

**Our Languages are Sacred:  
Finding Constitutional Space for Aboriginal Language Rights**

By

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## Abstract

This doctoral thesis argues that Aboriginal languages have a special constitutional status under section 35 (1) of the *Constitution Act, 1982*. Using the framework established by the Van der Peet case (that in order for an Aboriginal activity to be recognized as an Aboriginal right it must be demonstrated as a practice, custom, and tradition at the time of contact with a “modest” ability to evolve”) this thesis argues that special constitutional status must be obtained due to four reasons, each divided into chapters. Chapter One argues that Aboriginal language rights are derived from Aboriginal customs, practices, and traditions identify language as a sacred and inalienable right. These customs, practices, and traditions form the basis for law and frame these languages as inherent and a duty to transmit to future generations. Using inter-customary and historical language practices between European and Aboriginal peoples this thesis also suggest that linguistic exchange created a unique body of law and formed the basis for relationships between diverse cultures and national groups.

Chapter Two traces the disruption Canada’s assimilation policies have had on Aboriginal languages, particular in educational policy and residential schools. As this thesis suggests, this was a violation of Canada’s common law as inter-customary law regarding language was not extinguished or surrendered by law or treaty. This forms a large part of what the Truth and Reconciliation Commission of Canada has called Canada’s “cultural genocide” – a practice successive federal governments have admitted as wrong and now commit to rectifying in policy and practice. If Canada is committed to a “new relationship” with Aboriginal peoples on a “nation-to-nation” basis Aboriginal languages must be recognized as a seminal and foundational part of Canadian law and constitution.

Chapter Three frames Aboriginal languages as crucial and ongoing parts of Aboriginal customs, practices, and traditions today, continuing a pre-contact sacred character that fulfills the Van der Peet criteria. For evidence this thesis cites Aboriginal people’s advocacy for language preservation and promotion through law; ongoing attempts to express constitutional recognition regionally; the unwritten principles of the Canada’s constitution; and government recognition of the centrality of Aboriginal language through constitutional negotiations, national studies and Royal Commissions.

Chapter Four argues that International law is a crucial arena in which Aboriginal language rights can, has, and should be asserted. Furthermore, Canada has committed to implementing the United Nations Declaration on the rights of Indigenous Peoples that recognizes Aboriginal peoples’ language rights in a number of areas such education.

Chapter 5 presents the pressing need for constitutional recognition of Aboriginal language rights that would include a positive obligation on the State to guarantee Aboriginal peoples the right to education in their Aboriginal languages. It also sets out the broad lines of how constitutional recognition could be achieved.

## **Acknowledgements**

I would not have been able to complete my research without the love and support of my mother Doris Young and the wisdom of her twin sister, my Auntie, Esther Sanderson. I am also very grateful for the encouragement of Verna Kirkness and for her availability to listen to my ideas while she was living in Winnipeg.

I would like to recognize and thank the Social Sciences and Humanities Research Council, the National Aboriginal Achievement Foundation and the PhD Studies for Aboriginal Scholars, University of Manitoba, for their financial support. I would also like to thank James Gorton, Hudson's Bay Company Archives, and Doug Smith, Truth and Reconciliation Commission of Canada for their research assistance.

I also acknowledge my supervisor Peter Kulchyski and my committee members Jean Friesen and Gerald Heckman for their guidance and support.

## **Dedication**

To my grandparents Elizabeth Jane Young and Senator John Young who risked their freedom to ensure the Cree language was kept alive in my family. To my daughter Sarah (Nimijiien Niibense) Fontaine-Sinclair, it was her birth that inspired me to go back to school.

I also dedicate this research to all Aboriginal peoples who were made to feel that the cultural abuse they experienced as children in residential school was not a violation of human decency and their Aboriginal right.

## Preface

Although this thesis presented a challenge to write, Chapter Two on the impact of residential schools on Aboriginal languages and cultures was extremely demanding. Although there have been a number of public discussions about what occurred in the residential schools and their legacy, many Aboriginal families do not discuss the personal implications of these schools. It's too painful. As a result, I had to find out what happened in these schools by reading books and listening to the testimonies revealed to the Truth and Reconciliation Commission. At least those public gatherings created a sense of community and provided cultural support workers to talk to if needed. In my case, however, as a student reading books in isolation, I found it extremely hard to learn about the abuse of Aboriginal children and to think about what happened to my parents and grandparents. It is important to mention this because writing about residential school history can be traumatizing for Aboriginal students. It can conjure up very strong emotions that range from deep sadness to pain and anger. My daughter is now at the age when many children were removed from their communities. I kept thinking as I read that if I were a mother during my grandmother's generation, I would not have my daughter by my side during these precious years and she might have experienced abuse. It took months to write Chapter Two. I was only able to read a few pages of testimony at time because I would inevitably end up crying or feeling sick to my stomach.



**Introduction**  
**Our Languages are Sacred:**  
**Finding Constitutional Space for Aboriginal Language Rights**

*Mii go gewiin maabam Mnidoo gaa-zhi-miin'goying iihow ji-naadziying iihow nake mii gaa-zhi-miin'gozying iihow gegoo enweying.*

For it was the Creator who gave to us this way of life and blessed us with this way of speaking.

*Aapji shpendaagwad maada enweying ge-giinwind ji-kendmang ji-moozhtooying geget gwa nishnaabewiying.*

This beautiful language is worth more than anything and is what truly lets us know and feel what it means to be Nishnaabe.<sup>1</sup>

*Mii ezhi-yaamgal iihow nishnaabemyin mii go ge-zhi-moozhtooyin iihow eyaawiyin geget gwa.*

This is how it is when you are speaking the Nishnaabe language, you can truly feel who you are.<sup>2</sup>

Aboriginal languages<sup>3</sup>, although as different from each other as the many languages of Europe are from each other, are largely languages of relationship. They tend away from isolating the

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<sup>1</sup> Aboriginal person or a person of Ojibway ancestry.

<sup>2</sup> Brian D. McInnes, *Sounding Thunder: The Stories of Francis Pegahmagabow*, (Winnipeg, Manitoba: University of Manitoba Press, 2016), 60. This statement was made by Duncan Pegahmagabow in 1995 at a language conference in Sault Ste. Marie. Brian D. McInnes interprets the meaning of the language as a spiritual language that “provided the people with a special connection to their identity and purpose. Only through the language ... could we be sure that our thinking was reflective of the values and teachings given to the Nishnaabe people in the beginning.”

speaker from other people or from the events or phenomena of the world about which he or she is speaking. This is a broadly shared cultural value that accepts the relationship between the mind of the speaker and the person, thing or event being described.<sup>4</sup>

Aboriginal peoples maintain that language has a spiritual significance because the Creator gave language to people. As a result, language is considered an integral part of the life and embodies “our unique relationship to the Creator, our attitudes, beliefs, values and the fundamental notion of what is truth.”<sup>5</sup> Languages are also regarded as spiritual because according to customary law it is in speaking the language that the people can be certain that their way of thinking reflects the values and teachings that were provided them at the beginning of time.<sup>6</sup>

Language scholars agree about the sacred significance of language. Herman M. Batibo, linguist and author of *Language Decline and Death in Africa* states that: “the significance of language in human life is that it is central not only to our social interactions and relationships but also in distinguishing us and enabling others to ascertain our positions in society.”<sup>7</sup> Joshua Fishman, an internationally renowned linguist, proclaimed that language holds a spirit or soul.<sup>8</sup> Fishman also suggests that language represents a moral order:

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<sup>3</sup> I will use the terms Aboriginal and Indigenous interchangeably. Within the context of Canada, the term Aboriginal will be used. References outside of Canada, Indigenous will be used. Although the definition of Aboriginal peoples includes Indian, Inuit and Metis, the dissertation does not deal with Metis languages.

<sup>4</sup> Canadian Heritage, *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, Ottawa: Task Force on Aboriginal Languages and Cultures, 2005, 23

<sup>5</sup> Marianne B. Ignace, *Handbook for Aboriginal Language Programming*, A Report Prepared for the First Nations Education Steering Committee, Aboriginal Languages Sub-Committee. North Vancouver, B.C., April, 1998.

<sup>6</sup> Brian D. McInnes, *Sounding Thunder: The Stories of Francis Pegahmagabow*, (Winnipeg, Manitoba: University of Manitoba Press, 2016).

<sup>7</sup> Herman M. Bartibo. *Language Decline and Death in Africa: Causes, Consequences and Challenges. Multilingual Matters*, 2005, *Volume 132* at 37.

<sup>8</sup> Joshua Fishman, “Maintaining Languages: What Works and What Doesn’t,” in *Stabilizing Indigenous Languages* edited by Gina Cantoni, (Flagstaff: Centre for Excellence in Education, 1996), 21.

It functions similarly to that order in ennobling human life and, in addition, it is co-constitutive of that order. It is not just the conventional norm; it is not just the natural ubiquitous tool of comfortable community with one's "own kind." It is also, for some, the heart of morality itself, morality that one can hear and see and feel, even as one brings it forth from one's self.<sup>9</sup>

For Aboriginal peoples, land relationships add to the sacred significance of language. As the peoples' intimate relationship to land evolved, so too did the dialects. Aboriginal languages are therefore as diverse as and rooted in the landscapes that exist across the country.<sup>10</sup>

Intergenerational survivor of the residential schools Sabrina Williams so eloquently explains the connection between language and culture and identity:

All things that are attached to language: it's family connections; it's oral history; it's traditions; it's ways of being; it's ways of knowing; it's medicine; it's song; it's dance; it's memory; it's everything, including the land. Because when I listen to people speak our language I can hear where, start to hear where it might have come from.<sup>11</sup>

The "founding fathers" of Canada disregarded the significance and importance of Aboriginal languages as they asserted nationhood and sovereignty over what they claimed as the country. As a result, laws and policies were established to eradicate Indigenous languages and cultures. The residential or boarding school system was one result of Canada's effort to extinguish the cultural identity of Indigenous peoples.<sup>12</sup> The Truth and Reconciliation Commission of Canada (TRC)

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<sup>9</sup> Joshua Fishman, "Maintaining Languages: What Works and What Doesn't," in *Stabilizing Indigenous Languages* edited by Gina Cantoni, (Flagstaff: Centre for Excellence in Education, 1996), 40.

<sup>10</sup> Canadian Heritage, *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*, Ottawa: Task Force on Aboriginal Languages and Cultures, 2005, 23.

<sup>11</sup> *Canada's Residential Schools: The legacy - The Final Report of the Truth and Reconciliation Commission of Canada, volume 5*, Montreal; Kingston; London; Chicago: MQUP, 2016, 138-139.

<sup>12</sup> Andrea Smith, *Indigenous Peoples and Boarding Schools: A comparative study*, New York: Secretary of the

has defined what occurred in the residential schools as cultural genocide.<sup>13</sup> The legacy continues for the vast majority of Indigenous communities because the original languages are not being transmitted from grandparent or parents to the children. Schools thus play a central role in the transmission of Indigenous languages. Some scholars assert that because the dominant educational system does not provide Indigenous children with an opportunity to learn and have access to their ancestral languages, it is perpetuating cultural genocide through linguicide.<sup>14</sup>

The issue of cultural genocide through linguicide is not solely a Canadian issue. Indigenous languages around the globe have been similarly impacted by state action and laws that have attempted to extinguish Indigenous peoples languages and cultures. These states are now attempting to deal with the consequences. Recently, experts noted that “(c)onservative estimates suggest that more than half of the world’s languages will become extinct by 2100.”<sup>15</sup> Indigenous languages are among the most threatened. The United Nations Permanent Forum on Indigenous Issues has asserted that linguicide is now the most pressing issue facing Indigenous peoples today.<sup>16</sup> Indigenous communities looking for solutions have a great deal of work to do to advance and support efforts to revitalize their languages. The objective of this dissertation is to

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United Nations Permanent Forum on Indigenous Issues, E/C.19/2009/CRP.1, 2009. Andrew John Woolford. *This Benevolent Experiment: Indigenous boarding schools, genocide, and redress in Canada and the United States*. U of Nebraska Press, 2015.

<sup>13</sup> *Canada's Residential Schools: The legacy - The Final Report of the Truth and Reconciliation Commission of Canada, volume 5*, Montreal; Kingston; London; Chicago: MQUP, 2016.

<sup>14</sup> Tove Skutnabb-Kangas, “*Linguistic genocide in education – or worldwide diversity and human rights?*” Mahwah, New Jersey & London: Lawrence Erlbaum Associates, 2000.; Tove Skutnabb-Kangas and Robert Dunbar, *Indigenous Children's Education as Linguistic Genocide and a Crime Against Humanity? A Global View*, (Guovdageaidnu/ Kautokeino: Gáldu, Resource Centre for the Rights of Indigenous Peoples, 2010),; Andrea Bear Nicholas, “Linguicide: Submersion Education and the Killing of Languages in Canada, ” *Briarpatch* 40, no. 2 (2011): 4.; Andrea Bear Nicholas, “Linguistic Decline and the Educational Gap: A Single Solution is Possible in the Education of Indigenous Peoples,” March 2009; A. Bear Nicholas, “Canada’s Colonial Mission: The Great White Bird,” in *Aboriginal Education in Canada: A Study in Decolonization*, edited by K.P. Binda and Sharilyn Calliou (Mississauga, ON: Canadian Educators’ Press. 2011), 11-33.

<sup>15</sup> United Nations Permanent Forum on Indigenous Issues. “Expert group meeting on the theme Indigenous languages: preservation and revitalization (articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples).” Economic and Social Council, February 2016. E/C.19/2016/10 (para 12)

<sup>16</sup> *Ibid.* 2.

examine possible options provided by Canada's Constitution to recognize Aboriginal language rights in a manner that supports language revitalization and maintenance at the community level. Later in this introduction I will frame the options within the structure for the constitutional recognition of Aboriginal rights in Canada set out by the Supreme Court of Canada in *R v Van der Peet*.

### Finding a Problem

I came to understand the significance of the connection between law and Aboriginal languages through a series of personal experiences. The first experience began with a powerful dream I had during our winter ceremonies. It made me aware that in our dreams my ancestors often stress the importance of our customary laws regarding language. The second experience resulted from my work with residential school court claims that involved Aboriginal peoples who were seeking recognition of the harms committed against their languages. Finally, as I began to reflect on the loss of language within my family history, I realized we had a very dysfunctional relationship to our languages as a result of Canada's assimilation policies. The harm and shame that my family and so many other Aboriginal families experienced for speaking an Aboriginal language informs a significant part of Canada's constitutional history, and provides a powerful reminder of why Aboriginal peoples' languages must have explicit constitutional recognition and protection from assimilative educational policies. As non-speakers of our traditional languages, my generation is directly experiencing the impact that language loss has on our sense of self, while we are reminded of the many important ways language connects to our cultural identity.

## Dreaming

In 2002, while completing my master's degree in Indigenous peoples' law and policy at the University of Arizona, I had a dream that elders were speaking to me in Ojibway. Before the dream, I had a unique experience while high in the sky on a plane traveling to our ceremonies in Minneapolis. Mid-way through my flight, I peered out the window and noticed a perfect circular rainbow floating in the air beside me. I marvelled at its circular shape and the brightness of the colors. I wanted to take a picture of it so I could show it to my family later. After a few seconds of fiddling through my purse, I located my camera but when I looked up again the rainbow had disappeared. Until then, the only rainbows that I had witnessed were the half-circular arched shaped rainbows that often form before or after a rain-shower. The other type of rainbow I am familiar with is called a sundog, which is a magnificent vertical presence in the sky that comes out before the weather turns bitterly cold. I was caught off guard that day. I knew in my heart I had witnessed something special, and that something would come to teach me more about the rainbow.

That same evening, after a successful flight, I fell asleep and dreamed that I had traveled to the core of the earth. Although it was cold and pitch black, I wasn't scared; but I was definitely curious. I kept wondering to myself: "*How did I get here? Where am I? Did I die? Am I buried alive in the earth?*" Then I heard very elderly-sounding male voices coming from the darkness. I listened attentively to see if I could understand what they were saying. Then, I realized they were speaking *Anishnabemowin* (Ojibway language). Suddenly, the mood of my dream turned serious. For some reason, I knew I had to listen carefully, even if I could not understand the words. I felt as though some part of me, on some level, understood. I closed my eyes tightly so that I could focus on the sounds and the words. The melodic voices continued for some time; I am not sure

how long. When I finally awoke, I sprang up feeling as though I had been submerged in water for a very long time. I was gasping for air and my heart was beating fast. I also felt extremely anxious. After I calmed myself down and my breathing resumed a normal pace, I reflected on the possible message of my dream. I also wondered about the connection between the dream and the image of the rainbow that appeared earlier in the day. Later, at the ceremonies, I approached an Elder with an offering of tobacco to have my dream translated.

He informed me that the greater significance of the dream would be revealed later in my life. For now, however, he told me that the circular color I witnessed was a prism of energy that represents our ancestors, or a reflection of them. The ancestors were informing me that they continue to hover in sacred places where our languages originate. They were also informing me that I remain connected to the life and spirit of the languages, even as a non-speaker. These languages form a part of my ancestral knowledge that remains connected to a part of me. The voices in the dream spoke of the urgency of reviving our languages and, although the language has been buried in the ground, the spirit of the language remains strong. The image of our languages rooted in the earth creates a powerful symbol, a testament that our languages come from and remain rooted in the soil of the land. Looking back on the Elder's words today, I realize that I only recognize certain aspects of his message; more will come.

Although the dream left me with symbols to interpret and many questions, I take the dreams seriously as do many Anishnaabe scholars who recognize dreams as a research methodology.<sup>17</sup> For me, the timing of the dream was particularly significant. It occurred shortly after my initiation ceremony into our traditional teaching lodge where I offered tobacco as a commitment

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<sup>17</sup>Kathleen E. Absolon, *Kaandoswin: How We Come to Know*, (Winnipeg: Fernwood Publishing, 2011); Jo-Ann Archibald, *Indigenous Storywork*, (Vancouver: UBC Press, 2008); John Borrows, *Drawing Out Law: A Spirit's Guide*, (Toronto: University of Toronto Press, 2010); Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, (New York: University of Otago Press, 1999).

to protect and advance our language. I was not sure how to accomplish this other than to learn the language myself. Soon after I graduated with my LLM from the University of Arizona, I traveled back to my maternal community, the Opaskwayak Cree Nation where I planned to remain for the year so that I could reconnect with my family and learn to speak Cree.

### A Constitutional Gap: Aboriginal Language Rights in Canada

A few months after my move home, I traveled to Vancouver with my mother. I visited my sister while my mother attended a conference on residential schools. On the last day of the conference, I agreed to pick up my mother. When I arrived, I was surprised by the tension in the room as several Aboriginal peoples, government officials and lawyers hovered around a very large table talking heatedly about the loss of language and culture. Some of the lawyers for the government were adamant that Aboriginal language rights did not have national recognition in Canada. I knew this statement to be legally incorrect. I had just completed two years of studying international law which recognizes language rights as a fundamental human right. International law also recognizes the specific rights of Indigenous peoples to language. Clearly Canada, as a signatory to treaties that recognize language rights such as the International Covenant on Civil and Political Rights, could not claim that Aboriginal peoples have no legal rights to their ancestral languages.

Shortly after the conference, I had an opportunity to assist with a class action suit on residential schools at a time when thousands of Aboriginal people were filing lawsuits against the federal government and the churches seeking compensation for sexual and physical abuses. At the same time, Aboriginal peoples were also seeking reparations for their loss of language and culture. Some claimants recommended a global fund to support language revitalization, while



others wanted the Canadian federal government recognized by the international community for committing genocide by destroying the cultural identity and language of young Aboriginal children through “education.” In most cases, Aboriginal peoples wanted to see their grandchildren and great-grandchildren learning their traditional/ancestral mother tongue as a form of reparation and, more importantly, as an assurance that the languages would be revitalized. Compensation was seen as one of many important steps for the revitalization of Aboriginal languages. Most importantly, the discussions Aboriginal peoples had during the time about loss of language and culture uncovered a gap that exists in Canada’s constitutional law.

The federal government’s position during the residential school settlements remained similar to their position identified during the residential school conference in Vancouver: because Aboriginal languages are not constitutionally recognized, the federal government has no legal obligation to provide redress. No government representatives during this time discussed how section 35 of Canada’s Constitution Act 1982 that recognizes Aboriginal rights might influence this issue. The federal government chose not to respond to these legal implications but instead included compensation for loss of language and culture in the Common Experience Payments provided to all former students of federally recognized schools. This “solution” did not address Aboriginal peoples’ legal rights to language, nor did it provide an adequate remedy to their residential school claims. Unfortunately, the negotiated Residential School Settlement Agreement resolved the majority of residential school claims without adequately dealing with the loss of language. As a result of the Agreement’s conditions, Aboriginal peoples in the future cannot file any claims against the federal government for residential schools.<sup>18</sup>

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<sup>18</sup> Under the Settlement Agreement, Aboriginal peoples had three options: 1) Request a claim form. Former students seeking a payment from the settlement and who did not wish to sue the Government of Canada or the churches had to register and request a claim form, sent by mail after August 20, 2007. The claimant was to complete and return the form. 2) Remove oneself (opt out). Those not wanting a payment, or interested in suing the Government or the

The government's position on Aboriginal language rights reminded me, and still reminds me, of a period not so long ago when it refused to recognize Aboriginal title to land. It took a Supreme Court of Canada decision to radically change that perspective.<sup>19</sup> Although this dissertation does not advocate for the courts to define Aboriginal language rights, or recommend any action by the courts, history does suggest that a positive court decision on Aboriginal rights often forces government to act. In this case, the government position on Aboriginal languages has resulted in very little action on revitalising languages.

Not only have Aboriginal languages received inadequate government support, but inequalities exist in Canada with respect to language support more generally. Under the Constitution Act of 1982, minority languages, defined as French outside of Quebec and English inside of Quebec, have a series of constitutional safeguards. They range from equality of treatment in all federal institutions<sup>20</sup> and the right to distinct education and cultural institutions,<sup>21</sup> to the education of children in either language at the public's expense.<sup>22</sup> Aboriginal languages have no similar provisions in the area of education even though Aboriginal languages are the

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churches on his or her own, must remove themselves from the Agreement (opt out) by submitting an Opt Out Form postmarked by August 20, 2007. 3) Do nothing, and get no payment and give up rights to sue. See the authorized Court Notice: [http://www.residentialschoolsettlement.ca/detailed\\_notice.pdf](http://www.residentialschoolsettlement.ca/detailed_notice.pdf)

<sup>19</sup> *Calder et al. v. Attorney-General of British Columbia*, [1973] S.C.R. 313

<sup>20</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. Section 16 (1): English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

<sup>21</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. Section 16.1 (1): The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

<sup>22</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. Section 23 (1): Citizens of Canada ... have the right to have their children receive primary and secondary school instruction in that language in that province. (3) ... (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

first languages of the country, providing cultural identity to Indigenous people and constitutional identity to the Canadian nation.

### The Legacy of the Residential Schools: a Personal Story

As I pondered the significance of these inequalities I became curious about the implications it had on my generation, who are primarily non-speakers. When I began to examine my family history and our relationship to language I immediately noticed a startling difference amongst the generations. My grandparents valued our language immensely but my parents' generation carried a great deal of shame towards speaking it, while my generation now carries a shame more directed towards our Aboriginal identity because we cannot speak or understand the language. I became increasingly interested in how the attitudes of my generation came to be so different from those of my grandparents, and even my parents.

Many Aboriginal families today question the value of Aboriginal languages in the education of their children, fearing that Aboriginal language programs “will negatively impact their children’s ability to succeed in their academic programs which are written and delivered in English.”<sup>23</sup> Aboriginal communities worry not just about their children’s success in post-secondary institutions, but also about their employment if their education focuses on learning to speak, read and write in an Aboriginal language. They believe that children’s ability to communicate in one of Canada’s official languages will suffer. Consequently, a number of Aboriginal communities and certain segments of Canadian society more generally question whether there is any value at all in teaching Aboriginal languages to children. Some Aboriginal leaders will assert publically the importance of language to cultural identity and then fail to

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<sup>23</sup> Virginia Arthurson, “First Nations Languages: Why We Need Them,” Winnipeg: Manitoba First Nations Education Resource Centre, (Accessed July 2, 2014), 3 <http://www.mfnerc.org/wp-content/uploads/2014/02/Immersion-Language-Booklet.pdf>

support the revitalization of Aboriginal language in their home territory. In response to these attitudes and responses, a Manitoban Aboriginal organization working in areas related to Aboriginal languages and education developed a pamphlet entitled “First Nation Languages: Why We Need Them.”<sup>24</sup> The pamphlet attempted to promote the importance of Aboriginal languages by claiming they are critical to the cultural identity of the Aboriginal people. Recently, the Truth and Reconciliation Commission of Canada documented the destruction of Aboriginal languages in the residential schools and recommended diverse opportunities to advance Aboriginal languages, particularly through education. Lack of support may partly stem from the legacy of the residential school that instilled people with shame about Aboriginal languages and identity.

For Aboriginal people, recognizing internalized shame and fear about using an Aboriginal language can often be a first step toward reviving their traditional languages. For me personally, I recognized that I had to dig into my family history to find out what happened to our own relationship to language. In the process, I gained several important insights.

While I was growing up, my mother and father spoke English to my siblings and me. During family gatherings, Ojibway (my father’s first language) and Cree (my mother’s first language) were spoken intermittently, and only amongst the adults. When my maternal grandparents were around, everyone spoke Cree as my grandmother did not speak English and my grandfather rarely did, although he could. French was introduced into my family in the early 1970s when my parents decided to register me in a French immersion school where I remained until high school.

In some respects, the diverse language situation at home resembled an immigrant family where the children spoke the dominant languages of the country, and the grandparents continued

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<sup>24</sup> Ibid 201.

to speak the language of their home country while the parents formed a bridge between the two languages and cultures. Significantly, however, my family is not new to Canada – we are “Indigenous” to this country and so is our mother tongue.

The language challenges my family has experienced is shared by so many Aboriginal families in Canada. According to the 2011 census on Aboriginal languages, the majority of Aboriginal peoples under the age of 59 years speak English or French while the small number of people who speak an Aboriginal language are over the age of 60.<sup>25</sup> Very few people under the age of 20 speak an Aboriginal language at all. I never questioned the implications of these statistics until I related them to my family.

My grandparents and parents were from a generation whose dominant language was Cree. Our home community had very few individuals who communicated in English when they were young. Although my grandparents are no longer alive, their persistence to keep the language alive reminds us how much can change in one generation. Most of the people from my parents’ generation (over the age of 60) continue to speak their ancestral languages but did not pass it onto their children. Both my parents’ and grandparents’ generations attended residential schools where they experienced shaming of their Aboriginal cultural identity and physical punishment whenever they spoke their language. Teachers and administrators used shaming to teach children that Aboriginal language and culture was immoral or sinful; they used physical punishment to instil fear and provide an ongoing deterrence. As a result, my parents and their siblings left the residential school as young adults ashamed of their cultural identity and afraid to speak their ancestral language.

Consequently, very few people of my generation speak our ancestral languages, and none in my daughters’ generation. The assault on traditional languages has also harmed to the elder-

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<sup>25</sup> Statistics Canada, 2011, *Aboriginal Languages in Canada*, Catalogue no. 98-314-X2011003.

youth relationship in my family. Regrettably, I was not able to get to know my grandparents very well because they only spoke Cree. I feel enormous loss because I could never tell them that I loved them or that I cherished them. My parents and their sibling also had an unhealthy relationship to our language and consequently lost an opportunity to be close to their parents. My parents did not share our ancestral language with my siblings and me because they were too afraid and ashamed to speak their mother tongue around children.

As I contemplated my own family history, my dream during the ceremonies, and my experience with the residential schools claims, I began to understand that the legacy of shame towards Aboriginal languages stems from racist ideas towards Aboriginal peoples. I decided to conduct further research (beyond my personal experience) into the broader implications that assimilation policies had and continue to have on Aboriginal peoples' language rights.

#### Constitutional recognition of Aboriginal Languages

Currently, Canada's Constitution does not recognize Aboriginal languages and their significance to the development of the country. Section 35 (1) of Canada's Constitution Act, 1982, purports to identify and clarify the nature of Aboriginal rights, but provides very little guidance on what it is designed to protect. It reads:

- (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.<sup>26</sup>

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<sup>26</sup> Rights of the Aboriginal Peoples of Canada, Part 2 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11

Because of the limited definition of Aboriginal rights provided in section 35 (1), the Supreme Court of Canada developed a framework to define Aboriginal rights in the 1996 *Van der Peet* decision (concerning a Sto:lo woman's right to sell fish). For any Aboriginal activity to qualify for constitutional protection under section 35, the activity must be demonstrated to be:

... a practice, custom or tradition ... of central significance to the aboriginal society in question... the practice, custom or tradition was one of the things which made the culture of the society distinctive -- that it was one of the things that truly made the society what it was ...<sup>27</sup> [emphasis in original/added]

Initially the Supreme Court recognized Aboriginal rights as activities that a specific Aboriginal nation exercised. Brian Slattery, a constitutional scholar, argues that it would likely fall under the umbrella of the "generic right," since Aboriginal languages are inextricably tied to the cultural identity of all Aboriginal peoples.<sup>28</sup> Moreover, the ability to transfer language to the next generation would qualify as a right to cultural integrity. He reasons even further that:

"Aboriginal groups arguably have the constitutional right to use their ancestral languages and the right to enjoy the educational and cultural institutions needed to maintain and develop them."<sup>29</sup>

Additionally, the Supreme Court of Canada through the *Van der Peet* framework has also recognized that "Aboriginal peoples have the right to maintain and develop the central and significant elements of their ancestral cultures."<sup>30</sup>

Significantly, the court's definition of Aboriginal rights recognizes that the customs, practices, and traditions must be rooted historically prior to European arrival:

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<sup>27</sup> *R v Van Der Peet*, [1996] 2 S.C.R. 507 para 55

<sup>28</sup> Brian Slattery, "A Taxonomy of Aboriginal Rights," In *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Aboriginal Rights*. Edited by Foster, Hamar, Heather Raven and Jeremy Webber, (Vancouver: UBC Press. 2007),111- 128.

<sup>29</sup> Slattery, Brian. "The Generative Structure of Aboriginal Rights." (2007). 38 S.C.L.R. (2d) at 608,.

<sup>30</sup> *Van der Peet*. Slattery 2007 at 118.

It must, in other words, aim at identifying the practices, traditions and customs central to the aboriginal societies that existed in North America prior to contact with the Europeans.<sup>31</sup> That is, Aboriginal activities and practices can evolve provided they maintain strong continuous ties to their historical origins. In the *Van der Peet* case, Justice L'Heureux Dube insisted that activities associated with the evolution of Aboriginal rights also includes activities that are geared towards the preservation of Aboriginal societies:

... all practices, traditions and customs which are connected enough to the self-identity and self-preservation of organized aboriginal societies should be viewed as deserving the protection of s. 35(1).<sup>32</sup>

In this dissertation I will use the framework the Supreme Court of Canada has developed for Aboriginal rights (through the *Van der Peet* case) to argue that Aboriginal languages have a special constitutional status under section 35 (1) of the Constitution Act, 1982, and advance two arguments. First Aboriginal language rights exist as a right of cultural integrity. Secondly, Aboriginal language rights include the right for Aboriginal peoples to control and administer the appropriate educational institutions necessary to maintain and advance Aboriginal languages. I also recognize that several treaty issues related to Aboriginal languages add to this argument and deserve further research, but for the purposes of this dissertation I will simply focus on Aboriginal rights.<sup>33</sup>

In Chapter 1, I will use the first part of the *Van Der Peet* test to demonstrate that the pre-contact foundation of Aboriginal language rights derives from traditional Aboriginal law that regards language as a sacred and inalienable inherent right that cannot be extinguished. I will

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<sup>31</sup> *Van der Peet* at paras. 44-46, 55-56, 60-62

<sup>32</sup> *Van der Peet* at para 160.

<sup>33</sup> There are likely treaty guarantees for Aboriginal languages. There are also implications on the role interpreters played in the treaty negotiations.



also demonstrate that Aboriginal law informed the linguistic customs, traditions and practises that arose between Aboriginal peoples and Europeans during the early period of contact, generating inter-societal customs. I argue that these interactions create a special constitutional status for Aboriginal languages in section 35 (1) derived from the rules that regulated communication exchanges during this earlier period. I will not provide a general linguistic history for Canada since each region of the country is culturally and politically diverse, nor will I explore Aboriginal customary law in great detail. Instead, I focus on the linguistic customs of the Algonquian, one of the largest linguistic families in Canada, and how Algonquian speaking people adjusted upon encounters with English (and to a certain extent French) traders and missionaries.

Near the end of the nineteenth century, as I note in the second chapter, the inter-societal linguistic customs and traditions originally formulated between Aboriginal peoples and Europeans was violated by government policies of assimilation. In Chapter 2, I provide an overview of the federal government's attempt to eradicate Aboriginal culture by attacking the Aboriginal languages of students through the residential school system and other colonialist actions. I focus on the harsh linguistic experiences Aboriginal peoples endured in the residential schools to force their cultural assimilation into settler society.

In Chapter 3, I investigate another component of the *Van Der Peet* test which asserts that Aboriginal practices, customs and traditions must be continuous, and argue that Aboriginal peoples persisted in promoting Aboriginal languages in education within their communities. In addition, Aboriginal peoples have continuously asserted their constitutional rights through political action. I will also examine outstanding federal policy objectives regarding Aboriginal languages, constitutional discussions before 1982 and current scholarship related to the

advancement and promotion of Aboriginal language rights. The chapter not only demonstrates the ongoing efforts of Aboriginal peoples to assert the existence of Aboriginal language rights, but also that the governments of Manitoba, the Northwest Territories and Nunavut already grant certain Aboriginal languages a quasi-constitutional status.

The fourth chapter examines the international recognition of Indigenous language rights, and Canada's support of the relevant international conventions without, ironically, implementing them nationally. I use Chapter 4 to consider the constitutional status of Indigenous languages rights in other jurisdictions, such as Bolivia and New Zealand. The purpose is not to provide a detailed analysis of Indigenous language rights in other jurisdictions but to demonstrate, Canada lags behind the policies and practices of other countries to advance Indigenous language rights.

Finally, the possible implications for recognizing and affirming Aboriginal language rights as an educational right under section 35 (1) of the Canadian Constitution will be considered in Chapter 5. In this chapter, I suggest where we might go as a country to reconcile the past treatment of Aboriginal languages while recognizing that Canada's linguistic origins are Aboriginal. Canada is an extremely culturally rich country and the languages of Aboriginal peoples are foundational to its history. There is much work to be done to restore the languages of Aboriginal peoples, and constitutional recognition is an important step in this process

## Chapter 1

### Aboriginal Customs, Practices and Traditions in the Prairies

I argue in this chapter that Aboriginal customs practices and traditions is the basis for Aboriginal language rights. Aboriginal customary practices and traditions informs the first part of the Van der Peet test, which is to demonstrate the existence of Aboriginal peoples' pre-contact customs, traditions and practices supporting Aboriginal languages. Next, this chapter provides an overview of customary inter-linguistic practices that arose amongst Europeans and Aboriginal peoples in the prairie region interacting in three settings. Language-exchanges<sup>34</sup> between the Hudson's Bay Company (HBC) and Aboriginal peoples for the purpose of trade demonstrates that the HBC, as a quasi-governmental entity, acknowledged Aboriginal customs regarding language. Second, linguistic practise that arose in education when the missionaries arrived is examined to demonstrate a transitional period where Christianity was introduced but not at the expense of Aboriginal languages. The development of the syllabic writing system as a tool for language preservation is particularly significant. The third and final section examines the recognition of Aboriginal peoples language rights in the first court of western Canada and briefly in the treaty-making era. The chapter concludes with a discussion of the significance of the linguistic practices that were developed in the prairie region and Aboriginal language rights under section 35 (1) of Canada's Constitution Act. Before embarking on an overview of linguistic customary practices, I will briefly set out the linguistic land of Aboriginal people sin the prairie region and explain the sacred nature of Aboriginal languages. Before I commence overview of the customary linguistic practices, I will briefly set out the linguistic landscape of

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<sup>34</sup> Language exchange means a method of learning and adapting to another language.

Aboriginal peoples in the prairie region and then explain the sacred nature of Aboriginal languages.

### Overview of Languages in the Prairie Region

It is estimated that between 50 to 90 Aboriginal languages (as recognized by UNESCO) existed in what is now recognized as Canada.<sup>35</sup> In the prairie region the main linguistic group was Algonquian, one of the largest groups in North America, with approximately 30 languages.<sup>36</sup> The traditional territory of Algonquian speaking peoples is vast, spanning from the eastern coast of the county all the way to the Rocky Mountains. Although people in the territory speak a range of different dialects and languages, the languages are all culturally inter-related. The following maps demonstrate the range of Algonquian languages spoken in the prairie region. The first map of northern Manitoba drawn by a Cree speaker, Cha Chay Pay Way Ti demonstrates regions in the Swampy Cree dialect. It also references regions in the territory in the Cree language.

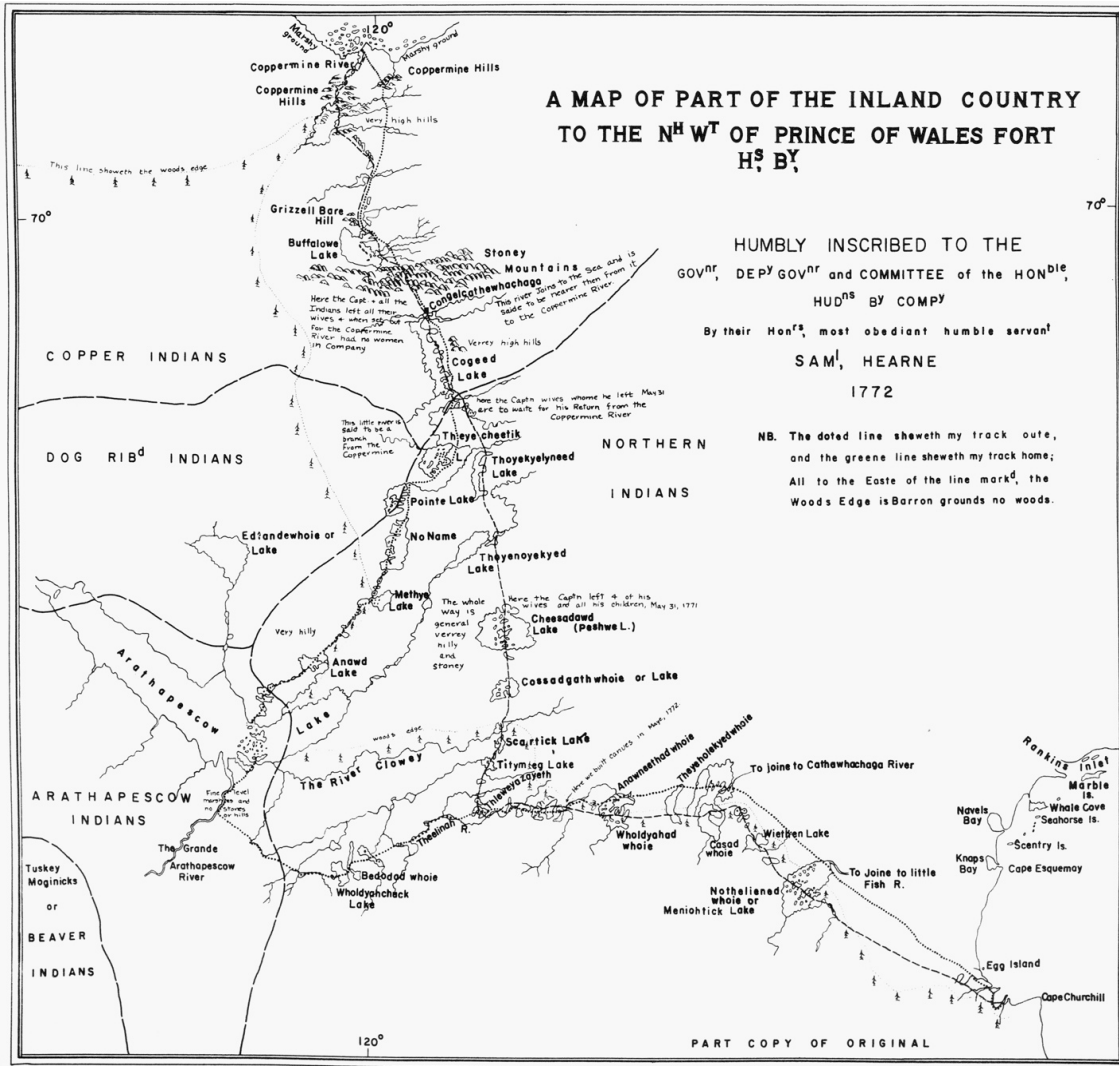
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<sup>35</sup> Statistics Canada 2011

<sup>36</sup> Blackfoot, Arapaho, Gros Ventre, Cheyenne, Cree, Menominee, Ojibwe, Pottawatomi, Sauk-Fox, Kickapoo, Shawnee, Miami-Illinois, Mi'kmaq, Abenaki, Malecite-Passamaquoddy, Massachusett, Carolina Algonquian, Powhatan, Etchemin, Loup A, Loup B, Shinnecock.



**Image 1:2 Map of Aboriginal Territory and Languages in the Hudson Bay area**



Source: Hearne, Samuel. "A Map of Part of the Inland Country to the N<sup>H</sup> W<sup>T</sup> of Prince of Wales Fort H<sup>S</sup>, B<sup>Y</sup>, Humbly Incribed to The Govnr, Depy Govnr and Committee of the Honble, Hudns By Compy By their Honrs, most obedient humble servant Saml, Hearne 1772" [facsimile].<sup>38</sup>

**Image 1:3 Image of Algonquian languages**

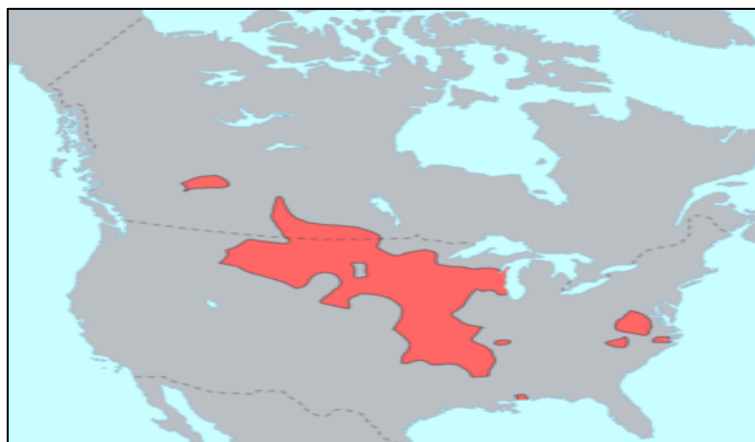
The next map demonstrates the vast territory of the Algonquian languages ranging from the prairie region all the way to the east coast and what is known as the United States.

<sup>38</sup> John Warkentin and Richard I. Ruggles. *Manitoba Historical Atlas : a Selection of Facsimile Maps, Plans, and Sketches from 1612 to 1969*. Winnipeg: Historical and Scientific Society of Manitoba, 1772, 92.



Map redrawn and modified from two maps by cartographer Roberta Bloom appearing in Mithun (1999:xviii-xxi). The meaning of the word Algonquian in the Maliseet language is *elakomkwik*, loosely translated as “they are relatives” or “they are allies.” The term suggests a close kinship amongst the languages and speakers. The prairie region also had several Siouan (Dakota) languages that are divided into the Western Siouan<sup>39</sup> and the Eastern Siouan.<sup>40</sup> The speakers of this language family are located in the plains area of North America, but they regularly traveled to the northern prairie region to trade with other Aboriginal peoples.

#### **Image 1:4 Map of the Siouan Language**



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<sup>39</sup> Some of these languages are referred to as Crow, Hidatsa, Mandan, Dakota (Assinaboine or Nakota, Stoney or Nakoda and Dakota-Lakota), Kansa, Omaha-Ponca, Osage, Quapaw, Chiwere, Ho-chunk, Biloxi, Ofo and Tutelo.

<sup>40</sup> Some of these languages are referred to as Catawba and Woccon.

Map redrawn and modified from two maps by cartographer Roberta Bloom appearing in Mithun (1999:xviii-xxi).

### Language: A Sacred Inalienable Inherent Right

A foundational source of Aboriginal language rights is derived from Aboriginal customs, traditions and practices.<sup>41</sup> Indigenous nations have always had “ the right to use and develop their ancestral languages and to enjoy the educational and cultural institutions needed to maintain them.”<sup>42</sup> Aboriginal languages are integral to the cultural identity of Aboriginal peoples. The vitality and continuance of Aboriginal cultures is dependent on the peoples’ ability to transmit the language to children. The practices, customs and traditions associated with culture and language transmission is therefore intimately connected. Indigenous women have played a central role in this process. It begins from the bonding period between a mother and child and then is carried on with the community, extended family and relationships with the Elders. The transmission process of language and culture is an inalienable right. Every Aboriginal nation has customary practices and traditions regarding language transmission.

Harold Cardinal elaborates on the Cree principle, *iyiniw miyikowisowina*, referring to “that which is given to the peoples,” while *iyiniw saweyihtakosiwin* are “the people’s sacred gifts” that are derived from the peoples’ unique relationship they have with the Creator.<sup>43</sup> Within these concepts, language is defined as a sacred inalienable right. It cannot be given away or

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<sup>41</sup> Justice McLachlin indicates in *Van der Peet R. v. Van der Peet* [1996] 2 S.C.R. 507 (S.C.C.) at para. 263 that: The history of the interface of Europeans and the common law with aboriginal peoples is a long one. As might be expected of such a long history, the principles by which the interface has been governed have not always been consistently applied. Yet running through this history, from its earliest beginnings to the present time is a golden thread—the recognition by the common law of the ancestral laws and customs [of] the aboriginal peoples who occupied the land prior to European settlement.”

<sup>42</sup> Brian Slattery, “The Generative Structure of Aboriginal Rights.” (2007). 38 S.C.L.R. (2d) at 608.

<sup>43</sup> Harold Cardinal, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations*, (Calgary: University of Calgary Press, 2000), These terms are in the Plains Cree dialect.



extinguished because of the responsibility to protect it for future use. Language is also a fundamental part of a peoples' identity and relinquishing it would be akin to giving away the culture or land. Ojibway elder Dolly Neapetung further explains that: "The Creator gave us a way of life and a language by which we could speak to one another and speak to Him and give meaning to everything that was around us ... to help us understand the world and other people, our relatives."<sup>44</sup> All of these instructions, explains the Creation story, are given in our ancestral languages. Because in the creation stories of Aboriginal people language originates from a place of spirit, language is also considered sacred.

When the people emerged from the spirit realm, language evolved as the people interacted with the living environment. Interaction with the plants, four legged animals, birds, rocks and water became a part of the peoples' daily life as they developed relationships with all these living entities and created an understanding of each. As the landscape changed, so too did language, evolving with the living land and the peoples' existence within their homelands, and blessing the people with its versatility and usefulness. Eventually, as peoples' needs and understanding grew, the original language evolved into different languages. Soon, linguistic offshoots emerged in different parts of the country. As a result, the land was nourished with diverse cultural exchanges and dialects.<sup>45</sup>

Language is a sacred inalienable right. It cannot be given away or extinguished because of the responsibility to protect it for future use inherent in a gift from the Creator. Language is also regarded as a fundamental part of a peoples' identity and relinquishing it would be akin to giving away the culture of the peoples. Aboriginal languages are also sacred because they are land-based languages. Ojibway elder Ruth Norton, at a Linguistic Rights Conference held in Ottawa

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<sup>44</sup> Ibid 30.

<sup>45</sup> Doris Young, Personal Communication. September 2007.

in 1993, further elaborates on this point “ ... languages (are) spiritual, and because the languages (are) spiritual ... our rights are entrenched in the law of the land, the way that we see it. As our ancestors tell us, the Creator has given us the land that we live in, and with the land he had given us the language.”<sup>46</sup> Norton explains that language and its connection to the land are crucial to the development of relationships amongst human beings but also to the identity of Aboriginal peoples. Language and land relationships can also be seen in, for instance, the multiple and different Indigenous languages and dialects in specific areas in North America, within language families and even amongst relations and communities. Aboriginal languages evolved according to the peoples’ relationship to the living environment. The late Vine Deloria adds that the Indigenous tribal languages are

for the most part, ... land-centred. That is to say, every feature of landscape has stories attached to it. If a tribal group is very large or has lived on a particular piece of land for many generations, some natural features will have many stories attached to them. I know some place in the Dakotas about which at least a dozen stories are told. These stories related both secular events such as tales of hunting and warfare and sacred events such as personal or tribal religious experiences. Each family within a tribe has its own tradition of stories about tribal ancestral lands. In theory it would be possible to gather from the people of the tribe all the stories that relate to every feature of the landscape. If these stories were then arranged chronologically, the result would be the history of the people.<sup>47</sup>

Aboriginal land-based language practices also evolved into our communication protocols, integrating our teachings derived from our relationships to our living environment.

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<sup>46</sup> Ruth Norton “Aboriginal Languages: Multiplicity and Insufficiencies” in Léger, Sylvie. *Les droits linguistiques au Canada, Collusions or Collisions?: Proceedings of the First Conference, University of Ottawa, November 4-6, 1993*. 153

<sup>47</sup> Vine Deloria, and James Treat, *For This Land: Writings on Religion in America*, (New York: Routledge, 1999), 252.

Other examples of the land-based nature of language come from linguistic concepts that define language itself. For instance, in the Swampy Cree dialect, language is defined as *miteinane*. The word translates directly as “heart-tongue,” from “*mite*” (heart) and “*inane*” (tongue). The root word “inane” is also in the word *ininiw* (people of the land) and *inniwowin* (Cree Language). When the three words *miteinane* (heart-tongue), *ininiw* (people of the land) and *inniwowin* (Cree Language) are combined, the concept becomes: *the tongue was given to the people of the land to communicate from the heart about the land because that is who we are ... we are a people of the heart ... in the act of being a person we speak from the heart.*<sup>48</sup>

In addition to the spiritual connection between language and land relationships, words used to express feelings and thoughts also have spiritual significance because they invoke a person’s mind, body and spirit. A powerful teaching regarding language states that “your life is through your heart” and the words used to communicate come from your heart. Therefore, spoken words are considered sacred expressions because they come from your spirit, revealing the interconnection between the person that you are and Creation.

When Europeans arrived in the prairie region, Aboriginal languages were the official ways of doing business.<sup>49</sup> The ceremonial structures during trade and treaty negotiations provided language exchanges context and meaning. Slattery observes that they “...usually involved formal exchange of greetings, presents, ceremonial belts, statements of grievance or intent and reciprocal oral promises. The negotiations were conducted in at least two and sometimes a number of languages and so involved interpreters in important roles.”<sup>50</sup> Borrows argues that

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<sup>48</sup> The translation is derived from my discussion with Esther Sanderson, a Cree Elder from the Opaskwayak Cree Nation located in the Pas, Manitoba on September 9, 2011.

<sup>49</sup> Brian Slattery, “Aboriginal Language Rights,” In *Language and the State: The law and politics of identity : Proceedings of the second national conference on constitutional affairs*, edited by David Schneiderman, (Centre for Constitutional Studies, Montréal : Cowansville: Éditions Yvon Blais, 1991), 373.

<sup>50</sup> Slattery, “Aboriginal Language Rights” 373.

these are included as sources of Aboriginal law<sup>51</sup> and they are embedded within different historical protocols around communication such as feasting practices<sup>52</sup>, gifting<sup>53</sup> and pipe ceremonies.<sup>54</sup>

#### Language Exchange between Hudson's Bay Company and Aboriginal Peoples

Although New France traders and settlers had already interacted with Aboriginal people cultures in eastern Canada, the first Europeans to engage with Aboriginal languages in the prairie region were employees of the Hudson Bay Company (HBC). The HBC, established in England in 1670, existed to make profits from the trade of furs, but functioned as a *de jure* and *de facto* government over a vast region that was drained by all the rivers and streams flowing into the Hudson Bay.<sup>55</sup> During the pre-settlement fur-trade period, the HBC governed the territory under an English Charter from King Charles. Although nominally controlled by a central body of directors in London, England, the HBC appointed local governors and officers to manage their affairs throughout the trading area. During the seventeenth and eighteenth centuries, HBC employees observed the common law of master and servant, with little attention to anyone else. Although success of the HBC depended on communication with Aboriginal peoples, the English Charter said nothing about the languages of non-European people, and certainly nothing about language rights.

Although the HBC eventually acknowledged the significance of Aboriginal languages, the company established no consistent written language policies. Instead, the HBC tried to navigate

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<sup>51</sup> John Borrows, *Canada's Indigenous Constitution*, (Toronto: University of Toronto Press, 2010), 23-24.

<sup>52</sup> Aimée Craft, *Breathing Life into the Stone Fort Treaty: An Anishnabe Understanding of Treaty One*, (Saskatoon: Purich Publishing, 2013),

<sup>53</sup> Jean Friessen, "Magnificent Gifts: The Treaties of Canada with the Indians of the Northwest 1869-1876." *Transactions of the Royal Society of Canada* 1.(1986): 41-51.

<sup>54</sup> Aimée Craft, *Breathing Life into the Stone Fort Treaty*.

<sup>55</sup> Howard Robert Baker II, "Law Transplanted, Justice Invented: Sources of law for the Hudson's Bay Company in Rupert's Land, 1670 – 1870," (Master's thesis, University of Manitoba, 1996),

through many languages and dialects with very little guidance, since none of its employees initially had experience with the regional dialects of the interior prairies. The company also had to interact with communities that were culturally very different from their own and from each other as the traders tried to establish business relationships with people they knew very little about.

Initially, the fur traders from New France and Britain depended upon Aboriginal labour and Aboriginal economy for the industry to succeed, and on Aboriginal interpreters to help provide access to Aboriginal territories. Two French fur traders, Pierre Radisson and his nephew Jean Baptiste Chouart, advised the HBC to have their employees learn the Aboriginal linguistic customary practices of the people they intended to trade with.<sup>56</sup> Based on their previous experience in the eastern part of the country, they recognized that learning vocabulary was not enough, and urged HBC employees to learn and engage with regional customary protocols of communication. Ceremonial exchanges and gift giving, for example, were part of local Cree culture.<sup>57</sup> These types of relational systems would eventually become the basis for inter-societal linguistic practices in the prairie region of Canada. The systematic effort to learn and to adapt to linguistic practices became an inherent part of the Aboriginal trading system in the region.<sup>58</sup>

During this period, HBC employees were completely at the mercy of Aboriginal peoples. Being neither well acquainted with the Indigenous prairie languages, nor with the customary protocols (not to mention surviving on the land), the newcomers had to rely on the patronage of

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<sup>56</sup> Arthur Silver Morton, and Lewis Gwynne Thomas. *A History of the Canadian West to 1870-71: Being a History of Rupert's Land (the Hudson's Bay Company's Territory) and of the North-West Territory (including the Pacific Slope)*, (published in co-operation with University of Saskatchewan by University of Toronto Press, 1973), 110.

<sup>57</sup> James Dempsey, Effects on Aboriginal Cultures Due to Contact with Henry Kelsey." *Henry Epp* (1993): at 132.

<sup>58</sup> Arthur J. Ray, *Indians in the Fur Trade: Their Role as Trappers, Hunters, and Middlemen in the Lands Southwest of Hudson Bay, 1660-1870: with a New Introduction*, (Toronto: University of Toronto Press, 1998),

their hosts to learn about Aboriginal culture.<sup>59</sup> Some scholars from this period note that Aboriginal peoples generally dominated the power relationship amongst the French and the English.<sup>60</sup> Company directors in distant London had to rely on its employees to determine how to overcome cultural and linguistic barriers. The HBC had to find employees who were willing to enter into the interior and then locate those who were able to communicate with Aboriginal peoples in the regional languages and dialects.

Initially, the HBC found it challenging to hire Cree-speaking men who were willing to travel into the interior. Correspondence between the HBC and the governor of the James Bay area posts from 1683 to 1689 illustrate some of the challenges of this initial period. For example, a letter dated April 27, 1683, from the HBC headquarters to Henry Sergeant, emphasized the need for men able to communicate in an Aboriginal language: “You are to Choose out from amongst our servants such as are best qualified with Strength and Body and the Country Language, to travel and to penetrate into the Country, to draw down the Indians by fair and gentle Means to trade with us.”<sup>61</sup> Very few men were skilled in any Aboriginal languages at the time. Sergeant responded in a letter dated September 13, 1683, that the HBC would have to entice men financially to travel into the interior:

I Shall not be neglectful, as soon as I find any Man capable and willing to send up into the Country with the Indians will and may produce, and to use their utmost in bringing down the Indians to our Factory; but your Honours should give good Encouragement to those

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<sup>59</sup> Dale R. Russell, *Eighteenth Century Western Cree and their Neighbours*. No. 143. Canadian Museum of Civilization, 1991.

<sup>60</sup> Ray. *Indians in the Fur Trade*.

<sup>61</sup> British House of Commons. Report from the Committee Appointed to Inquire into the State and Condition of the countries adjoining to Hudson's Bay, and of the trade carried on there. in [publisher not identified] [database online]. [London: House of Commons], 1749, 274.

who undertake such extraordinary Service, or else I fear that there will be but few that will embrace such Employment.<sup>62</sup>

Further correspondence between Sergeant and the HBC reflects the importance of the ability to communicate in the *lingua franca* of the territory to the success of their venture. For example, in a letter to Sergeant dated May 22, 1685, the HBC expressed its willingness to increase the wages of employees who could speak an Aboriginal language:

We perceive our Servants are unwilling to travel up into Country, by reason of Danger, and want of Encouragement. The Danger we judge is not more now than formerly; and, for their Encouragement we shall plentifully reward them when we find they deserve it by bringing down Indians to our Factories, of which you may allure them. We judge Robert Stanford a fit person to travel, having the Lingua and understanding the Trade of the Country; and upon a Promise of Mr. Young (one of our Adventurers) that he should travel for which Reasons we have advanced his Wages to Thirty Pounds per Annum ...<sup>63</sup>

Sergeant further indicated in a letter dated August 24, 1685, that despite the increased wages, none of the men who were approached were willing to make such a risky journey:

Mr. Stanford does not accept the Term your Honours provide, but rather chooses to go home; neither he nor any of your Servants will travel up Country, altho' your Honours have earnestly defined it, and I pressed it upon those proposal you have in mind.<sup>64</sup>

Eventually, the HBC located willing and qualified men, including Henry Kelsey and James Isham, two notable employees who provided detailed accounts of the Aboriginal languages they encountered. Kelsey is recognized as the first European person to travel into the interior of the region between 1690 and 1692. James Isham, on the other hand, is noted for the relationships he

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<sup>62</sup>Ibid.

<sup>63</sup> Ibid..

<sup>64</sup> Ibid.

developed with Aboriginal communities some fifty years later between 1744 and 1749. Both men quickly produced Cree dictionaries to provide HBC fur traders with a vocabulary that could assist them in communicating with Aboriginal communities during trading activities. In addition to the dictionaries, Kelsey and Isham wrote detailed accounts in their journals of Aboriginal peoples' linguistic customs, practices and traditions. Although both may have held different views on the customary linguistic protocols they witnessed, each included the cultural protocols of communication along with vocabulary to illustrate language practices, customs and traditions.

### Henry Kelsey

Henry Kelsey began his career with the HBC in 1684 as a cabin boy on supply ships for the forts of the Hudson Bay region. After working his way up the company hierarchy, the HBC entrusted him to bring trade inland, and he embarked on a two-year journey from York Factory. His task was to convince Aboriginal peoples to trade with the company closer to its posts along the shores of the Hudson Bay. Kelsey traveled into the interior by foot with an unidentified Cree companion in June 1690. With the assistance of his Cree companion, Kelsey was able to establish relationships with several/numerous Aboriginal communities over this two-year period.



### Map 1:5 Map of Kelsey's route into the interior



Source: (Hudson Bay Exploration Western Interior map Henry Kelsey's possible route to the Great Plains is shown in purple on the map. Own work Peter C. Newman: "Empire of the Bay" Historical Atlas of Canada: Exploration from Hudson Bay, 1610-1821 The National Atlas)

As he reported in his journal, one of Kelsey's main objectives for traveling into the Interior was to learn Aboriginal languages. He wrote, "*Through Gods assistance for to understand The native language & to see their land.*"<sup>65</sup> During his travels, he encountered numerous languages predominantly from the Algonquian and Souian (Dakota) family.<sup>66</sup> Although Kelsey writes about several Aboriginal communities, he would have encountered predominantly Swampy Cree speakers during this travels. The territory of the Swampy Cree people is vast, starting in northern Manitoba, following the Saskatchewan River in the north-eastern part of Saskatchewan and continuing onto the shores of the Hudson and James Bays in Ontario. Today, they are divided

<sup>65</sup> John Warkentin, Arthur G. Doughty and Chester Martin, *The Kelsey Papers*, (Regina: Canadian Plains Research Center, University of Regina, 1994).

<sup>66</sup> He also identified six different groups: the Nayhaythaway Indians, the Home Indians, the Stone Indians, the Eagles Birch Indians, the Mountain Poets and the Naywatame Poets. Scholars have identified the first two groups, but the identities of the others are not yet known for certain, despite many theories (Russell, *Eighteenth Century Western Cree and their Neighbours*, 77). Kelsey likely anglicised the words he selected in referencing the first two groups as the Nayhaythaway from the plural Cree word *Nehithawak* (those who speak the same language) or in the singular *Nehithawew* (Russell, *Eighteenth Century Western Cree and their Neighbours* 78). The HBC commonly referred to these Cree as "the Home" or "Homeguard Indians" (Russell, *Eighteenth Century Western Cree and their Neighbours* 78).

into two different groups, the Western Swampy<sup>67</sup> and the Eastern Swampy or the Western James Bay Cree.<sup>68</sup> Several dialects of Cree are spoken in this region such as “th”, “y”, “n” and “l” dialects.

The communities Kelsey commonly referred to in his journal were those of the Stone Indians. The HBC also referred to them as Assinae Poets or sometimes just Poets.<sup>69</sup> They are now commonly recognized today as Assiniboine or Stoney Indians. Their traditional territory stretches from south-western Manitoba to Saskatchewan, and into parts of Alberta, northern Montana and western South Dakota. These communities are speakers of the western Siouan language family. The next three groups are not as easily identified. The Mountain Poets are likely part of the Assiniboine people and therefore speakers of the Siouan language. Kelsey mentioned them in his journal on August 24, 1691: “*This day lay still waiting for a post which came in ye afternoon from ye Capt: of the Mountain Poets Named Washa.*”<sup>70</sup> Washa was a leader of the Mountain Poets and the only Aboriginal person named in Kelsey’s journal. The Eagle Birch Indians are likely Cree- based since they are not referred to as Poets in Kelsey’s journal.<sup>71</sup> The last group, the Naywatame Poets, are the most significant community referred to in Kelsey’s 1691 journal. There are many theories regarding the identity of the Naywatame Poets. They have

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<sup>67</sup> This area has been parceled into approximately eighteen First Nation reserve communities: Chemawawin Cree Nation, Cumberland House Cree Nation, Fisher River Cree Nation, Fort Severn First Nation, Fox Lake Cree Nation, Marcel Colomb Cree Nations (also Rock Cree), Misipawistick Cree Nation, Mosakahiken Cree Nation, Red Earth Cree Nation, Sapotaweyak Cree Nation, Shamattawa Cree Nation, Shoal Lake Cree Nation, Tataskweyak Cree Nation, War Lake First Nation, Wuskiwi Sipiik First Nation, York Factory First Nation.

<sup>68</sup> This area has been parceled into approximately six First Nation reserve communities: Albany River Cree or Kashechewan First Nations, Attawapiskat, Flying Post or Mattagami River Cree, Nipigon Cree, Severn River Cree and Weenusk First Nation.

<sup>69</sup> Russell, *Eighteenth Century Western Cree and their Neighbours* 79.

<sup>70</sup> John Warkentin, Arthur G. Doughty and Chester Martin, *The Kelsey Papers*, (Regina: Canadian Plains Research Center, University of Regina, 1994),

<sup>71</sup> Russell, *Eighteenth Century Western Cree and their Neighbours*, 80.

been referred to as Mandan,<sup>72</sup> Sioux,<sup>73</sup> Gros Ventre or Atsina<sup>74</sup> and Blackfoot.<sup>75</sup> However, their exact identity is not certain.

Kelsey's journal does not specify which languages he mastered; however, he probably knew both Assiniboine and Cree since he referred most commonly to Cree in his journal.<sup>76</sup> Kelsey also authored a Cree Dictionary entitled *A Dictionary of the Hudson's Bay Indian Language*<sup>77</sup> containing approximately 600 Cree words, which was written to assist individuals engaged in the trade. The HBC informed Kelsey of its intention to publish the dictionary for future traders: "you do well to Educate the men in Literature but especially in the Language that in time we may send them to travel If we see it Convenient ... We have sent you your dixonary [sic] Printed, that you may the better Instruct the young Ladds with you, in ye Indian Language."<sup>78</sup> For reasons unknown, the dictionary was never published. In fact, Joseph Robson, a former HBC employee, alleged in the mid 1700's that the company had ordered Kelsey's dictionary hidden from the public.<sup>79</sup> For approximately 250 years it went missing until "discovered" in the British Library of London in the 1970's (Kelsey).

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<sup>72</sup> Samuel Hearne and Joseph Burr Tyrrell, *A Journey from Prince of Wales's Fort in Hudson's Bay to the Northern Ocean*, No. 445. Рипол Классик, 1795, 12.

<sup>73</sup> Lawrence J. Burpee, *The Search for the Western Sea: The Story of the Exploration of North-western America*, (Toronto: Musson, 1908),111.

<sup>74</sup> Arthur Silver Morton, and Lewis Gwynne Thomas. *A History of the Canadian West to 1870-71: Being a History of Rupert's Land (the Hudson's Bay Company's Territory) and of the North-West Territory (including the Pacific Slope)*, (published in co-operation with University of Saskatchewan by University of Toronto Press, 1973), 113.

<sup>75</sup> James W. Whillans, *First in the West: The Story of Henry Kelsey, Discoverer of Canadian Prairies*, (Edmonton, Alta: Applied Art Products, 1955), 145.

<sup>76</sup> Russell, *Eighteenth Century Western Cree and their Neighbours* 79.

<sup>77</sup> Henry Kelsey, "A Dictionary of the Hudson's-Bay Indian Language," London, 1710.

<sup>78</sup> Warkentin, Doughty, Martin, *The Kelsey Papers* XXVII.

<sup>79</sup> Joseph Robson, 1759, 72.



public social and cultural gatherings that are integral to Aboriginal peoples' linguistic practices, customs and traditions within traditional feasts, pipe ceremonies, song and prayer.<sup>81</sup> Kelsey also provides some detail about the linguistic protocols surrounding the use of cultural objects.

### Feasting

On August 31, 1690, Kelsey wrote about a community feast prepared for him by Aboriginal peoples after he accepted the request to travel and recognized that the feast was a way of communicating their gratitude to him: "This day the Indians made a feast desiring of me to be a post to a parcel of Indians which was to the Northward of us ..."<sup>82</sup> Then on September 3, 1690, another feast was held to make the community aware that Kelsey would be speaking on an important issue. During the feast, Kelsey warned the people that their participation in war with other Aboriginal nations could prevent the HBC from trading with them in the future:

This morning they provided a feast for me to hear what I had to say so told them my message which was to stay for those which I came from now I understanding their drift was to come altogether for to go to wars so I told them they must not go to wars for it will not be liked by the governor neither would he trade with them if they did not cease from warring.<sup>83</sup>

### Pipe ceremonies

Kelsey's journal entries went beyond reports of important community feasting practices to reveal the significance of pipe ceremonies, which he noted were often conducted before and after

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<sup>81</sup> Aimée Craft, *Breathing Life into the Stone Fort Treaty: An Anishnabe Understanding of Treaty One*, (Saskatoon: Purich Publishing, 2013).

<sup>82</sup> Doughty, Martin and Dobbs, Public Archives Canada, 15.

<sup>83</sup> Ibid

important deliberations, and when people were seeking guidance. On September 5, 1690, Kelsey referred to a pipe ceremony held by Elders to celebrate and give thanks for the discovery of their enemies, noting that the men sitting were required to wait quietly for the Elders to come out and smoke their pipes to express their joy:

About ten o'clock this morning the young men appearing in sight & carrying out just like a Crane gave a sign that they had discovered their Enemies & as soon as they came within one hundred yards of the tent they sat all down in a Row upon the grass not speaking one word so the old Men lighting their pipes went to them & served them round Crying as if they had been stob'd for Joy that they had found their enemies the young men having brought some of arrows to verifie with thye had been about.<sup>84</sup>

Following this event, on September 9, 1690, Kelsey provided the Stone Indians with tobacco to request peaceful relations with the Nayawattame Poets, demonstrating his understanding of tobacco offerings in the following way:

This morning I went to the Captain of the stone Indians tent carrying with me a piece of tobacco I telling him to make a speech to all his Country men & tell them not to disturbe nor meddle with the Nayawattame poets for I was going back to Invite and encourage them to a peace.<sup>85</sup>

This section of Kelsey's journal reinforces the importance of learning both the cultural and social contexts of language-use as integral to understanding Aboriginal linguistic customs, traditions and practices. For example, using the pipe represents the spoken word, and whatever is agreed upon during important discussions is confirmed during the ceremony. Every individual who participates in the ceremony has a responsibility to ensure that instructions are understood,

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<sup>84</sup> Ibid, 16.

<sup>85</sup> Ibid, 17.

respected and carried out. Kelsey noted in his description that if a person refuses to smoke the pipe, it means they do not agree with what has been discussed. The following entry reflects his understanding:

Their second point is Concerning A pipe steam ... Now every one of these & all things Else belonging to the steam Afore. Hath speech belongs to every one of them as the makers fancy lead him Now there is but very few Indian but with are leading with can get one these pipes & when he hath mind to go to wars or any other way he calls all of them together & tell them his mind so then he Lights the pipe & severth them Round Crying Now their Customs is to take butt four Whiffs of those pipes & if any one hath not a mind to go with him nor answer his request he will Likewise refuse to smoke out of his pipe.<sup>86</sup>

Kelsey's writings on cultural protocols also refer to the use of pipes as a way to communicate prayer for travelers about to embark on a dangerous journey: "Likewise they will send these pipes out upon any expedition as when they go for to seek out their Enemies tracks or when they are want of victuals."<sup>87</sup>

Kelsey provided additional details on the protocols of the pipe as a way of communicating blessings or making important decisions. As Kelsey indicated, the pipe was pointed towards the four cardinal directions while being smoked, and songs were sung to communicate blessing and thanksgiving:

*(prayers for everyone)* this being done the master burning a little more sweet grass then taketh a pipe fill'd with tobacco & perfume eth shall call to the feast so then he goeth out of doors & those which are appointed he call by name two of 3 times over & returning into the tent again lights the pipe which was given to him the pipe being lightened he turneth

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<sup>86</sup> Ibid, 19 – 20.

<sup>87</sup> Ibid, 20.

the end which goeth into the mouth to with place the master of the feast shall direct him which generally first towards our English house & from thence moving round gradually towards the sun rising & so about to \*\*\*\* here the sun is at noon still keeping in motion to where the sun goeth down & then turneth .. end which goeth into the mouth toward the ground so lighting it the second time handeth it round to his companions & as they receive it they give thanks so when they are all gathered together the master will have some victuals & some tobacco ready cut with which they will sing & be merry ... now they have but two or three Words in a song & they observe to keep time along with him ... leader of the song for Every man maketh his own songs by virtue of with he dreams of as I have said before & at the Conclusion of every song they give thanks all in general to him with the song belongs to So likewise if any.<sup>88</sup>

#### Prayer and song

Kelsey noted several other protocols involving language, including communicating prayer with song in a situation where an Elder is called to care for someone in poor health:

If any of them be sick they use no other means nor know no other help but to sing for which purpose they hire a man & he calls together some men more or less for to accompanie him in his singing so all of them getting a piece of birch Rine & a little stick goes to the sick mans tent then he ... begins to sign and the Rest Beats upon the Rine the same stroke he uses with his rattle which is made of Birch rine hallow within having some stone or Beads Inclosed in it so when he has sat & sung a while to his patient ...<sup>89</sup>

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<sup>88</sup> Ibid, 23 – 24.

<sup>89</sup> Ibid, 21.



Kelsey's notebook entries on language protocols also extend to protocols for communicating requests to Elders. Offering tobacco is an important first step in communicating the request. If the tobacco is accepted, the Elder has communicated his agreement to assist. In the following entry, the Elder has accepted a tobacco offering and deliberates on what is required to care for the sick person. He concludes that an offering to the Creator and prayer is important to the individual's healing process: "Contrary Now in such times they will take the best things they have & hang upon Poles as an offering to him which was the cause of his sickness Likewise making a long speech desiring him his health again"<sup>90</sup>

Kelsey also learned about the connection between song and dreaming. He was informed that when the spirit of an animal appears in the dream of an individual and offers the dreamer a song, the spirit and human life are communicating in a sacred way. The song communicates the individual's connection to the spirit of the animal and ultimately provides the community with guidance and direction on important decisions:

Their sixth point I shall relate is concerning their singing of the songs & from whence they think they have them those they reckon Chiefly for gods are Beast & fowl But of all Beast the Buffalo & of all fowls the vouter & the Eagle which they say they dream in on their sleep & it relates to them when they shall say when they sing & By the means whatsoever they ask or require will be granted or given to them which by often making use of it sometimes happens to fall our Rights as they sat & for the one time it was pass for a truth that he hath a familiar<sup>91</sup>

## Common Regional Language Practices

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<sup>90</sup> Ibid, 21.

<sup>91</sup> Ibid, 22 - 23.

In another section of the journal, Kelsey acknowledged common regional linguistic practices despite differences between languages. He noted the similarities between the Stone Indians and the Souian-speaking Nayaythaway peoples in the following passage:

Now there is a Difference between the Stone Indians & the Nayhaythaways although the principles of their belief is all one & the same But I mean as to passages in their tents which I shall give some small relation of I having been amongst the stone Indians of late will begin with them first.<sup>92</sup>

Kelsey also described a number of important communicative protocols followed before holding a community feast, as the preparations are considered just as important as the public event itself. First, someone is given the responsibility of making a fire at the centre of a lodge. Someone else has the responsibility of caring for the fire during the ceremony. Smudging the space with traditional medicines such as sweet grass is another important part of the process. Everything is done to create a sacred space prior to the delivery of important speeches. The preparations are all important protocols of public speaking:

Now if they have a mind for to make a feast they will pitch a tent on purpose & after ... the tent is made & fixt then no woman Kind ... man must not come within the door of the then ...(*reference to ceremonial place*) so then the master of the tent & one or two more goeth in & Cutteth out a place for the fire about three foot square in the middle of the tent & then the fire being made they take a little sweet grass & lay at every corner (*must be smudged*) of the said square & the putting fire to it they perfume the tent so making along speech wishing all health & happiness both to founders and cofounders.<sup>93</sup>

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<sup>92</sup> Ibid, 23.

<sup>93</sup> Ibid, 23.

In spite of the rich detail Kelsey provided in his journals about language practices, these writings were not shared with the general public until 1926, over two hundred years later. Moreover, his journals subsequently disappeared from public view for a number of years and were eventually retrieved in the Public Records Office in Northern Ireland mixed in with another collection.<sup>94</sup> Although Kelsey's writings were not used during his lifetime, they provide significant and valuable descriptions of the linguistic history of north central North America of the late 1600's. Kelsey was the first European to write about the language practices, customs and traditions of Aboriginal peoples in the plains and likely one of the first to comment on their social and cultural relevance. Some have noted that Kelsey's "journey to the Plains ... was only made possible by Kelsey becoming part of the Indian community."<sup>95</sup> It seems unlikely that Kelsey could have made the initial trek successfully without the assistance of Aboriginal people. More important, his ability to learn vocabulary and the language customs, practices and traditions was only possible with the assistance of Aboriginal peoples. In spite of the value of the journals, it is not certain why they disappeared for so long.

### James Isham

Another important figure from this period is James Isham, who began his career in 1732 with the HBC at York Factory. About nine years later, he was in charge of establishing trade in Churchill. One of his first tasks was to build a fort in the area. During this period, Isham referred to many Aboriginal communities he encountered: Nakawawuck, Moquo, Muskegowuck, Keiskachewon, Poetuck, Cawcawquek, Nemaui, Wappus, Sinnepoet, (alias) Boskemo, Earchetinués, Missinnepee, Gristeen, pennesewagegwan, Quashe'o, Pechepoethinue, wunnusku,

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<sup>94</sup> John Warkentin, Arthur G. Doughty and Chester Martin, *The Kelsey Papers*, (Regina: Canadian Plains Research Center, University of Regina, 1994).

<sup>95</sup> Warkentin, Doughty, Martin, *The Kelsey Papers*, ix – x.

unnahathewunnutitto, Uchepowuck and the Wechepowuck, a language group located north of the Churchill River.<sup>96</sup> Isham indicated that this last language was more of a challenge to learn because he found that one word could have several meanings. The language complexity created a number of communication barriers.<sup>97</sup>

As a result of Isham's knowledge of the regional languages, he authored two dictionaries, *Vocabulary of English and Indian*, which contains phrases to assist with the linguistic education of traders, and *A Small account of the Northward Indian language*.<sup>98</sup> Together the two dictionaries contain 58 pages of English and Cree words, with a few words translated into the Assiniboine language.

Among the terms and descriptions contained in the dictionaries are words to assist individuals with "small talk," expressions commonly used for greetings and pleasantries during trade. Another section assists traders with the business of trading goods, while Isham also translates numbers into a few regional dialects. The following example illustrates a common exchange during hunting: "I shall grieve when you go,"<sup>99</sup> [followed by an Englishman's response]: "You'll come again in the Spring."<sup>100</sup>

The dictionary also presents important evidence for the blending of European and Aboriginal worldviews. Isham uses westernized references to time such as "seven days in a week" and "twelve months in a year," to describe time and work days,<sup>101</sup> while capturing the Aboriginal worldview in references to months. For example, January is referred to as "Little old moon" or

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<sup>96</sup> James Isham, Edwin Rich, Ernest Rich, and A.M. Johson, *James Isham's Observations on Hudsons Bay 1743*, (Champlain Society, 1949), 113.

<sup>97</sup> Isham, Rich, Rich and Johnson, *James Isham's Observations*, 177 – 178.

<sup>98</sup> Ibid

<sup>99</sup> Ibid, 57.

<sup>100</sup> Ibid, 59.

<sup>101</sup> Ibid, 7.

“Cold moon” and November is referred to as “the moon the Deer sheds their horns.”<sup>102</sup> Several references to seasons also exemplify an Aboriginal worldview. For example, spring is referred to as “breaking up of the Rivers.”<sup>103</sup> Several more humorous translations also reflect this worldview: mustard seeds are referred to as “child’s dung” in Cree and capers are referred to as “sheep’s dung.”<sup>104</sup> Statements that reflect an Aboriginal-European trading system are evident in phrases such as, “[T]his tobacco has a bad taste, I will not trade it” and “[t]ake pity on me give me good measure with a little over.”<sup>105</sup>

Not only does Isham’s journal shed light on the merging of European and Aboriginal worldviews, they also provide helpful descriptions of the communicative protocols followed by Aboriginal peoples during this period. His descriptions of ceremonies resemble the observations made by Kelsey. In his writings, Isham notes the protocols when using the pipe during important deliberations. He also indicates that a pipe ceremony often lasts for a significant amount of time, and follows a strict protocol of silence to provide important time to think. Individuals are encouraged to carefully consider the words that they use to express their thoughts. Isham describes this period of silence as a time when “the Spirit then puts it in their head to Speak.”<sup>106</sup> He also notes that the time of silence prepares people to speak “with a good heart and mind.” Isham refers to the four cardinal directions that the pipe is pointed towards during the ceremony.<sup>107</sup> The pipe is often smoked as a linguistic protocol when visitors enter Aboriginal peoples’ territory (often referred to as camps in Isham’s journals). During pipe ceremonies, speakers normally observe a protocol that allows chiefs to speak first and the Elders to speak

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<sup>102</sup> Ibid, 7.

<sup>103</sup> Ibid, 8.

<sup>104</sup> Ibid, 15.

<sup>105</sup> Ibid, 51.

<sup>106</sup> Ibid, 83 – 84.

<sup>107</sup> Ibid, 85.

last, after the pipe is smoked.<sup>108</sup> When the ceremony and the deliberations have been completed, the people attending distribute gifts before holding a feast.<sup>109</sup>

Isham's writings with their detailed descriptions were submitted to an HBC committee in London about 1744. Although they provide valuable information concerning the customary practices of Aboriginal peoples in the area at the time, they were not published until 1949, two hundred years later. The HBC does not mention Isham's writing anywhere and there is no evidence that Isham's work was acted upon.

Kelsey and Isham's journals contributed greatly to the historical record of linguistic practices of the region's people. However, HBC directors living in England were so completely disconnected from the requirements of communicating with Aboriginal communities to establish trade relationships that they failed to recognize the value of these records. In any event, Kelsey and Isham played an essential role in reducing linguistic barriers and initiating relationships that HBC employees would later foster. Equally important, they participated in the linguistic protocols of communication that they later recorded. The dictionaries also provide important sources of information regarding the vocabulary used during trade.

By the mid-1800's, HBC employees became more involved linguistically with Aboriginal peoples and recognized the value of acquiring both the vocabulary and customary protocols of communication in Aboriginal languages. For example, HBC Governor George Simpson, a powerful and influential player in Company affairs, noted employees who could speak Aboriginal languages in his Character Book, an indication that the HBC valued knowledge of the region's Aboriginal languages (See Appendix A). Simpson's Character Book which contains a list of Chief Factors, Chief Traders, Clerks who joined the HBC anywhere from 1790 – 1821.

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<sup>108</sup> Ibid, 87.

<sup>109</sup> Ibid, 88.

The list shows the nationality, capacity, the length of service, salary in addition to Aboriginal language skill. Although there was nothing in HBC policy that required employees to learn Aboriginal languages, many were nonetheless engaged with linguistic protocols that were often sacred and would become accustomed to them. As result, Aboriginal customary traditions and linguistic practices evolved along with European protocols.

At the beginning of the 19<sup>th</sup> century the HBC in Rupert's Land decided to open its door to missionaries to provide education to Aboriginal peoples.<sup>110</sup> The HBC recognized its role in providing education to Aboriginal people particularly since there were a number of children born as a result of unions between HBC employees and Aboriginal women. I now turn to the linguistic practices that arose in this context.

### Missionaries

Missionaries in the 19<sup>th</sup> century were significant in providing Christian education to Aboriginal peoples but did not generally do this at the expense of Aboriginal languages. The education of Aboriginal peoples in the prairie region became part of a larger global missionary enterprise that used many different approaches to engage with Aboriginal languages. Missionaries sought to convert Aboriginal peoples to Christianity but they never had a single coordinated language policy. In some cases, Aboriginal peoples were taught to speak, read and write in English before their conversion. In contrast, missionaries in other situations had the Bible translated into Aboriginal languages so that Aboriginal peoples would learn the word of God in their own language. In any case, quite a few Aboriginal peoples during the early nineteenth century were fluent in English and Aboriginal languages likely due to intermarriages with HBC employees. Some missionaries, on the other hand, would have to acquire proficiency

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<sup>110</sup> HBCA, A.6/21, fo. 50, Governor and Committee to George Simpson, 11 March 1823.

in the local dialects. Others never learned to speak an Aboriginal language and worked through an interpreter. Regardless of the tactics used for conversion, the HBC retained a central role in Aboriginal/European interactions by bringing missionaries into the region.

### Indian Mission Schools

In 1820, the HBC hired Reverend John West as the company chaplain. West, an Anglican, was a member of the Church Missionary Society (CMS), an evangelical organization devoted to converting Aboriginal societies and improving their socio-economic conditions. West subsequently established a mission school for Aboriginal children to Christianize them after teaching them to read and write in English.<sup>111</sup> By the fall of 1820, West had recruited his first students: Pemitewithinew (James Hope), the nine-year old son of Chief Withaweecapo, and Sakacheweskam (Henry Budd), the eight-year-old son of a Metis woman from Norway House.

West continued his recruitment process, approaching a number of Aboriginal leaders in the area including Chief Peguis. Initially, Peguis was reluctant to send his sons to West's mission school, spending a great deal of time considering his decision. As part of his deliberative process, he conducted a pipe ceremony in which West participated.<sup>112</sup> After the ceremony, Peguis questioned West's intentions for the children after they completed their education. West replied that the children could return home but in school they "would read the Book that the Great Spirit has given to them ... and would teach them how to live well and die happy."<sup>113</sup> Eventually, Peguis agreed to support West's Mission school but enrolled his nephew instead of his sons.<sup>114</sup>

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<sup>111</sup> Winona L. Stevenson, "The Church Missionary Society Red River Mission and the Emergence of a Native Ministry 1820-1860, with a Case Study of Charles Pratt of Touchwood Hills," (PhD diss., University of British Columbia, 2010), 57.

<sup>112</sup> Stevenson, "Church Missionary"

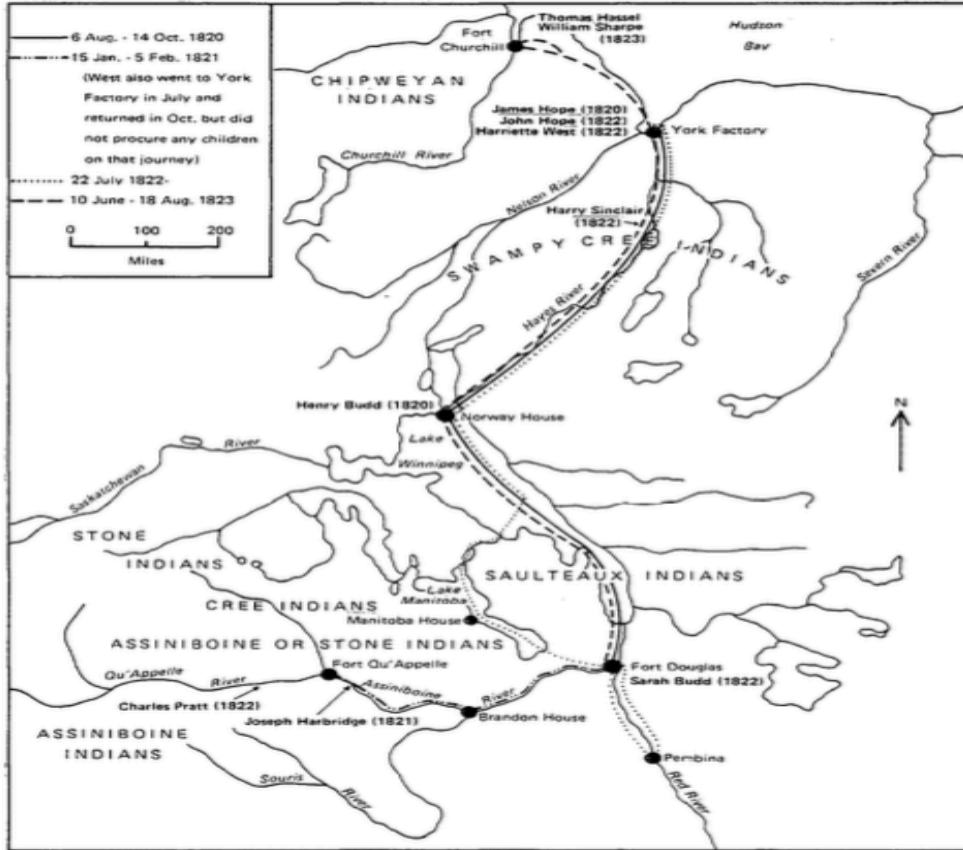
<sup>113</sup> Ibid, 53. Citing PAC CMSA, A. 98, John West Report to the Hudson's Bay Company and the Church Missionary Society, 3 December 1823, 96.

<sup>114</sup> Ibid, 53.



## Map 1:7 Indian Mission Schools in the Prairie Region

Map Showing the Origins of the Indian Mission Students Recruited by John West During his Inland Travels, 1820-1823



Source: John A. M. West, The Substance of a Journal During a Residence at the Red River Colony, British North America in the Years 1820-1823 (London: L. B. Seeley & son, 1824; reprinted ed., Vancouver: The Alcuin Society, 1967).

## Image 1:8 Students From the Indian Mission Schools

Indian Mission Students Recruited by the HBC, 1824-1825

Date of Arrival	Names	Origin	Nationality
12 Oct. 1824	James Settee	Nelson River District	Swampy Cree
12 Oct. 1824	David Jones	Nelson River District	Swampy Cree
12 Oct. 1824	John Spence	Nelson River District	Swampy Cree
12 Oct. 1824	William Garrioch	Nelson River District	Swampy Cree
12 Oct. 1824	Colin Leslie	Fort Churchill	Inuit
Fall 1824	William Cochran	?	Cree
Winter 1824	Edwan Bickersteth	?	Saulteaux
28 May 1825	Spokan Garry	Columbian District	Spokan
28 May 1825	Kootaney Pelly	Columbian District	Kootaney

Sources: PAC CMS, A. 87, William Garrioch to Edward Bickersteth, 8 August 1826.  
PAM HBCA, E.4/1a, fo. 64.

By 1822, West had recruited ten Aboriginal children to attend his school. Within two to three years, the Aboriginal students recruited to West's mission school knew a lot about Christianity and could speak and understand English thanks to "constant drilling, recitation, and daily devotions."<sup>115</sup> Although these children were graduates of "the first 'English as a Second Language program' (ESL) in Western Canada"<sup>116</sup> they also maintained their fluency in the ancestral language and maintained strong ties to their cultural identity.<sup>117</sup> West's school continued until he returned to England in 1823.

Between 1820 and 1839 West appears to have been the only Anglican missionary who learned to speak Cree.<sup>118</sup> The HBC at that time probably provided interpreters to missionaries who worked in Aboriginal communities. Missionaries would later rely on the Aboriginal graduates

<sup>115</sup> Ibid, 58.

<sup>116</sup> Ibid, 58.

<sup>117</sup> Stevenson, "Church Missionary,"; Tolly Bradford, *Prophetic Identities: Indigenous Missionaries on British Colonial Frontiers, 1850-75*, (Vancouver: UBC Press, 2012).

<sup>118</sup> Stevenson, "Church Missionary"

from West's mission schools to conduct religious work in Aboriginal communities. The role of these "lay missionaries" became even more important when missionary societies of other denominations began working in the prairie region.<sup>119</sup> In response to this denominational threat, the Reverend John Smithurst learned Cree so he could translate Communion Services for the Elders who did not understand English.<sup>120</sup>

Eventually other missionaries settled in the area. The British Wesleyan Methodist Missionary Society recruited Henry Bird Steinhauer, an Ojibway who had trained as a Methodist minister.<sup>121</sup> Steinhauer could speak Cree as well as Ojibway. In 1842 he helped James Evans to translate the Bible and various hymns into Cree, and later played a central role in the translation of Cree syllabics (discussed later in the chapter).

At the same time, a number of Catholic missionaries in the plains area had learned to speak Ojibway. Father Belcourt, for example, spent over fifteen years in what is now known as the Archdiocese of St Boniface. He could read, write and speak Ojibway,<sup>122</sup> suggesting that his goal of Christianizing Ojibway peoples would be done in their mother tongue. That the Catholic church expected that the "future apostles were expected to learn the dialects of Aboriginal peoples and prepare grammars and dictionaries of the same."<sup>123</sup> Belcourt describes the complexity of Ojibway way language as:

much richer than is commonly thought. It bears great resemblance to the ancient languages.

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<sup>119</sup> John Webster Grant, *Moon of Wintertime : Missionaries and the Indians of Canada in Encounter since 1534*, (Toronto: University of Toronto Press, 1984), 101.

<sup>120</sup> T.C.B. Boon, *The Anglican Church from the Bay to the Rockies: History of the Ecclesiastical Province of Rupert's Land and its Dioceses from 1820 to 1955*, (Toronto: Ryerson Press, 1962),

<sup>121</sup> Isaac Kholisile Mabindisa, "The Praying Man: the Life and Times of Henry Bird Steinhauer," (PhD diss., University of Alberta, 1984),

<sup>122</sup> James Michael Reardon, *George Anthony Belcourt: Pioneer Catholic Missionary of the Northwest, 1803-1874. His Life and Times*, (St. Paul, Minn.: North Central Publishing Company, 1955), vii.

<sup>123</sup> *Ibid*, 12 – 13.

It has, like the Greek, the dual and the two futures. And like that language it has but few radical words, but their manner of forming words for the occasion, by the aid of these radicals, gives a great facility of expression, the same as the Greek... This language is formed of radical and compound words. The radical words are commonly employed in the familiar style; but in oratorical style, the compound words are used ... This makes the learning of the language rather difficult at first, nearly equal to the acquiring of two languages; but in return for this, one obtains an extra facility in expressing his thoughts will all the force he desires.<sup>124</sup>

The threat of Catholic missionaries entering the region convinced the Anglican Church to hire Aboriginal graduates from West's mission schools. They would need very little additional training<sup>125</sup> in their work to establish new missions within Aboriginal communities.

The Christianizing mission in the region radically changed during the mid nineteenth century. Aboriginal peoples were no longer required to learn English in order to become Christians. The Anglicans instead used West's graduates, with their fluency in ancestral languages and kinship ties to Aboriginal communities, to facilitate conversion. The church reasoned that these men had a better chance of acceptance in Aboriginal communities because of their cultural backgrounds. Henry Budd, for example, one of West's earliest graduates, was sent to Cumberland House to work with Swampy Cree. Charles Pratt, another early graduate, was sent to work with Plains Cree and Assiniboine communities.<sup>126</sup>

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<sup>124</sup> Ibid, 30.

<sup>125</sup> Stevenson, "Church Missionary," 100 - 101.

<sup>126</sup> Ibid, 08.

St. John's College

Between 1850 and 1859, scholarships were awarded to Aboriginal men who were interested in entering the seminary to become ordained ministers. The first recorded students were "Charles Pratt (1850), Robert McDonald (1850-52), Henry Budd Jr. and John Settee, son of James (1850-55), James Settee, John Garrioch, Thomas Cook (1853), and Henry Cockrane (1853-58)."<sup>127</sup>

These Aboriginal men maintained their Aboriginal identity through their continued use of their ancestral language while learning to read, write and speak English.<sup>128</sup> For example, Henry Budd, the first ordained minister, "using Cree in the church ... allowed (him) to form a connection with his community membership through language while encouraging them to see language as a unique and important aspect of their group identity."<sup>129</sup> Budd's use of the Cree language allowed him to maintain kinship ties with his culture and community.<sup>130</sup>

During the nineteenth century, Aboriginal cultural identity was preserved through the language despite the introduction of a new religion and way of life; not all missionaries were determined to eradicate all Aboriginal cultures and languages. The Aboriginal men who learned a new language and a new religion were able to maintain a deep connection to their cultural origins and territory through their ancestral language. Language played a strong role in maintaining cultural identity that was intimately intertwined with their traditional territories.<sup>131</sup> The Anglicans went even further to support the preservation of Aboriginal languages and cultures through the Native Church Policy created by Henry Venn.

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<sup>127</sup> Ibid, 111.

<sup>128</sup> Stevenson, "Church Missionary."; Bradford "Prophetic Identities"; and Katherine Pettipas. "The Diary of the Reverend Henry Budd, 1870-1875." *Vol. IV. Manitoba Record Society, Winnipeg.* 1974.

<sup>129</sup> Bradford, *Prophetic Identities*, 122.

<sup>130</sup> Ibid.

<sup>131</sup> Stevenson, "Church Missionary."; Bradford, "Prophetic Identities." Pettipas, "The Diary of Henry Budd."; Mabindisa, "The Praying Man." Peter Jones (*Kahkewaquonaby*) and the *Mississauga Indians*. Lincoln: University of Nebraska Press, 1987.

## Native Church Policy

Venn was the Secretary to the Church Missionary Society from 1841 to 1872. His views regarding the transformation of Aboriginal societies while respecting their language and cultures evolved into the Native Church Policy (NCP) in 1869.<sup>132</sup> The goal of the NCP was to create a self-supporting congregations of Aboriginal Christians. As a result, CMS missionaries “were instructed to study the host cultures, learn the languages, and refrain from imposing European habits, tastes, and ideas in order that a distinctly Indigenous institution would develop in an Indigenous setting.”<sup>133</sup> Stevenson argues that Venn believed that Aboriginal peoples should not have to choose between their "nationality and religion."<sup>134</sup> The NCP policy was influenced by the failure of the Anglican Church in Ireland to win converts, seemingly a response to the imposition of English on the Gaelic-speaking people of Ireland. Not only did the Irish reject the English language, they also rejected Anglican efforts of conversion. Guided by this history, Venn believed it was necessary to develop an Aboriginal church where Aboriginal peoples were Christianized in their ancestral languages.<sup>135</sup> As a result, Venn ensured that Aboriginal men had educational opportunities for clerical training, even if they were unable to communicate in English. Correspondence in 1865 between Henry Venn from the General Secretary of the Church Missionary Society and the Diocese of Moosonee reveal that the Diocese wanted to raise funds to house, train and remunerate Aboriginal men interested in pursuing a clerical path. This proposal also included a provision to fund the families who were willing to join these men, and support for teachers who were fluent in Cree and English. In Venn’s words:

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<sup>132</sup> Stevenson, “Church Missionary”

<sup>133</sup> Ibid, 164.

<sup>134</sup> Ibid, 113.

<sup>135</sup> Jean Usher, "Apostles and Aborigines Social Theory of Church Missionary Society," *Histoire Sociale-Social History* 7, (1971), 41.

Besides those fourteen pure Indian clergymen, speaking no other language than their own should as soon as possible be appointed, who should have under their care the various members of their own tribes during the winter seasons for there would be little difficulty in selecting such agents as most of the tribes have already teachers placed over them several being men of intelligence and ... considerable influence. Those men with their wives and families I would bring to Moose keeping them under instruction for the two winters employing them in the summer as Evangelists, they should then receive ordination or deacons and return of them... tribes following their occupation as hunters at the same time the spiritual oversight of their tribes. They say of each of those families at Moose would involve a cost of fifty and sixty pounds per annum on their return to their hunting grounds I propose that each of ordained Indians should receive 20 pounds per annum with 5 pounds for traveling expenses to remunerate more highly would I fear be injurious as raising them too high above their relatives and associates and tending to foster pride and self conceit. The five at the principal posts should receive from 120 – 200 pounds per annum according to nationality, and time of service with a house and allowance for traveling expenses.<sup>136</sup>

Reverend James Settee, Swampy Cree, took advantage of the educational opportunities at St. John's during this period, becoming the second ordained minister. In addition to conducting services for Aboriginal peoples in Aboriginal languages, he also included members of the settler Icelandic community in his congregation. An Icelandic interpreter who understood Cree translated Settee's sermons into the Icelandic language.<sup>137</sup> But the complex language exchanges

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<sup>136</sup> Miscellaneous Papers from the Diocese of Moosonee, Correspondence overseas with General Secretary, GY C1 6a, 1865.

<sup>137</sup> Ryan Eyford, *White Settler Reserve: New Iceland and the Colonization of the Canadian West*, (UBC Press, 2016), 96.

introduced by the NCP were not the only efforts by missionaries to respect Aboriginal languages; Aboriginal language-exchanges were also defined, to a large extent, by the use of syllabics.

## Syllabics

The use of syllabics became an important method of written communication for conversion. There are however, two different explanations of the importance and reasons for the development of syllabics. One version insists that Aboriginal peoples developed them. The other version stresses that westerners developed syllabics. Some scholars attribute syllabics to the work of missionary James Evans in the early 1800's, but Aboriginal oral history explains that this system dates back to the 1700's when it was created by *Mistanaskowew* (Badger Call or Badger Voice) from Western Canada and *Machiminahtik* (Hunting Rod) from Eastern Canada.<sup>138</sup>

## Aboriginal Peoples and the Origins of Syllabics

Nancy Smith, *Ak a chah*, George Chiefstick and Jerry Saddleback from Hobema, Alberta, identify the origin of syllabics in Aboriginal customary law that prohibits imposing one's language onto other people; to do so implies that the latter's ways are incorrect. Following this principle, syllabics were employed simply as a tool to teach Aboriginal languages to those willing to learn. The customary protocols associated with syllabics were and are considered sacred. Even today, anyone requesting a teaching on syllabics must follow protocols that include

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<sup>138</sup> Stevenson, "Church Missionary,"; Jerry Saddleback, 2013. Paper Presented at Origins of Cree Syllabics, Edmonton Alberta; Neal, McLeod, *Cree Narrative Memory: From Treaties to Contemporary Times*, (Saskatoon: Saskatchewan: Purich Publishing, 2007),



an offering of tobacco and cloth to the Elder who can provide the oral history, and a pipe ceremony, a crucial component of the lesson.<sup>139</sup>

In 2013, Elder Saddleback provided a detailed account of the oral history during a teaching workshop in Edmonton, Alberta. The workshop was significant because the history has not been published and rarely taught in a public setting. According to Saddleback's teachings, Mistanaskowew (Badger Call or Badger Voice)<sup>140</sup> was a holy man in the late 1700's who followed the ways of the Midewiwin (Grand Medicine) society. Although today Midewiwin teachings are commonly associated with Ojibway ceremonial practices, many Algonquian speakers including the Cree were historically members of the Midewiwin society. The connection between Mistanaskowew and the Midewiwin demonstrates the historical relationship between Ojibway and Cree syllabics. A prophecy during Mistanaskowew's lifetime foretold that the people would one day experience difficulties remembering the language, so syllabics were created to assist the people during the challenging period to come. Saddleback shared another version of the teaching by recounting how the Creator brought syllabics to Mistanaskowew, and instructed him how to pass it to Maciminahtik (Hunting Stick):

Mistanaskowew was to take the Chart [syllabics] and show it to Maciminahtik. He was a teacher of children, who taught about prophecies and Creator's Natural Law. He taught them a way of Life about consequences and growth ... Maciminahtik is given the Ceremony of Reading (Reading Ceremonial Ritual – Ayamihewinihkewin – comes from the word Ayamihcikewan meaning "reading"). The Creator made the Chart specifically for Maciminahtik because he had the oral traditions down exactly how they should be. The

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<sup>139</sup> Saddleback, "Cree Syllabics"

<sup>140</sup> Participants that were registered and attended a workshop held by Elder Jerry Saddleback in Edmonton on June 4 and 5, 2013 were provided with permission to write about the general discussion that took place on the history of syllabics. The information I provide is based from the notes I took during the workshop in addition to the written material that Saddleback provided prior to the workshop.

Creator made the Chart Himself. Whenever the Chart is folded and opened, new inscription appears inside it. As the Chart was read to our people, everyone understood it ... The Chart is passed on four times: Creator passed the Chart to the Four Spirit Beings and they pass it to Mistanaskowew and he passes it to Maciminahtik who passed it to the People.

Maciminahtik follows the formality of the Reading Ritual. He does the Pipe ceremony and sings the songs each time as he teaches with the Chart. Every time he opens it and folds it, there are more inscriptions, like pages turning. Maciminahtik teaches like that for awhile.

The Chart is a teaching tool – the whole curriculum (Eh Aspahakemot – using it as a teaching tool).<sup>141</sup>

The teaching reveals that syllabics were created in response to a prophecy that the languages would someday be endangered. The shapes used in the syllabic chart are similar to those found on Midewiwin birch bark teachings and ceremonial lodges; in addition, these symbols are generally associated with Algonquian ceremonial practices. For example, the four cardinal directions depicted in the syllabic chart are also associated with pipe ceremonies. The protocols of a pipe ceremony are based on speaking and praying to each of the four directions. According to Saddleback, the symbols also incorporate the varying components of the universe (Eh Wihkweahkik Kisik).<sup>142</sup> The original description of Cree syllabics is represented in the following drawing:

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<sup>141</sup> Saddleback, “Cree Syllabics,” 3 -5.

<sup>142</sup> Saddleback, “Cree Syllabics,” 4.



**Image 1:10 Syllabics used by James Evans**

	e	ii	ooo	oos	Paal
	▽	△	▷	◁	
w	·▽	·△	·▷	·◁	o
bp	∨	∧	>	<	<
aa	U	∩	)	(	c
ya	γ	∩	J	L	u
ak	q	p	d	b	v
n	γ	∩	J	L	L
h	∞	∞	∞	∞	a
m	∨	∩	∩	∨	∩
sh	∩	∩	∩	∩	∩
ʔ	∩	∩	∩	∩	∩

(<http://imp.lss.wisc.edu/~jrvalent/glolangiss/Ojibwe.htm>)

**James Evans and the Origin of Syllabics**

In 1828, English Methodist missionary James Evans, came to teach in the Ojibway community of Rice Lake, where he spent approximately six years learning to speak and read in Ojibway. After ordination in 1833 as a Wesleyan minister, Evans served several other Ojibway communities until 1837. With the linguistic skills he developed, Evans translated Biblical passages from English into Ojibway using Roman orthography following the example of Peter Jones, another Ojibway Methodist minister, who had previously translated portions of the Bible. As Evans studied the language further, he concluded that the Roman alphabet was not always suitable for writing Ojibway.<sup>144</sup> As a result, certain scholars suggest, Evans developed a better way to represent Ojibway through various phonetic sounds.<sup>145</sup> Other scholars suggest that around 1836 Evans was encouraged by Methodist minister William Case to create a simple writing

<sup>144</sup> Burwash, "Gift to a Nation," 5.

<sup>145</sup> Murdoch, "Syllabics," 22.

system for Ojibway using Roman orthography.<sup>146</sup> Although syllabics did not surface immediately, a number of publications by Evans appeared shortly after he was tasked to create the system. For example, *The Speller and Interpreter in English and Indian*, a book of hymns and music, appeared in 1837.<sup>147</sup>

The historical record is ambiguous with respect to the date of origin for syllabics. Some, like Reverend Nathaniel Burwash, claim the writing system was created by 1836:

[W]e learn that as early as 1836, he had not only analyzed with scientific skill the Ojibway branch of the Algonquian family of languages and reduced it to an alphabet of eight consonants and four vowels, but also discovered the secret of its simple syllabic character, and the possibility of writing it by syllabic character, and the possibility of writing it by syllabic rather than by alphabetic character.<sup>148</sup>

Murdoch is sceptical of Burwash's theory because it is based solely on a briefing note written by the Reverend Joseph Stinson in 1841, and lacks corroborating evidence.<sup>149</sup> Murdoch suggests that syllabics originated from an Ojibway syllabic system that was submitted to the Wesleyan Board of Missions in 1836. Following this submission, a committee of five individuals was appointed in 1837 to meet during the Wesleyan Methodist Conference to adopt a uniform orthographical system for the Ojibway language.<sup>150</sup> In the same year, Isaac Pitman published a phonetic shorthand system. Some suggest that Evans was influenced by this writing system since

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<sup>146</sup> Murdoch, "Syllabics," 21.

<sup>147</sup> James Evans, *The Speller and Interpreter, in Indian and English : For the Use of the Mission Schools, and Such as May Desire to Obtain a Knowledge of the Ojibway Tongue* [New York? : s.n.], 1837 (New York : D. Fanshaw) <http://eco.canadiana.ca/view/oocihm.56105/3?r=0&s=1> (Accessed July 2016).

<sup>148</sup> Burwash, "Gift to a Nation," 6.

<sup>149</sup> Murdoch, "Syllabics," 23.

<sup>150</sup> *Ibid*, 24.

a copy of this shorthand system was found in his possession.<sup>151</sup>

**Image 1:11 Isaac Pitman Shorthand**

<i>P</i>	<i>pee</i>	\	<i>T</i>	<i>tee</i>		<i>Ch</i>	<i>chay</i>	/	<i>K</i>	<i>kay</i>	—
<i>B</i>	<i>bee</i>	\	<i>D</i>	<i>dee</i>		<i>J</i>	<i>jay</i>	/	<i>G</i>	<i>gay</i>	—
<i>F</i>	<i>eff</i>	∪	<i>Th</i>	<i>ith</i>	(	<i>S</i>	<i>ess</i>	)	<i>Sh</i>	<i>ish</i>	∪
<i>V</i>	<i>vee</i>	∪	<i>Dh</i>	<i>thee</i>	(	<i>Z</i>	<i>zee</i>	)	<i>Zh</i>	<i>zhee</i>	∪
<i>M</i>	<i>em</i>	∩	<i>N</i>	<i>en</i>	∩	<i>Ng</i>	<i>ing</i>	∩	<i>H</i>	<i>hay</i>	∩
<i>L</i>	<i>el</i>	∩	<i>R</i>	<i>ray, ar</i>	/∩	<i>W</i>	<i>way</i>	∩	<i>Y</i>	<i>yay</i>	∩

Shortly after the introduction of the Pittman system, Evans was appointed as the General Superintendent of Norway House, Manitoba. The first recorded Cree syllabic writing system surfaced in this community during this period. One important goal for Evans in his new post was to distribute as widely as possible the Cree syllabic translations of the Bible he had made in previous years. To carry out this task, Evans required a printing press, which he requested from the HBC. However, the company refused to permit anyone to bring a press into the territory so Evans created his own in the fall of 1840 and released the first plate on October 15th.<sup>152</sup> The following month, hundreds of copies of the hymn “Jesus My All to Heaven is Gone” were printed in Cree syllabics and distributed widely, and “[b]y mid-June, 1841 (Evans) had printed approximately 5,000 pages of material.”<sup>153</sup>

Evans’ translating team was largely responsible for the success of this independent printing. Team members were primarily of Aboriginal ancestry and were either bilingual or multilingual. For example, Thomas Hassell (Chippewyan) had learned fluent Cree, French and English; Henry Bird Steinhauer (Ojibway) had attended a mission school in Upper Canada and knew Greek, Hebrew, English, in addition to Cree; and John Sinclair who, as the son of an HBC officer and a

<sup>151</sup> Ibid, 26.

<sup>152</sup> Burwash, “Gift to a Nation,” 9.

<sup>153</sup> Ibid, 10.

Cree mother, was fluent in Cree. Due to his multilingual upbringing, Sinclair was an excellent translator and interpreter. Another important member of the team was William Mason, who supervised the mission during Evans's absence. Although Mason was not Aboriginal, he was married to Sophia Mason who was the daughter of a Cree mother and an HBC officer.<sup>154</sup> Sophia would have greatly assisted Mason in his translation work since she was raised speaking Cree.

Cree syllabics were widely circulated due to the successful translation work of this dynamic, multilingual team. Several Aboriginal communities became proficient in this writing system and took the initiative to teach others interested in learning. Burwash describes the teaching process: "Every man who acquired the new art imparted his knowledge to others, and in a short period of time we hear of men who could read and write as far north as Fort Churchill and as far west as the Rockies."<sup>155</sup> By 1842, knowledge of syllabics was widely known in places such as York factory, Fort Severn and Moose Factory. Evans attributes the rapid rate of knowledge transmission to the close Cree kinship systems of the time.<sup>156</sup> As the knowledge of syllabics grew, however, missionaries began to question whether the printing of religious texts in syllabics should continue<sup>157</sup> or whether, according to one suggestion, printing should return to the Roman alphabet. William Mason addressed this question in a letter from York Factory on September 12, 1854:

Before I conclude it will perhaps be advisable for me to say a few words regarding the printing of books in the syllabic characters having studied the system for some years ... I do think that for grammatical and philological purposes the Roman characters are decidedly the best, I have been confined in this opinion since reading the Church missionary

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<sup>154</sup> Ibid, 15.

<sup>155</sup> Ibid, 11.

<sup>156</sup> Murdoch, "Syllabics," 176.

<sup>157</sup> Burwash, "Gift to a Nation," 12.

intelligence for March 1853. The roots of the Cree words are closed and not open syllables and many words require double consonants to pronounce them correctly. In writing or printing with the syllable of a consonant and join it to the following vowel to which it does not belong. And it is utterly impossible to spell proper names by them, my translation of the New Testament is intertwined with Roman letters to assist me in making out what the characters were intended to express. What difficulty there may be in some of the languages of this immense country there exists now in expressing clearly and correctly every sound of the Cree by the means of the Roman Characters. When in fact Archdeacon Hunter's translation of St Mathew's Gospel ... and of the young men who had been taught English at the Mission School they read it at once both correctly and fluently and in a week any of the school children could read it. The Reverend Thomas Hurlburt whose extensive knowledge of Indians deserves notice, regrets that the syllabic systems was ever adopted, thinks they are very defective and inefficient and should be permitted to fall into disuse. I cannot go so far as this, for the sake of those Indians who have not the opportunity of being taught at the mission stations. Many adults in different parts of the country acquired a knowledge of the syllabic characters themselves, and can both read and write in them. Yet my conviction is that they will be ultimately given place to the Roman Character. I should therefore recommend the immediate adoption of the archdeacon's improved orthography and the printing of his manuscript. Could he remain in English to complete the translation of the entire new testament as well as the prayer book, it would be conferring the greatest of blessing upon our mission... I still think that elementary books and portions of gods [God's] holy word should be circulated amongst our converted Indians in the syllabic character until the roman characters become general.<sup>158</sup>

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<sup>158</sup> Church Missionary Society, William Mason's letter from Hudson's Bay Territories Church, C1/042/3a, 1854.



In his letter, Mason explained the dilemma of using syllabics. It had its virtues, since Roman orthography seemed unable to express correctly every sound in the Cree language. In one example, Mason indicated that double consonants are necessary to pronounce certain words correctly, and recommended the use of syllabics to aid in pronunciation when reading. Mason noted how easily the Cree language could be taught with syllabics. He also noted that many Aboriginal peoples were able to learn how to read and write Cree syllabics fairly quickly. In spite of its success, Mason foresaw the demise of Cree syllabics and recommended the use of syllabics only until more Aboriginal peoples could become acquainted with Roman orthography.

Regardless of origin, syllabics became the cornerstone for teaching Aboriginal peoples how to read and write. These two accounts of its origins require more research to resolve. However, they are complementary in the sense that both Aboriginal peoples and the missionaries saw value in the writing system as an aid to communication and to a certain extent, language preservation.

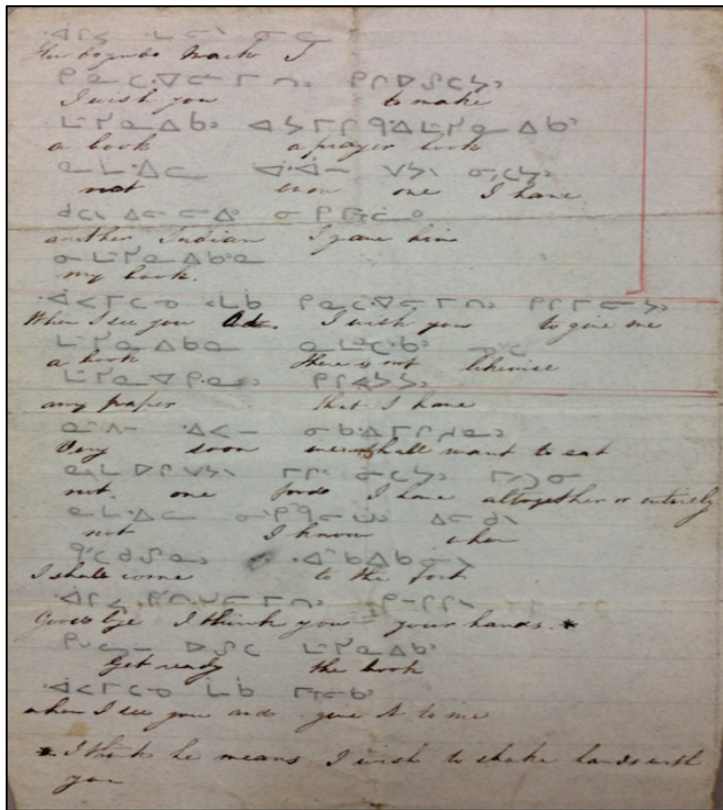
### Inuit Syllabics

Syllabics found another application by the mid-1800s with Inuit speakers.<sup>159</sup> In carrying out the mandate of the CMS, two Anglican missionaries, John Horden and Edwin Arthur Watkins, learned Cree syllabics before publishing a number of religious texts for Inuit speakers in the 1850's. Horden, initially appointed as Moose Factory schoolmaster in 1851 by the HBC, studied Cree for several months before mastering Cree syllabics and becoming a good interpreter. Eventually he was able to preach to the Cree community on his own. The following undated letter provides an example of Horden's skill with syllabics.

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<sup>159</sup> Although this section takes us outside the scope of the prairie region it demonstrates the influence that the prairie region had on other languages in other regions.

Image 1:12 Translated Letter from Cree Syllabics to English



(Church Missionary Society, Translated letter from Cree Syllabics to English, Church Missionary Society Records, C1/0 33/117, 1851).

Using Roman orthography, Horden translated the letter handwritten in syllabics by an unnamed Aboriginal person into English. Horden’s expertise with syllabics is also apparent in publications such as a *Collection of Psalms and Hymns, in the language of the Cree Indians of North West America, 1874*, as well as a translation of the New Testament in 1876.

Edwin Arthur Watkins similarly learned Cree and became interested in translating the Bible into Indigenous languages. He traveled to Canada in 1852, living in Fort George on James Bay until 1856, in Red River from 1856 to 1860, in Cumberland House from 1860 to 1863, and then in Portage La Prairie until 1866. As a missionary, he soon learned to communicate in Cree.<sup>160</sup> By

<sup>160</sup> E. A., Watkins, Mackay, J. A., Faries, R., and Church of England in Canada, General Synod, *A Dictionary of the Cree Language : As spoken by the Indians in the provinces of Quebec, Ontario, Manitoba, Saskatchewan and*

1855, Watkins had translated the Gospels of John and Luke from English into Cree, and in 1865 he gained notice for publishing a Cree dictionary. Watkins intended the dictionary to preserve the Cree language and to provide a resource for traders and others interested in learning Cree.<sup>161</sup> Watkins described the process of learning Cree in terms of “investigating the structure of a beautiful language, and seeing its Native rich expressions.”<sup>162</sup>

In 1865, Watkins and Horden met with the Church Missionary Society in England to discuss creating an Inuit writing system.<sup>163</sup> Minutes from the meeting on November 24, 1865, reveal a discussion concerning the possibility of adapting the Cree writing syllabic system to the Inuit language:

1. It appears to us very undesirable that any changes, except such as are absolutely necessary, should be made in the Syllabium as now used; though we quite agree that the system is not so scientifically accurate as could be wished. We consider that in dealing with the uncultivated tribes of North America, *utility* and *simplicity* are more important than philological precision.
2. In reducing the *Esquimaux* language into syllabic writing, we think that a change may be advantageously made in the *final* symbols. Instead of the arbitrary signs now in use for the Cree, we would propose the adoption of the *half-size* characters of the *same forms* as those employed for the consonants in combination with the vowel *a*. This change might be introduced into the *Cree* language at a future period; but as there is in

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*Alberta*, Toronto, Ont.: Published under the direction of the General Synod of the Church of England in Canada, 1938.

<sup>161</sup> Ibid

<sup>162</sup> Ibid, v.

<sup>163</sup> Murdoch, “Syllabics,” 34.

existence a large supply of Bibles and other publications printed according to the original methods, we would not advocate for any alterations at present.

3. The additional consonants, *b* and *d*, found in the Esquimaux, may, we think, be represented with sufficient accuracy by the characters for *p* and *t* respectively without the introduction of new forms; especially as the natives frequently pronounce these letters so indistinctly that is difficult to ascertain their true sound.
4. In the Esquimaux language there are some consonants which will need to be represented. For these we have adopted signs which combine as nearly as possible the two separate consonants.<sup>164</sup>

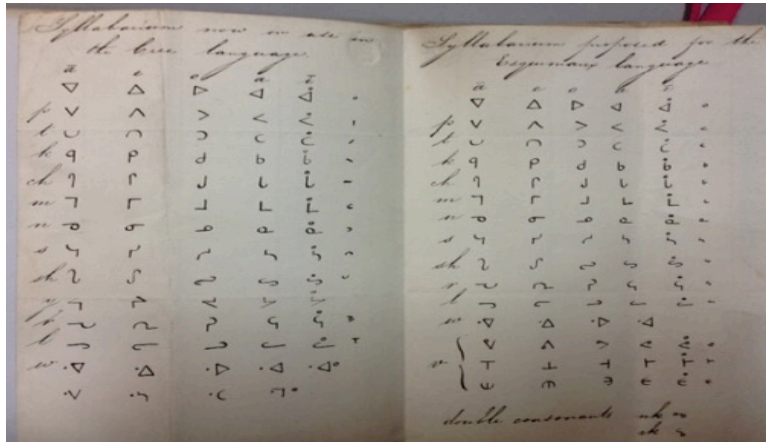
Three months after these deliberations, a letter from Watkins dated February 10, 1866, indicated they would need to find a way to standardize the Inuit language.<sup>165</sup> A year later, Horden and Watkins created an Inuit syllabic chart. The following example shows Cree syllabics on [the left] and Inuit Syllabics on the [right].

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<sup>164</sup> Church Missionary Society, Letters from Reverend Horden and EA Watkins 1865 – 1866 relating to syllabics used for the Cree and Eskimo languages with printed. Syllabium and conference minutes, G Y C1 F1 1, 1865.

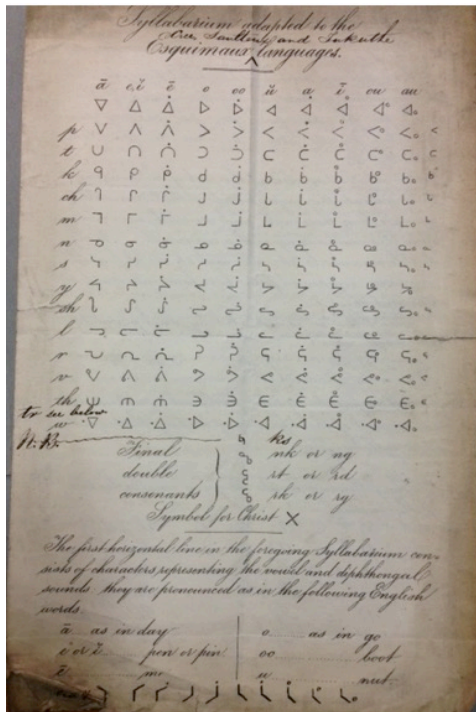
<sup>165</sup> Church Missionary Society, Letters from Reverend Horden and EA Watkins 1865 – 1866 relating to syllabics used for the Cree and Eskimo languages with printed. Syllabium and conference minutes. Syllabium for the Cree language and Syllabium prepared for the Esquimaux language, G Y C1 F1 1, 1865.

**Image 1:13 Syllabrium for the Cree Language and Syllabrium prepared for the Inuit Language**



(Church Missionary Society, **Syllabium for the Cree language and Syllabium prepared for the Esquimaux language**, CMS G Y C1 F1 1, 1865).

**Image 1:14 Syllabium adapted to the Cree, Saulteaux and to the Inuit Language**



(Church Missionary Society, **Syllabium adapted to the Cree, Saulteaux and to the Esquimaux Language**, G Y C1 F1 1, 1865).

After the publication of these charts, Edwin Peck would go on to promote the use of Inuit



the laws that were used, their linguistic rights were recognized through the use of interpreters. Interpreters were generally provided in cases where Aboriginal peoples were charged for committing crimes against other Aboriginal individuals as well as in situations where alleged crimes were committed against non-Aboriginal peoples.<sup>168</sup> An interpreter was also used for the swearing in process prior to testifying for a trial. If Aboriginal peoples were recognized as non-Christian they were asked of their understanding of the need to be truthful, and the consequences of failing to be truthful.<sup>169</sup> In some cases, interpreters were used to explain the charges against Aboriginal peoples by translating from English into the language of the accused.

Interpreters were also used during trials in the early years of the court. In 1824, an interpreter assisted in the trial of a Saulteaux man accused of murdering an elderly woman from his nation.<sup>170</sup> In another case, *Public Interest v. Newkesequenskik*, a Saulteaux man was charged for allegedly stabbing his brother to death in 1845. The evidence was translated to and from Ojibway, and several witnesses testified that the deceased had a bad temper and frequently criticized his brother. *Newkesequenskik* was sentenced to twelve months of solitary confinement.<sup>171</sup> It remains uncertain whether Aboriginal peoples understood the language used in court, the legal terms or the law they were charged of violating, nor whether translation was adequate.

During this period, interpreters did not have legal training in Aboriginal law or British law. They were generally retained simply for their knowledge of one or more Aboriginal languages, English and in some cases French. As a result, it is not known whether justice was served from

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<sup>168</sup> Ibid

<sup>169</sup> Ibid, 359.

<sup>170</sup> Alexander Ross, 1856 *The Red River Settlement: Its Rise Progress, and Present State with Some Account of the Native Races and Its General History to the Present Day*. Reprint, Edmonton: Hurtig, 1972.

<sup>171</sup> Gibson, *Law, Life and Government*, 361.

an Aboriginal perspective or according to Aboriginal law. At the very least, the courts attempted to recognize the right to be heard and understood. This consideration and the use of interpreters and language exchange were also features of the treaty process.

### Treaties

As with administering justice in the court, the role of the interpreter was essential for Aboriginal peoples' right to be heard, but more importantly for the purposes of language practices, to be understood during the treaty negotiations. The skills required for interpretation went beyond knowledge of Aboriginal languages alone. Some of the complex forms of communication include the protocols of offering tobacco, feasting and pipe ceremonies that were described in the journals of Kelsey and Isham. In these types of situations, historian Nancy L. Hagedorn defines the role of the interpreter as a "cultural broker" or as "a person of ability and integrity in whom both sides could place ... confidence because they required the knowledge of ceremonies that were inherent in the political processes of negotiating treaties."<sup>172</sup> For example, in order to translate the negotiation of treaties it was very important in many cases for the interpreter to understand the nuances of the Aboriginal ceremonies that were inherent in the political processes. In these situations, Aboriginal peoples' right to be heard and understood was be respected during the negotiations.

Pipe ceremonies provide a prime example of a ceremony integral to the treaty process.<sup>173</sup>

Because the laws of tobacco play a significant role in pipe ceremonies, the interpreter must

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<sup>172</sup> Nancy L. Hagedorn, "'A Friend to Go Between Them': The Interpreter as Cultural Broker during Anglo-Iroquois Councils, 1740-70," *Ethnohistory* 35 (1) (1998): 61 – 62.

<sup>173</sup> Cardinal, "Treaty Elders of Saskatchewan"; Treaty 7 Elders and Tribal Council with Walter Hilderbrandt, Sarah Carter and Dorothy First Rider, *The True Spirit and Original Intent of Treaty 7*, (Montreal & Kingston: McGill-Queen's Press, 1997); Craft, "Stone Forty Treaty."



understand much more than the words exchanged with the negotiator. During these ceremonies, the interpreter had to translate the deliberations prior to the pipe ceremonies and at their conclusion, when the most significant treaty decisions would have been made. The interpreter, to be trusted, must have acquired an intimate understanding of the views of Aboriginal peoples in significant matters such as what they were willing to negotiate and what they were not. Again, in these situations, government officials were recognizing Aboriginal peoples right to be heard and understood through the role and use of the interpreter. Some of the more trusted interpreters during treaty time were Alexander Morris, James McKay and W.J. Christie who were viewed as more faithful treaty negotiators to Aboriginal peoples as oppose to J.A.N. Provencher, E.A. Meredith and David Mills.

Translation of the treaty text (as oppose to the terms of the treaty) into Aboriginal languages also required great skill. It provides another example of the complex role of the translator. Because of the different and varied dialects that exist within one Aboriginal language, such as Cree, the translator would have required more than one person for this task. For example, Cree can vary so greatly that a dialect spoken in one community may be completely different in another; the Aboriginal peoples who speak the Swampy Cree dialect in Northern Manitoba do not always understand the Cree dialect in Island Lake, also in Northern Manitoba. In this case, the skill of two or more translators would have been required. Had the treaty text been translated into Aboriginal languages, issues such as surrender and extinguishment would have been very problematic because it violates principles of Aboriginal law which regards the land as inalienable.<sup>174</sup> The research that is currently conducted with Treaty elders is a reflection of this

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<sup>174</sup> Cardinal, "Treaty Elders of Saskatchewan."

principle.<sup>175</sup> Further analysis (but beyond the scope of this research) of the role and the abilities of the interpreter and the connection this role has to Aboriginal language rights is critical

Another possible issue related to translation that requires further inquiry, is that the majority of Aboriginal peoples could not read Roman orthography during the treaty era. The syllabic writing system, however, was available. A number of Aboriginal peoples and missionaries during this period had the expertise to translate English into Ojibway and Cree syllabics. Other areas regarding treaty interpretation and translation require further research that is beyond the scope of this dissertation. It raises a number of issues regarding treaty rights that also go beyond the scope of this research.

### Concluding Remarks

This chapter reveals the origins of Aboriginal languages and the development of inter-societal customary linguistic practices between Aboriginal peoples and Europeans before 1867. The customs stem from Aboriginal customs traditions and practises which regard language as a sacred and inalienable right. The first Europeans to engage significantly with Aboriginal peoples in the prairie region, employees of the HBC, accommodated and even adopted Aboriginal linguistic practices, traditions and customs during the fur trade. There was never an attempt to eradicate or extinguish Aboriginal languages, and in fact Cree became the lingua franca of trade.<sup>176</sup> Other examples of language adaptation is evident from the dictionaries that were created to assist fur traders learn the local Aboriginal dialects. Isham's dictionary provides a particularly strong example of attempts to bridge diverse worldviews by using terminology that defined time

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<sup>175</sup> Cardinal, "Treaty Elders of Saskatchewan"; Treaty 7 Elders and Tribal Council with Walter Hilderbrandt, Sarah Carter and Dorothy First Rider, "Intent of Treaty 7"

<sup>176</sup> Arthur J. Ray, *Indians in the Fur Trade: Their Role as Trappers, Hunters, and Middlemen in the Lands Southwest of Hudson Bay, 1660-1870: with a New Introduction*, (Toronto: University of Toronto Press, 1998),

and other pertinent terms significant for trade. The HBC also adapted to Aboriginal linguistic protocols in feasting, gifting, pipe ceremonies and offering tobacco.

As the missionaries arrived, language exchange took on an entirely different focus with the introduction of a new educational system and religion. Although some of the changes that were introduced impacted Aboriginal peoples' religious and spiritual practices, missionaries never attempted to extinguish Aboriginal languages. English, and to a certain extent French, were taught to the Aboriginal students who attended the mission schools. At the same time, however, some missionaries learned to communicate in Aboriginal languages and even used a new writing system based on syllabics. Controversy remains over the origins of syllabics. For Aboriginal peoples, syllabics became a method of language preservation in the midst of a great cultural and political change. The syllabic symbols are also associated with the four cardinal directions associated with pipe ceremonies. The oral teaching regarding syllabics emphasize the sacred nature and protocols related to Aboriginal languages. According to Elders from Alberta, Aboriginal custom, practise and traditions prohibits imposing one's language onto other people. The customary protocols associated with the syllabics also considered sacred. Oral teachings to this day requires following customary protocols of offering tobacco and cloth as well as a pipe ceremony. Therefore the context of ceremonies when communicating that occurred with the Hudson Bay Company employees remain today when teachings regarding syllabics are conducted. Many Aboriginal peoples were also able to maintain strong ties to their cultural identity by continuing to speak their mother tongue when engaging with the missionaries. The sacred significance of language is central to defining the intrinsic value of language and is foundational for advancing Aboriginal language rights in Canada.

Constitutional expert Brian Slattery defines the result of these types of exchanges as “the product of customary practices that emerged to regulate the relations between the original nations of America and the incoming European nation. This body of custom developed ... from the first tentative contacts ... to the grand treaty settlements.”<sup>177</sup> He adds that the customary law is “not exclusively English or French in origin, nor on the other hand was it purely aboriginal. Both aboriginal and settler groups contributed to its formation; so doing they produced something genuinely new and distinctively Canadian.”<sup>178</sup> Slattery also argues that the basis for special status for Aboriginal languages is attributed to the historic inter-societal customs that initially governed the relationships between Europeans and Aboriginal peoples.<sup>179</sup> These customs would have primarily derived from Aboriginal customary practices. Slattery suggests that the communication exchanges that flourished in various ways resulted from interactions that occurred during trade, political negotiations, diplomatic relationships and other social negotiations. When Europeans and Aboriginal peoples met, interpretation was often required and communication protocols had to be acknowledged. Over time, customary practices developed between Europeans and Aboriginal peoples that regulated communication exchanges. Slattery further adds that

(i)nssofar as these exchanges can be seen as the forge of the constitutional structure that eventually bound first nations to the Crown as allied and protected nations, they can plausibly be seen as recognizing that aboriginal languages occupied a special constitutional status, consistent with the unique constitutional position occupied by aboriginal groups...

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<sup>177</sup> Slattery, “Aboriginal Language Rights,” 72.

<sup>178</sup> Ibid, 372.

<sup>179</sup> Ibid.

this special status is now confirmed and guaranteed in section 35 (1) of the Constitution Act, 1982.<sup>180</sup>

In this case, the law regarding language came from the historical linguistic practices that emerged between Aboriginal peoples and Europeans that were eventually incorporated into significant areas such as the administration of justice. Interpreters were used in the first court of Western Canada as well as during treaty negotiations which acknowledged the right to be heard and understood. Whether the interpreters helped serve justice is one of a number of issues that require further research and analysis, but in any event, the implications of the language practices that emerged between Aboriginal peoples and Europeans provides the historical context and a theoretical basis for the recognition of Aboriginal language rights under section 35 (1).

Another premise for Aboriginal language rights comes from what Slattery characterizes as principled-based theories. These stem from “basic human goods that form the basis for moral norms, such as ... the value of linguistic security or the value of being able to transmit one’s culture and world view to one’s children.”<sup>181</sup> Shamefully, the state of Canada, when established, did not value or recognize Aboriginal customary law regarding language and collaborated with the Churches to establish a residential school system intended to destroy Aboriginal languages and cultures. In the next chapter, the impact of the federal government’s assimilation policy on Aboriginal languages is explored. The focus is on the treatment of Aboriginal children for speaking their ancestral languages in the residential school system.

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<sup>180</sup> Ibid, 373.

<sup>181</sup> Ibid, 370.

## Chapter 2

### Linguistic Harm: Residential Schools and Canada's Assimilation Policy

The talk you took away.  
When I was a little girl  
at Shubenacadie school.

You snatched it away:  
I speak like you  
I think like you  
I create like you  
The scrambled ballad, about my world.

Two ways I talk  
Both ways I say,  
Your way is more powerful.

So gently I offer my hand and ask,  
Let me find my talk  
So I can teach you about me.

—Rita Joe.<sup>182</sup>

I was deprived of the love and guidance of my parents and siblings for over years. I lost my Native language and Aboriginal culture and was removed from my family roots. The enormity of the loss of both my culture and my connection with my family feels overwhelming and the effects irreversible. I lost my identity as a Native person. I live with a sense of not knowing who I am and how I should be in the world. I lost the friendship and support of my friends and community. I suffered a loss of self-esteem.... I'm angry about my loss of culture ... It's sickening. It was obvious the tremendous effect it has had on me as a person and yes, I get angry as hell.<sup>183</sup>

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<sup>182</sup> Rita Joe, Four Poems. In *Canadian Women Studies* (Summer Fall 1989) (10/ 2 & 3): 28.

<sup>183</sup> Canada's Residential School, Statement to the TRC from Frederick Lee Barney, 122.

If linguistic practices between Aboriginals and Europeans in the prairie region and throughout the country during the fur trade and missionary era were based on accommodation, they began to shift radically when the Canadian government adopted assimilative policies aimed at eradicating the political, legal and cultural distinctions between Aboriginal peoples and Canadians.

Assimilation through education proved very effective in destroying Indigenous cultural identities and languages wherever colonial rule was imposed, as suggested by the emergence of educational systems around the world designed specifically to assimilate Indigenous children.<sup>184</sup>

Residential schools for Aboriginal children were established in Canada, the United States, Central and South America, Australia, New Zealand, Scandinavia, the Russian Federation, Asia, Africa and the Middle East. At the same time, state schooling more generally gained popularity in western countries.

Over the past few decades, scholars have begun to examine the history of residential schools, exposing the abuses, the sub-standard level of education, the racism, and the death of so many Aboriginal children.<sup>185</sup> This chapter specifically examines the residential school system in Canada and the impact of Indigenous language and cultures. In spite of Canada's assimilation policy, at no point in time did Aboriginal people surrender or expressly have their customary linguistic rights based on sacredness or centrality to Aboriginal culture, extinguished.

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<sup>184</sup> Andrea Smith, *Indigenous Peoples and Boarding Schools: A comparative study* (New York: Secretary of the United Nations Permanent Forum on Indigenous Issues, E/C.19/2009/CRP.1, 2009).

<sup>185</sup> J.R. Miller, *Shingwauk's Vision, A History of Native Residential Schools* (Toronto: University of Toronto Press, 1996); Brian E. Titley, *A Narrow Vision, Duncan Campbell Scott and the Administration of Indian Affairs*, (University of British Columbia Press, Vancouver, British Columbia, 1986; James Sakej Youngblood Henderson, "Treaties and Indian Education," in *First Nations Education in Canada: The Circle Unfolds*, edited by Battiste, Marie Ann, and Barman, Jean, (Vancouver: UBC Press, 1995); J. Rick Ponting, *Arduous Journey: Canadian Indians and Decolonization*, (Toronto: McClelland & Stewart, 1988); Roland David Chrisjohn, Sherri Lynn Young; and Michael Maraun, *The Circle Game: Shadows and Substance in the Indian Residential School Experience in Canada*, (Penticton, BC: Theytus Books, 1997); David A. Nock, *A Victorian Missionary and Canadian Indian Policy, Cultural Synthesis vs Cultural Placement*, (Wilfred Laurier Press, Waterloo, Ontario, 1988).

The chapter begins with an overview of the legal and policy framework that initially made the system possible. Personal accounts of former students are included to illustrate the negative impacts experienced by individuals, families and communities as a result of the destruction of Aboriginal languages and cultures via residential schools. However powerful the residential schools were in destroying Aboriginal cultural identities and languages, the power was never absolute. Students, families and entire communities resisted the loss of their culture and identity. Taken together, however, Canada's residential school history was one of mass destruction of generations of Aboriginal peoples that continues to impact their lives today and Canadian society more generally.

#### Creating the Legal and Policy Framework

Canada's policy to extinguish Aboriginal languages and culture finds its origins in the country's new constitution of the mid-1800's. When politicians first began to devise policies for assimilation, subsection 91(24) of the *Constitution Act, 1867* provided the federal government with the jurisdiction to legislate on issues related to "Indians" and "Indian lands." This subsection provided the federal government with legal and political authority over "Indian people" and "Indian bands" – a power which ultimately provided the government practical control over day-to-day activities in many areas exercised through parliamentary enactment of the Indian Act.. Although the legislation does not mention language and culture directly, the federal government subsequently made several public statements and issued a series of policy directives regarding Aboriginal education that had implications for both.

In 1883, Sir John A. MacDonald publically informed the House of Commons of the government's position regarding education:



When the school is on the reserve the child lives with its parents, who are savages; he is surrounded by savages, and though he may learn to read and write his habits and training and mode of thought are Indian. He is simply a savage who can read and write. It has been strongly pressed on myself, as the head of the Department, that Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men.<sup>186</sup>

This statement starkly reveals two important aspects of government attitudes at the time: first, that the government knew how significant close family and social relationships were to Aboriginal peoples who had been transmitting language and culture to their children for generations; and, second, that the government fully intended to remove Aboriginal children from the cultural connections they had to family and community. Although mothering was not directly mentioned in any legislation, the assimilative policies that followed had a direct impact on mother-child relationships. For Aboriginal peoples, as in most cultures, mothering is central to the transmission of culture and language. Through the mother-child bond, all children learn to speak their language by observing and listening.<sup>187</sup> For Aboriginal peoples, learning to communicate in the language results in learning the culture. The two go hand in hand.<sup>188</sup>

Although policy statements issued by early Canadian governments did not mention language specifically, the federal government's Annual Report of 1885 included a declaration that Aboriginal children in residential school should no longer be allowed to speak their mother

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<sup>186</sup> Official Report of the Debates of the House of Commons of the Dominion of Canada: 1<sup>st</sup> Session, 5<sup>th</sup> Parliament, February 8<sup>th</sup> – April 19<sup>th</sup>, 1883. Ottawa: MacLean, Roger.

<sup>187</sup> Jeannette Corbiere-Lavell, and Dawn Memee Lavell-Harvard (eds), *"Until our hearts are on the ground": Aboriginal mothering, oppression, resistance and rebirth.* (Ontario: Demeter Press, 2006).

<sup>188</sup> Canadian Heritage, *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*, Ottawa: Task Force on Aboriginal Languages and Cultures, 2005.

tongue. Milloy explains that policymakers had a “multifaceted strategy of re-socialization ... to stamp out Aboriginal languages within the schools and in children.”<sup>189</sup> Federal leaders agreed that teaching children to speak French or English was a critical step in acculturating Aboriginal children. Language was the vehicle to replace Aboriginal culture with core European concepts and values. As Milloy indicates,

[t]he Department [of Indian Affairs] and the churches understood consciously that culture or, more particularly, that the task of overturning one ontology in favour of another was the challenge they face is seen in their identification of language as the critical issue in the circle. It was through the language that the child gained its ontological inheritance from its parents and community... The civilizers knew it must be cut if any progress was to be made.<sup>190</sup>

Senior staff in the Department of Indian Affairs strongly suggested that it would “be found best to rigorously exclude the use of Indian dialects.”<sup>191</sup> In 1896, the federal government recommended that in the education of Aboriginal children, “Every effort must be made to induce pupils to speak English and to teach them to understand it, unless they do, the whole work of the teacher is likely to be wasted.”<sup>192</sup> According to an edict of the Department of Indian Affairs, “[t]he use of English in preference to the Indian dialect must be insisted upon.”<sup>193</sup> The objective was to instruct children in English, except in Quebec where the focus was to instruct in French.

At first, the schools were ineffective in stamping out Aboriginal languages. Such lack of initial success caused some senior staff in the 1890’s to question the likelihood of achieving this

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<sup>189</sup> John Sheridan Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879 to 1986*, (Winnipeg: University of Manitoba Press, 1999) at 38.

<sup>190</sup> Milloy, *A National Crime* at 38.

<sup>191</sup> *Ibid*, 39.

<sup>192</sup> *Ibid*, 38.

<sup>193</sup> *Ibid*, 39.

policy objective. During this time, the federal government appeared to soften its position on language, prompting Hayder Reed, the Superintendent General of Indian Affairs, to advise the federal government, “At most the native language is only to be used as a vehicle for teaching and should be discontinued as soon as possible.”<sup>194</sup> The government reaffirmed its objective to do what? and between 1894 and 1908 issued two Orders in Council compelling Aboriginal children to attend residential school<sup>195</sup>

By the 1920s, the policies of assimilation through education were firmly entrenched in law, and the system of residential and day schools well-established in their task of replacing Aboriginal languages and cultures with European language and culture. The regulations for compulsory attendance were ultimately incorporated into amendments to the *Indian Act* in 1919 - 20 which stated:

Every Indian child between the ages of seven and fifteen years who is physically able shall attend such day, industrial or boarding school as may be designated by the Superintendent General for the full periods during which such school is open each year.<sup>196</sup>

Subsection 10 (3) of the *Indian Act* authorized the government to fine or imprison parents or guardians who failed to send their children to these schools, and to apprehend these children for the purpose of ensuring their attendance:

Any parent, guardian, or person with whom an Indian child is residing who fails to cause such child, being between the ages of the aforesaid, to attend school as required by this section after having received three days notice so to do by a truant officer shall, on complaint of the truant officer, be liable on summary conviction before a justice of the

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<sup>194</sup> Ibid, 45.

<sup>195</sup> Order in Council, P.C. 3327, November 10, 1894 and Order in Council, P.C. 1685, October 6, 1908.

<sup>196</sup> An Act to Amend the Indian Act, S.C. 1919-20, c.50 (10-11 Geo. V), s. 10 (1).

peace or an Indian agent to a fine of not more than two dollars and costs, or imprisonment for a period not exceeding ten days or both, and such child may be arrested without a warrant and conveyed to school by the truant officer.<sup>197</sup>

During this time, the government was committed “to support, maintain and educate” Aboriginal children “in a manner satisfactory to the Superintendent General.”<sup>198</sup> Although in the government’s educational goals did not address language specifically, Deputy Superintendent of the Department of Indian Affairs, Duncan Campbell Scott in 1920 revealed the aggressiveness of the federal government’s assimilative residential schools policy during a Parliamentary committee meeting. Scott contended that the policy should continue “...until there is not a single Indian in Canada that had not been absorbed into the body politic, and there is no Indian question, and no Indian Department.”<sup>199</sup>

Although the federal government set the general policy for residential schools, senior government staff did not provide consistent supervision or management. Thus, “the normative policy on language was set in the field by individual school administrators themselves.”<sup>200</sup> School principals were left in charge of language training and the development of pedagogy to prevent Aboriginal children from speaking their mother tongue. Many school administrators held a negative view of Aboriginal language. According to Graham, they believed that speaking an Aboriginal language was an impediment to learning but was also an integral part of the cultural identity of the peoples that had to be eradicated.<sup>201</sup> Most schools made English or French “the

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<sup>197</sup> An Act to Amend the Indian Act, S.C. 1919-20, c.50 (10-11 Geo. V), s. 10(3).

<sup>198</sup> Milloy, *A National Crime*, 184.

<sup>199</sup> Ibid, 46.

<sup>200</sup> Ibid, 185

<sup>201</sup> Elizabeth Graham, *The Mush Hole: Life at Two Indian Residential Schools*, (Waterloo, Ont.: Heffle Publishing 1997), 220.

only allowed means of communication.”<sup>202</sup> Schools varied in their approaches to the goal, but everywhere the effect was the same: Aboriginal children lost their languages, lost their cultural identity and lost their connection to family and community.

### Impact: Experiences from Former Students

Children who resisted speaking French or English encountered a patchwork of punishments deployed by school staff. Some schools enforced their language policies through excessive physical punishment, while other schools used gentler means to induce children to speak English or French, particularly where staff were of Aboriginal ancestry.<sup>203</sup> Sometimes the punishment was indirect, felt when the children returned home to discover they were estranged from their families. The most telling experiences of punishment come from former students themselves, who recount extreme physical abuse, ridicule and simply a profound sense of loss. During this period the federal government actively sought to eradicate Aboriginal languages within the residential school system.

### Physical Punishment

In the 1890's, Mary Tappage attended St. Joseph's Mission school in British Columbia. She recalled, “If we were heard speaking Shuswup, we were punished. We were made to write on the board one hundred times, “I will not speak Indian any more.”<sup>204</sup> Mary questioned why children were not allowed to speak their language.

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<sup>202</sup> Milloy, *A National Crime*, 39.

<sup>203</sup> Ibid, 183-84.

<sup>204</sup> Mary Augusta Tappage Evans and Jean E. Speare, *The Days of Augusta*, (Vancouver: J. J. Douglas, 1973). Commissioner, 18 December 1884.

Eleanor Brass from Peepeekisis reserve in Saskatchewan recalls being strapped at a residential school in 1905 when she spoke her language.<sup>205</sup> According to Brass,

[t]he Indian language was strictly forbidden and allowed only when relatives came to visit.

This was intended only to allow a quicker grasp of the English language; however it also served as a disadvantage to the Indian pupils by forcing them to discard their own native tongue which probably contributed to a feeling of inferiority.<sup>206</sup>

Joseph Francis Dion, a Cree Indian from the Kehiwin Reserve in Alberta, attended the Onion Lake mission school, and went on to open the first school on the reserve in 1916 where he taught for the next 24 years. In Dion's words, he had the children recite "[t]he Lord's Prayer, first in Cree, then I had the children repeat the same in English."<sup>207</sup> One of Dion's greatest challenges was that the children continued to speak Cree when they were together despite the rule for children to speak English outside of the classroom.<sup>208</sup> Eventually Dion gave up trying to enforce a strict English-only policy, an exceptional decision that contrasted with the behaviour of non-Aboriginal staff in residential and day schools across Canada who, in most cases, reprimanded Aboriginal children harshly for speaking their mother tongue.

According to Nelly Stonefish, a former student of Mount Elgin residential school from 1924 to 1927, children were strapped for speaking their language on school grounds.<sup>209</sup> Another former student from Mount Elgin, Dorothy Day, recalled that despite getting strapped for speaking their language, some children resisted. For example, children often spoke amongst themselves in the absence of school staff, and Day reported speaking with her mother in their language during student-parent visits at school. Nevertheless, children caught speaking their

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<sup>205</sup> Eleanor Brass, and Glenbow Museum, *I Walk in Two Worlds*, (Calgary: Glenbow Museum, 1987), 25.

<sup>206</sup> *Ibid*, 6.

<sup>207</sup> Joseph F. Dion, and Hugh Aylmer Dempsey, *My Tribe, the Crees*, (Calgary: Glenbow Museum, 1979), 158.

<sup>208</sup> *Ibid*, 161.

<sup>209</sup> Graham, "The Mush Hole," 430.

language inside school would get the strap. Day remembered being told, “Don’t you know this is an English school you’re going to – you’re not supposed to talk Indian” and recalled many children being punished for speaking their language.”<sup>210</sup>

Peter Smith attended the Mohawk Institute from 1926 to 1935. In his recollection, when the small boys came into the school

we weren’t allowed to talk Indian at all, we couldn’t say a word in Indian, just speak English, and these children would come in and maybe have no English at all and they would get in groups like cattle, trying to understand English, because they would give them a licking – or they’d give you a scolding or something like that for not being able to say it in English, and they just wiped out the entire Indian language. It’s just the one thing I felt sorry – because you’d see a group of ten or twelve small boys standing in a group trying to learn a little English. Some of them never heard English. I didn’t speak any Indian – but it was all the way around us. If we could have utilized our language, probably we would still have our language today – but we don’t have a language.”<sup>211</sup>

Raymond Hill, a former student of the Mohawk institute from 1929 to 1937, revealed that he lost his language within a year of attending residential school. Raymond attributed this quick loss to repeated threats of being strapped if he was caught speaking his Mohawk language.<sup>212</sup>

Emmert General, a former student at the Mohawk Institute from about 1932 to 1938, had memories: “I spoke my Native language when I went there but if you tried to speak to someone in your own language you’d always get the strap or something ...”<sup>213</sup>

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<sup>210</sup> Ibid, 436.

<sup>211</sup> Ibid, 360.

<sup>212</sup> Ibid, 368.

<sup>213</sup> Ibid, 374.

Basil Johnston's autobiography tells of his time at Spanish School, which was first officially called St. Peter Clavier's Indian Residential School and renamed after 1945 to Garnier Residential School. The autobiography mentions a young boy who ran away from the school because he was whipped for speaking his language.<sup>214</sup> It also mentions an incident when Father Hawkins came out of his office and enquired if a student had spoken in an "Indian" language. The student responded, "No, Father. Not me. You tol' us not to talk Indian. It is against the rules, you said."<sup>215</sup>

Kenneth George attended the Mohawk residential school from 1953 to 1960. He could only speak Oneida upon first entering school. Yet, upon leaving, he could only understand a few sentences in his language. He attributed this loss to the repeated beatings he received for speaking his language in school. He was hit for helping other Cree-speaking children communicate in English, and spoke of seeing a school officer physically punishing kids for speaking their language. The older he got, the worse the beatings became; and things were no better for the strictly Cree-speaking children who were starting at the school:

[I]t was really bad, because that's all they knew. They were terrified – they were really scared, because all they knew was Cree. Us older guys would kind of pull them aside and try to help them speak English. I always wondered why I ended up getting a ruler across the hand. I didn't know why I was being hit. Now I know why – these guys told me about it. I can't make a sentence in Oneida, but I can pick up words here and there, and that's really sad.<sup>216</sup>

Bob White Eye attended the Mohawk residential school from 1955 to 1964. He spoke mostly Delaware when he arrived at school. He was beaten badly for speaking his language and

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<sup>214</sup> Basil Johnston, *Indian School Days*, (Toronto: Key Porter Books, 1988), 104.

<sup>215</sup> *Ibid*, 105.

<sup>216</sup> Graham, "The Mush Hole," 409 – 410.



eventually the only language he knew was English. He remembered having to learn English the very first day of school and the resulting impact it continued to have on his life:

The reason we spoke Indian was that Grandmother – that was all that she spoke, she spoke no English at all. Dad spoke English so we had English and Indian, but not fluently. When I was there in the sixties, the Cree children started coming in and they spoke no English, and they literally beat this one child into submission, (as a result) [...] he is in fact mentally (ill) today.<sup>217</sup>

Lee Snake attended the Mohawk residential school from 1963 to 1965. He recalled being beaten for speaking his Delaware language. However, he was able to pick up some Cree words from a number of Cree children who attended the school. Snake indicated that his language was beaten out of his mom's generation; not everyone from his community had their ancestral language.<sup>218</sup> According to Snake, when the language is taken, a sense of Aboriginal identity, including ceremonies and dances, is lost.<sup>219</sup>

Marius Tungilik does not recall being taught to use syllabics but does recall being punished for speaking Inuktitut:

Don't even think Inuktitut was taught in the school. Some students recalled being taught syllabics in the school. I can't recall that myself. I guess that was in the early days. Ten months English two months Inuktitut at home. So difficult. We missed out on how to interact. Suddenly home was an alien environment. We were punished if we were speaking

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<sup>217</sup> Ibid, 418.

<sup>218</sup> Ibid, 422.

<sup>219</sup> Ibid, 423.

Inuktitut in class. A scolding or beating. We were told not to speak the devil's tongue. Religious instruction was conducted in Inuktitut.<sup>220</sup>

### Psychological Punishment

In addition to the physical punishment that so many Aboriginal children experienced for speaking their ancestral language, some students were ridiculed and psychologically abused.

Marjorie Groat, who attended the Mohawk Institute in the 1930's, revealed how children were encouraged to ridicule each other's Aboriginal language and culture in school. Groat recounted an incident with a smaller boy who couldn't speak any English at all. He was teased constantly for this by the older boys, encouraged by the other students and teachers, and picked on because he was small. Groat felt sorry for this boy, and would have preferred that the older boys had protected him.<sup>221</sup>

A woman who attended the Mohawk Institute from 1940 to 1945 recalls being thrown in the clothes closet with another young girl for speaking her language:

There were rats in there and I remember crying, and I remember wondering: Why was I in there? Why did they put me in there? [W]e were both sitting there crying and afraid that these mice were going to get us, or these rats. I guess we were in there for speaking Indian. I don't remember speaking Indian but my aunt says we used to speak Indian fluently before we went [...] [T]here were a bunch of girls from Walpole Island that used to speak Indian all the time, and they were always getting thrown in there, but they used to go and hide after a while and speak Indian.<sup>222</sup>

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<sup>220</sup> David Paul King, "The History of the Federal Residential School for the Inuit Located in Chesterfield Inlet, Yellowknife, Inuvik and Churchill, 1955 – 1970," (Master's thesis, Trent University, 1999), 229.

<sup>221</sup> Graham, "The Mush Hole," 362.

<sup>222</sup> Ibid, 380.

Isabelle Knockwood from Wolfville, Nova Scotia, attended residential school in Shubenacadie from 1936 to 1947. She recalled children being punished for speaking Mi'kmaq:

Not only were we forbidden to tell whatever the nuns defined as “lies” – from our first day at the school speaking our own languages resulted in violent physical punishment. Since we knew no English we had to hide to talk to each other in Mi'kmaq. Even after a few years had passed and we learned enough English to communicate with each other, it still was often dangerous to talk. We were forbidden to talk at night in the dormitory. Brothers and sisters were strictly forbidden to speak to each other.<sup>223</sup>

Georgina Gregory attended Files Hills Indian Residential School in Balcarres, Saskatchewan when she was seven years old. She attended the school for eight years, and told of children being “ridiculed and discouraged from speaking their language and had no choice but to speak English [...] I know there is absolutely nothing wrong about learning English, but they saw it that those students forgot their language through humiliation and shame.”<sup>224</sup>

Maria Campbell, a former student of a residential school in Beauval Saskatchewan, remembered students being allowed to speak only French or English and being put into a small dark closet for hours as punishment for speaking her language: “[I] was paralyzed with fright when they came to let me out. I remember the last day of school and the sense of freedom I felt when Dad came for me. He promised that I would never have to go back.”<sup>225</sup>

Theodore Fontaine attended the Fort Alexander Indian Residential School in Manitoba from the age of seven years to twelve. Like many students, he was punished for speaking Ojibway:

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<sup>223</sup> Isabelle Knockwood, and Gillian Thomas, *Out of the Depths: The Experiences of Mi'kmaw Children at the Indian Residential School at Shubenacadie, Nova Scotia*, (Lockeport, N.S.: Roseway, 1992), 10.

<sup>224</sup> Constance Deiter, *From Our Mothers' Arms the Intergenerational Impact of Residential Schools in Saskatchewan*, (Toronto, ON: United Church Publishing House, 1999), 63.

<sup>225</sup> Maria Campbell, *Halfbreed*, (Lincoln: University of Nebraska Press, 1982), 44.

I inadvertently said something in Ojibway. She'd [teacher] assumed I was referring to her when a couple of boys laughed at my comment. She yelled and (she) wash my mouth with soap [...] I was shoved into a closet behind her chair. It was under the stairs leading to the second floor and was used to store brooms and other cleaning material. I don't remember how long I was in there, but it seemed like an eternity[...] Eventually she let me out. Her first word was "*Tiens!* (Take that!)" followed by a warning not to speak my "savage" language.<sup>226</sup>

Janie Margaret Matthews or Geniesh (Little Janie) attended the St. Phillip's Indian and Eskimo Anglican Residential School in Fort George, Quebec in the mid 1940's. She recalled being told the following:

[Y]ou are here to learn English in or around the school. You will not speak Cree, and anyone caught speaking it will be severely punished [...] You are here to be educated. You have been taken out of your homes because it is very difficult to learn under such unfortunate circumstances. It is not your fault [...] and your families don't know any better, so they must be forgiven for their old ways. However, you must forget your old ways [...]<sup>227</sup>

Andrew Amos lived at Queens Cove reserve on the west coast of Vancouver Island. Amos attended Christie Indian Residential School from 1948 to 1956. When he first went to school he could not speak English, yet he was no longer allowed to speak his language.<sup>228</sup>

## Estrangement and Loss

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<sup>226</sup> Theodore Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools: A Memoir*, (Surrey, B.C: Heritage House, 2010), 106 - 107.

<sup>227</sup> Jane Willis, *Geniesh; an Indian Girlhood*, (Toronto: New Press, 1973), 45.

<sup>228</sup> Agnes Grant, *Finding my Talk: How Fourteen Native Women Reclaimed their Lives After Residential School*, (Calgary: Fifth House, 2004), 25.

As a result of the abuse Aboriginal children experienced, many of them lost their ability to communicate with family and community due to language barriers. Many of the former students commented on their loss of cultural identity and connection to family that made them feel like strangers to their own people.

John Tootoosis from the Poundmaker Reserve in Saskatchewan attended St. Michaels and Delmas residential schools in the early 1900's. He recalls that when children returned home,

Having lost their Cree language, they could rarely understand what was being said, and could not make themselves understood, and it was months before it began to come back to them. They were strangers in their former homes. Their parents and grandparents, once the centre of their existence, were now diminished, mere remnants of a bygone era and a worthless culture. They no longer could respect their Elders after having been so indoctrinated into the white man's religion. Cree songs and stories, ceremonies or prayers were now, to these young converts, terrifying evidence of souls damned and lost ...<sup>229</sup>

A former student of Mount Elgin located in Ontario recalled in 1906 that any letter sent by the children to their family members had to be written in English. Moreover, "all conversations between the visitors and the children ha(d) to be in English."<sup>230</sup> In consequence, parents who were lucky enough to receive letters from their children were often not able to read them.

Evidence surfaced in 1907 that residential schools were having a destructive impact on children and their families. Dr. Peter Bryce, a Medical Inspector to the Department of the Interior and Indian Affairs published a 1907 report, "Report on the Indian Schools of Manitoba and the Northwest Territories" indicating that several children were dying due to deprivation of adequate

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<sup>229</sup> Norma Sluman, and Jean Goodwill, *John Tootoosis*, (Winnipeg: Pemmican Publications, 1984), 105.

<sup>230</sup> Graham, "The Mush Hole," 220.

medical care and unsanitary living conditions.<sup>231</sup> Edward Ahenakew, a Cree Anglican minister from Saskatchewan, added his own observations in support the harmful effects of residential schools: “Again and again I have seen children come from boarding school only to die, having lost during their time at school all the natural joys of association with their own families, victims of an educational policy.”<sup>232</sup>

Earl Maquinna George from Clayquot Sound, British Columbia, attended a residential school at Ahousaht in the thirties. He remarked that the children were not only prevented from speaking their language, they were also denied any opportunity to discuss topics related to the Nuu-Chah Nulth culture.<sup>233</sup>

Interviews of sixty former students who attended the Mohawk Institute and Mount Elgin reveal that until 1972 many children were restricted to speaking English. Punishment for speaking their language ranged from being strapped to being thrown into the clothes press.<sup>234</sup> Of all the students interviewed from Mount Elgin, only eight claimed they could still speak their mother tongue. All of the students interviewed reported feeling “a deep sense of loss, saying that losing the language, whether individually or collectively, and the associated loss of their culture, was the worst thing about the schools.”<sup>235</sup>

Another woman recalled returning to her community and not being able to communicate with her Dad. She recounted one experience when her Dad came to visit her and her sister. During the visit, he spoke to them in their traditional language but they could no longer understand him. As she recounted, she and her sister “couldn’t figure out what he was talking about, and he got

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<sup>231</sup> Peter Bryce, *The Story of a National Crime: Being a Record of the Health Conditions of the Indians of Canada from 1904 to 1921*, Black Series, RG 10 v.3957 140754-2 DIA, NAC.

<sup>232</sup> Edward Ahenakew, Ruth Matheson Buck, and University of Regina, “Voices of the Plains Cree,” *Canadian Plains Research Center*, 28, Regina (1995):132. .

<sup>233</sup> Earl Maquinna George, *Living on the Edge: Nuu-chah-nulth History from an Ahousaht Chief's Perspective*, (Winlaw, B.C.: Sono Nis Press, 2003),38.

<sup>234</sup> Graham, “The Mush Hole,” 22.

<sup>235</sup> Ibid, 220.

really angry with us – really angry. Or maybe not so much angry as disappointed. He said, ‘Even my dog could understand [...]’ That’s what the Mush hole did to me – it took away my language, and to this day I don’t speak Indian.’<sup>236</sup>

Bette Spence attended a residential school in Brandon, Manitoba, for about six or seven years and recalled not being allowed to speak Cree. In addition, “there was not one single native tradition in the school. They just took you away from home, where you left everything all the Indian-ness back there.”<sup>237</sup>

Inez Dieter from Peepeekisis Indian reserve in Saskatchewan attended both the Onion Lake Residential School and the Prince Albert Indian Residential School from 1938 to 1946. Prior to attending residential school Inez lived in a Metis community until she was eight. At that point, she was taken to an orphanage in Edmonton where a nun made arrangements to take her to Onion Lake residential school. When Inez was reunited with her brother years later, her brother noticed that she could no longer speak Cree. He recognized that this was going to be a problem because all their relatives spoke Cree. Dieter recalls hearing the other girls speaking Cree and attempting to copy them. Speaking Cree was forbidden at the school, so the girls would teach her at night (Dieter, 51).

Albert Canadien attended the Sacred Heart Indian Residential School in Fort Providence, Northwest Territories, when he was seven years old. He recalled the nuns speaking mainly French:

For the first few days of school, communication was very difficult for me as I didn’t speak or understand English or French. It took me some time before I learned enough to be able to speak and understand some English. Soon after that we were forbidden to speak Slavey

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<sup>236</sup> Graham, “The Mush Hole,” 383.

<sup>237</sup> Dieter, “From My Mother’s Arms,” 51.

[...] It seems ironic when I think about it now, because the Sisters who supervised us at that time spoke only French; they didn't speak English that well. As a consequence, we learned broken English from them.<sup>238</sup>

Canadien also explained the impact that the language restriction has on his relationship with his family:

Not being able to speak my own language really created a communication problem for me. It was especially hard when my parents came to visit us. I wasn't quite sure if the restriction applied when speaking to my own parents. I did speak to them in our language only after I was sure the Sisters weren't around or close by. Like most people in Fort Providence at that time, my dad spoke to us in South Slavey when he came to visit us. I don't think he was aware of the language restriction, and I never did tell him about it.<sup>239</sup>

Jennie Blackbird from Walpole Island attended the Mohawk Institute from 1942 to 1946.

Jennie's experience losing her language had a rippling impact on her life:

The thing that shocked me the most was when I was told I could not speak my native language. I was birthed into this language, yet, I was told I was being rude. This really pierced me. Because my native language was all that was spoken at home, the English language was the first foreign language I learned. And we weren't allowed to speak our Indian language?!!! My inner emotions could not accept this, but I could not express myself enough to say what was in my heart in the English language [...] I knew in my heart that this was wrong and so unfair to us Native children. The emotional shock tremors that I suffered then I still feel to this day [...] I had to learn all over again to love and to

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<sup>238</sup> Albert Canadien, *From Lishamie*, (Penticton, B.C.: Theytus Books, 2010), 56.

<sup>239</sup> *Ibid*, 56.



... speak my language when I got home to stay. Although I eventually got my language back [...] the tremors from the emotional shock I endured are still with me to this day.<sup>240</sup>

Sylvia Soney was the second generation in her family to attend the Mohawk Indian Residential School, and her first language was English. Sooney assumed that because both her parents attended a residential school they wanted to shelter their children from physical punishment for speaking their language, so they never taught them their language.<sup>241</sup>

Harold LeRat attended a residential school in Crooked Lake in the 1930's for 10 years. His father Solomon LeRat also attended a residential school. He recounted his father's negative experiences speaking Cree and Sauteaux, which resulted in the destruction of the language in his family:

When my dad went to school he was not allowed to speak Sauteaux or Cree. The kids would be beaten if they did, so when his older kids went to school, dad said not to speak Cree or you will get beat up. The older ones all spoke the Indian languages at home, but because Elsie and I were in school after our parents died, we lost our language.<sup>242</sup>

Calvin Sault recalled the impact of the Mohawk residential school, which he attended until 1953. He could not speak his language until he was 48 years old and, as a result, he was prevented from knowing his cultural identity.<sup>243</sup>

Alice Ningeongan, a former student from Churchill residential school from 1964 to about 1970, recalled being encouraged to use syllabics:

I guess it wasn't permitted because that was not what we were there to speak, we were there to speak English. But they did encourage us to write syllabics [...] I learned to write

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<sup>240</sup> Graham, "The Mush Hole," 388-389.

<sup>241</sup> Ibid, 392.

<sup>242</sup> Harold LeRat, and Linda Ungar, *Treaty Promises, Indian Reality: Life on a Reserve*, (Saskatoon: Purich Publishing, 2005), 128.

<sup>243</sup> Graham, "The Mush Hole," 400.

home to mom using syllabics from the prayer book. It used to take me a long time but at least I learned to write in the writing system that I knew<sup>244</sup>

At the age of seven, Nunatakmut (Alice) French was taken to the Anglican school in Aklavik. People from her community remarked on the fact that she could no longer speak her language when she returned home.<sup>245</sup> French recalled that when she asked her father to speak in Inuvialuktun to her, she “could understand most of the words, but when I tried to answer I found I had first to translate the words from English into Inuvialuktun.”<sup>246</sup>

Alice Blondin-Perrin, a Dene from Cameron Bay, attended St. Joseph’s Mission School in Fort Resolution from 1952 to 1959. She reported hearing many Aboriginal languages as well as English, French and Latin. She grew up speaking Slavey at home. Only about 50 people at residential school spoke her language. The other students spoke Dogrib (Thicho) and Chipewyan.<sup>247</sup> Blondin-Perrin had many linguistic challenges to overcome at school. She could not understand the other young girls and she was physically punished from the age of four for speaking in her mother tongue. After two years, she eventually learned to speak English, a considerable accomplishment considering the older girls spoke Dogrib and Chipewyan, the nuns spoke French to each other and Latin was read in church.<sup>248</sup> While overcoming these challenges, Blondin-Perrin lost the ability to communicate in her mother tongue. To this day, she does not understand why the children were never told the reasons they were forbidden to speak their language, and believes the language policy had grave consequences. “[T]heir decision,” she stated, “created long-term language barriers, problems and grief for me. I would never be able to

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<sup>244</sup> LeRat, “Treaty Promises,” 229.

<sup>245</sup> Alice French, *My Name is Masak*, (Winnipeg: Peguis, 1997), 4.

<sup>246</sup> *Ibid*, 8.

<sup>247</sup> Alice Blondin-Perrin, *My Heart Shook like a Drum: What I Learned at the Indian Mission Schools, Northwest Territories*, (Ottawa, Ont.: Borealis Press, 2009): 16.

<sup>248</sup> *Ibid*, 22.

sit and talk with the Elders. I lost my language.”<sup>249</sup> At home, Blondin-Perrin’s parents spoke six dialects of the Dene language. She recalled her family teaching her in Dene about the traditional knowledge of the land, including the names of significant places and rivers. In contrast, Blondin-Perrin noted that in residential school,

our native languages were not to be heard or spoken. Our customs and traditions were denied to all of us. Our Native spirituality denied. Our heritage was denied and not mentioned, because their goal was to take the Indian out of us. We were not taught anything about the land, water or Dene spirituality. We were only taught the white man’s way, and a very narrow version of even that. The government and missionaries wanted to civilize us and assimilate us, turn us into white people, make us learn their languages and customs. I am very sad that I lost my native tongue in residential school. All my life I felt like I was looking into the windows of Native peoples’ homes because I was not able to participate in any discussions, or laugh at their jokes. It was like a slap in the face. The reality of only speaking English set in when I could not communicate among my people.<sup>250</sup>

Blondin-Perrin’s experience of returning home was not an isolated incident. Many former students returned home feeling like strangers in their own communities. Some of them could no longer communicate with their parents, grandparents and extended family members in their ancestral language. They also felt a great deal of shame about their Aboriginal identity because of their school experiences. As Milloy explains,

Though children were removed from their parents and communities divorced from direct involvement in their own culture for many years, English and French, and thus western culture, remained quite ‘unnatural to them.’ They had not been civilized – Canadianized –

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<sup>249</sup> Ibid, 22.

<sup>250</sup> Ibid, 23- 24.

when they left school. They had not been prepared to live a new life. Indeed, in many cases, as studies in the 1960's revealed, because of their extended isolation from their families, the persistent denial of their culture and abuse, many returned unable to lead any sort of productive life, old or new.<sup>251</sup>

Although the government played a central role in creating a system that facilitated cultural abuse, it did nothing to assist Aboriginal children after they left the residential school system. A former student from Saskatchewan eloquently described the void many former students felt after leaving the schools:

... when an Indian comes out of these places it is like being put between two walls in a room and left hanging in the middle. On one side are all the things he learned from his people and their way of life that was being wiped out, and on the other side are the whiteman's ways [...] There he is, hanging in the middle of the two cultures and he is not a white man and he is not an Indian. They washed away practically everything from our minds, all the things an Indian needed to help himself, to think the way a human person should in order to survive [...] We were defenseless [...] those who went to school could not even talk when a non-Indian would speak to them, they would hang their heads. I sometimes think that it was planned that way so that the Indian could no longer speak for himself [...] did not believe in himself [...] had to be told what to do.<sup>252</sup>

Some residential school staff held a similar view that the schools were denying Aboriginal children their culture and language. Miss Eden Corbett, a former teacher in the Aklavik Anglican School, resigned in 1944 on the grounds that the staff were participating in ineffective and immoral teachings practices. On departing from her teaching position, Corbett stated that

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<sup>251</sup> Milloy, *A National Crime*, 185.

<sup>252</sup> Norma Sluman, and Jean Goodwill, *John Tootoosis*, (Winnipeg: Pemmican Publications, 1984), 106.

[I am] grieved to think that I must leave these children in the same condition I found them [...] I consider that the system as it is now in force, definitely does not meet the requirements of the native. Where, in a ten month academic period, does a child get any contact with its practical life? How is a child, after a four to ten year period in a school, supposed to adapt itself to the environment of its parents, when the language, habits and arts have been severed, for such a length of time. The child is an alien and the situation is pitiful. Is that practical Christianity?<sup>253</sup>

Harold Cardinal, a former student from Alberta, recalled the consequences of language loss on communal relationships which “alienated the child from his own family [and] from his own way of life without in any way preparing him for a different society.”<sup>254</sup> Aboriginal peoples that attended residential school experienced language and cultural abuses in many different ways. In addition, Cardinal noted, “teachers, unlike the earlier missionaries, made no attempt to understand the native tongue. They couldn’t even be bothered to learn the children’s names [...] they didn’t really care if they broke his spirit.”<sup>255</sup>

## Language Resistance

Although many former students of the residential school system expressed a deep sense of loss, some of them described powerful instances of resistance. An example of group resistance occurred in 1962 with a riot at the Edmonton Indian Residential in reaction to students were **iced** for speaking their language.<sup>256</sup> In western Canada, children created a sign language used in residential schools in Hobbema, Edmonton, Blue Quills, Onion Lake, Prince Albert, Brandon

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<sup>253</sup> Milloy, *A National Crime*, 185.

<sup>254</sup> Harold Cardinal, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations*, (Calgary: University of Calgary Press, 2000), 54.

<sup>255</sup> Ibid, 86.

<sup>256</sup> Dieter, “From My Mother’s Arms,” 75.

and Birtle. The signs consisted of a two handed letter system and body gestures, and allowed children to overcome difficulties learning to speak English at the school. This language also assisted children in situations where students spoke different Aboriginal languages.<sup>257</sup> Students often used their sign language behind the teacher's back in the classroom. Inez Dieter reported that students used the language to convey birthday greetings to their siblings, who were generally kept apart and prohibited from speaking together while at school. In Dieter's words, "this language should be a testament to the intelligence, spirit and resourcefulness of First Nations children."<sup>258</sup>

### Consequences of the Residential Schools Today

Although the last school closed its doors in 1996, it had become apparent in the sixties that Aboriginal communities nationwide were experiencing severe socio-economic problems. The federal government responded in 1963 by commissioning Harry B. Hawthorne, an anthropologist from the University of British Columbia, to conduct a study. After an extensive review of Aboriginal communities across Canada, Hawthorne released his report in 1967. One of Hawthorne's major conclusions was that the difficulties Aboriginal peoples were facing were largely caused by the residential school system. The report emphasized a critical connection between the revitalization of Aboriginal language and culture and the well-being of Aboriginal peoples, suggesting that

language is an integral part of any culture, in the anthropological sense of "culture."

According to linguists, the structure of a language determines the mental categories and thought processes of those who have inherited the language. Few would dispute the fact

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<sup>257</sup> Ibid, 75 - 76.

<sup>258</sup> Ibid, 77.

that the spoken and written word is an essential instrument in the process of transmitting and absorbing knowledge. In the field of education, there is a direct relationship between mastery of the language and success in learning. For all these reasons, the question of language of instruction in schools attended by Indians is thus of capital importance. Indian children who are forced to take courses in a language that is not their mother tongue find school more difficult than other children, during the first few years in particular.<sup>259</sup>

The report continued to highlight the government's policy to eradicate Aboriginal languages:

[T]he lack of attention shown towards the teaching of the Indian languages in the courses of study would seem to indicate rather clearly that the Indian languages might be allowed to disappear and be replaced by either English or French (in Quebec). The great number of Indian languages and dialects and the need to integrate Indians with Canadian society might justify this measure.<sup>260</sup>

The report also acknowledged that the destruction of Aboriginal language would lead “almost inevitably to the loss of their own ethnic identity and cultural traditions.”<sup>261</sup>

Stories in the *Hawthorne Report* from former residential school students revealed a dark thread in Canada's past, a history of severe injustices creating linguistic harm. Regardless of the language policy adopted in the schools, children were invariably prevented from speaking their language and learning their culture. Scholastically, the result was the same across the board: children left the schools with a level of language proficiency (in English or French) far below the

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<sup>259</sup> H.B. Hawthorn, 1966, *A Survey of the Contemporary Indians of Canada: A Report on Economic, Political, Educational Needs and Policies*, Ottawa: Indian Affairs Branch, 1966, 37.

<sup>260</sup> Ibid, 37.

<sup>261</sup> Ibid, 37.

desired Canadian standard. The most profound shortcoming of the government system was the poor educational experience provided to the children, which “was after all the most critical part of the strategy of cultural transformation.”<sup>262</sup> The extremely low quality of education had disastrous consequences for the whole assimilative undertaking, and, as a result, Aboriginal children left the schools without a good footing in either culture.<sup>263</sup>

Many years have passed since the Hawthorne Report, and many studies have revealed the damages done by the residential schools and their consequences. In its final report on residential schools, the Truth and Reconciliation Commission of Canada (TRC) concluded that the residential schools program was “a systematic, government-sponsored attempt to destroy Aboriginal cultures and languages and to assimilate Aboriginal peoples so that they no longer existed as distinct peoples.”<sup>264</sup> The TRC has also documented the intergenerational impacts of language loss in statements from children of residential school survivors. In one statement, Sabrina Williams from British Columbia revealed the profound impact loss of language had and continues to have on her connection to her cultural identity:

I didn't realize until taking this language class how much we have lost—all the things that are attached to language: its family connections, its oral history, its traditions, its ways of being, its ways of knowing, its medicine, its song, its dance, its memory. Its everything, including the land [...] And unless we inspire our kids to love our culture, to love our language [...] our languages are continually going to be eroded over time. So, that is daunting.<sup>265</sup>

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<sup>262</sup> Milloy, *A National Crime*, 185.

<sup>263</sup> *Canada's Residential Schools: The legacy - The Final Report of the Truth and Reconciliation Commission of Canada, volume 5*. 2016. Montreal; Kingston; London; Chicago: MQUP.

<sup>264</sup> *Canada's Residential Schools*, 201.

<sup>265</sup> *Canada's Residential Schools*, Statement to the TRC by Sabrina Williams, 205.



This statement resonates deeply within me, as an intergenerational survivor of the residential schools. Their story is my story; my own experience allows me to attest that the impacts of language loss can be all-encompassing, surfacing in unexpected ways. However, I can also attest that there is a way out of the damage through re-connecting with our languages and our culture.

Like most Canadians, I grew up learning nothing about the history of residential schools. I never questioned the fact that I often heard my mother speaking Cree and my father speaking Ojibway. I did not identify these languages as my family languages, and I certainly did not consider them as two of Canada's original languages. Finally, in the early 1990's, I started to investigate the history of residential schools, and came to realize that Aboriginal languages had become invisible partly through the shame and self-doubt Aboriginal peoples inherited from the residential schools experience.

In 1993, I became aware of the source of the cultural shame I had felt as a child. My mother gave a keynote address at a conference in Winnipeg, Manitoba, where she spoke about the physical abuse and denigration she received as a child for speaking Cree while attending a residential school. She told the Winnipeg audience that she was physically punished every time she spoke Cree, a devastating experience because Cree was the only language she knew as a child. Eventually, English would be the only language she used at school.

After I had a few weeks to reflect on what my mother revealed during her talk, I realized that my family's relationship to our language was far from healthy. We did not cherish the language as my grandparents did and in fact my mother and her siblings appeared to hide the fact that they could speak Cree. They only spoke their ancestral language when they said something private to each other or when my grandparents were present.

Although my generation was not physically abused for speaking an Aboriginal language, we inherited feelings of cultural shame. Even worse, we never knew where the sense of shame came from and we never acknowledged it to one another. Some of us went to extremes, denying our Aboriginal identity, lying entirely and claiming another identity. Part of the problem was that most of us grew up knowing very little about Aboriginal culture or history. For me, my Cree and Ojibway identity meant very little. They became words that I often heard people talk about in the area where my mother and father were raised. The older generation was a bit different because many of them continued to communicate in Cree. At least they maintained a sense of Aboriginal identity through the language.

The wall that separates my generation from our cultural identity became denser when the violence my parents experienced in the schools trickled into our family life. Home was often not safe. We witnessed violence. People changed drastically when alcohol was around. Nothing was predictable. I never knew from one minute to the next whether home life would be calm or chaotic. I did not trust members of my family and never confided in any one. Most of the time, I kept to myself and tried to be invisible. Many of my peers eventually became victims of the violence. Although not everyone from my generation has experienced family violence, we have all been denied our culture and language, and to some degree have inherited shame.

I personally carried this legacy until I was introduced to our culture. In my early twenties, my mother started to attend our traditional ceremonies. In the process, she learned about oral history, our teachings and about the medicines that come from the land. She also went to see medicine people who were able to assist her to heal from some of the trauma she experienced in the schools. A few of her sisters followed her down this path. Eventually, my brother, sister and I became intrigued and we started to attend different ceremonies with my mother. My sister

became a sun dancer, as did my mother and a few other members of our family. In 1997, I decided to attend Midewiwin ceremonies. Since then, I have been learning Mide teachings and the Ojibway language. During this time, the Elders explained many of the customary protocols of communication that Henry Kelsey and James Isham wrote about in their journals three hundred years ago, such as feasting, offering tobacco and pipe ceremonies. As a result of this knowledge, I became proud of my cultural identity for the first time in my life.

In addition to cultural knowledge, my healing journey included learning about the residential schools. Before 1990, I had no idea about this history or the policy that targeted the destruction of Aboriginal languages and cultures. When I first learned about what happened to my mother and the rest of my family, I was very angry. Soon after, I was able to make the connection between the abuse that happened in the schools and the abuse that was occurring in my home. Before gaining this knowledge, I walked around in a cloud of silent shame.

### Concluding Remarks

We now know that the Canadian government deliberately and systematically attempted to destroy Aboriginal culture, primarily through destroying Aboriginal languages. In the first chapter Aboriginal language rights are recognized by Aboriginal customary law and by quasi-government entities such as the Hudson's Bay Company as well as by the justice system and government during treaty negotiations. In this chapter, evidence of the impact resulting from the government's violation of Aboriginal law and language rights is provided in the testimonials of Aboriginal peoples.

Over the past decade, personal testimony and scholarly research on the legacy of the residential school have grown considerably, highlighting many of the harms related to past

federal government policy and law; much of it remains in force today.<sup>266</sup> No one describes government actions as benevolent intrusions, but as deliberate psychological strategies to destroy Aboriginal peoples language, culture and consciousness.<sup>267</sup>

Not only did the residential schools nearly destroy the ability and, in many cases, the will of parents and Elders to pass Aboriginal languages and cultural identities to the next generation, the schools violated Aboriginal customary law that regards language as a sacred gift from the Creator to preserve for future generations. The residential school system violated the inter-customary practices that were developed between Europeans and Aboriginal peoples that preserved their languages. Aboriginal peoples did not attempt to extinguish the French or English language. Moreover, the treaties were negotiated to ensure that Aboriginal peoples and Europeans would continue to exist as distinct peoples. A central component of European and Aboriginal peoplehood lies within the ancestral languages and cultures of each nation. The French were consulted during the creation of the British North American Act. They fought for their language rights. Aboriginal peoples were never provided with the same opportunity. In fact, Canada assumed jurisdictional authority over Aboriginal peoples in section 92 (24) of the British North American Act, 1867. As a result, the federal government granted itself the authority to create laws regarding “Indians.”<sup>268</sup> One of the results of this assumed authority was the Indian

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<sup>266</sup> Brian E. Tittley, *A Narrow Vision, Duncan Campbell Scott and the Administration of Indian Affairs*, (University of British Columbia Press, Vancouver, British Columbia, 1986); J.R. Miller, *Shingwauk's Vision, A History of Native Residential Schools*, (Toronto: University of Toronto Press, 1996).

<sup>267</sup> Andrew John Woolford, *This Benevolent Experiment: Indigenous Boarding Schools, Genocide, and Redress in Canada and the United States*, (University of Nebraska Press, 2015); David A. Nock, *A Victorian Missionary and Canadian Indian Policy, Cultural Synthesis vs Cultural Placement*, (Wilfred Laurier Press, Waterloo, Ontario, 1988); Roland David Chrisjohn, Sherri Lynn Young; and Michael Maraun, *The Circle Game: Shadows and Substance in the Indian Residential School Experience in Canada*, (Penticton, BC: Theytus Books, 1997); Sherri Lynn Young; and Michael Maraun. *The Circle Game: Shadows and Substance in the Indian Residential School Experience in Canada*. Penticton, BC: Theytus Books, 1997

<sup>268</sup> Section 91 It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared

Act. The objective of the Indian Act was assimilation. It was created to primarily eradicate Aboriginal language and cultures. Not only did this violate Aboriginal peoples right to remain “Indians” or “peoples,” it resulted in a great deal of harm that stems from racist ideas. These ideas have infiltrated the views that many Canadian have towards Aboriginal peoples and continue to influence the way government treats Aboriginal peoples. Racist attitudes and institutions impact the way Aboriginal peoples view themselves. Shame and sometimes apathy towards Aboriginal languages and cultures reduces the will to pass on the languages in Aboriginal communities and homes.

The effects of the schools are now so widespread. The policies and laws also placed unbearable constraints on the intellectual development of Aboriginal peoples that included a concerted effort to extinguish their cultural heritage and language.<sup>269</sup> One of the most damaging consequences is that many residential school survivors have no desire to pass on oral history and cultural knowledge. Because Elders and youth could not communicate with one another, important cultural protocols of communication were not passed down. Aboriginal women were prevented from exercising their role as caregivers and nurturers of the culture and language. Children left the residential schools with very little knowledge, if any, of their cultural identity and history, and few parenting skills. In spite of the government’s attempt to eradicate Aboriginal languages, some Aboriginal peoples continue to speak their language, resist assimilation and moreover continue to advocate for Aboriginal language rights in Canada. In spite of the harm to Aboriginal peoples’ language and culture during the residential school

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that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, 24. Indians, and Lands reserved for the Indians.

<sup>269</sup> James Sakej Youngblood Henderson, “Treaties and Indian Education,” in *First Nations Education in Canada: The Circle Unfolds*, edited by Battiste, Marie Ann, and Barman, Jean, (Vancouver: UBC Press, 1995),

period, the Supreme Court of Canada recognizes that continuity can still be satisfied despite an interruption in a practice and despite government opposition or interference with a practice.<sup>270</sup> It could also be argued that the federal government's attack on language in the context of its attempt to "assimilate" Aboriginal peoples demonstrates the government's recognition of "the central significance" of language to these societies which is a significant criteria of the Van der Peet test. In order for the government to meet the extinguishment criteria in Sparrow<sup>271</sup> they would have to demonstrate clear and plain intention to extinguish Aboriginal language rights. The next chapter provides examples of the persistence to keep Aboriginal languages as part of the dialogue of constitutional rights.

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<sup>270</sup> Van der Peet. *R. v. Adams* [1996] 3 S.C.R. 101 4 C.N.L.R 1.

<sup>271</sup> R v Sparrow [1990] 1 SACR 1095.

**Chapter 3**  
**Evidence of Continuity:**  
**Advocacy and Recognition of**  
**Aboriginal Language Rights in Canada**

Canada admitted to its role in the destruction of Aboriginal languages and cultures in the 2008 Statement of Apology delivered by Prime Minister of Canada, Stephen Harper:

Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said, "to kill the Indian in the child". Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country... First Nations, Inuit and Métis languages and cultural practices were prohibited in these schools... The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language. In moving towards healing, reconciliation and resolution ...<sup>272</sup>

Since the Statement of Apology Canada has arguably entered an era of reconciliation. During this period, the courts and the federal government have stated that Canada's assimilation policies and attitude of cultural superiority are no longer acceptable threads in the country's constitutional fabric. Although important steps have been made toward reconciliation and healing, a great deal of work remains for Canada to adequately address and rectify the violation of Aboriginal customary law and the lingering impacts of assimilative policies, including the destruction of Aboriginal languages.

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<sup>272</sup> Canada's Statement of Apology delivered by Prime Minister of Canada, Stephen Harper, 2008.

According to the Supreme Court of Canada, a qualifying Aboriginal right not only must comprise practices, customs or traditions with historical origins prior to European contact, it must also maintain some sort of continuity over time. As we shall see in this chapter, Aboriginal peoples continued to speak their languages despite attempts to eradicate them in the residential schools, and even worked towards revitalizing their languages in various ways. This chapter will examine continuity of Aboriginal languages in the following areas: 1) the advocacy by Aboriginal peoples around language preservation and promotion, 2) government recognition of the significance of Aboriginal languages in Royal Commissions, reports and other federal initiatives, 3) constitutional principles for the protection and recognition of Aboriginal languages, 4) legislation enacted by various jurisdictions across the country to achieve the preservation and promotion of Aboriginal languages with Nunavut as a case study, and finally, 5) the use of the unwritten constitutional principles on the protection of minorities that associate language rights with the protection of cultural integrity to advance Aboriginal language rights under section 35.

#### Advocacy by Aboriginal Peoples: Language Preservation and Promotion

There was a period of silence regarding Aboriginal language and culture until the mid-1960's. The shame and abuse Aboriginal peoples experienced in the residential schools as well as the overall impact related to Canada's assimilation policy is related to this silence. The legacy of my grandparents and parents generation provides one example of the impact on language and culture from this period. My grandparents resisted Canada's assimilation in the privacy of their home. When my mother and her siblings were at home from residential school during the summer they were only allowed to speak Cree. The shame and abuse however took its toll on my mother's



generation. My mother informed me that she felt ashamed of our language and culture for a number of years before she realized its importance to our identity. Many Aboriginal families likely have their own stories that have not been shared with the public. The discussions about the abuses and the impact of residential schools and Canada's assimilation policy generally did not surface until the early 1990's. The discussions were partly prompted by the residential school court cases. We are now at the early stages of the discussions regarding the impact this period has had on Aboriginal languages and cultures. However, advocacy for the integration of Aboriginal languages in Aboriginal education began in the 1970's in during the period of Indian control of Indian education. Since then, many Aboriginal leaders across the country have been increasingly advocating for Indigenous language rights and culturally appropriate educational institutions that are necessary to transmit Aboriginal languages and the cultural identity of Aboriginal children.

#### Wahbung 1971

In the 1971 publication *Wahbung Our Tomorrows*, the Manitoba Indian Brotherhood commented on the failings of education in the residential schools:

Many non-Indians believe that we have failed education but the truth of the matter is that education has failed us. It has failed us because it was imposed upon us, not relevant to us, nor were we given the opportunity of being involved in designing it. Education has failed to recognize our cultural values and customs, our language, and our contributions to mankind. It has led to failure and the lowering of self-esteem.<sup>273</sup>

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<sup>273</sup> Manitoba Indian Brotherhood, 109.

The federal government's response was to re-organize the educational system and focus on pedagogical benefits as defined by the government rather than cultural and language preservation. Milloy notes that in 1972

The Department realized that the most formidable handicap that faces the Indian child entering [the provincial] school" was the requirement of being able to function in the English language, or in Quebec, French. To that end, it laid the greatest emphasis on the development of a "language arts" program for day and residential schools. It also employed regional language supervisors who were to help children "overcome any language difficulties" in the belief that "much of the progress in Indian education" was to be realized by these "improved methods of language instruction."<sup>274</sup>

A Department of Indian Affairs branch director at the time indicated that the basis of Aboriginal education was acculturation "in which the Indian has voluntarily or involuntarily been caught up."<sup>275</sup> Indian Affairs truly believed that Aboriginal peoples would benefit from the influences of European culture so the best course of action was to provide children a sound education in the English language.<sup>276</sup>

#### Indian Control over Indian Education 1972

Then, in 1972, the National Indian Brotherhood (NIB) released an extensive policy document, *Indian Control of Indian Education*. The NIB presented this statement on education to the Minister of Indian Affairs and Northern Development which outlined the philosophies, goals, principles and directions that would serve as the foundation of future school programs for

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<sup>274</sup> Milloy, *A National Crime*, 198 -99) [citing: INAC File 4745-1 Vol. 1, *Indian Education Program*, 1972, 12.].

<sup>275</sup> Milloy, *A National Crime*, 199.

<sup>276</sup> *Ibid*, 199.

“Indian” children.<sup>277</sup> The NIB stressed the importance of language in the following way:

Language is the outward expression of an accumulation of learning experience shared by a group of people over centuries of development. It is not simply a vocal symbol; it is a dynamic force which shapes the way a man looks at the world, his thinking about the world and his philosophy of life.<sup>278</sup>

The NIB also stressed that the preservation of Aboriginal cultural identity would require deliberate action to reverse the declining rate of language speakers. The report focused primarily on the development of formal language instruction in two key aspects: teaching the language and teaching *in* the language. It also advocated for Aboriginal children to be taught in their ancestral language for the first four to five years of school, after which English and French would be gradually introduced. It further stressed the importance of engaging teachers who were fluent in local Aboriginal dialects, as illustrated in the following recommendations:

- have teachers-aides specialize in Indian languages,
- have local language-resource aides to assist professional teachers,
- waive rigid teaching requirements to enable Indian peoples who are fluent in Indian languages to become full-fledged teachers.<sup>279</sup>

Other recommendations focused on funding to develop language programs and studies on how to adapt traditional oral languages to written forms for instructional and literary purposes. The report also critiqued the federal government’s reluctance to invest in Aboriginal languages as a

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<sup>277</sup> National Indian Brotherhood, 1972, iii. Many members of the distinguished committee that produced the report continued to promote Aboriginal languages long after the release of the report. The members consisted of: John Knockwood and Peter Christmas, Union of Nova Scotia Indians; Bary Nichols, Unions of New Brunswick Indians; Larry Bissonette, Indians of Quebec Association; Louis Debassige and Roland Chrisjohn, Union of Ontario Indians; Verna Kirkness, Manitoba Indian Brotherhood; Rodney Soonias, Federation of Saskatchewan Indians; Clive Linklater, Indian Association of Alberta; David Joe, Yukon Native Brotherhood; James Wah-shee, Indian Brotherhood of the Northwest Territories; and Dr. Jacqueline Wietz, National Indian Brotherhood. George Manuel was the President of the Indian Brotherhood at the time.

<sup>278</sup> Ibid, 15.

<sup>279</sup> Ibid, 15.

short-sighted approach to policy given that teaching Aboriginal languages to children would ultimately have long term economic benefits.<sup>280</sup>

#### Assembly of First Nations

Several reviews surfaced after the First Ministers Conference on Aboriginal Constitutional Matters in 1984. A Secretary of State report, *Canada's Aboriginal Languages: An Overview of Current Activities in Language Retention*<sup>281</sup> as well as *The Use of Aboriginal Languages in Canada: An Analysis*<sup>282</sup> were released in 1986. Both reports conclude that a major language shift was occurring and that funding for Aboriginal languages federally and provincially had major deficiencies.

After the release of these studies, Aboriginal organizations were funded to develop policy proposals on language. The Assembly of First Nations (AFN) subsequently produced two studies on Aboriginal languages, *Aboriginal Language Policy Studies, Phase I and II*. The objectives of both studies were

- (1) To study the feasibility of a First Nations (Aboriginal) Languages Institute within the context of a Comprehensive First Nations Language Policy.
- (2) To pursue and investigate the feasibility of an on-going mechanism(s) required by Aboriginal people to encourage the survival and revitalization at the community level of all Aboriginal languages.
- (3) To share and investigate knowledge and skills as it relates to the survival and development of Aboriginal languages at the community level (Jamieson 3).

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<sup>280</sup> Ibid, 16

<sup>281</sup> Roderic P. Beaujot, Canada. Dept. of the Secretary of State of Canada, *Social Trends Analysis Directorate, and Canada. Native Citizens Directorate, The Use of Aboriginal Languages in Canada: An analysis of 1981 Census data*, Secretary of State, 1987.

<sup>282</sup> Ibid.

Following the completion of Phase I of the study, it was distributed to one hundred Members of Parliament and other Aboriginal organizations to seek their support of the policy recommendations to keep Aboriginal languages viable. Phase II of the study, prepared between July 25 and September 30, 1988, developed a comprehensive implementation plan for the revitalization of Aboriginal languages and an education strategy to help the Aboriginal community and Canadian public understand and support the AFN's language policy plan.<sup>283</sup> The study also found that the federal, provincial and territorial governments spent \$6,286 million on Aboriginal language programs and other initiatives from 1983 to 1988. Funded were language curriculum development, summer camps, workshops and conferences, language classes, publications and reference materials.<sup>284</sup> Based on the AFN's research, it was determined that approximately \$802,500 was required to run a single organization to facilitate all the necessary language initiatives, including community education, research, adult instruction, resource development, school materials, and policy and implementation work. It was also determined that to run similar organizations across the country, several million dollars per year would be required.<sup>285</sup>

Also reported in the study, Cree scholar Verna Kirkness proposed that a \$100 million dollar endowment fund be established for the protection and revitalization of Aboriginal languages and to support Aboriginal language initiatives at the community level.<sup>286</sup> These two studies further recommended that language policies should be developed within the framework of self-government negotiations, and noted that there is great need to promote language use in the home and support Aboriginal language teachers.

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<sup>283</sup> Mary E. Jamieson, *The Aboriginal Language Policy Study: Phase II: Implementation Mechanism, September, 1988*, edited by Assembly of First Nations, Ottawa: Ottawa: Assembly of First Nations, 1988, 3.

<sup>284</sup> *Ibid*, 14.

<sup>285</sup> *Ibid*, 18.

<sup>286</sup> *Ibid*, 20.

During this period, the Chiefs across Canada declared a national “State of Emergency on Languages.” As a result, the AFN established the Chiefs’ Committee on Languages and the Technical Committee on Languages to protect and advance First Nations language rights in Canada. The Native Council of Canada also hosted a national Aboriginal Language policy conference in 1988.

In the same year, the Secretary of State, David Crombie, committed to support Aboriginal languages on behalf of the federal government with the assistance of the AFN. A year later, the government included Aboriginal languages in a bill to establish a Heritage Languages Institute, which focused predominantly on minority immigrant languages. The bill was withdrawn because of unified opposition from the Aboriginal community that there was inadequate consultation. David Crombie then introduced another Private Member’s Bill to establish an Aboriginal Languages Institute but it too did not pass for similar reasons.

Shortly after the failings of the Private Member’s Bill, the AFN published three policy documents illustrating the rapid decline in the number of Aboriginal language speakers and the endangered state of all Aboriginal languages: *Towards Linguistic Justice for First Nations* (1990), *Towards Rebirth of First Nations Languages* (1992) and *National First Nations Language Strategy: A Time to Listen and the Time to Act* (2000).<sup>287</sup> As a result of the first two studies, the AFN recommends lobbying for Aboriginal language legislation to protect and promote Aboriginal languages as well as raise awareness of the importance of Aboriginal languages at the community level. The Chiefs Committee on Languages as well as a Technical Committee on Languages recommended the implementation of their language strategy during

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<sup>287</sup> *Towards Linguistic Justice for First Nations* (Ottawa: Assembly of First Nations, 1990), *Towards Rebirth of First Nations Languages* (Ottawa: Assembly of First Nations, 1992), *National First Nations Language Strategy: A Time to Listen and the Time to Act*, Adopted by resolution of the Chiefs in Assembly, July 2000 (Ottawa: Assembly of First Nations, 2000).

their Annual General Assembly in July 2000. Unfortunately, due to cutbacks made by the Department of Indian Affairs, the AFN Languages Secretariat was terminated in early 2000 and their language strategy was not implemented. Since, the AFN Languages Secretariat faced many challenges due to government funding cutbacks to the AFN.

### Government Recognition of the Significance of Aboriginal Languages

As a result of the advocacy of Aboriginal peoples, the federal government has established Royal Commissions, several studies and a federal government program.

#### The Royal Commission on Bilingualism and Biculturalism 1963

In 1963, the Royal Commission on Bilingualism and Biculturalism (the B & B Commission) was established to examine the status of English and French languages and cultures in Canada.<sup>288</sup> The final report and recommendation of the B & B Commission ultimately led to Canada's *Official Languages Act* which recognized French and English as the official languages of Canada.<sup>289</sup> Although the mandate of the B & B Commission did not include Aboriginal languages, some Aboriginal peoples appeared before the B & B Commissioners to raise issues related to Aboriginal languages.

In Sudbury, the B & B Commission heard from an Aboriginal woman who was appalled that Aboriginal peoples were excluded from Canada's Constitution. She asked, "Why is the Indian always forgotten? This was the first culture and this was the first language in Canada. We are

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<sup>288</sup> Royal Commission on Bilingualism and Biculturalism, *Report of the Royal Commission on Bilingualism and Biculturalism*, Volume 1. Ottawa: Queen's Printer, 1967.

<sup>289</sup> The Official Languages Act was proclaimed in 1969. It gives French and English equal status. As a result both languages have preferred legal status over all other languages. It is also considered the keystone of bilingualism in Canada. The significance of the *Official Languages Act* to Aboriginal language rights will be elaborated on later in the chapter.

told the BNA Act [the British North American Act] was between the French and the English – where was the Indian during this time?<sup>290</sup> In Victoria, an Aboriginal leader commented on whether the French communities’ needs should be met linguistically and culturally. During his talk he stated, “Certainly. If another group can succeed in doing something when we have been condemned to death, we will be glad for them.”<sup>291</sup> The he added, “my grandchildren no longer know the language of my people, but can speak French.”<sup>292</sup> After hearing from the Aboriginal community, the B & B Commission concluded that Canada’s assimilation policy “raises very complex problems. The process of integration calls into question the very nature of the traditions and customs of native society.”<sup>293</sup> The Commissioners also strongly recommended that:

everything possible must be done to help the native populations preserve their cultural heritage, which is an essential part of the patrimony of all Canadians. The Commission also feels that the Canadian government, in close co-operation with the provinces concerned, should take the necessary steps to assist the survival of the Eskimo language and the most common Indian dialects.<sup>294</sup>

The B&B Commissioners noted that special measures had to be taken to safeguard the contribution of Aboriginal peoples.<sup>295</sup> They also recognized that a special commission was required to examine the status of Aboriginal cultures and languages:

Though they are the oldest inhabitants – the early Eskimo and the even earlier Indian cultures have existed in Canada for thousands of years – they are less integrated in the life of the Canadian community than any other ethnic group. Their position and future

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<sup>290</sup> Royal Commission on Bilingualism and Biculturalism, *Report of the Royal Commission on Bilingualism and Biculturalism*, Volume 1. Ottawa: Queen's Printer, 1967, 49.

<sup>291</sup> Ibid, 128.

<sup>292</sup> Ibid, 128.

<sup>293</sup> Ibid, xxvi.

<sup>294</sup> Ibid, xxvii.

<sup>295</sup> Ibid, 151



prospects would have to be the object of special study<sup>296</sup>

Ironically, shortly after the release of the B & B Report, the federal government introduced a Statement of the Government of Canada on Indian policy, otherwise known as the 1969 White Paper. It recommended the abolition of the Indian Act and the complete elimination of Indian status as well as Aboriginal peoples' distinct rights.<sup>297</sup> Aboriginal leaders were outraged. Opposition by Aboriginal peoples was expressed across the country. In British Columbia, the Union of British Columbia Indian Chiefs released a *Declaration of Indian Rights: The B.C. Indian Position Paper*, often referred to as the "Brown Paper." The Chiefs of Alberta under the leadership of Harold Cardinal released *Citizens Plus*, the so-called "Red Paper." During this time, the Aboriginal leadership put forward a proposal to secure resources for Aboriginal education that would assist in maintaining Aboriginal languages and cultures in Alberta.<sup>298</sup> At the same time, Aboriginal peoples in Manitoba initiated jurisdictional local control over education on reserves relate to language.

#### Standing Committee on Aboriginal Affairs 1971

In 1990, the Standing Committee on Aboriginal Affairs (the Committee) examined the issues that Aboriginal peoples were facing across the country. In the report, "You Took My Talk": Aboriginal Literacy and Empowerment" the Committee associated the endangered status of Aboriginal languages with literacy difficulties Aboriginal peoples faced.<sup>299</sup> The Committee attributed literacy difficulties/problems to the government's attempt to eradicate Aboriginal

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<sup>296</sup> Royal Commission on Bilingualism and Biculturalism, *Report of the Royal Commission on Bilingualism and Biculturalism*, Volume 1. Ottawa: Queen's Printer, 1967, 22

<sup>297</sup> *Statement of the Government of Canada on Indian Policy*, 1969. Minister of Indian Affairs and Northern Development. Ottawa: Queen's Printer Cat. No. R32-2469.

<sup>298</sup> Indian Chiefs of Alberta. Foundational Documents. *Citizens Plus*. *Aboriginal Policy Studies*, Vol. 1, no. 2, 2011. 188-281 <https://ejournals.library.ualberta.ca/index.php/aps/article/view/11690/8926> (Accessed July 2016).

<sup>299</sup> House of Commons Standing Committee on Aboriginal Affairs: 1990, 5.

language and culture via residential schools, and cited the following problems linked to this attempt:

Children sent to residential schools returned home unable to communicate with their parents and grandparents – because of the loss of aboriginal language skills and the almost total disorientation of their cultural value system. Where the system failed to achieve its goal of total assimilation, many children ended up semi-lingual and without a firm cultural identity of any kind. The socio-cultural fall-out from this devastating policy is still very much in evidence and was referred to by most witnesses.<sup>300</sup>

One recommendation in this report focused on the improvement of literacy skills tied to “preserving and promoting these endangered languages and increasing self-esteem.”<sup>301</sup> Although the Committee pointed out that cultural assimilation was not considered a formal part of education policy, the system did not yet accommodate Aboriginal language and culture adequately. The Standing Committee concluded the “experience of formal education as an unwanted process of assimilation ha[d] not yet changed substantially.”<sup>302</sup>

It is interesting to note that the Committee also examined the literacy situation prior to institution of the residential school system. A study by two social scientists, Jo Anne Bennett and John Berry from Queen’s University revealed that in the late 1800’s, Cree speaking people arguably had the highest literacy rates in the world, reading and writing in syllabics “without any of the pedagogical tools so familiar to the Euro-Canadian tradition.”<sup>303</sup> The findings from this study also indicated that the residential school had a devastating effect on the transmission of a successful writing system.

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<sup>300</sup> House of Commons Standing Committee on Aboriginal Affairs: 1990, 14.

<sup>301</sup> Ibid, 5.

<sup>302</sup> Ibid, 14.

<sup>303</sup> Ibid, 17.

The Assembly of First Nations has also attempted to advance Aboriginal languages through formal education programs. In 2011, a national panel was established by the AFN to provide recommendations on First Nations schooling that would include Aboriginal languages and cultures in the curriculum. Panel members determined that the education system continues to fail the needs of First Nations people, attributing the problem to “legislative provisions that are more than one hundred years old and linked to a period that we now accept as deeply harmful and destructive ... the residential school era.”<sup>304</sup> The panel also determined that school curricula continue to impact Aboriginal peoples negatively because they do not support First Nations identity. Consequently, the panel recommended that schools teach the language and provide cultural teachings on contemporary land relationships.<sup>305</sup> Many of the youth interviewed for the study informed the panel that they wanted to see a curriculum that would provide them with a sense of belonging. In support of what they heard from the youth, panel members strongly urge that curricula must include Aboriginal languages and history.<sup>306</sup>

#### Royal Commission on Aboriginal Peoples 1992

In 1992, the Royal Commission on Aboriginal Peoples (RCAP) recognized the endangered status of Aboriginal languages. RCAP also emphasized that once Aboriginal languages are lost, there is no other place in the world that they can be retrieved.<sup>307</sup> One of the Commission’s recommendations specified an endowment of \$100 million for an Aboriginal Language

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<sup>304</sup> Scott Haldane, George E. Lafond, and Caroline Krause, “Nurturing the Learning Spirit of First Nation Students: Report of the National Panel on First Nation Elementary and Secondary Education for Students on Reserve,” Ottawa: Ontario, 2011, vi.

<sup>305</sup> *Ibid.*, 1.

<sup>306</sup> *Ibid.*, 4.

<sup>307</sup> The Royal Commission on Aboriginal Peoples.

Foundation. Like the previous commissions and studies, it also identified government responsibility to support the revitalization of Aboriginal languages, recognizing an urgency since ... a great many of the elders who constitute the fluent speakers are also fragile with age. This is an area where restorative justice cannot wait while negotiations for a new relationship progress at a deliberate pace. Aboriginal languages have been undermined by government action. They should be conserved, restored or documented for posterity with government support. Because churches have played a critical part in the destruction of languages, we consider that practical support for the restoration of the languages would be a highly appropriate reconciliatory gesture.<sup>308</sup>

To date, none of these recommendations have been implemented.

#### Heritage Canada: Aboriginal Language Initiative 1983

In 1988, the federal government created the Aboriginal Languages Initiative (ALI) as part of its Aboriginal Peoples Program (APP). ALI is a program of government-administered heritage subsidies. APP was established to promote, revitalize and preserve Aboriginal peoples' cultures. The mandate of ALI is to support Aboriginal languages through community projects. However, many issues and criticism have been raised about the way funding is administered by the federal government under these programs. For example, ALI was not developed in partnership with Aboriginal peoples and therefore does not reflect the nation-to-nation relationship between Canada and Aboriginal peoples. It also does not provide Aboriginal people with the opportunity to make decisions about how to allocate scarce resources and how to administer programs.

In 2005, the Department of Canadian Heritage established a Task Force on Aboriginal

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<sup>308</sup> Royal Commission on Aboriginal Peoples, 578.

Languages and Cultures<sup>309</sup> partly in response to the over 10,000 residential school claims against the federal government and churches for residential school abuses. Ten individuals were appointed in December 2003 to advise the Minister of Canadian Heritage on establishing a language centre. It was proposed by the federal government that the \$160 million budget would be designated for a ten-year period to help preserve, revitalize and promote Aboriginal languages.

Shortly after the Task Force report was released, Prime Minister Harper revoked the \$160 million, pledging instead to spend \$5 million per year in “permanent funding” to ALI. Prime Minister Harper cut this funding shortly after he was elected. Then in 2007, the Minister of Canadian Heritage and Status of Women, the Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians and the Honourable Dennis Fentie, Premier of the Yukon Territory, signed the 2006–2007 Canada–Yukon Cooperation Agreement for Aboriginal Languages. The agreement provided funding to Aboriginal communities for language projects in the amount of \$1.1 million. The funding came from Canada’s Heritage Aboriginal Languages Community Initiative Program. Aboriginal peoples have had more success advancing Aboriginal language rights with territorial and provincial governments than with the federal government. There has since been some increase in funding with the Prime Minister Justin Trudeau however, program funding is not an adequate response given the harm the federal government intentionally caused to Aboriginal languages. There is also the inequality that exists when comparing the funding provided to English and French languages.

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<sup>309</sup> Task Force on Aboriginal Languages and Cultures, *Towards a New Beginning: A Foundational Report for a Strategy to Revitalize Indian, Inuit and Métis Languages and Cultures* (Ottawa: Department of Canadian Heritage, 2005).

## Standing Committee on Aboriginal Affairs 1971

The House of Commons Standing Committee on Indian Affairs and Northern Development issued a report on June 30, 1971, focusing on educational rights. In its report, the Standing Committee advised the government to recognize and support the right of Aboriginal parents – where numbers warrant – to educate their children in their own mother tongue:

[T]he language of instruction at the pre-school level and up to the first or second year of primary schools should be in the language of the local Indian or Eskimo community with secondary and tertiary languages English and/or French being introduced gradually through the pre-school and primary period and that course linked to the local Indian and Eskimo culture continue to be taught in the local language throughout the primary level of school ... That decision regarding the initial languages of instruction and the timing of introduction of secondary and tertiary languages should only be made after consultation with, and clear approval from a majority of parents in the communities concerned.<sup>310</sup>

Shortly after the release of the Standing Committee on Indian Affairs and Northern Development released their report, constitutional discussion on Aboriginal languages commenced.

## Constitutional Principles for the Protection and Recognition of Aboriginal Languages

### Senate and House of Commons 1971

In 1972, a Special Joint Committee of the Senate and the House of Commons (hereinafter “Special Joint Committee 1972”) held hearings on the constitutional status of Aboriginal

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<sup>310</sup> House of Commons Standing Committee on Indian Affairs and Northern Development, *Minutes of proceedings and evidence of the standing committee on Indian Affairs and Northern Development: Respecting the Annual Reports of the Department of Indian Affairs and Northern Development (1967-68 and 1968-69), including fifth report to the house*. [Ottawa]: Queen's Printer, 1971 at 763.

languages, finally recommending that provincial and territorial governments recognize Aboriginal language rights and acknowledge the diversity of Aboriginal cultures across Canada.<sup>311</sup> Because of section 91 (24) of the *Constitution Act, 1867*, matters pertaining to Aboriginal peoples such as language and culture fall under federal jurisdiction. Consequently, it seems puzzling that Aboriginal language rights were allocated to the provinces and territories. One rationale is that section 93 places education (with the exception of the Confessional Schools) as a matter falling within provincial jurisdiction. Another rationale is that language and culture are considered “civil rights” under section 92 (13) or matters of a “local or private nature” under section 92 (16) of the *Constitution Act, 1982*. However, and most significantly, the federal government did not assume responsibility for Aboriginal languages and did nothing of much importance to advance Aboriginal languages despite the recommendations of Aboriginal peoples and the Special Joint Committee. As will be elaborated later in the thesis, Aboriginal leaders insist that under section 91 (24) of the *Constitution Act, 1867* constituted responsibility for Aboriginal languages is held by the federal government.

#### Special Joint Committee on the Constitution 1982

Several recommendations related to language rights were later made to the Special Joint Committee on the Constitution of Canada in 1980 (hereinafter “Special Joint Committee 1980”),<sup>312</sup> with one focusing on the need to grant official language status to Aboriginal

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<sup>311</sup> Anne F. Bayefsky, *Canada's Constitution Act 1982 & Amendments: A documentary history*, (Toronto; London: McGraw-Hill Ryerson, 1989), 236.

<sup>312</sup> Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada, Senate of the House of Commons, Issue No. 14, Thursday, November 27, 1980. “Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada” published by the Government on October 2, 1980. First Session of the thirty second Parliament, 1980.

languages.<sup>313</sup> Mr. Maxwell F. Yalden (Commissioner of Official Languages) commented that he “would be tempted to put native languages on the same footing with official languages,” stating, “while it is not up to me, as Commissioner of Official Languages, to formally recommend it, I feel it is valid.”<sup>314</sup>

Mr. George Braden (M.L.A. and the Elected Member of the Executive Committee, Government of the Northwest Territories) focused on Aboriginal language issues in his home province, but ultimately recommended that all Aboriginal languages be recognized within Canada’s Constitution:

A matter closely related to Native rights is that of Native languages. The Charter of Rights and Freedoms preserves English and French as the official languages of Canada with equality of status. The Legislative Assembly and the Government of the Northwest Territories both support the preservation of English and French as the official languages. However, the reality in the Northwest Territories is that the people speak several Native languages, the preservation of which is far more crucial to them than the preservation of English and French. I submit that the recognition of the right of Native people to use Native languages is in keeping with their special status. The preservation and indeed the

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<sup>313</sup> The federal government implemented a Special Joint Committee of the House of Commons and the Senate in 1980 to hear submissions from the public on constitutional amendments. The committee was composed of 25 members (10 from the Senate and 15 from the House of Commons, including 15 Liberals, 8 Progressive Conservatives, and 2 New Democrats). The process was described as “one of the most impressive examples of democratic consultation in Canadian history.” The consultation process was originally organized as a thirty-day session of hearings, but ended up as a three-month consultation process involving 914 individuals and groups submitting briefs, in addition to 214 oral presentations.

<sup>314</sup> House of Commons and Senate 32<sup>nd</sup> 1<sup>st</sup> Session, Special joint Committee on Constitution of Canada: Monday November 17, 1980 Minutes of Proceedings and Evidence of the Senate and the House of Commons on the Constitution of Canada Issue No 6: 6:30.



propagation and advancement of Native languages should be an aim to be recognized clearly in the constitution of Canada.<sup>315</sup>

Senator Willie Adams (Northwest Territories) raised the question of language education in the Northwest Territories. He noted, "...there are only two official languages, English and French. You are more concerned about language education in the Territories. Right now we are teaching people who go up to Grade III in the local community and who are taught their mother tongue."<sup>316</sup>

Mr. Braden's response is that the preservation, protection and the development of Aboriginal languages in a number of areas is an item of great importance to the cultural well being of Aboriginal peoples:

We, as a government are very cognizant of the need to start work right now in developing further, and in some cases, preserving native languages. We generally believe that once a group of people loses their language, they lose a very, very significant and important part of their culture. Believe me, I see the problems that have been created, because kids I went to school with many years ago in the Northwest Territories are no longer able to communicate in the language of their parents or grandparents. So what we have done as an immediate item of action within our government is to establish a small working group with a capability to deliver programs and services in Dene languages such as Dogrib, Slavey, et cetera. We see an immediate need and are going to be establishing a language commission which is hopefully going to provide us with direction of more substance and with the long-

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<sup>315</sup> House of Commons and Senate 32<sup>nd</sup> 1<sup>st</sup> Session, Special joint Committee on Constitution of Canada: Tuesday, November 25, 1980 Minutes of Proceedings and Evidence of the Senate and the House of Commons on the Constitution of Canada, Issue. No 12: 12:60.

<sup>316</sup> House of Commons and Senate 32<sup>nd</sup> 1<sup>st</sup> Session, Special joint Committee on Constitution of Canada: Tuesday, November 25, 1980 Minutes of Proceedings and Evidence of the Senate and the House of Commons on the Constitution of Canada, Issue. No 12: 12:82.

term in mind, so that we can start looking at more comprehensive delivery programs and services in all languages in the Northwest Territories. We would like to look at ways and means by which large industries can use Native languages.<sup>317</sup>

In apparent agreement with the language rights proponents, Mr. Frank Oberle (Member of Parliament for Prince George, Peace River) went further to recognize the significance of Aboriginal culture to the historical context of Canada's constitution. During discussions, Oberle, and Chief James Gosnell (President, Nisga'a Tribal Council) examined the connection between language rights and Aboriginal title, with Oberle arguing that the source of Aboriginal language rights are based on customary law and the peoples' title to the land:

[T]he constitution, in my opinion is not the source of rights, it is a result of history and tradition; but if there is any need to entrench anything, surely it must be the need to entrench the rights of native people, the Aboriginal people of this land, because every other ethnic group, every other cultural group in this country does not draw the source of its culture from the North American continent and you do, you have nowhere else to go to replenish your culture. The land is your soul, is your culture, is all of your existence and if there is any need to entrench anything, it should be your rights and the traditions that you have established here ... I would like to get back, though, and ask you why it is that you have not ... tied land to culture and to language, why you have not made the connection between your culture, which is part of nature, and which is the land, why you have not made this connection<sup>318</sup>

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<sup>317</sup> House of Commons and Senate 32<sup>nd</sup> 1<sup>st</sup> Session, Special joint Committee on Constitution of Canada: Tuesday, November 25, 1980 Minutes of Proceedings and Evidence of the Senate and the House of Commons on the Constitution of Canada, Issue. No 12 : 12:82.

<sup>318</sup> House of Commons and Senate 32<sup>nd</sup> 1<sup>st</sup> Session, Special joint Committee on Constitution of Canada: Monday, December 15, 1980 Minutes of Proceedings and Evidence of the Senate and the House of Commons on the Constitution of Canada, Issue. No 26: 26:32.

Chief Gosnell agreed with Oberle's statement, adding that Aboriginal peoples needed to secure land rights before the federal government would seriously acknowledge and address any derivative rights:

It is absolutely impossible for us to talk about our language unless we negotiate on a just and equitable basis and there is no way we can do it without Aboriginal title. We intend to do what you have said ... that is why we are already one step ahead of it in establishing our schools, that is exactly what we are doing, but here again this is what we want to negotiate about. When negotiations comes, then our language is part of that negotiation. It hinges on that entrenchment of our Aboriginal title in the constitution, that is the key. Without that there is nothing we could, it is meaningless. We have gone through seven years and we have not gotten anywhere.<sup>319</sup>

In his statement, Chief Gosnell also observed that communities were not sitting idle, but were instead working actively on the development of their Aboriginal languages. Several points emerged from the exchange between Oberle and Chief Gosnell that are significant in meeting the requirements of the Van der Peet test. First, Oberle's observations, that the sources of Aboriginal language rights are the customs, practices and traditions of Aboriginal peoples in entirely consistent with Van der Peet. According to Chief Gosnell Aboriginal language rights are also associated with Aboriginal title for a couple of reasons. First, he insists that there is integral connection between Aboriginal languages and land. Aboriginal title is important for the necessary resources that are required to support the continuity of Aboriginal languages and the distinct linguistic identities of Aboriginal peoples. The emphasis of resources, Aboriginal rights and language rights is also present \in the National Indian Brotherhood's submission to the

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<sup>319</sup> House of Commons and Senate 32<sup>nd</sup> 1<sup>st</sup> Session, Special joint Committee on Constitution of Canada: Monday, December 15, 1980 Minutes of Proceedings and Evidence of the Senate and the House of Commons on the Constitution of Canada, Issue. No 26: 26:33.

Special Joint Committee referred to later in the chapter. Another important point to emphasize is that Aboriginal peoples had never relinquished Aboriginal language rights, and although these rights were not expressly recognized in Canada's Constitution, Aboriginal language rights nevertheless existed on the basis of the Aboriginal peoples' continued engagement with their languages, in part through the establishment of culturally appropriate schools in a number of communities as a result of Indian control of Indian Education. Chief Gosnell's statement also demonstrates the continuity of Aboriginal peoples recognition and their efforts to preserve Aboriginal languages, the centrality of languages to their customs and traditions through the creation of schools.

Despite the support made by many of the presenters, Mr. Jim Fulton (NDP Skeena) noted in response to an exchange involving Mr. Charlie Watt (Co-Chairman, Inuit Committee on National Issues) the relative lack of reference to these rights in submissions made to the committee:

One of the things that has profoundly interested me in sitting on this Committee, and I am sure it is something that the other members have thought about, is that the overwhelming majority of native people who have appeared before this Committee have not asked specifically for the entrenchment of their language rights, and I think as all members of this Committee have noted, well within the document, is that one of the potent principles included in it is this specific reference to the inclusion of minority rights specifically for certainly the second largest group in Canada which is the French speaking people of Canada [...] Some of the more highly refined and perhaps distinct from what you are requesting in terms of language rights has not come forward as one of the most stressed

principles before this Committee, and I wonder if you could comment on how far you have gone in terms of what you are requesting before this Committee?<sup>320</sup>

Mr. Watts replied that Aboriginal peoples were busy trying to meet fundamental needs of people in the community:

I guess the reason that is has not come out and I guess has come out from a lot of other groups is because the things that we talk about as far as our survival, really our language is part of that. If we do not survive as a people and if our communities don't survive then our language dies anyway, and you can have all the acts of Parliament and programs and everything else to try and keep our language. It is not going to live if we do not live as a people. What will happen is you will have professors in universities speaking our language and that is about as much as it will be living because if we are not alive as a people, how can our languages live?<sup>321</sup>

Mr. Watts's submission's suggested that the strategy of the leadership during this period was to secure Aboriginal rights as a means for meeting the fundamental needs of the people, which included Aboriginal language rights.

Another submission, Mr. Gilles Tardif (Director, Canadian Federation of Civil Liberties and Human Rights Associations) suggested that Canadians must rise to the occasion and assist Aboriginal peoples in advancing Aboriginal language rights. "[A]n effort must be made," he stated, "to guarantee native language rights, because some native groups have lost the incentive for making sure that their linguistic rights are guaranteed. So, as someone stated earlier, this

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<sup>320</sup> House of Commons and Senate 32<sup>nd</sup> 1<sup>st</sup> Session, Special joint Committee on Constitution of Canada: Tuesday, December 16, 1980 Minutes of Proceedings and Evidence of the Senate and the House of Commons on the Constitution of Canada, Issue. No 27: 149-150.

<sup>321</sup> House of Commons and Senate 32<sup>nd</sup> 1<sup>st</sup> Session, Special joint Committee on Constitution of Canada: Tuesday, December 16, 1980 Minutes of Proceedings and Evidence of the Senate and the House of Commons on the Constitution of Canada, Issue. No 27:150.

means more than just protecting the future, this means a challenge for Canadians (put into a footnote House of Commons and Senate 32<sup>nd</sup> 1<sup>st</sup> Session, Special joint Committee on Constitution of Canada: Monday, December 8, 1980 Minutes of Proceedings and Evidence of the Senate and the House of Commons on the Constitution of Canada, Issue. No 21:19).

Finally, a brief statement by Mr. Rene Simon (Chairman, Attikamek-Montagnais Council) identified the shame around speaking Aboriginal languages that resulted from residential schools: “Presently, we try and speak or [sic] languages as much as possible, contrary to what we did before, when Indians were perhaps ashamed, at least embarrassed, to speak their own languages.”<sup>322</sup>

In addition to the individual, in-person presentations made to the committee, the National Indian Brotherhood in November 1980 submitted proposed amendments regarding Aboriginal rights and freedoms. The amendments include the right to adequate resources to support the preservation of Aboriginal languages and cultures:

Within the Canadian federation, the Aboriginal peoples of Canada shall have the right to their self determination, and in this regard Parliament and the legislative assemblies together with the government of Canada and the provincial governments, to the extent of their respective jurisdictions are committed to negotiate with the Aboriginal peoples of Canada mutually satisfactory constitutional rights and protections in the following areas: the right to adequate land and resource base and adequate revenues, including royalties, revenue sharing, equalization payments, taxation, unconditional grants and program

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<sup>322</sup> House of Commons and Senate 32<sup>nd</sup> 1<sup>st</sup> Session, Special joint Committee on Constitution of Canada: Wednesday, December 17, 1980 Minutes of Proceedings and Evidence of the Senate and the House of Commons on the Constitution of Canada, Issue. No 28:18).

financing. So as to ensure the distinct culture and economic and linguistic identities of the Aboriginal peoples of Canada.<sup>323</sup>

Shortly after these Constitutional discussions took place, Aboriginal rights were recognized under section 35 of the *Constitution Act, 1982* without any specific reference to languages. A year later, federal-provincial ministers met to examine Aboriginal constitutional rights. During this time, many Aboriginal leaders across the country asserted that Aboriginal rights include language rights. The Inuit Committee on National Issues emphasized the need to define and entrench Aboriginal rights including the cultural rights on the basis of Aboriginal peoples' prior occupation:

It has taken you 52 years to hash out a suitable foundation for this country albeit one in which Quebec and I think it is fair to say the Aboriginal people have been excluded. We know exactly what we want, and we are here to tell you about it. We appeal to all of you around this table not to allow mutual impatience to destroy what we all know ought to be an act of construction. The task at hand is nothing less than identifying, defining and entrenching Aboriginal rights in the Constitution of Canada. ... We are participating in this conference with the hopes of achieving with dignity, a place in Canadian confederation which recognizes our distinct political, economic and cultural rights as is befitting of our long time occupancy in what is now known as Canada.<sup>324</sup>

A letter written by Charlie Watt and Tagak Curley, the co-chairs of the Inuit Committee on National Issues, requested a constitutional amendment guaranteeing resources to meet the cultural and linguistic needs of the peoples based on prior occupation and distinct constitutional

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<sup>323</sup> National Indian Brotherhood Submission to the Special Joint Committee on the Constitution 1980-81. Letter to Senator Harry Hays, November 11, 1980 from Dilbert Riley, President of the National Indian Brotherhood. Website: <http://historyofrights.ca/wp-content/uploads/committee/nib.pdf> March 31, 2017)

<sup>324</sup> Federal Provincial Meeting of Ministers on Aboriginal Constitutional Matters: 1985.

status:

We were ... never involved or consulted when Canada as we now know it was formed. Even if our existence had been fully known to the Fathers of Confederation at that time, we were not familiar with European ways and would not have been able to understand the proceedings which resulted in the establishment of the Dominion of Canada. Our people, our ways, and our land have slowly become more familiar with European ways ... Political and historical tradition in Canada has recognized two founding peoples – the French and the English. You can well imagine that we find this somewhat offensive, considering the fact that we have inhabited this land for many thousands of years. Inuit, together with other aboriginal peoples form a distinct part of the Canadian “mosaic”. We feel then that this opportunity we now have before us ... should result in the recognition of the rights of our people ... We are seeking amendments which will guarantee Constitutional protection for the following principles:

- (1) the collective recognition of the aboriginal peoples as distinct peoples in Canada due to our occupation as distinct peoples in Canada due to our occupation of our lands since time immemorial, including the protection of our cultures ... to provide aboriginal peoples with resources to adequately meet our economic social and cultural needs ...<sup>325</sup>

At the conclusion of these discussions, a draft statement of constitutional principles was presented. Four overarching points were made regarding the distinct status that comes from Aboriginal peoples’ prior occupancy while affirming self-governing rights over their cultural life, which include language. The first point was that

The special status of aboriginal peoples in Canadian Society stems from the fact of their

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<sup>325</sup> Federal Provincial Meeting of Ministers on Aboriginal Constitutional Matters: 1985.



occupation, use and collective ownership of lands in what is now Canada prior to European settlement and the application of European law. The aboriginal peoples existed as distinct nations and exercised self-governing powers over their territory and over their religious, cultural, social, economic and political life...<sup>326</sup>

The second point is that Aboriginal rights include:

The right to preserve and develop their own distinct aboriginal cultures, languages and religions free from arbitrary interference.

The third point asserts that section 91 (24) of Canada's Constitution Act, 1867, confers on the federal government a fiscal responsibility to Aboriginal peoples:

... the fiscal and trust responsibility of the Federal Government stems from the devolution of Crown responsibility (which responsibility is defined in part in the Royal Proclamation of 1763); and such responsibility cannot be unilaterally abandoned.<sup>327</sup>

The fourth point emphasizes that adequate resources must be provided for services comparable to those provided to all Canadians, while taking into account the special needs of Aboriginal peoples. In the case of advancing Aboriginal languages, additional resources may be required to assist with revitalization efforts:

It is further recognized that, when defining and developing aboriginal institutions of self-government, it will be essential that adequate fiscal resources be made available to the aboriginal peoples. Such resources are required to provide services reasonably comparable to those available to Canadians generally, taking into account the special social, cultural and economic needs of aboriginal peoples.<sup>328</sup>

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<sup>326</sup> Federal Provincial Meeting of Ministers on Aboriginal Constitutional Matters: 1985.

<sup>327</sup> Federal Provincial Meeting of Ministers on Aboriginal Constitutional Matters: 1985.

<sup>328</sup> Federal Provincial Meeting of Ministers on Aboriginal Constitutional Matters: 1985.

Although these recommended amendments did not result in the recognition of Aboriginal languages rights under section 35 (1) of the Constitution Act, 1982, they are an assertion that Aboriginal rights include Aboriginal language rights across the country. Ten years after the constitutional discussions, Aboriginal languages rights were again the focus of discussion in Charlottetown.

#### Charlottetown Accord and A Right of Self Government 1992

Peter Hogg insists that had the *Charlottetown Accord* been adopted in the *Constitution Act, 1982*, it would have included the inherent right of self-government in section 35.1 (3) as a right to safeguard and develop Aboriginal languages, cultures, economies, identities, institutions, and traditions.<sup>329</sup> Although the *Charlottetown Accord* was defeated in the 1992 constitutional referendum, Hogg suggests that the treatment of Aboriginal peoples during the negotiations has had some lasting impacts on the status of Aboriginal rights.<sup>330</sup> Firstly, Aboriginal organizations were treated as a virtual “third order” of government in the discussions that led up to the *Charlottetown Accord*, alongside eleven provincial and two territorial governments. Secondly, the provincial and the territorial governments agreed that an inherent right to self-government existed. Thirdly, even though the *Charlottetown Accord* did not proceed, Hogg proposes that the unanimous approval of the federal and provincial governments can be regarded as an informal recognition that an Aboriginal language right exists.<sup>331</sup> Hogg’s argument is important for advancing Aboriginal language rights as part of the right to self government by Aboriginal nations under self-government agreements. In addition to the recognition of Aboriginal language

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<sup>329</sup> Charlottetown Accord, Draft Legal Text, 1992.

<http://www.etc.ca/pages/law/cons/Constitutions/Canada/English/Proposals/CharlottetownLegalDraft.html> (April 21, 2016) at 37 -38.

<sup>330</sup> Peter W. Hogg, *Constitutional Law of Canada*. 2nd ed (Agincourt, Ont.: Agincourt, Ont.: Carswell, 1985), 184.

<sup>331</sup> *Ibid*, 181.

rights in the *Charlottetown Accord*, Aboriginal language rights have been recognized regionally.<sup>332</sup>

## Regional Legislation

Since the mid 1980's, Aboriginal language legislation has been introduced in the Yukon, Quebec, Manitoba, the Northwest Territories and Nunavut. In this next section a brief overview of provincial and territorial legislation will be provided. Nunavut will be used a case study to examine language legislation in three areas: the Official Languages Act, the Inuit Language Protection Act as well as the Education Act.

### Yukon 1983

In the Yukon, the question of Aboriginal language rights was highlighted shortly after two unilingual traffic tickets were challenged in 1983 by a French speaking Whitehorse resident on the basis that they violated his language rights under the Charter of Rights and Freedoms.<sup>333</sup> The federal government responded by attempting to amend Yukon's constitution unilaterally by introducing Bill C-26 *An Act to Amend the Northwest Territories Act and the Yukon Act* into the House of Commons. The purpose of Bill C-26 was to to apply the official languages provisions of the *Charter of Rights and Freedoms* and *the Official Languages Act* to Yukon. Members of the Yukon Assembly responded that addressing Aboriginal language rights should be a priority since they were becoming endangered and the Aboriginal population was greater than the

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<sup>332</sup> There are Aboriginal Self Government agreements that recognize Aboriginal language rights that are not included in this thesis.

<sup>333</sup> *R. v. St. Jean*. Unreported. Territorial Court of the Yukon, June 30, 1983.

francophone population. Consequently, an *Act to Recognize and Provide for the Use of the Aboriginal Languages and to Establish the Official Languages of the Northwest Territories* was approved by the legislative Assembly of the Northwest Territories in 1985.<sup>334</sup>

Unfortunately, Bill C-26 died with a change of government in the 1984 election. However, Aboriginal leadership in the Yukon continued to advocate for Aboriginal language rights in their land claim agreement. Several Aboriginal peoples held positions in the Yukon government who were able to continue advocating for Aboriginal language rights. As a result, Aboriginal languages in the Yukon have been granted special status. They are recognized in section 1 (3) of the *Yukon Act* which provides that

The Yukon recognizes the significance of Indigenous languages in the Yukon and wishes to take appropriate measures to preserve, develop and enhance those languages in the Yukon.<sup>335</sup>

Section 11 of the *Yukon Act* is a discretionary provision recognizing the right of Aboriginal peoples to receive certain services in an Aboriginal language:

The Commissioner in Executive Council may make regulations in relation to the provision of services of the Government of the Yukon in one or more of the aboriginal languages of the Yukon.<sup>336</sup>

Quebec 1977

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<sup>334</sup> Government of Yukon 1990, Report on implementation of French language services. Phase I – Identification of services at 4.

<sup>335</sup> *Yukon Act* S.C. 2002, c. 7.

<sup>336</sup> *Yukon Act* S.C. 2002, c. 7.

In Quebec, the preamble of the *Charter of the French Language* recognizes Aboriginal and Inuit peoples as the descendants of the first inhabitants of the country. Aboriginal and Inuit languages are also exempt from certain provisions of the *Charter of the French Language* making French the language of instruction in elementary and secondary schools.<sup>337</sup> For example, section 88 provides an exception to both Cree and Inuktitut. Section 97 excludes the application of the *Charter of the French Language* for Indian reserve communities. Section 95 exempts the use of Cree and Inuktitut speakers in the legislature and the courts (with a few exceptions)<sup>338</sup> who qualify under the *Act approving the Agreement concerning the James Bay and North Quebec*.

Under the *Cree-Naskapi (of Quebec) Act* language rights are recognized for the purpose of administering justice. All written judgments and verbal statements made by a judge must be translated into Cree and Naskapi. Section 18 of the *Cree-Naskapi (of Quebec) Act* recognizes that the language for the administration of justice is Cree and Inuit. All translations in Cree, Naskapi or an Inuit language are to be provided without cost to Indigenous peoples. However, translation is provided for information purposes only. Michel Bastarache notes that

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<sup>337</sup> *Charter of the French Language*, R.S.Q., chapter C-11. Section 88. Notwithstanding sections 72 to 86, in the schools under the jurisdiction of the Cree School Board or the Kativik School Board, according to the Education Act for Cree, Inuit and Naskapi Native Persons (chapter I-14), the languages of instruction shall be Cree and Inuktitut, respectively, and the other languages of instruction in use in the Cree and Inuit communities in Québec on the date of the signing of the Agreement indicated in section 1 of the Act approving the Agreement concerning James Bay and Northern Québec (chapter C-67), namely, 11 November 1975. The Cree School Board and the Kativik School Board shall pursue as an objective the use of French as a language of instruction so that pupils graduating from their schools will in future be capable of continuing their studies in a French school, college or university elsewhere in Québec, if they so desire. After consultation with the school committees, in the case of the Crees, and with the parents' committees, in the case of the Inuit, the commissioners shall determine the rate of introduction of French and English as languages of instruction. With the assistance of the Ministère de l'Éducation, the Cree School Board and the Kativik School Board shall take the necessary measures to have sections 72 to 86 apply to children whose parents are not Crees or Inuit. For the purposes of the second paragraph of section 79, a reference to the Education Act is a reference to section 450 of the Education Act for Cree, Inuit and Naskapi Native Persons. This section, with the necessary changes, applies to the Naskapi of Schefferville.

<sup>338</sup> Section 96 requires the introduction of "French in their administrations, both to communicate in French with the rest of Quebec and with those person under their administration who are not contemplated in subparagraph (a) of that section, and to provide their services in French to those persons."

It would seem that since the translations are for information purposes only, the objective underlying these provisions is trial fairness as opposed to the preservation of cultural identity of these aboriginal peoples. To preserve aboriginal languages and culture, stronger language use rights in the judicial system would be necessary.<sup>339</sup>

#### Manitoba 2010

In June 2010, Manitoba implemented *The Aboriginal Languages Recognition Act*,<sup>340</sup> which recognizes and protects seven Aboriginal languages: Cree, Dakota, Dene, Inuktitut, Michif, Ojibway and Oji-Cree. The preamble notes the endangered status of these languages and the role the government has in recognizing and promoting the preservation and use of these languages. The legislation also recognizes how vital Aboriginal languages are to Aboriginal peoples' culture, self-esteem, and wellbeing.

#### Northwest Territories 1984

The French language rights court case that occurred in the Yukon also prompted the discussion of Aboriginal language rights in the Northwest Territories. In 1984, the Northwest Territories passed the *Official Languages Ordinance* which recognized the special status of Aboriginal languages beside English and French as the official languages. Resources were allocated for the creation of a French school board and the development of Aboriginal languages.<sup>341</sup> In 1985, the *Official Languages Ordinance* was replaced by the *Official Languages Act*. Shortly there-after, certain Aboriginal members of the assembly protested because they were

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<sup>339</sup> Michael Bastarache, *Language Rights in Canada*, (2nd ed. Cowansville, Québec: Éditions Y. Blais, 2004), 223.

<sup>340</sup> *Aboriginal Languages Recognition Act* C.C.S.M. c. A1.5.

<sup>341</sup> Barbara McMillan, "Educating for Cultural Survival in Nunavut: Why Haven't We Learned from the Past?" *Paideusis*, Volume (2015), No. 2, 24-37.; Nitah, Steven. "One Land - Many Voices: Report of the NWT Special Committee on the Review of the Official Languages Act," *Canadian Parliamentary Review* 25, no. 3 (2002): 4-8.

not permitted to speak their own language. A Special Committee on Aboriginal Languages was thus created to review the status of Aboriginal languages in the NWT. Culture Minister Titus Allooloo, in providing a rationale for recognizing Aboriginal languages, stated

I think it's about time that the aboriginal (people) who have lived in this area for such a long time be given services in their own languages ... also chairman of the Special Committee on Aboriginal Languages, established last fall after some members of the legislature walked out to protest lack of native- language rights.<sup>342</sup>

The government of the NWT eventually decided that certain Aboriginal languages and French would be granted official language status in the Territories (Laurie). Then, in 1990, the *Official Languages Act* was amended to include Cree, Chipewyan, Dogrib, Inuktitut, Inuvialuktun, Inuinnaqtun, Gwich'in, North Slavey and South Slavey as official languages in addition to French and English. During this time, the Office of the Language Commissioner was also established.

The preamble of the NWT's *Official Language Act* declares that Aboriginal languages constitute a distinct part of Canadian identity while asserting that "the legal protection of languages will assist in preserving the culture of the people as expressed through their language." Under the Act, Aboriginal peoples from the NWT have a right to use any of the recognized languages in a territorial court or in debates and proceedings of the legislature where it is warranted. Section 9 (2) states that

Chipewyan, Cree, Gwich'in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey and Tâîchômay [can] be used by any person in any court established by the Legislature.

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<sup>342</sup> Laurie Sarkadi, "N.W.T. Wants 8 Official Tongues," *Edmonton Journal* (Edmonton, Alta.), April, 6. 1990.

As for the right to receive public services in an Aboriginal language, section 11 (2) of the *Official Language Act* states that

Any member of the public in the Northwest Territories has the right to communicate with, and to receive available services from, any regional, area or community office of a government institution in an Official Language other than English or French spoken in that region or community, where

(a) there is a significant demand for communications with and services from the office in that language; or

(b) it is reasonable, given the nature of the office, that communications with and services from it be available in that language.

Section 11 (3) of the *Official Language Act* also indicates that

consideration shall be given to collective rights of Aboriginal peoples pertaining to Aboriginal languages and exercised within the traditional homelands of those peoples, consistent with any applicable lands, resources and self-government agreements, including land claim and treaty land entitlement agreements, and any other sources or expressions of those collective rights.

The significance of the statutory provision is not only because it supports the continuity of preserving Aboriginal languages it also recognizes the collective rights that existed on their traditional homeland. Although there are provisions for Aboriginal languages in certain cases, laws in the NWT are only legally binding in the French and English versions. Furthermore, the NWT government is only required to publish laws in the other official languages upon special request of the legislature. Additionally, services in any particular official language are only provided when there is a significant demand; English is the only language guaranteed for all



services.

### Nunavut: A Case Study

Due to the close association of the Inuit land with the language and people, there was a major emphasis on protection and preservation of the Inuit language during the Nunavut Land Claims process that began in the late 1970's. The objective of the process was to create a Nunavut territory and government. Paul Quassa, one of the lead negotiators, insisted that the protection of the Inuit language is

... the whole reason why the land claims took place, because we were losing our language ... a lot of us who went to school, who were the first Inuit going to school, practically lost out on this because we were told not to speak our language and ... I think that that's part of the whole land claims process. Once you have the languages the culture is strong.<sup>343</sup>

The importance of the Inuit language was also stressed by Mary Simon, president of Inuit Tapiriit Kanatami, during a 2008 Arctic Indigenous Language Symposium. Quite simply, she stated, "Our language is who and what we are and the health of our language lies at the core of our wellbeing."<sup>344</sup> Despite the significance of the Inuit language and its central purpose in Nunavut's land claims process, the negotiations between the Nunavut Tunngavik Inc., the government of Nunavut and the federal government did not result on an agreement on this important issue. Thomas Berger, former politician and judge of the British Columbia Supreme Court, was appointed to assist. After studying the situation in Nunavut, Berger concluded in his

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<sup>343</sup> Annis May Timpson, "Reconciling Indigenous and Settler Language Interests: Language Policy Initiatives in Nunavut," *Journal of Canadian Studies*, Volume 43, Number 2, (Spring 2009), 159.

<sup>344</sup> Nunavut Tunngavik Incorporated, *2009/10 Annual report on the state of Inuit culture and society – Our primary concern: Inuit language in Nunavut*, Iqaluit, NU: Nunavut Tunngavik Incorporated, 2011.

Conciliator's Report that the support and development of Inuit languages is essential:

Given the demographics of the new territory, Inuktitut ought, generally speaking, to be the language of the governmental workplace in Nunavut and the language of the delivery of government services. But it is not. The principal language of government in Nunavut is English.<sup>345</sup>

In a letter from Berger to the Honourable Jim Prentice, Minister of Indian Affairs and Northern Development that was attached to his report, Berger also suggested a correlation between the well-being of Inuit youth and their ability to speak their language:

Only 25% of Inuit children graduate from high school ... The schools are failing. They are not producing graduates. This is damaging to their confidence, their faith in themselves. For them, there has been not only institutional rejection of their language and culture, but also a demonstration of their personal capacity... In Nunavut this reinforces the colonial message of inferiority. The Inuit student mentally withdraws, then leaves altogether. In such a system Inuktitut is being eroded. Of course, language is only one element of identity, but it is a huge one. The dropout rate is linked to Nunavut's unhappy incidence of crime, drugs and family violence. Ejetsiak Peter chairman of the Cape Dorset District Education Authority, summed it up for me through an interpreter: 'The children who drop out have not developed the skills to live off of the land, neither do they have employment skills.' So they are caught between two worlds.<sup>346</sup>

Shortly after the release of Berger's report, the Legislative Assembly of Nunavut introduced several bills to the legislature to create an *Official Languages Act*, an *Inuit Language Protection*

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<sup>345</sup> Thomas R. Berger, *The Nunavut Project Conciliator's Final Report: Nunavut Land Claims Agreement: Implementation Contract Negotiations for The Second Planning Period, 2003-2013*, Vancouver, B.C: Bull, Housser & Tupper, 2006, iii.

<sup>346</sup> *Ibid*, iii-v.

*Act and a new Education Act.*

The discussions of these bills by Nunavut's Legislative Assembly provide some telling statements regarding the significance of Bill 7, Nunavut's proposed new *Inuit Language Protection Act*, and Bill 6, Nunavut's proposed new *Official Languages Act*. Mr. Tagak Curley (Rankin Inlet North) explained the earlier views held by lawyers during the land claims negotiations regarding Inuit language (interpretation):<sup>347</sup>

First of all, I would like to mention that when we started negotiations, when James Arvaluk and I first started talking about the land claims agreement ... the lawyers used to tell us that this is not part of our aboriginal right.<sup>348</sup>

Mr. James Arvaluk (Tununiq) referenced the impact of the residential schools on the Inuit language while applauding the Prime Minister's statement of Apology to former students of Residential Schools as a marker to discontinue linguicide (interpretation):

As a matter of fact, during our early schooling years, whenever we would inadvertently blurt something out in Inuktitut, the teacher would slap the back of our hands with a yardstick. During those times, it was almost impossible to imagine that the Inuit culture and language could be preserved or maintained, especially as we underwent these experiences

From the time that we started working towards the protection of Inuit rights, which is a while back since some of us are getting quite advanced in our age, we were gratified at the Prime Minister's apology to the aboriginal people and his commitment that the government

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<sup>347</sup> The discussions held in Nunavut's legislative Assembly are primarily in Inuktitut. Interpretation is provided. I have highlighted where translations has occurred.

<sup>348</sup> Legislative Assembly of Nunavut, 4954.

would discontinue the eradication of the aboriginal cultures and languages. Those of us who experienced the days of residential schools accepted that apology made by the federal government.<sup>349</sup>

Honourable Louis Tapardjuk, Minister of Culture, Language, Elders and Youth; Minister of Finance; and Chairman, Financial Management Board (Amittuq) also commented on the importance of the proposed Inuit Language Protection Act (interpretation):

for too long Inuit have been denied basic services in their language. There is an absence in Canadian society of understanding, respect, basic rights and the means that are necessary to achieve substantive equality between speakers of the Inuit language and those that speak the other two official languages. Our unilingual elders are being disadvantaged in their homeland. With the dominance of English in many aspects of our society, youth are concerned about losing their ability to speak the Inuit language, and even more so when they become young parents struggling to pass this important part of their ancestral heritage to their children.

Our language is endangered. We cannot take this lightly for language is at the heart of Inuit culture. It reflects the generations who came before and their relationship to our Arctic world. It speaks of who we are, how we view our surroundings, and how we wish our children to know their world. To lose one's language is to lose an essential part of one's identity. In fact, the survival of our language is crucial to the survival of Inuit as a distinctive people and to our dream for what Nunavut is and will become.

We urgently need to reverse the language shift among our young people and strengthen

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<sup>349</sup> Ibid, 4952 - 4953.

their use of the Inuit language. We must not forget our elders and unilingual Inuit language speakers and the support they need to ask for services in their language. We need to ensure the growth and adaptation of the Inuit language so that it functions well in all aspects of our daily life and in the government and private sectors. These issues require us to take action now, before it is too late.<sup>350</sup>

The Honourable Louis Tapardjuk continued to explain the three objectives of the *Inuit Language Protection Act* (interpretation):

The bill contains provisions to ensure that the Inuit language is:

- A language used daily in services and communication with the public throughout all sectors of Nunavut society;
- A language of instruction in a school system that prepares children to enter adult life having a rich knowledge of the Inuit language and full ability to use it; and
- A language of work in territorial institutions thus supporting a representative public service and the full participation of Inuit in it.

To assist in realizing those objectives, Bill 7 also:

- Supports the importance of the use of the Inuit language in early childhood and adult education;
- Addresses the need for language revitalization, particularly in communities and age groups at risk;
- Ensures language standards and the development of new terms by establishing the *Inuit Uqausinginnik Taiguusiliuqtiit*; and

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<sup>350</sup> Ibid, 4948.

- Supports the roles of the Minister of Languages and the Languages Commissioner...<sup>351</sup>

Hon. Louis Tapardjuk explained the importance of providing explanation of basic household services to Inuit who do not speak English (interpretation):

Yes, those are the services that are provided. As long as the people that provide those services are living in Nunavut, they will have to have their services written in Inuktitut. Telephone, water, and electricity bills will have to be in Inuktitut because some people can't speak or read in English. Those are the services that have to be provided in Inuktitut.<sup>352</sup>

#### Nunavut's Official Languages Act 2008

Shortly after these discussions, the Legislative Assembly of Nunavut passed the *Official Languages Act*; on June 4, 2008, the Act received the required approval from the federal Parliament. As a result, the *Official Languages Act* recognizes Inuit (defined as Inuktitut and Inuinnaqtun), English and French as the three official languages of Nunavut. The Act also removes Chipewyan, Cree, Dogrib, Gwich'in, and Slavey from the list of official languages. Under the *Official Languages Act*, a position for a Language Commissioner was also established. Section 22.1 of the *Official Languages Act* requires the Languages Commissioner to apply the following principles in the Inuit language:

- (a) *Inuuqatigiitsiarniq* (respecting others, relationships, and caring for people);
- (b) *Tunnganarniq* (fostering good spirit by being open, welcoming, and inclusive);
- (c) *Pijitsirniq* (serving and providing for family or community, or both);

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<sup>351</sup> Ibid, 4949.

<sup>352</sup> Ibid, 4962.

- (d) *Aajiiqatigiinniq* (decision-making through discussion and consensus);
- (e) *Piliriqatigiinniq* or *Ikajuqtigiinniq* (working together for a common cause);
- (f) *Qanuqtuurniq* (being innovative and resourceful).

The legislation also addresses the use of Inuit languages in court, the legislative assembly as well as services provided to the public by institutions and government.

#### Nunavut's Inuit Language Protection Act

Then, on September 18, 2008 the *Inuit Languages Protection Act* is passed. The preamble highlights the importance of the Inuit language

- (a) as a cultural inheritance and ongoing expression of Inuit identity, both in Nunavut communities and in the wider circumpolar world;
- (b) as the fundamental medium of personal and cultural expression through which Inuit knowledge, values, history, tradition, and identity are transmitted;
- (c) to the development of dynamic and strong individuals, communities, and institutions in Nunavut that are required to advance the reconciliation contemplated by the Nunavut Land Claims Agreement;
- (d) to support the meaningful engagement of Inuit Language speakers in all levels of governance and in socio-economic development in Nunavut; and
- (e) as a foundation necessary to a sustainable future for the Inuit of Nunavut as a people of distinct cultural and linguistic identity within Canada.

The Preamble also identifies support for Inuit language rights in the Canadian Constitutional law and in international law including the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, proclaimed by the United

Nations. The Preamble also condemns governmental policies that destroy Inuit languages indicating that

... the past government actions and policies of assimilation and the existence of government and societal attitudes that cast the Inuit Language and culture as inferior and unequal, and acknowledging that these actions, policies and attitudes have had a persistent negative and destructive impact on the Inuit Language and on Inuit.<sup>353</sup>

The legislation seeks to provide the people of Nunavut with national and constitutional recognition of the Inuit language as an official language of Canada.<sup>354</sup> Section 8 establishes parameters for education, specifying that the language of instruction is to be the Inuit language:

Every parent whose child is enrolled in the education program in Nunavut, including a child for whom an individual's student support program plan exists or is being developed, has the right to have his or her child receive Inuit Language instruction.

### Nunavut's Education Act

When Nunavut created its own territorial government, education was recognized a critical component of ensuring the survival of Inuit language and culture. One of the objectives of the Act enacted in 1999 was to replace the educational system inherited from the Northwest Territories. Then, education was delivered in partnership amongst the Department of Education, three regional elected boards of education and locally elected District Education Authorities in every community. In 2000 the government of Nunavut dissolved the three regional school boards. The Department of Education assumed responsibility over education in Nunavut including the involvement of the District Education Authorities (DEA). The DEA are responsible

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<sup>353</sup> Ibid, 4848.

<sup>354</sup> Ibid, 4848-4949.



for ensuring the necessary resources are allocated to carry out their responsibilities as well as providing support to stakeholders such as staff.<sup>355</sup>

Nunavut's *Education Act* received royal assent in 2008 on the same day as the *Inuit Language Protection Act*. The goal of the *Education Act* was "to ensure that the vision and beliefs about education held by Nunavummiut are embedded in schools and in the education that students receive in Nunavut. This includes bilingual education for all students by 2019–20."<sup>356</sup> In the 2013 Auditor General's Report the importance of bilingual education is highlighted:

Implementing the *Education Act*, especially bilingual education, is a major undertaking. Many of the related requirements require long-term effort, including recruiting and creating new resources and providing support to various stakeholders, such as District Education Authorities and school staff. Its success depends not only on the Department of Education but on the participation of students, parents, and communities. This is vital to ensuring that students in Nunavut receive the high-quality, bilingual education that is key to the future well-being of both individuals and society.<sup>357</sup>

Section 1 defines the values of the education system according to Nunavut values and the principles and concepts of Inuit Qaujimajatuqangit, which are:

*Inuuqatigiitsiarniq Tunnganarniq* - Respecting others, relationships, and caring for people  
Fostering good spirit by being open, welcoming, and inclusive  
*Pijitsirniq Aajiiqatigiinni* - Serving and providing for family or community, or both  
Decision making through discussion and consensus  
*Pilimmaksarniq / Pijariuqsarniq*- Development of skills through practice, effort, and

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<sup>355</sup> Office of the Auditor General 2013, 1.

<sup>356</sup> Ibid.

<sup>357</sup> Ibid.

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*Piliriqatigiinniq / Ikajuqtiigiinniq* - Working together for a common cause

*Qanuqtuurniq* - Being innovative and resourceful

*Avatittinnik Kamatsiarniq* - Respect and care for the land, animals, and the environment.<sup>358</sup>

Section 8 of the *Education Act* defines the establishment of education programs that promote Nunavut culture and ways of understanding that include traditional knowledge and environmental land characteristics of Nunavut. Section 9 of the *Education Act* insists the educational programs are developed in accordance with the principles and concepts of Inuit Qaujimajatuqangit.

Unfortunately, in 2013 the Auditor General Report determined that “the government of Nunavut has failed to implement a fully bilingual school system with the Inuit language as the language of instruction from kindergarten to Grade 12. Despite efforts to increase the number of bilingual educators, the Department is not meeting the Act’s bilingual education requirements.”<sup>359</sup> Some of the problems identified were lack of qualified teachers, inadequate teacher training, lack of teaching resources and poorly developed curriculum that did not reflect the values and principles of Qaujimajatuqangit.<sup>360</sup> The Auditor General’s report identified other factors contributing to the failure of the education program such as: housing shortages, food insecurity, the poor health status of Nunavummiut and social issues related to teenage pregnancy and substance abuse.<sup>361</sup>

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<sup>358</sup> Education Act, SNu 2008, c 15

<sup>359</sup> Office of the Auditor General, 2.

<sup>360</sup> Two documents, written by Inuit for Inuit in Canada’s north, have attempted to establish what is to be taught in Nunavut Territory schools. These documents are *Inuuqatigiit: The Curriculum from the Inuit Perspective*, Government of Northwest Territories, 1996) and *Inuit Qaujimajatuqangit: Education Framework for Nunavut Curriculum*, Nunavut Department of Education, 2007).

<sup>361</sup> Auditor General’s Report, 3.

In addition to the Auditor General's Report, a Special Committee to review the *Education Act* was established in 2014 to review provisions and operation of the legislation.<sup>362</sup> One of the main observations the Special Committee highlighted was that the legislation has not been adequately implemented particularly in ensuring the government's ability to deliver bilingual education.<sup>363</sup>

In a recent paper submitted to the United Nations International Expert Group Meeting on Indigenous Languages, Sandra Inutiq, who was appointed Nunavut Language Commissioner in 2013, drew attention to educational funding. She noted that government spending per capita was far below that of other similar initiatives in Canada/Nunavut. Funding for French language education, she noted, is about \$4,000 per person, whereas the Inuit receives about \$40 per person. Inutiq also points out that

in the 2014–2015 *Canada-Nunavut General Agreement on the Promotion of French and Inuit Languages*, \$1.625 million was allocated to be spent on the French language, while \$1.1 million was to be spent on the Inuit language. It is important to note the French language speakers are a very small number with a population of 435 in Nunavut.<sup>364</sup>

She argued that language rights in Nunavut revolve around a hierarchal system designed to function in English first, then French and lastly the Inuit language. The symbolism of the hierarchy impacts the people of Nunavut and ultimately their ability to preserve and promote the Inuit language.<sup>365</sup>

One of the solutions proposed by the Nunavut government came in the form of Bill 37 which

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<sup>362</sup> Special Committee to Review the Education Act

<sup>363</sup> Ibid, 7.

<sup>364</sup> Inutiq, Sandra. "Indigenous Languages: Preservation and Revitalization: Articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples." PFII/2016/EGM, January 2016, 7.

<sup>365</sup> Ibid.

reset the target date to attain full bilingual education from 2019 to 2029. An additional recommendation is/was to change the goal of bilingual education from a grade 12 level to a grade 9 level.<sup>366</sup> The decision comes/came at an alarming time. Statistics Canada determined that the number of Inuit in Nunavut speaking Inuktitut dropped from 88 to 80 per cent from 1996 to 2011. Use of Inuktitut in the homes of Inuit people also fell from 76 per cent to 61 per cent.<sup>367</sup> Kathy Okpik, deputy minister of education admits that “We grossly overestimated our ability to implement some of the provisions of the Act. Our biggest challenge is the number of Inuktitut-speaking educators.”<sup>368</sup>

Aluki Kotierk, president of Nunavut Tunngavik Inc., the organization which monitors the Inuit land claims, asserts that “People envisioned we would be able to receive all public services in Inuktitut. Its absence goes against what was the vision and motivation to create Nunavut.”<sup>369</sup> Kotierk also “...blames a succession of territorial governments for failing to do anything to produce enough teachers to fulfill the promise of the original *Education Act*. The government of Nunavut, particularly the Department of Education, is so good at placing blame on Inuit. The government should be more proactive.”<sup>370</sup> Kotierk insists that the government of Nunavut cannot claim lack of resource because Nunavut Tunngavik Inc. has offered “the territorial government \$50 million from the settlement of a lawsuit with the federal government to kick start teacher training.”<sup>371</sup>

Unfortunately, what has transpired in Nunavut goes against the heart of their land claims

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<sup>366</sup> Bob Webber, “Why Have Nunavut? Battle over education bill goes to the heart of territory.” National Observer Online, March 19, 2017.

<sup>367</sup> Statistic Canada 2011.

<sup>368</sup> Webber. “Why Have Nunavut?”

<sup>369</sup> Peter Vagara, “Nunavut officials say Bill 37 will strengthen DEAs Education Act amendments would give local authorities a say in territory-wide education policy.” *Nunatsiaqonline*, March 13, 2017.

<sup>370</sup> Ibid.

<sup>371</sup> Webber. “Why Have Nunavut?”

agreement which is to preserve, promote and pass on the Inuit language to the next generation. Many Inuit leaders have emphasized that the Inuit language is the core of their identity and critical to their well-being. Earlier, Berger had strongly recommended that Inuktitut become the central language of the government. He argued that educational institutions that do not support Inuit language and culture reinforce colonialism and send a clear message to Inuit youth, in particular, that their language and culture are not important.

However, not everyone is united in this regard. Some lawyers for the government during the land claim negotiations even insisted that the Inuit language is not an Aboriginal right, echoing a similar position taken by some lawyers for Aboriginal peoples involved in residential school claims. For most of the Inuit, however, the Prime Minister's apology indicated a discontinuation of linguicide and a commitment to advance Aboriginal languages and cultures. Inuit people also claimed that for too long unilingual Elders have been disadvantaged in their homeland because of the dominance of English, and now young parents are struggling to pass on their ancestral culture and language to the next generation. A member of the Nunavut Legislative Assembly insists that the Inuit language

is at the heart of Inuit culture. It reflects the generations who came before and their relationship to our Arctic world. It speaks of who we are, how we view our surroundings, and how we wish our children to know their world. To lose one's language is to lose an essential part of one's identity. In fact, the survival of our language is crucial to the survival of Inuit as a distinctive people and to our dream for what Nunavut is and will become.<sup>372</sup>

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<sup>372</sup> Legislative Assembly of Nunavut, 4948.

It is clear that a central objective of the *Inuit Language Protection Act* and the *Education Act* is to ensure that the cultural values embedded in the Inuit language are present in the educational system.

Recently, the federal government committed \$15.8 million to Nunavut and \$19.6 million to the Northwest Territories for language services.<sup>373</sup> According to Heritage Canada, part of the funding is to stem the decline of Inuktitut in Nunavut as well as to meet the requirements of the *Official Languages Act* and the *Inuit Language Protection Act*. In a recent interview, Kotierk reported that federal government has promised \$15.8 million dollars over four years for Inuktitut language services in Nunavut. She also noted that over 21,000 people recognize Inuktitut or Inuinnaqtun as their mother tongue. In contrast, only 435 people in the region recognize French as their mother tongue, but are set to receive \$14.25 million for French language services over four years.<sup>374</sup> Kotierk insists/ed that more equitable funding would require the federal government to commit closer to \$700 million.<sup>375</sup>

Without the constitutional recognition that underpins the minority language rights of Canada's French and English official language minorities, Aboriginal languages will sit at the whim of an ever-changing government agenda. The basis for funding French language services is constitutionally recognized. Although constitutional recognition is one important step, there will be additional hurdles on the ground to overcome such as the creation and support of teacher training programs that are essential for language revitalization efforts in Nunavut and across Canada.

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<sup>373</sup> CBC News, "Federal gov't promises millions to Nunavut, N.W.T. for Indigenous language services," May 26, 2017, <http://www.cbc.ca/news/canada/north/funding-indigenous-language-services-1.4132893>

<sup>374</sup> Kieran Oudshoorn, "Nunavut Tunngavik calls for equitable funding for Inuit languages, Inuktitut language services receive similar funding to French services despite nearly 50 times more speakers," (CBC North Online), June 7, 2017.

<http://www.cbc.ca/news/canada/north/equitable-funding-for-inuit-languages-1.4148129>

<sup>375</sup> Ibid.

## Unwritten Constitutional Principles

### Minority Language Rights and Aboriginal Language Rights

In addition to the recognition of Aboriginal language rights in various jurisdictions across Canada, the Canadian judiciary has developed interpretive principles for language rights applicable to Aboriginal peoples. They are helpful in not only linking language rights with protection of the cultural integrity of Aboriginal peoples, they are also significant for advancing the argument that supporting education institutions is an implicit right under section 35 (1).

#### Unwritten Principles: Minority Rights and Aboriginal Rights

In *Reference re Secession of Quebec*,<sup>376</sup> the Supreme Court of Canada affirmed that Canada's Constitution encompasses written as well as unwritten principles. They are defined as "supporting principles"<sup>377</sup> that "are not expressly dealt with by the text of the Constitution."<sup>378</sup> These unwritten principles have been recognized as having normative force and are included as governing instruments of the constitution.<sup>379</sup> The Supreme Court of Canada defined these principles in the following manner:

Behind the written word is an historical lineage stretching back through the ages, which aids in the consideration of the underlying constitutional principles. These principles inform and sustain the constitutional text: they are the vital unstated assumptions upon

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<sup>376</sup> *Reference re Secession of Quebec* [1998] 2 SCR 217

<sup>377</sup> *Ibid*, 240

<sup>378</sup> *Ibid*, 240

<sup>379</sup> *Ibid*, 240

which the text is based.<sup>380</sup>

The unwritten principles have also described as the “internal architecture,”<sup>381</sup> the “lifeblood,”<sup>382</sup> that “breathe life into”<sup>383</sup> Canada’s Constitution. Additionally, the Supreme Court of Canada has identified four organizing principles: federalism, democracy, constitutionalism and the rule of law and respect for minorities. Included in these categories are Aboriginal peoples: “(t) here are linguistic and cultural minorities, including aboriginal peoples ... who look to the Constitution of Canada for the protection of their rights.”<sup>384</sup>

The Supreme Court goes on to insist that the underlying value for protecting minority language rights is applicable to Aboriginal rights under section 35 (1):

Consistent with this long tradition of respect for minorities, which is at least as old as Canada itself, the framers of the *Constitution Act, 1982* included in s. 35 explicit protection for existing aboriginal and treaty rights ... The "promise" of s. 35 , as it was termed in *R. v. Sparrow*, [1990] 1 S.C.R. 1075, at p. 1083, recognized not only the ancient occupation of land by aboriginal peoples, but their contribution to the building of Canada, and the special commitments made to them by successive governments. The protection of these rights, so recently and arduously achieved, whether looked at in their own right or as part of the larger concern with minorities, reflects an important underlying constitutional

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<sup>380</sup> *Ibid*, 248.

<sup>381</sup> *Ibid*.

<sup>382</sup> *Ibid*.

<sup>383</sup> *Ibid*.

<sup>384</sup> *Ibid*,269.



value<sup>385</sup> [emphasis added].

An inherent feature of section 35 (1) is to protect the cultural integrity of Aboriginal peoples and this value is also a key feature of the unwritten principles of the protection of minorities.

### Cultural Integrity and Language Rights

In minority language rights cases, the Supreme Court of Canada recognized the integral connection between language rights and “concern for the culture associated with the language.”<sup>386</sup> The unwritten principles were applied in *Lalonde v Ontario* by the Ontario Court of Appeal to determine that linguistic, cultural and educational institutions are included as principle or respect and protection of minorities.<sup>387</sup> The Court overturned the decision made by the Ontario government to close a French language hospital because the government failed to consider the unwritten principles. It was also determined that supporting cultural educational institutions are an integral feature of cultural and linguistic rights. In this case, it could be argued that decisions made by the government to cut Aboriginal language programs or institutions must consider the impact it has on the cultural rights of Aboriginal peoples.

Additionally the definition and scope of Aboriginal rights under section 35 (1) should be applied in a manner that is consistent with the unwritten principles of the protection of minorities. Although state funded language education is not recognized as an expressed right

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<sup>385</sup> [1998] 2 S.C.R. 217, 82.

<sup>386</sup> *Arsenault-Cameron v. Prince Edward Island* [2000] 1 S.C.R. 3, 24

<sup>387</sup> *Lalonde v Ontario* (2001) 56 O.R. (3d) 505 at 131:” that the language and culture of the francophone minority in Ontario "hold a special place in the Canadian fabric as one of the founding cultural communities of Canada and as one of the two official language groups whose rights are entrenched in the Constitution". If implemented, the Commission's directions would greatly impair Montfort's role as an important linguistic, cultural and educational institution, vital to the minority francophone population of Ontario. This would be contrary to the fundamental constitutional principle of respect for and protection of minorities.”

under section 35 (1), it could be argued that there is an implicit recognition using the interpretive assistance of the unwritten principles. The Supreme Court of Canada has recognized that unwritten principles are equally significant in “the interpretation of the scope of rights and obligations, and the role of our political institutions.”<sup>388</sup> Even if the text of the Constitution falls short of creating a specific constitutionally enforceable right, the values of the Constitution must be considered in assessing the validity or legality of actions taken by government.<sup>389</sup> In this regard, if the Ontario Court of Appeal determined that supporting cultural educational institutions are an integral feature of cultural and linguistic rights surely the recognition of Aboriginal language rights also entails supporting educational institutions that are required to transmit the language and culture onto the next generation.<sup>390</sup> Due to the significance of the link between language and culture the Supreme Court of Canada also insists that: “language rights must be given a purposive interpretation, taking into account the historical and social context, past injustices, and the importance of the rights and institutions to the minority language community affected.”<sup>391</sup>

The Supreme Court of Canada also alludes in the *Powley* decision that section 35 (1) may impose a positive duty of government to protect practices that are integral to maintaining Aboriginal cultures:

Our evaluation of the respondents’ claim takes place against this historical and cultural backdrop. The overarching interpretive principle for our legal analysis is a purposive

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<sup>388</sup> Reference re Secession of Quebec [1998] 2 SCR 217, 248.

<sup>389</sup> *Lalonde v Ontario* (2001) 56 O.R. (3d) 505, 38.

<sup>390</sup> The residential school system has resulted in very few speakers available to teach the language in the home. Therefore educational institutions will have to play a central role in language revitalization efforts.

<sup>391</sup> *Lalonde v Ontario* (2001) 56 O.R. (3d) 505, 33.

reading of s. 35. The inclusion of the Métis in s. 35 is based on a commitment to recognizing the Métis and enhancing their survival as distinctive communities. The purpose and the promise of s. 35 is to protect practices that were historically important features of these distinctive communities and that persist in the present day as integral elements of their Métis culture. [emphasis added]<sup>392</sup>

In this case, the Supreme Court of Canada identifies that protecting and enhancing cultural practices is an inherent part of section 35.

Section 23 of the *Canadian Charter of Rights and Freedoms* provides an example of how a constitutional right to education in the official language of the provincial or territorial minority generates a duty for the state to fund instruction and provide facilities “where the numbers warrant.”<sup>393</sup> As a result Canadian citizens meeting specific requirements have the right to have their children receive primary and secondary language instruction in the language of English or French linguistic minority population of the province in which they reside. This is stated explicitly in Section 23 (1), which recognizes that Citizens of Canada

- a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
- b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.

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<sup>392</sup> R. v. Powley, [2003] 2 S.C.R. 207, 13.

<sup>393</sup> Michael Bastarache, *Language Rights in Canada*, (2nd ed. Cowansville, Québec: Éditions Y. Blais, 2004), 9.

A major impetus for section 23 is to compel government to protect and advance the cultural integrity of minority language groups by providing state funded education in the minority language.

David Leitch, constitutional lawyer, proposes that the courts' rationale for granting minority language education rights to protect culture applies equally to Aboriginal languages. He references three Supreme Court of Canada decisions. First, the Supreme Court recognizes in *Reference re Manitoba Language Rights*, the Supreme Court indicates that language frames what could only be called a "worldview," stating that "(i)t is through language that we are able to form concepts; to structure and order the world around us."<sup>394</sup> In Leitch's second example, the Supreme Court articulates the relationship between language and culture in *Ford v. Quebec (Attorney General)* (1988) as "not merely a means or medium of expression; it colors the content and meaning of expression. It is, as the preamble of the *Charter of the French Language* itself indicates, a means by which a people may express its cultural identity."<sup>395</sup> Third, Leitch notes that the Supreme Court described the relationship between language and culture in *Mahe v. Alberta* (1990) as "more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them"<sup>396</sup> The Chief Justice of Canada, Brian Dickson also associated minority language rights with the ability to maintain cultural integrity through education:

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<sup>394</sup> *Reference re Manitoba Language Rights* at 744. Naomi Metallic also points to this decisions to support Aboriginal rights to language based on the practices, customs and traditions that made an Aboriginal society. She identified these as "universal concepts" that apply to all linguistic minorities or groups. See: Metallic, Naomi. "Les droits linguistique des peuples autochtones." In Bastarache, Michel. 2014. *Les droits linguistiques au Canada*, 3e edition. Montreal: Editions Yvonne Blais.

<sup>395</sup> *Ford v. Quebec (Attorney General)* [1988] 2 SCR 712 para 40.

<sup>396</sup> *Mahe v. Alberta*, 362.

The general purpose of s. 23 is clear: it is to preserve and promote the two official languages of Canada, and *their respective cultures* [emphasis in original], by ensuring that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population. The section aims at achieving this goal by granting minority language educational rights to minority language parents throughout.<sup>397</sup>

These court decisions suggest that the basis for granting minority language rights as a constitutional right in Canada stems from principles of preserving and advancing culture that are equally applicable to Aboriginal peoples. Additional arguments in support of positive duties to fund Aboriginal language education will come from international law that is discussed in chapter 4.

### Concluding Remarks

In this chapter the continuity of Aboriginal language practices, customs and traditions have persisted as a result of three main factors. The first two are due to forceful advocacy by Aboriginal peoples that have resulted in several territorial and provincial governments affirming Aboriginal language rights as a constitution right in regional language legislation (the Yukon, the Northwest Territories, Manitoba and Nunavut). Thirdly, the principles set out of by the Supreme Court of Canada in interpreting language rights expressly guaranteed in the Constitution Act, 1982 in addition to the unwritten constitutional principle of the protection of minorities have preserved or established space for the constitutional recognition of Aboriginal language rights and the support of the educational institutions that are required to transmit Aboriginal languages.

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<sup>397</sup> *Mahe v. Alberta*, 45.

One lesson learned from Nunavut's experience is that adequate resources and support for the development of teacher training programs and curriculum are crucial. Without adequate support in these areas, legislative objectives mean very little for the advancement of Inuit and other Aboriginal language rights. To cite one example, the Inuit have compared the support that the French community receives for language services and education with support received by Aboriginal communities for languages services, and found a great disparity largely because the government is required to provide adequate funding to the former. Another important lesson is that the ultimate decision of how to best address Aboriginal language revitalization efforts will lie within each community. More Aboriginal control over the governance of the schools will also be required in order to meet the demand of creating culturally appropriate schools.

As will be demonstrated in the next chapter, other countries offer evidence in recognizing Indigenous language rights constitutionally. International human rights law also recognizes Indigenous language rights in a number of areas.

## Chapter 4

### Indigenous Language Rights under International Law and Other Jurisdictions

Over the past twenty-five years, Indigenous peoples as well as supportive international non-governmental organizations (NGO's) around the world have been advocating for the recognition of Indigenous language rights (and other rights) under the umbrella of human rights. Language rights in this context is broadly defined as an integral to human nature and culture and is one of the most fundamental features and expressions of identity.<sup>398</sup> Within the human rights framework Aboriginal peoples have the liberty of expressing language rights within the human rights language that includes human dignity, liberty, equality and non-discrimination.

There are also sources of international law that recognize language rights. The two main sources are customary international law and international treaties. Canada is party to several international treaties that contain provisions regarding language rights such as the International Covenant of Civil and Political Rights that create binding treaty obligations. There are also non-binding international instruments such as the United Nations (UN) and the Organization of American States (OAS) declarations on the Rights of Indigenous Peoples that contain specific reference to Indigenous languages. The UN has also implemented mechanisms regarding Indigenous rights such as the United Nations Permanent Forum on Indigenous Issues,<sup>399</sup> the

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<sup>398</sup> United Nations Special Rapporteur on Minority Issues, Language Rights of Linguistic Minorities, A Practical Guide for Implementation, March, 2017, 5.

[http://www.ohchr.org/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities_EN.pdf)

<sup>399</sup> See: Resolutions and Decisions of the Economic and Social Council 2000/ 22: Establishment of a Permanent Forum on Indigenous Issues A/CONF. 157/24 (Part I), chap. III, sect. II B, para. 32. Section 2: “Also decides that the Permanent Forum on Indigenous Issues shall serve as an advisory body to the Council with a mandate to discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights; in so doing the Permanent Forum shall: (a) Provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the

Expert Mechanism on Indigenous Rights,<sup>400</sup> the Special Rapporteur on Rights of Indigenous Peoples.<sup>401</sup> Each mechanism is mandated to assist with the advancement of Indigenous language rights in a number of ways such as the appointment of independent Indigenous experts and advisory bodies to assist with the implementation of Indigenous rights domestically.

There are however a number of criticisms about the relevance of international law such as the fact that international treaties are non-binding on the state and there are many issues with the implementation of international law into domestic law.<sup>402</sup> Some international law experts would

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United Nations, through the Council; (b) Raise awareness and promote the integration and coordination of activities relating to indigenous issues within the United Nations system ...

<sup>400</sup> On September 2016, the Human Rights Council adopted [resolution 33/25](#), which amended the mandate of the Expert Mechanism. EMRIP's new mandate is to provide the Human Rights Council with expertise and advice on the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples, and assist Member States, upon request, in achieving the ends of the Declaration through the promotion, protection and fulfillment of the rights of indigenous peoples. Specific new elements of the mandate include: Upon request, assisting Member States and/or indigenous peoples in identifying the need for and providing technical advice regarding the development of domestic legislation and policies relating to the rights of indigenous peoples; Providing Member States, upon their request, with assistance and advice for the implementation of recommendations made at the universal periodic review and by treaty bodies, special procedures or other relevant mechanisms; Upon the request of Member States, indigenous peoples and/or the private sector, engaging and assisting them by facilitating dialogue, when agreeable to all parties, in order to achieve the ends of the Declaration; Identifying, disseminating and promoting good practices and lessons learned the efforts to achieve the ends of the Declaration, including through reports to the Human Rights Council; Expansion of the membership from five to seven experts, in order to reflect the seven indigenous sociocultural regions

<sup>401</sup> Human Rights Council resolution 33/12 requests the Special Rapporteur: (a) To examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples, in conformity with his/her mandate, and to identify, exchange and promote best practices; (b) To gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous peoples and their communities and organizations, on alleged violations of the rights of indigenous peoples; (c) To formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the rights of indigenous peoples (d) To work in close cooperation and coordination with other special procedures and subsidiary organs of the Council, in particular with the Expert Mechanism on the Rights of Indigenous Peoples, relevant United Nations bodies, the treaty bodies, and regional human rights organizations. In carrying out these different activities, the Special Rapporteur is also requested to work "in close cooperation with the Permanent Forum on Indigenous Issues and to participate in its annual session;" to "develop a regular cooperative dialogue with all relevant actors;" to pay a "special attention to the situation of indigenous children and women;" to consider "relevant recommendations of the world conferences and treaty bodies on matters regarding his/her mandate;" and to "submit a report on the implementation of his/her mandate to the Council in accordance with its annual programme of work."

<sup>402</sup> Tove Skutnaab-Kangas and Robert Phillipson (eds.), *Linguistic Human Rights, Overcoming Linguistic Discrimination* (Berlin: Mouton de Gruyter, 1995). Others suggest that international law can only set minimum standards and for now, language conflicts are better fought politically.<sup>402</sup> Laura Malksoo, "Language Rights in



place these types of arguments under a ““traditionalist view that unless implemented by specific legislation, a treaty obligation binding on Canada under international law is irrelevant.”<sup>403</sup>

because it has no consequences on domestic law. In some cases, however, it is argued that “Canada ratifies ... international human rights treaties without adopting implementing legislation, on the assumption that Canadian constitutional, statutory, and common law regimes already conform to treaty norms.”<sup>404</sup>

As for non-binding instruments, James Anaya, the former special rapporteur on the rights of Indigenous peoples, argues that countries that engage in international processes create “... customary norms (and) are generally binding upon the constituent units of the world community regardless of any formal act of assent to the norms.”<sup>405</sup> Canada for example participates and engages regularly in international mechanisms by attending meetings such as the Expert Mechanism on Indigenous Rights. Canada also follows the required reporting procedures to treaty bodies such as the Human Rights Council on how they are implementing their treaty obligations domestically.

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International Law: Why the Phoenix is still in the Ashes” 12 Fla. J. Int’l L. 431, 1998 – 2000 at 465. Peter Kulchyski, Indigenous rights scholar, argues that Aboriginal rights are not human rights and that aboriginal rights exist for the protection of the cultural distinctiveness of indigenous peoples, in the recognition that such distinctiveness may be of value in a rapidly changing world, they therefore pull in a different direction than human rights. Human rights move towards what is common in humanity and are an expression of some basic ideas thought to be of universal value. Aboriginal rights move in the direction of what characterizes specific groups of people and of what defines them as distinct. See: Kulchyski, Peter. “aboriginal rights are not human rights *defence of indigenous struggles*. Winnipeg, Manitoba, Canada: ARP Books, 2013 at 66-67.

<sup>403</sup> Gerald Heckman. “International Human Rights Norms and Administrative Law” in Colleen Flood & Lorne Sossin, eds, *Administrative Law in Context*, 3d ed. 569 (Toronto: Emond, 2018), 579.

<sup>404</sup> *Ibid*, 606.

<sup>405</sup> *Ibid*. S. James Anaya, “Indigenous Rights Norms in Contemporary International Law.” 8 *Arizona Journal International & Comparative Law* 1, 1991, 6.

The Supreme Court of Canada also insists that international law can influence Canadian constitutional law through judicial interpretation.<sup>406</sup> In the recent *Saskatchewan Federation of Labour* decision,<sup>407</sup> the Supreme Court of Canada discusses the use of international human rights norms in Charter interpretation. It holds that the Charter should be presumed to provide “at least as great a level of protection as is found in human rights documents that Canada has ratified” but has also looked at non-binding instruments, including national constitutions, to determine “international consensus” on the meaning of an international norm.<sup>408</sup>

In this chapter, the language rights of Aboriginal peoples will be examined in three areas of international law. The first is international treaties that Canada has ratified in which there are binding treaty obligations. Secondly, non-binding treaty obligations regarding Indigenous language rights will be explored. In this section it is argued that Canada also has positive obligations to recognize and advance Aboriginal language rights under section 35 in accordance with international norms and as an unwritten principles of the constitution. Finally, this section

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<sup>406</sup> In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1717/index.do> the Supreme Court of Canada considered whether Canada’s obligations under the *International Convention on the Rights of the Child* could influence interpretation of the *Immigration Act*. Justice L’Heureux-Dube for the majority quoted Professor Ruth Sullivan: “[T]he legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred.” Ibid at 70. In *R v Hape*, 2007 SCC 26 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2364/index.do> the Supreme Court of Canada stated, “Every principle of customary international law is binding on all states unless superseded by another custom or by a rule set out in a international treaty. ... These principles must also be drawn upon in [interpreting] the Charter.” Ibid at 46. “In interpreting the scope of application of the Charter, the courts should seek to ensure compliance with Canada’s binding obligations under international law where the express words are capable of supporting such a construction.” Ibid at 56.

<sup>407</sup> *Saskatchewan Federation of Labour v Saskatchewan* [2015] 1 S.C.R. 245.

<sup>408</sup> Although section 35 falls outside the parameters of the Charter of Rights and Freedoms an analogous argument can be made to interpret section 35 to receive according to the international consensus on language rights in addition to the principles that protect and advance language rights in international treaties that Canada has ratified. See: *Saskatchewan Federation of Labour v Saskatchewan* [2015] 1 S.C.R. 245 at para. 64 that in interpreting the *Charter*, the Court “has sought to ensure consistency between its interpretation of the *Charter*, on the one hand, and Canada’s international obligations and the relevant principles of international law, on the other...” and “there is an emerging consensus” that has to be applied ... at para. 71.

contains a very brief overview of how other countries have recognized Indigenous language rights outside of Canada. The objective of this section is to provide a sampling of countries that have recognized Indigenous language rights.

## INTERNATIONAL TREATIES

Canada has ratified several United Nations' treaties that protect and promote language rights such as the International Covenant on Civil and Political Rights, the International Covenant on Economic and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination as well as the Convention on the Rights of the Child.

### International Covenant on Civil and Political Rights

In 1976, Canada ratified the International Covenant on Civil and Political Rights.<sup>409</sup> This covenant has three articles that affirm the right of Indigenous peoples to their languages. Article 1 recognizes cultural rights as a peoples' fundamental right to self-determination:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 2 contains a non-discrimination provision regarding language:

Each state party to the present Covenant undertakes to respect all individuals within its territory and subject to its jurisdiction and to ensure the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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<sup>409</sup> *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, arts. 9-14, Can.T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976).

Article 27 recognizes the linguistic rights of minorities:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Another significant international treaty that recognizes language rights that Canada is party to is the International Covenant on Economic and Social and Cultural Rights.

#### International Covenant on Economic, Social and Cultural Rights

In 1976, Canada ratified the International Covenant on Economic, Social and Cultural Rights.

Article contains a non-discrimination provision:

Article 2 (2) recognizes

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 13 (3)

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

## International Convention on the Elimination of All Forms of Racial Discrimination

Canada ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1981.

### Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(e) Economic, social and cultural rights.

## Convention on the Rights of the Child

In 1991, Canada ratified the United Nations' *Convention on the Rights of the Child* which also recognizes the language rights of children to be educated in their ancestral language.<sup>410</sup> Article two also contains a non-discrimination provision.

### Article 2

(1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Articles 28 – 29 focus on children's right to be educated in their ancestral language.

### Article 28

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<sup>410</sup> Convention on the Rights of the Child, UN Doc. A/Res/44/25, 20 November 1989

(1) States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity,

Article 29 similarly acknowledges that,

(1) parties agree that the education of the child shall be directed to... (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 country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own.

Finally, Article 30 is specific to Indigenous children's rights to their ancestral language:

In those States in which ethnic, religious, or linguistic minorities or persons of indigenous origins exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.<sup>411</sup>

These international treaties create binding treaty obligations on Canada to advance language rights in accordance with principles contained in each treaty.

### Reporting to Treaty Bodies

As signatory to these UN Treaties, Canada also has reporting obligations to the treaty bodies that monitor the treaties it has ratified. A significant aspect of Canada's obligation is to report on how it has implemented its treaty obligations domestically. For example Canada has a

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<sup>411</sup> Committee on the Rights of the Child, General Comment No. 11 (2009).

responsibility to report to the Human Rights Committee which is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights as well as the United Nations Committee on Economic, Social and Cultural Rights which monitors the International Covenant on Economic, Social and Cultural Rights.

In 2006, the United Nations Human Rights Committee<sup>412</sup> and the United Nations Committee on Economic, Social and Cultural Rights both noted Canada's failure to comply with international standards because the country had not implemented any of the recommendations contained in the 2005 Task Force report on Aboriginal Language and Cultures *Towards a New Beginning A Foundational Report for a Strategy to Revitalize Indian, Inuit and Métis Languages and Cultures*.<sup>413</sup> Among the many concerns, the Committee on Economic, Social and Cultural Rights noted that "no time frame has been set up for the consideration and implementation of the recommendations of the Task Force on Aboriginal Languages and Cultures Report, and that no concrete measures have been adopted in the area of intellectual property for the protection of ancestral knowledge and traditional knowledge of Aboriginal peoples."<sup>414</sup> The Human Rights Committee recommended an "increase in Canada's efforts for the protection and promotion of Aboriginal languages and cultures."<sup>415</sup> The Committee on Economic, Social and Cultural Rights has insisted that governments have an obligation to protect and promote Indigenous languages and cultures. In the Committee's General Comment No. 21 recognizes the integral connection between Indigenous peoples culture and language with their existence and well-being.<sup>416</sup>

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<sup>412</sup> Concluding Observations of The Human Rights Committee CCPR/C/CAN/CO/5, 20 April 2006 at para 10.

<sup>413</sup> Task Force on Aboriginal Languages and Cultures, *Towards a New Beginning: A Foundational Report for a Strategy to Revitalize Indian, Inuit and Métis Languages and Cultures* (Ottawa: Department of Canadian Heritage, 2005), (available online at [www.aboriginallanguagetestaskforce.ca](http://www.aboriginallanguagetestaskforce.ca)). [The Task Force report recommends constitutional recognition of Aboriginal languages and guaranteed federal funding.]

<sup>414</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, 22 May 2006 at para 33 and 67.

<sup>415</sup> Concluding Observations of The Human Rights Committee CCPR/C/CAN/CO/5, 20 April 2006 at para 10.

<sup>416</sup> Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009).

## NON-BINDING TREATY OBLIGATIONS

There are also non-binding treaty obligations that fall under the umbrella of customary international law. The fact that Canada regularly participates in international mechanisms such as the United Nations' Expert Mechanism on the Right of Indigenous Peoples and the United Nations' Permanent Forum on Indigenous Issues create expectations that international norms are being advanced and applied domestically. Recently, two Declarations that recognize Indigenous peoples language rights have been adopted. This section briefly examines certain non-binding treaty mechanisms and processes that are significant to advancing Aboriginal language rights in Canada.

### American Declaration on the Rights of Indigenous Peoples

On June 2016, the Organization of American States (OAS), which deals with human rights regionally, implemented a Declaration on the Rights of Indigenous Peoples<sup>417</sup> that recognizes the linguistic rights of Indigenous peoples. As a member of the OAS, Canada has participated in the development and improvement of the American Declaration on the Rights of Indigenous Peoples but claimed that they had not participated substantively in the more recent negotiations. Canada also did however make two statements. The first: "Canada is now fully engaged, in full partnership with Indigenous peoples in Canada, to move forward with the implementation of the

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<sup>417</sup> American Declaration on the Rights of Indigenous Peoples, Res. AG/doc.5537, adopted without vote by Organization of American States, General Assembly, 46<sup>th</sup> sess., Santo Domingo, Dominican Republic, June 15, 2016. For an analysis of the American Declaration on the Rights of Indigenous Peoples and the UN Declaration on the rights of Indigenous Peoples refer to: Joffe, Paul. 2017. "Advancing Indigenous Peoples' Human Rights: New Developments in the Americas." <http://www.colombiancaravana.org.uk/wp-content/uploads/2017/01/Advancing-IPs27-Human-Rts-New-Dev27ts-in-the-Americas-Joffe-FINAL-Jan-4-17.pdf> Accessed July 1, 2017)



UN Declaration.”<sup>418</sup> Secondly, Canada indicated that it is: “committed to continue working with its partners in the OAS on advancing indigenous issues across the Americas.”<sup>419</sup> Paul Joffe, a human rights expert on Indigenous rights, suggests that: “(t)his statement does not diminish in any way Canada’s human rights obligations relating to the American Declaration. In light of the positive positions of the current government, it is not surprising that Canada chose to join other States at the OAS General Assembly and adopt the American Declaration without a vote.”<sup>420</sup> In light of Canada’s commitment to advance Indigenous rights, the American Declaration on the Rights of Indigenous Peoples remains a significant human rights instrument for advancing Indigenous language rights in a number of areas such as the right to use, transmit and to establish and implement educational institutions as well as provide education in Indigenous languages. These principles are contained in the following articles:

#### Article VI. Collective rights

Indigenous peoples have collective rights that are indispensable for their existence, well-being, and integral development as peoples. In that regard, States recognize and respect the right of indigenous peoples to their collective action; to their juridical, social, political, and economic systems or institutions; to their own cultures; to profess and practice their

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<sup>418</sup> In regard to Canada’s statement in the American Declaration, see footnote 2 (Canada) of the final text of American Declaration on the Rights of Indigenous Peoples, Res. AG/doc.5537, adopted without vote by Organization of American States, General Assembly, 46<sup>th</sup> sess., Santo Domingo, Dominican Republic, June 15, 2016.

<sup>419</sup> In regard to Canada’s statement in the American Declaration, see footnote 2 (Canada) of the final text of American Declaration on the Rights of Indigenous Peoples, Res. AG/doc.5537, adopted without vote by Organization of American States, General Assembly, 46<sup>th</sup> sess., Santo Domingo, Dominican Republic, June 15, 2016.

<sup>420</sup> Joffe, Paul. 2017. “Advancing Indigenous Peoples’ Human Rights: New Developments in the Americas.” <http://www.colombiancaravana.org.uk/wp-content/uploads/2017/01/Advancing-IPs27-Human-Rts-New-Dev27ts-in-the-Americas-Joffe-FINAL-Jan-4-17.pdf> Accessed July 1, 2017) at 8

spiritual beliefs; to use their own tongues and languages; and to their lands, territories and resources. States shall promote, with the full and effective participation of indigenous peoples, the harmonious coexistence of the rights and systems of different population groups and cultures.

#### Article XIV. Systems of knowledge, language, and communication

1. Indigenous peoples have the right to preserve, use, develop, revitalize, and transmit to future generations their own histories, languages, oral traditions, philosophies, systems of knowledge, writing, and literature, and to designate and retain their own names for their communities, individuals, and places.

2. States shall adopt adequate and effective measures to protect the exercise of this right with the full and effective participation of indigenous peoples.

#### Article XV. Education

3. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

4. States, in conjunction with indigenous peoples, shall take effective measures to enable indigenous individuals living outside their communities, particularly children, to have access to education in their own languages and cultures.

There is also a provision for financial and technical assistance so that Indigenous peoples are able to enjoy the rights contained in the Declaration:

#### Article XXXVII

Indigenous peoples have the right to have access to financial and technical assistance from

States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

## United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) was adopted by the UN General Assembly in September 2007. Canada's support has been evolutionary. In 2010, Canada issued a Statement of Support endorsing the principles of the UN Declaration on the Rights of Indigenous Peoples declaring it an aspirational non-binding document. Then, in 2015, the Prime Minister of Canada committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples<sup>421</sup> The announcement raises a number of questions such as how the federal government intends to implement or harmonize Canadian law according with the principles of international law. Canada officially adopted the UN Declaration on the Rights of Indigenous Peoples in 2016. Relevant sections pertaining to Indigenous language rights are referenced in Articles 13, 14, 15 and 16 where Indigenous peoples have the right to develop and transmit to future generations their histories, languages and oral traditions, philosophies, writing systems and literatures (article 13); to control their own education systems and institutions providing education in their own languages (articles 14 and 15); to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination (article 16).

## UN Permanent Forum Expert Group Meetings on Indigenous Languages

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<sup>421</sup> Online Editor, "Justice Minister Jody Wilson-Raybould's Opening Address at UN Permanent Forum on Indigenous Issues" *Northern Public Affairs* (9 May 2016), online: <[www.northernpublicaffairs.ca/index/justice-minister-jody-wilson-rayboulds-opening-address-at-un-permanent-forum-on-indigenous-issues/](http://www.northernpublicaffairs.ca/index/justice-minister-jody-wilson-rayboulds-opening-address-at-un-permanent-forum-on-indigenous-issues/)>; Online Editor, "Canada and UNDRIP: Indigenous Leaders Respond to the Announcement" *Northern Public Affairs* (11 May 2016), online: [www.northernpublicaffairs.ca/index/canada-undrip-indigenous-leaders-respond-to-announcement/](http://www.northernpublicaffairs.ca/index/canada-undrip-indigenous-leaders-respond-to-announcement/)

Over the past decade Indigenous language rights have been included in the agenda of many United Nations committees and organizations. In January, 2016, the Permanent Forum on Indigenous Issues organized another expert group meeting in New York to consider the theme “Indigenous languages: preservation and revitalization (articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples).”<sup>422</sup> One of the major issues emphasized during the Permanent Forum meeting was that the vast majority of Indigenous language are endangered and without immediate action will likely die. Again, the meeting participants focused on mother tongue education as an important was to address this troubling issue because

Learning in that mother tongue not only strengthens the ability of indigenous children to communicate in their own language but also benefits their overall academic achievements and lowers dropout rates. Furthermore a strong foundation in the indigenous language has been shown to benefit the ability of those children to learn the dominant non-indigenous language used where they live.<sup>423</sup>

In addition to the emphasis on mother-tongue education for children, participants expressed great concerns over the lack of national data on the status of Indigenous languages in most countries. It was also noted that

many countries did not collect any data on the situation of indigenous languages and that, when they did, the methods were faulty. Census questions often fail to accurately reflect to

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<sup>422</sup> Permanent Forum on Indigenous Issues. “Indigenous languages: preservation and revitalization (articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples).” Economic and Social Council, February 2016. E/C.19/2016/10.

<sup>423</sup> Permanent Forum on Indigenous Issues. “Indigenous languages: preservation and revitalization (articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples).” Economic and Social Council, February 2016. E/C.19/2016/10 at para 14.

what degree an indigenous language is spoken and used. For this reason census offices must endeavour to work in cooperation with indigenous peoples when conducting censuses and other data collection enterprises, not only in their implementation but also at all stages, including their development<sup>424</sup>

A number of significant issues were examined during the meeting, including the importance of linguistic diversity and the connection between language rights and other fundamental human rights. Participants raised concerns regarding threats to all Indigenous languages and made recommendations for the revitalization, promotion and protection of indigenous languages.<sup>425</sup> Many emphasized the link between the protection and advancement of language rights and other fundamental human rights such as health, work and self determination.<sup>426</sup> Participants also highlighted mother tongue education for children that includes the active participation of Indigenous peoples in the implementation of education policies. Furthermore, conference participants stressed, active participation should adopt the principles of free, prior and informed consent.<sup>427</sup> Above all, participants agreed that “Indigenous peoples themselves must claim ownership of their languages and direct revitalization efforts of their languages.”<sup>428</sup>

#### Expert Mechanism on the Rights of Indigenous Peoples

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<sup>424</sup> Permanent Forum on Indigenous Issues, “Indigenous languages: preservation and revitalization (articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples).” Economic and Social Council, February 2016. E/C.19/2016/10 at para 22.

<sup>425</sup> Permanent Forum on Indigenous Issues, “Report of the international expert group meeting on indigenous languages” Economic and Social Council. January 8, 2008. E/C.19/2008/3.

<sup>426</sup> Permanent Forum on Indigenous Issues, “Report of the international expert group meeting on indigenous languages” Economic and Social Council. January 8, 2008. E/C.19/2008/3 at para 28.

<sup>427</sup> Permanent Forum on Indigenous Issues, “Report of the international expert group meeting on indigenous languages” Economic and Social Council. January 8, 2008. E/C.19/2008/3 at para 40 (d) and 40 (h).

<sup>428</sup> United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, 7<sup>th</sup> Sess., “Report of the international expert group meeting on indigenous languages” (E/C.19/2008/3, January 21, 2008) at 44 (d).

In 2012, a study of the Expert Mechanism on the Rights of Indigenous Peoples was submitted to the UN Human Rights Councils on the role of languages and culture in the promotion and protection of the rights and identity of Indigenous peoples.<sup>429</sup> The study provides regional perspectives “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 language and cultural rights.”<sup>430</sup> Other submissions to the UN Human Rights Councils came from scholars who participated in the Brunel University Law School and Office of the High Commissioner for Human Rights expert seminar on indigenous peoples’ languages and cultures in London, England, in March 2012.<sup>431</sup> The study by EMRIP concluded, in part, that immediate action is required to address “the effects of historical and ongoing discrimination against indigenous peoples and individuals based on their cultures and use of their languages. Their languages and cultures will only flourish in environments when they are more broadly respected in their own right and for their contribution to an understanding of humanity.”<sup>432</sup> The Expert Mechanism also made several recommendations that include the development of an awareness-raising campaign due to the ignorance about Indigenous languages of governments, legislators,

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<sup>429</sup>Expert Mechanism on the Rights of Indigenous Peoples. “Role of Language and Culture in the Promotion and Protection of the Rights and Identity of Indigenous Peoples.” Human Rights Council. A/HRC/21/53. August 16, 2012.

<sup>430</sup> See Summary: Expert Mechanism on the Rights of Indigenous Peoples. “Role of Language and Culture in the Promotion and Protection of the Rights and Identity of Indigenous Peoples.” Human Rights Council. A/HRC/21/53. August 16, 2012.

<sup>431</sup> See: UN Human Rights Office of the High Commissioner:  
<http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/StudyLanguages.aspx>

<sup>432</sup> Expert Mechanism on the Rights of Indigenous Peoples. “Role of Language and Culture in the Promotion and Protection of the Rights and Identity of Indigenous Peoples.” Human Rights Council. A/HRC/21/53. August 16, 2012 para. 7.

policymakers, educators and the general public.<sup>433</sup> Another recommendation stressed the important role Indigenous women play as the primary transmitters of language. It was recommended that the Commission on the status of Women should consider as a priority area empowering Indigenous women to assert greater control over matters pertaining to language revitalization.<sup>434</sup> And finally, there was strong recommendation that member countries should

develop language policies to promote and protect indigenous languages. Such policies should ensure that indigenous children are provided with quality education in their indigenous mother tongue, which would encompass not only language instruction but also an overall education in the indigenous mother tongue. Such an education should be provided by teachers who are fluent in the relevant indigenous language and in cooperation with indigenous peoples.<sup>435</sup>

### Indigenous Languages and Bio-Diversity

Indigenous language experts often argue that the protection of Indigenous languages is not only a cultural and moral imperative but also an important aspect of global efforts to address biodiversity loss, climate change and other environmental challenges.<sup>436</sup> The Secretariat of the Convention on Biological Diversity states that “Indigenous languages hold the knowledge of how to protect and sustainably use some of the most vulnerable and biologically diverse ecosystems in the world.”<sup>437</sup>

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<sup>433</sup> Permanent Forum on Indigenous Issues, “Indigenous languages: preservation and revitalization (articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples).” Economic and Social Council, February 2016. E/C.19/2016/10, para 42.

<sup>434</sup> Ibid, para. 58.

<sup>435</sup> Ibid, para. 60.

<sup>436</sup> United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, 7<sup>th</sup> Sess., “Report of the international expert group meeting on indigenous languages” E/C.19/2008/3, January 21, 2008 at paragraph 13.

<sup>437</sup> The Secretariat of the Convention on Biological Diversity, *Indigenous Language in the Context of the Convention on Biological Diversity*, PFII/2008/EGM/11, January, 2008, para 3.

## United Nations Economic and Social Council

As part of the United Nations responsibility to advance the rights of Indigenous peoples, the organization has emphasized the issue of endangerment through a number of public initiatives. In 2008, for example, the United Nations General Assembly proclaimed 2008 as the International Year of Languages. In light of this initiative, the Permanent Forum on Indigenous Issues held a meeting of Indigenous language experts to discuss themes such as the importance of linguistic diversity and the connection between language rights and all other fundamental rights<sup>438</sup>

In 2008, UNESCO called for a conference on linguistic diversity that includes Indigenous language rights.<sup>439</sup> The proposed agenda of the conference included constitutional and other juridical protection of Indigenous languages, democratic policies in the promotion of Indigenous languages, actions by Indigenous peoples to protect and promote Indigenous languages, and media promotion of Indigenous languages.<sup>440</sup> As a result, the Permanent Forum on Indigenous Issues organized an expert group meeting on Indigenous languages.<sup>441</sup> Most recently in November 2016, the United Nations General Assembly adopted another resolution on the rights of indigenous peoples, stressing the urgent need to preserve, promote and revitalize endangered languages, and proclaimed 2019 as the International Year of Indigenous Languages, inviting UNESCO to “serve as the lead agency for the Year.”<sup>442</sup>

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<sup>438</sup> The United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, 7<sup>th</sup> Sess., “Report of the international expert group meeting on indigenous languages” (E/C.19/2008/3, January 21, 2008)

<sup>439</sup> United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, “Report on the seventh session (21 April – 2 May 2008) (E/2008/43 E/C.19/2008/13) at para 96.

<sup>440</sup> United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, 7<sup>th</sup> Sess., “Report of the international expert group meeting on indigenous languages” (E/C.19/2008/3, January 21, 2008).

<sup>441</sup> Permanent Forum on Indigenous Issues, “Report of the international expert group meeting on indigenous languages” Economic and Social Council. January 8, 2008. E/C.19/2008/3.

<sup>442</sup> [http://www.unesco.org/new/en/unesco-liaison-office-in-new-york/about-this-office/single-view/news/united\\_nations\\_general\\_assembly\\_proclaims\\_2019\\_as\\_the\\_intern/](http://www.unesco.org/new/en/unesco-liaison-office-in-new-york/about-this-office/single-view/news/united_nations_general_assembly_proclaims_2019_as_the_intern/)



There are a number of mechanisms within the United Nations as well as the Organization of American states that are committed to advancing and protecting the language rights of Indigenous peoples. These mechanisms become significant platforms for Aboriginal peoples in Canada when the government and the courts do not adequately recognize Indigenous language rights domestically in accordance with international standards.

### RECOGNITION: OUTSIDE CANADA

In addition to international law, Indigenous peoples have lobbied successfully to gain legal recognition for language rights in a number of countries outside of Canada. The governments of New Zealand, the United States, Norway, Finland, Greenland and Bolivia recognize Indigenous languages constitutionally. These countries support Indigenous languages as part of their cultural heritage. Furthermore, the language laws of these countries reflect changing attitudes towards Indigenous peoples' language and culture.

#### New Zealand

In New Zealand, section 77 A of the *Maori Affairs Act 1953 (NZ)*, superseded by the *Maori Languages Act, 1987*, declares the Maori language to be an official language of New Zealand.<sup>443</sup> However, many Maori remain sceptical whether official language status will help advance the Maori language. Currently, the legislation creates a statutory right to speak Maori in certain legal proceedings. Mamari Stephens, a senior lecturer of law at the University of Wellington, asserts that "To recognize Maori officially is one thing, to enable its use widely is another thing

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<sup>443</sup> *The Maori Language Act 1987* gives Maori language recognition in circumstances beyond official ceremonies but it does not clearly specify the extent of Maori language rights in New Zealand. In Courts of Law, Commissions of Inquiry and Tribunals, it confers the right to speak Māori to any member of the Court, any party, witness or counsel. It establishes Te Taura Whiri i te Reo Māori (Māori Language Commission).

altogether. Clearly, Tribunal did not accept that ‘official language’ status merely gave rise to a right to use Maori in the courts.’<sup>444</sup>

The Waitangi Tribunal<sup>445</sup> has deemed the Maori language a national treasure or *taonga*, which the Crown must protect.<sup>446</sup> Although the government accepts the Maori language as a treaty right, language rights claims cannot be enforced because they have not been legislated into New Zealand law.<sup>447</sup> The Waitangi Tribunal can suggest interpretations of the treaty to the government, but it does not have the authority to compel the creation of legislation. Still, some positive developments have come from a language rights claim under the Waitangi Tribunal, such as the recognition that the Maori language is a treaty right.

The *Maori Languages Act* does, however, create the *Te Taura I Te Reo Maori*, or the Maori Language Commission. It was established in 1987 to “promote the use of Maori as a living language and as an ordinary means of communication.”<sup>448</sup> Because of the Commission’s work, many Maori people have been empowered to learn Maori and take pride in their language.<sup>449</sup> Government changed its broadcasting policy and introduced the *State Sector Act* in 1988, requiring chief executives of government departments to increase involvement of Maori

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<sup>444</sup> Mamari Stephens, "A House with Many Rooms: Rediscovering Māori as a Civil Language in the Wake of the Māori Language Act (1987)" in *Poia FINISH* edited by Rawinia Higgins, 72.

<sup>445</sup> The Treaty of Waitangi Act 1975 was established by the Waitangi Tribunal to hear and make recommendations to the government on claims from Maori that any Act, regulation, Order in Council, policy, practice or action, is inconsistent with the principles of the Treaty of Waitangi.

<sup>446</sup> Article 2 of the Treaty of Waitangi guarantees to Māori hapu (tribes) the control and enjoyment of those resources and taonga that it is their wish to retain. The preservation of a resource base, restoration of tribal self-management, and the active protection of taonga, both material and cultural, are necessary elements of the Crown’s policy of recognising rangatiratanga.

<sup>447</sup> *Te Heuheu Tukino v Aotea District Maori Land Board* [1941] 2 NZLR 188 at 210.

<sup>448</sup> The mandate of the Maori Language Commission is available online:

[http://www.tetaurawhiri.govt.nz/english/about\\_e/about.shtml](http://www.tetaurawhiri.govt.nz/english/about_e/about.shtml)

<sup>449</sup> The Maori Language Commission outcome is available online:

[http://www.tetaurawhiri.govt.nz/english/about\\_e/about.shtml](http://www.tetaurawhiri.govt.nz/english/about_e/about.shtml)

throughout the Public Service and recognize the employment aspirations and requirements of the Maori people.<sup>450</sup>

The courts have provided other assistance in defining Maori language rights. Judges in *Te Weehi* described Maori languages as fundamental rights arising naturally from the condition of human existence.<sup>451</sup> The court further recognized Maori languages as a continuing, pre-contact right because they were a universal means of communicating prior to the arrival of European settlers. Other courts have described Maori language rights as a living system<sup>452</sup> and a right so fundamental that legislatures cannot take them away.<sup>453</sup> *Broadcasting (Assets No. 2)*<sup>454</sup> provides another perspective on treaty rights by noting that the treaty objective “was to ensure a proper place in the land for the two peoples on whose behalf it was signed. Nothing could be further from that objective than the obliteration of the culture of one of them, or its absorption into that of the other. This means that the protection of the Maori language is recognized as an essential element of Maori culture -- and is therefore a fundamental Treaty commitment on the part of the Crown.”<sup>455</sup> Arguably, courts have made fairly generous interpretations of Maori language rights, but the New Zealand government has only recognized Maori language rights under the doctrine of aboriginal rights.<sup>456</sup> The courts’ powers have their limits.

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<sup>450</sup> EEO Progress in the Public Service 2003 Report with Special Focus on Maori available on line: [http://www.ssc.govt.nz/display/document.asp?docid=3949&pageno=2#P31\\_2776](http://www.ssc.govt.nz/display/document.asp?docid=3949&pageno=2#P31_2776)

<sup>451</sup> *Te Weehi* [1986] 1 NZLR 680 at 686.

<sup>452</sup> *Broadcasting (Assets No 1)* (unreported, High Court of New Zealand, Wellington, McGechean J. 3 May 1991, CP 942/88, 20) at 60. Another interesting article that charts the development of Maori participation in New Zealand government and the printing of certain constitutionally and legally significant texts in Maori. Phil Parkinson, “Strangers in the House – the Maori Language in Government and the Maori Language in Parliament 1865 – 1900” 32 *Victoria U. Wellington L. Rev.* 2000.

<sup>453</sup> *SOE Case* [1987] 1 NZLR 641.

<sup>454</sup> *Broadcasting (Assets No. 2)* [1992] 2 NZLR at 587.

<sup>455</sup> *Broadcasting (Assets No. 2)* [1992] 2 NZLR at 588.

<sup>456</sup> Nin Tomas, “The Maori Language – The Chiefly Language of Aotearoa – The Long Struggle” in Greta Bird, Gary Martin, Jennifer Nielsen eds., *Majah: indigenous peoples and the law* (Australia: The Federation Press, 1996), 161.

One of the other limitations of the *Maori Languages Act* is that it does not generally go beyond a guarantee to speak the Maori language or the right to obtain interpretation in legal proceedings. There are no legal requirements for the New Zealand government to use the Maori language and it

generally ignore[s] any request to use Māori. This is not to say that the New Zealand Government has not taken steps to protect and promote the Māori language: quite the opposite, it has put into place some very interesting and innovative programmes – yet it remains that from a legal point of view, government authorities have little or no obligation to respond in this language, and especially do not need to employ bilingual civil servants to ensure the use of Māori, despite its official status.<sup>457</sup>

Only the Maori Land Court and the Waitangi Tribunal have addressed the use of Maori languages formally.<sup>458</sup> The New Zealand courts have encountered somewhat controversial interpretive issues when applying the Maori Language Act, and the government requires a fourteen-day notice if anyone intends to speak Maori<sup>459</sup> in court proceedings.<sup>460</sup> The court has been accommodating in both areas, using its discretionary powers to resolve the language claims

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<sup>457</sup> De Varennes, Fernand, and Elżbieta Kuzborska. "Language, rights and opportunities: The role of language in the inclusion and exclusion of indigenous peoples." *International Journal on Minority and Group Rights* 23, no. 3 (2016): 281-305.

<sup>458</sup> Tomas, Nin. "The Maori Language," 366.

<sup>459</sup> Speaking Te Reo or Maori or Use Sign Language in Court on <https://www.environmentcourt.govt.nz/te-reo-nzsl/> (Retrieved May, 2016)

<sup>460</sup> *R v Hillman* [1991] DCR 68. The District Court ruled that "in keeping with the spirit and intent of the Act, ... where a person desired to use Maori for expressing himself, he should also have the choice of electing to have questions put to him translated into the same language." In *Ngahe v MAF* HC Rotorua, Ap 27/92 Fisher J 20 August 1992, a defendant wanted to file an affidavit in Maori ... the court indicated that "although the appellant and his witness have no right to file and use documents expressed in the Maori language, the Court does have a discretionary power to direct that a document expressed in Maori be accepted."

generally by accepting Maori in court; however it does not give much weight to the decision by the Waitangi Tribunal to recognize Maori as a treaty right.<sup>461</sup>

#### The United States: Hawaii

Decades of destructive language policies have endangered the Hawaiian language. As a result, only a few elders on the isolated island of Niihau spoke the Hawaiian language in the 1970s. Since then, many Indigenous peoples in Hawaii have taken ownership of Hawaiian education.<sup>462</sup> The United States has also recognized Indigenous languages in limited ways. In 1978, the state legislature of Hawaii recognized Hawaiian as an official language, which generated a language revitalization program. Ten years later, a Hawaiian senator introduced a proposal in Congress, resulting in the adoption of the *Native American Language Act* in October 1990. In October 1992, additional legislation was passed in Hawaii that set up a grant program to ensure the survival and viability of Native American languages across the country.<sup>463</sup> This legislation acknowledges that the United States must act with Native Americans to help preserve Indigenous languages. It also establishes a federal policy “to preserve, protect and promote the rights and freedom of Native Americans to use, practice and develop Native American language and to encourage and support the use of Native American languages as a medium of instruction.” Section 104 of *the Native American Languages Act* states that the policy of the United States is to

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<sup>461</sup> Graham Rossiter, “The Use of Maori in Legal Proceedings”, *New Zealand Law Journal*, (September 2004): 365.

<sup>462</sup> Amy D. Kalili, paper presented at the expert group meeting on the theme “Indigenous languages: preservation and revitalization (articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples)”, 19 to 21 January 2016 at para 23. Available from: [www.un.org/esa/socdev/unpfii/documents/2016/egm/Paper\\_Amy\\_Kalili2.pdf](http://www.un.org/esa/socdev/unpfii/documents/2016/egm/Paper_Amy_Kalili2.pdf).

<sup>463</sup> Mark Fettes, “The International Context of Aboriginal Linguistic Rights,” *Canadian Centre for Linguistic Rights Bulletin*, Vol. 1 No. 3 (1994): 10.

- (1) preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages;
- (2) allow exceptions to teacher certification requirements for Federal programs and programs funded in whole or in part by the Federal Government, for instruction in Native American languages when such teacher certification requirements hinder the employment of qualified teachers who teach in Native American languages, and to encourage State and territorial governments to make similar exceptions ....<sup>464</sup>

The recently established non-profit organization ‘Aha Pūnana Leo’ has led a movement to revitalize Hawaiian as a living language. The Hawaiian educational system also teaches the language from pre-school through the university, the latter at the University of Hawaii at Hilo.<sup>465</sup>

#### Norway, Sweden and Finland

In the 1980’s, all Scandinavian countries legislated legal guarantees and regulations for the right to use the Sami language.<sup>466</sup> Norway adopted the first Sami language law in 1990.<sup>467</sup> Then,

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<sup>464</sup> P.L. 101-477 (October 30, 1990)

<sup>465</sup> Amy D. Kalili, paper presented at the expert group meeting on the theme “Indigenous languages: preservation and revitalization (articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples)”, 19 to 21 January 2016. Available from:

[www.un.org/esa/socdev/unpfii/documents/2016/egm/Paper\\_Amy\\_Kalili2.pdf](http://www.un.org/esa/socdev/unpfii/documents/2016/egm/Paper_Amy_Kalili2.pdf). At para 23

<sup>466</sup> The Finnish Sami Parliament, “Land Rights, Linguistic Rights, and Cultural Autonomy for the Finnish Sami People.” *Indigenous Affairs*, no. 33/4 (July-December, 1997); Ulla Aiki-Puoskari, *The education of the Sámi in the comprehensive schooling of three Nordic countries: Norway, Finland and Sweden*, Resource Centre for the Rights of Indigenous Peoples, 2005, <http://arcticcircle.uconn.edu/SEEJ/sami1.html> (accessed December 3, 2017); Nils Jernsletten, “Sami language communities and the conflict between Sami and Norwegian” in *Language Conflict and Language Planning*, ed. Ernst Håkon Jahr (Berlin and New York: Mouton de Gruyter, 1993) at 115-132. Ole Henrik Magga, Tove Skutnabb-Kangas, “The Saami Languages: the present and the future.” *Cultural Survival Quarterly*, no. 25.2 (July 31, 2001), <http://www.cs.org/publications/CSQ/csq-article.cfm?id=1294> (accessed December 3, 2008); Malgosia Fitzmaurice, U. Aikio-Puoskari, M. Pentikäinen, and F. Horn. "The Language Rights of the Indigenous Saami in Finland—Under Domestic and International law, *Juridica Lapponica* 26." (2001): 325-329, [http://www.un.org/esa/socdev/unpfii/documents/2016/egm/FirstPeoplesCulturalCouncil\\_Canada.pdf](http://www.un.org/esa/socdev/unpfii/documents/2016/egm/FirstPeoplesCulturalCouncil_Canada.pdf); Ulla Aikio-Puoskari, “Sámi Language in Finnish Schools,” *Bicultural Education in the North. Ways of Preserving and Enhancing Indigenous Peoples' Languages and Traditional Knowledge*, Münster: Waxmann, (1997), 47-57.;

<sup>467</sup>David Corson, “Norway’s “Sámi Language Act”: Emancipatory Implications for the World’s Aboriginal Peoples,” *Language in Society*, Vol. 24 (4) (1995): 493-514; Asta Balto, “Saami Bilingual Education in Norway,” in *Encyclopedia of Language and Education vol. 5, Bilingual education*, edited by Jim Cummins and David Corson,

in 1991 Finland established its *Law on the Use of the Sami Language Before the Authorities*. However, the Sami face several challenges in the language revitalization efforts.<sup>468</sup> Sweden, in contrast, has adopted few regulations on the use of Sami.<sup>469</sup> All three states have directly elected Sami Parliaments.<sup>470</sup> Although these are considered consultative bodies, the fact that they are elected gives them considerable weight in the legislature when faced with Sami language issues because they are able to speak to the issues that directly impact their community.

In Norway, Sami have been making some language gains in the area of public education.<sup>471</sup> In 1959, the Sami were granted instruction in the Sami language in primary schools.<sup>472</sup> In 1969, legislation in Norway formalized the right of children of Sami-speaking parents in Sami districts to be instructed in the language.<sup>473</sup> The *Primary and Secondary Education and Training (the Education Act)* affirms section 6 – 2

In Sami districts all children at the primary and lower secondary level have the right to receive their education both in Sami and through the medium of Sami.

Outside Sami districts, if at least ten pupils in a municipality wish to receive instruction in and through the medium of Sami, they have the right to such education as long as there remain at least six pupils in the group.

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(Kluwer Academic, 1997), 77-86.

<sup>468</sup> Marja-Liisa Olthuis, Kivelä, Suvi., and Skutnabb-Kangas, Tove, *Revitalising Indigenous Languages : How to Recreate a Lost Generation* (Linguistic Diversity and Language Rights) (Bristol:Multilingual Matters, 2013); Aikio-Puoskari & Penttikaninen.

<sup>469</sup> Birger Winsa, "Language Planning in Sweden," *Journal of Multilingual and Multicultural Development* 20, no. 4-5 (1999), 376-473.

<sup>470</sup> Finland in 1973, Norway in 1987, and Sweden in 1992.

<sup>471</sup> Marja-Liisa Olthuis, Kivelä, Suvi., and Skutnabb-Kangas, Tove, *Revitalising Indigenous Language. s : How to Recreate a Lost Generation* (Linguistic Diversity and Language Rights) (Bristol:Multilingual Matters, 2013),

<sup>472</sup> Torvald Falch, Per Selle, and Kristin Strømsnes. "The Sámi: 25 Years of Indigenous Authority in Norway," *Ethnopolitics* 15, no. 1 (2016): 125-43.

<sup>473</sup> Corson, "Norway's "Sámi Language Act," 493-514

The municipality may decide to offer Sami instruction at one or more of the schools in the municipality.

The municipality may issue regulations stipulating that all children at the primary and secondary level in Sami districts shall receive instruction in Sami.

Outside Sami districts, Sami children at the primary and lower secondary level have the right to receive Sami instruction. The Ministry may issue regulations concerning alternative forms of such instruction when it cannot be provided by suitable teachers at the school attended by the children.

From grade 8, pupils decide for themselves whether they will receive Sami instruction pursuant to the first, second and fifth subsections.

In secondary education, Sami also have certain rights to be educated in the Sami language:

#### Section 6 - 3

Sami pupils in upper secondary education and training have the right to receive Sami instruction. The Ministry may issue regulations concerning alternative forms of such instruction when it cannot be provided by suitable teachers at the school attended by the pupils.

The Ministry may issue regulations stipulating that certain schools shall provide instruction in or through the medium of Sami or in specific Sami subjects in upper secondary



education within certain courses or for certain groups. The county authority may also elect to offer such instruction.<sup>474</sup>

## Greenland

The Indigenous people in the Danish territory of Greenland have also made important gains with language rights. In 1979, *Home Rule*<sup>475</sup> recognized Greenlandic, not Danish, as the main language of the country. *Section 9* states that

(1) Greenlandic shall be the principal language...

(2) Either language may be used for official purposes.<sup>476</sup>

Since then, great progress has taken place. Greenlandic has become the medium of instruction in schools. Most inhabitants of Greenland acknowledge that children of Danish parents living in Greenland should learn Greenlandic.<sup>477</sup>

## Bolivia

The case of Bolivia provides an example to Canada and the world of how government legislation can help revive Indigenous languages in a number of areas. The Bolivian Constitution declares 36 Indigenous languages, as well as Spanish, as official languages of the country.<sup>478</sup> The constitution also requires government representatives to use at least two official languages, including Spanish.<sup>479</sup> In 1994, education reform was implemented, resulting in intercultural

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<sup>474</sup> Act of 17 July 1998 no. 61 relating to Primary and Secondary Education and Training (the Education Act) <https://www.regjeringen.no/contentassets/b3b9e92cce6742c39581b661a019e504/education-act-norway-with-amendments-entered-2014-2.pdf>

<sup>475</sup> *The Greenland Home Rule Act* No. 577 of 29 November 1978.

<sup>476</sup> *The Greenland Home Rule Act* No. 577 of 29 November 1978.

<sup>477</sup> Lars S. Vikor, *The Nordic Languages: Their Status and Interrelations* (Osolo: Novus Press, 1993), 110.

<sup>478</sup> *Constitucion Politica del Estado Plurinacional de Bolivia* (2009), 5.I.

<sup>479</sup> *Constitucion Politica del Estado Plurinacional de Bolivia* (2009), 5.II

bilingual education for Indigenous children.<sup>480</sup> Educational reforms include curriculum that has been developed using the knowledge, values and cultures of Indigenous peoples in Bolivia. Indigenous teaching practices and methodologies are also integrated into teaching Indigenous languages.<sup>481</sup> Over the past few years, the social and political status of Indigenous languages has been strengthened because of these legislative and educational changes.<sup>482</sup>

Bolivia and countries around the globe have demonstrated various legislative approaches that have helped implement the language rights of Indigenous peoples. These countries have successfully provided legal mechanisms to encourage Indigenous language revitalization efforts. For example, the work of the Maori Language Commission empowered the community to learn to speak Maori. However, the legal interpretation of Indigenous languages still presents significant challenges. For example, section 3 of the Maori Languages Act merely states, “The Māori language is hereby declared to be an official language of New Zealand.” Mamari Stephens (Te Rarawa), a lecturer in law in New Zealand, suggests that the Maori Languages Act provides minimal guidance to indicate what this status means. Stephens also concludes that “In the absence of further judicial determination of what this status actually means, it may well be that the effect of official status of the Māori language will continue to be determined primarily within the courts.”<sup>483</sup> One note of wisdom from the Waitangi Tribunal regarding official language status is relayed this way:

Official recognition must be seen to be real and significant which means that those who

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<sup>480</sup> Bolivia, *Education Reform Law, 1994* (Law 1565); Rosaleen Howard, “Language, Signs, and the Performance of Power: The Discursive Struggle over Decolonization in the Bolivia of Evo Morales” (2010) 37:3 *Latin Am Persp* 176.

<sup>481</sup> Sonia Comboni Salinas & José Manuel Juárez Núñez, “Education, Culture and Indigenous Rights: The Case of Educational Reform in Bolivia” (2000) 30:1 *Q Rev Comp Educ.*, 105 at 110.

<sup>482</sup> Sonia Comboni Salinas & José Manuel Juárez Núñez, “Education, Culture and Indigenous Rights: The Case of Educational Reform in Bolivia” (2000) 30:1 *Q Rev Comp Educ.*, 105 at 108.

<sup>483</sup> Stephens, “A House with Many Rooms,” 250.

want to use our official language on any public occasion or when dealing with any public authority ought to be able to do so. To recognise Māori officially is one thing, to enable its use widely is another thing altogether. There must be more than just the right to use it in the Courts. There must also be the right to use it with any department or any local body if official recognition is to be real recognition, and not mere tokenism.<sup>484</sup>

### Concluding Remarks

In this chapter, Indigenous language rights were highlighted in a number of international treaties, declarations, instruments and UN initiatives. The recognition of Indigenous language rights in other countries was also briefly reviewed. Canada should take note of the declarations of which it is a signatory and the examples of other countries when considering the languages of its own Aboriginal people. Canada also has constitutional duties, as expressed in the unwritten principles of the Constitution, to recognize and protect Aboriginal languages against assimilation.

Certain human rights scholars now suggest that countries like Canada have abandoned explicitly assimilative language and culture practices and have progressed in various ways to recognize the language rights of Indigenous peoples.<sup>485</sup> James Anaya argues that attitudes

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<sup>484</sup> Waitangi Tribunal Te Reo Māori Claim (WAI 11 1986) at [8.2.8].)

<sup>485</sup> Fernand de Varennes, *Language Minorities and Human Rights* (Netherlands: Martinus Nijhoff Publishers, 1996) at 269. See J.P. McEvoy, “Language Rights: Aboriginal Peoples”, (1997) 22 Can. L. Libraries No. 4, 156 at 156. S Rodolfo Stavenhagen, “Linguistic Minorities and Language Policy in Latin America: The Case of Mexico” in Florian Coulmas (ed.), *Linguistic Minorities and Literacy: Language Policy Issue in Developing Countries* (Berlin: Mouton Press) at 60 – 61. Fernand de Varennes, *Language Minorities and Human Rights* (Netherlands: Martinus Nijhoff Publishers, 1996) at p. 257 “Mexico was the scene of serious discussions during the 1950’s suggesting that it was inappropriate to teach in Spanish in an environment where the mother tongue was an Indigenous language. By the (mid) 1960’s, ... literacy ... in the native language and teaching Spanish as a second language became the official policy of the Mexican government. In the 1970’s, a growing demand appeared for the whole educational programme in larger indigenous communities to be truly bilingual and bicultural.

towards Indigenous rights by the international and domestic communities have changed over the past fifty years. Responding to the demands and advocacy efforts of Indigenous peoples, human rights law now recognizes Indigenous language rights as an aspect of human rights.<sup>486</sup> As a result, Anaya asserts that Indigenous language rights are included under the broad parameters of self-determination. In this context, Aboriginal peoples in Canada “have a right to maintain and freely develop their cultural identities in coexistence with other sectors of humanity ...”<sup>487</sup> Anaya also insists that the application of the UN Declaration on the Rights of Indigenous Peoples should be used with other international treaties that advance and promote the linguistic rights of all peoples.<sup>488</sup> This means that with the assistance of principles of international law that support the right of self-determination and other linguistic rights within treaties and declarations that Canada is signatory to, Aboriginal peoples have a strong foundation to assert Aboriginal language rights domestically. Canadian legal scholars have also commented on the use and application of international law and Aboriginal law to advance Indigenous rights in Canada.<sup>489</sup>

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<sup>486</sup> S. James, Anaya. “Indigenous Peoples in International Law.”

<sup>487</sup> S. James, Anaya, “Indigenous Peoples in International Law,” 99.

<sup>488</sup> Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya, UN Doc. A/HRC/9/9 (11 August 2008), para. 40).

<sup>489</sup> Centre for International Governance Innovation. *UNDRIP Implementation Braiding International, Domestic and Indigenous Laws*.

## Chapter 5

### Aboriginal Language rights under section 35 (1) of the *Constitution Act, 1982*

#### My Language

If I forget my native speech.  
And the songs that my people sing.  
What use are my eyes and ears.  
What use is my mouth.

If I forget the smell of the earth  
And do not serve it well.  
What use are my hands.  
Why am I living in the world.

How can I believe the foolish idea.  
That my language is weak and poor.  
If my mother's last words.  
Were in Evenk

Alitet Nemtushkin<sup>490</sup>

The previous chapters laid the groundwork for constitutional recognition of Aboriginal language rights to transmit, teach and learn Aboriginal languages. Chapter one provided evidence of Aboriginal customary practices and traditions regarding the sacredness and inalienability of languages. There was also evidence presented regarding how these language customs, traditions and practices evolved into inter-customary practices with Europeans creating something unique to Canada. Chapter two established how language remained central to Aboriginal societies through the cultural genocide that occurred in residential schools. Chapter three demonstrated continuity between historic language practices, customs and traditions and the central place they occupy as evidenced by continuing advocacy, regional language

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<sup>490</sup> United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, 7<sup>th</sup> Sess., “Report of the international expert group meeting on indigenous languages” E/C.19/2008/3, January 21, 2008 at 20.

legislation, constitutional provisions as well as constitutional principles. Chapter four found support for constitutional recognition under international norms (via treaties as well as international instruments and mechanisms) and in state practices in some jurisdictions outside of Canada.

In December 2016, Prime Minister Trudeau announced that the federal government would introduce an Indigenous Languages Act to support the revitalization of Indigenous languages. Legislators will have to consider many other factors such as how to implement the principles of UN Declaration on the Rights of Indigenous Peoples.<sup>491</sup> The new Working Group of Ministers recently announced may provide opportunities to “examine relevant federal laws, policies, and operational practices to help ensure the Crown is meeting its constitutional obligations with respect to Aboriginal and treaty rights; adhering to international human rights standards, including the UN Declaration on the Right of Indigenous Peoples; and supporting the implementation of the Truth and Reconciliation Commission’s Calls to Action.”<sup>492</sup>

There have been two previous attempts to introduce Aboriginal language legislation. Legislation is also being contemplated under Bill S-212, the Aboriginal Language of Canada Act. The Bill was originally introduced in 2009 by Senator Serge Joyal and again in December 2015. It was primarily opposed in the first attempt due to, again, inadequate consultation with Aboriginal communities. Lack of consultation remains one of many problems. Bill S-212 also does not provide either parents or communities the right to educate their children in their own languages. It also does not require any funding over and above what the federal government

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<sup>491</sup> General Assembly Resolution 295, UNGAOR, 61st Session, Supplement No 49, UN Doc A/RES/61/295, 46 ILM 1013 (2007).

<sup>492</sup> Prime Minister announces Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples: <http://pm.gc.ca/eng/news/2017/02/22/prime-minister-announces-working-group-ministers-review-laws-and-policies-related>, February 22, 2017.

otherwise provides for education. In fact, the bill does not impose any new initiatives that promote Aboriginal languages. Bill S-212 simply confirms the existing powers of the government to fund language programs it deems appropriate. It is unlikely that Bill S-212 will go beyond the second reading. Legislation is an important step and will require support by Aboriginal peoples as well as other federal departments.

In light of the proposed legislations on Indigenous languages, the objective of this chapter is to provide a very brief overview some of the challenges that Aboriginal peoples face with language transmission due to endangerment and the impact this is having on the health and well-being of Aboriginal peoples. The final section will also briefly examine the significance and overview some of challenges Indigenous peoples face with language revitalization efforts in education.

### Challenges to Language Transmission

A number of areas that address language transmission challenges will have to be included in Indigenous language legislation in order for it to have an impact. The following section briefly touches on the issue of endangerment, the significance between health and language, education as well as examples of language revitalization efforts occurring at the post-secondary level.

#### Endangerment

A major barrier that Aboriginal peoples face with language revitalization is endangerment. Current research and analysis has concluded that the almost ninety surviving Aboriginal

languages in Canada are under serious threat of extinction.<sup>493</sup> UNESCO says that all Aboriginal languages are endangered and have categorized the level of endangerment by language use:

- 36 per cent are critically endangered because they are only used by the great-grandparent generation,
- 18 per cent are severely endangered because they are only used by the grandparent generation,
- 16 per cent are definitely endangered because they are used by the parental and the two previous generations combined.<sup>494</sup>

The average age of Aboriginal speakers is over 60 years which means that in most cases (some exceptions are in Nunavut and some northern Aboriginal communities) Aboriginal languages are no longer being spoken at home.

The decline of speakers from 1996 to 2011 is evident in the following statistics. In 1996, 26% reported their first language was an Aboriginal language.<sup>495</sup> In the 2006 census, 18% reported their first language was an Aboriginal language.<sup>496</sup> Most recently, in the 2011 census, only 14.5% of the Aboriginal population reported that their first language was an Aboriginal language.<sup>497</sup> There is however diversity when comparing the percentage of language speakers per Aboriginal nation:

- 63.7% of Inuit speak their Indigenous language,
- 22.4% of First Nations speak their Indigenous language.<sup>498</sup>

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<sup>493</sup> UNESCO. Norris.

<sup>494</sup> UNESCSO

<sup>495</sup> National Household Survey, 2011.

<sup>496</sup> Statistics Canada, 2006.

<sup>497</sup> Statistics Canada, 2011.

<sup>498</sup> Statistics Canada 2011.



## Aboriginal Languages and Health

Researchers have now linked the decline of language speakers and loss of culture with overall poor health and well being that Aboriginal peoples are currently experiencing.<sup>499</sup> The Public Health Agency of Canada now considers language and culture amongst the key determinants of health.<sup>500</sup> The Assembly of First Nations conducted a longitudinal survey of First Nations health and concluded that language and culture impacts the overall well-being of both individuals and communities.<sup>501</sup> Summarizing this situation in contemporary terms, Dr. Billie Allan and Dr. Janet Smylie conclude: “Policies and practices emerging from imperialistic and colonial ideologies have been extremely destructive to the health and well-being of Indigenous peoples, cutting across the broad spectrum of social determinants of health.”<sup>502</sup> Joseph Magnet, Canadian language rights scholar, notes the important connection between Aboriginal youth learning to speak their ancestral language and building self worth and self-respect:

There is an even more important gap –the gap between the baseline of what aboriginal human capital is today. Aboriginal children are products of their communities. Aboriginal communities are beset with all too many challenges. Human capital has to be developed so that it will respect itself and be respected by others. Generations have been taught to loathe who and what they are as aboriginal people. The challenge for this and succeeding generations is to develop aboriginal communities so that aboriginal human capital will

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<sup>499</sup> Darcy Hallett, “Aboriginal Identity Development, Language Knowledge, and School Attrition: An examination of cultural continuity,” (PhD diss., University of British Columbia, 2005); Hallett, 2007; Chandler and Lalonde; Darcy Hallett, Michael J. Chandler, and Christopher E. Lalonde, “Aboriginal Language Knowledge and Youth Suicide,” *Cognitive Development* 22 (3) (2007): 392-9.

<sup>500</sup> Public Health Agency of Canada.

<sup>501</sup> First Nations Information Governance Centre.

<sup>502</sup> B. Allan. and J. Smylie, “First Peoples, Second Class Treatment: The Role of Racism in the Health and Well-Being of Indigenous Peoples in Canada,” Toronto, Ontario: the Wellesley Institute, 2015.

nourish its own sense of self-respect and self worth.<sup>503</sup>

Other studies suggest that Aboriginal communities lacking various markers of cultural continuity regularly experienced heightened rates of youth suicide and early high school drop out rates. One particular study of Aboriginal communities in British Columbia suggests: “[B]ands with higher levels of language knowledge (measured by a majority of its members having conversational-level abilities) had fewer suicides than those with lower levels.”<sup>504</sup> Another significant finding from this study is summarized in the following manner: “[T]he rates of suicide in the bands with high language knowledge levels were “well below the provincial averages for both Aboriginal and non-Aboriginal youth.”<sup>505</sup> Overall, these results demonstrate that the use of Aboriginal languages and relationship to culture is a “strong predictor of health and wellbeing in Canada’s Aboriginal communities.”<sup>506</sup> Moreover, language is widely recognized as one of the most tangible symbols of culture and group identity.<sup>507</sup>

Recently, the First People’s Heritage, Language and Cultures Council concluded that the health of Aboriginal peoples’ languages in British Columbia is impacted by language and cultural issues:

The loss of language is directly related to the troubling health issues many First Nations are facing today. Knowledge of one’s language is related to physical, mental and spiritual

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<sup>503</sup> Magnet, 192.

<sup>504</sup> Hallett, Chandler, and Lalonde, “Aboriginal Language Knowledge and Youth Suicide,” 350.

<sup>505</sup> Ibid, 396.

<sup>506</sup> Ibid, 398.

<sup>507</sup> Owen, (2011).; Verna Kirkness, “The Critical State of Aboriginal Languages in Canada.” *Canadian Journal of Native Education* 22 (1) (1998): 93- 107; Verna Kirkness, *Aboriginal Languages: A Collection of Talks and Papers*, (Vancouver, B.C.:1988); Marie Battiste, “Enabling the Autumn Seed: Toward a Decolonized Approach to Aboriginal Knowledge, Language, and Education,” *Canadian Journal of Native Education* 22 (1) (1998): 16-27.; Marie Battiste, Margaret Kovach, and Geraldine Blazer, “Celebrating the Local, Negotiating the School: Language and Literacy in Aboriginal Communities,” *Canadian Journal of Native Education* 32 (2010): 4,12,154.; Task Force on Aboriginal Languages and Cultures. First Peoples’ Cultural Council, Submission to the United Nations Expert Group Meeting on Indigenous Languages: Preservation and Revitalization (Articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples), 19-21 January 2016, UNHQ, New York, December 2015. [http://www.un.org/esa/socdev/unpfii/documents/2016/egm/FirstPeoplesCulturalCouncil\\_Canada.pdf](http://www.un.org/esa/socdev/unpfii/documents/2016/egm/FirstPeoplesCulturalCouncil_Canada.pdf) at 8.

health. It is an expression of ways of life, ways of thinking, and cultural understanding. Language revitalization plays a vital role in community growth, healing, education, development, strong families and reconnection to the past. A healthy language means healthy individuals, healthy communities, and contributing members to society<sup>508</sup>

In fact, language and cultural loss is deemed a factor for poor health and economic detriments in many Aboriginal communities.<sup>509</sup> Although these studies provide important guideposts for improving the health and well being of Aboriginal communities and showing that such improvement is linked to language and cultural revitalization, more empirical studies are required. It is important to hear testimony of how the loss of language has impacted Aboriginal peoples first hand. Indigenous peoples from the United States and New Zealand have concluded that talking about the damage language loss has caused to the community is a first key step in language revitalization work.<sup>510</sup>

### Aboriginal Languages and Education

Linguistic rights scholars assert that language rights, revitalization and educational rights are all intimately connected. Robert Dunbar, Chair of Celtic Languages, Literature, History and

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<sup>508</sup> First Peoples' Cultural Council, Submission to the United Nations Expert Group Meeting on Indigenous Languages: Preservation and Revitalization (Articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples), 19-21 January 2016, UNHQ, New York, December 2015. [http://www.un.org/esa/socdev/unpfi/documents/2016/egm/FirstPeoplesCulturalCouncil\\_Canada.pdf](http://www.un.org/esa/socdev/unpfi/documents/2016/egm/FirstPeoplesCulturalCouncil_Canada.pdf)

<sup>509</sup> A. Bombay, K. Matheson; and H. Anisman. *Origins of lateral violence in Aboriginal communities: A preliminary study of student-to-student abuse in Residential Schools*, Ottawa, Ontario, Aboriginal Healing Foundation, 2014.; B. Cohen, "The Spider's Web: Creativity and Survival in Dynamic Balance," *Canadian Journal of Native Education*, 25(2) (2001): 140-8.; C. Loppie Reading and F. Wien, "Health inequalities and Social Determinants of Aboriginal Peoples' Health." Prince George, BC: National Collaborating Centre for Aboriginal Health; O. McIvor, "Language nest programs in BC: Early childhood immersion programs in two First Nations communities," Brentwood Bay, BC: First Peoples' Heritage, Language and Culture Council Last modified 2006, [http://www.fpcc.ca/les/PDF/language-nest-programs\\_in\\_BC.pdf](http://www.fpcc.ca/les/PDF/language-nest-programs_in_BC.pdf)

<sup>510</sup> Higgins Cantoni, Poia Rewi Rawinia, and Vincent Olsen-Reeder (eds). *The Value of the Maori Language: Te Hua o te Reo Māori*. Huia Publishers, 2014.

Antiquities at the University of Edinburgh and Tove Skutnabb-Kangas, a linguistic human rights scholar asserts that:

everyone has the right to communicate in their mother tongue and be understood irrespective of whether their mother tongue is a minority or a majority language. It also means the right to be educated in a mother tongue. At a collective level it implies the right to enjoy and develop their language and the right for minorities to establish and maintain schools and other training and educational institutions, with control of curricula and teaching in their own languages. It also involves guarantees of representation in the political affairs of the political state, and the granting of autonomy to administer matters internal to the groups, at least in the fields of culture, education, religion, information, and social affairs, with the financial means ... to fulfil these functions.<sup>511</sup>

Tove Skutnaab-Kangas and Dunbar have insisted that the fact that Canada teaches Aboriginal children the dominant languages as the expense of their ancestral language in the dominant school system be seen as committing a crime against humanity<sup>512</sup> They call this type of education subtractive education:

(because it ) teaches children (some of ) the dominant language at the cost of their Indigenous mother tongues. It contributes to language shift, and thus to the disappearance of the world's linguistic diversity (and, through this, also disappearance of biodiversity).<sup>513</sup>

Skutnabb-Kangas and McCarthy add that when

indigenous and minority children are forced to accept teaching through the medium of

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<sup>511</sup> Skutnaab-Kangas and Robert Phillipson 1995, 2.

<sup>512</sup> Tove Skutnabb-Kangas and Robert Dunbar, *Indigenous Children's Education as Linguistic Genocide and a Crime Against Humanity? A Global View*, (Guovdageaidnu/ Kautokeino: Gáldu, Resource Centre for the Rights of Indigenous Peoples, 2010).

<sup>513</sup> Ibid, 6.

dominant languages ...can cause serious mental harm and often leads to the students using the dominant language with their own children later on— i.e. over a generation or two the children are linguistically, and often in other ways too, forcibly transferred to a dominant group. This happens to millions of speakers of threatened languages all over the world. But learning new languages, including the dominant languages, should not happen subtractively, but rather additively, in addition to their own languages. Subtractive formal education, which teaches children (something of) a dominant language at the cost of their first language, is genocidal.<sup>514</sup>

Cultural genocide was recognized in the final report of the Truth and Reconciliation Commission (TRC). It was also recognized in the draft provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but was substituted by a reference to the “elimination of cultures” during the subsequent negotiations.<sup>515</sup> Some scholars argue that the discussion of the term during the UNDRIP negotiations “indigenized” the issue and resulted in a shift of discussions to recognize issues related to loss of language and culture as a human rights issue.<sup>516</sup> It also triggered state responsibility and obligation of due diligence of prevention which is defined as the “the capacity to influence effectively the action of persons likely to commit, or already committing, genocide.”<sup>517</sup> In this case, Canada’s current subtractive model of education in which Indigenous children are learning the dominant language and culture in school at the

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<sup>514</sup> Tove Skutnabb-Kangas & McCarty, Teresa, “Clarification, Ideological/Epistemological Underpinnings and Implications of Some Concepts in Bilingual Education,” In Volume 5, *Bilingual Education*, edited by Jim Cummins and Nancy Hornberger, (Encyclopedia of Language and Education, 2nd edition. Kluwer Academic Publishers, 2007), 211.

<sup>515</sup> Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) UNGA Res. 61/295 (UNDRIP). Discussed in Section 4.1.2.2..

<sup>516</sup> Elisa Novic, *The Concept of Cultural Genocide: An International Law Perspective*, (Oxford University Press, 2016).

<sup>517</sup> *Ibid*, 189.

expense of their ancestral language and culture, is cultural genocide.

Many Indigenous communities around the world are working towards language and cultural reparations through immersion programs.<sup>518</sup> Language experts have indicated that one of the most significant methods for advancing endangered languages is through immersion programs.<sup>519</sup> In *Indigenous Children's Education and Linguistic Genocide and a Crime Against Humanity? A Global View*, Tove Skutnaab-Kangas and Robert Dunbar, recommend that the ancestral languages of Indigenous peoples should be the main language of instruction from kindergarten to grade seven to ensure a good level of fluency. They also indicate that other languages could be taught as subjects during the first seven years. Andrea Bear Nicolas, a Maliseet language activist, suggests that research on Indigenous immersion is a critical step in reversing linguistic extinction. It also has extremely positive impacts on Aboriginal children educationally.<sup>520</sup>

Immersion programs for Indigenous languages surfaced in the early 1980's in New Zealand, the United States and Canada. In most cases, Indigenous communities in these countries were dealing with a population of peoples that did not grow up learning their ancestral language as

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<sup>518</sup> Leanne Hinton, and Kenneth L. Hale, *The Green Book of Language Revitalization in Practice*, (San Diego: San Diego: Academic Press, 2001), Rawinia Higgins, Roia Rewi, and Vincent Olsen-Reeder (eds), *The Value of the Maori Language: Te Hua o te Reo Māori*, (Huia Publishers, 2014), Rawinia Higgins, Roia Rewi, and Vincent Olsen-Reeder (eds), *The Value of the Maori Language: Te Hua o te Reo Māori*, (Huia Publishers, 2014), Jessica Murray, Erin Aupanekis; and Karen Rempel, "Cree Language Survey Results Opaskwayak Cree Nation," The Pas, Manitoba: Opaskwayak Educational Authority, 2013, W.H. Wilson and K. Kamana, "Mai Loko Mai O Ka 'Iini: Proceeding from a dream" - The 'Aha Punana Leo Connection in Hawaiian Language Revitalization," *The Green Book of Language Revitalization in Practice*. San Diego, CA: Academic Press (2001).

<sup>519</sup> Marja-Liisa Olthuis, Kivelä, Suvi., and Skutnabb-Kangas, Tove, *Revitalising Indigenous Languages : How to Recreate a Lost Generation (Linguistic Diversity and Language Rights)* (Bristol:Multilingual Matters, 2013); Tove Skutnabb-Kangas and Robert Dunbar, *Indigenous Children's Education as Linguistic Genocide and a Crime Against Humanity? A Global View*, (Guovdageaidnu/ Kautokeino: Gáldu, Resource Centre for the Rights of Indigenous Peoples, 2010, Andrea Bear Nicholas, "Linguicide: Submersion Education and the Killing of Languages in Canada, " *Briarpatch* 40, no. 2 (2011): 4. A. Bear Nicholas, "Canada's Colonial Mission: The Great White Bird," in. *Aboriginal Education in Canada: A Study in Decolonization*, edited by K.P. Binda and Sharilyn Calliou (Mississauga, ON: Canadian Educators' Press. 2011), 11-33

<sup>520</sup> Andrea Bear Nicholas, "Linguicide: Submersion Education and the Killing of Languages in Canada, " *Briarpatch* 40, no. 2 (2011): 4, 2.

children. Language nests were therefore initially created to bring together Elder speakers and infants as part of early childhood programming. In the process, the Elders would speak in an Indigenous language to infants enrolled in the program as a first step in revitalizing their languages. From these programs, immersion programs for second language speakers were developed for Indigenous peoples.

In New Zealand, these programs are referred to as Te Kohango Reo or “language nests.”<sup>521</sup> In the United States, the Hawaiians developed Aha Punana Leo or “language nests” as part of their revitalization efforts.<sup>522</sup> From the Aha Punnana Leo, immersion programs were developed for Kindergarten to grade 12 and now at the university level. In New Zealand, there were 600 language nests by 1998.<sup>523</sup>

In Canada, there have been a few immersion programs implemented, and in spite of the numerous challenges, they are a critical and effective way of advancing Aboriginal languages (Charon; Osborne; Murray). Some of the challenges relate to lack of adequate funding and therefore a struggle to keep the programs afloat. There are some exceptions where Aboriginal communities are more economically stable and are able to self resource their own language programs, such as at Onion Lake First Nation in western Canada.<sup>524</sup> The majority of the immersion programs such as the Opaskwayak Cree Nation,<sup>525</sup> the Mohawk Freedom School,<sup>526</sup> and Mi’kmaq Immersion in Nova Scotia,<sup>527</sup> are struggling to survive.

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<sup>521</sup>Verna Kirkness, “The Critical State of Aboriginal Languages in Canada.” *Canadian Journal of Native Education* 22 (1) (1998): 93- 107.

<sup>522</sup> Leanne Hinton, and Kenneth L. Hale, *The Green Book of Language Revitalization in Practice*, W.H. Wilson and K. Kamana, “Mai Loko Mai 0 Ka 'Iini: Proceeding from a dream” - The 'Aha Punana Leo Connection in Hawaiian Language Revitalization,” *The Green Book of Language Revitalization in Practice*. San Diego, CA: Academic Press (2001).

<sup>523</sup> Leanne Hinton, and Kenneth L. Hale, *The Green Book of Language Revitalization in Practice*.

<sup>524</sup> A. Seegerts, "The Gift of Language and Culture: Documenting the Success of the Onion Lake Cree Immersion Program and the Need for Ongoing Development, Expansion, and Committed Funding Resources.," *Regina: Federation of Saskatchewan Indian Nations*, 2002.

<sup>525</sup> Opaskwayak Education Authority.

Other issues that all Aboriginal communities face is that there are very few individuals that can teach Aboriginal languages. The speakers are an elderly population generally over the age of sixty years. There are also very few Aboriginal language teacher-training programs. The First Peoples' Cultural Council submission to the United Nations Expert Group Meeting on Indigenous Languages in December 2015 addressed the kind of support that is require to address the issues Indigenous peoples are facing in Canada with respect to language loss:

The implementation of a full immersion program at the elementary school level was recommended as a critical way of dealing with the endangered language situation. The FPCC also referred to some of the challenges such as lack of adequate curriculum that will have to be addressed in order to implement immersion:

The curriculum that exists often has no scope and sequence (a summary of what is to be taught and the sequence in which it will be taught) and typically there is no coordination between early childhood education, primary, secondary and post-secondary curriculum. There are few educational texts developed for Indigenous language teaching or for other core content in immersion settings. Such materials could be developed (in part) by supporting the digitalization, transliteration and sharing of recordings in archives in museums and academics' collections around the world. Teachers need to have access to training in language curriculum development and immersion teaching methodologies.<sup>528</sup>

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<sup>526</sup> Louellyn White, *Free to Be Mohawk: Indigenous Education at the Akwesasne Freedom School*, (Vol. 12. University of Oklahoma Press, 2015),

<sup>527</sup> Esther Osborne, Josephine Peck, Donna-Lee Smith, and Donald M. Taylor, "Learning through an aboriginal language: The impact on Students' English and Aboriginal Language Skills", *Canadian Journal of Education* 34 (4) (2011): 200-15.

<sup>528</sup> First Peoples' Cultural Council, 6.



Another barrier that the FPCC acknowledged is the lack of certified teachers available to teach in immersion programs:

Certified language teachers are often not fully fluent and fluent teachers are often not fully certified and are paid less than other teachers. Post-secondary institutions must invest in language teacher training programs that support Indigenous languages and students. As one example, the University of Victoria in Victoria, British Columbia, has recently developed such programs, offering both a Bachelor's and Master's program in Indigenous language revitalization, with support for cohorts of students from the same community. Partnering with Indigenous communities, programs such as these can completely change the future of Indigenous languages.<sup>529</sup>

#### Language Revitalization Efforts in Post Secondary

There are now some post secondary institutions in Canada that are committed to supporting Aboriginal language revitalization. Some of the most recent initiatives have focused on providing students with the necessary skills in the following areas: to assist with revitalization efforts at the community level, a foundation in Indigenous teaching methodologies and research.

The University of Victoria's Certificate in Aboriginal Language Revitalization is one example. The program is designed to assist students develop strategies to support language revitalization in communities or for individuals. There are no academic prerequisites required to enter into the program. There is also an opportunity for students in the Indigenous Education program at the University of Victoria to obtain a diploma and Bachelor of Education in Indigenous Language Revitalization. Finally, they also offer a master's degree in Indigenous

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<sup>529</sup> First Peoples' Cultural Council, 6.

## Language Revitalization.

The University of Saskatchewan has adopted and modified the Language Revitalization programs offered at the University of Victoria in the College of Education. Currently there is a two-year certificate program in Indigenous Languages. The program is designed to provide students with a strong foundation in indigenous teaching methodologies that lead into a full Cree immersion program.

Additionally, the faculty of Native Studies at the University of Alberta offers a summer program, the Canadian Indigenous Languages and Literacy Development Institute (CILLDI). The object of the program is to assist students with training in linguistics, teacher training and research in language policy-making. In addition to post-secondary students, the program is open to Indigenous language activists who are interested in developing better skills to teach language. There are therefore contributions that post secondary institutions can make in the revitalization efforts that are critical in the area of education.

## Concluding Remarks

I have shown in chapter 1 that the use of Indigenous languages is integral to the distinctive culture of indigenous peoples, that this has remained so throughout Canada's history of colonization, that this is recognized in both domestic statutory and constitutional law and in the international norms that inform it. One of the most surprising findings in this research is that no one has developed language rights theory in Canada.<sup>530</sup> Instead, we have "a mosaic of different languages safeguards."<sup>531</sup> Currently the law recognizes the language rights of English and French

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<sup>530</sup> Vanessa Gruben, "Language Rights in Canada. A Theoretical Approach," in *Official Languages of Canada: New Essays*, edited by Joseph Eliot Magnet, (Markham, Ontario: Lexis Nexus Canada, 2008), 109.

<sup>531</sup> *Ibid*, 108.

as Canada's two official languages, and minority language education in both French and English. Although the theoretical justification for protecting minority official languages has evolved since confederation, it remains primarily informed by the objective of nation building. During the twentieth century, the government promoted a policy of assimilation that claimed "linguistic homogeneity was necessary to unify and build the country."<sup>532</sup> Currently, language promotion now includes the protection of linguistic human rights and the preservation of linguistic diversity.<sup>533</sup>

Denise Reaume, a Canadian language scholar, asserts that the foundation of language rights must go beyond protection and providing effective communication safeguards. She stresses that language has intrinsic value that must be fundamentally recognized as the basis for language rights (Reaume, 618). Leslie Green adds that the value of language as the ability to transmit and speak our mother tongues is a significant feature of human personalities (Green, 651). He notes that "(l)anguage is not merely something that allows us to live together. It is a constitutive feature of our common life. It is not merely a desirable feature of human life; it is an essential one" (Green, 651). Reaume adds that

Participation in communal forms of human creativity such as language is an intrinsic part of the value of human life. The particular linguistic or cultural form it takes for a particular group of people has intrinsic value for them because it is their creation. This value of language as a manifestation of human creativity with which its speakers identify, is key to understanding the claims to its protection (Reaume 618-619).

Both Green and Reaume propose an educational system that fosters a supportive language environment for children, parents and community. More specifically, they suggest that mother-

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<sup>532</sup> Ibid, 110.

<sup>533</sup> Ibid, 109.

tongue education is critical to enable children to participate in their cultural traditions and community life (790).

Slattery includes Aboriginal languages as a significant focus for language rights protection in Canada. He recognizes Aboriginal peoples' right to maintain and develop Aboriginal languages in educational and cultural institutions are an integral component of Aboriginal language rights.<sup>534</sup> Aboriginal language rights would therefore fall under the umbrella of the *right to cultural integrity* under more current application of Canadian rights. He further adds that language is an integral feature of Aboriginal peoples' ability to manifest, nurture and transmit culture.<sup>535</sup> He also argues that Aboriginal language rights are pertinent to cultural preservation and may therefore be appropriate within self-government agreements that provide Aboriginal peoples with the opportunity to pass language laws in addition to language education.<sup>536</sup>

The courts have also indicated that one of the specific objectives of section 35 is to ameliorate past injustices that have damaged Aboriginal customary practices or critical aspects of Aboriginal identity; Aboriginal languages are among those "critical aspects." In *R v Adams* the Supreme Court of Canada insisted that although certain rights are not explicitly stated under section 35, they nonetheless exist:

... the fact that a particular practice, custom or tradition continued following the arrival of Europeans, but in the absence of formal gloss of legal recognition from the European colonizers, should not undermine the protection accorded to aboriginal peoples. Section 35 (1) would fail to achieve its noble purpose of preserving the integral and defining features of distinctive aboriginal societies if it only protected those defining features which were

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<sup>534</sup> Brian Slattery, "A Taxonomy of Aboriginal Rights," In *Let Right be Done: Aboriginal Title, the Calder Case, and the Future of Aboriginal Rights*. Edited by Foster, Hamar, Heather Raven and Jeremy Webber, (Vancouver: UBC Press. 2007), 119.

<sup>535</sup> *Ibid*, 119.

<sup>536</sup> *Ibid*, 2007.

fortunate enough to have received the legal approval of British and French colonizers<sup>537</sup> (para 3).

The Truth and Reconciliation Commission of Canada Call (TRC) to Action 13 insists that the most suitable place to recognize Aboriginal language is under section 35 (1) of Canada's Constitution Act since Aboriginal language practices are "pre-existing, distinctive, and continuous" (Canada's Residential School, 120). Currently, section 35 (1) of Canada's Constitution Act, 1982, defines Aboriginal rights in the following way:

(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.<sup>538</sup>

The federal government has made a commitment to implementing the TRC Calls to Action. In this case, the proposed Indigenous Languages Act will therefore have to recognize Aboriginal language rights as a constitutional right under section 35.

### Final Reflection

In 2008, the words of the Honourable Louis Tapardjuk, Minister of Culture, Language, Elders and Youth; Minister of Finance; Chairman, Financial Management Board (Amittuq), stresses the importance of Inuit language rights comes from the fact that

... for too long Inuit have been denied basic services in their language. There is an absence in Canadian society of understanding, respect, basic rights and the means that are necessary

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<sup>537</sup> R v Adams, para 3.

<sup>538</sup> Rights of the Aboriginal Peoples of Canada, Part 2 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11

to achieve substantive equality between speakers of the Inuit language and those that speak the other two official languages.

Our unilingual elders are being disadvantaged in their homeland.

With the dominance of English in many aspects of our society, youth are concerned about losing their ability to speak the Inuit language, and even more so when they become young parents struggling to pass this important part of their ancestral heritage to their children.

Our language is endangered.

We cannot take this lightly for language is at the heart of Inuit culture. It reflects the generations who came before and their relationship to our Arctic world.

It speaks of who we are, how we view our surroundings, and how we wish our children to know their world. To lose one's language is to lose an essential part of one's identity. In fact, the survival of our language is crucial to the survival of Inuit as a distinctive people and to our dream for what Nunavut is and will become.

We urgently need to reverse the language shift among our young people and strengthen their use of the Inuit language.

We must not forget our elders and unilingual Inuit language speakers and the support they need to ask for services in their language.

We need to ensure the growth and adaptation of the Inuit language so that it functions well in all aspects of our daily life and in the government and private sectors.

These issues require us to take action now, before it is too late.<sup>539</sup>

Slattery points out that Canada is in the midst of a long process of decolonization: “we have been slow to free ourselves from the trammels of imperial rule, preferring to accomplish by gradual processes of evolution what others have effected abruptly by force of arms, we have been slower to embark on this task of internal decolonization.”<sup>540</sup> Slattery challenges us to

broaden our conception of the sources of Canadian law and to recognize the diverse roles that Indian, Inuit, and Metis peoples have played in the formation of this country and its Constitution. It suggests that Aboriginal peoples should be viewed as active participants in

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<sup>539</sup> Legislative Assembly of Nunavut, 2008, 4948.

<sup>540</sup> Slattery, “Aboriginal Language Rights,” 112.

generating the basic norms that govern us – not as people on the fringes, helpless victims, or recipients of constitutional handouts from the government or courts, but as contributors to the evolution of our Constitution and most fundamental laws. In short, aboriginal conceptions of law and rights really count – not as curiosities of another time and place or as the denizens of exotic legal pigeonholes, but as fundamental part of our living traditions.<sup>541</sup>

The TRC also stresses that “If the preservation of Aboriginal languages does not become a priority both for governments and for Aboriginal communities, then what the residential schools failed to accomplish will come about through a process of systematic neglect.”<sup>542</sup>

As an individual who has been personally impacted by this colonial legacy, I deeply regret not being able to communicate with my grandparents who are now deceased. Our family and cultural history was housed in their memory. They were not able to pass on this knowledge to my generation as a result of the language barriers that we experienced. My family has, however, instilled in my heart a love for our language and cultural identity in spite of the abuse they endured. I will pass this legacy of love and determination to keep our languages alive to my daughter’s generation. I remain hopeful that this generation will succeed at paving a better future for our sacred languages.

During my personal reflection on this thesis topic I have come to appreciate the role of women. In my culture (and others) Cree women play a significant role in passing the culture to children through language. According to Cree law, mothers and grandmothers have always used language as a significant way to bond with children. The development of the mother-child bond begins with senses such as touch, smell, as well as through eye contact and facial expressions

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<sup>541</sup> Ibid, 112.

<sup>542</sup> *Canada's Residential Schools: The legacy - The Final Report of the Truth and Reconciliation Commission of Canada, volume 5*, Montreal; Kingston; London; Chicago: MQUP, 2016, 202.

particularly while nursing (for children who can see). Bonding is also created through voice (for children who can hear) which morphs from sounds into words used to teach children a world-view of values, ways of behaving and connecting with other beings (people, plants, animals and water). Part of the teaching and learning process is done through observation and language that includes rituals, songs and stories.

I became intimately connected with this bonding process during the first year of my daughter's life. We created a language that, initially, only the two of us understood. As I stumbled through the process of teaching her about life on this earth, I relied on what I could recall from being mothered by my mother. Herein lay my challenge: my mother was raised in her early years immersed in the Cree language and culture. The Cree language was the foundation from which my grandmother bonded with my mother. The source of their relationship came from the connection they had to the land as they spoke Cree. Their survival depended on that connection because they were part of a trapping culture. The land provided nourishment for their body, mind and spirit. The Cree language and culture taught them important values and tools that were necessary to live off, and with, the land. That language-land-relationship was their life force. Unfortunately, I did not grow up learning to speak Cree nor did I have the opportunity to grow up living on the land.

Our Creation story informs us that the evolution of our language (Swampy Cree) comes from land-relationships that individuals and the community developed with the living environment. The Cree language evolved as people engaged with the swamps, rivers, animals, trees and other plant life, but also with our ancestors who lie buried in the earth. Not surprisingly, the relationship between Cree women and children radically shifted when the federal government removed Aboriginal children from the care of their mother and the land, placing them into



residential schools. As a result, women's ability to pass on the Cree culture through language became extremely challenging if not impossible.

I am the descendant of this fragmented and yet resilient history. The resilience is demonstrated in my grandmother's determination to pass on the Cree language and culture to her children. Each year, my grandparents kept a few children at a time at home and brought them to the family trap-line to immerse them in the love of the land and the Cree language and culture. It was a legal offense under the Indian Act during that time to prevent Aboriginal children from attending residential school. They could have been fined or imprisoned, or both, but they did it anyway. Because of their brave efforts, my mother and her siblings became and remained fluent Cree speakers. My mother, however, was so badly abused in residential school through physical punishment and shaming for speaking and being Cree that she was not able to pass on the language to either my brother, sister or me. Fortunately, however, we heard the Cree language in the background of our childhood. We also were also raised surrounded by Cree cultural values that my mother acquired in spite of her residential school experience.

I have inherited the harm and the shame, but also the determination and resilience to keep the language and culture alive. I raised my daughter during her early years with the best of my abilities. I took her to ceremonies. She was given a traditional name as an infant. She knows who she is culturally and she is proud of her Cree and Ojibway identity. She also heard her ancestral language in the background of her childhood at ceremonies where the Ojibway language is still spoken.

The ability to communicate fluently in our ancestral language is a missing cultural link between my daughter and me. The language and cultural values it represents are both critical to our identity, and we have a responsibility according to our customary law to maintain the

language for future generations. My hope is that Canada recognizes Aboriginal peoples' constitutional rights and protects Aboriginal language as an educational right so that Aboriginal children have an opportunity to reclaim their birthright; I also hope that that their ancestral languages will be spoken and live in the homes and communities of Aboriginal peoples once again.

**Meegwetch.**

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## APPENDIX A:

The following are from Simpson's Character Book of 1832 that contains a list of Chief Factors, Chief Traders, Clerks, people who joined the HBC anywhere from 1790 – 1821. The list shows the nationality, capacity, the length of service, salary in addition to Aboriginal language skill.<sup>543</sup>

### Chief Factors:

Stewart Alexander – served NWC from 1796 until 1821 when he became chief factor of the HBC – speaks Cree well with good relations with Aboriginal peoples (170 - 1).

Keith George – born in Scotland – joined NWC before 1813 and then joined HBC in 1821 – speaks Cree and understand Chipewyan (172 -3).

John Dugald Cameron – born in Canada – joined NWC in the 1790's. He became Chief Factor of HBC at the coalition of 1829 - speaks Saulteaux and is one of our best Indian Traders – stemmed from the fact that he had an Indian wife, probably Ojibway or Saulteaux (173).

John Charles – speaks Cree and Chipewyan and has a good deal of influence with Indian (174).

Edward Smith – joined NWC before 1806 and became wintering partner in 1814. He was appointed as Chief Factor of HBC in 1821 coalition - speaks Cree and Chipewyan and is an excellent trader (175).

John McLoughlin – joined NWC in 1803 and then HBC on 1821 - speaks Saulteaux (176).

James Millan – from Scotland – NWC sometime before 1804 and then with the HBC after the coalition in 1821 Chief Trader and then Chief Factor in 1827. speaks several Indian Languages (183 -4)

Duncan Finlayson – from Scotland – Joined HCB as a clerk in 1815 – and became chief trader in 1828 and then Chief Factor in 1831 - Speaks Cree (186)

### Chief Traders:

Thomas McMurray – Orkneyman – served HBC since 1790 and was appointed as chief trader in 1821 Speaks Cree and Saulteaux (187)

Donald McIntosh – NWC since 1806 and appointed Chief Trader for HBC in 1821 during Coalition - speaks Saulteaux(188)

John Peter Pruden – joined HBC in 1791 and was appointed chief trader in 1821 - speaks Cree (188)

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<sup>543</sup> Hudson's Bay Miscellany 1670 – 1870, The Hudson's Bay Record Society Volume XXX, Winnipeg Hudson's Bay Record Society, 1975 B.239/f/12, fos. 1- 9.

Angus Cameron born in 1782 in Scotland, joined NWC in 1801 and then HBC in 1821 retired in 1845. Speaks Algonquin and has much influence with Indians (189)

Cuthbert Cumming – from Scotland – entered into service with NWC in 1804 and joined HCB during 1821 coalition and then onto Chief Trader in 1827 best Saulteaux speaker in the Country (194)

Colin Campbell – Born in Canada – Joined NWC in 1804 and HBC in 1821 and Chief Trader in 1828 - speaks several Native Languages (196)

Clerks:

Nicholas Brown joined HBC in 1828 – An Irishman – speaks Algonquin (203)

Williams Cowie joined HBC in 1822 – Scotchman – Speaks Chippewyan (203)

George Delormier. Joined HBC in 1830 - A Canadian – speaks a little Algonquin having been

brought up in an Indian village of Cocknawgan opposite of La Chine where his Father is the

Government Interpreter (205)