

First Nations Summit



FEDERAL BILINGUALISM REQUIREMENTS – SEEKING AND SECURING AN EXEMPTION FOR INDIGENOUS PEOPLES

INTRODUCTION AND ISSUE:

- 1. This submission is made to the Committee in response to Bill C-13, An Act for the Substantive Equality of Canada's Official Languages.
- 2. Any employment or appointment criteria that requires an individual to be bilingual in both French and English in order to be considered, hired or appointed to a position or role is a real and direct systemic barrier for Indigenous People and hinders the opportunity for Indigenous Peoples to fully participate and represent Indigenous perspectives throughout the federal government, and in important offices such as the Governor General's office and at the Supreme Court of Canada.
- 3. Many otherwise qualified individuals have not been able to break through the "cultural glass ceiling" to move into higher levels of government.
- 4. Indigenous Peoples have been and continue to be marginalized and restricted in achieving meaningful representation within the federal public service and government institutions.
- 5. The requirement of bilingualism fails to account for the legal and systemic barriers, such as the *Indian Act*, 1876 and the Residential School system, imposed on the original peoples of this country and in effect have negatively impacted Indigenous Peoples' ability to fully participate in the political, economic and cultural life of Canada.
- 6. The requirement to be bilingual is a systemic barrier for Indigenous Peoples to be considered, hired or appointed and hinders their abilities to fully participate and represent Indigenous perspectives throughout the federal government. Having a federal government that reflects and includes Indigenous Peoples provides for a culturally rich and diverse public service which can serve to improve Crown—Indigenous relations and provide for a more inclusive unified country.
- Indigenous Peoples seek to participate fully and represent Indigenous perspectives throughout the political, economic and social fabric of the federal government and Canada.

PRESERVATION OF INDIGENOUS LANGUAGES AND RECOGNITION OF INDIGENOUS LANGUAGES AS A SECOND LANGUAGE, ON PAR WITH ENGLISH-FRENCH BILINGUALISM

- 8. Recognition of Indigenous languages in their territories as a second language, on par with English and French, is an important issue to collectively work towards. Our Indigenous languages are fundamental to our Nations and our histories. As they grow more endangered with each loss of a fluent speaker, it becomes increasingly important to preserve and grow our languages within each of our Nations and territories.
- 9. The current Minister of Official Languages of Canada has expressed support for the need to preserve Indigenous Languages. In our view, part of that is affording Indigenous Peoples an exemption to English/French bilingualism requirements so our citizens are not forced to learn either English or French in order to advance in key governmental positions.
- 10. We are pleased with the work being undertaken to implement the *Indigenous Languages Act*, including the first ever Commissioner of Indigenous Languages for Canada. We look forward to the important work the Commissioner will do in ensuring our languages are respected and recognized as the first languages of what we now call Canada, and in ensuring the full implementation of *An Act Respecting Indigenous Languages*. This work will require sustained governmental support, both financially and politically.
- 11. We feel that the <u>Preservation of Indigenous Languages</u> and <u>Federal Bilingualism Exemption For Indigenous Peoples</u> issues should be supported in concert and on an equal basis by the federal government.]

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

- 12. The *United Nations Declaration on the Rights of Indigenous Peoples*, which the government of Canada was adopted without qualification, and has committed to implement, affirms that:
 - Article 5: "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State"
- 13. On June 21, 2021, the *United Nations Declaration on the Rights of Indigenous Peoples Act* received Royal Assent and came into force. The Act affirms the reality that the Declaration already has legal effect in Canada and requires the federal government to take active measures, in consultation and cooperation with Indigenous peoples, to reform its laws.
- 14. The implementation Act explicitly rejects colonialism and the doctrines of racial superiority, including Terra Nullius and the doctrine of discovery, long used to deny Indigenous peoples' fundamental rights. The Act states that "all relations with Indigenous peoples must be based on the recognition and implementation of the inherent right to self-determination." The Act also calls for "concrete" measures to "address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination."

PROPOSAL

- 15. The First Nations Summit supports the position of the Teslin Tlingit Council proposing that Indigenous People should not be required to be bilingual in French to be hired in key positions within the federal public service or to be appointed to the Supreme Court of Canada. The Teslin Tlingit Council proposes that the Government of Canada legislate an exemption for Indigenous People under the Public Service Official Languages Exclusion Approval Order SI/2005-118.
- 16. Bilingual exemptions are recognized and provided by way of a *Public Service Official Language Exclusion Approval Order* (Regulation SI/2005-118) ("Regulation") achieved pursuant to section 20 of the *Public Services Employment Act*, SC 2003 c. 22.
- 17. The *Public Services Employment Act*, SC 2003, c.22 provides opportunity for the Public Service Commission of Canada to identify barriers to employment and seek exemptions:

Exclusion of positions and persons

"20 (1) Where the Commission decides that it is neither practicable nor in the best interests of the public service to apply this Act or any of its provisions to any position or person or class of positions or persons, the Commission may, with the approval of the Governor in Council, exclude that position, person or class from the application of this Act or those provisions. [...]

General regulatory power

22 (1) The Commission may make any regulations that it considers necessary to give effect to the provisions of this Act relating to matters under its jurisdiction. [...]

Qualification Standard

31 (1) The employer may establish qualification standards, in relation to education, knowledge, experience, occupational certification, language or other qualifications, that the employer considers necessary or desirable having regard to the nature of the work to be performed and the present and future needs of the public service

Identification of biases and barriers

(3) When establishing or reviewing qualification standards, the employer shall conduct an evaluation to identify whether they include or create biases or barriers that disadvantage persons belonging to any equity-seeking group. If a bias or barrier is identified in the course of the evaluation, the employer shall make reasonable efforts to remove it or to mitigate its impact on those persons."

SUPPORT FOR THE PROPOSAL

18. The Teslin Tlingit Council approached the First Nations Summit in late 2021 seeking support for their efforts to seek and secure an exemption for Indigenous Peoples from having to satisfy French bilingualism requirements in order to serve in key positions throughout the federal public service or within the federal court system, including the Supreme Court of Canada. The First Nations Summit Chiefs in Assembly approved a resolution First Nations supporting the Teslin Tlingit Council

initiative to seek a legislated exemption for Indigenous Peoples, pursuant to the *Public Services Employment Act*, SC 2003, from any employment or appointment criteria that may require Indigenous Peoples to be bilingual in both French and English in order to:

- a. be hired for key positions within the federal public service or other government offices;
- b. hold key positions such as Governor General of Canada; or
- c. be considered for judicial appointments to Canadian courts, including the Supreme Court of Canada.
- 19. A copy of the approved final First Nations Summit resolution is appended as Appendix 1.
- 20. The Teslin Tlingit Council also brought their proposal to Yukon First Nations and the Council of Yukon First Nations at the Council of Yukon First Nations Fall Assembly in October 2021, and the Assembly of First Nations Special Chiefs Assembly in December 2021 and received similar support via Chiefs resolutions.
- 21. It is our understanding that the Teslin Tlingit Council is collaborating on a separate submission concerning the same subject matter to the Committee by the Assembly of First Nations.

BACKGROUND ON THE FIRST NATIONS SUMMIT

- 22. The First Nations Summit was founded in 1990 to support First Nations in establishing treaty negotiations and is one of the three Principals in the First Nations-Crown made-in-BC treaty negotiations framework.
- 23. The First Nations Summit is comprised of a majority of First Nations and Tribal Councils in BC and provides a forum for First Nations in BC to address issues related to Crown-First Nation treaty negotiations, as well as other issues of common concern. The Summit's original mandate is to advance discussions with the governments of Canada and BC to support First Nations in conducting their own direct treaty negotiations with Canada and BC. In carrying out its mandate, the First Nations Summit does not participate as a negotiating party at any First Nations specific negotiations.
- 24. Over time and through the collective decisions by First Nations Chiefs and leaders, as directed by resolutions, the Summit has been instructed to take a leadership and advocacy role on the full range of issues of concern to First Nations, including negotiations and implementation issues of treaties, agreements and other constructive arrangements and day-to-day social and economic issues which affect First Nations.
- 25. The First Nations Summit is an action and solutions oriented First Nations-driven organization. A critical element of the First Nations Summit's work includes identification of concrete steps to overcome negotiation barriers. In First Nations-Crown treaty negotiations in BC, we are facing a number of process and substantive issues that pose significant challenges and must be overcome in order to reach treaties, agreements and other constructive arrangements.

SUMMARY RECOMMENDATION

26. The First Nations Summit supports the **Government of Canada legislating under the Public**Service Official Languages Exclusion Approval Order SI/2005-118 an exemption for Indigenous People concerning the requirement for an individual to be bilingual in both French and English in order to be considered, hired or appointed to a position or role in key positions within the federal public service or to be appointed to the Supreme Court of Canada or other such offices.

REFERENCES

- 1. First Nations Summit Resolution 1021.12 [INDIGENOUS PEOPLES EXEMPTION: FRENCH BILINGUAL REQUIREMENTS]. October 7, 2021.
- 2. Teslin Tlingit Council Briefing Note re: Federal Bilingualism Requirements Seeking and securing an exemption for Indigenous Peoples. October 5, 2021
- 3. Public Service Official Languages Exclusion Approval Order \$1/2005-118
- 4. Public Services Employment Act, SC 2003 c. 22

APPENDIX

1. First Nations Summit Resolution 1021.12 [INDIGENOUS PEOPLES EXEMPTION: FRENCH BILINGUAL REQUIREMENTS].

APPENDIX 1





RESOLUTION #1021.12

SUBJECT: INDIGENOUS PEOPLES EXEMPTION: FRENCH BILINGUAL REQUIREMENTS

WHEREAS:

- A. Any employment or appointment criteria that requires an individual to be bilingual in both French and English in order to be considered, hired or appointed to a position or role is a real and direct systemic barrier for Indigenous People and hinders the opportunity for Indigenous Peoples to fully participate and represent Indigenous perspectives throughout the federal government, and in important offices such as the Governor General's office and at the Supreme Court of Canada.
- B. The requirement of bilingualism fails to account for the legal and systemic barriers, such as the *Indian Act*, 1876 and the Residential School system, imposed on the original peoples of this Country and in effect have negatively impacted Indigenous Peoples' abilities to fully participate in the political, economic, cultural and social fabric of Canada.
- C. Having a federal government and important institutions that reflect and include Indigenous Peoples and perspectives provides for a culturally rich and diverse public service which can serve to improve Crown– Indigenous Relations and provide for a more inclusive unified country.
- D. Article 5 of the *United Nations Declaration on the Rights of Indigenous Peoples*, 2007 ("UNDRIP"), which the government of Canada has adopted without qualification, and has, alongside the government of BC, committed to implement, affirms that "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State".
- E. The *Public Services Employment Act*, SC 2003, c.22 provides opportunity for the Public Service Commission of Canada to identify barriers to employment and seek exemptions:

Exclusion of positions and persons

"20 (1) Where the Commission decides that it is neither practicable nor in the best interests of the public service to apply this Act or any of its provisions to any position or person or class of positions or persons, the Commission may, with the approval of the Governor in Council, exclude that position, person or class from the application of this Act or those provisions. [...]

General regulatory power

22 (1) The Commission may make any regulations that it considers necessary to give effect to the provisions of this Act relating to matters under its jurisdiction. [...]

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SUBJECT: INDIGENOUS PEOPLES EXEMPTION: FRENCH BILINGUAL REQUIREMENTS

Qualification Standard

31 (1) The employer may establish qualification standards, in relation to education, knowledge, experience, occupational certification, language or other qualifications, that the employer considers necessary or desirable having regard to the nature of the work to be performed and the present and future needs of the public service

Identification of biases and barriers

- (3) When establishing or reviewing qualification standards, the employer shall conduct an evaluation to identify whether they include or create biases or barriers that disadvantage persons belonging to any equity-seeking group. If a bias or barrier is identified in the course of the evaluation, the employer shall make reasonable efforts to remove it or to mitigate its impact on those persons."
- F. Bilingual exemptions are possible in accordance with the *Public Service Official Language Exclusion Approval Order* SI/2005-118, a regulation passed pursuant to section 20 of the *Public Services Employment Act*, SC 2003 c. 22.
- G. The Teslin Tlingit Council, a Yukon First Nation government who has traditional territory in the Province of British Columbia, seeks the support of the First Nation Summit Chiefs in Assembly to provide political support that includes lobbying the Government of Canada to provide a legislated exemption for Indigenous Peoples from being required to be bilingual in both French and English in order to be hired in key positions within the federal public service or to be appointed to the Supreme Court of Canada.

THEREFORE BE IT RESOLVED:

- 1. That the First Nations Summit Chiefs in Assembly support the Teslin Tlingit Council initiative to seek a legislated exemption for Indigenous Peoples, pursuant to the *Public Services Employment Act*, SC 2003, from any employment or appointment criteria that may require Indigenous Peoples to be bilingual in both French and English in order to:
 - a. be hired for key positions within the federal public service or other government offices;
 - b. hold key positions such as Governor General of Canada; or
 - c. be considered for judicial appointments to Canadian courts, including the Supreme Court of Canada.
- 2. That the First Nations Summit Chiefs in Assembly direct the First Nations Summit Political Executive to provide political advocacy, including the preparation of advocacy letters to the Federal Minister of Heritage and the Prime Minister of Canada.
- 3. That the First Nation Summit Chiefs in Assembly support the submission of a conceptually similar resolution at the Assembly of First Nations December 2021 Specials Chiefs Assembly.

MOVED BY: Kathryn Teneese, Ktunaxa Nation

SECONDED BY: Judith Sayers, President Nuu-chah-nulth Tribal Council

DATED: October 7, 2021

Passed by consensus.

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RESOLUTION #1021.12

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THERY CASINOR

ENDORSED BY:

Cheryl Casimer

Robert Phillips

Lydia Hwitsum