

# OFFICIAL RECOGNITION OF INDIGENOUS AND MINORITY LANGUAGES IN CANADA AND SWITZERLAND: COMPARING THE ROMANSH AND INUIT LANGUAGES

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## INTRODUCTION

There are an estimated 5,000 to 7,000 languages present in the world today.<sup>1</sup> Of these languages, only a few are spoken by a large number of people. It is estimated that, “97 percent of the world’s population speaks 4 percent of its languages, while only 3 percent speaks 96 percent of them”.<sup>2</sup> It is stated that over the 21<sup>st</sup> Century, 2,500 languages could be lost,<sup>3</sup> and 90 percent of existing languages could become extinct.<sup>4</sup> These numbers show a shocking trend in language decline and language loss. The reasons are various and can be found in social, cultural, economic and even military pressure.<sup>5</sup> Many of the lesser-spoken languages in the world are indigenous languages,<sup>6</sup> and they are in danger of extinction.<sup>7</sup>

The loss of a language should concern the wider global population because, as the United Nations Educational, Scientific and Cultural Organization [UNESCO] states:<sup>8</sup>

Every language reflects a unique world-view with its own value systems, philosophy and particular cultural features. The extinction of a language results in the irrecoverable loss of unique cultural knowledge embodied in it for centuries, including historical, spiritual and ecological knowledge that may be essential for the survival of not only its speakers, but also countless others.

Indigenous languages were often only transmitted orally from one generation to the next.<sup>9</sup> Traditional knowledge is, therefore, “always only one generation away from extinction”.<sup>10</sup> The loss of indigenous languages and the consequent loss of the knowledge they contain is of concern to the whole of humankind. A wealth of medical knowledge has come to the western world from the field of traditional indigenous

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<sup>1</sup> Estimated numbers vary between 5000 and 7000. See Department of Economic and Social Affairs [DESA] *State of the World’s Indigenous Peoples*, United Nations, 2009, 57; A Dalby, *Language in Danger: The Loss of Linguistic Diversity and the Threat to Our Future*, Columbia University Press, New York, 2003, ix.

<sup>2</sup> DESA, *ibid* at 57.

<sup>3</sup> Dalby, n1 at ix.

<sup>4</sup> DESA, n1 at 58.

<sup>5</sup> D Nettle and S Romaine, *Vanishing Voices: The Extinction of the World’s Languages*, Oxford University Press, New York, 2000, 7.

<sup>6</sup> The terms Indigenous and Aboriginal are used interchangeably throughout this article, although “Indigenous” is used primarily in the Swiss context, whereas “Aboriginal” is primarily used to describe the native languages and peoples of Canada.

<sup>7</sup> DESA, n1 at 57.

<sup>8</sup> United Nations Educational, Scientific and Cultural Organization [UNESCO] “Frequent Asked Questions on Endangered Languages: Why should we care?” UNESCO <[www.unesco.org](http://www.unesco.org)>.

<sup>9</sup> DESA, n1 at 58.

<sup>10</sup> Nettle and Romaine, n5 at 71.

medicine. Indispensable medicines such as aspirine, for example, were developed from the investigation of traditional herbalism.<sup>11</sup> In Africa, traditional smithing would provide cheaper steel tools for the continent than those that are imported. However, the practice of orally passing knowledge about traditional smithing inter-generationally is no longer being followed and the art of traditional smithing is in danger of being lost.<sup>12</sup> These examples show that the loss of orally transmitted languages should be of concern to people throughout the world, even to speakers of extremely viable languages such as English, Arabic and Chinese, because they contain knowledge that is valuable to all of us.

## THE IMPORTANCE OF INDIGENOUS LANGUAGES IN CANADA

In Canada, at least 60 Aboriginal languages are spoken. However, only Cree, Ojibwa, Dakota and Inuktitut are deemed viable enough to survive because they have large numbers of speakers in both Canada and the United States.<sup>13</sup>

That the loss of Aboriginal languages is a pressing issue in Canada is evident from the 2005 Report of Canada's Task Force on Aboriginal Languages and Culture *Towards a New Beginning: A Foundational Report for a Strategy to Revitalize First Nation, Inuit and Metis Languages and Cultures* [Task Force Report].<sup>14</sup> The Task Force was mandated to "propose a national strategy to preserve, revitalize and promote First Nation, Inuit and Metis languages and cultures".<sup>15</sup> To this avail, the Task Force consulted Aboriginal people throughout the country and gathered information on the importance of indigenous languages and what could be done to save them from extinction. It found that:<sup>16</sup>

A people's philosophy and culture are embedded in their language and given expression by it. Language and culture are key to the collective sense of identity and nationhood of the First Nation, Inuit and Metis people.

Most Aboriginal people consulted believed that speaking their own language helps people to understand who they are, not only in relation to themselves but also in relation to their families and communities and in relation to higher creation.<sup>17</sup> Aboriginal languages also convey the strong ties that Aboriginal peoples have with their territories. The Task Force Report stated that the First Nations, Inuit and Metis relationship to the land is reflected in their languages.<sup>18</sup> This relationship means that the Aboriginal peoples of Canada cannot be viewed separately from their lands to which they carry an inherent responsibility.<sup>19</sup> This responsibility may, for example, encompass taking care of sacred sites for community ceremonies. Knowledge of such

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<sup>11</sup> Dalby, n1 at 212.

<sup>12</sup> Nettle and Romaine, n5 at 167-8.

<sup>13</sup> Ibid, 8.

<sup>14</sup> Task Force on Aboriginal Languages and Culture, *Towards a New Beginning: A Foundational Report for a Strategy to Revitalize First Nation, Inuit and Métis Languages and Cultures*, Department of Canadian Heritage, Ottawa, 2005 [Task Force Report].

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

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

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

<sup>18</sup> *Task Force Report*, n14 at 22.

<sup>19</sup> Ibid, 23.

sites and their significance are transferred from generation to generation in the tradition of oral recounting by Elders.<sup>20</sup> The Elders pass information by storytelling: it is “through telling stories that the histories of the peoples, as well as important political, legal, and social values are transmitted”.<sup>21</sup> This form of communicating knowledge will be lost if the Aboriginal language becomes extinct. The loss of knowledge would, in turn, diminish both the culture and the people.

Canada’s Aboriginal peoples are enlisting the aid of the government to assist with reclaiming their languages. They attribute the diminution of their languages to the assimilation policies of Canada’s past governments. The Task Force was of the opinion that the Aboriginal languages had been devalued, as opposed to English and French, by the assimilationist efforts of the government, and that this devaluation had led to the languages being neglected by their own speakers.<sup>22</sup> As the Task Force put it:<sup>23</sup>

Many First Nations, Inuit and Metis people have been taught that their languages are inferior and best forgotten. Generations of First Nation, Inuit and Metis people were taken away, often forcibly, from their families and communities and placed in residential schools. There, with the support and active cooperation of the churches, they were systemically stripped of their traditional languages, cultures and spiritual beliefs.

Pupils were punished or beaten when speaking their own language and as a consequence, the language was associated with shame and fear, and with the notion that it was not important. These feelings subsequently led to the language not being transmitted by Residential School pupils to their own children.<sup>24</sup> To counteract these negative effects of the Canadian government’s assimilation policies, Aboriginal groups are seeking to have their languages formally recognised by the state.<sup>25</sup>

## **THE IMPORTANCE OF STATE RECOGNITION OF A LANGUAGE**

The importance of gaining formal recognition of Aboriginal languages by the Canadian state is exemplified by the official recognition given to te reo Maori (the Maori language) in Aotearoa New Zealand.

The claim to make te reo Maori an “official language” was heard by the Waitangi Tribunal [Waitangi Tribunal], which investigates Crown breaches of the principles of the Treaty of Waitangi, in 1985.<sup>26</sup>

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<sup>20</sup> Ibid.

<sup>21</sup> S Venne, “Understanding Treaty 6: An Indigenous Perspective”, in M Asch (ed), *Aboriginal and Treaty Rights in Canada*, University of British Columbia Press, Vancouver, 1997.

<sup>22</sup> *Task Force Report*, n14 at 75.

<sup>23</sup> Ibid.

<sup>24</sup> See L Fontaine, “Re-Conceptualizing and Re-Imagining Canada: Opening Doors for Aboriginal Language Rights” (2006) 31 *SCLR*. (2d), 312-313.

<sup>25</sup> *Task Force Report*, n14 at 75; see also V Galley, “Reconciliation and the Revitalization of Indigenous Languages”, in G Younging, J Dewar and M DeGagne (eds), *Response, Responsibility and Renewal: Canada’s Truth and Reconciliation Journey*, Aboriginal Healing Foundation, Ottawa, 2009, 244 at 247.

<sup>26</sup> Waitangi Tribunal, “Report of the Waitangi Tribunal on the Te Reo Maori Claim: Report Summary” (2012) Waitangi Tribunal <[www.waitangi-tribunal.govt.nz](http://www.waitangi-tribunal.govt.nz)>. The official Report citation is *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 2nd ed, Department of Justice, Wellington, 1989 [*Te Reo Maori Report*].

An internationally accepted socio-linguistic definition of “official language” states the following:<sup>27</sup>

A language which is used for political, legal and administrative communications within a given political territory. The legal status of official languages is usually constitutionally guaranteed and official languages are also taught in the education system. Some countries have more than one official language. ... In such cases there is often a ‘division of labour’ and not all official languages are used in all functions (e.g. certain documents may not be available in all languages). To grant official status to a language is a symbolic and political act ...

The term “official language”, therefore, denotes the language that the state uses in all of its operations. It is considered to be the most prestigious status that can be conferred on a language.<sup>28</sup> It is generally assumed that speakers of the official language are in a better position than non-speakers because they speak the language needed to receive state services, to receive an education, and to work in state institutions.<sup>29</sup> As stated in the above definition, making a language an “official language” is a symbolic and political act. The official status elevates a language by giving it importance. Consequently, the culture upon which the language status is conferred is also elevated.

A language can also be recognised as a “national language”. The term “national language” connotes that a certain language is “part of the country’s national heritage, and thus represents more than a simple minority”,<sup>30</sup> therefore, “it is recognised as a symbol of national identity”.<sup>31</sup> This places importance on the language as part of the identity of the state. It does not mean that the language is always used by the state in all its formal functions, but it does mean that the state will promote and protect the language.<sup>32</sup>

Te reo Maori became an official language of Aotearoa New Zealand in 1987. The arguments in favour of making it “official” can be applied equally to Canada’s Aboriginal languages and other non-official languages.<sup>33</sup>

The *Te Reo Maori Report*,<sup>34</sup> which recorded the findings of the Waitangi Tribunal, offers valuable arguments for granting official status to te reo Maori and counters some of the most common objections against such recognition. With regard to the importance of maintaining and advancing te reo, various witnesses had stated that without the language, the culture would die. These statements were aptly summarised by the Maori

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<sup>27</sup> J Swann, R Mesthrie, A Deumert and T Lillis, *A Dictionary of Sociolinguistics*, Edinburgh University Press, Edinburgh, 2004, “official language”.

<sup>28</sup> Official Languages and Bilingualism Institute, “Official Language Status” Site for Language Management <[www.slmc.uottawa.ca](http://www.slmc.uottawa.ca)> [OLBI Official Language Status].

<sup>29</sup> S May, *Language and Minority Rights: Ethnicity, Nationalism and the Politics of Language*, Routledge, New York, 2012, 162.

<sup>30</sup> Official Languages and Bilingualism Institute “National Language Status” Site for Language Management in Canada <[www.slmc.uottawa.ca](http://www.slmc.uottawa.ca)> [OLBI National Language Status].

<sup>31</sup> Swann et al, n27 at “national language”.

<sup>32</sup> OLBI National Language Status, n30.

<sup>33</sup> Arguments used to recognise te reo Maori as an official language in Aotearoa New Zealand also support recognition of indigenous languages elsewhere in the world.

<sup>34</sup> *Te Reo Maori Report*, n26.

proverb, “Ka ngaro te reo, ka ngaro taua, pera i te ngaro o te Moa” (“If the language be lost, man will be lost, as dead as the moa”).<sup>35</sup> The Tribunal responded:<sup>36</sup>

... it is quite obvious that the language and its preservation is important. It is unique, spoken nowhere else in the world, and is part of a rich heritage and culture that is also unique. There is a great body of Maori history, poetry and song that depends upon the language. If the language dies all of that will die and the culture of hundreds and hundreds of years will ultimately fade into oblivion.

This evaluation is true of any Aboriginal or minority language. It reinforces the point made in Canada by the Task Force, that without its language, a culture ultimately cannot survive.

The Waitangi Tribunal also pondered the question of why the use of te reo Maori had declined and came to the conclusion that, among other factors:<sup>37</sup>

The real cause (if a single cause can be assigned) is that Maori people do not speak the language in their homes. Dr Benton also referred to this when he said to us: ‘There are many reasons why people decided (often against their will and despite their deepest feelings) to abandon the use of Maori in their homes. One major and ever-present factor in such decisions however has been the obvious lack of support for the language in the New Zealand community as a whole.’

In Aotearoa New Zealand, the Waitangi Tribunal came to the conclusion that the best protection for te reo was to use it and, therefore, opportunities for its use must be provided. Official recognition would publicly signal this need,<sup>38</sup> and would create opportunities for the language to be used in situations where it was not yet spoken.<sup>39</sup> The Waitangi Tribunal concluded that the official recognition of te reo Maori should be:<sup>40</sup>

... an act that publicly demonstrates that preservation of the Maori language is important to all of us, Maori and Pakeha alike. It should be an act that restores proper status to the Maori language as something valuable that we acknowledge to be valuable. It should be an act that puts the language, and therefore the culture, on to a pedestal so that our children will see ‘being Maori’ as something to be proud of, not something to be treated as worthless.

Linguists do not all agree that granting official status necessarily benefits the language and guarantees its survival. To many, it is more important to confer power to the people speaking the language to ensure its survival.<sup>41</sup> Obviously, if the “official language status” is only declared on paper, without any opportunities being created for its use by the state, it will decline. However, if official language status is coupled with opportunities for use, as envisioned by the Waitangi Tribunal, state support will expand its use. Thus, the granting of official status was considered important to Maori (as it was to speakers of the Romansh language discussed later) as a first step towards strengthening their language usage.

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<sup>35</sup> Ibid, 3.1.4; reference is being made to the Moa, a species of bird now extinct in Aotearoa New Zealand.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid, 3.3.5.

<sup>38</sup> Ibid, 5.2.

<sup>39</sup> Ibid, 5.08.

<sup>40</sup> Ibid, 8.1.7.

<sup>41</sup> Nettle and Romaine, n5 at 40.

## ARGUMENTS FOR OFFICIAL STATUS FOR ABORIGINAL LANGUAGES IN CANADA

The considerations of the Tribunal regarding te reo Maori can also be applied to the Aboriginal languages of Canada. The Aboriginal languages constitute part of Canada's national heritage, and were well established when the first settlers arrived. That Aboriginal peoples are one of the distinctive features of Canada is today also recognised by state entities themselves. As the Commissioner of Official Languages points out: "Together with Native peoples and multiculturalism, linguistic duality is one of the fundamental features of the Canadian identity":<sup>42</sup> But even though the Aboriginal peoples are considered to be a fundamental part of Canada's identity, their languages do not currently receive the same degree of state protection as the English and French languages. There is a mismatch here, because, if Aboriginal peoples are a fundamental aspect of Canada's identity, then their languages should also be acknowledged as a fundamental part of Canadian identity. Granting official language status to Aboriginal languages would provide such acknowledgement.

## WHY COMPARE CANADA WITH SWITZERLAND?

As already stated, there are between 5,000 to 7,000 languages in the world.<sup>43</sup> However, only about 100 of these languages are officially protected languages in their own countries. Further, only approximately 20 percent of the states of the world have more than one official language.<sup>44</sup>

Switzerland has four official languages: German, French, Italian and Romansh. Romansh is only spoken by around 0.5 percent of the population, approximately 35,000 speakers.<sup>45</sup> Yet it is recognised in the Federal Constitution of the Swiss Confederation [Swiss Constitution] as an official language.<sup>46</sup> Canada, on the other hand, although comprising a much larger territory than Switzerland, concentrates only on its two settler languages at a federal level and fails to embrace its Aboriginal language heritage to the same extent.

Switzerland obviously is not the first country that comes to mind when writing about Aboriginal peoples and their languages. In Europe in general, there is little talk of Indigenous or Aboriginal peoples, but only of "minorities" and consequently, of minority languages, as for example in the European Charter on Regional or Minority Languages.<sup>47</sup> So how does the term "minority" compare to the terms "aboriginal" and "indigenous"? There is no fixed definition for the term "minority" in international law. However, the

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<sup>42</sup> Office of the Commissioner of Official Languages *Annual Report: Special Editions 35<sup>th</sup> Anniversary 1969-2004 Volume I* (Minister of Public Works and Government Services Canada, 2005). <[www.ocol-clo.gc.ca](http://www.ocol-clo.gc.ca)> at 1 [OCOL Annual Report].

<sup>43</sup>DESA, n1.

<sup>44</sup> OLBI Official Language Status, n28.

<sup>45</sup> J Furer, *Die Aktuelle Lage des Romanischen* (Bundesamt für Statistik, Neuchatel, 2005, 30.

<sup>46</sup> Federal Constitution of the Swiss Confederation 1999 (CH) Article 70(1) [Swiss Constitution]; W Linder, *Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies*, 3<sup>rd</sup> ed, Houndmills (UK), Palgrave Macmillan, 2010, 25.

<sup>47</sup> See European Charter on Regional and Minority Languages (opened for signature 5 November 1992, entered into force 1 March 1998).

United Nations Office of the High Commissioner of Human Rights' *Factsheet on Minority Rights* provides the following helpful definition:<sup>48</sup>

The most commonly used description of a minority in a given State can be summed up as a non-dominant group of individuals who share certain national, ethnic, religious or linguistic characteristics which are different from those of the majority population. In addition, it has been argued that the use of self-definition which has been identified as 'a will on the part of the members of the groups in question to preserve their own characteristics' and to be accepted as part of that group by the other members, combined with certain specific objective requirements, could provide a viable option.

The terms "aboriginal" and "indigenous" are often used interchangeably, although the term "indigenous" has prevailed as the more generic international term for many years.<sup>49</sup> The United Nations Declaration on the Rights of Indigenous Peoples [the Declaration],<sup>50</sup> does not provide a definition for the term "indigenous" or "indigenous peoples". Instead, the Declaration "underlines the importance of self-identification, that indigenous peoples themselves define their own identity as indigenous".<sup>51</sup> Article 33 of the Declaration reads as follows: <sup>52</sup>

Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.

This does not give much insight into the concept of "indigenous". However, according to the *Factsheet: Who are Indigenous Peoples?*, issued by the United Nations Permanent Forum on Indigenous Issues [the Permanent Forum],<sup>53</sup> the term "indigenous" encompasses the following:<sup>54</sup>

- Indigenous peoples are peoples that define themselves as indigenous;
- have a historical continuity with pre-colonial societies;
- have strong links to territories and surrounding natural resources;
- have distinct social, economic or political systems and have distinct languages, cultures and beliefs.

The Permanent Forum maintains self-identification from within is the better criterion for identifying who are indigenous peoples than the application of any fixed external definition.<sup>55</sup>

Indigenous languages then, can be understood as the languages of indigenous peoples. Indigenous peoples are groups that have a historical continuity to the regions in which

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<sup>48</sup> Office of the High Commissioner for Human Rights, *Fact Sheet on Minority Rights*, FS 18/Rev.1 (1998) <[www.ochr.org](http://www.ochr.org)>

<sup>49</sup> United Nations Permanent Forum on Indigenous Issues "Indigenous Peoples, Indigenous Voices, *Factsheet: Who are Indigenous Peoples?*" <[www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf)> [The Permanent Forum].

<sup>50</sup> United Nations Declaration on the Rights of Indigenous Peoples GA Res 61/295, A/61/L.67 (2007) [the Declaration].

<sup>51</sup> DESA, n1 at 5.

<sup>52</sup> The Declaration, n50 at Article 33.

<sup>53</sup> The Permanent Forum, n49.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

they live in societies that pre-date colonial settlement, and who have developed unique cultural relationships and distinct social and economic systems within their territories.

“Indigenous peoples” and “minorities” are similar in that both are usually in a non-dominant position in their state territories, possess languages and religious beliefs that differ from the dominant group, and want to maintain their own identity.<sup>56</sup> Minority groups differ from indigenous peoples, however, in that they “do not necessarily have the long ancestral, traditional and spiritual attachment and connections to their lands and territories that are usually associated with self-identification as indigenous peoples”.<sup>57</sup>

While Romansh constitute a “minority” with regard to their language, the speakers of Romansh in Switzerland most certainly do not constitute an indigenous people. They do not have a distinct social or economic system or possess culture and beliefs that are distinct from the rest of the Swiss population. They have the same religious beliefs (predominantly Roman-Catholic and Protestant), and cultural habits as the rest of the Swiss population. They do not consider themselves different from the rest of the Swiss population, except in so far as their language is concerned. The same is true for the other three language groups. Furthermore, even though their language is present only in one specific part of Switzerland they do not have a spiritual attachment to that territory as their place of origin.

The Romansh language evolved from the Latin language introduced after the Romans conquered large parts of Western Europe, among them the territory of what today constitutes the Swiss canton Graubunden.<sup>58</sup> The language has been present in the region of Graubunden since the 3<sup>rd</sup> century, and, until 1850, was the primary language spoken.<sup>59</sup> There is, therefore, a historic continuity of the language being spoken in a distinct territory, even if this continuity is not coupled with the same degree of spiritual attachment to the territory that is a feature of indigenous relationships.

A further point that highlights similarities between Romansh and Aboriginal languages is found in the explanatory report to the Council of Europe’s, European Charter on Regional and Minority Languages [European Charter],<sup>60</sup> which states: “Many European countries have on their territory regionally based autochthonous groups speaking a language other than that of the majority of the population.”<sup>61</sup> The term “autochthonous” can be understood as, “indigenous rather than descended from migrants or colonists”.<sup>62</sup> Switzerland has protected the Romansh language under the European Charter since 1998.<sup>63</sup> Romansh can therefore be regarded as one of the

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<sup>56</sup> United Nations Human Rights Office of the High Commissioner *Minority Rights: International Standards and Guidance for Implementation* HR/PUB/10/3, 2010, 4.

<sup>57</sup> Ibid.

<sup>58</sup> M Gross and Ors, *Romanisch Facts & Figures*, 2nd ed, Lia Rumantscha, Chur, 2004, 12.

<sup>59</sup> Ibid, 26.

<sup>60</sup> European Charter on Regional and Minority Languages (opened for signature 5 November 1992, entered into force 1 March 1998).

<sup>61</sup> “European Charter on Regional and Minority Languages – Explanatory Report” Council of Europe Treaty Office <[www.conventions.coe.int](http://www.conventions.coe.int)> at 1.

<sup>62</sup> A Stevenson (ed), *Oxford Dictionary of English*, Oxford University Press, 2010, “autochthonous”.

<sup>63</sup> Database for the European Charter for Regional or Minority Languages <<http://languagecharter.eokik.hu>>.



autochthonous languages of Switzerland. The terms “indigenous” or “aboriginal” are not so out of place in Europe, after all then. This point is strengthened by the Swiss Constitution, which, in its English translation uses the term “indigenous” in Article 70, Paragraph 2, to refer to the Romansh language.<sup>64</sup> Therefore, even though Romansh are not an indigenous people, Aboriginal languages and the Romansh language share similarities that allow for a comparison to be made between them.

## THE SITUATION IN SWITZERLAND

### The Romansh Language

Switzerland is host to a lot of different languages. In the year 2000, Swiss German was spoken by 63.7 percent of the population; 20.4 percent spoke French; 6.5 percent Italian, and 0.5 percent Romansh. The remaining 9 percent of the population spoke Spanish, Portuguese, English, languages of the former Yugoslavia, Turkish, Albanian and other languages.<sup>65</sup>

As stated above, Romansh is spoken by only 0.5 percent of the Swiss population, that is approximately 35,000 speakers. The language is only spoken in five regions of the canton Graubunden, each of which has its own dialect. In 1982, Rumantsch Grischun, an artificially created single language comprising the five different dialects was created and in 1996 it was declared the official language of both Federal and Cantonal Institutions.<sup>66</sup> Until then, Romansh had been in danger of being overrun by German and the language had been in steady decline since the canton Graubunden acceded to the Swiss Confederation in 1803.<sup>67</sup> The decline in the use of Romansh led to the formation of various associations aimed at preventing the extinction of the Romansh language, the most prominent being Lia Rumantscha.<sup>68</sup>

After World War I, the claim for constitutional recognition of the Romansh language in canton Graubunden grew and the Executive of Graubunden asked the Federal Executive for recognition as a national language.<sup>69</sup> The claim for recognition as a national language was prompted by nationalist tendencies in Europe at that time. Italy, which neighbours the canton Graubunden, claimed that Romansh was not an individual language but an Italian dialect, and therefore, the Romansh speaking parts of Graubunden constituted Italian territory.<sup>70</sup> It was in reaction to such attacks, that the Romansh speaking community pressed for their language to be recognised as a national Swiss language. In 1938, therefore, Romansh was declared a national language of Switzerland.<sup>71</sup>

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<sup>64</sup> Swiss Constitution, n46 at Article 70(2).

<sup>65</sup> D Thurer and T Burri, “Zum Sprachenrecht der Schweiz”, in C Pan, and B Pfeil (eds), *Zur Entstehung des Modernen Minderheitenschutzes in Europa*, Springer, Wien, 2006, 266.

<sup>66</sup> Gross et al, n58 at 27.

<sup>67</sup> Furer, n45 at 17.

<sup>68</sup> Gross et al, n 58 at 17; <[www.liarumantscha.ch](http://www.liarumantscha.ch)>.

<sup>69</sup> C Casanova, Federal Chancellor of Switzerland, “Il rumantsch e l’identitad plurilingua da la Svizra”, speech at an event of the Schweizerische Studienstiftung, Muster, 1 October 2011, Schweizerische Bundeskanzlei [www.bk.zjadmin.ch](http://www.bk.zjadmin.ch) at 6.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

In 1985, Martin Bundi, a Romansh speaking politician, voiced his concern about the state of the language in Parliament. This led to the creation of Constitutional Article 116, which made Romansh an official language in 1996.<sup>72</sup> A new Swiss Constitution came into force on January 1, 2000.<sup>73</sup> The language Article received the new number of Article 70, but in essence it remained the same.

The constitutional enshrinement of Romansh as an official language was the result of concern about its viability.<sup>74</sup> The change was inspired by the desire to protect the quadrilingualism of Switzerland, which had become one of Switzerland's distinguishing features. The Swiss state wanted to build a single nation while still respecting the individuality of its different partnering entities.<sup>75</sup> However, the broader political motives behind making Romansh an official language should not obscure the fact that the initiative came from a Romansh speaking politician from canton Graubunden who was representing the views of Romansh speakers concerned about protecting their language and the distinctive culture it is linked to.

## Language Policy in Switzerland

### (i) The Swiss Constitution

The Swiss Constitution contains three Articles regarding languages: Articles 4, 18 and 70.<sup>76</sup> Article 4 states the national languages of Switzerland to be German, French, Italian and Romansh.<sup>77</sup> Article 18 guarantees the "freedom of language". This means that any person in Switzerland is free to use any language in the private realm. However, when communicating with the state administration or in school, a person is restricted to using the one official language assigned to the territory where the person resides, as for example, German in Zurich. This "territoriality principle" restricts the freedom to use any language that one pleases, in any situation, anywhere.<sup>78</sup> The *territoriality principle* is enshrined in Article 70(2), which is explained in further detail below.<sup>79</sup>

With regard to official status, paragraph 1 of Article 70 of the Swiss Constitution states:<sup>80</sup>

The official languages of the Confederation shall be German, French and Italian. Romansh shall also be an official language of the Confederation when communicating with persons who speak Romansh.

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<sup>72</sup> "Botschaft über die Revision des Sprachenartikels der Bundesverfassung (art. 116 BV) vom 4. März 1991" (1991) Schweizerisches Bundesarchiv <[www.amtsdruckschriften.bar.admin.ch/viewOrigDoc.do?id=10051812](http://www.amtsdruckschriften.bar.admin.ch/viewOrigDoc.do?id=10051812)> [Botschaft Sprachenartikel] at 312.

<sup>73</sup> Confoederatio Helvetica "Neue Bundesverfassung am ersten Januar in Kraft" (press release, 27 December 1999) <<http://www.admin.ch/cp/d/38673686.0@fwsrv.bfi.admin.ch.html>>.

<sup>74</sup> Botschaft Sprachenartikel, n72 at 310.

<sup>75</sup> Ibid.

<sup>76</sup> Swiss Constitution, n46 at Articles 4, 18 and 70.

<sup>77</sup> Ibid, Article 4.

<sup>78</sup> Thurer and Burri, n65 at 269.

<sup>79</sup> Swiss Constitution, n46 at Article 70(2).

<sup>80</sup> Ibid, Article 70.

This means that at the Federal level Romansh is not awarded the same official status as the other three languages, but is only regarded as an official language when Romansh speakers communicate with Federal entities.

Paragraph 2 of Article 70 states:<sup>81</sup>

The Cantons shall decide on their official languages. In order to preserve harmony between linguistic communities, the Cantons shall respect the traditional territorial distribution of languages and take account of indigenous linguistic minorities.

Besides giving the Cantons freedom to decide their official languages, this paragraph enshrines the *territoriality principle* at a constitutional level. Switzerland is made up of 26 cantons. The *territoriality principle* means that one language is ascribed to each specific territory, which then has to be used when communicating with the governmental institutions of this territory and sometimes also in other areas of the public sphere. The aim of the *territoriality principle* is to maintain the original composition of the languages of the state.<sup>82</sup> In Switzerland, the territoriality principle maintains the original linguistic divisions of the country. It means that in an originally German-only speaking canton, the official language will be German, excluding the other official languages from the cantonal level and municipal level.<sup>83</sup> The *territoriality principle* is, therefore, a restriction on the freedom of language.<sup>84</sup>

The remaining paragraphs 3 to 5 of Article 70 read as follows:<sup>85</sup>

3. The Confederation and the Cantons shall encourage understanding and exchange between the linguistic communities.

4. The Confederation shall support the plurilingual Cantons in the fulfilment of their special duties.

5. The Confederation shall support measures by the Cantons of Graubunden and Ticino to preserve and promote the Romansh and the Italian languages.

These paragraphs highlight the emphasis of the Federal language policy on maintaining the linguistic diversity in Switzerland and show the importance given to the preservation of those national languages spoken only by a minority of the population.

## **(ii) Federal Language Policy**

Article 70(2) of the Swiss Constitution allows the cantons to decide their official languages with due consideration being given to the traditional territorial distribution of languages and indigenous linguistic minorities. Switzerland is a Federal state that consists of 26 cantons, each having its own parliament, government and judiciary.<sup>86</sup> According to Article 3 of the Swiss Constitution, the cantons, “exercise all the sovereign

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<sup>81</sup> Ibid.

<sup>82</sup> Thurer and Burri, n65 at 270.

<sup>83</sup> J Voyame, “Overview of Swiss History and Political Institutions”, F Dessemontet and T Ansay (eds), *Introduction to Swiss Law*, Kluwer Law International, The Hague, 2004, 12.

<sup>84</sup> Ibid.

<sup>85</sup> Swiss Constitution, n46 at Article 70(3)-(5).

<sup>86</sup> J Aubert and E Grisel, “The Swiss Federal Constitution”, in F Dessemontet and T Ansay (eds), *Introduction to Swiss Law*, 3rd ed, Kluwer Law International, The Hague, 2004, 20.

rights which the Constitution has not explicitly or implicitly assigned to the Confederation and which it does not forbid them to exercise by a specific rule”.<sup>87</sup> Therefore, “as long as a given competence is not explicitly assigned to the federal government by the Constitution, it remains within the purview of cantons”.<sup>88</sup> According to the allocation of competencies in the Swiss Constitution, the cantons are given authority over specific areas of law, including languages, culture and education.<sup>89</sup> As a consequence, much of Swiss language law is legislated at the cantonal level, with little legislation being enacted at the Federal level.<sup>90</sup> However, in 2009, the “Bundesgesetz über die Landessprachen und die Verständigung zwischen den Sprachgemeinschaften”<sup>91</sup> [Federal Language Law] came into force.<sup>92</sup> The Federal Language Law details the Articles of the Swiss Constitution dealing with languages, especially Article 70.

Several Articles are specifically aimed at supporting the Romansh language. Federal texts of special significance must be published in Romansh.<sup>93</sup> Article 22 of the Federal Language Law provides financial aid for the Romansh language and culture.<sup>94</sup> As has been stated above, however, the Federal law only regulates the use of the language when individuals are dealing with Federal institutions.

### **(iii) Cantonal Language Policy**

Each canton, according to Article 51 of the Swiss Constitution, shall adopt a democratic constitution.<sup>95</sup> The Swiss Constitution gives the cantons the authority to decide on their official languages, while respecting the *territoriality principle*.<sup>96</sup> As far as the Romansh language is concerned, the Constitution of the canton Graubünden [Graubünden Constitution], states in Paragraph 1 of Article 3, that German, Romansh and Italian are the national and official languages of the canton, each of them being of equal value to the others.<sup>97</sup> The law concerning languages, the “Sprachengesetz des Kantons Graubünden” of Graubünden [Graubünden Language Law] states in its Article 1 that one of its aims is to strengthen the trilingual status of the canton, to maintain and advance the Romansh and Italian language and to support the endangered national language Romansh with specific measures.<sup>98</sup> Also, the Graubünden Language Law regulates the allocation of the different municipalities to the linguistic territories, which is necessary to maintain the *territoriality principle* as stated in Paragraph 2 of Article 70 of the Swiss Constitution.<sup>99</sup>

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<sup>87</sup> Ibid, 21.

<sup>88</sup> F Grin, “Language Policy in Multilingual Switzerland: Overview and Recent Developments” (1999) European Centre for Minority Issues <www.ecmi.de>, 5.

<sup>89</sup> Thurer and Burri, n65 at 272.

<sup>90</sup> Grin, n88 at 4.

<sup>91</sup> Bundesgesetz über die Landessprachen und die Verständigung zwischen den Sprachgemeinschaften 2007 (CH) [Sprachengesetz].

<sup>92</sup> Eidgenössisches Departement des Innern EDI “Inkraftsetzung des Sprachengesetzes” (press release, 04.12.2009) <www.edi.admin.ch>.

<sup>93</sup> Sprachengesetz, n91 at Article 11.

<sup>94</sup> Ibid, Article 22.

<sup>95</sup> Swiss Constitution, n46 at Article 51.

<sup>96</sup> Ibid, Article 70(2).

<sup>97</sup> Verfassung des Kantons Graubünden 2003 (CH) Article 3 [Graubünden Constitution].

<sup>98</sup> Sprachengesetz des Kantons Graubündens (SpG) 2006, Graubünden, Switzerland, Article 1 [Graubünden Language Law].

<sup>99</sup> Ibid, Article 2(c).

The main points regarding the use and protection of the Romansh language in the Graubunden Language Law are as follows: Article 3 states that the official languages of the canton are to be used in the legislature, executive and judiciary of the canton. Each person has the right to contact the cantonal authority in any of the three official languages. The cantonal authority will then reply in the language in which it has been contacted. With regard to Romansh, which is constituted of five dialects, Romansh speaking persons can apply their own dialect or the standard language, Rumantsch Grischun, when communicating with cantonal authorities.<sup>100</sup> The cantonal authority will, however, always reply in the standard form of Rumantsch Grischun.<sup>101</sup>

The Graubunden Language Law also gives Lia Rumantscha, an organisation that dedicates itself to the maintenance of the Romansh language,<sup>102</sup> recurring annual financial funding.<sup>103</sup> The canton Graubunden is also entitled to fund municipalities or private persons to support projects that maintain and advance Romansh, support Romansh papers and magazines or scientific research, and offer courses in Romansh to integrate speakers of other languages.<sup>104</sup>

The most striking feature of the Graubunden Language Law is Article 16, which sets out the directions for municipalities to decide on their official languages. The Article centers on the term “indigenous”, which is used in the English translation of the Swiss Constituti.<sup>105</sup> According to Article 16(2) of the Graubunden Language Law, municipalities with a share of at least 40 percent of speakers of an “indigenous” language, i.e. Romansh spoken in its traditional territories, will be deemed to be monolingual municipalities.<sup>106</sup> Such municipalities with a share of Romansh speakers of more than 20 percent will be deemed bilingual municipalities.<sup>107</sup> This is a very strong statement in favour of Romansh, since it allows Romansh to be the sole official language in a municipality, even if it is spoken by less than half of its population. This provision had been criticised by German speakers,<sup>108</sup> however it was deemed necessary by its proponents in order to protect the Romansh language from extinction in its traditional territories.<sup>109</sup>

Swiss language policy involves federal, cantonal and municipal levels of state authorities and legislature. This allows for a very specific language law, which can pay close attention to the actual circumstances given in a specific region of the country. Provisions like the percentage rules regarding official languages in municipalities show that a high degree of importance is being placed on the maintenance and advancement of Romansh.

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<sup>100</sup> Graubunden Language Law, n98 at Article 3.

<sup>101</sup> Ibid, Article 3(5)

<sup>102</sup> Lia Rumantscha, “Welcome” <[www.liarumantscha.ch](http://www.liarumantscha.ch)>.

<sup>103</sup> Graubunden Language Law, n98 at Article 11(1).

<sup>104</sup> Ibid, Article 12.

<sup>105</sup> Graubunden Language Law, n98 at Article 16; Swiss Constitution, n46 at Article 70(2).

<sup>106</sup> Ibid, Article 16(2).

<sup>107</sup> Ibid.

<sup>108</sup> A Cortesi, “Gegen die ‘Diskriminierung der Deutschsprachigen’” *Tagesanzeiger* (18 May 2007) <[www.tagesanzeiger.ch](http://www.tagesanzeiger.ch)>.

<sup>109</sup> Ibid.

## THE SITUATION IN CANADA

### Language Policy in Canada

The Canadian Charter of Rights and Freedoms [Canadian Charter] states that English and French are the official languages of Canada.<sup>110</sup> However, “this shared official status applies only to Federal government institutions”,<sup>111</sup> such as Parliament, the Federal Administration and Federal Courts.<sup>112</sup> Provinces, municipalities and private businesses are generally not subject to official bilingualism.<sup>113</sup>

The root of Canada’s official bilingualism lies in its settlement by both French and English colonists.<sup>114</sup> From the time of Confederation in 1867, both languages were used in Parliament. They did not, however, enjoy equal status.<sup>115</sup> In the 1960s the Royal Commission on Bilingualism and Biculturalism [Royal Commission] was established to assess the situation around the two settler languages. The Royal Commission recommended that English and French be declared the official languages of Canada.<sup>116</sup> The Official Languages Act was enacted in 1969. It recognised the equality of English and French in the Federal administration and permitted Canadian citizens to receive Federal services in their official language of choice.<sup>117</sup> Since then, the Official Languages Act has undergone changes that are included in the new Official Languages Act 1988.<sup>118</sup> The new Act was passed with regard to language rights that had been introduced by the Canadian Charter.<sup>119</sup> <sup>120</sup> The Canadian Charter had been included in the Canadian Constitution during its revision in 1982.<sup>121</sup> Sections 16 to 20 state the equality of French and English languages, the right to use both languages in parliament or in the government of Canada,<sup>122</sup> and the right to use either language in debates in the parliament and before federal courts.<sup>123</sup> Also, any materials produced by the Parliament of Canada shall be printed in both languages and have equal force.<sup>124</sup> Section 23 of the Canadian Charter also acknowledges the right of parents who speak a minority official language in the province of their residence to have their children educated in that minority language.<sup>125</sup> This right however is subject to there being enough citizens in the

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<sup>110</sup> Canadian Charter of Rights and Freedoms 1982 CA, s16 [Canadian Charter].

<sup>111</sup> Official Languages and Bilingualism Institute, “The Legal Context of Canada’s Official Languages”, Site for Language Management <[www.slmc.uottawa.ca](http://www.slmc.uottawa.ca)>.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Official Languages and Bilingualism Institute, “Linguistic History of Canada”, Site for Language Management <[www.slmc.uottawa.ca](http://www.slmc.uottawa.ca)>.

<sup>115</sup> Office of the Commissioner of Official Languages “History of Official Languages” <<http://www.ocolclo.gc.ca>>.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Office of the Commissioner of Official Languages “History of the Official Languages Act” <[www.ocolclo.gc.ca](http://www.ocolclo.gc.ca)>; Official Languages Act 1988 (CA) [OCOL].

<sup>119</sup> Canadian Charter, n110.

<sup>120</sup> OCOL, n118.

<sup>121</sup> B Morse, “An Overview of Canadian Aboriginal Law”, in D Champagne (ed), *The Native North American Almanac*, Gale Research, Detroit, 2001.

<sup>122</sup> Canadian Charter, n110 at s16.

<sup>123</sup> OCOL, n118.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid; Canadian Charter, n110 at s23(1).

province with the same right to warrant the provision of the education in the minority official language.<sup>126</sup>

In direct contrast to the above, Aboriginal languages are not recognised constitutionally. The Official Languages Act 1988 only refers to the English and French languages.<sup>127</sup> There has been some debate about whether the sections on native rights in the Canadian Charter also offer protection for Aboriginal languages.<sup>128</sup> The conclusion has generally been that even if the sections can be read to include the right of Aboriginal peoples to maintain their languages within their communities, they do not entitle Aboriginal peoples to financial aid from the government to promote their languages.<sup>129</sup>

In 1971, the government of Canada introduced a policy of “multiculturalism”. This was to accommodate ethnic minorities such as Canadians of Ukrainian or German descent, who opposed the French minority population and its language receiving so much official recognition.<sup>130</sup> However, protecting Aboriginal peoples and their languages was not seriously considered under this policy.<sup>131</sup>

Some of Canada’s provinces and territories are more progressive with regard to Aboriginal languages. In the Northwest Territories, for example, seven official Aboriginal languages are identified in the Official Languages Act 1984. These languages acquired equal status to English and French when the Official Languages Act was revised in 1988.<sup>132</sup>

### **The Situation of the Various Indigenous Language Families**

There are three constitutionally recognised groups of Aboriginal peoples in Canada. They are the Indian, Inuit and Metis peoples.<sup>133</sup> Within the group referred to as “Indian”, certain Indians can be registered under the Indian Act and are referred to as “registered” or “status” Indians.<sup>134</sup> Aboriginal people who do not meet the criteria for registration are usually called “non-status” Indians.<sup>135</sup> Status and non-status Indians are also referred to generically as “First Nations” peoples.<sup>136</sup> The “Inuit” people are a distinct group of Aboriginal people living in the Arctic region of Canada,<sup>137</sup> and are excluded from registration under the Indian Act.<sup>138</sup> The term “Metis” grew out of two different groups of people with mixed ancestry, Aboriginal, and either English or French settler ancestry. The former were generally referred to as “Half-breeds”, the latter

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<sup>126</sup> Canadian Charter, n110 at s23(3).

<sup>127</sup> Official Languages and Bilingualism Institute, “Native Languages of Canada: Legal Framework”, Site for Language Management Canada <[www.slmc.uottawa.ca](http://www.slmc.uottawa.ca)>.

<sup>128</sup> J Edwards (ed), *Language in Canada*, Cambridge University Press, Cambridge, 1998, 153.

<sup>129</sup> Ibid.

<sup>130</sup> Official Languages and Bilingualism Institute, “A Change in the Course of Language Rights (1963-1969)”, Site for Language Management, Canada <[www.slmc.uottawa.ca](http://www.slmc.uottawa.ca)>.

<sup>131</sup> Ibid.

<sup>132</sup> Edwards, n128 at 154.

<sup>133</sup> P Chartrand (ed), *Who are Canada’s Aboriginal Peoples? Recognition, Definition and Jurisdiction* (Purich Publishing Ltd, Saskatoon (CA), 2002) at 41-42; Constitution Act, 1982, s35(2).

<sup>134</sup> Chartrand, *ibid*, 44; Indian Act RSC 1985 c I-5.

<sup>135</sup> Chartrand, *ibid*.

<sup>136</sup> “First Nations” Aboriginal Affairs and Northern Development Canada <[www.aadnc-aadnc.gc.ca](http://www.aadnc-aadnc.gc.ca)>.

<sup>137</sup> “Inuit” Aboriginal Affairs and Northern Development Canada <[www.aadnc-aadnc.gc.ca](http://www.aadnc-aadnc.gc.ca)>.

<sup>138</sup> Chartrand, n133 at 45.

according to the French term “Metis”. Over time, however, those two distinct groups have come to be regarded as one group under the common denominator “Metis”.<sup>139</sup> It has to be noted, however, that the understanding of who is Metis is still evolving.<sup>140</sup> With regard to such definitions, it is also important to remember that the division into different aboriginal groups, especially the division of First Nations people into “registered” or “non-registered” Indians under the Indian Act, is an imposition by the state which is at odds with indigenous peoples’ wish to self-identify who is an indigenous person.<sup>141</sup>

The Aboriginal population of Canada is extremely heterogeneous, with a diversity of languages. There are approximately 65 Aboriginal languages spoken in Canada.<sup>142</sup> These languages can be grouped into 11 different language families and isolates.<sup>143</sup> Public appreciation of Aboriginal languages is low.<sup>144</sup> They are still perceived as primitive languages “without an elaborate grammar or vocabulary” by many,<sup>145</sup> even though their grammars and vocabularies are as intricate as other languages.<sup>146</sup>

The 2006 census states that the number of First Nations people who speak an Aboriginal language remains steady at approximately 29 percent.<sup>147</sup> Of the Metis, approximately 4 percent were able to carry a conversation in an Aboriginal language, compared with 5 percent in the 2001 census, resulting in a decline of one percent.<sup>148</sup> The Inuit language is spoken in five different dialects: Inuvialuktun; Inuinnaqtun; Inuttit; Inuktitut; and Inuttut. The “Inuit language”, to use one term to encompass all of the dialects, has a large enough number of speakers to be considered viable.<sup>149</sup> However, knowledge and use of the Inuit language is declining. In the census of 2006, only 32,200 Inuit, 64 percent of the total population, reported that they speak the Inuit language as their mother tongue. This signifies a decline from 68 percent in 1996. The at-home use of the Inuit language, which is considered vital in ensuring transmission of the language to younger generations, has reduced from 58 percent in 1996, to 50 percent in 2006.<sup>150</sup>

Statistical data therefore indicates that many Aboriginal people in Canada have lost the ability to converse in their own language, or, even worse, never actually gain competency in speaking their language in the first place. Although a steady number of First Nations people are still speaking an Aboriginal language, there is no reason to be joyful: 30 percent of people speaking an Aboriginal language highlights that 70 percent are not capable of conversing in their own language. Since languages are conveyors of

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<sup>139</sup> Ibid, 84-87.

<sup>140</sup> Ibid, 103.

<sup>141</sup> R Maaka and A Fleras, *The Politics of Indigeneity: Challenging the State in Canada and Aotearoa New Zealand*, University of Otago Press, Dunedin, 2005, 160.

<sup>142</sup> Official Languages and Bilingualism Institute, “Native Peoples and Languages”, Site for Language Management Canada <[www.slmc.uottawa.ca](http://www.slmc.uottawa.ca)>.

<sup>143</sup> Edwards, n128 at 144.

<sup>144</sup> Ibid, 125.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> Statistics Canada *Aboriginal People in Canada in 2006: Inuit, Metis and First Nations, 2006 Census* (Minister of Industry, Ottawa, 2008) at 48 [2006 Census].

<sup>148</sup> Ibid, 37.

<sup>149</sup> Ibid, 28.

<sup>150</sup> Ibid.



culture, this must have a detrimental effect on the First Nations' sense of identity. The same can be said regarding the Metis, of which an even lower number of people are able to converse in an Aboriginal language. The Task Force is therefore correct to state in their report that "all languages, including those considered viable, are losing ground and are endangered".<sup>151</sup>

As pointed out above, the Aboriginal languages of Canada are not constitutionally recognised. Although it is the view of the Task Force that Aboriginal language rights are entrenched in section 35 of the Constitution Act 1982 and, therefore, fall under the Aboriginal rights that are recognised and affirmed under the Constitution Act 1982,<sup>152</sup> they are nevertheless in danger of becoming extinct. This was what prompted the Aboriginal peoples in Canada to set up the Task Force on Indigenous Languages and Culture, in order to recommend ways of maintaining the languages. One recommendation centered upon the enacting of legislation by Canada to recognise, protect and promote its Aboriginal languages.<sup>153</sup> This recommendation was based on the belief that raising the status would positively enhance the way people perceived it. The Task Force states that languages that are perceived as being "held in high regard"<sup>154</sup> enjoy more interest and are spoken more than languages which are perceived as being less valuable.<sup>155</sup> The shift of many Aboriginal young people towards English can certainly be attributed to their perceiving aboriginal languages as lesser languages.

While the Task Force's recommendation only goes as far as implementing legislation to protect Aboriginal languages, the gaining of official status would be of maximum benefit. It would elevate the languages publically and be an important first step towards ensuring the maintenance of the languages. It would show a commitment by the state to using aboriginal languages in its communications with aboriginal people. This desire for official recognition was also prevalent in the efforts of the Romansh speaking Swiss population, and te reo Maori speakers, and resulted in both being declared official languages.

## **Nunavut as an example of a Progressive Language Policy**

### **(i) The creation of Nunavut and its current situation**

Canada's youngest territory, Nunavut, was created by the Nunavut Land Claim Agreement,<sup>156</sup> signed between the Inuit people and the Canadian Prime Minister, in May 1993.<sup>157</sup> The term "Nunavut" means "our land" in Inuktitut.<sup>158</sup> The desire to create a new territory under the self-government of the Inuit people began in the 1970s. At first it centered on claiming back land for the Inuit people, however, this then evolved into a

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<sup>151</sup> *Task Force Report*, n14 at iii.

<sup>152</sup> *Ibid*, v; Constitution Act 1982, n133 at s35(1).

<sup>153</sup> *Ibid*, 79.

<sup>154</sup> *Ibid*, 75.

<sup>155</sup> *Ibid*.

<sup>156</sup> Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada (signed 25 May 1993).

<sup>157</sup> A Kersey, "The Nunavut Agreement: A Model for Preserving Indigenous Rights", (1994) 11 *Ariz J Intl & Comp L*, 429.

<sup>158</sup> Maaka and Fleras, n141 at 192.

desire for self-government for the Inuit people.<sup>159</sup> “The sustaining vision of Nunavut is a society with full control over its culture and language, its resources and environment.”<sup>160</sup> The creation of a new territory was perceived as a big step forward for the Inuit people. As the Inuk leader John Amagoalik stated: “No other land claim has involved creating a new territory with our own government. It is a victory. We’ve achieved what other aboriginal people can only dream about”.<sup>161</sup> The creation of the Nunavut territory gave the Inuit political control, since they constituted the majority of population in the territory, comprising 85 percent of the population, which would be mirrored in their having controlling legislative powers.<sup>162</sup>

Even though the creation of Nunavut has been perceived as a victory by some,<sup>163</sup> others see Nunavut as “a largely artificial construct without the critical tax base to be self-sufficient and lacking any productive economic enterprise to foster wealth creation”.<sup>164</sup> These critics see the vision of Nunavut as being dependent on Federal funding.<sup>165</sup> Also, social and economic problems were seen for the new territory with its high costs of living, high unemployment and high suicide rates.<sup>166</sup> Still, there are optimistic voices belonging to the Inuit people themselves. Paul Okalik, former Premier of Nunavut, acknowledges that Nunavut is facing difficulties caused by the abrupt change of lifestyle when Inuit first came into contact with non-Inuit. He says: “To this day, many continue to face personal turmoil as they are torn between two worlds”.<sup>167</sup> Nevertheless, Okalik sees the creation of Nunavut as a way to guarantee the rights of self-government so crucial to the Inuit people when pursuing their land claims agreement.<sup>168</sup> Nunavut also has natural wealth. Resources such as gold, oil and natural gas, as well as fish and wild game, offer great opportunities for economic expansion and allow the Inuit people “to engage the outside world on our own terms, in our own language and through our traditional values”.<sup>169</sup>

The creation of Canada’s youngest territory has benefitted the Inuktitut language, which has been elevated to being one of three official languages. The loss of the Inuit language and the consequent fear for their culture was one of the main reasons the Inuit people entered into land claim negotiations.<sup>170</sup> After first adopting the “Official Languages Act 1988 of the Northwest Territories” [NTOLA], of which Nunavut was a part before becoming its own territory in 1999, Nunavut created its own “Official Languages Act” [OLA Nunavut] which was passed in the Nunavut legislature in 2008.<sup>171</sup> Because the OLA Nunavut diminished the rights of other languages, which had been official

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<sup>159</sup> Ibid, 193.

<sup>160</sup> Ibid.

<sup>161</sup> Kersey, n157 at 429.

<sup>162</sup> Ibid, 455; Maaka and Fleras, n141 at 194.

<sup>163</sup> Kersey, n157 at 429.

<sup>164</sup> Maaka and Fleras, n141 at 194.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> P Okalik, “Nunavut: The Road to Indigenous Sovereignty”, (2007) 2 *Intercultural Hum. Rts. L. Rev.* 11, 13.

<sup>168</sup> Ibid, 14.

<sup>169</sup> Ibid, 18.

<sup>170</sup> A Timpson, “Reconciling Indigenous and Settler Language Interests: Language Policy Initiatives in Nunavut”, (2009) 43(2) *Journal of Canadian Studies*, 161.

<sup>171</sup> “Nunavut Politicians Pass New Official Languages Act”, *CBC News*, 4 June 2008.

languages under the NTOLA, it had to receive parliamentary concurrence.<sup>172</sup> This concurrence was given in June 2009.<sup>173</sup> Unfortunately, the Act has still not been fully implemented.<sup>174</sup>

Nunavut has elevated the Inuit language to an official language and has also created the Inuit Language Protection Act [ILPA Nunavut], which came into force in 2008.<sup>175</sup> This Act is “the only Act in Canada that aims to protect and revitalize a first peoples’ language”.<sup>176</sup> The ILPA Nunavut has also not been fully implemented.<sup>177</sup> Nevertheless, the provisions of the two Acts offer a new approach to the protection of Aboriginal languages, and, if successfully implemented they “could signal the development of a more exciting, complex, and diverse approach to official language politics in Canada that integrates the protection and promotion of Indigenous and settler languages”.<sup>178</sup>

## **(ii) The Official Languages Act [OLA Nunavut] and the Inuit Language Protection Act [ILPA Nunavut]**

OLA Nunavut elevates Inuit, comprising as a single term the two dialects Inuktitut and Innuinaqtun,<sup>179</sup> to an official language alongside English and French. It is equal in status to English and French.<sup>180</sup> The status of “official” language allows the Inuit language to be used in debates in the Legislative Assembly<sup>181</sup> and in judicial and quasi-judicial proceedings.<sup>182</sup> It may also be used to communicate with the head and central service offices of a territorial institution, and with other offices if there is a significant demand for communication in an official language.<sup>183</sup> The preamble of OLA Nunavut states the importance of the Inuit people and their language by declaring the presence of the Inuit people in the territory to be a fundamental characteristic of Canada.<sup>184</sup> Reference is made to past times when the Inuit language was “legally, socially and culturally subordinated in government and elsewhere”,<sup>185</sup> as being reversed by OLA Nunavut. However, the Inuit language is not pushed as strongly as might have been expected given the history of Aboriginal language marginalisation. Legislation is made, printed and published in English and French, whereas an Inuit version is only published by order of the Commissioner in Executive Council.<sup>186</sup>

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<sup>172</sup> “History of Nunavut’s Language Laws”, Office of the Language Commissioner of Nunavut, <<http://langcom.nu.ca>>.

<sup>173</sup> Ibid.

<sup>174</sup> See: “Nunavut’s CLEY department re-names, re-shapes itself” (4 June 2012) Nunatsiaq Online <[www.nunatsiaqonline.ca](http://www.nunatsiaqonline.ca)>; see also S Rogers, “Nunavut language laws a ‘priority,’ Aariak says” (1 November 2011) *Nunatsiaq Online* <[www.nunatsiaqonline.ca](http://www.nunatsiaqonline.ca)>.

<sup>175</sup> Timpson, n170 at 160.

<sup>176</sup> “Nunavut’s Official Languages: Inuit Language Protection Act”, Office of the Language Commissioner of Nunavut, <<http://langcom.nu.ca>>.

<sup>177</sup> Ibid.

<sup>178</sup> Timpson, n170 at 176.

<sup>179</sup> Official Languages Act 2008 Nu 2008 c10 at s1 [OLA Nunavut]; Inuit Language Protection Act 2008 Nu 2008 c17, at s2 [ILPA Nunavut].

<sup>180</sup> Ibid, OLA Nunavut, s3.

<sup>181</sup> Ibid, s4(1).

<sup>182</sup> Ibid, s8(1) and s9(1).

<sup>183</sup> Ibid, s12 (2) and (3).

<sup>184</sup> Ibid, 1.

<sup>185</sup> Ibid.

<sup>186</sup> Ibid, s5(1) and (3).

The ILPA Nunavut in its preamble refers to the past government policy of assimilation and the perception of the Inuit language as being inferior to English and French.<sup>187</sup> It states that these actions and attitudes have had a negative effect on the Inuit language.<sup>188</sup> The ILPA Nunavut was designed to ensure the viability of the Inuit language.<sup>189</sup> It contains provisions regarding the use of the Inuit language in communications and services by public sector bodies and private sector bodies, as well as the use of the language in education and as the language of the work place in territorial institutions.<sup>190</sup> The different provisions are to be implemented gradually after 2008. The aim of the government was for Nunavut to become a bilingual society in Inuktitut and English by 2020, while still respecting the needs of the French speakers and with Inuktitut as the language of the work place.<sup>191</sup> Use of the Inuit language as the language of work in territorial institutions is a right, and territorial institutions have a statutory duty to increase the use of the Inuit language in the work place.<sup>192</sup> Use of the Inuit language is also enforced in public and private sector entities, which have to use the language in essential services, such as emergency, rescue or health services, and also when offering hospitality services in a hotel or restaurant.<sup>193</sup>

### **(iii) The effects of the Official Languages Act and the Inuit Language Protection Act**

By creating these policies which link official recognition of an Aboriginal language with measures to advance it, Nunavut is a pioneer and provides a new role model for the language policy of Canada.<sup>194</sup> Little is known about how effective such policies are in maintaining and advancing other Aboriginal languages.<sup>195</sup> The policies drafted by Nunavut are, however, of interest to other Aboriginal peoples in Canada, and indigenous peoples worldwide who are trying to revitalise and maintain their languages.<sup>196</sup> In these circumstances, a comparison with Romansh and the policies put in place to protect Romansh is extremely valuable.

As stated above,<sup>197</sup> Romansh is in a similar situation to Aboriginal languages such as Inuit. Therefore, it is not surprising that the language policies for Nunavut and Romansh both emphasise the languages being used in everyday life. With regard to Romansh, specific municipalities being declared unilingual Romansh speaking municipalities, guarantees language use. In Nunavut, the daily use is fostered by obligatory use of Inuit in important services such as health and hospitality, as well as the use of Inuit in the work place.

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<sup>187</sup> ILPA Nunavut, n179 at 1.

<sup>188</sup> *Ibid.*

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

<sup>191</sup> Timpson, n170 at 162.

<sup>192</sup> ILPA Nunavut, n179 at s12.

<sup>193</sup> *Ibid.*, s3(2); "Inuit Language Protection Act" Office of the Language Commissioner of Nunavut <[www.langcomm.nu.ca](http://www.langcomm.nu.ca)>.

<sup>194</sup> Timpson, n170 at 160.

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

Whether the official status and the policies put in place to protect the Inuit language actually help to maintain the language still has to be seen. On the other hand, the official status of Romansh and the legislative work enacted on both the federal and cantonal level to protect and maintain Romansh seems to have benefitted the language. The first results of the latest census from 2010 with regard to religion and languages show that the percentage of Romansh speakers has remained stable at 0.6 percent when compared to the census from 2000.<sup>198</sup> Halting the steady decline of Romansh since the end of the 19<sup>th</sup> Century<sup>199</sup> has to be seen as success, and show that policies aimed at maintaining languages can go a long way in sustaining them. These results support the Inuit language also being recognised as an official language at the federal level.

#### **(iv) The Inuit Language as an Official Language at the Federal Level**

##### **a. Possible Objections to Granting Official Status**

Granting federal official status to the Inuit language would mean that Inuit people could use their language when communicating with the Federal government. They could use it before Federal Courts or in Parliament, and legislation would have to be issued in the Inuit language. They could also ask for education of their children in their language if they were residing in provinces or territories where their language constituted the minority language.

A major objection to official recognition of an indigenous language is the expense to the state. This was countered by the Waitangi Tribunal in Aotearoa New Zealand, as follows:<sup>200</sup>

This objection pre-supposes that by official recognition all public documents statutes, regulations, public notices, perhaps even street signs should be published in both languages. We do not agree. The extent to which official recognition would require efforts of this kind will depend upon subject-matter, locality, audience and other factors as well as costs.

As with Romansh, the Inuit language could be limited to communications between its speakers and the federal institutions or to only issuing certain legislation in the Inuit language. This is already the case in Nunavut, anyway, where legislation is mainly passed in English and French.<sup>201</sup>

##### **b. The Pilot Project of the Canadian Senate as Inspiration**

The Senate of Canada recently introduced a pilot project allowing Inuktitut to be spoken in the senate.<sup>202</sup> The Standing Committee on Rules, Procedures and the Rights of Parliament [Standing Committee] recommended the use of Inuktitut in the Senate

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<sup>198</sup> Bundesamt für Statistik BFS, “Ein Funftel der Bewohnerinnen und Bewohner ist konfessionslos“ (press release, 19 June 2012) at 1.

<sup>199</sup> Furer, n45 at 17.

<sup>200</sup> *Te Reo Maori Report*, n26 at 5.6.

<sup>201</sup> OLA Nunavut, n179 s5(1).

<sup>202</sup> The Standing Committee on Rules, Procedures and the Rights of Parliament “Fifth Report” (9 April 2008) Parliament of Canada <[www.parl.gc.ca](http://www.parl.gc.ca)>.

chamber and also recommended allowing the use of other aboriginal languages in the Senate chamber.<sup>203</sup> These recommendations were based on the findings that:

... use of Aboriginal languages in the Senate would constitute recognition of their unique status in Canada. Canada's Aboriginal peoples were here long before the arrival of the Europeans, and have never been conquered.

The Committee believed that the use of Inuktitut in the Senate chamber would be “a positive way of affirming the legitimacy of these languages”.<sup>204</sup> The Committee also expressed concern about the viability of the languages and pointed out that “allowing the use of aboriginal languages on the floor of the Senate would send a powerful message about the importance that we attach to them”.<sup>205</sup> These strong statements from a Federal government committee support the argument for making aboriginal languages “official” languages. Similar views were expressed by the Waitangi Tribunal when considering official status for te reo Maori. It was stated that te reo Maori, “is, after all, the first language of the country, the language of the original inhabitants”.<sup>206</sup> Such statements acknowledge the longstanding Aboriginal desire for their languages, which are the first spoken on the territories of modern nation states such as Canada, to be saved from extinction, and, instead treated as valuable assets of the state. Speaking Inuktitut in the Senate of Canada would be an enormous achievement. It would pave the way for the official language status of Inuktitut and acknowledge the Aboriginal heritage of Canada.

#### **(v) Is Official Status for All Aboriginal Languages Possible?**

Inuktitut is one of approximately, 60, aboriginal languages present in Canada. The prospect of making them all official languages is daunting. Regarding the feasibility of letting other aboriginal languages be spoken in the Senate, the Committee came to the conclusion that “there may be significant practical barriers relating to aboriginal languages or dialects that do not have a significant population of current speakers”. Although this may be lamentable, it is also understandable that it might be very difficult to allow for translation of a language only spoken by a few hundred speakers. The same approach could apply to recognising aboriginal languages as official languages at a Federal level.

Technical equality to English and French on a Federal level would elevate the status of the aboriginal languages, show a commitment of the Canadian state to its Aboriginal people, and would distinguish aboriginal languages from other immigrant languages. If official recognition was coupled with measures to advance the languages such as exists in Nunavut, it would reinforce the survival of aboriginal languages.

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<sup>203</sup> Ibid.

<sup>204</sup> Ibid.

<sup>205</sup> Ibid.

<sup>206</sup> *Te Reo Maori Report*, n26 at 1.

## CONCLUSION

Switzerland and Canada both have more than one official language. However, although Canada grants its two colonial languages official status, it does not similarly acknowledge its aboriginal languages. In fact, Canada has long counted itself as being founded by its two “immigrant” peoples.<sup>207</sup> This view was later slightly changed to a policy of multiculturalism, which recognised all ethnic groups as being equal in value.<sup>208</sup> Although the importance of aboriginal language rights is at least being acknowledged,<sup>209</sup> and the Senate’s pilot project is promising, the focus at the Federal level is still only on English and French.

In comparison, Switzerland actively acknowledges its different languages. The concept of one single national language for the whole state was dismissed at confederation and instead four national languages were implemented. The intention was to constitute a united Swiss state without assimilating any of the different parties to the state.<sup>210</sup> The consideration given to Romansh from an early point in time has led to various acts of enforcement of the language, such as declaring it a national language as well as an official language, albeit with certain restrictions. These efforts clearly helped the Romansh language to survive, and, even more important, it gave the Romansh language the respect it deserves.

Similarly, making aboriginal languages official languages at the Federal level would be a significant first step in preserving the languages. It would also signify that Canada acknowledges the heritage of its aboriginal peoples as part of its history and gives them, and their languages, the respect they deserve.

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<sup>207</sup> *OCOL Annual Report*, n42 at 4.

<sup>208</sup> *Ibid.*, 34.

<sup>209</sup> *Ibid.*

<sup>210</sup> *Botschaft Sprachenartikel*, n72 at 310.