Legal update

Federal institutions: new language considerations introduced under the Indigenous Languages Act

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Indigenous

Earlier this year, the Indigenous Languages Act, was passed into law in response to the Truth and Reconciliation Commission’s report “Calls to Action,” which invited the federal government to recognize the importance and place of Indigenous languages in Canada. This legislation recognizes that the rights of Indigenous peoples protected under s. 35 of the Constitution Act, 1982 may include rights related to Indigenous languages. The Act received royal assent on June 21, 2019, and its provisions will come into force on a day to be fixed by order of the Governor in Council. This date, however, has yet to be announced.

Obligations of federal institutions

While the Act applies to many government departments and Crown corporations, federal institution obligations under the Act are largely permissive. Notably, the Act provides that a federal institution may provide access to services in an Indigenous language, if it has the capacity to do so and there is sufficient demand. Further, it provides that a federal institution may cause any document under its control to be translated into an Indigenous language or interpretive services to be provided to facilitate the use of an Indigenous language in the course of its activities. Moreover, under the Act, an agreement between the Government of Canada and provincial, territorial, or Indigenous governments may be entered into to allow a federal institution to provide access to services in an Indigenous language.

The Office of the Commissioner of Indigenous Languages

The Act establishes the Office of the Commissioner of Indigenous Languages (the Office). The Office’s mandate includes promoting Indigenous languages; supporting the efforts of Indigenous peoples to reclaim, revitalize, maintain and strengthen Indigenous languages; promoting public awareness of various aspects of Indigenous languages, cultures, history, rights and the importance of working toward reconciliation; and supporting projects in Indigenous language education and revitalization.

The Office’s mandate also includes facilitating dispute resolution and reviewing complaints. Indeed, upon request, the Office may provide services (mediation or other culturally appropriate services) to facilitate the resolution of a dispute related to, most notably, the fulfilment by any party of an obligation related to Indigenous languages under an agreement entered into by the Government of Canada or the implementation of any Government of Canada policies and programs related to Indigenous languages. Additionally, the Act provides for the appointment of a Commissioner of Indigenous Languages (Commissioner), who may review complaints filed respecting such matters. After a review, the Commissioner must prepare a report containing any recommendations it considers appropriate. Although the
Commissioner may review complaints, the Act does not specifically confer upon the Commissioner any right to compel witness testimony or document production, or to compel compliance with provisions of the Act. Under the Act, the Commissioner has the powers of a natural person, meaning it can sue and be sued. However, there is no statutory right of action under the Act that allows a party or the Commissioner to seek redress before a court of competent jurisdiction.

**Regulations and rules**

The Act also affords the Governor in Council the power to make regulations. Notably, these regulations may specify the services to which access may be provided in an Indigenous language and the region in which a federal institution may provide access to those services in that language; define what it means to “provide access to services”; and specify the circumstances in which a federal institution has the “capacity” to provide access to services in an Indigenous language and those in which “demand” for access to services in that language is sufficient.

The Governor in Council also has the power to make regulations respecting filing and reviewing complaints and the reports and recommendations made following a review; procedures for consultations required under that Act and for negotiating the agreements and arrangements referred to above; and generally, for carrying out the purposes of the Act. Additionally, the Office may make rules respecting the dispute resolution services or review of complaints, subject to any regulations made by the Minister of Canadian Heritage.

**Take-aways**

The Act itself does not impose any positive obligations on federal institutions. However, it will be important for federal institutions to keep an eye out for agreements or arrangements entered into by the Minister of Canadian Heritage with provincial or territorial governments, Indigenous governments or other Indigenous governing bodies, Indigenous organizations or other entities for the purpose of allowing federal institutions to provide access to services in an Indigenous language.

Indeed, a federal institution failing to fulfill an obligation related to Indigenous languages under such an agreement could face a complaint to the Office of the Commissioner of Indigenous Languages. Additionally, federal institutions would be wise to remain on the lookout for regulations or rules enacted under the Act, which could add specifications to the services federal institutions may provide as well as to the complaint process.

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