

IALC OTTAWA Conference Report 2015

New Perspectives and Challenges on Protecting Language Rights: Promoting Linguistic Pluralism

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Background

On May 20-21, 2015, language commissioners, public servants, academics and other professionals from various parts of the world gathered in Ottawa, Canada for the second conference of the International Association of Language Commissioners (IALC). Created in May 2013 in Dublin, Ireland, the IALC supports and advances language rights, equality and diversity, and helps language commissioners' work according to the highest professional standards. Current membership includes representatives from regions and countries with language commissioners, including Canada (at Federal level, Ontario, New Brunswick and Nunavut), Catalonia, Ireland, Kosovo, South Africa, Sri Lanka and Wales.

On May 19th, the participants were welcomed to Ottawa by His Excellency the Right Honourable David Johnston, the Governor General of Canada at his official residence, Rideau Hall, Ottawa. In his address the Governor General took the opportunity to confirm how essential the role of official languages was in the delivery of public services and to the social cohesion of the society and expressed a wish that the international participants would both learn from Canadian best practice and in turn would benefit from the exchange of views, practices and visions which this unique mix of specialists would afford.

The conference itself was organised and hosted superbly by the Official Languages and Bilingualism Institute of the University of Ottawa in co-operation with the Office of the Commissioner of Official Languages. Professor Richard Clement and his colleagues deserve an especial thanks for arranging a fascinating mix of speakers, an excellent venue and plenty of opportunities for genuine interchange.

On the morning of May 20th, 2015, the conference participants were welcomed to the University of Ottawa by Professor Gary Slater, Associate Vice-President, Student Affairs. The opening speech was given by Graham Fraser, Commissioner of Official Languages, Canada and the President of IALC.

Commissioner Fraser's axioms

Having expressed his delight at the growth of the IALC the Commissioner of Official Languages drew our attention to three axioms which influenced the vitality of official languages. The first was the impress of linguistic spaces and the conditions that influence which languages are spoken where and under what circumstances. His focus on the significance of space and networks for language reproduction and use was timely as both the territorial range and nature of language-related networks in Canada was changing apace. We can unpack this spatial dimension further by referencing a host of linguistic spaces which need to be considered in determining the health or

otherwise of official language community vitality. Such spaces can be open, closed, fluid, bounded, regulated and proctored or anarchic, satisfying, contested, crowded, fuzzy, self- and other-determined, hidden and secretive, exclusive or shared.

A second axiom was the centrality of IT both in the delivery of services and in the creation of new communities. Thus while acknowledging that linguistic networks can be stable and resourceful, a warning was given that with the advent of IT and rapid communication systems, such networks, when they are forged from, and overly dependent on, artificial intelligence and cyber space, can threaten to reduce the value of human interaction on which so much of our meaning seeking behaviour is predicated.

Fraser's third axiom, multiple communities, evoked the need to be conscious of the interlocking nature of those formal and informal communities which shape our lives. He argued for a greater awareness of how public service delivery systems and organic communities interacted, drawing attention to the fact that some types of communities miss out on the full range of services on offer. This was a growing concern as more and more public services were offered on line, officially bilingual and equal in their provision, but offering no guarantee of satisfying the expectations and demands of official language communities. While such practices undoubtedly respect the requirement of legal equality the notion of serving the particular needs of various communities may not be as well realised by such trends. Webber anticipated this trend when in 1964 he devised the concept "community without propinquity", which captured the potential for the alternative and radical bases of community orientation we witness today in the form of on-line communities and the removal of some structural barriers which in times past prevented or limited human interaction. But such conceptions of community also drew attention to the inexorable decline in face-to-face communication as the services offered by banks, post offices and government departments are increasingly automated and placed at a distance from the customer. One may ask, how vitiating is that for the soul and mind of a people, especially when such services are corralled under the banner of a dominant language all in the name of efficiency, standardisation measures and the need to serve the democratic majority. What price then the virtue of co-equality, of minority recognition and full representation in the affairs of the pluralist state?

Following the Commissioner's keynote remarks the first morning was devoted to language rights and how language commissioners hold governments to account. The first of five panels throughout the conference concerned the practical policy issue of making commissioners' advice stick which is encapsulated in the art of recommendation and follow-up. The second panel gave an opportunity for Canadian public servants to articulate how governments respond to the recommendations of the Official Languages Commissioner. The third panel addressed the question of changing hearts and minds about the value of linguistic pluralism while the fourth panel discussed the manner in which compliance could be ensured and, under what conditions when all else fails complainants and Commissioner take the legal route.

The second day was concerned with the twin themes of language and group conflict while the fifth panel dealt with the protection and promotion of aboriginal languages.

I have identified the following cardinal issues which were addressed and elaborated upon below within the thematic structure of the conference programme: Strategies and Resources; Revitalising Indigenous Vitality; Measurement and Evaluation; Action and Implementation; Setting Goals and Changing Behaviour; Dialogue and Communicating; Post-conflict Reconciliation; Partnership and Development; International Actors: Mandate, Goals, Resources and Impact.

Panel 1: Making Your Advice Stick

The first substantive session was titled 'Holding Governments to Account'. It was evident that Commissioners and their staff had to exercise a fair measure of both conviction and caution in dealing with their principal targets, namely state and regional/provincial governments. I deduced that the maxim of the morning was 'Commissioners: Know your duty and exercise your powers!' But it may be asked who are the real targets for reform and impact? Ostensibly, Commissioners address their remarks and recommendations to the government *per se*, but in reality when it comes to implementation any significant change is actioned by specific, often known individuals, whether at the level of Minister, Deputy Minister, senior civil servant or head of agency. In broad terms such interaction, when seen as a long-term process rather than as a single intervention, demands a good understanding of the context within which any anticipated reform is likely to take place, thus Commissioners and their staff have to develop sensitive political antennae and adopt savvy behaviour. Often this is accompanied by a fair degree of pragmatism and mutual empathy for what needs to be done.

The Canadian Provincial Commissioners for NB and Ontario who opened this session both recognized that what was most needed from them was very specific guidance and precise recommendation for government departments which over time developed into a culture of best practice of what to do, and what not to do.

A critical issue in their view was timing, when to intervene and when to hold back? Part of this decision-making process related to the potential impact such an intervention might have, but it was also determined by how well the Commissioners could secure and muster their resources. Judicious use of public monies was an important consideration for the Provincial Commissioners.

François Boileau, French Language Service Commissioner, Ontario, illustrated the need to develop accurate recommendations which were capable of implementation. He exemplified what **not** to do thus:

"The Commissioner recommends that the Minister Responsible for Francophone Affairs, in conjunction with her Cabinet colleagues, develop an action plan to ensure that disadvantaged populations have genuine access to French-language services, in keeping with the letter and the spirit of the *French Language Services Act*."

This formulation was considered to be too general and as a result the government did not know what to do. In its place a more realistic suggestion was that actionable recommendations would be formulated along the following lines:

- be as specific as you can;
- ensure the middle management can understand;
- include a deadline;
- be patient and persistent;
- recall that a recommendation is part of a dialogue with the Government;
- recommendations versus persuasion: the need of a recommendation to get the attention.

François Boileau illustrated the art of penning recommendations thus:-

Before (2007-8): "The Commissioner recommends that the Minister propose a clear regulation to govern the delivery of French-language services under a contract with a third party who has agreed to provide services on behalf of a government agency or under a new public-private partnership".
After (2009-10):-"The French Language Services Commissioner urges the Minister responsible for francophone affairs to follow up on his recommendation and, in 2010-2011, to create a regulatory framework for services offered by third parties, in order to eliminate the existing loopholes".

The wise counsel was to remember that all parties involved in the implementation of the French Language Services Act were engaged in a permanent dialogue and that the desired outcomes were most readily achieved if there was a shared understanding of what was possible within a given timeframe.

Katherine d'Entremont, Commissioner of Official Languages, New Brunswick, informed the conference that the following considerations and questions were the most apposite in the formulation of her Office's recommendations. A *sine qua non* was that all recommendations were the result of expert analysis of a given situation. The key questions for her were:

- are the recommendations evidence-based?
- are they remedial and constructive rather than punitive?
- are the roles clear?
- is responsibility for implementation identified?
- are the effects of recommendations measurable?
- are the timelines realistic?
- will they galvanize the target organization into action?

A second aspect of the New Brunswick best practice was managing communications wisely, especially in relation to the release of investigation reports. This involves:-Deciding whether it is in the public interest to inform; deciding on who to inform; if the decision is to publish an investigation report, when should this be done? If publishing, is it better to opt for a soft publication or a media release? What impact will such publication of recommendations and investigative findings have? Will it resonate with citizens? Will it compel the organization to act?

Similar messages were evoked in the lessons from Wales presented by Commissioner Meri Huws who was tasked with elucidating her conception of the Welsh Language Commissioner's decision-making process. The key determinants of that process that she identified were the quality of evidence obtained, the maintenance of appropriate relationships and the choosing of targets and tools.

The maxims embedded in these relatively new practices (the Welsh Language Commissioner began its work in April 2012) were simplicity, the search for clarity and a commitment to persistence. She reported that the often awkward and taxing decisions the Welsh Language Commissioner faced were couched in a series of generic questions, such as when to intervene? When to demonstrate the powers one holds? How to take the community with you?

In all this, it was recognized that both inappropriate action and inconsistency could lead to threats to the integrity and capacity of the Commissioner's office to have a lasting impact and to influence a change in behaviour. Ultimately for Meri Huws, her professional practice and decision making was more akin to an art rather than a science. Because so much of her work is rooted in the application of psychology, much of the decision-making process has to take account of the anticipated response of the target audience.

We turned then to Ireland's experience of formulating recommendations and implementing language rights reforms.

The Irish Language Commissioner, Rónán Ó Domhnaill, reported that constitutionally Ireland has two official languages, Irish and English. Before the Official Languages Act 2003 was passed, citizens' only recourse was to the courts and this was both expensive and time consuming. The Official Languages Act 2003 established the Office of Language Commissioner to handle language complaints from citizens and to monitor compliance by public bodies with the Act. However, the Act has very few direct provisions, as language schemes were supposed to lead to an incremental improvement in language services. He further reported that since its establishment in 2003, the Irish Office has handled over 7000 complaints (a significant proportion of which related to government departments and offices and to local authorities), launched over 100 investigations and placed 7 reports before the Houses of the Oireachtas which were discussed primarily by the Oireachtas Joint Committee on Public Oversight and Petitions. Of particular note was the Commissioner's recommendation to the Committee in January 2015 that a public register be created and maintained by the Committee so that it could more effectively monitor and proctor the response of organizations to the Commissioner's recommendations.

The most important decisions in individual cases often relate to how and when to progress the case to the next level. This was a matter of judgement, but the question was raised how best to influence the behaviour of the target organisation and how can the public body be persuaded? What in

essence was the best approach to following up by letter, phone, or in person? Should these measures not work, was a more formal approach required?

The Commissioner debated the merits of employing the tactic of naming and shaming so as to change the attitude and behaviour of the heads of Public Bodies who were in breach of their language obligations. He reminded the audience that the Committee had the power to add and remove names as issues were resolved to its satisfaction. But 'name and shame' tends to represent a short term gain, and if not accompanied by other strategies and instruments it could be less effective when it came to ensuring structural reform and permanent changes to the learned behaviour of institutions.

A particular concern which animated the previous post holder, Sean Ó Cuirreáin, was the safeguarding of the Commissioner's independence. It may be asked: has the Commissioner's office been too effective in its work? At the time of Ó Cuirreáin's resignation in December 2014 there was a widespread belief that the political and administrative arms exhibited a strong negative reaction to naming and shaming. Thus the current Commissioner is faced with the delicate task of safeguarding the Office's status, resources and capacity to act. This is seen most acutely in the decision-making process of when to intervene in a case. Several suggestions could be made as to how best to strengthen the Commissioner's independence. A fundamental feature of the preservation of the Commissioner's independence is the funding stream which animates the organization. The Commissioner has come to the conclusion that resources should not be dependent on Government Department, but rather they should be directly provided for by Oireachtas/Parliament. Recruiting/staffing would then become a question for the Office – within the resources made available by Oireachtas/Parliament. Other suggestions circulating at present were to make constitutional provision for the Office, as is being sought by the Office of the Ombudsman. Another was to benchmark the resources of the office to the Office of the President, while a third was to provide by statute for the resources of the office with an inbuilt increase to counter inflation. Similar measures could also be adopted by several other agencies represented in the conference. This issue of the relationship between resources, capacity and freedom to act and the maintenance of independence, was a common theme raised by most cases covered by the conference and in consequence deserves very close attention in future comparative work on language commissioners/ombudsmen/regulators.

The Catalan Ombudsman, Rafael Ribó, the host of the inaugural conference of the IALC in March 2014, expressed his frustration as to how limited in fact were his powers to effect change in relation to several agencies of the Spanish state which operated within Catalonia. The tension could best be expressed in the phrase I used in my Rapporteur's address as 'Catalan Freedom: Spanish Shackles'. It may be asked how autonomous is the Catalan Ombudsman and within which domains? While great strides had been made in relation to embedding the authority of the Ombudsman within Catalan Government activities and services, it was recognized that the intransigence of selected Spanish state competences, such as the legal system and policing remained as major barriers to Catalan

advancement. As a consequence in common with all the sub-state cases discussed in the conference, Catalan territorial governance had its limits within a non-sympathetic state system. The Ombudsman's response to this structural conundrum was to reiterate the need to build bridges in a difficult context.

Panel 2: Government Responsiveness

The second panel was devoted to Government Responsiveness at various levels of the Canadian political hierarchy to the input of the respective Commissioners. The common theme was the institutional response to Language Commissioners' recommendations and impact.

Marc Tremblay, Executive Director, Official Languages Centre of Excellence, Treasury Board Secretariat offered six pearls of wisdom, which from his perspective characterised the manner in which both government and commissioner should structure their interaction.

The first was that both parties should be concerned with offering and receiving timely advice, thus enhancing the relevance of OCOL to the process of securing linguistic duality. The second was the emphasis he placed on strategic thinking and action. The third was the necessity for a balanced and reasoned response which will sustain over the long period. The fourth was a plea to be realistic and to manage expectations so as to produce results which are both commensurate and feasible. The fifth is to produce answers and implement actions which are solution-oriented and avoid structural and partisan conflict. The sixth is that maintaining a culture of impartiality is the key to a receptive ear and sustained progress.

These were sound principles of practice derived from an experienced agent within the Canadian system and are eminently worthy of imitation elsewhere.

Line Pinet, Director of Canadian Francophonie and Official Languages in New Brunswick reflected on a spirit of co-operation which characterised the relationship between the provincial government and the NB Commissioner of Official Languages. Despite the complexity of having to manage different functions, roles and responsibilities, she argued that the absolute necessity is to work together. Both Commissioner and Executive have recognized that engineering behavioural and institutional change requires time, thus the persistence of the Commissioner's repeated messages through six annual reports has paid off, for the language regime system has recently introduced most of the recommended reforms. In consequence, evaluation over the long term is as vital as is evidence-based policy in the determination of overall strategy and implementation of Official Language Act.

In a similar vein of co-operation, Kelly Burke, Assistant Deputy Minister, Office of Francophone Affairs Ontario, highlighted the Language Commissioner's critical role in helping to set the agenda for government, which officials acknowledge in a spirit of openness and mutual respect. The relationship was changed substantially by reforms to the law in 2013 and 2014 which resulted in greater autonomy and different reporting procedures for the French Language Services Commissioner,

Francois Boileau. From Keyyl Burke's perspective, this maturation reflects the growth of a steady and positive relationship between the principal actors involved which is realised in practical terms in respect of constructive meetings between the partners every two weeks so as to anticipate and formulate answers to evolving issues.

A second significant change was the enlargement through redefinition of who constitutes Ontario's Francophone population i.e. who are the legitimate customers/recipients of the services guaranteed under the French Language Services Act. The widening of the customer base changes the dynamic and makes the Language Commissioner's office more relevant to a greater proportion of Ontario's citizenry. While this was a welcome move, it was acknowledged that this reform has also created new challenges for the delivery of services.

The fourth contributor in this panel, Stéphane Cloutier, Director Official Languages Division, Ministry of Culture and Heritage, described Nunavut's uniqueness. The simultaneous management of three official languages (English/French/ Inuit) raised considerable legal and social-psychological issues in relation to the status of the indigenous language. It was recognized that an extraordinary effort to strengthen both corpus and status planning aspects was needed to maintain the revitalization programme. The four key challenges identified by this presentation were related to capacity, diversity, dialect and resource issues. In future, it is hoped that more details and working examples of the exact and precise nature of the relationship between the Official Languages Division and Language Commissioner will be forthcoming as this was a critical element in the cumulative efforts required to meet the challenges identified.

The afternoon sessions were devoted to the promotion and protection of linguistic pluralism. The keynote address was given by Nicoletta Mariolini, the Swiss Federal Delegate for Plurilingualism since August 1st, 2013, who outlined what we may characterise as the five pillars of Swiss language policy. The first instrument for maintaining the language regime was to develop institutional plurilingualism, especially through the translation of official documents and the federal procurement policy which gave a fiscal base to operational plurilingualism. The second arm was to promote the three official languages (German/French/Italian) in the state's public administration. The third was to encourage comprehension and consistent exchange between the constituent language communities. The fourth was the state's financial support for the bilingual cantons while the fifth was the protection and promotion of the Italian and Romansh languages and cultures in the cantons of Ticino and Graubünden.

The inter-comprehension strategy within the Swiss public administration allows and requires freedom to choose a language of communication and a language of work from among the official ones; use of the first language; thinking and working in different official languages; a very good receptive competence of the three official languages. In consequence the public administration model is predominantly "multilingually receptive".

Despite these regulatory provisions, Nicoletta Mariolini argued that the federal government had recognized the need for a revised regulation for the Federal Administration. New legislation was required so as to restore some element of balance and stability within the federal system. She explained that it was difficult to implement the previous regulation because there was so much resistance to change. Thus in order to reinforce its multilingualism policy and national cohesion, the Swiss Parliament and the Swiss Government requested a revision of the Regulation which came into force on October 1st, 2014.

Today, after the revision, the Delegate is faced with a more comprehensive remit such that she acknowledges the need to be able to intervene in the key processes to promote multilingualism; to lead the implementation process and to follow-up on policy measures; to link the strategic and the technical levels; and to connect the internal, national and international levels. In terms of regulatory behaviour this means that she has to motivate and convince, for governing 'by decree' is not an option! In practice this requires a trade-off between ideals and reality and the securing of coherence between the internal and external strategies. The real challenge is to transform priorities, aims and objectives into effective, efficient and concrete actions and results with a view to building bridges between linguistic regions, external national organizations and the Swiss federal administration.

In order for these actions to be effective it was recognized that the statutory authority which underpinned the Delegate's role was important. However, based on her experience, the Delegate identified the crucial role which political support played in the effective management of plurilingualism as state policy. As an audience concerned with the health of multilingual populations in socially complex polities we could readily identify the lesson given which was choose your leaders wisely for fear of something worse!

Panel 3: Changing Hearts and Minds

In consideration of the theme of changing hearts and minds in Canada one may speculate whether or not the relationship between the two official language communities could still be characterised as being one of two solitudes or has it moved on such that by now it is more an issue of being engaged in a reflective mirror image the one of the other? In prefiguring what might be discussed in this panel, the Chair, Carsten Quell, Director, Policy and Research, OCOL, posed a number of fundamental questions.

He asked how were we to identify and reconcile majority and minority world-views. Does it matter what one language community, a majority for example, thinks about another language community, a minority community. Does it matter for the minority, does it matter for the majority, and does it matter for the government of the jurisdiction that both communities inhabit.

If change was required, whose responsibility is it to change attitudes and what role does second language acquisition play? In Canada outside Quebec, some might argue that, in the past, the views Anglophones held of Francophones were not as favourable as they are today. When assessing

motivations to learn the second language, Carsten Quell pondered what role does individual ambition for educational improvement play vis-a-vis a desire to strengthen group cohesion? Did the learning of French-as-a-second-language play a role in changing attitudes? What role does individual ambition for the best education of one's children play versus loftier goals such as national cohesion?

Here we touch on contested emotions and ideologies, a theme which ran throughout the question and answer sessions.

Dyfan Sion, Director of Policy and Research, Office of the Welsh Language Commissioner, reflected on the implementation of Welsh language policy and on the relationship between the Welsh government and his own organization. He acknowledged that there was a general political consensus in support of the Welsh language, which was heartening as only 23% of people in Wales can speak some Welsh, while the Welsh Language Use Survey (2013/4) records that only 11% or 310,600 of all people aged three and over living in Wales can speak Welsh fluently.

However, while the government strategy on language had been recently revised there was still not enough consideration given to the language in a wide array of policy domains. Further it was argued that both legislation and policy makers have been inconsistent in their approach to the relationship between the promotion and protection of language rights. The advent of a new set of language standards was welcomed, especially as it gave the Welsh Language Commissioner a wider template and framework to monitor and, if necessary, to intervene in relation to the regulation of a new linguistic landscape. But it must also be recognized that need and demand are alternative vectors of service provision and in a context of post-welfare state fiscal reductions which has been accompanied by the hollowing out of the state and citizenship, the success of the Commissioner is even more dependent on a host of external factors which influence the degree to which the new regulatory system, especially the language standards, will be upheld.

As with all the other cases discussed in this conference the responsibility for Welsh requires fresh ideas, new motivations and resourceful actions by which the minority language may be navigated into the mainstream of public policy and socio-economic affairs.

Michelle Landry, Professor of Sociology at the University of Moncton, argued that Acadians had been very successful in building institutional networks which served their interests as an ethno-linguistic community. Being organized allowed the group to protect itself also as a political community. But in relation to social movements in New Brunswick, it was evident that the best ideas and persistent commitment came from below, from the people. We may ask: how has this grounded-up pressure helped shape the Language Policy and Language Planning agenda? The answer is that by combining passion with reason, Acadians have not only managed to maintain their own distinctiveness, but have also reached out to the majority community so as to engage them also in the task of becoming functional bilinguals.

Emotion and social justice are useful pre-condition triggers for group mobilization, but to sustain and grow institutional distinctiveness, political representation and socio-economic muscle is needed, especially in the Acadian attempt to attract, seduce, convince and engage the 'other' in the acquisition of French. While second language acquisition is an important instrument for the reproduction of French involving learning a new skill set, creating new speakers and juggling hybrid identities this is not the same as the reproduction of a historically rooted culture and its associated myriad overlapping bonds of belonging. Thus we need to distinguish between the reproduction of a language per se and the reproduction of an associated culture and set of core values in group mobilization.

Professor Mathew Hayday of the Department of History, University of Guelph, demonstrated that the historical lense offers an important perspective on the vagaries of official language policy and planning. The fundamental feature was the Federal Government's expenditure on second language acquisition which was particularly significant for raising the profile of French in Western Canada. He argued that the role of the Office of the Commissioner of Official Languages waxes and wanes dependent not on its mission, goals and effectiveness, but on greater forces in the political constellation. He also argued that while the OCOL was an important agency, there were many other significant organizations which influenced the vitality of the Francophonie population of Canada, most crucially Canadian Parents for French. Parental power can identify, define and prioritize many of the challenges to be met, and have also influenced the agenda set by OCOL from time to time to good effect. Professor Hayday's message was, we should seek to use all the devices known to us to turn potential into reality. This requires a holistic and mutually-supportive set of strategies. An under-used and often ignored strategy was the informal use of humour in setting the context for problem-solving and several real-world examples of how this was effective were given. A second approach was for the minority to reach out by appealing in its campaigns and deliberations to the decency of the majority, the 'other' so to speak, so that they too may be engaged and sympathetic to the aims of the minority over the long term.

Philip Fenez, President of the Canadian Parents for French, relished the opportunity to explain the contribution of his organization to Canada's linguistic duality. He argued that the organization's principal goal was to create better educational opportunities and standards and he demonstrated that because such goals had been successful. The notion of immersion French education had proved attractive to many, rising from some 45,000 in 1977 to over 300,000 in 1990 and it has maintained this upward trajectory today. Currently the organization has 170 chapters and relies on 20,000 volunteers, the life blood of the movement, to administer its programmes.

However, the real abiding concern was to create the language spaces outside the confines of the school to which Graham Fraser alluded in his opening remarks. Canadian Parents for French seeks to provide additional opportunities for young people to socialise, to have fun and to gain skills and knowledge, to forge worthwhile friendship patterns and create new networks.

To all this activity we should add an important caveat so as to temper the mantra of those who insist on evidence-based policies. Based on the experience of parents in many minority communities, demand in and of itself, does not create supply communal struggle and political will, does!

Panel 4: Ensuring Compliance, Upholding Rights When All Else Fails: Taking the Legal Route.

Renée Soublière, Litigation Coordinator and Supervisor, Official Languages Directorate, Justice Canada opened this panel by explaining the role of the most important elements involved in the process of securing the maintenance of language rights. Her presentation highlighted the significance of systematic remedies which were occasioned by the Official Languages Act. She dealt with the preconditions for the remedy; the nature of the remedy created in section 77 of the OLA; the remedies themselves and the costs involved.

Two key questions highlighted were what mechanisms are in place to ensure compliance and how are language rights envisioned? Conceptions of the latter question had been shaped in part by the language rights support programme, currently administered by the University of Ottawa under the direction of Geneviève Boudreau who chaired the panel. This programme aims to promote awareness of language rights through public education, offer access to alternative dispute resolution processes to settle disputes out of court and supports litigation that helps clarify the nature of language rights.

A second important consideration in securing justice for language rights is to recognise that the parties involved are all partakers of a culture of learned behaviour. Thus, routinized implementation of compliance, respect and promotion of language rights by Governments and public institutions over time generates its own set of procedures, expectations and outcomes.

But what happens when there is a breach of such rights, how are reparations handled? The applicant has the onus to demonstrate a violation of the Official Languages Act and the causal relationship between the contravention and the remedies contemplated. ⁱⁱ Renée Soublière advised that the remedy will vary according to whether or not the breach continues.ⁱⁱⁱ Two things are required, first the purpose of the right being protected must be promoted (courts must craft responsive remedies) and secondly the purpose of the remedies provision must be promoted (courts must craft effective remedies). ^{iv} In terms of the preconditions for the remedy – s. 77 of the OLA, the Commissioner may:

- Apply to the Court for the remedy available to the complainant if the Commissioner has the consent of the complainant (para. 78(1)(a));
- Appear before the Court on behalf of a person who has applied under section 77 for a remedy (para. 78(1)(b));
- Appear as a party to any proceedings under section 77 with leave of the Court (para. 77(1)(c));
- Seek leave to intervene in “any adjudicative proceedings relating to the status or use of English or French” (subs. 78(3)).

Pascale Giguere, Senior Counsel and Manager, Legal Affairs, OCOL, focussed on four aspects of the Commissioner's powers and dealings with the court system. First, it was made very clear that the option of going before the courts was a last resort tool when no other means to resolve a dispute were available, or when a complainant had gone before the Courts and the Commissioner felt that he also had to be involved. Secondly, the court judgements were a very important tool for communities to use in their own dealings with government and public authorities. Thirdly, the speaker illustrated one significant element of OCOL's legal practice namely how to launch strategic interventions which will have a generic impact on the system. Initially, the Commissioner undertakes a strategic impact analysis which takes into account factors such as the importance of the legal issues raised for language rights; the arguments raised by each party in support of their respective positions and the contribution that the Commissioner could bring to the case as a national ombudsman for language rights. As a consequence the Commissioner may:

- 1) initiate the proceeding himself if the complainant consents [OLA, 78(1)a)];
- 2) appear before the Court in the name of the complainant [OLA, 78(1)b)];
- 3) appear with leave of the Court, as a party to the proceeding [OLA, 78(1)c)]; or
- 4) participate in the proceeding, with leave of the Court, as an intervener [OLA, 78(3)].

The final aspect raised was, what was the practical impact of Commissioner's intervention and how was success measured. OCOL has developed a set of performance indicators for measuring results. Intervention in cases brought before the courts was deemed successful if it clarifies language rights and obligations, applies interpretation principles, clarifies the Commissioner's investigation powers, rules on important procedural or preliminary issues and brings the government or institution to take action.

These generic statements are of great interest to all the other participants in the conference as they build on more than forty years of Canadian best practice since the first OLA in 1969, made more acute since the revised OLA introduced on September 15, 1988 brought about Part 10 which allowed for Court Remedies to be instituted.^v

Roger Lepage, a lawyer with Miller Thompson LLP, Regina, Saskatchewan asked: why should we respect language rights? He averred that respect for linguistic duality started in the home and the community and should not be conceived merely as a professional legal matter. Fundamental to this respect and growth of mutual tolerance was the activity of organizations such as Canadian Parents for French. He argued that important lessons were to be learned in going beyond the promotion and persuasion approaches adopted in the earlier years of the organization, for appealing to the heart and mind, had to be wedded to the development of a legal discourse of language rights so as to secure fundamental justice for parents and students, such as access to their preferred education through the medium of French.

He reminded us that the Canadian Charter of Rights and Freedoms, (1982) Article 23 which concerns minority language educational rights in relation to the language of instruction which together with other pieces of legislation widens the range of statutory duties and obligations, but can actually complicate matters. Nevertheless, the provisions of that article can also be used as a platform for further action, reform and impact in securing a secure status for French in problematic contexts.^{vi}

The final speaker in this panel was Mark Power of Power Law, Ottawa, who took the occasion to ask hard-hitting questions about how the litigation system works in respect of the defence of language rights.

He advised that when the stakes are high the persistent supplicant can have more than one chance to make the case and seek both justice and structural reform of the system as regards official languages. This is an important safeguard in the process which, when allied to the role of OCOL in conducting enquiries and in intervening in significant court cases, can have a cumulative impact on advancing the status of French in particular.

However, he used the adage that single court decisions can also have symbolic, systemic and totemic impacts. A landmark case was the Montfort Hospital Court decision of 1999 which ruled against the attempt by the Ontario Health Services Restructuring Commission to close the medical facility. The Court ruled that the Hospital's designation under the French Language Services Act gave the francophone community the right to receive health care in a 'truly francophone environment' and functioned as an important linguistic and cultural institution that protected the identity and assimilation of the francophone community in Ontario. Beyond the immediate circumstances, the Court decision also galvanised a community, redefined the significance of ethno-linguistic vitality as a statutory consideration and extended the functional mandate both of OCOL and of the Court system in reinterpreting the relationship between individual and community rights.

Mark Power unpacked the maxim that the social benefits of upholding language rights should not be under-emphasised, but his concluding message was that although lawyers often framed the debate, it is we as citizens who animated it. The lesson was that we should temper our faith in the litigation system with a dose of cynicism based upon experience.

The first day's proceedings were drawn to a close by Professor Richard Clément, Director of OLBI, University of Ottawa, who asked three significant questions. What was mostly involved in court cases, was it reconciliation or compensation? To what extent should the media be involved in articulating fresh perspectives and in holding government to account in relation to lack of compliance? Given that the powers of the Language Commissioners represented in this conference varied quite significantly, are there best practice and generic principles and instruments that can be employed to deal with common issues that arise?

A reception followed, hosted by the University of Ottawa which included a colourful and animated presentation on the 400th anniversary of Samuel de Champlain in Ontario.

Language and Group Conflict

The morning of the second day was given over to the themes of language and group conflict and post-conflict stabilization. This promises to be an increasingly important part of the IACL's efforts as attempts are made world-wide to institute regulatory environments with respect to the rights of threatened identities in former conflict situation.

The first of two plenary speakers was Pär Stenbäck, former Minister of the Finnish Government and former General Secretary of the Red Cross and Red Crescent Societies, Geneva. Minister Stenback dealt with issues of sophisticated pragmatism in seeking to tackle the question of whether or not tension between languages lead to open, violent conflict. He referenced examples ranging from the Basque Country to Ukraine and averred that in many cases the absence of language rights was used as a pretext for military intervention, as had been seen in the past in relation to the Sudetenland crisis of 1938, and more recently the tension surrounding the issue of protecting Russian-speakers in the newly independent Baltic States in 1990. Given the plethora of ethnolinguistic conflicts, we may well ask: where is wisdom when passion runs high?

Minister Stenback provided the audience with an 11 point desiderata and tool box to manage conflict resolution as follows:

1. "Using a traditional Red Cross expression: Prevention is better than cure. When hostilities flare up, it is always difficult to extinguish the fire.
2. Preaching respect for another language (and culture) is the main responsibility of all community leaders when the situation is tense.
3. Realizing that language majorities seldom, if at all, can embrace a minority language in a whole-hearted way; there will remain a silent expectation that the minority should accept the supremacy of the bigger language.
4. Political promises and goodwill is fine, but legislation is better. Even better if the relation between the languages are defined in a constitution or a Magna Carta, hard to abolish overnight.
5. Rights based on a defined territory is the strongest guarantee, hazy declarations of equality without legal repercussions for breaking language peace have no lasting value.
6. A minority needs spokesmen with gravitas among the majority, personalities who are ready to stand up against populism. Hate speech must be punished without delay.
7. If a minority is not self-sufficient when it comes to mono-lingual institutions, the state shall finance them on equal terms as enjoyed by the majority.
8. A minority without education in its own language is heading for assimilation or rebellion.
9. A language threatened with extinction or drastic decline, has the right to apply or demand extraordinary measures to safeguard its existence.

10. A minority shall have access to news in all media produced in its own country; being dependent on information from foreign sources will lead to diminished national cohesion, perhaps secessionism.
11. Majorities must accept that devolution and autonomy is a way of preserving a state, not necessarily a step towards secession”.

The difficulty of course, is to transform this advice into action and Minister Stenback challenged us to ask who is going to use this toolbox to secure peace between language groups and who is going to supervise that the principles are adopted by nation states around the world?

In linking his presentation to the next, he pondered that, as Europe has been the scene of so many language-related conflicts in history and the European Union wishes to be seen as the promoter of soft power in the interest of peace, could the EU serve a role model for the rest of the world? One particular answer was provided by Johan Häggman based on his long experience of working for the European Commission. Johan Haggman asked, what could and what should the EU do. With respect to third countries, he argued that the EU had intervened and been active in the resolution of ethno-linguistic conflict, but in respect of conflict episodes within the EU he argued that it was powerless as it had few effective tools and no legal basis to justify involvement. Now at first sight, this seems odd as the Lisbon Treaty, Article 1a declares that “the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. With the Lisbon Treaty (1.12.2009) the Charter of Fundamental Rights entered into force. While Articles 21 and 22 of the Charter do discuss discrimination and uphold diversity, the scope of the Charter is limited to EU law, specifically in relation to Article 51 which states that “with due regard for the principle of subsidiarity [the Charter is applicable to] the Member States only when they are implementing Union law. They shall therefore respect the rights in accordance with their respective powers... Furthermore, the Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.”

In truth, the Charter does little for regional and minority languages and affirms that language policy is a matter for member states. The EU does, however, offer some support in the form of either promotion or critical political commentaries on what it considers to be discriminatory action against selected minority languages. It has also offered a modicum of financial support in the past to ‘smaller’ languages, but in keeping with its mainstreaming approach, the bulk of EU financial assistance goes towards the 24 official languages while the Erasmus + education programme gives priority to the six dominant languages. Yet Johan Haggman insists that financial support is significant as it is an endorsement of selected languages and it is the only manner in which the EU can influence the language policy of its member states. In desperate cases the EU can also draw attention to the plight of unrecognized languages as it has done in the case of Greece.

Finance and resources are the key to power, endorsement, involvement and legitimacy, thus a significant tool for promotion. However, the EU's intransigence is made more acute, argues Haggman, because it has been accompanied by the European Parliament's active attempt to delete references to Regional and Minority Languages in Commission drafts for new proposals. Technically, it is possible for the EP to initiate new support programmes as evidenced by the potential of the Ebner Report, but Haggman's realistic and largely critical account of the ambition and operation of the EU and EP confirms the adage, that in respect of RML policy, we should trust not in princes, but rather as active citizens and specialists seek to create opportunities for the empowerment of RMLs within the formal framework of European institutions.

Language Accommodation and Stabilization in Post-conflict Environments

The third guest speaker of the morning was Slaviša Mladenović, the Language Commissioner of Kosovo, who was appointed on December 19th, 2012. As Commissioner, he has specific responsibility for the official languages but he also strives for the protection, preservation and promotion of the languages of communities which are not an official language or in official use. Most of Mr. Mladenović's professional experience was gained while working for the OSCE.

The essence of the Kosovan difficulty is that given the ferocity of the civil-war, post-conflict reconciliation is dogged by instability and mutual distrust. The current legal framework for the use of languages was instituted in 2006 whereby 'Law no.02/L-37 on the Use of Languages' detailed the provisions which were to be made for both Albanian and Serb languages.

Without a doubt, independence has led to a power reversal between Albanian and Serb, but the fundamental challenge now is how the peace is to be managed and with what consequences for reconciliation and reconstruction.

It was acknowledged that there was a limited capacity to implement sound ideas and an internationally agreed programme of rebuilding civil society, but so much of the outcome over the long term depends upon political leadership and accommodation at all levels, from Prime Minister to local community.

Capacity-building is a major challenge and a generational one for creating competent bilinguals who can animate the system will take a considerable amount of time and effort.

The Commissioner has constitutional and Prime Ministerial authority and backing, but lacks the means to implement the goals of his mandate. Recourse to external support, principally from the EU, acts as an important signifier of steady progress and legitimacy. Similarity members of the IALC have been helpful in identifying best practice principles which may guide the future actions of the Commissioner.

However, the impact which the Commissioner may have is limited to a great extent by structural weaknesses which characterise the Kosovan society. For example, there is insufficient human

capacity to carry out official translation duties, which is unlikely to be ameliorated soon, as no provision exists for a university degree in translation nor an official certification system for translators and interpreters. There is a lack of qualified profiles for recruitment within the civil service, whose members are characterized by increasing monolingualism which is reflective of society in general. This is unlikely to change so long as there is a parallel education system which keeps the two language communities apart. Fundamental to all these difficulties is the scarcity of resources and an insufficient budget to see the mandate through.

The second presentation concerning Sri Lanka was prepared by Professor Dissnayake, Chairman of the Official Language Commission, Sri Lanka, and in his absence was graciously delivered by Mr. Waruna Wilpatha, the Sri Lankan Acting High Commissioner in Ottawa

The historical context revealed that Sinhala-Tamil relations go back centuries, while Sri Lanka became a British Colony in 1815 and gained independence in 1948. The linguistic impact of the relatively short shadow of colonial history is that English continued as the official language until 1956 when Sinhala became the official language. With the implementation of the 13th Amendment to the Constitution in 1988 Tamil and Sinhala became official languages and English became a link language.

It was argued that much of the enduring ethnic conflict derived from the 1956 language policy and was rekindled periodically by supplementary discriminatory actions before successive governments started paying attention to remedial actions. One important reform, was the Sixteenth Amendment of the Constitution (1988) which decreed that:

“22 (Languages of Administration)

- (1) Sinhala and Tamil shall be the language of administration throughout Sri Lanka and Sinhala shall be the language of administration and be used for the maintenance of public records and the transaction of all business by public institutions of all the provinces of Sri Lanka other than the Northern and Eastern Provinces where Tamil shall be so used.”

It was observed that such declarations were evidence of the government’s attempts at language accommodation even in times of acute conflict. Further remedial action stemmed from an amended Constitution and a new vision for a post-conflict society. Thus Act No. 18 of 1991 established an Official Language Commission whose general aims were:

- (a) to recommend principles of policy, relating to the use of the Official Languages, and to monitor and supervise compliance with the provisions contained in Chapter IV of the Constitution;
- (b) to take all such actions and measures as are necessary to ensure the use of the languages referred to in Article 18 of the Constitution;

- (c) to promote the appreciation of the Official Languages and the acceptance, maintenance, and continuance of their status, equality and right of use;
- (d) to conduct investigations, both on its own initiative, and in response to any complaints received, and to take remedial action as provided for, by the provisions of this Act.

The Commission has the power to initiate reviews, commission studies, diffuse and publish material, acquire property and generally promote the aims and goals of the mandate.

However, it was only in 2010, after the cessation of hostilities in 2009, that this amendment was capable of implementation as part of a much larger policy of post-conflict reconciliation and accommodation which ranged from infra-structural investment, agricultural reform and educational initiatives.

A major element of the new National Language Project is Sri Lankan-Canadian co-operation. This project is implemented by a Canadian Executing Agency, Agriteam Canada, and various sub-consultants contracted by the Agriteam including the Official Languages and Bilingualism Institute (OLBI) at the University of Ottawa and The Asia Foundation (TAF) in Sri Lanka in collaboration with the Ministry of National Languages and Social Integration (MNLSI), specifically the Language Division of the ministry, Department of Official Languages (DOL), the National Institute for Language Education and Training (NILET), and the Official Languages Commission.

The strategic and practical impact of this project serves as an excellent example of the virtues of external professional assistance and could act as a precedent for IALC support in other contexts in time should the Association so decide.

In the January 2015 elections, Mr. Maithripala Sirisena was elected as President and part of the government's continued attempts at reconciliation saw a 19th Amendment to the Constitution which included a commitment to transform the Official Language Commission into an Independent Commission with an expanded remit and increased powers.

The lessons to be learned from this case study are that the Reconciliation Commission gives salience to the Tri National Language initiative as a platform for reconciliation through good governance. In addition new rules for public employment may provide an increased instrumental motivation to learn the language of the 'other' thus contributing to functional bilingualism and an increased accommodation.

The Preservation and Revitalization of Aboriginal/Indigenous and Minority Languages

The second theme of the day concerned aboriginal/indigenous and minority languages and the keynote address was given by Professor Akhtarul Wasey, the National Commissioner for Linguistic Minorities in India. As a distinguished academic specialising in religious thought and practice, Professor Wasey is committed to the cause of language preservation as a carrier of culture. India, as the world's largest democracy, is faced with the daily experiment of managing its ethno-linguistic complexity which is comprised of 1,652 Languages and 22 Official Languages together with tribal and marginal languages. In 1961 a consensual approach to diversity was achieved through the establishment of the three language formula, namely Hindi, English and one other. The presentation outlined the various policies for RML (Regional and Minority Languages) and tribal languages, their engagement with corpus and status language planning and the attempts made to establish safeguards for linguistic minorities especially in the realm of education.

The work of the National Commissioner for Linguistic Minorities was described as innovative and comprehensive, involving a clear vision and mandate. However, the scale of the challenge it faces is enormous especially for the democratic inclusion of many citizens who belong to the minority and tribal groupings. Empowering such people is aided by the partnership between the National Commissioner and a raft of voluntary agencies, while some degree of accountability is maintained by the annual reporting of its activities to Parliament. A particular challenge given India's size is the intended and unintended consequences of geolinguistic territorial language planning which creates both inclusive and exclusive outcomes for tribal and marginalised language speakers. This raises the question of how effective is the system for indigenous protection and in that respect it was noted that there are limits to the acknowledged rights enshrined in the system. The real difficulty, as with so many other cases covered in the conference, is a lack of resources to take the measures forward. An outstanding issue is to decide what form should positive government action take, for there are so few cases to date to determine precedent and legitimate expectation.

Aboriginal Languages in Canada

The final module, devoted to aboriginal languages in Canada, was chaired by Claude Denis, School of Political Science, University of Ottawa. It was argued that in order to effectively protect and promote linguistic pluralism, and particularly aboriginal languages in Canada, we must gain an understanding of the law and how it relates to languages. Consequently, the next key note speaker, Ms. Naiomi Metallic, reflected on how various pieces of legislation had impacted on the rights and vitality of aboriginal language speakers. Naiomi Metallic is an associate lawyer at Burchells LLP in Halifax specializing in aboriginal and litigation practice. Originally, from the Listuguj Mi'gmaq First Nation on the Gaspé Coast of Québec, she was the first Mi'gmaq person to clerk at the Supreme Court of Canada.

Currently there are between 53 to 70 different Aboriginal languages in Canada. Among First Nations People, there are eleven distinct language families, and when Inuktitut and Michif (the language of the Métis) are included the indigenous linguistic landscape's cultural richness is revealed.

Nevertheless, according to UNESCO, all Canada's indigenous languages are facing decline, even the most flourishing such as Cree, Ojibway and Inuktitut. In addition to the obvious communicative element, the preservation of such languages is important for they are directly linked to traditional knowledge, traditional territories, collective identities, cultures, customs and traditions, personal identity and spiritual well-being. Revitalization efforts by the Assembly of First Nations (AFN) since the 1970s has focused on attempts to make the issue of loss of languages a national issue requiring attention by government. At the time when Canada was considering amendments to the *Constitution Act, 1982*, First Nations leaders were advocating for Section 35 to be amended to explicitly recognize the inherent right to self-government of Aboriginal Peoples which would specifically recognize the right of First Nations to take measures to preserve and develop their languages and cultures. This did not succeed.

The presentation then moved on to deal with existing protection and gaps in the provision by the federal government. The AFN, the Royal Commission and the Task Force on Aboriginal Languages all recommended that Canada has to take greater action to protect Aboriginal languages. However, it was declared that there is nothing in the *Indian Act*, the *Official Languages Act*, or the *Canadian Multiculturalism Act* that specifically references Aboriginal languages. In relation to education on reserves, Canada funds schools on reserves and also regulates by way of policy (instead of law). There is some funding for immersion programming but it is in tight competition with other programming and the Task Force found that this expenditure was not sufficient. Canada also has an Aboriginal Language Initiatives Program administered through Heritage Canada which funds community-based language projects which again the Task Force found not to be sufficient.

Within the territories, where there is a high concentration of Aboriginal People, stronger efforts are being made to protect and promote Aboriginal languages. At the provincial level, British Columbia and Manitoba have also legislated to promote Aboriginal languages and in many of the provinces, Departments of Education provide some instruction in Aboriginal languages in public schools, but in several provinces, this is the only action being taken to promote Aboriginal languages as in Saskatchewan, Alberta, Ontario, New Brunswick and Newfoundland, while PEI has no programming or policies whatsoever with respect to Aboriginal languages (even though there are two Mi'kmaq communities in PEI).

Yukon's Languages Act "recognizes the significance of Aboriginal languages in the Yukon" and the government's wish "to take appropriate measures to preserve, develop, and enhance those languages in the Yukon". Its Education Act requires the Minister of Education to include mandatory courses on the linguistic and cultural heritage and history of Yukon's Aboriginal Peoples while on request, the Minister can give permission for any course of study to be provided in whole or in part in an Aboriginal language.

NWT's Official Languages Act recognizes eleven official languages, nine of which are Aboriginal languages and extends to them several protections as official languages. The OLA provides that

government services at local and regional offices are in the official languages and the OLA has also created an Official Languages Commission to enforce language rights. NWT's Education Act provides that the language of instruction in schools must be in one of the official languages. A school board can choose to provide classes in one of the official Aboriginal languages if there is a significant demand in the district.

For Nunavut the Official Languages Act establishes Inuit and French and English as the official languages of the territory. There is also the Inuit Language Protection Act which specifically seeks to increase fluency in Inuit, both oral and written, within the population of Nunavut while extensive language rights are accorded to Inuit speakers, including usage in the workplace and in public and private sectors. The government has established a fund to finance projects relating to official languages. These laws create an Official Languages Commission and strong mechanisms to enforce language rights. The Education Act in Nunavut requires that every student receive a bilingual education and that the languages of instruction must be Inuktitut and either French or English.

In closing her address, Naomi Metallic returned to the protection offered by Section 35 of the Constitution Act, 1982, arguing that Aboriginal and treaty rights protected by s. 35 of the Constitution, do not specify, but likely include Aboriginal languages rights. There are also treaty rights arguments pertaining to treaty promises regarding education. But she speculated whether these rights require governments to take positive steps to protect Aboriginal languages. To date there have been no cases on the issue. Given that no rights are absolute, she asked: what would be the limits on these rights? Further would a cost-benefit analysis be justifiable in the circumstances for those languages that are most at risks?

Finally, the overview turned to aspects of international law by reference to Canada's endorsement of the United Nations Declaration on the Right of Indigenous Peoples in 2010. Article 13 recognizes the right of indigenous peoples to revitalize their languages and to require states to take effective measures to ensure this is protected. Article 14 recognizes that indigenous peoples have the right to establish and create their own education systems and that states shall take effective measures to ensure indigenous people have access to education in their own culture and language.

Given this comprehensive and stimulating survey, the final panel sought to unpack many of these issues by offering detailed case studies of how particular groups had sought to implement several initiatives designed to revitalize aboriginal languages.

Panel 5: Protecting and Promoting Aboriginal Languages in Canada: our Experience, Good Practices and Challenges

Sandra Inutiq, the first of the four panelists, is the Official Language Commissioner of Nunavut, and a founding member of IALC. Her presentation surveyed the current context of language policy and management in Nunavut. The great strength of the Nunavut struggle for respect and equality was that it was rooted in community power rather than institutional devolution. The bottom-up social movement had set the agenda to create the territory and to normalise the use of the indigenous language. This may be characterised as an example of intellectual self-determination.

The presentation also paid particular attention to the progress made and the challenges yet to be faced in relation to the growth of English which threatens the vitality of the Inuit languages. She described the principal means by which she, as Commissioner, sought to carry out her mandate in relation to the legislative authority, resource base and capacity to influence language choice. Some concerns were raised in respect of her duties as Official Language Commissioner and that related to the ongoing debate on the virtue of rights. The legal framework had been established by two language acts, namely the Official Language Act (2008) which covers three official languages and the Inuit Language Protection Act, (April 2013) especially Section 35, which conveyed a quasi-constitutional status to Inuktitut and Inuinnaqtun. The result is that these delegated powers through significant Acts, have mobilised the assertion of respect for the promotion and funding of aboriginal languages. Nunavut is now engaged in a push to achieve language equality.

However, two predominant features overshadowed her work and made it very difficult to measure real progress. The first was the sheer size of the territory and the fragmented nature of its constituent communities. The second was the more human problem posed by small-scale communities in large-scale territories, namely that many people with whom she interacted at a professional and regulatory level were also known to her personally. In strict formal terms, this produced some unease of relationship and dialogue especially in legal affairs. But in socio-political terms, this also called for a very judicious approach to the marriage of formal procedures and informal mediation and consensus building which was such an integral part of traditional Inuit values.

Three outstanding challenges remain, namely the decline of home language use, the social psychological ramifications of the colonial open prison of self-hood which is a result of assimilatory pressures, and Federal intransigence in the face of Nunavut ambition.

Bonnie Jane Maracle is a member of the Mohawk Nation and an Aboriginal Learning Strategist at the University of Toronto. Her presentation reflected on the historical experiences whereby federal legislation and the forced removal of children led to the diminution of group vitality. Today's experience gave some hope for the future for many members are realizing the value contained in their languages. Languages are valued as a gift from the Creator to humans. The phrase 'use it or lose it' was considered not as an adage....but a prediction. Thus, she asked the conference what is our experience? Her answer was:-"We have experienced life without our language, for

generations....but today we have opportunity to experience life in our languages, instilling in our People an identity and sense of purpose.”

There then followed worked examples of good practice in homes, schools, and communities for all age levels which included:

- language nests;
- Master-Apprentice programs;
- elementary, secondary, and adult immersion schools;
- summer language camps;
- weekend language camps;
- day classes, night classes, core subject classes;
- on-line language classes;
- language apps and a greater use of technology focussing on the development of language tools to support language learning.

The presentation finished with three challenges to indigenous language revitalization in the field of education where creditation of original language study remained an issue as did the policy of not hiring ‘unqualified’ fluent speakers. It was claimed that political support was missing at local, provincial and federal levels which resulted in a lack of adequate financial support. Thirdly, and most intractable, she argued that ‘our own people’ demonstrated fear and shame and that fluent speakers found it hard to reproduce their language either because others adopted a “why bother” attitude or because there was a widespread lack of awareness of the value of the indigenous language.

Professor Marie-Odile Junker, Killam Research Fellow, School of Linguistics and Language, Carleton University, Ottawa, focussed her attention on the application of information and communication technologies for language preservation. This inspirational presentation demonstrated the capacity of aboriginal languages web tools to capture, document, transmit and help restructure several features of the Algonquian family of languages. The architecture for this was the creation of a digital infrastructure which included dictionary and terminological developments as a contribution to corpus planning; a Linguistic Atlas which served as an important resource that could be shared and imitated by other endangered language groups, conversation apps, oral stories databases and advances in social media developments. Illustrations, rich in design and detail, demonstrated the power of IT to aid revitalisation efforts, but the presenter was careful to emphasise that this was a co-operative effort which sought to empower indigenous communities by involving them at significant stages of the design and execution of these related projects. She also demonstrated how evidence derived from academic research could have an impact through building capacity workshops designed to empower community actors committed to language revitalization.

There is though, a conundrum as regards the development of ‘Integrated’ Web Tools and that is who decides the content? This in turn raises other issues as regards authenticity, utility, representation

and cross-cultural pollination, all essential features to consider if the outputs of the IT projects are to reach out and be endorsed by the target communities themselves.

Rhonda L. Paulsen, Professor of Indigenous Studies, Trent University, Ontario, spoke on the theme of "Indigenous Languages in School: Moving Research to Inform Practice." By employing Bourdieu's theory of linguistic capital within the "dominant-to-oppressed" class structure of society she examined how the dominant class intentionally, and most often explicitly, restricts and defines the roles of the oppressed. She argued that politicians within the Department of Indian Affairs (DIA) devised such a political framework in the latter part of the 1800's, when policies were written to prohibit all indigenous languages in Canada from being spoken or written. Quoting from the policy written by Duncan Campbell Scott, Deputy Superintendent General with the DIA in 1909 the official desiderate was described thus: "The happiest future for the Indian race is absorption into the general population, and this is the object of the policy of our government. The great forces of intermarriage and education will finally overcome the lingering traces of native custom and tradition... Our objective is to continue until there is not a single Indian in Canada who has not been absorbed into the body politic, and there is no Indian question" (Smith 1993: 34 -38).

The Residential School System became the principal instrument for Scott's political agenda. Reversing that policy today through indigenous language courses offers a means of reinforcing the social spheres and cultural realities of people and their development of a firm sense of self. As an educator she warned that "we must remember that it is not only the message itself that carries the meaning, but the implication of the words chosen, the tone and the connotations, that accurately reflect the intent of the speaker. In other words, whereas the predominant emphasis in non-Indigenous culture is on content and meaning found in the words used, Indigenous traditional pedagogy emphasizes the context and the meaning found around the words."

At the end of the day I, as Rapporteur, interpreted the principal themes and messages of the sessions which are reproduced in this report. My personal observations and recommendations conclude this document.

In conclusion: Considerations and Challenges

The variety, significance and range of issues addressed by the participants and the richness of the presentation reaffirms the complexity of the human condition and reminds us that we are fearfully and wonderfully made! Human endeavours involve extraordinary courage, innovation and perseverance, but also occasional failure and depression. So it proved in this gathering which reflected an admixture of innovative ideas, programmes for language stabilisation and revival and the embrace of media and IT advances together with a certain reluctance by some groups and target audiences to adopt the new found rights and liberties to use their preferred language in the affairs of the local region or central state. For their part also, institutions go through systemic reform and often appear idiosyncratic and inconsistent in their reactions to sound recommendations and progressive ideas.

At their most fundamental, several of the presentations were grappling with the themes of who we are, who are we? How does contemporary representation of identity deal with the multiple and cumulative pressure exercised by the hegemonic determination to erase aboriginal identity, by the interruption of language transmission in the family and community, by being enclosed within boundaries that can be emasculating. The message from some was that people themselves had to face the hardest task which was to take the first step in language revitalization, what may be described as intellectual self-determination, so as to sow seeds of hope and growth. In time immersion education initiatives, new courses at Higher Education level, developments in IT and institutional recognition could all provide opportunities and space to build capacity and usage in the target language.

The central state and local authorities were often crucial in legitimizing and financing language revitalization efforts. But there is more than one set of rules, one set of power-brokers and gatekeepers involved in this complex and tangled web we weave called language promotion, protection and regulation. It may be asked whether the general move toward multi-level governance allows space for informal initiatives. Whilst much attention was given to empowering local communities in such diverse jurisdictions as India, Sri Lanka, and Nunavut, it may be asked how local demands and democratic impulses percolate up through the system to influence language promotion and policy.

What general lessons may be gleaned from the experience of the Language Commissioners gathered in Ottawa? The first is that context is all important for political pressure is a constant. The second is that strategic decision-making and challenges are an important part of the mandate. When to intervene in a case, whether in respect of a Court Challenge or a departmental omission can have both immediate and long-term implications.

Are challenges to Ministerial authority a calculated gamble or a statutory obligation determined by the evidence-based logic? What are the long-term consequences of such challenges to the Commissioner's standing, independence and credibility? Government reaction to constant criticism can result in financial and resource pressure which can lead to capacity stresses, to risk averse behaviour and to atrophy the Commissioner's office.

But it can also force a rethink of the core mandate of the Commissioner and to a re-evaluation of where Language Commissioners fit in to the regulatory landscape. Language Commissioners are but one type in a growing family of regulatory agencies and actors but the clear warning is that the growth of the regulatory state should not overshadow the vital promotional efforts of language activists and agencies.

For the more established offices it is evident that a Language Commissioner's role changes over time. Thus, the question may be asked how responsive are they to new challenges? This suggests

that a great deal of internal evaluation and constant capacity building and training is required by Commissioner Staff. Thus one of the great virtues of membership of the IALC would be that combined efforts to produce best practice tools and instruments could be employed to make the Commissioner's monitoring and interventions more effective in both public administrative/service delivery terms and in Court Challenges.

This would require time-series data collection and the development of a range of evaluative techniques and practices to share among members. Outcome-based approaches would require that the IALC develop techniques to evaluate changes in actual individual and institutional behaviour so that impact and success can be measured in a consistent manner. Identifying supporting evidence so as to critically assess the aims and details of a policy which is changed as a direct result of taking on board recommendations made by a language Commissioner is a difficult, if necessary, element of determining the impact of outcomes. It requires targeted evidence, sound judgement and strategic/political acumen to be able to attribute the agents of change. But it is essential if we are to be able to judge the relative value of a Commissioner's impact on the system.

In turn, it would be advisable to devise a different set of measures by which the internal work and not just the external impact of Language Commissioners may be evaluated. One element of this which would be especially useful for newly-established Language Commissioners would be the preparation of training and evaluation packages so that worked examples, guidelines and best practice can be shared among members of the IALC.

Then there is the issue of whether or not only those agencies which have the name Language Commissioner in their title should be admitted to the IALC. In the Rapporteur's summing up session I asked what's in a name for a 'rose by any other name would smell as sweet' and this was prompted in part by the absence of a Quebec delegation. I urged that the Chair of IALC formally invite the regulatory authority for language in Quebec to consider joining the Association and thus such a courtesy be shown to other responsible agencies which perform similar functions.

After several successful conferences which have showcased the work of Language Commissioners and the response of the principal government departments charged with implementing language rights and obligations, it is reasonable to ask where are we headed? It is now time to conduct an audit on the impact of the various Language Commissioners to ascertain to what extent they are part of the mainstream or a tolerated side-show in selected jurisdictions. My view is that the family of Ombudsmen and Commissioners requires systematic investigation to ascertain what powers, roles, tools, processes and types of impact and interaction serve the cause best. It is also my conviction that the Regulatory State, the prime legal and administrative context, also needs systematic investigation so that abuses of power or mission creep do not cloud or mask the core functions of the Ombudsmen and Commissioners. A third area of attention is an examination as to how international law plays out and influences the duties and actions of Language Commissioners in specific jurisdictions? A fourth area is a focus on the potential which Language Commissioners have in playing a useful role in post-conflict accommodation and reconciliation. There was plenty of

evidence on show in this conference to demonstrate the relevance of the idea of inaugurating a systematic regulatory agency in selected cases, but as both Sri Lanka and Kosovo made clear, without the supporting infra-structure and capacity to implement the recommendations of the Commissioner, language rights were more often than not a constitutional provision rather than a daily lived reality for so many citizens. A mature, well-regulated framework such as currently exists in Switzerland shows the added value and the advantages of linguistic skills, enables citizens and the state to understand their economic value and can reinforce ‘national cohesion’. Clearly it is recognized that the Swiss experience may well lie at one end of the continuum and that contexts such as Kosovo, Eritrea, Iran and South Sudan may well lie at the opposing end, but surely part of the justification for the IALC is to have an impact within those targeted jurisdictions which have most to learn and gain from the transfer of sound ideas and best practice from the mature, stable liberal democracies as represented by Switzerland and Canada.

For more information on the conference please visit the IALC Web site at www.languagecommissioners.org

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ⁱⁱ The applicant must demonstrate a breach of the OLA and the causal link between the breach and the relief claimed . See *Leduc v. Canada*, 2000 CanLII 15454, para. 20; *Lavigne v. Canada (Human Resources Development)* , [1996] FCJ No. 1418 (QL), conf . by [1998] A.C.F. No. 686 , para. 16). See: *Leduc v . Canada*, 2000 CanLII 15454 , para . 20; *Lavigne v . Canada (Human Resources Development) , [1996] FCJ No. 1418 (QL), aff’d by [1998] F.C.J. No. 686, para . 16).*

[Le demandeur doit démontrer l’existence d’une contravention à la LLO et le lien de causalité entre la contravention et les réparations demandées. *Voir: Leduc c. Canada*, 2000 CanLII 15454, par. 20; *Lavigne c. Canada (Développement des ressources humaines)*, [1996] A.C.F. no 1418 (QL), conf. par [1998] A.C.F. no 686, par. 16). *See: Leduc v. Canada*, 2000 CanLII 15454, para. 20; *Lavigne v. Canada (Human Resources Development)*, [1996] F.C.J. no 1418 (QL), aff’d by [1998] F.C.J. no 686, para. 16).]

ⁱⁱⁱ The remedy depends on whether or not the breach continues. See: *Mayors Forum* , para. 20 , 53, 62; *Desrochers v. Canada (Industry)* , 2006 FCA 374 , para. 82 et seq. *Desrochers v. Canada (Industry) , 2009 SCC 8 , para. 37).* See: *Mayors Forum*, para. 20, 53, 62; *Desrochers v. Canada (Industry) , 2006 FCA 374 , para. 82 ff.; Desrochers v. Canada (Industry) , 2009 SCC 8 , para. 37).*

[Le remède variera selon que la violation perdure ou non.]

Voir: Forum des Maires, précité, par. 20, 53, 62; *Desrochers c. Canada (Industrie)*, 2006 CAF 374, par. 82 et ss. *Desrochers c. Canada (Industrie)*, 2009 CSC 8, par. 37). *See: Forum des Maires*, précité, par. 20, 53, 62; *Desrochers c. Canada (Industrie)*, 2006 CAF 374, par. 82 et ss.; *Desrochers c. Canada (Industrie)*, 2009 CSC 8, par. 37).]

^{iv}The reparation shall promote the realization of the object of the right guaranteed (the courts are obliged to award compensation appropriate to the situation) and promote the realization of the purpose of the remedies provision (the courts are obliged to provide reparations effective) .

View: *Doucet -Boudreau v. Nova Scotia (Minister of Education)* , 2003 SCC 62, paras. 24 and 25 ; Mayors reiterated in the Forum

[La réparation doit: favoriser la réalisation de l'objet du droit garanti (les tribunaux sont tenus d'accorder des réparations adaptées à la situation) et favoriser la réalisation de l'objet des dispositions réparatrices (les tribunaux sont tenus d'accorder des réparations efficaces).

Voir: Doucet-Boudreau v. Nova-Scotia (Minister of Education), 2003 CSC 62, paras. 24 and 25; reiterated in *Forum des Maires*.)]

^v “The Commissioner may take a case to the Federal Court with the consent of the complainant. The Commissioner may also appear on behalf of the complainant or as a party to a case initiated by the complainant. Finally, the Commissioner may present, as evidence during court proceedings, information relating to similar complaints involving the same institution.” Part Ten Official Languages Act, 1988.

^{vi} Constitution Act, 1982 see [www. http. laws-lois.justice.gc.ca](http://www.laws-lois.justice.gc.ca) for the full text of the Act.