

ACKNOWLEDGMENTS

‘Constitutional pioneers’ seems to be a very apt description of the colleagues that I have had the pleasure of knowing during my time as a member of the International Association of Language Commissioners (IALC). It hints towards the uniqueness of the role and the bold and enterprising spirit of members past and present.

Since its formation in 2013, the IALC has endeavoured to educate and inform the public, governments, and policy-makers worldwide about their role, functions and strategic importance. This present volume is a further significant contribution to this objective. It is testimony also to the shared ambition and eagerness of the IALC’s members to collaborate on projects of mutual benefit to the speakers of the languages they are called upon to promote and protect.

‘Think globally, act locally’ is a strapline which has been used extensively (a little too extensively perhaps) by many sectors to convey the worthy ambition of being outward-looking whilst operating effectively at a local level. Though overused, it is certainly a strapline which summarizes the IALC’s regular activities and *raison d’être*. It conveys the ambition at the heart of the IALC to scan horizons for best practice and transferable models, taking heed of challenges and successes experienced by fellow members; an ambition which is certainly demonstrated by this volume.

It is my great pleasure, therefore, as the Chair of the IALC, to thank all those who have contributed to this book. Firstly, Les Éditions Yvon Blais and Thomson Reuters Canada for their willingness to publish within such a demanding timeframe. The seeds for this collaborative volume were first planted in Kosovo in May 2018 so we as an association are indebted to all those who helped to make this volume a reality in less than a year. Secondly, I want to thank all the authors who saw merit in contributing, and for placing the work of the language commissioners in its international, legislative and theoretic context. I am particularly grateful to Professor Linda C. Reif, Ann Chaplin, Dr. Nora Farrell, Professor François Larocque, Professor Robert Dunbar and

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FOREWORD

If there is an institutional model that has developed and proliferated in public administrations worldwide over recent years, it is certainly that of the ombudsman. This growth may be interpreted in part as an attempt by governments to restore declining trust in public administration and the political classes through the introduction of generally effective and inexpensive mechanisms for resolving issues and disputes between citizens and the state. We have also in recent years seen the development and proliferation of pioneering new actors designed by governments to restore public trust, enhance public service quality, and ensure transparency and fairness specifically in relation to language rights: Language commissioners.

These language commissioners are somewhat difficult to define and categorize as their remits and responsibilities vary significantly: they are each the unique products of the political and legislative context in which they were conceived. Generally speaking, language commissioners share some of the characteristics of the classic model ombudsman. Most of the time, they are appointed by, but independent of, the legislature. Their mandate is to preserve the rights of linguistic minorities by monitoring the quality of the public services provided to them. To do so, they often conduct investigations in response to complaints by the public, and make recommendations for improving public administration. However, they are more than classic ombudsmen and their distinct role extends beyond simply handling complaints and making recommendations. Their designated territory is not solely the rights of the individual but the collective rights of the language community or communities that they are charged with preserving and protecting. They also often have broader mandates to proactively monitor compliance, advocate, promote and facilitate language use, propose innovative solutions, and educate the public regarding minority language rights.

Their field of operation – language rights – adds to their uniqueness, to the extent that language is a fundamental element of identity and an essential variable to take into account when building a stable and harmonious

society. They are tasked with negotiating the difficult terrain of ensuring the rights of speakers – often minority groups – while fostering the knowledge, understanding and political goodwill of the majority. Thus the establishment of a language commissioner in any given jurisdiction is never a politically neutral act. Nor is it merely a simple and convenient mechanism to improve the general quality of public services. Rather it is a deliberate but crucial statement regarding the value of minority languages and their speakers and their potential to enrich and unite people. Language commissioners are therefore a model increasingly used by governments to secure language rights, promote social equality and secure social justice. They are sometimes used as instruments of societal cohesion, harmony and conflict prevention: a voice for those communities they represent and champion. This particularity makes them distinct actors in the ombudsman community.

Their forefather is very clearly the Office of the Official Languages Commissioner of Canada. It was established by the first *Official Languages Act* in 1970 in a context of tension between Francophone and Anglophone communities and in response to the recommendations of the Royal Commission on Bilingualism and Biculturalism. The Commissioner's mandate is to monitor compliance with the *Official Languages Act* by ensuring the equality of English and French in Parliament, the Government of Canada, the federal administration and the institutions subject to the Act; support the development of official language minority communities in Canada; and promote the equality of English and French in Canadian society. A pioneer in the field, the Office of the Official Languages Commissioner has served as a model for the development of similar bodies in some Canadian provinces as well as in Ireland, Wales and Kosovo.

It soon became apparent that there would be merit in bringing these new actors together in order to share their collective experiences and develop best practices as they broke new ground. Unique and often lone actors within their individual jurisdictions, the strength, fellowship, energy and inspiration promised by unity with similar institutions had obvious appeal. To formalize their cooperation these language commissioners formed the International Association of Language Commissioners (IALC), which had its inaugural conference in Barcelona in March 2014. As previously suggested, the term language commissioner is a relatively new one that eludes simple definitions. It is used by the IALC to cover a broad range of actors which include general and classic ombudsmen whose mandate also commits them to give attention to language rights, as well as specialized language commissioners whose sole mandate is the promotion of language rights and the protection of linguistic minorities. At the time of publication it had 11 member institutions:

- Commissioner of Official Languages for New Brunswick (Canada)
- Language Commissioner of Kosovo
- Languages Commissioner of Nunavut (Canada)
- Northwest Territories Languages Commissioner (Canada)
- Office of the Irish Language Commissioner
- Office of the Commissioner of Official Languages (Canada)
- Flemish Ombudsman
- Ombudsman of Ontario (Canada), taking over the responsibilities of the Office of the French Language Services Commissioner of Ontario
- Ombudsman of Catalonia
- Ombudsman of the Basque Country
- Welsh Language Commissioner

The IALC's mission is to support and advance language rights, equality and diversity throughout the world and to support language commissioners so they may work to the highest professional standards. The IALC's main objectives can be summarized as follows:

- To promote, support and advance language rights, equality and diversity;
- To share experience, insights and connections between language commissioners' offices;
- To encourage the exchange of information and mutual learning between language commissioners' offices and to provide an avenue to members to advance best practices and a stronger knowledge base on language rights protection efforts;
- To increase awareness and understanding of the role and value of language commissioners among governments, state agencies, academia, media and the general public;
- To define, publish and keep under review criteria for the recognition of language commissioners' offices by the association and to accord recognition to those who satisfy the defined criteria for recognition as language commissioners throughout the world;

- To support regions that wish to create a position of language commissioner or advance their language rights.

To achieve these objectives and carry out its mission, the IALC adopted a set of values governing its members' organizational operations. Those values are as follows:

- Integrity: The association will conduct all activities responsibly with equity and accountability to its membership and profession.
- Service: The association will support its membership by providing the best advice and assistance as appropriate.
- Respect: The association will foster respect for all languages.
- Collaboration: The association will promote interaction among its members and engage with other organizations to advance the profession as well as promoting language rights, equality and diversity.
- Independence: The association will promote the principle of independence of language commissioners.

The IALC is a relatively young association, but the importance of having such an association has been confirmed by the challenges that the protection of minority languages has encountered in recent years. In Wales, for example, the Welsh Government published a white paper in 2017 outlining its proposals to legislate again in relation to the language, a move which may have had far-reaching implications for the Commissioner's independence and powers. Following public consultation (to which the members of the IALC responded collectively)¹ the Government has since abandoned such plans. In Ontario, however, the newly elected Progressive Conservative government abruptly abolished the Office of the French Language Services Commissioner in 2018, transferring its functions and some of its staff to the Ombudsman of Ontario. The global financial downturn and its ensuing austerity measures coupled with a lack of understanding of the language commissioner's importance, role and methodology create a harsh climate for language commissioners. Although the context of these two examples is different, they both suggest a risk for minority language rights and language commissioners – and language revitalization efforts in general – to be considered soft or easy targets in such climates.²

1. <<http://languagecommissioners.org/Welsh-Language-Bill>> (accessed 26 April 2019).

2. A risk or trend identified by Professor Colin H. Williams in 2013 when commenting on the Irish *Fina Gael* Government's readiness to cut the State's support for the Irish language when

At the same time, the IALC has been continuing to mature, and cooperation and collaboration between members has intensified. The members' shared goal of enhancing international awareness of the language commissioner's role led to the idea of publishing a book on language commissioners' functions and methods. This book is certainly dedicated to the speakers of official, minority and indigenous languages. However, it will not focus on the plight, struggles and daily challenges of the speakers of minority – or minoritized – languages. Rather it will focus on a proposed solution and the attempt by governments to save them by bringing them into the mainstream and reversing their status. The mechanism that many governments have chosen to enhance the legislative underpinning for these languages, ensuring the rights of their speakers and access to services, is that of the language commissioner. Until now little has been published about the actual experience of language commissioners in executing their mandates. Professor Colin H. Williams, writing in 2013, noted that 'the field of language rights and regulation could benefit from a more systematic and regular comparison of the work and impact of language commissioners worldwide'.³ A scattering of comparative essays has appeared since but this is one of the few volumes devoted entirely to the subject. This is certainly the first book to bring together in collaboration both academics and practitioners – namely language commissioners and their staff – to explore language commissioners and their contributions from both theoretical and practical perspectives.

The volume is therefore divided into two parts and is composed of contributions from academics and IALC members respectively. It was planned from the outset that it would be a two-part volume, combining the theoretical and the practical. However, on receipt of the contributions it became increasingly apparent that this divide was somewhat artificial. Each language commissioner is the product of the legislation and the social and political context which brought the role into being and must eventually act within those confines. It is imperative therefore that each of the members' case studies presented in the second half of this volume be read in the light of those chapters which illustrate their legislative, social and political environment. We would like to take this opportunity to thank all contributors for their commitment and dedication in supporting this project. It has been an exciting and ambitious venture which needed to be delivered within a challenging timeframe and without their commitment it could not have been realized. Our sincerest thanks to you all.

faced with severe pressure to rein in public expenditure: 'A soft target, apparently, in a harsh climate.' (Colin H. Williams, *Minority Language Promotion, Protection and Regulation: The Mask of Piety* (Palgrave Macmillan, 2013), p. x).

3. Colin H. Williams, *Minority Language Promotion, Protection and Regulation: The Mask of Piety* (Palgrave Macmillan, 2013), p. 291.

As mentioned above, the book is divided into two parts to reflect the two-pronged approach – both theoretical and practical – to the analysis of the function of language commissioner. Part 1 entitled ‘Language Commissioners: The Institutional and Legal Landscape’ consists of contributions that examine the structures in which language commissioners operate. It sheds light on the structural and institutional foundation that the commissioner needs in order to execute his or her mandate as effectively as possible. The six contributions in Part 1 discuss not only this structural and institutional framework but also the challenges and issues that sometimes arise from it. These range from the unique nature of the role of language commissioners and their relation to key concepts like accountability and independence, to the problems posed by the legal and institutional framework in which they operate.

Part 2 entitled ‘The Pioneers at Work’ focuses on the functions, methods and impact of the work of language commissioners. It is composed of nine contributions by IALC members describing their approaches, success stories and the challenges that they have encountered in carrying out their mandate to protect linguistic minorities. Each case study is evidence of the breadth of many of the members’ mandates – mandates that extend far beyond their complaint-handling duties. The plethora of methodologies and approaches adopted by them are placed side by side so they may be easily compared and contrasted. This approach mirrors the regular activities of the IALC where practices are shared and analyzed in order to ensure that language commissioners worldwide make the best use of resources and work to the highest possible professional standards.

Our hope is that this book will lead to an improved understanding of the language commissioner’s role and functions. It will be of interest to academics, researchers and students interested in accountability institutions such as ombudsman’s offices and the institutional framework in which they operate. We hope that it will also be of interest to all those who are passionate about languages and that it will be of real practical value to public decision-makers and leaders exploring ways of protecting linguistic minorities. Our greatest ambition is that some of the content may provide inspiration, or a blueprint even, for governments who are currently considering models for protecting language rights. We also hope that it will spark further studies and discussions and help language commissioners, as constitutional pioneers, to find a permanent place in the diverse and vibrant family of organizations devoted to revive minority languages.

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