



Government responsiveness

Panel discussion on “Protecting language rights | Promoting linguistic pluralism”

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Government Responsiveness

- In a previous panel, the commissioners dealt with the art of recommendation and follow up, as well as that of providing advice.
- We will explore government responsiveness to such advice and recommendations.
 - How do governments react to such advice and recommendations?
 - When are advice and recommendations most effective?



Timely

- **When discussions occur early in the decision-making process, the likelihood of influencing government decisions is greater.**



Based on a trust relationship

- **To intervene early and in a timely fashion, the actors must trust each other. Generally, such trust must develop before a conflict arises.**



Strategic

- Judgment is important to select those opportunities that best allow governments to achieve results.
- Public servants seek out key moments to introduce changes (budget, program review, transitions).

Balanced

- **Governments are more likely to be receptive to advice that respects the often delicate equilibria that lie beneath state intervention.**
 - **Majority/minority**
 - **Costs/benefits**
 - **Priority/non priority**



Realistic

- **Governing in the 21st Century is a complex affair and many files compete for governments' interest. In the end, even governments have limited resources with which to seek to resolve all issues.**
- **Governments will be more receptive to recommendations that grant them sufficient leeway to allow for progressive implementation laid out over a longer period of time, and which are economically viable.**

Solution-oriented conflict-avoidance

- **Governments want to avoid conflicts. The ombudsman is efficient in the role of mediator/conciliator to parties that are involved in such conflicts.**
- **To be trusted to play such a role, which is a key role for an ombudsman, the ombudsman must demonstrate impartiality.**
- **There must be room for compromise and for interest-based negotiations between the parties.**

Focussed on the key objective

- **When one or more of these conditions are absent, the ombudsman and governments will have reduced prospects of meeting a key legislative objective for their creation – the resolution of conflicts.**
- **The objective is to resolve such conflicts without calling on the courts.**


Sources

“ ... [T]he Commissioner of Official Languages plays a very important role... To allow him to fulfill a social mission of such broad scope, he has been vested with broad powers by the Parliament of Canada... The Commissioner may also exercise his persuasive influence ... The ... Official Languages Commissioner follow[s] an approach that distinguishes [him] from a court. [His] unique mission is to resolve tension in an informal manner... one reason that the office of ombudsman was created was to address the limitations of legal proceedings... Wade, *Administrative Law* (8th ed. 2000) at pp. 87-88 explains why this is so important:

[T]here is a large residue of grievances which fit into none of the regular legal moulds, but are none the less real. A humane system of government must provide some way of assuaging them, both for the sake of justice and because accumulating discontent is a serious clog on administrative efficiency in a democratic country...”

“... An ombudsman is not counsel for the complainant. His or her duty is to examine both sides of the dispute, assess the harm that has been done and recommend ways of remedying it. The ombudsman’s preferred methods are discussion and settlement by mutual agreement.

See *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53, [2002] 2 S.C.R. 77 at par. 35, 38 and 39.



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