

A Language Commissioner for Wales: International Precedents.

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The Welsh Language Act 1993

- The WLB and Language Schemes (542 to date)
- Evaluate how much value has been added to public administration and bilingual service delivery by the adoption of such schemes? Is there an alternative mechanism?
- Has language-related behaviour changed?
- Whither the notion of language rights?
- Why the pre-occupation with new legislation?

Changing Nature of Debate

From

- Struggle
- Protect unique language
- 'Nationalist' ideology
- Marginal dependency
- Minority special pleading
- Language as a divisive issue
- Cultural justification

- Preoccupation with education
- Para-public employment
- Reactive policy

To

Normalization
Promote bi/multilingualism
Inclusive pluralism
Governance
Equal opportunity
Language as integral
Socio-economic rationale
Holistic thinking
Economic marketing
Purposeful growth

Policy Contexts

- ‘Bonfire of the quangos’
- Functions of threatened WLB to be re-allocated to unidentified agencies, Y Dyfarnydd side-show, review and popular reaction to diminution of LPLP
- Cymru Un commitment to a Language Commissioner

Recent Legislative Considerations

- Legislative Devolution-Language Legislative Competence Order (LCO) a useful test case of competence and capacity
- Westminster Parliamentary scrutiny sought to build on Welsh Language Act 1993, but was mindful of the competence implications and the alleged limited capacity within NAFW to produce and implement complex legislation.

National Assembly for Wales

- NAFW (Legislative Committee no 5) recommended full transfer of competence for Welsh to itself.
- Four implications:
 - a) Future of WLB;
 - b) Establishment of Language Commissioner;
 - c) Specification of language rights;
 - d) Extension of Language Schemes to part of private and voluntary sectors.

Options Presented

- To preserve the WLB as agency for language policy and planning.
- To integrate the WLB within the Assembly Executive.
- To establish a Language Commissioner.
- To establish a Commission for the Welsh Language, absorbing WLB *in toto*, housing both promotional and regulatory aspects of LPLP, including a Commissioner, but with additional powers and responsibilities as determined by new legislation.

Domestic Precedents: The Current Commissioners e.g. ICO, Wales

- ICO – Wales is responsible for:
- providing a general advice and enquiry service to individuals, organisations and public authorities based in Wales;
- investigating all freedom of information complaints which relate to Welsh public authorities;
- raising local awareness of information rights and encouraging good practice;
- engaging with the Welsh Assembly Government, National Assembly and other key decision makers to ensure that new policy and legislation comply with the legislation we regulate;
- ensuring that the interests of individuals, organisations and public authorities throughout Wales are considered in the development of ICO policy and guidance; and
- responding to local needs by providing a targeted and appropriate service (this includes the provision of services in the Welsh language).

Language Measure 4 March 2010

- 'Official' status for Welsh Language
- Establish a Language Commissioner
- Advisory Panel
- Appeals Tribunal
- Abolish the Welsh Language Board

Probable Scrutiny and Review Issues

- NAFW Scrutiny Committee receive evidence over next few months with a view to improve measure and establish COL in late 2011. Interrogate the definition, measurement and application of the 'service standards' which replace the language schemes: five elements:- 1.service provision; 2.policy implementation; 3.administrative arrangements; 4.language promotion; 5.recording compliance and complaints.

Probable Scrutiny and Review Issues

- Accountability of LC- to Minister(s), to full Assembly.
- Financial independence and sustainability of COL
- Definition and development of common standards approach to delivery of language services
- Application of standards to Crown Bodies
- Fit between Language Measure and WLA 1993
- Future legislation, clauses and refinements related to language as issues within policy development

Probable Scrutiny and Review Issues

- Two way comparison with other:-
- Commissioners/Ombudsmen in Wales and UK
- Language Commissioners
- Distinct Welsh model, how well defined, clear, applicable, capable of development?
- Legal cases, court challenge and remedy

Probable Scrutiny and Review Issues

- Relationship between language promotion, regulation and implementation
- Whither the non-Commission functions of the WLB?
- How will language rights be developed?
- Will the new arrangements sustain creativity and holistic approach to Language Policy and Planning?
- Will the LC's judgements and interventions have an authoritative bite, or will the investigative process be characterised by a series of administrative and judicial appeals?

International Precedents

- Canadian Federation: Office of Commissioner of Official Languages
- Province of New Brunswick and of Ontario: Office of the French Language Services Commissioner
- Ireland: An Coimisinéir Teanga
- Finland: Ministry of Justice
- Catalonia and Basque versions

Federal Commissioner of Official Languages

- Canadian Constitutional System
- Protection given to native languages and other languages spoken
- Official Languages in Canada
- Constitutional protection of English and French as official Languages
- Official Languages Act
- Role of the Commissioner
- What works and where there is room for improvement

Historical Milestones

- French settlement & English conquest
- French-speaking population primarily in what is now Quebec
- Legally recognized language rights for the French-speaking population non-existent
- Failed attempts at assimilation: rebellion of 1837
- Act of Union of 1840: abolishing the use of French
- French reintroduced in the legislative process in 1841, but abolished again in 1848

Constitutional Protection of O.L.

- *Constitution Act of 1867*: grants right to use English or French in the courts and Legislative Assemblies of the Federal government and the province of Quebec
- Increased attempts at assimilation
- French-language not a language used by the State: relegated to second place in Parliament and government
- 1960s: Royal Commission on Bilingualism and Biculturalism: blueprint for the establishment of a long term and wide ranging language policy
- Formal recognition of language rights began in the late 1960s and continues to progress

The Canadian constitutional system

Flexible federal system: federal, provincial and shared jurisdictions

Federal

- Foreign affairs
- National defence
- Air transportation
- Immigration

Provincial

- Education
- Health
- Social services
- Job training

Shared

- Taxation
- Commerce
- Justice
- Environment

Each order of government has the authority to enact language legislation in its areas of responsibility.

Protection given to language rights can vary somewhat from one province to another.

Languages in Canada

Most common languages

(knowledge of language)

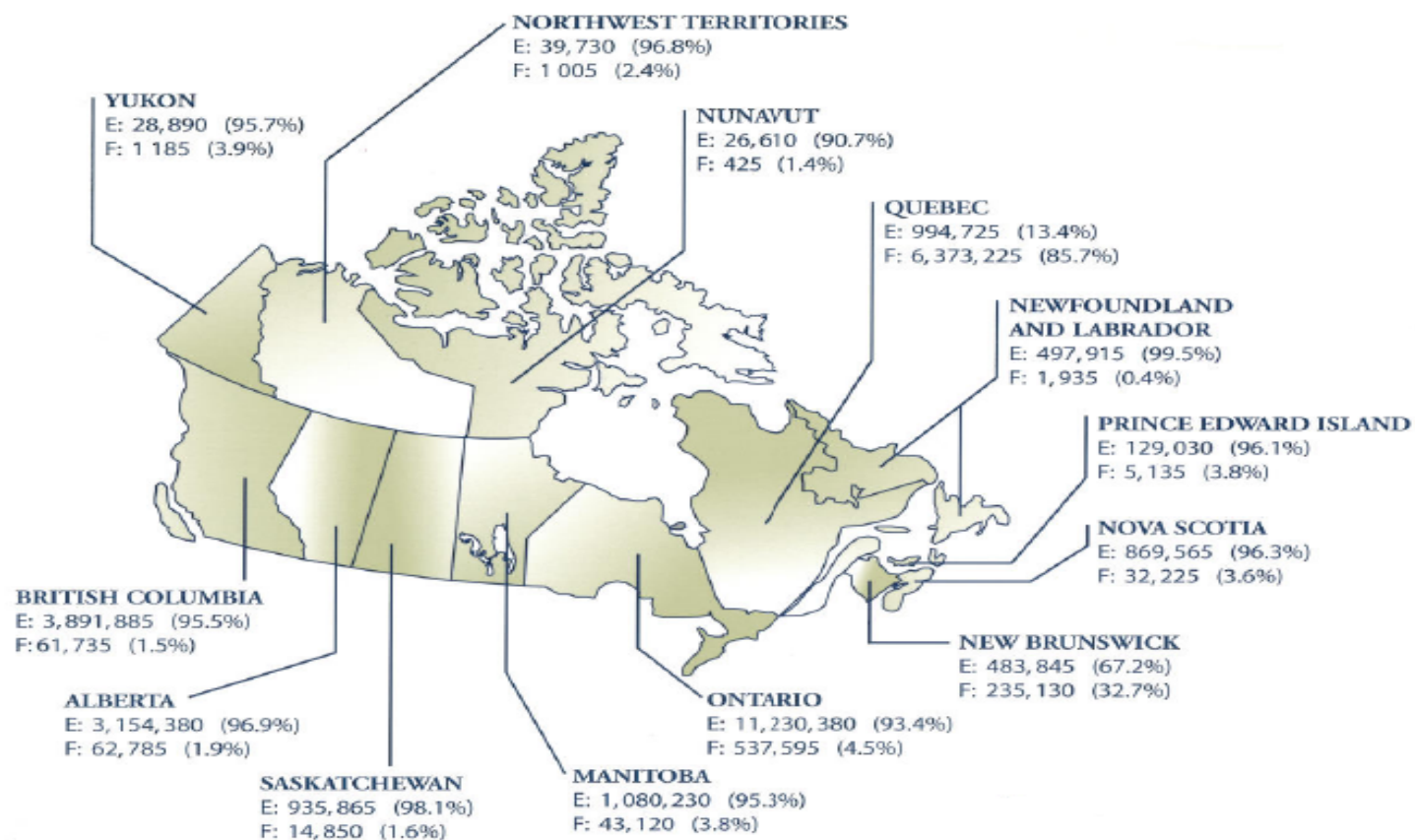
- English 26,578,795
- French 9,590,700
- Chinese 1,213,750
- Spanish 758,280
- Italian 660,945
- German 622,650

Native languages

(mother tongue)

- Cree 78,855
- Inuktitut 32,015
- Ojibway 24,190
- Montagnais-Naskapi 10,975
- Oji-Cree : 11,690
- Micmac 7,365
- Dakota/Sioux 5,585

Official Languages in Canada in 2006



Official Languages in Canada

Population of Canada in 2009:	31 241 030
Number of people who knew English and French:	5.4 million (17.2% of the population)
Percentage of Francophones who were bilingual:	42% (46% among young people aged 15 to 19)
Percentage of Anglophones who were bilingual:	9% (15% among young people aged 15 to 19)
Percentage of bilingual (English/French) young people whose mother tongue was neither English nor French:	20%

Canadian Charter of Rights and Freedoms of 1982

- **Section 16** – English and French official Languages of Canada
- **Section 17** – Right to use English and French in debates and proceedings of Parliament and of the Legislature of New-Brunswick
- **Section 18** – Laws of the Parliament of Canada and of the Legislature of New-Brunswick must be published in both languages
- **Section 19** – English and French can be used in any courts established by Parliament of Canada and by Legislature of New-Brunswick
- **Section 20** – Federal Government's and Government of New-Brunswick's services and communications in both official languages
- **Section 23** – Minority Language Educational Rights
- **Section 24** – Right to go to court for a remedy

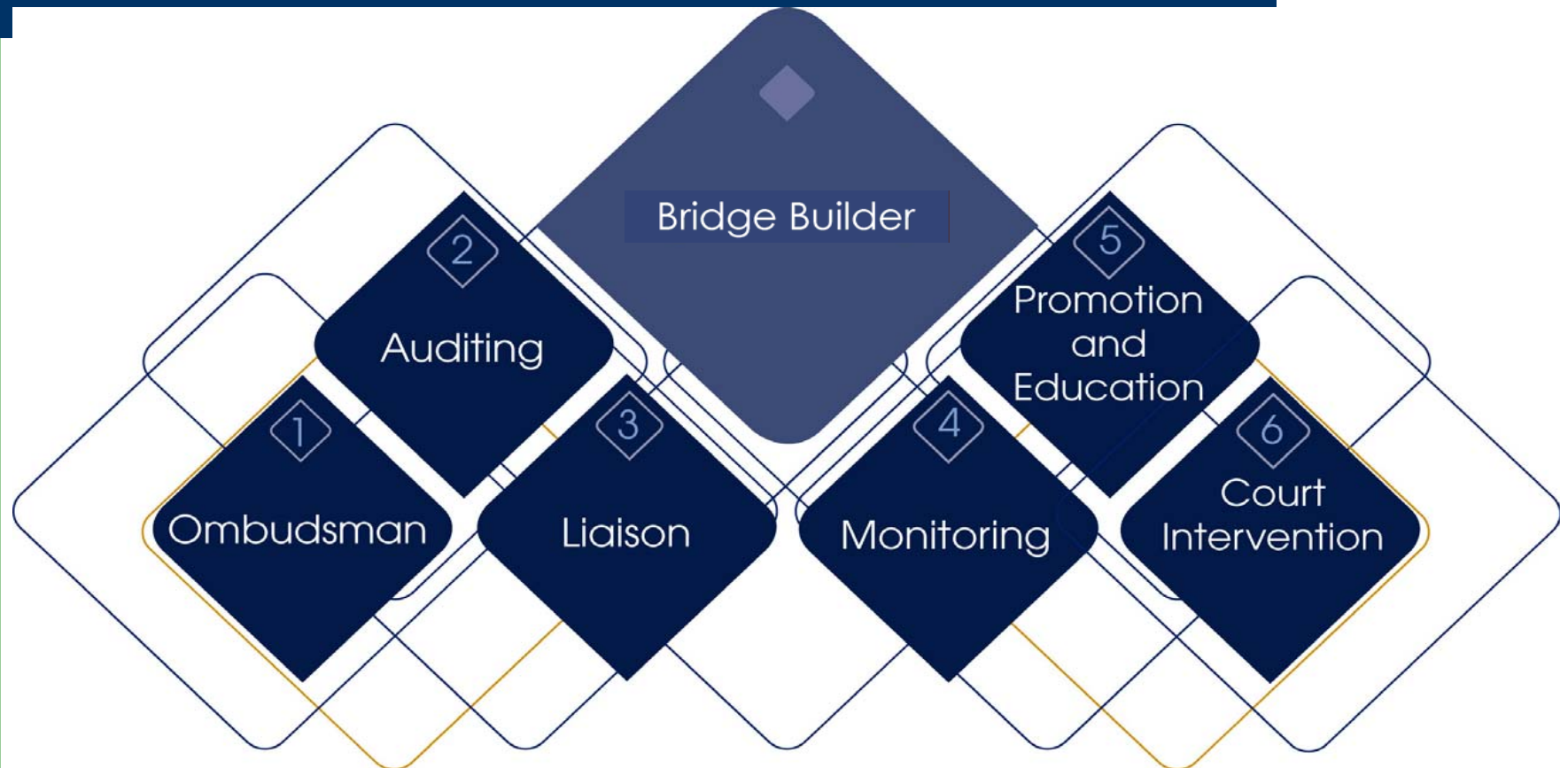
Official Languages Act of Canada

- Implements the language rights granted by the Charter
- Objectives of the Act:
 - Language Equality in Parliament, within the Government of Canada, the federal administration and institutions subject to the Act
 - The development and vitality of official language minority communities in Canada; and
 - The equal status of English and French in Canadian society

Role of the Commissioner

- The Commissioner takes all necessary measures to ensure that the three key objectives of the Act are achieved:
 - The equality of English and French in Parliament, within the Government of Canada, the federal administration and institutions subject to the Act;
 - The development and vitality of official language minority communities in Canada; and
 - The equal status of English and French in Canadian society.

Roles of the Commissioner of Official Languages



The Canadian model ... what works ?

- Entrenched constitutional rights afforded to the linguistic minority
- Statutory mechanisms (ombudsman and court remedy) to ensure the language rights of citizens are respected
- Education in the other official language
- Advocacy and promotional work, letting the public know what their statutory rights are.

Accountability and Independence

- OCOL submits an Annual Report to Parliament (and to respective committee) and must provide an outline of its plans and priorities to the Treasury Board.
- Dr Adam believed that the individual needs to be one who does not fear responsibility nor criticism: “you must be impermeable to outside influences: the federal government, minority groups, lobby groups, even the Prime Minister himself”.
- Court cases have influenced the mandate, good and bad, now both ‘individual rights’ and ‘community vitality’ are within the COL’s remit.

How has the COL's independence contributed to the evolution of his mandate and activities?

- Through his interpretation of the Act, the COL has determined what activities he must pursue in order to defend its letter and spirit. The letter of the Act is easy to define; it is what is written section by section.
- Critically the spirit of the Act is a concept of Canada's linguistic duality and the importance it holds for society. As a result, through his interpretation of the Act, the COL has changed his mandate in order to address society's needs. ...it is his position as an Officer of Parliament that has given him the freedom to direct his activities as he sees fit. (Source: Kuryolo,2000).

Commissioner's influence

- Commissioner Adam held that her power and influence lay in her credibility and the respect and support she received from Parliament and the public. According to her “if [you] lose these, whether it be with government, government institutions or [the] public, [you lose your] effectiveness...you need credibility in order to pass judgement [and for] this Office to be able to stand up for what [it believes] in”. (Source: interview with Kuryolo, May 10 2000.)

Cardinal Principles

- Independence of OCOL from Ministerial interference, accountable to Federal Parliament. Public credibility as advocate.
- One of eight Agents General of Parliament, thus constant cross-referencing to the relationship between Commissioner, parliament, the Courts and the citizens.

Canada's official language policy: a work in progress

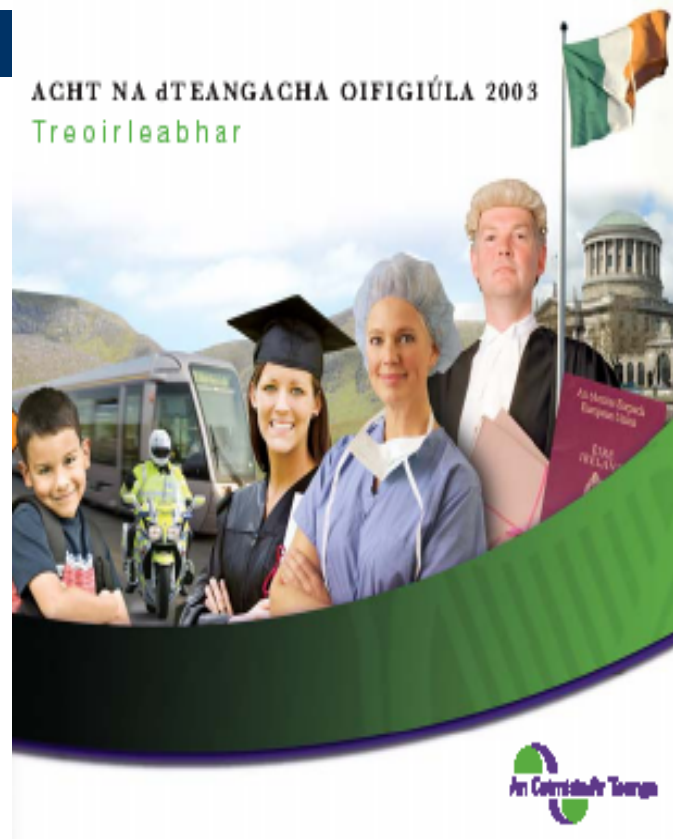
- Language of service has improved in all regions, but there is room for further improvement
- For language of work, progress is uneven
- Intervention of courts still required to ensure respect of language rights
- There continues to be much room for improvement at the provincial, territorial and municipal levels

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Oifig an Choimisinéara Teanga

- Ombudsman
- Compliance Agency
- No responsibility for promotion of Irish language – Foras na Gaeilge
- Three divisions on advice of independent consultant
 - Investigate complaints & advise public
 - Monitor implementation & advise public bodies
 - Communications

Background

- **Constitution – Article 8**

The Irish language as the national language is the first official language.

English is recognised as a second official language.

Background

- 1974 – end to system of compulsory Irish in civil service
- Effect on the ability of the state to deal with the public through Irish
- Court cases taken to obtain services through Irish
- Role of Irish prior to 2003 beginning to wane

Official Languages Act 2003

- Official Languages Act 2003 – aim is to improve the quantity and quality of services in Irish
- Act aims to achieve this improvement over a period of time
- Based on Canadian and Welsh Acts

Official Languages Act 2003

- Direct Provisions
 - Communication-must be replied to in the same language
 - Publications- Annual report; Financial statements; Public policy proposals in Irish or bilingually
 - Place names- **Section 9(1)**:-Recorded/Live Oral Announcements; Headings of Stationery; Signage; Advertisements
- Regulations
- Schemes
- Other Acts

Language Scheme Services

- Schemes on request from the Minister
- Forms, information booklets, publications
- First point of contact
- Service on the telephone
- One-to-one service
- Websites
- Interactive services
- An Ghaeltacht

Other enactments

- Approx. 100 pieces of legislation prior to the Act which referred to the status or use of Irish
- Only enforceable through courts
- As a result of the Act, compliance agency (OCT) which can act on behalf of the complainant.

Public Bodies

- Gov. Departments and Offices
- Local Authorities
- HSE
- Educational Institutions
- Agencies, boards and state companies
- Approx. 650 in total; 95 Schemes to date

Compliance - Language Schemes

- **Year 1**
 - Emphasis on progress to date
 - Processes and procedures identified
 - Commitments have been communicated
 - Recognising any potential risks
- **Year 2**
 - Specific commitments
 - Follow on from Year 1 review
- **Year 3**
 - Commitments implemented
 - Evidence based
 - Verification
 - Confirmation
 - Follow-up

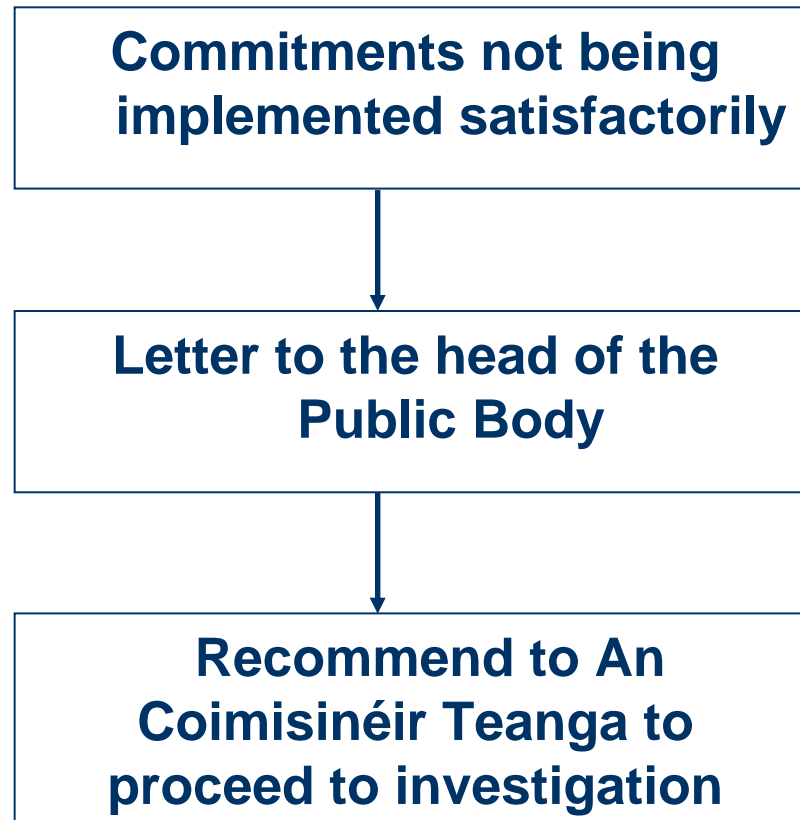
Process

Language Schemes	Methods
Year 1 - Review	<ul style="list-style-type: none">- Questionnaire- Review- Meeting- Report
Year 3 - Audit	<ul style="list-style-type: none">- Questionnaire- Supporting Documentation- Internal Review<ul style="list-style-type: none">- Questionnaire & documentation- Complaints- Independently sourced documentation- Preparation of Audit File- Meeting- Commitment Letter- Investigation- Report & Recommendations- Follow-up

Test Procedure

Commitments	Audit Tool
Communication with the Public <ul style="list-style-type: none"> - Reception Staff - Public Service Counters - Field Staff 	<ul style="list-style-type: none"> - Confirmation by Public Body *
Publications <ul style="list-style-type: none"> - Forms - Brochures / Information Leaflets - Corporate documents 	<ul style="list-style-type: none"> - Supporting documentation - Process verification - Internal review
Websites	<ul style="list-style-type: none"> - Internal review
Interactive Systems	<ul style="list-style-type: none"> - Internal review
Press Releases	<ul style="list-style-type: none"> - Supporting documentation - Confirmation by Public Body - Internal review - Process verification
Training and Development	<ul style="list-style-type: none"> - Supporting documentation - Confirmation by Public Body
Recruitment and Placement	<ul style="list-style-type: none"> - Confirmation by Public Body
Gaeltacht Offices	<ul style="list-style-type: none"> - Confirmation by Public Body
Monitoring and Review	<ul style="list-style-type: none"> - Supporting documentation - Process verification

Compliance Process – Further steps



Process Strengths and Weaknesses

- Strengths

- Independence
 - Separation of duties
 - Monitoring role only
- Multi Year Review and Audit
- Option to Investigate

Process Strengths and Weaknesses

- Weaknesses
 - Ambiguous commitments
 - Confirmation of compliance by Public Bodies
 - Volume of Schemes

Reasons for Non-Compliance

- Capacity and resources to deliver services
- Lack of buy-in from Senior Management
- Internal communication of commitments
- Poor Monitoring & Review processes

Complaints & Investigations

- Received by email, phone or post
- Frequently advice only – misunderstandings as to what is or is not covered by legislation
- Complaints dealt with by investigation, but informal procedure in place to attempt to reach resolution or agreement without resorting to investigation.

Complaints & Investigations

- Procedure highly successful - vast majority of cases settled informally.
- Letter/email issued to contact person in public body, specifying alleged breach and relevant section of Act.
- 10 working days to prepare informal response to the allegation; extensions if requested.
- If public body accepts the breach or gives a valid explanation, issues an apology in case of breach and undertakes to put revised procedures in place, no further action is taken.

Complaints & Investigations

- 2007 –10 completed
- 2008 - 17 completed
- 2009 to date - 13 commenced
- Investigation takes place in cases of alleged contravention of:
 1. Official Languages Act
 2. Regulations under the Act
 3. Language Schemes
 4. Any other enactments relating to the status or use of Irish

Complaints and Investigation, Step 1 – Collection of Information & Records

- Issue of formal letter to head of the public body explaining alleged breach & quoting the relevant section of the Act or Acts.
- Accompanied by note setting out steps of the process and requesting all relevant records (see sample) and by
- Appendix setting out basic questions along the lines of ‘Do you accept there was a breach? If so, why? If not, why not? (setting out legal arguments).

Complaints and Investigations – Steps 2 & 3 Examination & Analysis

- On receipt of response, decision made whether we have sufficient information to proceed with draft or full report or whether further information is required. Further info. may be sought in writing or orally.
- Process continues until CT is satisfied we have info. required. Only circumstances in which info/records may be withheld are Cabinet Confidentiality. This must be certified by the Secretary General to the Government and has arisen in one case to date.

Complaints & Investigations – Step 4

- CT has the right to issue draft report, without findings or recommendations, and is inclined to do so in most cases to avoid inaccuracies or misunderstandings appearing in the final report.
- A final report must issue in all cases under legislation to the public body, to the Minister for Community, Rural and Gaeltacht Affairs and to the complainant, where one exists.

Complaints & Investigations – Step 4

- Findings and recommendations of CT appear in final report – recommendations at his discretion
- 4 weeks for all parties to appeal to High Court on point of law
- Invitation issued by CT to comment on his findings or recommendations within 6 weeks
- If recommendations not implemented within reasonable time, having considered the response of the public body, if any, report to both Houses of the Oireachtas to include response of public body
- Compensation scheme may be introduced by Min. for CR&GA with consent of Min. for Finance

Investigations 2008

- Dublin City Council: s.10(a) 'Maximising the City's potential'. No breach - no proposals contained in doc. Complaint received.
- Dept of Environment: s.10(a) 'Resourcing the Planning System'. Breach – document contained proposals. Complaint.
- Dept. of Environment: s.10(a) Green Paper on Local Government. Breach – compliance monitoring.
- Health Service Executive: s.18 Implementation of agreed scheme. Preschool inspection – complaint received.
- Dept. of Environment: s.18 Implementation of agreed scheme. Website. Audit and complaint.
- Dept. of Transport: s.10(a) Consultation document. Monitoring of compliance.
- Irish Research Council for Humanities & Social Sciences: s.9(2) Response in English. Complaint received.
- Iarnród Éireann: Other enactment – Transport Act 1950. Ticket – complaint received.

Investigations 2008

- Heritage Council: Other enactment – Heritage Act. Sufficient staff with Irish language fluency. Complaint & monitoring.
- Dept. of CR&GA: s.18 Implementation of agreed scheme. Departmental interviews for promotion and training. Complaint, compliance check & CT initiative.
- Equality Authority: s.10(b) Annual report. CT initiative.
- Dept. of Justice: s.18 Implementation of agreed scheme. Complaint & CT initiative.
- Dept. of Social & Family Affairs: s.9(3) Letter to a class of the public. Complaint & CT initiative.
- NRA: s.9(3) Mailshot re eFlow. Complaint & CT initiative.
- Dept. of Ed: Other enactment – Ed. Act 1998. Complaint received. Guidelines for teachers in English only.
- A named insurance company: Other enactments – Insurance Act 1936 as confirmed by Insurance Act 2005. Complaint received. No breach – forms not completed wholly in Irish.
- Dept. of Social & Family Affairs: s.18 Implementation of agreed scheme. Complaint received – síneadh fada.

Three issues for Wales

- The relationship between **promotion** of an official language and **regulation** of a compliance function. i.e. the statutory regulations.
- How COL will influence behaviour and initiate reform within public administration and with Welsh public? What weighting should be given to advocacy and a proactive stance?
- How to develop the Language Commissioner's duties and basic operation. Initially an elementary form of OCOL, without the constitutional conventions, and full suite of language rights, but investigations and advocacy will be subject to court challenges and court remedies.

Possible Composite Hierarchy

- Official Status
- Standards
- Language Schemes
- Regulation and Implementation
- Complaints and challenges

Comparative Perspectives

- Equality and Human Rights Commission, the Single Equality Bill, implications of extending discrimination law to include language;
- Consequence of increased recognition of official status of Welsh in the UK and Europe.
- Language Commissioners in Canada, Ireland, Wales etc
- Commissioners and Ombudsmen
- British-Irish Ombudsmen Association
- Commonwealth Ombudsmen
- European Ombudsmen