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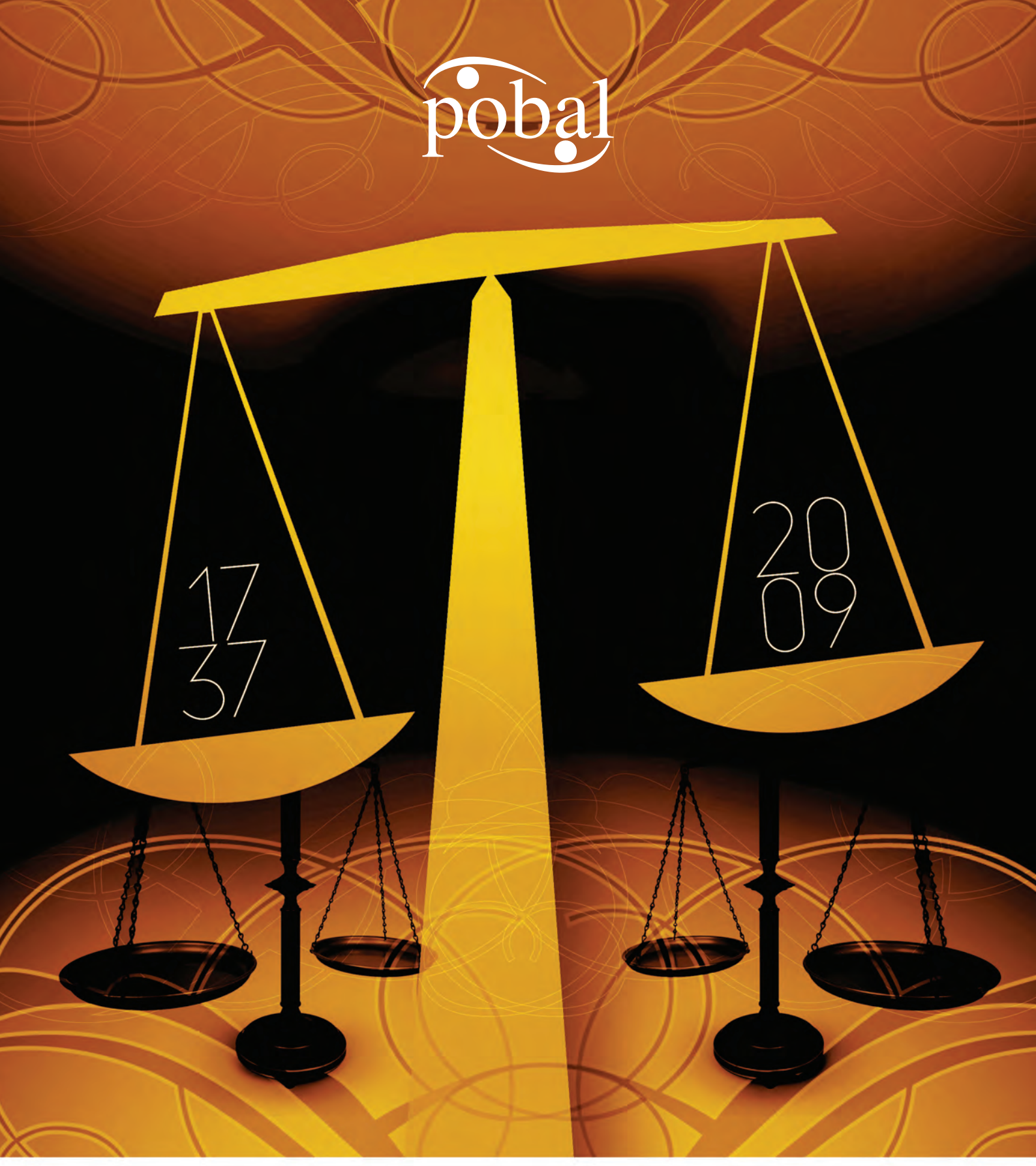

Úsáid na Gaeilge sna Cúirteanna
Cearta agus Cothrom na Féinne: An cleachtas idirnáisiúnta is fearr

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The Use of Irish in the Courts
Rights and Equality: The Best International Practice


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4. **Janet Muller**
   Príomhfheidhmeannach CEO POBAL

6. **Sorcha McKenna**
   ar son | on behalf of Monica McWilliams,
   Príomhchoimisinéir, Chief Commissioner
   Coimisiún Um Chearta an Duine TÉ, NI Human Rights Commission

8. **Micheál Ó Flannagáin**

12. **Mike Ritchie**
    Stiúrthóir / Director,
    Committee on the Administration of Justice

14. **Graham Fraser**
    Canadian Commissioner of Official Languages

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The Use of Irish in the Courts
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Janet Muller
Príomhfheidhmeannach CEO POBAL

Cuirim fáilte roimh gach duine chuig an ócáid seo inniu. Níos moille, beidh duine de na daoine is údarásaí ar an ardán domhanda maidir le cosaint na dteangacha, Graham Fraser, ag tabhairt óráide faoi thaithí Cheanada mar a bhaineann sé le húsáid na dteangacha mionlaigh sna cúirteanna. Tá ríméad orainn gur ghlac sé mar Choimisinéir Ceanadach na dTeangacha Oifigiúla, lenár gcuireadh taisteal chuig an ócáid, a dhíreoidh ar chosc leanúnach ar úsáid na Gaeilge sna cúirteanna ó thuaidh. Chomh maith le Graham Fraser, beidh Sorcha McKenna anseo le teachtaireacht tacaíochta ar son Phríomhchoimisinéir an Choimisiún Um Chearta an Duine TÉ, Monica McWilliams a chur inár láthair. Beidh Príomhfheidmeannach CAJ (Committee for the Administration of Justice) Mike Ritchie ag tabhairt léamh an Choiste ar Acht 1737 agus ar Acht na Gaeilge chomh maith. Fáiltíonn muid chomh maith roimh Mhicheál Ó Flannagáin dlíodóir, agus roimh Chiarán White, abhcóide a chomhairligh linn agus a d'ullmhaigh an t-athbhreithniú dlí a thug Caoimhín Mac Giolla Chatháin an bhliain seo caite.

I should like to welcome everyone here today. Later on, Graham Fraser, one of the most authoritative figures on the world stage in the matter of language protection will be speaking about the experience of Canada as it relates to the use of minority languages in the courts. We are delighted that as the Canadian Commissioner for Official Languages he has accepted our invitation to travel to this event, which will focus on the continuing ban on the use of Irish in the courts in the North. As well as Graham Fraser, Sorcha McKenna will be here to present a message of support on behalf of the Chief Commissioner of the NI Human Rights Commission, Monica McWilliams. The Director of the Committee on the Administration of Justice, Mike Ritchie, will give CAJ's interpretation on the 1737 Act and on the Irish Language Act as well. We welcome also Michael Flanigan, solicitor and Ciarán White, barrister, who advised us and who prepared the Judicial Review which Caoimhín Mac Giolla Catháin took last year.

Is dlí frith-ghaelach é, Acht 1737 um Riar na Córa (Teanga) (Éirinn). Cibé cuspóir a bhí leis 272 bliain ó shin, an lá inniu, ní dhéanann sé ach cosc iomlán a chur ar úsáid na Gaeilge sna cúirteanna ó thuaidh. Is í an Ghaeilge an t-aon teanga amháin atá in úsáid choitianta a thagann faoi thionchar an choisc seo. Déantar freastal ar theangacha na mionlach eitneach ar bhonn laethúil i gcúirteanna Thuaisceart na hÉireann, mar is ceart agus is cóir. Sa Bhreatain Bheag, tá an ceart ag Breatnaiseoirí an Bhreatnais a úsáid in imeachtaí gach cineál cúirte ó 1942. In Albain, tá roinnt cúirteanna ann ina dtig an Ghàidhlig a cluinstin ar bhonn laethúil má iarrtar í. Creideann POBAL, go léiríonn feidhmiú leanúnach an Achta seo i dTÉ, léiríonn sé go bhfuil Rialtas na Breataine arís eile ciontach as caighdeán dúbailte maidir le húsáideoirí na dteangacha éagsúla dúchasacha ar na hoileáin seo.

Mar is eol daoibh, cuireadh dúshlán dlí roimh an Acht ach faraor, cailleadh an cás. Tugadh an breithiúnas díreach roimh dhruidim na gcúirteanna don samhradh. Shílfeá nach raibh siad ag iarraidh aird na ndaoine a dhíriú ar an chinneadh! Nuair a chuala muid an cinneadh, bhí muid meallta, ach ní raibh iontas orainn. Mar a dúirt muid ag an am, ní raibh ann ach céim eile ar an bhealach. Chuala muid rialtas na Breataine ag cosaint go fíochmhar dlíthe seanaimseartha éagóracha a imríonn leatrom ar an teanga Ghaeilge agus ar Ghaeilgeoirí. Thaispeáin cuid den fhianaise a cuireadh i láthair na cúirte go bhfuil aitheanta ag Rialtas na Breataine roinnt uaireanta le blianta beaga anuas go gcaithfidh sé an dlí seo a aisghairm. Tá roinnt pleanála tosaigh do sheirbhísí i nGaeilge sna cúirteanna déanta aige le tréimhse de bhlianta gan a chuid torthaí féin riamh a chur i bhfeidhm. Chruthaigh cinneadh na cúirte an géarghá atá le hAcht na Gaeilge, le cearta na nGael a chosaint mar ba chóir. Léiríonn an méid atá ráite ag an bhreitheamh, Séamus Tréasaigh nach féidir le pobal na Gaeilge cothrom na Féinne a fháil faoin dlí mar atá sé faoi láthair. Ní leor Comhaontú Aoine an Chéasta, ní leor Acht um Chearta Daonna, ní leor Cairt na hEorpa do Theangacha Réigiúnacha nó Mionlaigh. Mar sin, is léir go bhfuil Acht na Gaeilge uainn le lánchosaintí dlíthiúla a chur in áit don Ghaeilge sa tuaisceart agus le creatlach a fhorbairt d'úsáid na Gaeilge i gcúrsaí uile na beatha, na cúirteanna san áireamh. Tá comhairle dlí anois glactha againn agus tá feachtas tosaithe againn, ag iarraidh ar pholaiteoirí tacú linn agus aisghairm Acht 1737 a lorg láithreach.

The 1737 Act on the Administration of Justice is an anti-Irish language law. Whatever its purpose was 272 years ago, today, it simply serves to place a blanket ban on Irish in the Northern courts. Irish is the only language in common use in the North that is affected by this ban. Ethnic minority languages are accommodated every day in the courts in the North, as is right and proper. In Wales, Welsh speakers have had the right to use Welsh in all kinds of courts since 1942. In Scotland, there are a number of courts where Gaidhlig can be heard every day if its use is requested. POBAL believes that the continued use of this Act in the North shows that the British government is once more guilty of operating a double standard in its treatment of the users of different indigenous languages on these islands. As you know, we have challenged the operation of this law, but the case was lost unfortunately. The judgement was given right before the summer recess. You would almost think they did not want to attract attention to the decision! When we heard the ruling, we were disappointed, but we were not surprised. As we said at the time, it was just another step along the way. In court we heard the British government fiercely defend this old fashioned and discriminatory law, which is repressive of the Irish language and of Irish speakers. Some of the evidence put before the court shows that the British government itself has recognised several times that it will have to repeal this law. Forward planning for court services through Irish has been undertaken by the British government in recent years, but it has not been put into action. The court case has proven the urgent need for the Irish language Act, to properly defend the rights of Irish speakers. What the Judge, Séamus Treacey said shows that Irish speakers cannot get just treatment under the law as it stands at present. The Good Friday Agreement is not enough, the Human Rights Act is not enough, the European Charter for Regional or Minority Languages is not enough. Therefore, it is clear that the Irish Language Act is needed to put in place comprehensive legal protections for the Irish language in the North and to develop a framework for the use of Irish in all areas of life, including in the courts. We have now taken legal advice and we have also started on a campaign to call on politicians to support us as we seek the immediate repeal of the 1737 Act.

Úsáid na Gaeilge sna Cúirteanna
Cearta agus Cothrom na Féinne: An cleachtas idirnáisiúnta is fearr

(insert Sorcha McKenna's talk here)

The Use of Irish in the Courts
Rights and Equality: The Best International Practice

Sorcha McKenna
ar son | on behalf of Monica McWilliams,
Príomhchoimisinéir, Chief Commissioner
Coimisiún Um Chearta an Duine TÉ, NI Human Rights Commission

Ar dtús, gabhaim leithscéal ón chroí nach bhfuil mé in ann a bheith libh ar maidin mar gheall ar chúrsaí teaghlaigh. Tá Sorcha McKenna, ball d'fhoireann an Choimisiúin ag labhairt ar mo shon agus ag cur i láthair mo theachtaireacht tacaíochta.

Tá dioma mhór orm nach mbeidh seans agam aithne a chur ar Graham Fraser, Coimisinéir Ceanadach na dTeangacha Oifigiúla. Tá freagracht aige a chinntiú go bhfuil na teangacha oifigiúla, Fraincis agus Béarla, curtha chun cinn, faoi chosaint agus go gcaitear leo go cothrom sa tsochaí.

Thig linn uilig cuid mhaith a fhoghlaim ón chaighdeán Ceanadach. Ní thig liom barraíocht béime a chur ar chomh riachtanach is atá sé ár gcuid oibre a lonnú agus a thuigbheáil sa chomhthéacs idirnáisiúnta – ní amháin maidir leis an chaighdeán idirnáisiúnta ach maidir leis an taithí idirnáisiúnta chomh maith.

Tá earnáil dheonach chearta daoine bríomhar againn sa limistéar seo agus d'éirigh le grúpaí, amhail POBAL ceist chearta teanga a cur ar chlár na gcoistí faireacháin idirnáisiúnta.

Ba mhaith liom comhghairdeas a gabháil le POBAL as an ócáid seo a eagrú agus as a bheith in ann an tUasal Fraser a mhealladh, duine le post ard-chaighdeáin agus le taithí leathan.

Bhí an Coimisiún bunaithe faoi Comhaontú Aoine an Chéasta agus mar institiúid aitheanta ag na Náisiúin Aontaithe, oibríonn sé trasna an speictrim iomláin ar cheisteanna duine, cearta teanga san áireamh.

Is sa chomhthéacs seo a rinne an oimisiún ionadaíocht le déanaí ar an tsaincheist ar a bhfuil muid ag labhairt anseo inniu - ar Acht 1737 ar Riar na Córa (Teanga) (Éirinn), atá go fóill ar leabhair na reachtanna agus a chuireann cosc 'de facto' ar úsáid na Gaeilge sna cúirteanna.

Let me say how sorry I am that for family reasons I am unable to attend this important event today. I am represented here today by Sorcha McKenna of my staff. I am particularly disappointed I will not have the opportunity to meet Graham Fraser the Commissioner of Official Languages of Canada. He has responsibility for ensuring that the official languages of French and English are promoted, protected and equal in society.

We could learn a lot from the Canadian experience. I cannot stress enough the importance of setting our work in the international context, both in relation to international standards and also international experience.

We have a dynamic human rights NGO sector in this region and groups like POBAL have succeeded in bringing the question of language rights to the attention of the international monitoring bodies. I would in particular like to commend POBAL on organising this event and securing the skills and expertise of the Mr Fraser.

The NI Human Rights Commission was established following the Good Friday Agreement and as a UN accredited body, works across the full spectrum of human rights issues, including language rights.

It was indeed in this context that the Commission recently made representations on the specific issue we are here to discuss today –the ongoing presence of the 1737 Administration of Justice (Language)(Ireland) Act on the statute books and the de facto ban on Irish in the courts this entails.

The Commission, with POBAL and others, brought this to the attention of the UN in the context of the UKs recent examination in Geneva on its commitments under the ICESCR. The Commission was pleased the UN Committee responded in its concluding observations by calling for the implementation of the Irish language Act noting Irish is the only one of the three main UK minority languages without legislative protection.

Thug an Coimisiún, POBAL, agus eagraíochtaí eile, an t-ábhar seo os comhair na Náisiún Aontaithe sa Ghinéiv i chomhthéacs an scrúduithe ar an Ríocht Aontaithe maidir le cur i gcrích a chuid dualgas faoin Choinbhinsiún ar Chearta Eacnamaíochta, Sóisialta agus Cultúrtha.
Bhí an Coimisiún sásta leis na tuairimí deiridh ó choiste na Náisiún Aontaithe, inar iarr siad ar an Ríocht Aontaithe Acht na Gaeilge a chur i bhfeidhm. Ghlac siad leis go bhfuil an Ghaeilge ar an aon teanga amháin, as na trí priomhtheanga mionlach sa Ríocht Aontaithe, nach bhfuil cosanta faoin dlí.

Leanann an Coimisiún ar aghaidh ag plé leis an rialtas, maidir leis an ghealltanas a thug siad i gComhaontú Cill Rimhinn, Acht na Gaeilge a thabhairt isteach.

Bhí muid soiléir - cé gur féidir leis na húdaráis réigiúnacha, cosúil le Tionól Thuaisceart na hÉireann, na dualgais chonartha seo a chur i gcrích trí chaighdeán iomchuí a bhaint amach; mura gcomhlíonann an Tionól na dualgais seo is é an stát Briotanach fós atá freagrach.

Sa chás nach gcuireann Feidhmeannas TÉ an comhaontú i gcrích, glactar leis ag an Choimisiún, go bhfuil rialtas Westminster freagrach as cur i gcrích na reachtaíochta.

Tá polasaí an Choimisiúin ar Acht na Gaeilge bunaithe ar dhá bhunphrionsabal; ar dtús - cur chuige ó ghné na gceart de agus sa dara háit, comhréir iomlán le caighdeáin idirnáisiúnta.

Dá mbeadh Acht na Gaeilge i bhfeidhm is léir go mbeadh aisghairm déanta ar Acht 1737. Is é seasamh an Choimisiúin é gur chóir go mbeadh forálacha Chairt na hEorpa ar Theangacha Mionlach agus Réigiúnach tugtha isteach sa dlí intíre; seo an moladh a rinne muid leis an rialtas i gcomhairle an Choimisiúin ar an Bhille Ceart.

Tugadh an chomhairle seo i gcomhthéacs 'progressive realisation' (réadú forásach), sin le rá gur féidir cur le dualgais an Stáit faoin Chairt go leanúnach agus iad a neartú de réir riachtanas na gcainteoirí.

Chuige sin, leanfaidh an Coimisiún le saincheist Acht na Gaeilge a thógáil ina chuid oibre ar an stáitse áitiúil agus idirnáisiúnta.

The Commission continues to engage with government over the Commitment in the St Andrew's Agreement to introduce an Irish Language Act.

We have been clear that while treaty compliance can be achieved by regional authorities such as the Northern Ireland administration, meeting relevant standards, if a devolved body does not deliver, the state does not escape responsibility. In the context of non-implementation by the Northern Ireland Executive the Commission therefore expects Westminster to ensure that the legislation is enacted.

Commission policy in relation to the Irish Language Act is based on two fundamental principles, firstly a rights-based approach and secondly full conformity with international standards. Legislative protection enshrined in such an Act is a clear vehicle to repeal the 1737 Act.

Our position is also that the provisions of the European Charter on Regional and Minority Languages should be justiciable, a recommendation we made to government in our recent Bill of Rights advice. This advice was given in the context that the Charter is an instrument under which the state's commitments can be progressively increased and strengthened in line with the needs of speakers.

To this end the Commission will continue to highlight the need for an Irish Language Act in its future work at both local and international level.

Úsáid na Gaeilge sna Cúirteanna
Cearta agus Cothrom na Féinne: An cleachtas idirnáisiúnta is fearr

The Use of Irish in the Courts
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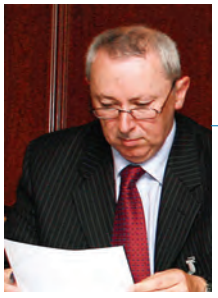
Is dlíodóir ar Bhóthar na bhFal é, Micheál Ó Flannagáin. D'oibrigh POBAL leis le níos mó ná bliain anuas ar an cheist seo. Is cúis áthais dúinn é go bhfuil sé linn le cur síos a dhéanamh ar an dúshlán dlí a cuireadh roimh fheidhmiú an Achta 1737.

Michael Flanigan is a solicitor on the Falls Road. POBAL has worked with him for over a year on this issue. We are pleased that he can be here today to describe the challenge we made to the continuing operation of the 1737 Act.



Micheál Ó Flannagáin

Is mise Micheál Ó Flannagáin, an dlíodóir a bhí ag obair ar chás cúirte Chaoimhín Mhic Giolla Chatháin. Ba mhaith liom cuid de chúlra na hagóide dlíthiúla in éadan "the 1737 Act", Administration of Justice (languages) (Ireland) Act 1737, a thabhairt daoibh, na pointí a tógadh i rith an cháis san áireamh. Nuair a léigh mé teideal na comhdhála seo 'Úsáid na Gaeilge sna Cúirteanna' shíl mé ar dtús 'ní ghlacfaidh sin i bhfad.' In amannaí síleann daoine go mbíonn an dlí solúbtha agus is gnáth go mbíonn cuid mhór cur agus cúiteamh ann idir dlíodóirí faoi fhoclaíocht agus bhrí. Níl sin fíor. B'fhearr leis an dlí go mbeadh an dlí cinnte, agus is é an rud amháin atá cinnte maidir leis an chás seo ná nach dtig leat Gaeilge a úsáid sna cúirteanna. Tá sin cinnte ón bhliain 1737 go dtí an lá atá inniu ann.

I mí Aibreáin 2008 thosaigh Gael óg as iarthair Bhéal Feirste cás a thug dúshláin dhlíthiúla in éadan na reachtaíochta 'The Administration of Justice (Language) Act (Ireland) 1737.' Ceoltóir atá ann leis an ghrúpa Bréag a tógadh le Gaeilge i nGaeltacht Bhóthair Seoighe. Fuair sé oideachas trí mheán na Gaeilge agus tagann sé i dtír lena chuid cheoil trí mheán na Gaeilge. Cosúil le cuid mhór Gaeilgeoirí, shíl sé go raibh brí éigin le Comhaontú Aoine an Chéasta agus leis na gealltanais a rinne Rialtas na Breataine ann i dtaca leis an Ghaeilge. Is fiú cuimhneamh ar na gealltanais a bhí sa Chomhaontú mar go ndéanann daoine dearmad orthu. Léifidh mé cuid acu daoibh:

Comhaontú Aoine an Chéasta:
The British Government will, in particular in relation to the Irish language, where appropriate and where people so desire it:

- *take resolute action to promote the language;*
- *facilitate and encourage the use of the language in speech and writing in public and private life where there is appropriate demand;*
- *seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language;*

My name is Micheál Ó' Flanigan and I am the solicitor who represented Chaoimhín Mhic Ghiolla Chatháin in his court case. I would like to give a brief outline of some background to the legal challenge raised against the Administration of Justice (languages) (Ireland) Act 1737, "the 1737 Act" including some of the arguments that were raised during the case. When I read the title of this conference 'The Use of Irish in the Courts' my first thought was 'well, this won't take long.' Sometimes people think that the law is flexible and that there tends to be a lot of arguments between lawyers about words and their meaning. This is not exactly the case and in fact the law prefers certainty above all in the law, and one thing that is certain about this particular law is that Irish cannot be used in the courts. That has been the case from 1737 to the present day.

In April 2008 a young Irish speaker from West Belfast began a court case that sought to challenge the legality of the 1737 Act. Caoimhín is a musician with the group Bréag who was raised through Irish in the Shaw's Road Gaeltacht. He was educated through the medium of Irish and now makes a living as a musician through the medium of Irish. Like many other Irish speakers he relied upon the Good Friday Agreement and believed the promises made by the British Government in it in respect to the Irish language. It's worth remembering these provisions because people forget what they were. I will read some of them to you now:

Good Friday Agreement:
The British Government will in particular in relation to the Irish language, where appropriate and where people so desire it:

- take resolute action to promote the language;
- facilitate and encourage the use of the language in speech and writing in public and private life where there is appropriate demand;
- seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language;

D'éirigh an cás ó iarratas molta le ceadúnas ócáideach a fháil d'ócáid. I gcás iarratais ar cheadúnas ócáideach, caithfidh tú iarratas a chur isteach chun na cúirteanna. Bhí sé de rún ag Caoimhín Mac Giolla Chatháin coisir a reáchtáil sa Chultúrlann. Thóg an t-iarratas molta seo ceist iontach simplí; mar Ghael, ag eagrú oíche cheoil do Ghaeilgeoirí in ionad lánGhaeilge, cá chuige a raibh air Béarla a úsáid nuair a bhí sé ag déileáil leis an stát agus ag dul chun na cúirte. Mar sin de chuir mise litir ar a shon go simplí soiléir chuig an chúirt, ag cur in iúl gur mhaith le mo chliant iarratas a chur isteach i nGaeilge ag iarraidh an cheadúnais céanna, agus an nglacfadh an chúirt leis. Tháinig an freagra ar ais lán chomh simplí soiléir 'ní ghlacfadh'. B'ansin a rinneadh cinneadh go dtiocfadh linn athbhreithniú cúirte a thógáil fá dtaobh de.

Ní hionann athbhreithniú agus cás cúirte ar bith eile. Tá rialacha speisialta bainte leis. I dtús báire, caithfidh tú cead a fháil ón chúirt le tús a chur leis an chás. Níl cead cúirte a dhith ort le cás ar bith eile a thosacht mar sin. Chuir muid isteach ag lorg ceada. Go bunúsach bhí an t-iarratasóir, Caoimhín Mac Giolla Chatháin, ag argóint cúpla pointe. I ndiaidh Comhaontú Aoine an Chéasta agus na gealltanais a thug Rialtas na Breataine i dtaca le Cairt na hEorpa do Theangacha Réigiúnda nó Mionlaigh, go mbeadh sé réasúnta do Chaoimhín Mac Giolla Chatháin a bheith ag dúil le h-athrú dlí i dtaca leis an Ghaeilge, go mbeadh ionchas dlisteanach aige go ndéanfadh an Rialtas na rudaí a gheall said. Chomh maith leis sin bhí muid ag argóint pointí cearta daonna, de dheasca go raibh cosc iomlán ar an Ghaeilge, ní raibh cead aige mar Ghaeilgeoir dul chun na cúirte mar ba mhian leis agus gur chuir sin isteach go mór ar a chearta daonna mar shaoránach, go háirithe faoi Alt 6 (ceart rochtana dul isteach sna cúirteanna) agus Alt 14 (toirmeasc ar idirdhealú). Éisteadh leis an iarratas ceada ar an 21ú Aibreán 2008 agus fuair muid cead ón Bhreitheamh Weatherup. Sílim go raibh iontas orainn uilig nuair a dúirt sé 'go raibh maith agaibh' leis na habhcóidí ag deireadh na héisteachta.

Nuair a théann tú chun na cúirte ag cuartú athbhreithniú cúirte caithfidh an t-iarratasóir na pointí uilig a dhéanamh ag an tús agus ar dhóigh, thig leis an taobh eile luí siar. I ndiaidh duit cead a fháil athraíonn sin. Bogann an dualgas go dtí an taobh eile agus ansin bhí ar an Rialtas a chuid fianaise féin a chur isteach agus a mhíniú, cad chuige a bhfuil an dlí seo ann agus cad é an dóigh a raibh sé ag cloí le Comhaontú Aoine an Chéasta agus le Cairt na Eorpa.

Leis an chéad cheist a fhreagairt, agus mar chuid den chás, bhí orainn uilig dul ar ais ar scoil le stair a fhoghlaim. Bhí saineolaí, an Dr. Eamon Phoenix, ag Caoimhín Mac Giolla Chatháin agus bhí saineolaí ag an Choróin. De réir an Dr. Phoenix tháinig an dlí seo chun tosaigh i gcroílár ré na bpéindlithe i nÉirinn agus mar a scríobh sé féin:

The challenge arose out of a proposed application to obtain an occasional licence for a function. When requesting an occasional licence the application must be made to the courts. Caoimhín Mac Giolla Chatháin decided to apply for a licence to organise a function in the Cultúrlann Mac Adam O Fiaich. This proposed licence application raised a very simple question; as an Irish speaker organising an Irish music night for Irish speakers in an Irish language arts centre, why was he required to use English when dealing with the State and using the courts. I wrote to the courts on Mr. Mac Giolla Chatháin's behalf, in clear and simple terms, requesting that my client be allowed to submit an application in Irish for this licence, and asking whether the courts would accept this. They replied in equally clear and simple terms that they would not. That then was the decision made that we sought to judicially review.

A judicial review is different from any other court case in that it has its own particular rules. Firstly, you need permission or leave from the courts to go ahead with such a case. Permission is not needed to begin any other type of court case. The first stage then was to apply for leave from the court to apply for judicial review. The applicant, Caoimhin Mac Giolla Cathain was relying on a number of judicial review grounds of challenge. Firstly that following the Good Friday Agreement and the commitments that the British Government made in ratifying the European Charter for Regional or Minority Languages, that it was reasonable for Mr. Mac Giolla Chatháin to expect changes in the law in regard to the Irish language. In other words that he had a legitimate expectation that the Government would comply with its commitments. As well as that, the claimant raised a number of human rights points; that because of the complete ban on Irish Mr. Mac Giolla Chatháin, as an Irish speaker, could not use the courts and that this impinged on his civil rights, particularly under Article 6 (the right to a fair hearing) and Article 14 (prohibition on discrimination). The leave application was heard on the 21th April 2008 and leave was granted by Mr. Justice Weatherup. I think we were all surprised to hear the judge say 'go raibh maith agaibh' to the barristers at the end of the hearing.

When you go to the courts seeking a judicial review the applicant must put forward his arguments first while the other side to some extent can reserve their position.. This position changes after leave is given. The onus then shifts onto the respondent, in this case, the Government who then had to explain why this law was necessary and how it complied with the commitments given under the Good Friday Agreement and the European Charter on Regional and Minority languages.

To answer the first of those questions, and as part of the case, we were all required to go back to school to learn some history. An expert witness, Dr. Eamon Phoenix, was called by Caoimhín Mac Giolla Chatháin and the Crown called their own expert to give strikingly different analyses of the nature of the 1737 Act. According to Dr. Phoenix, this law was passed after the Williamite Wars in the middle of the penal law era in Ireland:

Úsáid na Gaeilge sna Cúirteanna
Cearta agus Cothrom na Féinne: An cleachtas idirnáisiúnta is fearr

The Use of Irish in the Courts
Rights and Equality: The Best International Practice

"The 1737 Act was passed by the old ascendancy dominated Irish Parliament in Dublin from which Roman Catholics, some 87% of the population of Ireland at the time, were excluded by law. The 1737 Act belongs to the period of the penal laws in Irish history, this refers to a series of laws passed by the Irish Parliament in the period after the Williamite victory at the Boyne. The laws had a dual purpose; to convert as many Catholics of the land owning class to the established church and secondly, to exclude the Catholic masses from all economic, social and political power. As the historian Dr. Malcolmson observed, the laws were designed, not to make Catholics good subjects, but to deprive them of the power to be bad ones."

Mar fhocal scoir, scríobh sé:

"The 1737 Act can be viewed as a peice of discriminatory legislation directed at the mother tongue of the mass of the Irish population at the time. It is therefore the cultural equivalent of a penal law."

Níor aontaigh saineolaí na Corónach. De réir na Corónach ní péindlí seo ar chor ar bith, tá meancóg déanta againn, níl le déanamh agat ach cur i láthair an dlí féin a léamh. Tuigim cad chuige nár mhaith le hOifig na Ard-Seansailéara a admháil gur péindlí é seo, nach bhfuil dochar ar bith sa dlí seo agus go bhfuil sé neodrach ar fad i dtaca leis an Ghaeilge de. Nuair a tháinig an cás chun éisteachta bhí cur chuige an Rialtais iontach suimiúil? Mar a leanas a léitear an mhionnscríbhinn lárnach a chuir an tSeirbhís Chúirteanna faoi bhráid:

The Government considered the implications of the 1737 Act both before and following ratification of the European Charter. As appears from its preamble, the 1737 Act was not and is not intended to discourage or endanger the maintenance and development of languages other than English, rather the 1737 Act outlawed the use of Latin, French and, so called, court hand in the court, and was designed to prevent disadvantage or injustice by protecting members of the public from the use in court of languages with which they were unfamiliar.

Is fiú stopadh ansin bomaite agus cuimhneamh gur tháinig an reachtaíocht i bhfeidhm ag am in Éirinn nuair nach raibh Béarla ag formhór an daonra. Leanann leis an sliocht:

"The 1737 Act was passed by the old ascendancy dominated Irish Parliament in Dublin from which Roman Catholics, some 87% of the population of Ireland at the time, were excluded by law. The 1737 Act belongs to the period of the penal laws in Irish history, this refers to a series of laws passed by the Irish Parliament in the period after the Williamite victory at the Boyne. The laws had a dual purpose; to convert as many Catholics of the land owning class to the established church and secondly, to exclude the Catholic masses from all economic, social and political power. As the historian Dr. Malcolmson observed, the laws were designed, not to make Catholics good subjects, but to deprive them of the power to be bad ones."

He finishes by saying:

"The 1737 Act can be viewed as a piece of discriminatory legislation directed at the mother tongue of the mass of the Irish population at the time. It is therefore the cultural equivalent of a penal law."

The Crown expert disagreed with this. In the submissions of the Crown this is not a penal law at all. We were all mistaken, you only had to read the wording of the law itself to see this. That the act does no harm to the Irish language and in fact is entirely neutral as far as the Irish language is concerned. When the case came on for hearing the approach taken by the government in defence of the 1737 Act was revealing. A central affidavit submitted by Court service in the case read as follows. "The Government considered the implications of the 1737 Act both before and following ratification of the European Charter. As appears from its preamble, the 1737 Act was not and is not intended to discourage or endanger the maintenance and development of languages other than English, rather the 1737 Act outlawed the use of Latin, French and, so called 'court hand' in the court, and was designed to prevent disadvantage or injustice by protecting members of the public from the use in court of languages with which they were unfamiliar.

It's worth stopping at his point to consider that this law was passed at a time when almost all of the population of Ireland didn't speak a word of English. The affidavit continues:

"The Government is of the view that the 1737 Act continues to have this purpose and function. Furthermore the 1737 Act was not an impediment to ratification by the United Kingdom of the Charter, in particular the Government took the view that the Act did not fall within the prohibition in Article 72 of the Charter as it could not be said that it intended to discourage or endanger the maintenance or development of the Irish language."

Ba ceist lárnach í in argóint an cháis cé acu an bhfuil Acht 1737 ina bhac nó a mhalairt ar an Ghaeilge. Ag pointe tábhachtach sa chás chuir an bhreitheamh Treacey ceist ar abhcóide an Rialtais did he accept that the 1737 was an obstacle to the development of the Irish language? agus tháinig an freagra ar ais 'No'.

Léirigh pointí eile a thóg an Rialtas tuigbhéal s'acu ar chúrsaí Gaeilge. Ag caint ar idirdhealú in éadan cainteoirí Gaeilge agus Acht 1737, rinne abhcóide na Corónach an pointe seo ar son an Rialtais:

"The legislation does not involve any discrimination because there is no difference in the treatment of anyone, because everyone here can speak English."

Ionann is go ndearbhaíonn an ráiteas thuasluaite go gcailleann Gaeilgeoir a cheart teanga is bunúsaí a luaithe is eol dó nó a bhfuil tuiscint aige ar an Ghaeilge. In amannaí tig cás chugat agus ar dhóigh, tógann sé scáthán in éadan an tsochaí ina bhfuil muid. Tá cás Chaoimhín Mhic Giolla Chatháin mar sin. Amharcaim ar an scáthán sin agus ní maith liom an méid a nochtann sé.

Tá daoine ann a deir nár cheart cás mar seo a ghlacfadh agus ó tharla gur cailleadh an cás sa chéad bhabhta agus go bhfuil stádas na Gaeilge sa chúirt níos laige anois ná mar a bhí. Níl sin ceart. Nuair nach bhfuil ach faic agat ní thig leat níos mó a chailleadh. Níl an dlí seo riachtanach le cúirteanna a reáchtáil in Albain, i Sasana agus sa Bhreatain Bheag. Cad chuige a bhfuil sé riachtanach sa dúiche seo. Mar sin de ní bheidh dul chun cinn ar an Ghaeilge sna cúirteanna go dtí go bhfuil an reachtaíocht seo bainte as na leabharthaí dlí agus curtha sna leabharthaí staire leis na péindlithe eile.

"The Government is of the view that the 1737 Act continues to have this purpose and function. Furthermore the 1737 Act was not an impediment to ratification by the United Kingdom of the Charter, in particular the Government took the view that the Act did not fall within the prohibition in Article 72 of the Charter as it could not be said that it intended to discourage or endanger the maintenance or development of the Irish language."

Whether the 1737 Act was an obstacle to the Irish language then became a central matter for argument in the case. At one point in the case Mr Justice Treacey asked the crown counsel did he accept that the 1737 Act was an obstacle to the development of the Irish language. The Crown counsel answered him in one word 'No'.

The Government made another submission which revealed perhaps more clearly than anything else their understanding of and approach to the Irish language. Speaking about the issue of discrimination against Irish speakers and the 1737 Act, the Crown barrister made the following point on behalf of the Government:

"The legislation (1737 Act) does not involve any discrimination because there is no difference in the treatment of anyone, because everyone here can speak English."

The effect of this stated position means that as an Irish speaker that once you knew and understood English that you lost anything that could remotely be described as language rights. Sometimes a case comes along that, in a way, holds up a mirror to the society in which you live. Caoimhín Mac Giolla Chatháin's case does just this and when I look in that mirror I cannot say I like what I see.

Some people have argued that this case should not have been taken and that having lost the first round that the status of the Irish language is weaker than before. That is not true. When you have nothing, you cannot lose anything. This legislation is not required to administer the courts in Scotland, England and Wales and the question has to be asked, Why is it necessary to administer the courts in Northern Ireland? The real position as regards the use of Irish in the courts is that there will be no advance in the use of Irish until this legislation is taken out of the law books and put into the history books with the other penal laws.

Úsáid na Gaeilge sna Cúirteanna
Cearta agus Cothrom na Féinne: An cleachtas idirnáisiúnta is fearr

The Use of Irish in the Courts
Rights and Equality: The Best International Practice

Tá Mike Ritchie ina stiúrthóir ar CAJ, eagras neamh-stáit a oibríonn ar son cearta na ndaoine i dTÉ. Tá Mike anseo linn le tacaíocht earnáil dheonach chearta an duine a thaispeáint do phobal na Gaeilge inniu agus léamh an Choiste a thabhairt ar chinneadh na cúirte.

Mike Ritchie is Director of the Committee on the Administration of Justice, a non-governmental organisation that works for human-rights. Mike is here to show the support of the voluntary human rights sector for the Irish speaking community, and to give the CAJ's interpretation of the court's decision.

Mike Ritchie
Stiúrthóir / Director,
Committee on the Administration of Justice

First of all, I want to say that the Committee on the Administration of Justice finds this a very disappointing ruling. It is a setback, but I think it is important to stress that this also shows the limits to rights under the law, that rights don't get you everywhere.

It's been quite interesting for me to come back to the Committee on the Administration of Justice after some twelve years away, and to reflect on how far we have come from those days. Because, from the days when I worked for the CAJ in the past, there were many areas where there were clear violations of rights. The government wasn't used to speaking about rights; there wasn't much talk in the courts about rights. And now we have a much richer discourse about rights.

I was at the opening of the School of Professional Legal Studies in Derry last year, and heard the Lord Chief Justice, Brian Kerr, give an hour-long speech there, half of which was taken up with the question of rights. It's something that would not have occurred some years ago, and I think it's important we celebrate the advances that we have made. In CAJ we put together a pamphlet on the Irish language many years ago, where we were laying out the benefits of the European Charter on Regional or Minority Languages. It was the first time I think that a rights-framework was approached to the Irish language in a comprehensive way in this jurisdiction.
So, we have come a long way, and even if it hasn't been lived up to, the fact that there is an agreement between all the parties and the government, saying that there will be an Irish Language Act, is a measure of how far we have come. And sometimes, it is the administrative task of getting us over the road, of getting us over the barrier, which is what creates all the difficulty. So, it seems to me, that morally, you have won the argument. Now you are working out the strategy and tactics, for how we actually achieve repeal of the 1737 Administration of Justice (Language) Act, and also bringing in the Irish Language Act.

In a sense, it seems to me, to be a dialogue between rights and politics, and we're at this stage in politics, and it's now about how we move the politicians around to bring in the Irish Language Act. It seems to me that we won't get rid of this piece of legislation, the 1737 Administration of Justice Act,(unless the appeal is successful) unless we get an Irish Language Act.

It seems to me that what this judgment on the 1737 Act has done is that it has clarified that in Judge Treacey's view, the intention of the Act was to reform the courts. And it's quite interesting, in the recent Criminal Courts Review, there was an element where they talked about trying to use language which would make what was happening in the courts more understandable to the ordinary person. So he saw it as a piece of law reform. It seems to me, however, where the weakness in his argument is, is that he didn't look at the consequences of the Act then, and didn't see what the continuing consequences of the Act are now.

What occurs to me, – coming back to Human Rights work – is the importance of working out legal strategies. Not just about one case. It may be about building a legal strategy, and looking for a range of different cases, before you can actually find the one which will actually do the business for you. It's something which they have done a lot of in South Africa, using their Bill of Rights there. And now we have a lot more information, because of this judgement – maybe it would be worth thinking about different types of cases that could be taken, and the ones that might succeed.

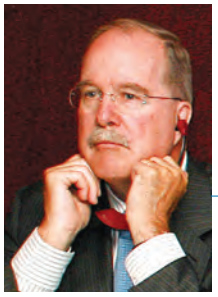
Just concluding, I wanted to remind us all that again, the International Committee on Economic and Cultural Rights at the UN has again called for the implementation of the Irish Language Act, as a duty on the local administration, or on the British Government. So, in a sense, we have won the moral argument – we know where we should be – it is a case of strategising how we get there. I would like to pay tribute to POBAL, for fighting very vigorous campaigns – by all reasonable grounds, they should have succeeded by now, and in the CAJ, we are committed to helping you get there.

Úsáid na Gaeilge sna Cúirteanna
Cearta agus Cothrom na Féinne: An cleachtas idirnáisiúnta is fearr

The Use of Irish in the Courts
Rights and Equality: The Best International Practice

Ceapadh Graham Fraser mar Choimisinéir Ceanadach i 2006. Is Oifigeach Parlaiminte Cheanada é, a bhfuil dualgais éagsúla air le spriocanna reachtaíocht teanga Cheanada, Acht na dTeangacha Oifigiúla a chur chun cinn agus a bhaint amach. Áirithíonn cuid de na dualgais seo go gcloíonn forais fheidearálacha leis an Acht, ag seasamh le cearta teanga na gCeanadach agus ag cur chun cinn dúbailteacht teanga agus dátheangachais. Le linn slí bheatha fhada agus an-dearscnaithí, scríobh sé tuairiscí éifeachtúla ar pholasaí poiblí, ar chearta teanga agus ar reachtaíocht náisiúnta agus idirnáisiúnta.

Graham Fraser was appointed Canadian Commissioner for Official Languages in 2006. He is an Officer of the Canadian Parliament, and plays several key roles in promoting and achieving the objectives of Canada's language legislation, the Official languages Act. These roles include ensuring that federal institutions comply with the Act, upholding the language rights of Canadians and promoting linguistic duality and bilingualism. During a long and distinguished career, he has written influentially on public policy, on language rights and on national and international law.



Graham Fraser
Canadian Commissioner of Official Languages

I am delighted to be here with you this morning. I am particularly thankful to Janet Muller and to the organizing committee for inviting me to address you in Belfast, on my way to Dublin where I will take part in the Canadian Bar Association's Canadian Legal Conference over the next few days. I have very fond memories of my first visit here in November 2006 at POBAL's invitation, shortly after I was appointed Commissioner of Official Languages for Canada. Today, I have been asked to speak about Canadian best practices in terms of linguistic equality in the administration of justice. Access to justice in both official languages in Canada is indeed a matter of prime importance. The right to use English and French before the courts reflects the profound will of Canadians across the country to live in a society in which dignity and respect for one another are key values.

Before I talk about our Canadian experience, however, I would like to mention that I have read the recent High Court's ruling denying the right to use the Irish language before the Courts. Mindful of the limits of my jurisdiction, I nevertheless wish to express that, on a personal level, I would have liked today's meeting with you to have been under different circumstances—where I could have celebrated with you a ruling favouring and advancing the use of the Irish language in the administration of justice. I certainly know from our experience in Canada that progress can sometimes be slow when trying to achieve such goals.

This is particularly true in cases as fundamental and vital to a country as strengthening linguistic identity and defining rights for the use of minority languages in aspects of public life. I certainly appreciate the efforts of those who stood up to have their language rights recognized, and those who represented the Irish community as it took one step towards linguistic equality in the administration of justice in Northern Ireland.

I am also aware of the different interpretations of the Administration of Justice (Language) Act of 1737, particularly in the context of other relatively recent instruments crystallizing the UK Government's commitment to promote the Irish language.1 It appears to me that dialogue is underway in Northern Ireland among the Courts, government and members of the linguistic minority—a dialogue that I hope will have a constructive impact on the vitality of the Irish community. Canadian history certainly suggests that the path to official recognition and acceptance of the status and use of a minority language can be a long and winding road—even when political will exists. However, every step taken is a step in the right direction.

1 Access to Justice in Both Official Languages: The Canadian Experience
Notes for an address at the POBAL Conference: Irish in the Courts: Justice and Equality—Examining Best Practices
Belfast, Northern Ireland August 15, 2009
Check against delivery

[1] In the Belfast Agreement (also known as the "Good Friday Agreement") concluded in 1998, the UK Government made a number of commitments to promote the Irish language. The Irish language was also recognized by the UK Government as a regional or minority language for the purposes of the Council of Europe Charter for Regional or Minority Languages at the time of ratification by the UK Government on March 27, 2001.

In the case discussed by Mr. Flannigan earlier, I believe the issue was one of linguistic access to the Courts; of being able to file an application for an occasional liquor licence in the Irish language. The ability to use one's language in the administration of justice in essence plays a very critical cultural role, which is recognized in Canadian jurisprudence. As the Supreme Court of Canada has held:

The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another, and thus to live in society.[2]

Freedom of expression cannot truly exist in terms of language if a person is prohibited from using the language of his or her choice. In 1988, the year the Official Languages Act of Canada was amended for the first time, the Supreme Court of Canada also stated that:
[Language] is not merely a means or medium of expression; it colours the content and meaning of expression. It is [...] a means by which a people may express its cultural identity. It is also the means by which the individual expresses his or her personal identity and sense of individuality.[3]

Parenthetically, as a non-lawyer, let me note that some of the most eloquent statements about the importance of language as a key to identity that I have ever read can be found in Supreme Court of Canada judgments.
In my opinion, language guarantees in the area of access to justice are an essential contributing factor to the continued vitality and development of minority communities. Canada's model of linguistic duality is the unique product of its specific circumstances.
It is therefore my hope that my remarks today will be useful and practical for you in your pursuit of justice and equality here in Northern Ireland.

2 Reference re Manitoba Language Rights, [1985] 1 S.C.R. 721, p. 744.
3 Ford vs. Quebec (Attorney General), [1988] 2 S.C.R. 712, pp. 748-49.

The Canadian Experience

As some of you may know, 2009 marks the 40th anniversary of the Official Languages Act in Canada. The notion of Canada as a bilingual country is not a new one: we have had a bilingual and bijural regime in different forms for 250 years. However, our path toward legal recognition of language rights has not always been without its challenges.

[3] Without going into detail, suffice to say that prior to Confederation in 1867, recognition of the French language and culture took several quick turns. As you know, the origins of Canada are based on not one, but two European influences: the English and the French. By the early 1700s, large populations of both English and French-speaking colonialists had been established. These groups differed significantly, both linguistically and culturally. Whereas one group spoke French, practiced Catholicism and followed its own legal system based on civil law, the other spoke English, practiced Protestantism and followed a legal system based on the common law tradition.
Following the British Conquest in 1759, French-speaking settlers were guaranteed the right to continue practising their religion, applying their laws and speaking their language. There was a practical reason for this: the colonial administration wanted to be sure that French-speaking settlers were not drawn into supporting the American colonies to the south. This strategic factor has not been an aspect of the situation of the Irish.
In the wake of the 1837 Rebellion, the British abolished the use of French in the newly established Province of Canada, which encompassed both language groups. However, this proved to be politically untenable. After eight years, in 1848, the use of French was restored, as a result of a critical coalition between English-speaking and French-speaking leaders Robert Baldwin and Louis-Hippolyte Lafontaine.

With Confederation in 1867 came a certain level of stability. Concern for the protection of linguistic and religious communities, and fear of assimilation were critical issues in the negotiations at the time. The protection of language and religion was a precondition demanded by these communities for entering into the Canadian federation. The preservation of these rights was an essential feature of Canada's first Constitution.

Being aware of this part of our history is key to understanding where Canada comes from linguistically and culturally.

Our country is also based on a constitutional division of power between the federal and the provincial governments. Interestingly enough, language is not a recognized constitutional field of jurisdiction clearly attributed to one level of government or another. While the federal government has exclusive jurisdiction to legislate in some areas (such as criminal law), administration of justice is a matter of provincial jurisdiction. However, both the federal and the various provincial governments can legislate in matters relating to language.
Because both levels of government have such authority, various regimes have been established throughout Canada's provinces. Ontario, Nova Scotia and Prince Edward Island have adopted French language services acts. Manitoba has a French language service policy. New Brunswick is the only officially

[4] bilingual province in the country. Quebec is unique—it is the sole province where the French language predominates, and a strong English minority is present, mainly concentrated in Montreal, a major city. Some provinces have no officially recognized language regime, thus perpetuating the status quo, which is detrimental to its linguistic minority. Finally, all three territories are moving at a different pace and in different directions trying to reinstate Aboriginal languages to their rightful place in society, while preserving the rights of both English- and French-speaking citizens.

Notes for an address at the POBAL Conference Belfast, Ireland, August 15, 2009 3
Notes for an address at the POBAL Conference Belfast, Ireland, August 15, 2009 4

Such variety makes for a very interesting situation through which citizens, governments and the courts must navigate. Although universal rights exist at the federal level, our system is characterized by diversity, energy, inclusiveness and creative asymmetry. Like a quilt, it is a patchwork—reflecting extraordinary vitality.

In terms of best practices, some rights are recognized throughout the country, notably those provided at the federal level. The Canadian Charter of Rights and Freedoms, the Official Languages Act and the Criminal Code all set out specific language guarantees that seek to ensure that members of both official language communities have access to justice in the official language of their choice at the federal level and in criminal cases. More specifically, the Official Languages Act grants a party appearing before a federal court or tribunal the right to be heard by a judge who understands his or her official language without the need for translation. New Brunswick's Official Languages Act grants similar rights in matters before its courts.

In addition, the Criminal Code grants an accused person the right to a trial in the official language of his or her choice, regardless of where the trial is held. The provisions of the Code also require such a trial to be held before a judge or jury who understands the official language of the accused without the use of translation or simultaneous interpretation services. Any criminal lawyer will attest to the importance of an accused being able to understand first hand—and not via translation—the legal proceedings likely to determine his or her fate or future. Although some basic rights exist at the federal level and in the criminal context, asymmetry in the language regimes of the various provinces has created language tensions in the past—and continues to do so to this day.

For example, in Ontario, many Francophones can recall a time when the provincial government restricted the use of French as the language of instruction after the first year of school. It also banned the teaching of French to anybody after the fourth year of school.

This regulation was eventually repealed, but the damages it did to that community have not been forgotten. As an example, in some areas of the province, it is not uncommon to come across families bearing French names who can no longer speak French because past generations were deprived of access to their culture and their heritage. In 1979, the Supreme Court of Canada was called upon to resolve two cases, one in Manitoba and one in Quebec, where the constitutionality of provincial language regimes was contested. In the Forest case,[4] the contested legislation was the Manitoba Act, 1870, which abolished the status of the French language as a language of the legislature and the courts in that province. The Act was declared unconstitutional by the Supreme Court of Canada. The very same day, in the Blaikie case,[5] the Supreme Court also overturned the provisions of Quebec's Charter of the French Language that provided that only the French content of statutes and court judgments was official.

While some of these cases relied on the provisions of the Constitution and the Canadian Charter of Rights and Freedoms to resolve the issues involved, others had to rely on the unwritten principle of minority protection, a principle only recently officially recognized, and yet not spelled out in any text of law, but flowing from the Confederation Pact of 1867.

Indeed, it was just over 10 years ago that the Supreme Court of Canada confirmed the existence of four unwritten constitutional rules not expressly dealt with by the text of the Constitution, but which nevertheless have normative force and effect. One of them, the principle of respect for and protection of minorities, is a fundamental structural feature of the Canadian Constitution. Not only is it reflected in the specific guarantees in favour of minorities, but it also infuses the entire text and plays a vital role in shaping the content and contours of the Constitution's other structural features: federalism, constitutionalism and the rule of law and democracy.

Notes for an address at the POBAL Conference Belfast, Ireland, August 15, 2009 5

4 Attorney General of Manitoba vs. Forest, [1979] 2 S.C.R. 1032; (December 13, 1979)
5 Att. Gen. of Quebec vs. Blaikie et al., [1979] 2 S.C.R. 1016; (December 13, 1979)

These principles are of prime importance when Courts are called upon to interpret the meaning of the law taking into account competing interests. These unwritten principles represent the Constitution's "internal architecture" and "infuse our Constitution and breathe life into it."[6]
Those words from the Supreme Court played a pivotal role in a key decision by the Ontario Court of Appeal. In the Montfort decision, the Ontario government had to preserve the province's only French-language teaching hospital. The ruling confirmed that the provincial government had to take into account the unwritten constitutional principle of the protection of minorities when making decisions affecting the official language minority. Administrative expediency could not trump the rights of the minority. This case demonstrates that constitutional values are relevant in the assessment of the validity of actions taken by a government, even if the right in question is not explicitly included in the text of our

' In other cases, representatives of the minority have had to invoke history to assert their rights successfully. For example, Gilles Caron, a citizen from one of the Western provinces, contested the constitutionality of the Alberta Languages Act and was successful in obtaining a ruling that the Alberta law revoking French language rights in the province was unconstitutional. In arguing his case, Mr. Caron relied on expert historic analysis going back to the roots of Confederation and to the establishment of the first non-Aboriginal settlements in the region. The Government of Alberta appealed the decision and a judgment is expected in the next few months. Many hope that this judgment will confirm the provincial court's decision that language rights were a condition for the admission of the Northwest Territories into Confederation. Recently, a number of court decisions have upheld the language rights of Francophones in Western Canada. These are long-term struggles that are imperative to the recognition of the equality of English and French throughout Canada.

6 Reference re Secession of Quebec [1998, 2 S.C.R. 217] at pages 248 and 249 of the opinion of the Court
Notes for an address at the POBAL Conference Belfast, Ireland, August 15, 2009 6
Constitution.

There have been many other cases involving language-related challenges in Canada. Along with those I have presented to you today, they demonstrate that linguistic minorities in Canada have also had to assert their language rights before the courts in novel ways. This has not been easy at times. There is, however, a general feeling that things have been moving forward, especially over the last 40 years.

The adoption of an official languages act at the federal level and in New Brunswick in 1969 and the adoption of the Canadian Charter of Rights and Freedoms in 1982 are obvious milestones. Nevertheless, each challenge has been a defining moment and has contributed to a deeper understanding of the scope and application of language rights. Canada is now stronger and more united as a result. Recent statistics show strong support for linguistic duality.

We have created a unique country where language is at the centre of our Constitution, and many important advances have been made through ongoing dialogue involving the population, Parliament and the courts. But the greatest challenge of all remains yet—to instil a sense of belonging; a sense that French and English are Canadian languages, central to everyone's sense of what the country represents and values. To achieve full recognition of language as a vital Canadian value, Canadians must stop perceiving linguistic duality as an obligation or a burden, and regard it as an asset that can enrich all of us in Canada and perhaps inspire others.

Of course, every country and every regime have their particular challenges. Canada has learned from the successes of others. It has been a pleasure for me to share with you some of our challenges and accomplishments. But in the end, each regime must be moulded from a unique cast, taking into account the concerns, needs and particular expectations of its linguistic minorities.

In Canada, I believe more than ever that we are on the way to achieving new heights, and that our trajectory is aligned to achieve true linguistic equality. But our work is not yet done and we must continue to have a constructive national dialogue on language issues.

There are still many areas for improvement, including access to justice in both official languages. For example, the issue of the linguistic abilities of judges appointed to the Supreme Court of Canada has been a matter of recent discussion. Because laws in Canada are jointly drafted and not simply translated, it is being argued that judges sitting on the highest court of the country should have the language abilities to understand both English and French versions of the laws without relying on translations. This is an issue that will be addressed in Canada, one which I will continue to follow closely.

In the meantime, I wish you all good luck in your pursuit towards linguistic equality.

Thank you. I would be pleased to answer any questions you may have.

Notes for an address at the POBAL Conference Belfast, Ireland, August 15, 2009 7

Úsáid na Gaeilge sna Cúirteanna
Cearta agus Cothrom na Féinne: An cleachtas idirnáisiúnta is fearr

The Use of Irish in the Courts
Rights and Equality: The Best International Practice

Janet Muller, Príomhfheidhmeannach POBAL
Clabhsúr
Aithníonn Rialtas na Breataine agus OTÉ go sáraíonn feidhmiú leanúnach Acht 1737 a gcuid molta féin faoi ghealltanais an Athbhreithniú Cheartais Choiriúil a rinne siad ocht mbliana ó shin. Le déanaí, nuair a chuir siad i láthair an dara páipéar comhairliúcháin ar an Acht Gaeilge molta a gealladh ag Cill Rímhinn, d'admhaigh siad go gcaithfeadh Acht 1737 imeacht. Is mithid anois gníomhú ar na ghealltanais sin.

Ta sé leagtha amach ag POBAL aird náisiúnta agus idirnáisiúnta a choinneáil ar Acht 1737, dlí atá anois 272 bliain d'aois – tá POBAL ag glaoch ar pholaiteoirí agus daoine eile, ag leibhéal náisiúnta agus idirnáisiúnta brú a chur ar rialtas na Breataine an dlí seo a aisghairm láithreach. Níor chóir dóibh leanstan ar aghaidh ag cosaint dlí atá do chosanta.

Janet Muller, CEO POBAL
Closure
The British government and the NIO recognise that the 1737 Act breaks its own commitments made eight years ago in the Review of Criminal Justice. Recently, when it published its second consultation paper on the Irish language Act NI it promised in the St Andrews' Agreement, it admitted that the 1737 Act had to go. It is time for them to act on these commitments now.

POBAL is determined to keep national and international attention to the 1737 Act, a law that is now 272 year old. We are calling on politicians and others to bring pressure to bear on the British government to repeal this law immediately. They should not continue to defend the indefensible.

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