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Translator's Corner

Twentieth anniversary of the *Civil Code of Quebec*: the English translation of the *Civil Code of Quebec*: a controversy

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ABSTRACT

In 1973, a team of translators headed by Clive Meredith was mandated to translate the revised *Civil Code of Quebec* (CCQ) and the comments thereon. Traditionalists in the legal community attacked the plain language translation, and the entire project was turned over to the Quebec Justice Department. The translation was completely redone, largely inspired by the 100-year-old *Civil Code of Lower Canada*. The English version of the CCQ was severely criticised as soon as it entered into force in 1994 and now, 20 years later, the Quebec Justice Department has made a series of amendments to it. This short article tracks the main stages in this unique translation history.

KEYWORDS

Legal translation, translation errors, translation quality, bilingual legislation, *Civil Code of Quebec*, history of translation

You will understand that, when we speak of bilingual legislation, there isn't a French law and an English law. There is only ONE law whose interpretation depends on the consistency between the two texts. [...] The Montreal Bar is best placed to maintain pressure on the government to adopt a better way of drafting legislation and to ensure that the adopted texts comply with its constitutional obligation and the imperative of improving access to justice. Citizens must be able to read and understand the law without the assistance of a lawyer.

(Moore 2014: 1-2, my translation)

1. Errors identified in the English version of the CCQ

The quality of legislative translation into English in Quebec has often been criticised, but never as severely as that of the *Civil Code of Quebec*. In 1991, the Quebec National Assembly adopted the *Civil Code of Quebec* in French and English, and it entered into force in 1994. The English translation of the CCQ was even criticised publicly by Louise Harel, then a sitting member of the National Assembly, who quipped that its translators "did not have training in the law; they had studied literature more than anything else" (Coates 2011:

52). The CCQ required approximately 5000 improvements according to a report issued by a joint committee of the Barreau du Québec and the *Chambre des notaires du Québec*, chaired by former *bâtonnier* [president of the Bar] Casper Bloom. Mr. Moore also referred to the 5000 corrections to be made in his speech to the *Barreau de Montréal* on May 7 (Moore 2014). The introductory quote from a speech by Greg Moore, the *Barreau de Montréal's* new *bâtonnier*, eloquently explains why it is so important to correct such errors. Both languages have force of law. In principle, you should read the Code in both languages to fully understand its meaning.

It is important to note that not all 5000 changes suggested by the Joint Committee targeted either a legal error, an inconsistency or a substantive mistranslation. Mr. Coates, who acted as legislative counsel to the Committee, wrote the following to me in an email on July 25, 2014:

The largest proportion of the proposals targeted problems in expression (including a lack of discipline in the choice of terminology, but also awkward phrasing, etc.). The proposals did indeed target a significant number of legal errors, inconsistencies and substantive mistranslations. Yet they are in the minority. Finally, the Joint Committee raised in passing a handful of problems in the French text. [...]

Counting changes includes some measure of judgement. When a sentence in an article of the Code was targeted in more than one place and for more than one reason, the Joint Committee counted each place or term as one change (since each needed to be justified separately). The Ministry of Justice came up with the count for the number of changes actually incorporated into the Code. Quite likely they counted all the neighbouring changes in an article as one modification.

The following paragraphs describe some of the proposed changes:

In the new Civil Code, the English terminology varied between different parts of the Code, while seeming to refer to the same thing, or even varied within one and the same part (e.g., the use of the terms damage, prejudice and injury). The English text was in many places stylistically and grammatically awkward. Elsewhere, the text was needlessly ambiguous.

Substantive legal discrepancies between the English and French texts were also scattered here and there throughout the Code. Thus, only three years after the Code came into force, the Supreme Court had to decide between "*toute disposition contraire*" and "any stipulation to the contrary" (Article 2930 C.C.Q.). (Bloom and Coates, *The Montreal Lawyer* 2013: 14-15).

2. Earlier translation of the CCQ

Few people know that the initial translation of the CCQ was written in plain, readable English. The style was ahead of its time because plain English writing

was not the norm for legislation nearly 40 years ago. A translation team, mainly consisting of freelancers under the direction of Clive Meredith, an experienced Quebec government reviser, was mandated by the Civil Code Revision Office to prepare a plain English language translation. The Civil Code Revision Office's translations of the draft *Civil Code of Quebec* and the two volumes of comments thereon were released in 1977–1978 and are available for consultation (McGill University's Archives of the Civil Code Revision Office).

Let us look at a sample of the different versions, which are all available to consult online. The samples include the 1977 version by a very talented translator on Mr. Meredith's team, the late Kelly Ricard.

Source text (identical in 1906 and in 1991)

EAUX

Les fonds inférieurs sont assujettis, envers ceux qui sont plus élevés, à recevoir les eaux qui en découlent naturellement. (...)

Target texts

1) *The Civil Code of Lower Canada (1906)*

501. Lands on a lower level are subject towards those on a higher level to receive such waters as flow from the latter naturally and without the agency of man.

2) *Report on the Quebec Civil Code (1977)*

Water must be allowed to flow naturally from higher land to lower land. (Kelly Richard's translation, Meredith *Pitfalls and Procrastinations*, 1977, unpublished)

3) Official translation adopted as legislation

WATERS

Article 979

Lower land is subject to receiving water flowing onto it naturally from higher land.

1991, c. 64, a. 979

(*Civil Code of Quebec*, 1991).

In the above examples, we can see that the plain language style used in the 1977 translation was replaced by a wordier sentence in 1991. How did the plain-language version of the CCQ come about and why was it subsequently rejected? Some background information is in order.

3. Vast project to reform the CCQ

The Civil Code Revision Office (CCRO) was created in 1955 to oversee revisions to the *Civil Code of Lower Canada*, enacted in 1866 on the eve of Confederation. The CCRO was reorganised under the highly respected McGill University Law Professor Paul-André Crépeau in 1966 and undertook a vast project to reform the Code. It was the height of Quebec's Quiet Revolution and the centennial of the old Code (Tetley 1999–2000). The work of the CCRO continued for 12 years.

The CCRO oversaw some 40 committees, each entrusted with reforming one particular aspect of Quebec civil law. There was a committee on evidence, one on obligations and so on, made up of people from outside the government. As each committee finished its work, it submitted a report to the CCRO containing its proposed legislation. The translation team, under the direction of Clive Meredith, translated the reports into English. They were then distributed to reviewers for comments. Generally, some 2000 copies were printed of each report. Once all the comments had been received on any given subject, the Committee members concerned amended their text when necessary. All the comments and amendments were translated by Mr. Meredith's team. The entire series of reports was then consolidated into the Report on the Quebec Civil Code, which was to constitute the new Civil Code once it was approved by the Minister of Justice and tabled in Quebec's National Assembly.

The CCRO prepared reports side by side in both French and English, except for the Report on the Quebec Civil Code (1977), which was published in separate English-language and French-language volumes (McGill's Archives of the Civil Code Revision Office). The English and French versions of the *Civil Code* were traditionally printed side by side in one volume, mainly for reasons of economy. According to civil lawyers or *civilistes*, the two versions should be side by side because they are equal in law and both should be read to properly understand the intended meaning. For this reason, one school of thought was that the translation should faithfully reproduce the French construction. Any translation requires that the original construction be followed to a certain extent, but Mr. Meredith felt that this technique was overused in legislation. Unfortunately, some jurists who reviewed the translation considered that writing in a plain English style would open the door to *contresens* [mistranslations]. Another popular misconception was that, for a legal text, the translator should use 'aforesaid' and 'hereafter' and other legalese. By reading Elmer Driedger (*The Composition of Legislation*) or Bryan Garner (*Garner's Dictionary of Legal Usage*), it is clear that many of these 'sacred

cows' of legalese have fallen out of popular use to be replaced by simpler words. Plain and simple legal writing was uncommon in the 1970s, however.

4. Too many cooks spoil the broth

The project, which was carried out before computers, extended over a four-year period. Specifically, Mr. Meredith's mandate was to supervise the translation of the Draft Report and comments thereon for the Civil Code Revision Office. The Office's objective was to update the Code that lays down the *jus commune* and governs "persons, relations between persons, and property" (preliminary provision of the CCQ). Originally, Professor Crépeau had said the Code should be written for the man on the street and the English version should be drafted in English style. However, as various people became involved in reviewing the project and made more corrections, Mr. Meredith's fight for a plain language translation intensified because traditionalists started attacking the plain language style.

In many cases, style was sacrificed by the reviewers so that the English matched the French text. According to Mr. Meredith's unpublished book *Pitfalls and Procrastinations*, the main stumbling block was probably a misunderstanding of the nature of translation. In Article 1 of Part II of the 700-page *Report on the Family*, "L'enfant a droit" was translated as "Every child is entitled" by Mr. Meredith's team. When the time came to discuss the final changes made by the Office, the words "Every child" had been changed to "The child." After considerable discussion, "Every" was adopted, but it was decided to change the French to "Tout" because it was felt by the reviewers that the two versions should match. It was very frustrating when translations were imposed. However, Mr. Meredith managed to have "A hypothec may be a floating one" changed back to "A hypothec may float" by arguing tooth and nail with the committee members. The official 1991 translation of the Code reads "A hypothec is a floating hypothec when..." (Article 2715). The translation should ideally sound as fluent in the target language as in the source language and not be a *calque*—a mere copy.

In the *Report on Civil Status*, Mr. Meredith's team had originally translated 'acte de l'état civil' in such expressions as 'acte de mariage,' 'acte de décès' and 'acte de naissance' by 'record(s) of civil status,' marriage, death or birth, as the case may be. However, the word 'act' was imposed as the official translation. Of course, Quebecers are used to hearing 'act of marriage' now, but it is still odd given its connotations in English. 'Directeur de l'état civil' was translated by Mr. Meredith's team as 'Registrar of Civil Status,' which was rejected and replaced by 'Director of Civil Status.' It seems that "acts of civil

status” was selected because it had been used for 100 years. One jurist even wanted to change the name of the Civil Code Revision Office to the infelicitous ‘Office of Revision of the Civil Code,’ but fortunately his suggestion was rejected. Mr. Meredith objected to the introduction of any non-English-sounding expressions in the translation whenever he could, e.g., ‘prohibition to’ and ‘to deliver over.’

In fact, in an unpublished letter to Mr. Crépeau, dated April 22, 1974, Clive Meredith quoted Elmer Driedger (1968), stating that “*shall* is much overworked in legislation.” He disagreed with the use of the “imperative shall” in the Code and some other archaic turns of phrase such as “He who...” instead of “Any person who.” The above cases are examples of the bones of contention which arose in committee meetings to analyse the translation. Some of the Old Code was imposed on the sole strength of its 100 years’ existence. When Mr. Meredith’s level of frustration rose, he wrote “Has not our consistent aim been to write a twenty-first century Code?” (*Pitfalls and Procrastinations*). One of the most challenging and frustrating aspects of the project was merely to make sure that the Code was translated into idiomatic English.

5. Rejection of the plain language translation style

After all of that hard work, it is ironic that the *Report on the Quebec Civil Code* was never adopted as such except for Book Two (The Family), which was enacted in 1980 because of the urgency of modernising the outdated family law under the old code. After the publication of the CCRO’s Report, the *Ministère de la Justice* took over the project and Mr. Meredith and his team were replaced by National Assembly translators. During the period between the release of the Report and the enactment of the new code, Government of Quebec jurists continued to review the proposed legislation, added to the content in French, and the CCQ was completely retranslated. Traditionalists won the day. The official translation (1991) is closely patterned on the French text and widely inspired by the archaic terminology used in the English text of the *Civil Code of Lower Canada*. In any case, one can well imagine the pressure on the National Assembly translators (Coates 2011: 52) to retranslate the some 3300 articles of the CCQ as quickly as possible. The whole of the present *Civil Code of Quebec* was enacted in December 1991 and came into force on 1st January 1994.

Ideally, legislation and legal texts should be translated and reviewed by legal translators or jurilinguists. Moreover, translators should not be forced to work *en vase clos* — a vacuum. They need access to the drafters so they can ask questions and understand the legal reasoning and context. My Francophone

friends point out that the laws in other provinces are poorly translated into French, so I should not complain. That was perhaps true in the past, but there has been some success with co-drafting in recent years, which means drafting in both English and French at the same time. Good results can also be achieved when legal translators are involved in the process of translating laws alongside the drafters.

6. Twentieth anniversary of the Civil Code of Québec

The changes proposed by the Joint Committee of the Barreau du Québec and the *Chambre des notaires du Québec* were negotiated with the *Ministère de la Justice* and approved by it in May 2014, 20 years after the CCQ was adopted.

A portion of the amendments was included in the current version of the CCQ online updated to 1st July through administrative measures. I made a brief sampling and found some inconsistencies that were corrected, e.g., “a constituting act of co-ownership” in article 1059 was changed to match an “act constituting the co-ownership” in article 1053. Also, the expressions ‘exclusive’ and ‘common parts,’ referring to co-ownerships, were changed to “private and common portions” in article 1053 to be consistent with articles 1054 and 1055. Moreover, ‘common parts’ is a British rather than a North American expression.

I also found three interesting examples of changes provided below (emphasis added). However, I was surprised to discover that most of the amendments were minor stylistic changes. In the first example, a positive formulation was substituted for a negative formulation, which is perhaps clearer in English.

8. No person may renounce the exercise of his civil rights, except to the extent consistent with public order.
1991, c. 64, a. 8.

8. A person may only renounce the exercise of his civil rights to the extent consistent with public order.
1991, c. 64, a. 8; I.N. **2014-05-01.**

In the second example, the unidiomatic expression “gives a lease” was changed to “leases.”

1065. A co-owner who gives a lease on his private portion shall notify the syndicate and give the name of the lessee.
1991, c. 64, a. 1065.

1065. A co-owner who leases his private portion shall notify the syndicate and give the name of the lessee.

1991, c. 64, a. 1065; I.N. **2014-05-01**.

In the third example, some terminology was changed. “Prejudice” became “injury” and “compensation” was changed to “indemnity.”

1067. A co-owner who suffers prejudice by the carrying out of work, through a permanent diminution in the value of his fraction, a grave disturbance of enjoyment, even if temporary, or through deterioration, is entitled to obtain compensation from the syndicate if the syndicate ordered the work or, if it did not, from the co-owners who did the work.

1991, c. 64, a. 1067.

1067. A co-owner who, as a result of work carried out, suffers injury in the form of a permanent diminution in the value of his fraction, a grave disturbance to enjoyment, even if temporary, or through deterioration, is entitled to obtain an indemnity from the syndicate if the syndicate ordered the work or, if it did not, from the co-owners who did the work.

1991, c. 64, a. 1067; I.N. **2014-05-01**.

Edmund Coates, a jurilinguist for the Joint Committee, wrote in an opinion piece in the *Montreal Gazette* on May 22 that 3566 changes were made to the CCQ in May by the *Ministère de la Justice* through administrative means. In the future, it will be important to always refer to the latest, up-to-date version of the CCQ given all the amendments to the English text, representing 20 years of work by the Joint Committee of jurists together with three representatives of the *Ministère de la Justice*, including senior translator Donald Breen.

The *Ministère de la Justice* made a number of changes by virtue of its administrative authority under the *Act respecting the Compilation of Quebec Laws and Regulations* (CQLR c R-2.2.0.0.2). Mr. Coates wrote to me in an email dated November 5, 2014, that he understands that a bill will be introduced in spring 2015 to introduce the changes involving substantive legal issues.

The official electronic version of the *Civil Code*, published on the Publications du Québec website, indicates the articles which have been modified with the date “2014-05-01.”

Sincere gratitude to Clive Meredith for the use of his unpublished memoir, *Pitfalls and Procrastinations*, and to Edmund Coates, a researcher at McGill’s

Paul-André Crépeau Centre for Private and Comparative Law, for his clarifications. The opinions expressed in this article are strictly those of the author. The author has published two shorter articles on the same subject: in *Juriscribe* at <http://acjt.ca/medias/63/juriscribe%202013-07.pdf> and in *Circuit* at <http://www.circuitmagazine.org/who-translated-the-civil-code-of-quebec>. The current article discusses the amendments to the legislation more in depth.

Note: The official language of the Province of Quebec is French, and the Quebec government writes Quebec with an accent in both French and English. However, the accents have been removed from Quebec in this article for consistency purposes in the English text.

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Biography

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