INTERPRETATION AND CONSTRUCTION OF BILINGUAL LAWS: A CANADIAN LAMP TO LIGHT THE WAY?

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I. BILINGUALISM IN IRISH CONSTITUTIONAL LAW AND LEGISLATION

The Taoiseach is empowered, pursuant to Article 25.5 of Bunreacht na hÉireann, to cause to be enrolled in the office of the Registrar of the Supreme Court a text of the Constitution in both official languages signed by the President, the Chief Justice and the Taoiseach as conclusive evidence of the provisions of the Constitution as amended. Article 25.5.4˚ provides that in case of conflict between the texts of any copy of the Constitution so enrolled, the text in the national language shall prevail.

Similarly, the remaining sections of Article 25 (25.1-25.4) provide for the issuing of legislation bilingually. The Constitution envisages that bills may be presented and passed by the Oireachtas and then signed by the President either unilingually (either Irish only or English only) or bilingually and that, where a bill is passed and signed unilingually, that an official translation be issued in the other official language.[1]

In *Ó Beoláin v. Fahy*[2] the Supreme Court granted a declaration that under Article 25.4.4˚ the State has a constitutional duty to issue this official translation *when* the President signs the text of a unilingual bill.

This is a continuation of the simultaneous procedure as set out under Article 42 of the Irish Free State Constitution which provided as follows:

> As soon as may be after any law has received the King's assent, the clerk, or such officer as *Dáil Éireann* may appoint for the purpose, shall cause two fair copies of

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[1] Article 25.4.4˚.

[2] [2001] 2 I.R. 279 (S.C.).

> such law to be made, one being in the Irish language and the other in the English language (one of which copies shall be signed by the Representative of the Crown to be enrolled for record in the office of such officer of the Supreme Court as *Dáil Éireann* may determine), and such copies shall be conclusive evidence as to the provisions of every such law, and in case of conflict between the two copies so deposited, that signed by the Representative of the Crown shall prevail.

In the case of bills passed and signed in the bilingual format, Article 25.4.6° provides that in case of conflict between the texts, the text in the national language shall prevail. In the case of unilingual bills, the Constitution only requires that the text which was passed by the Oireachtas and signed by the President be enrolled in the Office of the Registrar of the Supreme Court as conclusive evidence of its provisions (Article 25.4.5°). It is curious that the 1937 Constitution, in contrast with the Irish Free State Constitution, is silent in relation to the enrolment or deposition of the unsigned text, although the procedures of the Houses of the Oireachtas themselves and the Translation Section in particular enable the verification of the authenticity of the unsigned text.

It is clear from Irish jurisprudence in this area that the *raison d'être* of such translations is to facilitate their use and the use of both official languages, in particular in the course of litigation. As stated by O'Hanlon J. in *Delap v. Minister for Justice*[3] in relation to the Irish translation of the Rules of the Superior Courts:

> [The applicant] has the right under the Constitution to conduct his side of the proceedings entirely in the Irish language if he desires to choose the first official language. I am of the opinion that there is a great obstacle in his path if he desires to use the Irish language but if at the same time there is no official version available of the law found in the rules concerning the regulation of such proceedings or of the forms which accompany them and that he is not being accorded equal treatment in that case

[3] (1980-1998) I.R.S.R. 116.

> by comparison to that section of the public which is fully satisfied to use the English language version at all times.[4]

This passage was approved by the majority in the Supreme Court in *Ó Beoláin v. Fahy*[5] and by McGuinness J. (presiding) who stated that, in relation to the availability of official Irish translation of Acts of the Oireachtas and of Rules of Court;

> The issue is one of the right of access to the courts by persons who speak either of the two official languages named in Article 8 of the Constitution.[6]

Hardiman J. concurred, stating that:

> Moreover, the only conceivable reason for requiring the issuing of an official translation [of legislation] is so that it can be used by those who are lawfully desirous of conducting their legal business in that one of the official languages which was not the language in which the bill was passed.[7]

In the case of *Gael Linn Teo. v. Commissioner of Valuation*,[8] Keane J. (as he then was) delivering the judgment of the Supreme Court refers to his examination of both the signed and the unsigned texts of the Valuation Act 1988 in order to aid his interpretation thereof, saying that "the intention of the Oireachtas" was "illustrated by the words in the English and Irish versions of the statute in question."[9]

Canada also has a diversity of bilingual legislative texts. Since confederation in 1867 all Acts of the Parliament of Canada and of the Legislature of Québec have been enacted in both French and English. Until the constitution was patriated in 1982, however, most instruments comprising the Constitution of Canada itself were Acts of the British Parliament and as such

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[4] (1980-1998) I.R.S.R. 116, at 121 (translation of judgment).
[5] [2001] 2 I.R. 279 (S.C.).
[6] [2001] 2 I.R. 279, at 309 (S.C.) (translation of judgment).
[7] [2001] 2 I.R. 279, at 347 (S.C.) (translation of judgment).
[8] [1999] 3 I.R. 296 (S.C.).
[9] [1999] 3 I.R. 296, at 304 (S.C.) (translation of judgment).

enacted in English only. Section 55 of the (bilingual) Constitution Act 1982 provided for the expeditious preparation and enactment of French versions of these various unilingual British Acts. Similarly, arrears of current unilingual legislation have been translated and re-enacted by the Ontario legislature, which legislature since 1991 now enacts its laws bilingually as do the legislatures of Manitoba and New Brunswick.

The Canadian Courts have interpreted the duty to print and publish Acts bilingually as one which extends to statutory instruments. In *A.G. Québec v. Blaikie*[10] the Canadian Supreme Court wrote:

> Dealing now with the question whether "regulations" issued under the authority of Acts of the legislature of Québec are "Acts" within the purview of s.133, it is apparent that it would truncate the requirement of s.133 if account were not taken of the growth of delegated legislation. This is a case where the greater must include the lesser.[11]

Said s.133 of the British North America Act, 1867 provided that "[t]he Acts of the Parliament of Canada and of the Legislature of Québec shall be printed and published in both [English and French]."

This decision is in line with the decision of the Irish High Court in *Ó Murchú v. Cléireach Dháil Éireann*[12] currently under appeal to the Supreme Court and with Irish practice from 1922 to at least 1979.

That both the Canadian courts and the High Court of Ireland have come to the same conclusion comes as little surprise. There is little to recommend a distinction between bilingualism in primary and secondary legislation given the interplay of both in the legal order. Many Acts provide for their own amendment by statutory instrument within a certain time period *e.g.* The Official Languages Act 2003 s. 4(1)(c). Other Acts have been amended by statutory instrument *e.g.* the Maintenance Act, 1994 was amended

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[10] [1979] 2 S.C.R. 1016.
[11] [1979] 2 S.C.R. 1016, at 1027.
[12] High Court, unreported, Smyth J., 7 December 2004.

by the Minister for Justice with Statutory Instrument 52 of 2002 European Communities (Civil and Commercial Judgments) Regulations and the Companies Acts were amended by the Minister for Enterprise with Statutory Instrument 333 of 2002 European Communities (Corporate Insolvency) Regulations, both pursuant to the European Communities Act 1972.

Statutory instruments have also been amended by Acts of the Oireachtas: *e.g.* section 6 of the Local Government (No. 2) Act, 2003 amended Statutory Instruments 297 of 1995 Local Elections Regulations 1995.

While Article 25 of Bunreacht na hÉireann permits laws to be enacted either unilingually or bilingually, the Oireachtas has now chosen to follow the path of bilingual enactment. Section 7 of our Official Languages Act 2003 (which came into force on 14 July 2006) echoes s.133 of the British North America Act, 1867 (*supra*) in providing thus:

> As soon as may be after the enactment of any Act of the Oireachtas, the text thereof shall be printed and published in each of the official languages simultaneously.

In *A.G. of Québec v. Blaikie* the Supreme Court of Canada wrote:

> It was urged before this Court that there was no requirement of enactment in both languages, as contrasted with printing and publishing. However, if full weight is to be given to every word of s.133 it becomes apparent that this requirement is implicit. What is required to be printed and published in both languages is described as "Acts" and texts do not become "Acts" without enactment.[13]

Blaikie was followed by the Canadian Supreme Court in *Re Manitoba Language Right*[14] and this principle is now settled law.

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[13] [1979] 2 S.C.R. 1016, at 1022.
[14] [1985] 1 S.C.R. 721.

II. THE INTERPRETATION OF DIFFERENT TEXTS

As noted above, the constitutional implication is that, as with the Constitution itself, in the case of conflict between the texts of legislation enacted in the bilingual format, the Irish text shall prevail. This does not mean, of course, that the English text is to be ignored any more than that the Irish text of legalisation passed in English is to be ignored. Budd J. said in *O'Donovan v. Attorney-General*,[15] referring to the two texts of the Constitution:

> Both texts of the Constitution are authoritative…It would seem to follow as a matter of common-sense that one should not approach the elucidation of the meaning of either text with a view to seeking a conflict, but rather with a view to seeing if they can properly be reconciled.[16]

It is submitted that the principle of one text prevailing over the other in the case of conflict between them is but one of the many canons at the disposal of the Court when addressing both texts.

That the language of the "first draft" should, by that very fact, be given greater weight has been rejected in Canada. As Taschereau J. wrote for the majority of the Supreme Court of Canada in *C.P.R. v. Robinson*:[17]

> I take it that whether the article was first written in French or in English is immaterial ... In the case of ambiguity, where there is any possibility to reconcile the two, one must be interpreted by the other.[18]

Instead, Canadian construction of statutes is based on the equal authenticity rule since both texts have been enacted (or re-enacted) by the legislature and the fact that there is no entrenched rule of construction to the contrary. This rule would appear to apply to Irish statutory instruments.

The Canadian approach to interpreting bilingual legislation is a judicial creation and has developed a number of aids to construction which would prove useful in the Irish context in order

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[15] [1961] I.R. 114.
[16] [1961] I.R. 114, at 131.
[17] (1891), 19 S.C.R. 292.
[18] (1891), 19 S.C.R. 292, at 325.

to see if both texts can properly be reconciled. The Canadian approach to the construction of bilingual and bijuridical legislation is discussed fully in *Driedger on the Construction of Statutes*.[19]

III. THE 'SHARED MEANING' RULE

The rationale behind the 'shared meaning' rule was set out by the British Columbian Court of Appeal in *R. v. O'Donnell*:[20]

> The words in both versions, of necessity, must be construed with the same meaning. So, if one version is clear and unambiguous and the other version has the same meaning as well as others, it follows that, when construing, the common meaning must be accepted.[21]

The attempt to discover or construct a shared meaning is the first step in the interpretation of bilingual legislation. The shared meaning is not always decisive, however, and other indicators of meaning must also be taken into account.

Indeed, where these other indicators suggest the shared meaning is inappropriate, the court is entitled to reject it in favour of a more appropriate version, which is plausible in one language version but not in the other c.f. *Food Machinery Corp. v. Canada (Registration of Trade Marks)*.[22]

This *de facto* phenomenon of one text prevailing over the other and the resulting apparent departure from the principle of equal authenticity is resolved by the Canadian courts by conceptualising the law as enacted as being distinct from its formulation in the words chosen by the drafter.

The law is seen as an abstract rule or provision. The words chosen by the legislature to express this rule, which it intends to enact or which the courts are obliged to apply in a just and appropriate manner to the facts, may or may not be well chosen. It is the Court's function to construct the rule from an examination of both texts and using the various canons of construction. The

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[19] (Sullivan, Toronto: Butterworth's, 2002).
[20] [1979] 1 W.W.R. 385 (B.C.C.A.).
[21] [1979] 1 W.W.R. 385 (B.C.C.A.), at 389.
[22] [1946] 2 D.L.R. 258 (Ex. Ct.)(*infra*).

equality of the texts is maintained in that in such circumstances either may be preferred as correctly expressing the rule in the absence of shared meaning or where the shared meaning is seen as objectionable.

In the Irish context, the shared meaning approach is certainly in tune with Budd J.'s comments in *O'Donovan*. An outright rejection of the shared meaning would, however, only seem possible here in favour of the dominant text given the wording of Article 25 of the Constitution. However, a more liberal approach might find favour in relation to statutory instruments.

IV. SHARED MEANING CONFIRMS ORDINARY MEANING

Where the meaning of both texts is the same, this is usually the ordinary meaning of the words in both versions. The effect here of reading and relying on both texts is to strengthen the presumption in favour of the ordinary meaning. For example, in *R. v. Barnier*[23] the Canadian Supreme Court was concerned with the Criminal Code's definition of insanity as being incapable of "appreciating the nature and quality of an act" or "of knowing that an act is wrong" and whether these formulations established two tests or one.

The Court looked at the dictionary definitions of "know" and "appreciate" in the English text and of "savoir" and "juger" in the French and found that their meanings corresponded. The Court concluded that:

> It is therefore clear on the plain meaning of the section that Parliament intended that for a person to be insane within the statutory definition, he must be incapable firstly of appreciating in the analytical sense the nature and quality of the act or of knowing in the positive sense that his act was wrong.[24]

V. SHARED MEANING RESOLVES AMBIGUITY

The shared meaning rule has been adopted in many Canadian cases to resolve ambiguities occurring in either or both texts. The

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[23] [1980] 1 S.C.R. 1124.
[24] [1980] 1 S.C.R. 1124, at 1137.

most celebrated example is that of *Tupper v. R.*[25] where the question arose whether the screwdrivers, gloves, flashlight and nylon stockings found in the accused's car could be considered an "instrument for house-breaking/instrument pouvant servir aux effractions de maisons" under s.295(1) of the Criminal Code.

The English words "instrument for house-breaking" were uncertain in scope having a narrow definition (*i.e.* an instrument whose only or ordinary use was for that of house-breaking) and a broad definition (*i.e.* any instrument capable of being used for house-breaking). The broad definition was the shared meaning (instrument pouvant servir aux effractions de maisons) and was therefore presumed to be the true meaning of the section in the absence of any reason to reject it. Per Judson J.:

> The French version makes the meaning clear. Both versions mean the same thing. [Thus] an instrument *for* house-breaking is one *capable of being used for* house-breaking.[26]

To apply this approach to an Irish example, s.9 of the Education Act 1998 provides that a recognised school shall provide education to students which is appropriate to their abilities and needs and that it shall use its available resources to *inter alia*:

(f) promote the development of the Irish language and traditions, *Irish literature*, the arts and other cultural matters.	(f) chun forbairt na Gaeilge agus thraidisiúin na hÉireann, *litríocht na hÉireann*, na healaíona agus nithe cultúrtha eile, a chur chun cinn.[27]

Irish Law Statutes Annotated raises the question of whether "*Irish literature*" refers to literature in the Irish language only or whether it also includes Anglo-Irish literature. This ambiguity in the English text is resolved by reference to the Irish text "*litríocht na hÉireann*" (the literature of Ireland) which encompasses literature written in languages other than Irish.

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[25] [1967] S.C.R. 589.
[26] [1967] S.C.R. 589, at 593 (emphasis added).
[27] Emphasis added.

A similar example can be drawn from Bunreacht na hÉireann, Article 12.4.4˚ of which provides:

Tig le haon duine atá nó a bhí ina Uachtarán é féin d'ainmniú d'oifig an Uachtaráin	Former or retiring Presidents may become candidates on their own nomination.

The Irish version can be construed in two ways: It is argued by Dr. Micheál Ó Cearúil that a former or retiring president could nominate his or herself for the *office* of President rather than as a candidate for election to that office meaning that there would be no question of an election.[28] This is a liberal construction of the Irish text.

Under a conservative construction "ainmniú d'oifig an Uachtaráin" (nomination for the office of president) implies nomination for *election* to said office given that, if more than one former or retiring president were to pursue such a course, only one could serve as president. The English version with its specific reference to candidacy resolves this ambiguity.

Another example of the fruitfulness of comparing two texts occurs at Article 28.9.1˚ which provides that:

Tig leis an Taoiseach éirí as oifig uair ar bith trína chur sin in iúl don Uachtarán.	The Taoiseach may resign from office at any time by placing his resignation in the hands of the President.

The Irish version presents a taoiseach who wishes to resign with a wide range of options in relation to his communicating his resignation to the President given that he need only inform her of his decision (cur in iúl). The English version, however, is much narrower and calls for said resignation to be placed in the President's hands. Under the shared meaning rule the English version would be preferred notwithstanding Article 25.5.4˚ because both texts can convey this meaning without conflict when read together.

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[28] See Ó Cearúil, *Bunreacht na hÉireann: Two Texts or Two Constitutions?* (The Ireland Institute, 2002) at pp. 45-47

This eventuality was foreseen by one of the framers of the Constitution, Mr de Valera, who noted on 2 April 1941 in the debate on the Second Amendment of the Constitution Bill, 1940, that:

> … it is a great advantage to have a fundamental law in two languages. Ambiguities are found in practically every language. You will have those ambiguities no matter how you may try to provide against them...Where there is an apparent slight ambiguity in one text, when you turn to the other text you find that it is completely removed: that it quite clearly has one meaning and not another.[29]

VI. SHARED MEANING CONFIRMS ORDINARY OR TECHNICAL MEANING

The shared meaning rule can be particularly helpful in determining whether a word or expression should be given its ordinary or technical meaning. In *Deltonic Trading Corp. v. Deputy M.N.R. (Customs & Excise)*[30] the issue was whether the "lobster tails/queues de langoustes" imported by the appellant should be considered "crustaceans/crustacés" or "lobsters/homard" within the meaning of the Customs Tariff. Although known in English as "rock lobsters", the species in question was clawless and the tariff Board concluded that is could not be classed as "lobster" or "homard" as normally understood.

On appeal, the importer relied on the scientific definition of the term "lobster" which included certain types of clawless crustaceans such as rock lobsters. The court rejected these arguments:

> Statutes must normally be construed according to the meaning of the words in common language rather than according to their scientific meaning... In their ordinary correct sense, the English word "lobster" and the French word "homard" have the same meaning. French dictionaries, whether published in France, like the *Larousse*, the *Robert*, the *Littré* and the *Quillet*, or in

[29] 82 *Dáil Debates* 1259a (Second Stage, 2 April 1941).
[30] (1990), 133 N.R. 7 (F.C.A.).

> Quebec, like the *Belisle* and the *Beauchemin*, and English dictionaries, like the *Oxford* and the *Webster*, define the words "homard" and "lobster" in the same manner, as designating crustaceans with large claws. In deciding as they did, therefore, the Board interpreted both versions of the Tariff according to their ordinary correct meaning. They could not do otherwise in the absence of any indication that Parliament...had used the word "lobster" in its scientific rather than ordinary meaning and the French word "homard" in a clearly incorrect manner.[31]

VII. SHARED MEANING MODIFIES ORDINARY MEANING

In most cases the shared meaning is assumed to be a meaning found in each version of the bilingual text read separately, as opposed to a meaning that is constructed by reading both versions together. However in *Aeric Inc. v. Canada Post Corp.*,[32] Ryan J. pointed out that in so far as each version forms part of the immediate context of the other, each may appropriately influence the meaning of the other. In *Aeric* the meaning of the expression "the principle business/l'activité principale" was at issue in the context of the Canada Post Corporation Act. The applicant argued that only profit-making activities were captured based on the English text whereas the respondent relied on the broader interpretation based on the French.

While it is submitted that the shared meaning rule as applied in *Tupper* (*supra*) would have favoured the narrower construction as resolving the ambiguity of the French text, the Court favoured a more harmonious approach, Ryan J. saying that:

> ...the use of the term "l'activité principale" in the French version of para. (h) gives support to a wide reading of "principal business". On the other hand, the use of "principal business" in the English version suggests that "l'activité principale" should be read in a somewhat more restricted way than a literal reading might suggest. Each

[31] (1990), 133 N.R. 7 (F.C.A.), at 9.
[32] (1985), 16 D.L.R. (4th) 686 (F.C.A.).

> version of para. (h) forms part of the context in which the other must be read...[33]

On this basis "the principal business/l'activité principale" permitted reference to non-profit making activities, but only if these activities were related to a business carried on by the person. Using this approach, the ordinary meaning of each version is adjusted to take account of the other and the resulting construction is then regarded as the shared meaning. It could be said that it is a case of a "blended" or "harmonious" meaning being preferred under these circumstances.

VIII. SHARED MEANING IS NOT DECISIVE

In earlier cases, the dominant trend of jurisprudence was to adopt shared meaning of bilingual provisions as conclusive without resort to other interpretative aids. In *Food Machinery Corp. v. Canada (Registration of Trade Marks)*[34] the shared meaning was tested against other indicators of meaning, leading to a rejection of the shared meaning by the Court as not embodying the rule which parliament intended to make law.

The matter in issue was whether the appellant was entitled to register its corporate name as a word mark under the Unfair Competition Act.

Section 26(1) of the Act provided that a corporation's name could not be so registered subject to an exception under s.26(2) which provided as follows:[35]

An application for the registration of a word mark otherwise registrable shall not be refused on the ground that *the mark consists of* or includes a series of *letters* or numerals *which also constitute or form part of the name of the firm or*	Une demande d'enregistrement d'un mot servant de marque autrement enregistrable ne doit pas être refusée pour le motif que *la marque se compose* d'une série *de lettres* ou chiffres, ou la comprend, *qui constituent aussi le nom de la firme ou corporation, ou en font partie,*

[33] (1985), 16 D.L.R. (4th) 686 (F.C.A.) at 707.
[34] [1946] 2 D.L.R. 258 (Ex. Ct.).
[35] Emphasis added.

corporation by which the application for registration is made.	par laquelle la demande d'enregistrement est faite.

The italicised words in the English version constitute an ambiguity which can be read in two ways:

(1) the mark consists of letters which also
constitute, or
form
part of the name of the firm or corporation.

(2) the mark consists of letters which also
constitute, or
form part of
the name of the firm or corporation.

The italicised words in the French version can have only one meaning *i.e.* the one corresponding to version (2) of the English. The shared meaning rule here would allow the registration of corporation names in full as opposed to just allowing the registration of a part of such names.

The Court was understandably reluctant to adopt this meaning as it would render s.26(1) redundant. It is most unlikely that parliament intended to prohibit the registration of corporation names in s.26(1) and then permit such registration by way of exception in s.26(2).

Thorson P. resolved this problem by rejecting the shared meaning and relying on the English version, saying:

> My own opinion of the English text is that its meaning is also clear, but two constructions have been advanced, one of which is objectionable and the other free from objection...[I]t seems to me that the Court should deal with the matter as it would deal with any other question of ambiguity, namely, seek to ascertain the true intent of Parliament, following the guidance of the canons of construction recognized as applicable in such cases. Under the circumstances, it would, I think, be sound to hold that where two constructions are advanced for either the

> French or English text of a statute, one subject to objection and the other free from it, that construction which is free from objection, according to the recognised canons of construction, should be adopted, even although the language of the other text is at variance with it and in accord with the objectionable construction; the objectionable construction is not rendered free from objection by reason of such accord and is not entitled to any support from it.[36]

The practical question which arises in the Irish context is whether the canon of preferring the dominant text in the case of conflict is an immutable constitutional imperative or simply one canon of construction among many which may aid the Court in determining the rule which the Oireachtas intended to make law, thereby allowing the Court, where an interpretation pursuant thereto leads to an unacceptable result, to reject same in favour of a construction which avoids that result.

In any event, the Irish courts seem to have instinctively adopted the shared meaning approach in relation to Bunreacht na hÉireann, as observed by Fergus W. Ryan:

> More often than not, the courts have tended to read the two texts in a harmonious fashion attempting to iron out any subtle difference that may emerge.[37]

IX. ABSENCE OF SHARED MEANING

Clearly, where the divergence between the texts of bilingual legislation is so great that there is no shared meaning, different principles apply.

An example of this drawn from the Canadian context is that of *Klippert v. R.*[38] Here, s.659 of the Criminal Code defined a "dangerous sexual offender" as a person who "has shown a *failure* to control his sexual impulses" in the English text and as a person

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[36] [1946] 2 D.L.R. 258 (Ex. Ct.) at 263.
[37] Ryan, *Constitutional Law* (Thomson Round Hall, 2001) p. 48.
[38] [1967] S.C.R. 822.

"qui...a manifesté une *impuissance* a maîtriser ses impulsions sexuelles".[39]

As Fauteux J. pointed out:

> We are not dealing here with a situation where each of the English and of the French text is capable of assisting the other, in a matter of interpretation, but with a situation where one has to elect between either the English text...or the French text.[40]

The Court, in this case, based its choice on the legislative history of the provision and the presumption against tautology. The section in issue had been amended and it was at the time of amendment that the divergence in meaning arose. The previous definition read thus:[41]

659. In this Part...(b) "criminal sexual psychopath" means a person who...*has shown a lack of power to control* his sexual impulses...	659. Dans la présente Partie...(b) "délinquant sexuel dangereux" désigne un individu qui...*a manifesté une impuissance a maîtriser* ses impulsions sexuelles

These say substantially the same thing. Upon amendment the English version was altered while the French remained the same:[42]

659. In this Part...(b) "dangerous sexual offender" means a person who...*has shown a failure to control* his sexual impulses....	659. Dans la présente Partie...(b) "délinquant sexuel dangereux" désigne un individu qui...*a manifesté une une impuissance a maîtriser* ses impulsions sexuelles

The Court preferred the English version as embodying the rule which parliament intended to make law. As Fauteux J. stated:

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[39] Emphasis added in both quotations.
[40] [1967] S.C.R. 822, at 834.
[41] Emphasis added.
[42] Emphasis added.

> [The English text] manifests the actual intervention of Parliament to change the existing law with respect to one of the constituent elements in the definition [while the French text is] indicative of no change at all...
> [T]o give priority to the French version would, in this case, render the change made in the English version meaningless and the actual intervention of Parliament, to make this change, futile.[43]

While such divergences may be rare in the Irish context, there are instances. One example of the absence of shared meaning is Article 12.4.1˚ of Bunreacht na hÉireann, which provides:

Gach saoránach ag a bhfuil cúig bliana tríochad slán, is intofa chun oifig an Uachtaráin é.	Every citizen who has reached his thirty-fifth year of age is eligible for election to the office of President.

In the Irish text one must be 35 years of age to be eligible for election to the office of President. In the English text one need only be 34. It is to provide for just such situations that, pursuant to Article 25.5.4˚, the text in the national language prevails and it would be difficult to imagine an argument to justify a departure from this constitutional canon of construction, in relation to this provision in any event.

CONCLUSION

Up until the 1980s it was taken for granted that Bunreacht na hÉireann and both primary and secondary legislation should be made available bilingually if the rights of the citizen to conduct his business through the medium of English or Irish was to be vindicated and the objective of a bilingual society advanced.

In recent years, the amount of legislation being published bilingually has climbed back towards these levels as the courts (for example, in *Ó Beoláin*) and the Oireachtas (Official Languages Act, 2003) have recognised the need for such materials to be available in both official languages of the State. This growth is set to continue as

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[43] [1967] S.C.R. 822, at 834.

the obligation to provide bilingual texts of secondary legislation, hitherto only fitfully addressed, is comprehensively confirmed.

The example of Canada shows how such developments not only show due regard to the rights of both Irish and English speakers but also can be harnessed to enrich and enhance statutory and constitutional interpretation.