Language and Law

A resource book for students

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Chapter C10

Same Law, Different Texts

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EXAMPLE 1 (POLICE INTERVIEW)

Q: But isn't it the case, that you decided prior to approaching those men, to steal from them?
A: I . . . say yes . . . or what? ['or what' not transcribed by police]

EXAMPLE 2 (POLICE INTERVIEW)

Q: Yes. Can you describe those two men?
A: Um – yeah. Yes.

EXAMPLE 3 (TRIAL)

A: When the child came, I initially examined the patient and I noted the moistness of the tongue, sunken eyes, the skin color, and everything was okay.
Q: Are you suggesting that there were no sunken eyes?
A: *No.*
Q: I think we better slow down a little bit more and make sure the record . . . did you observe sunken eyes?
A: No.

Activity

- ❏ In example 1, the interviewee shows clear signs of incomprehension and seeks help from the interviewer. Was the question posed to him difficult to understand? If so, why?
- ❏ Explain the witness's response in example 2 in terms of direct versus indirect speech acts and language proficiency.
- ❏ In example 3, language habits from the witness's first language may have affected how he responds to questions in English: in his first 'no' reply, is he answering the speech act or the propositional meaning of the question? What would have happened if the lawyer did not seek clarification?
- ❏ Is miscommunication avoidable in these circumstances?

SAME LAW, DIFFERENT TEXTS C10

In this unit, we explore how courts resolve linguistic indeterminacy in bilingual and multilingual jurisdictions. Two legal cases are discussed.

Arriving at a legal meaning

Two major kinds of **linguistic indeterminacy** contribute to legal indeterminacy in statutory interpretation. **Intralingual indeterminacy** refers to uncertainties such as

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those created by ambiguity (semantic, syntactic, referential, pragmatic, etc.), vagueness and generality. **Interlingual indeterminacy** arises when two texts do not completely correspond (i.e. there are discrepancies between texts). In two examples below, we gain a glimpse of strategies adopted in bilingual and multilingual jurisdictions to resolve each type of indeterminacy.

Intralingual indeterminacy: is Perrier water a 'carbonated beverage'?

Having two or more legislative texts sometimes helps with interpretation, especially as regards intralingual indeterminacy. According to Beaupré (1986: 2–3), many cases would not have reached the courts 'had the parties compared the two versions of the law in the first place'.

Consider a Canadian case in which the main issue in dispute was whether Perrier, a carbonated mineral water sold in bottles or cans, should be taxed as a 'carbonated beverage' within the meaning of Schedule III of the Excise Tax Act. The following extract is taken from the judgment of *Perrier Group of Canada Inc. v. Canada*, delivered by Judge Linden.

In resolving the dispute, the court referred first to dictionary definitions of *beverage*, and found that some dictionaries define it as excluding water while others simply define it as 'a drink'. It also considered the relevant case law, which the court found inconclusive. The court then turned to the French version of the legislation:

> 24 An analysis of the French version of the legislation is most helpful. Subsection 18(1) of the *Constitution Act, 1982* states that the French and English versions of an Act are equally authoritative. This statement requires that, where the ordinary meanings of the French and English versions of a statute seem to point in different directions, the Court is obliged to choose an interpretation that best reconciles the wording used in both. MacGuigan J.A. commented on this obligation in *Nitrochem Inc. v. Deputy Minister of National Revenue for Customs and Excise*, [1984] C.T.C. 608, 53 N.R. 394 (F.C.A.), as follows:
>
> > With respect to the reconciliation of English and French texts, a judge's responsibility is not to seek some primary instance of ordinary usage in one language to which the meaning in the other language must be made to conform, but rather to try to grasp the whole meaning in both languages.
>
> 25 The appellants have urged that we do what MacGuigan J.A. above suggests should not be done, that is, to accept "some primary instance of ordinary usage" in the English language version to which the French version would then be made to conform. The French version of section 1 uses "boisson" as the equivalent of three different English words used in the legislation, they being "drink", "water" and "beverage". Several observations may be made about this use of "boisson". First, it is a term of general meaning. It is not like the English word "beverage", which ordinarily connotes a more specialized sort of drink.

26 Rather, "boisson" ordinarily designates any kind of drink. Its primary definition given by *Le Petit Robert*[1] is "Tout liquide qui se boit". Translated, this definition means simply "a liquid suitable for drinking". Water is certainly such a liquid.

27 As a second observation, I note that the closest French equivalent to the English word "beverage" is not "boisson" but "breuvage". This latter term, as its spelling suggests, is the etymological equivalent to "beverage". One of the meanings of "boisson" set out in *Le Petit Robert* is "breuvage". Not surprisingly, the popular meanings of the two words are very similar. Again as given by *Le Petit Robert*, the primary definition of "breuvage" is:

1. Boisson d'une composition spécial ou ayant une vertu particulière.

28 Translated somewhat literally, this definition reads: "A drink having a special composition (mix) or particular property (characteristic)".

29 What is important about this definition is not its exactly translated meaning, but the simple fact that a "breuvage" is a specialized form of a "boisson". This much is plain from the definition and reinforces the first observation that the French version deliberately chose a term with a general rather than a specific meaning.

30 Counsel for the appellants referred the Court to a document published by l'Office de la langue française in the Province of Quebec, where it suggests that the words "boisson gazeuse" be used to denote soft drinks or soda pop, and that "eau gazeuse" be employed to describe "les eaux minérales gazeuses". This publication also stated "boisson englobe eau, eau n'englobe pas boisson," which contradicts the submissions counsel made earlier. As interesting as this document is, and though it may be influential in improving French usage in the future, its advice, like that of the dictionaries, cannot bind this Court. Thus, in my view, since both versions of the legislation are equally authentic, and since we must adopt the meaning that both versions share, "beverage" and "boisson", as used in the legislation, both mean any type of drink, including water.

31 If a server in a Canadian restaurant asked a customer which "beverage" to bring and the customer responded, "Perrier, please", would the server be surprised that the customer thought that Perrier was a beverage? I think not. Would the server respond to the customer saying, "Perrier is a water, and I shall bring it, but do you want a 'beverage' as well?" I think not. In our common speech, most Canadians, in my view, would include water, especially sparkling water, within the meaning of beverage, despite the many dictionary definitions excluding it. Similarly, if a server in French-speaking Canada asked what the customer wished as a "boisson", the response "Perrier" would not surprise the server. No one would think that Perrier is not a "boisson", despite the advice of the Office de la langue française. Though the word may not always be used to refer to water, therefore, I am of the opinion that it is more natural to interpret "beverage" as including water.

This case is one of many instances where a Canadian court has resolved ambiguity contained in a legislative text by referring to another language version of the same text. Consider the following questions:

Activity

- In para. 25, Judge Linden acknowledges that the English word *beverage* 'ordinarily connotes a more specialized sort of drink' (than water). Then in para. 31, he presents a hypothetical scenario in which treatment of Perrier as a beverage would not contradict ordinary usage, in order to justify that *beverage* should be interpreted as including water. Do you think the scenario is consistent with or contradicts the earlier point?
- In para. 29, Judge Linden argues that the French version 'deliberately chose' a general rather than specific term. Why do you think he did not consider the rendering of *beverage* as *boisson* to be possibly a translation error?
- Was the shared meaning rule applied in this case?

Interlingual indeterminacy: are boats vehicles?

Now consider the EU case *Fonden Marselisborg Lystbådehavn v. Skatteministeriet.* Fonden Marselisborg Lystbådehavn (the Marselisborg Pleasure Boat Port Trust) is an independent institution based at the pleasure boat port of Marselisborg in Denmark that lets out water-based mooring and dry berths and land sites for storing boats during winter. The Sixth Directive referred to below is EU legislation that specifies a common list of VAT exemptions, which include, in Article 13B(b) of Title X, 'the leasing or letting of immovable property' excluding 'the letting of premises and sites for parking vehicles'. The issue in dispute in this case was whether pleasure boats should be considered to be 'vehicles'.

> 41 The words used in the various language versions of Article 13B(b)(2) to designate 'vehicles' are not consistent. As the Commission rightly stated, a number of language versions, among which are the French, English, Italian, Spanish, Portuguese, German and Finnish versions, encompass means of transport in general in that definition, including aircraft and boats. On the other hand, other versions, such as the Danish, Swedish, Dutch and Greek versions, have selected a more precise term with a more limited meaning which serves to designate principally 'land-based means of transport'. More particularly, the Danish word 'kjøretøjer' refers to land-based transport on wheels.
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> 42 In that connection it must be recalled that, according to settled case-law, where there is a difference between the language versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part (see, in particular, Case C-372/88 *Cricket St Thomas* [1990] ECR I-1345, paragraph 19, and Case C-384/98 D [2000] ECR I-6795, paragraph 16).
>
> 43 As regards the letting of premises and sites for parking vehicles, Article 13B(b)(2) of the Sixth Directive introduces an exception to the exemption laid down for the leasing and letting of immovable property. It thus makes the transactions to which it refers subject to the general rule laid down in that directive, namely that VAT is to be charged on all taxable transactions, except in the case of derogations expressly provided for. That

provision cannot therefore be interpreted strictly (see Case C-346/95 *Blasi* [1998] ECR I-481, paragraph 19).

44 Therefore, the term 'vehicles' used in that provision must be interpreted as covering all means of transport, including boats.

45 Letting mooring berths for boats is not limited solely to the right to privately occupy the surface of the water, but also involves making available various port equipment for mooring the boat, landing-stages for the crew and the use of various sanitary or other facilities. As the Advocate General points out in paragraph 51 of her Opinion, none of the reasons, including the social ones, that originally justified allowing the exemption from VAT for immovable property may be applied to the letting of mooring berths for pleasure boats in the circumstances in the main proceedings.

46 In those circumstances, having regard to the objectives of Article 13B(b) of the Sixth Directive, point 2 of that provision, which excludes the letting of premises and sites for parking vehicles from the exemption from VAT, must be interpreted as meaning that it is generally applicable to the letting of premises and sites for parking all means of transport, including boats.

47 In the light of the foregoing, the answer to the second question must be that Article 13B(b)(2) of the Sixth Directive is to be interpreted as meaning that the definition of 'vehicles' includes boats.

Activity

- ❏ On what basis did the court decide that 'vehicles' must include boats?
- ❏ Do you think neither, either, or both of the following considerations should be relevant to a decision in this case?
  - (a) What the 'majority' of the language versions say.
  - (b) The fact that the case concerns a Danish company and that the Danish version of the Directive referred only to land-based transport on wheels.
- ❏ Based on this case, what advantages and disadvantages do you see in purposive (rather than narrower text-based) interpretation in a multilingual jurisdiction?

Notes:

* The combined name and slogan, in a distinctive font with graphic embellishment, were registered as a trademark in the UK in 2008 (UK00002484595), for three classes of goods/services: printed matter and publications; television advertising; and travel agency services (case details can be searched at www.ipo.gov.uk).

1 *Le Petit Robert* is a popular and widely used French dictionary.