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The Chief Justice of Ontario's Advisory Committee on Professionalism

La culture juridique parmi les juristes dans un pays bilingue

The Honourable
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Supreme Court of Canada

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Tab 5b

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Third Colloquium on the Legal Profession

THE PRACTICE OF LAW IN QUEBEC:
THE PERSPECTIVE OF AN ANGLOPHONE QUEBECER

By The Honourable Mr. Justice Allan Hilton
Quèbec Court of Appeal

As the Supreme Court tells us in so many different circumstances, and as common sense dictates, an appreciation of the context in which events occur is fundamental to their proper understanding. So it is with the topic of this presentation, which necessitates the enumeration of a certain number of factual elements to appreciate the extent to which the practice of law in Quebec has evolved from when I began as a law student at McGill in 1970 to today.

Let me begin at the beginning and state the obvious, even to an audience comprised, I assume, of people who were not born and raised in Quebec.

The Quebec into which I was born in June of 1949 bears little resemblance to the Quebec of today. Maurice Duplessis was the Premier of Quebec, and he would remain so until his death in 1958. His successors as leaders of the Union Nationale, a right-wing, nationalist political party that has long since ceased to exist, continued the policies and practices that led to the Quiet Revolution and its ongoing reverential admiration that was brought about when Jean Lesage and his Quebec Liberal Party were elected to form the Government of Quebec in 1960.

As my name and my curriculum vitae tell you, I am an Anglophone Quebecer. I was raised in circumstances that are starkly different, however, from a cultural and linguistic perspective, than those of my two children, who are 17 and 14 years old respectively.

First, I don't believe I ever heard the word Anglophone until the seventies. Despite being a relatively well-informed adolescent, I had no concept that I was different from the majority of children of my age in Montreal. I was raised in a suburb of Montreal that was overwhelmingly populated by residents whose first language was English. Circumstances in that era militated, however, against a high degree of mobility, so I was parked, so to speak, on an English-speaking part of the Island of Montreal in the midst of a French-speaking sea without ever realizing that there was a world but a short distance away that was linguistically very different from my own.

In other words, unlike Francophones who lived outside Quebec, I did not have to strive to avoid assimilation. On the contrary, because of the overwhelming presence of those who spoke the English language in surrounding provinces and states, Francophones in Quebec still had to struggle to minimize the potential of assimilation.

The public school system of the day was organized along denominational lines and remained so until 1997 when an amendment to section 93 of the ***Constitution Act, 1867*** applicable only to Quebec came into force. That system effectively limited access of Anglophones who wanted to attend schools where the language of instruction was French, unless they were Catholic, since there were very few, if any, Protestant schools where the language of instruction was French.

Today, not only do French language immersion schools proliferate within the English language school boards, but many Anglophones send their children to schools managed by French language school boards, or to schools which provide fully bilingual programs. Indeed, immersion instruction is the envy of many Francophone parents, who are, however, unable to send their children to English language immersion schools in the public sector, although such schools are beginning to flourish in the private sector.[1]

It is nevertheless a fact that both the number of schools in Quebec in which the language of instruction is English, including those that are French immersion schools, which are considered as English language schools for that purpose by Quebec's Ministry of Education, as well as the number of students receiving instruction in these schools, have declined precipitously.[2]

Indeed, the elementary school I attended in the fifties and the early sixties is now a French language school managed by the principal French language school board on the Island of Montreal, *la Commission scolaire de Montréal*, and the high school I attended between 1963 and 1966 is now slated for closure by the English Montreal School Board because the number of students attending it is less than one half of its capacity. And every year, more English schools are closed.

All of which is to say that children graduating today from English language schools realize that French is and will be part of their everyday reality in Quebec. That was not the case when I was attending high school, despite the fact that I did well in French as a subject. For me and, I imagine, most of my friends, French was something akin to Algebra or Geometry – it was something you had to know during the school year but it was something that you could more or less forget during the summer until school began again.

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1 *Private English Schools woo francophones*, Ottawa Citizen, September 17, 2004.

2 There are in my view two factors which are principally responsible for the relative decline of the population of the English school system in comparison to that of the French school system. The first of these is that section 23(1)(a) of the ***Canadian Charter of Rights and Freedoms***, which gives children of Canadian citizens who are Quebec residents whose first language learned and understood is English the right to right to receive primary and secondary school instruction in English, is not in force in Quebec pursuant to section 59 of the ***Charter***. The second is that section 73 and following of the ***Charter of the French Language***, R.S.Q. c. C-11, effectively limits access to instruction in English to children who have a parent who is a Canadian citizen and who has received the majority of his or her primary school instruction in Canada in English.

Even my attendance between 1966 and 1970 at what is now Concordia University in downtown Montreal to obtain an undergraduate degree did not have the impact one might have foreseen in terms of expanding my cultural and linguistic horizons. I spoke French more often, to be sure, but not nearly as much as would be the case today. Indeed, Montreal's two English language universities, McGill and Concordia, continue to actively recruit Francophone students, just as the Université de Montréal and the Université du Québec à Montréal have recently begun to actively recruit Anglophone students and provide support systems for them.

It was really my attendance at the McGill Law Faculty between 1970 and 1974 that exposed me on a large-scale basis to the necessity to speak, read and understand French on a daily basis because of the nature of the curriculum, and, more significantly, because of the large number of Francophone students who came to the Law Faculty from Quebec junior colleges both for its academic excellence and the exposure it gave them to enhancing their English language skills.

The Quebec Bar's professional training program was next, and there, all of the course materials and instruction were in French, although we could, if we wished, write our exams in English.

It is interesting to observe how the demographics of law firms have changed since then. As a newly minted lawyer in 1975, the firm I joined, Laing, Weldon, Courtois, Clarkson, Parsons, Gonthier and Tétrault, was considered "large" by Montreal standards, and it would have had 40 lawyers or so. It was also considered an "English" law firm, which was demographically accurate, since roughly 65% or so of its lawyers were Anglophones. Today, that same firm, which is now the Montreal office of McCarthy Tétrault, has in excess of 175 lawyers, and all but a small percentage of them are Francophone. In short, there is a high degree of integration of Anglophones and Francophones in the practice of law in Montreal, which is a reflection of the real extent to which Hugh McLennan's concept of Two Solitudes is very much inapplicable to the practice of law.

I say this because for those who do not live and work in Quebec, one might think we are forever in the midst of a linguistic cauldron.

It is of course the case that many aspects of public life and public affairs are seen and interpreted through the joint prisms of Quebec nationalism and language. One need only consider the extent to which successive Quebec governments, of both political stripes, emphasize their perception of the

existence of a Quebec "nation" in government nomenclature and public policy,[3] or how election results are seen as a matter of linguistic adherence.

Commentators were quick to observe after the last federal election, for example, that the Liberal Party lost all 54 seats in which the constituency was comprised of a significant Francophone majority, and that their 21 victories came in ridings with Anglophone majorities or significant Anglophone components. While those are true facts, they are not translated in the same way in every day life, and even less so in the practice of law, which is as close to perfect harmony of the two main linguistic communities as one can imagine.

There are, to be sure, lawsuits that involve language issues, usually with respect to admissibility to English language schools,[4] and to a much lesser extent now with respect to the languages of commercial signs[5] in the aftermath of the successive legislative changes brought about as a result of the Supreme Court's judgment in ***Ford* v. *Attorney General of Quebec***.[6] But as someone who has seen such cases both from the perspective of the Bar and the Bench, I can tell you that they are treated with the same high degree of professionalism and courtesy by lawyers and judges alike as any other type of case, despite the emotional current that often runs with them.

The Bar of Montreal is especially sensitive to linguistic concerns, and for many years has had a practice of ensuring that once every three years, its Bâtonnier is an Anglophone, and that in a year when that is not the case, one of its other executive officers is an Anglophone. The Bar of Montreal has also been at the forefront of sensitizing its members as well as others involved in the administration of justice with the need to ensure that services and official documents, such as subpoenas, are always available in English. Indeed, it has a permanent committee with that continuing objective in mind.

I would like to turn now to discussing what the conduct of litigation is like in Quebec, what special challenges from a linguistic or cultural perspective it presents for practitioners and judges, and what other challenges lay ahead.

Let me begin by making one distinction that is important. Both as a lawyer and as a trial judge, most of my work was in Montreal and a few judicial districts

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3 Interestingly, a recent Environics poll suggested that the Quebec populace does not share the perception of politicians that Quebec is a "nation". Only 33% of respondents were prepared to agree with the proposition that Quebec was a "nation" , whether within Canada (16%) or alongside Canada (17%), while 63% saw Quebec either as "one of ten equal provinces" (21%) or "a distinct society within Canada" (42%) – The Montreal Gazette, page A12, September 6, 2004.

4 See ***Québec (Procureure générale)* v. *Solski***, [2001] R.J.Q. 218 (S.C.), [2002] R.J.Q. 1285 (C.A.), leave to appeal to the Supreme Court of Canada granted, case number 29297. More recently, see ***Parasiuk* v. *Québec (Procureur général) et al.***, J.E. 2004-1713 (C.A.).

5 See ***Entreprises W.F.H. Ltée* v. *Québec (Procureure générale)***, [2001] R.J.Q. 2557 (C.A.), leave to appeal to the Supreme Court of Canada refused, case number 28978.

6 [1988] 2 S.C.R. 712.

in its immediate environs such as Laval, Terrebonne and Joliette. As an appellate judge, I now see cases from all across Quebec, however, the experiences I am about to relate can be said to be limited to the greater Montreal area, since I have insufficient experience elsewhere to be able to provide informed comments.

The first factor that distinguishes Quebec from other jurisdictions in Canada, irrespective of language and culture, is the rich civil law tradition we have inherited from France that happily co-exists with the principles of English public law, including in the main constitutional law, administrative law and criminal law. Quebec jurists are unique in Canada for their ability to rapidly switch from one system of law to another as the subject matter of their attention changes, or indeed, in certain situations, to draw upon both systems when both private law and public law concepts interact.

Unlike other jurisdictions, there is also a very high degree of bilingualism amongst members of the Bar and the Bench in Quebec; more so, I would imagine, than in any other jurisdiction in North America. It is not at all uncommon to see civil trials in which both languages are used interchangeably as the circumstances require, and there are also trials that take place, for one reason or another, in only one language. It is easy to understand that the overwhelming majority of trials, however, whether civil or criminal, take place exclusively in French.

Written pleadings in a civil case are most often completed in the first language of the lawyer, unless the proceeding requires that it be supported by an affidavit from someone whose first language is different from that of the lawyer. Examinations are conducted in the preferred language of the witness, be it French or English, and if a lawyer or a party wanted to have an interpreter present for interpretation from or to French or English, it would have to be at the party's expense, and the costs of the interpreter could not be taxed against the other party if that party's position in the lawsuit did not prevail.

Needless to say, a witness who spoke neither English nor French would be able to use an interpreter, and in such circumstances, the party who called such a witness would be able to recover the expense as part of taxable court costs if that party's position prevailed.

The challenge of conducting a lengthy complex trial in a second language is a daunting one for counsel and for the judge. Yet it is not at all uncommon.

I presided at a 33-day trial involving a series of disability insurance claims which involved the assessment of medical evidence from physicians in six distinct medical specialties, during which only French was spoken, and in my last year as a trial judge, I presided at a 43-day trial involving alleged manufacturer's liability and related insurance claims during which only English was spoken, including by the plaintiff's Francophone lawyer.

In my experience both as a lawyer and as a trial judge, in civil cases counsel will usually address the judge in French, unless the judge is an Anglophone, in which case Anglophone lawyers will do so in English. There may be an exception in some circumstances, however, where a Francophone lawyer will address a judge in English if that lawyer is representing an Anglophone client. On the other hand, it is equally possible that a Francophone lawyer who does not feel entirely at home in English will offer a quasi-apology for pleading in French when that lawyer represents an Anglophone by noting that the client has authorized the lawyer to plead in French.

Judges will invariably, as it were, go with the flow and respond to counsel in whatever language that counsel has used. The same is true of any questions a trial judge might have for a witness.

All of the Anglophone judges on the Superior Court are capable of writing judgments in French and do so when that is the appropriate course of conduct. By way of comparison, only a handful of Francophone trial judges write any judgments in English in cases in which all or most of the evidence has been taken in English. Anglophone judges will generally render judgments off the bench, or as we say in French, *séance tenante*, in the principal language in which the case has proceeded. In my experience as a trial judge, I would say that I rendered approximately 50% of my written judgments in French, and probably upwards of 90% of my oral judgments in French.

Unless you are as adept as Louise Charron, however, and few of us are, writing a judgment in a second language is an extremely time-consuming exercise. Typically, it will take at least twice the time to do so. On the Quebec Court of Appeal, both I and the other Anglophone who is a puisne judge write principally in English, with some judgments in French. Oral judgments, however, are invariably rendered in French, unless there is a specific reason to do so in English. Only a few of my Francophone colleagues on the Court of Appeal ever write any reserved judgments in English, although many of them are capable of doing so. Again, the constraint of time is a determining factor with our heavy caseload to manage.

That being said, I would imagine that of all the provinces in Canada, there are more judgments rendered in Quebec in the language of the linguistic minority than anywhere else. In addition, any party to a case can ask for and receive an unofficial translation of a judgment free of charge, although the delays to appeal are not suspended while a translation is being prepared.

Moreover, Quebec judges are constantly striving to improve their second language skills through individual personalized programs and by group immersion programs offered by the office of the Commissioner of Federal Judicial Affairs. They do so because they can be exposed to cases that call upon

their second language skills in a variety of ways at any time, and not merely as a matter of personal interest. It is a measure of the interest of Quebec judges in this respect that some provincially appointed judges even pay all of their own expenses to attend two-week immersion programs without any reimbursement by the Quebec government.

Because of the great extent to which they plead cases in French, Anglophone lawyers tend, at least on occasion, to talk in somewhat of a hybrid language when they address a judge in English. An Anglophone judge sitting in a motions court, for example, might hear an Anglophone lawyer say something like this:

> "My Lord, we have been referred to you by the *Greffière spéciale* because we cannot agree on an *échéancier* for this case and we want you to fix one. In addition, I wish to present an application for an *ordonnance de sauvegarde* to remain in effect until the hearing on the *injonction interlocutoire*."

Translated into proper English, this statement would be as follows:

> "My Lord, the Special Clerk has referred us to you because we cannot agree on a timetable for this case and we want you to establish one. In addition, I wish to present an application for a safeguard order to remain in force until the hearing on the interlocutory injunction."

Examples of this sort abound. While sitting once as a trial judge in chambers, I had a lawyer inform me in English that he and his colleague were before me so that I might "*tranche*" objections during an examination on discovery! Another one told me he had served an "*assignation*" on a witness, and was startled to learn that in English, an assignation is a covert sexual encounter, although in French, "*une assignation*" is the act of serving a subpoena.

The reason for this linguistic lapse is easy to understand, although more difficult to overcome. French and English share thousands of words together, which represents what the French author Henriette Walter has described in her book *Honni soit que mal y pense*[7] as "*l'incroyable histoire d'amour entre le français et l'anglais*". Nevertheless, constant attention must be paid to NOT using a word in one language simply because it exists in the other language – what are called *faux amis* – because the meaning in one language may be entirely different in the other.

I give you two examples as illustrations. The word "mobile" in English has to do with the capacity to move, yet the same word in French means what is referred to in English, especially in a criminal law context, as "motive". Similarly, someone who in English is "sensible" means that that person displays a high

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7 Éditions Robert Laffont, S.A., Paris, 2001.

degree of awareness or intelligence. Yet in French, the same word, "*sensible*", means sensitive.

It is therefore not at all uncommon for Anglophones and Francophones to assume that because a word exists in both languages, the same word has the same meaning. That is not at all necessarily true.

In fact, the kind of English used in Montreal has now reached the level of academic examination at McGill University in a research study entitled: English as a Minority Language: Ethnolinguistic Variation and the Phonetics of Montreal English. To its credit, the Quebec provincial government is financing the study.

The McGill professor notes that inasmuch as Montreal is the only major North American city where English is a minority language, the English spoken there is linguistically distinct. Here is what he says to explain the phenomenon:

> "Dominance of French, which many people in the English community deplore as oppressive … nevertheless preserves an ethnic diversity that is not heard in other cities. There is a reduction in the extent to which the children of immigrants are exposed to a standard North American English model. And there are extraordinary concentrations of ethnic groups in some neighbourhoods of Montreal. What you get is an incubation or insulation of language features that extends beyond the immigrant generation."[8]

The research professor also notes that television has little influence on language, which he says is spread by means of face-to-face communication:

> "The more systemic parts of language tend to be formed by peer groups. You talk like the people you most often talk to."

What this means in essence is that the English typically used in Quebec is very particular, and does not always admit of immediate understanding by Anglophones who are not Quebecers.

Criminal trials, of course, are meant to be conducted in the preferred language of the accused, but in some instances, say when there are multiple accused that include both Francophones and Anglophones, a bilingual trial can be conducted with individual interpretation for the accused as may be necessary. Where there is such a trial before a judge and jury, the panel of jurors will be selected from an array that includes only bilingual candidates who have so identified themselves.

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[8] "*The talk of the town*", The Montreal Gazette, page A7, August 27, 2004.

Where there is a criminal jury trial apart from a bilingual one, everything is conducted in the preferred language of the accused, and to the extent that it is necessary to do so, there are always interpreters available to interpret testimony.

In the last criminal jury trial I conducted last year just before my appointment to the Court of Appeal, which was in French, I encountered a situation that may be unique to Quebec, but which I found to be unusual.

I had three candidate jurors, all of whom of course must be Canadian citizens, who were of Haitian origin, who sought exemption on the basis that they did not understand the French spoken in Quebec well enough to participate as jurors. Needless to say I was somewhat sceptical, since all three gained their livelihoods in jobs that necessarily would have exposed them on a daily basis to the use of French, and they had no difficulty in presenting their applications for an exemption and answering questions in French. Nevertheless, both Crown and defence counsel agreed that they did not want these candidates on the jury panel if there was any doubt about their ability to understand the evidence.

In the same trial, I had three candidate jurors of Chinese origin who also sought an exemption on the basis that they did not understand French. One of them had even brought an interpreter to make the point. I had no difficulty in granting their requested exemption, but then sought to have their names transferred to an array of English speaking jurors. They all assured me they couldn't understand English adequately either.

In speaking with colleagues on the Superior Court about this situation, many told me that they had also been faced with Canadian citizens who claimed not to adequately speak either French or English applying for exemptions from jury service. Perhaps I am naïve, but I find that remarkable.

When a criminal trial is being conducted in either French or English, any documentary evidence in a language other than that of the trial must be translated. This is seen most often in English language trials, where basic investigative materials such as coroner's reports, pathology reports, ballistics reports and even documents such as wiretap transcripts must be translated.

Unfortunately, the translations are not always of the calibre one would hope to find. After explaining to a colleague one day that I had just spent the afternoon with counsel in the midst of a jury trial in order to render a translated document comprehensible for the jurors, he mentioned to me that his favourite mis-translation was in a coroner's report in which the author had written in French, "*La victime est décédée de trois balles dans le crâne*." This was rendered in English as, "The victim died from three balls in the crane", instead of his having died from three bullets in the skull.

I can assure you that there are very special challenges for a trial judge hearing a case in his or her second language. Much of it has to do with the use of colloquial language by witnesses, or with the use of abbreviated terminology with which the judge may not be familiar in his or her second language.

A Francophone colleague with an excellent command of English called me once in a panic because she did not know what it meant when a witness mentioned that someone "had whispered sweet nothings in her ear". Another Francophone colleague queried what a witness meant by uttering the phrase made famous on the Seinfeld television program, "yadda, yadda, yadda", to which I replied, in an answer that will most likely only be appreciated by Francophones, that it was the English equivalent of "*et patati et patata*".

I certainly expanded my linguistic horizons as a trial judge, to the point that I began to be a fervent listener of open-line radio programs while driving to and from work, because the type of language used by many witnesses was in a form that resembled what I would hear on the radio. After a while no one had to tell me what it meant for a child to "*faire dodo*", or that someone had a problem with his "*ordi*", or that another person was concerned with the conduct of her "*ado*".

Cultural differences based on language also landed me, albeit innocently, in occasional difficulty.

In my first year or so as a trial judge, I was presiding a slip and fall case where the accident had occurred in the early Spring after a difficult Winter. The son of the plaintiff explained to me that from what he observed, "*La chaussée de la route était toute fuckée*." Hearing in French but thinking in English, I assumed that the witness had committed the cardinal sin of using the "F" word in describing the surface of the road in Court. I explained to the witness that he was not in a bar, and that he had to use more appropriate language in Court. It was only later that I discovered from Francophone colleagues that in French, something that is "*tout fucké*" means nothing worse than that it is messed up, but not that it is "f…ed up". Indeed, I have since observed that the word "*fucké*", which I don't believe you will find in conventional French language dictionaries, appears in newspapers such as *La Presse* or *Le Devoir*.

In another case involving a dispute between a brother and a sister over who was best suited to administer their mother's property, the sister testified that on one occasion when her brother had gone to the bank for some reason, "*il a fait un tra-la-la*". My first thought, which I quickly concluded could not have been the case, was that he had been incontinent. After a pregnant pause as my bewilderment continued to manifest itself, I reminded counsel who was examining the witness that I was not a Francophone, and could she tell me what a "*tra-la-la*" was. She too had to think for 10 seconds or so, and finally said "*Il y avait un drame, il a fait une scène*".

Another phenomenon that we observe from time to time is the phonetic spelling of words or expressions in transcripts that a stenographer reproduces as they were pronounced. For example, one might see the following common expressions in a transcript:

- "*ben coudon*", which should be pronounced, "*bien écoute-donc*", and which means, "well, listen to this";
- "*ben wèyon donc*", which should be pronounced, "*bien voyons donc*", and which means, "come on now";
- "*mettons*", which should be pronounced, "*admettons*", and which means, "let's say";
- "*moé*", and "*toé*", which should be pronounced, "*moi*" and "*toi*", and which mean "me" and "you";
- "*astheure",* which should be pronounced, "*à cette heure*", and which means, "at this time;"
- "*y*" *a fait quelque chose*, which should be pronounced "*il*" *a fait quelque chose*, and which means, "he" did something;
- "*stacé"* – which should be pronounced, "*c'est assez"*, which means, "that's enough".

These are not the kinds of expressions that can be easily located in a traditional reference source. Anglophone lawyers and judges have to rely on experience to divine their true meaning.

I also intentionally leave from mention words or expressions that constitute swearing or other forms of exasperation or disapproval in French, which we hear or read in testimony from time to time when someone describes the verbal reaction of someone. These words are very much wrapped up in the sacraments of the Roman Catholic Church, and are not used in English by Anglophone Catholics or for that matter other Anglophones for a similar purpose.

From time to time, we also see both languages interspersed in testimony. Here is a recent example from a transcript I read in a case we heard last month:

R	J'étais pas présente, mais monsieur Provost me l'a constaté au téléphone.
Q	Constaté, vous dites?
R	Oui.
Q	How would you put it in English, when you say "constaté"?

R	Oh, he confirmed.
Q	Confirmed.
R	Confirmé.
Q	Verbally?
R	Yes, au téléphone.

Judges are also faced with unilingual self-represented litigants who square off against parties or witnesses who are also unilingual, but of the other language. Similar problems also occur at the Court of Appeal in Quebec. We all know that the proper management of trials and appeals involving self-represented litigants is already a challenge for counsel and judges alike. It is even more so when language considerations are factored in.

When lawyers are involved on the other side of the case, they will generally gracefully acquiesce to a request from the judge to speak in the language of the self-represented litigant, even if that language is their second one. I have seen this happen both as a trial judge and an appellate judge. Matters become more complicated, however, when a unilingual self-represented litigant has to listen to the testimony and then cross-examine a witness who speaks only the other language. Unless the self-represented litigant has the means to hire an interpreter for the purpose, the trial judge has to more or less muddle through and convey the essence of the questions to the witness.

Let me conclude by bringing to your attention two initiatives that demonstrate the desire of the legal community in Quebec to be better accessible to those in the rest of Canada and elsewhere in the world.

The first of these has to do with the English version of the ***Civil Code of Quebec***. This requires an explanation of how the English text of Quebec legislation is drafted.

As you know, section 133 of the ***Constitution Act, 1867*** requires that Quebec statutes be enacted in both French and English, and section 7(3) of the ***Charter of the French Language***[9] acknowledges that both versions are equally authoritative. Nevertheless, it is common knowledge that unlike federal legislation in which both versions of a statute are co-drafted, the English text of Quebec statutes is a translation of the French text, and the translators are not necessarily jurists nor Anglophones. From time to time, those translations are incomprehensible, or are replete with Gallicisms.

The English text of the ***Civil Code*** is no exception. To make the point, I draw your attention to article 311, which says in French at the outset that "*Les personnes morales agissent par leurs organes ...*", and in English, "*Legal*

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[9] R.S.Q., c. C-11.

persons act through their organs …", which, shall we say, has potentially different connotations than what was intended.

This type of infelicity led one of my colleagues, Jean-Louis Baudouin, in the 1995 case of ***Doré* v. *City of Verdun***,[10] when confronted with a divergence in article 2930 ***C.C.Q.*** dealing with the use of the word "stipulation" in English as opposed to "*disposition*" in French, to say this, not without a hint of exasperation:

> "*L'appelant plaide que le législateur a utilisé le mot «stipulation», qui n'a, en langue anglaise, qu'une connotation exclusivement contractuelle et que, par conséquent, l'intention législative était de limiter la portée du texte aux seules exclusions contractuelles. Il nous cite, à cet égard, le Black's Law Dictionary, dictionnaire des termes de common law.*
>
> "*Je ne pense pas qu'on puisse tirer de (cet) argument une conclusion ferme sur l'intention du législateur de restreindre l'effet de l'article aux seules ententes contractuelles, pour plusieurs raisons.*
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> "*La première est que, comme d'aucuns l'ont fait remarquer, la version anglaise du nouveau Code civil ne rencontre pas, sur le plan de sa clarté par rapport à la version française, l'approbation de tous. Elle n'est, en effet, une simple traduction de la version originale française. Or, comme le dit si bien le proverbe italien, «traduttore, traditore» (le traducteur est un traître).*"[11]

The weakness of the original English text is further reflected in the fact that when the Legislature enacted the transitional law that continues to govern issues that span the period of time before the new ***Civil Code*** came into force on January 1, 1994, it seized on the occasion to amend the English text of no less than 26 articles,[12] which, I can assure you, barely makes a dent in rendering the English text of the ***Civil Code*** one of which all Quebecers can be proud.

Indeed, much work remains to be completed. To that end, interested Anglophone members of the Quebec Bar, as well as academicians, joined together to persuade the Quebec Bar, the Chamber of Notaries and the Government of Quebec, to authorize the formation of a committee of English-speaking jurists whose task it would be to completely overhaul the English text of the ***Civil Code***. That work, which began in 1995, is close to completion, with

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10 [1995] R.J.Q. 1321 (C.A.).

11 *Ibid*, at p. 1327. While not disputing that the English text of the new ***Civil Code*** was a translation, in the Supreme Court of Canada Gonthier, J. nevertheless concluded that while "what he (Baudouin, J.A.) stated is unfortunately true", it could not be used to reject the argument that both the English and French texts of Quebec statutes are equally authoritative. See ***Doré* v. *Verdun***, [1997] 2 S.C.R. 862, at pp. 878 and 879.

12 S.Q. 1992, c. 57, s. 716.

issues such as harmonization of terminology throughout the Code and efforts to render the language gender neutral remaining to be accomplished. It is expected that an initial submission to the Quebec Ministry of Justice will be made shortly.

I should also add that in recognition of its importance, both the provincial and federal governments are financially supporting the venture to cover expenses. Otherwise, the participants in the work are devoting their considerable time and effort on a voluntary basis.

The second initiative worthy of mention has to do with steps recently undertaken by Chief Justice Michel Robert of our Court of Appeal to render important judgments of our Court more accessible to the broader Canadian community.

The reality is that while we in Quebec often cite judgments of trial courts and appellate courts across Canada in our judgments because Quebec jurists understand English, judgments from Quebec courts that are rendered in French, even in matters of law that apply across the country, are rarely if ever considered, let alone cited, unless they have been translated. Such translations, when they occur, are carried out by or on behalf of law report publishers.

It is indeed a pity that most jurists outside Quebec have not yet acquired the reflex to routinely examine Quebec authorities on subjects of law that are applicable across the country. I hope that an event such as this one will help to inspire those of you who are present or those who may later read these remarks to consider such an additional step in the course of conducting your research.

In conjunction with the *Société québecoise d'information juridique (SOQUIJ)*, our Court now has a legal translator at its disposal who, when called upon to do so by the Chief Justice, will prepare a translation of the formal order and reasons written in French, which will then be verified by one of the Anglophone judges on the Court as well as the authors of any of the reasons before the translation will be released. Such translations will be unofficial in the sense that the only official version will be that rendered in French and signed by the participating judges. There also will be an inevitable delay in the release of the unofficial version.

In addition, the unofficial English language judgment and reasons will be available for consultation on the SOQUIJ website which can be accessed at no cost - www.jugements.qc.ca - by clicking on "English translation". There you will find a list of judgments of interest that have been translated, including the recent ones concerning same-sex marriage,[13] the prohibition against wearing a kirpan in school,[14] and the provincial reference concerning sections 22 and 23 of the

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13 ***Catholic Civil Right League* v. *Hendricks.***

14 ***Commission scolaire Marguerite-Bourgeois* v. *Singh.***

federal ***Employment Insurance Act.***[15] If the hyperlink on the website is blue, you can click right on to the English text, and if it is not blue, it means that the preparation of a translation is underway.

Obviously, to the extent that language may be a barrier, the objective is to make Quebec jurisprudence in important matters such as constitutional law, criminal law, administrative law, family law and bankruptcy and insolvency law relevant considerations for jurists everywhere in Canada.

Permit me to conclude with a few personal remarks.

First, I believe there is an unfortunate trend in our country to instinctively consider everyone outside Quebec to be Anglophone and everyone in Quebec to be Francophone. For example, a recent article in *La Presse* noted that Anglophone ministers had taken a certain view on a particular subject within the federal cabinet, while Quebec ministers had taken a different view.[16] Where would that leave the Honourable Irwin Cotler, an Anglophone minister from Quebec, or the Honourable Mauril Bélanger, a Francophone minister from Ontario? Hopefully, the continued presence on the Supreme Court of Canada of three members of the linguistic minority from New Brunswick, Ontario and Quebec will help to diminish such impressions, as will as the high degree of bilingualism regularly displayed by all of that Court's members.

Second, I graduated from McGill's Law Faculty with both a Bachelor of Civil Law degree (B.C.L., 1973) and a Bachelor of Common Law degree (LL.B, 1974). We all know what happened two years later in Quebec with the election of a government whose principal objective was to create an independent Quebec state, and whose initial foray into language legislation, to put it mildly, was not enthusiastically received by Quebec's English-speaking minority.[17]

Many of those who graduated with me from McGill elected to leave Quebec and continue their practices in Toronto, Calgary, Vancouver or other major Canadian cities. Despite having an LL.B which would have allowed me to qualify for admission to the Law Society of Upper Canada or any other provincial Bar, I chose to remain in Quebec. I have never regretted that choice.

I live and work in one of North America's most beautiful cities in a stimulating environment, where every day is a learning experience and an intellectual challenge. Despite having gone through the trauma of two divisive

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15 ***Attorney-General of Quebec* v. *Attorney General of Canada.***

16 *L'année de tous les périls*, La Presse, page Plus 3, September 5, 2004.

17 See, for example, ***Attorney General of Quebec* v. *Blaikie***, [1979] 2 S.C.R. 1016 (on the language of the legislature and the courts), ***Attorney General of Quebec* v. *Quebec Association of Protestant School Boards***, [1984] 2 S.C.R. 66 (on the incompatibility of Chapter VIII of the ***Charter of the French Language*** with section 23 of the ***Canadian Charter***), and, ***Ford* v. *Attorney General of Quebec***, [1988] 2 S.C.R. 712 (on the language of commercial signs).

referenda on Quebec sovereignty and dreading the prospect of yet another one, I wouldn't trade it for anything.

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Quebec Court of Appeal
Montreal
October 5, 2004