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Bilingual legislation: the consistency between two  
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**BILINGUAL LEGISLATION:  
THE CONSISTENCY BETWEEN TWO  
LANGUAGES OF A LAW**

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## Table of Contents

|   |           |
|---|-----------|
| Acknowledgments.....  | 3         |
| <b>1. Introduction.....</b>   | <b>4</b>  |
| 1.1. Preliminary introduction.....  | 4         |
| 1.2. Purposes and objectives.....   | 5         |
| 1.3. Methodology .....  | 6         |
| 1.4. Outline .....  | 8         |
| <b>2. Bilingual legislation and bilingual legislative drafting .....</b>                    | <b>10</b> |
| 2.1. Constitutional and legislative framework.....  | 10        |
| 2.2. Bilingual legislation and the process of bilingual legislative drafting .....          | 12        |
| <b>3. Consistency as an essential element in the quality of bilingual legislation .....</b> | <b>21</b> |
| 3.1. Quality in bilingual legislation .....   | 21        |
| 3.2. Consistency as an essential element.....   | 25        |
| 3.3. The role of legislative drafters, translators and others .....                         | 33        |
| <b>4. Conclusion.....</b>   | <b>43</b> |
| Bibliography.....   | 49        |

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## 1. Introduction

### 1.1. Preliminary introduction

The language of the law is the expression of legal identities that vary according to systems and countries where different languages are used to express legislation, case law and doctrine as main components of the various legal cultures.<sup>1</sup> When Britain established sovereignty over most jurisdictions, the English language became the official language and the prevalent language of the law. Not surprisingly, most of these jurisdictions often follow the same general pattern as that established by the United Kingdom with regards to the drafting and enactment of laws. As far as written laws are concerned, all legislation used to be drafted in the English language only, and there has been little or no effort to translate the texts into the native language of the jurisdictions. Apart from being the working tool of the legal system in these jurisdictions, the English language is also a language which is globally used whereby it resulted in the necessity of the continued use of the English language. On the other hand, there is also a strong desire in most of these jurisdictions to build a bilingual legal system and this has been one of the traditional strengths. Inevitably, there exists a tension and a balance has to be struck. The logic underlying this is that although there are two texts and two languages, the law is one.<sup>2</sup> Translation is a cumbersome process, and problems of ambiguity or terminology are often obscured by translators, sometimes even by those of the highest

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<sup>1</sup> G. Peruginelli, 'Accessing Legal Information Across Boundaries: A New Challenge' (2009) 37 Intl J Legal Info 276, 277.

<sup>2</sup> T. Yen, 'Bi-lingual Drafting in Hong Kong' (August 2010) *The Loophole* 65 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Aug10.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Aug10.pdf) > accessed 23 May 2012.

quality and longest experience.<sup>3</sup> If a law is to be produced in more than one language, it is very important that both texts mean the same things.

## **1.2. Purposes and objectives**

The hypothesis of this dissertation is that consistency is an essential element towards achieving quality in bilingual legislation. Consistency was, and still remains to this day, a major part of a legislative drafter's reason and justification for existence, even if it involves in legislative drafting in one language only. The value of consistency for drafting a piece of legislation increases clarity and reduces the labour of the reader. Any form of communication in legislative drafting is facilitated by shared or at least commonly understood premises. The reader should know where the legislative drafter is coming from. For the legislative drafter, it produces certainty by enabling to rely on predictable outcomes from well established and precedented approaches. In addition, the terminology, syntax, organisation of ideas and style in bilingual texts laws have to be dealt with appropriately in order to ensure the equivalency and consistency of the English language text and the native language version of the text. Therefore, words and language are central to the work of the legislative drafter and the translator. Inconsistencies can, without a doubt, give rise to misunderstandings and mistakes. It can also lead to the possibility that a different interpretation is conveyed than what was initially intended to mean. This dissertation studies the issues on bilingual legislative drafting, uses qualitative methods to study the effectiveness of bilingual legislation and discuss the findings and the implications formed out of this dissertation. It is the main

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<sup>3</sup> R. K. Gordon and V. Thuronyi, 'Tax Legislative Process' in *Tax Law Design and Drafting: v.1*, edited by V. Thuronyi (International Monetary Fund 1996).

objective of this dissertation to prove the hypothesis. Gordon and Thuronyi stated that provisions, when drafted, should reflect what the policy makers really wanted to accomplish.<sup>4</sup> This statement can also be applied in circumstances relating to bilingual provisions where, when translated, should be consistent with the original text in order to reflect similar results. More often than not, the translators are faced with the problem of attempting to coordinate the two language versions and often rely heavily on literal translation of the original text which may not necessarily reflect the intended interpretation of the text. As a result, the final product of the legislation may not reflect the outcome of the intended objectives of the policy makers.

### **1.3. Methodology**

Much is said about the process of bilingual legislative drafting, the difficulties and challenges associated with it and the link between a legislative drafter and the translator or jurilinguist in preparing a translation that should accurately reflect the original text. Yet, it is worth noting the importance of consistency in producing quality bilingual legislation even in circumstances where the status of one language is more superior from the other language version. Strictly speaking, according to Revell,<sup>5</sup> the accuracy of translation is higher if both versions of bilingual laws have equal authority, as opposed to the possibility of making one version to prevail over the other. This dissertation will attempt to examine that consistency plays a major part with respect to bilingual legislation. Moreover, this dissertation attempts to provide an analysis to show that

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<sup>4</sup> Ibid 5.

<sup>5</sup> D. L. Revell, 'Bilingual Legislation: The Ontario Experience' (1998) 19(1) Stat LR 32, 39.

consistency in bilingual legislation is important regardless if the provision requires that one version of the text may prevail over the other. An analysis will be made in the level of consistency where it is often guided by the provisions laid down in the Constitution or other legislative framework relating to the authenticity and legal status of bilingual texts. For the purposes of proving the hypothesis, this dissertation will identify and examine the criterion that make for quality of legislation put forward by Xanthaki<sup>6</sup> as a universally applicable concept. Moreover, an analysis of the importance of legislative drafters and translators or jurilinguists working together as a team to achieve quality in bilingual legislation will also be made. As a start, a background of bilingual legislation and the drafting process of legislation in two languages will be introduced. In order to prove the hypothesis, several jurisdictions that deal with bilingual legislation will also be referred to as examples in order to provide a better understanding of bilingual legislation. These jurisdictions have been chosen for the purposes of this dissertation simply because these jurisdictions require that their laws are produced and enacted in two languages.

A large number of jurisdictions enact their legislation in more than one language. Ireland enacts legislation in Irish and English, Wales in Welsh and English, Hong Kong in Chinese and English, Canada in French and English, Tanzania in Kiswahili and

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<sup>6</sup> H. Xanthaki, 'Foreword: Special Issue on Legislative Drafting' (2011) 37 *Commw L Bull* 391; see also H. Xanthaki, 'Quality of Legislation: An Achievable Universal Concept or an Utopia Pursuit?' (Lecture Notes on Legislative Drafting 2011-2012) <[http://studyonline.sas.ac.uk/pluginfile.php/8915/mod\\_resource/content/0/LD\\_quality\\_of\\_legislation.pdf](http://studyonline.sas.ac.uk/pluginfile.php/8915/mod_resource/content/0/LD_quality_of_legislation.pdf)> accessed 4 August 2012.

English, among others.<sup>7</sup> Additionally, the Constitution of most bilingual jurisdictions make it clear that it provides for the texts of any written law in both the English language and the native language of that particular jurisdiction to be accepted as the authentic texts. Both these texts of legislation often enjoy equal legal status which also means that the legal effect of the two different languages versions should be the same. Jurisdictions such as Hong Kong and Canada are making efforts over the years to build and lay out a solid foundation of a bilingual legislative system and to find the best possible solution to respond to the needs to have bilingual legislation. Accordingly, this dissertation is intended to find a consensus on what is needed in drafting any legislation in bilingual versions so far as guidance on all forms of consistency is concerned in order to strike the right balance. In order to implement this, much can be learned from researching the experience of other jurisdictions where legislation is produced in more than one language, and analyse the best practices of those jurisdictions to examine if there is any application that might prove beneficial and can be applied in jurisdictions where legislation is produced in two languages.

#### **1.4. Outline**

This dissertation consists of four chapters. The first Chapter consists of the preliminary introduction which provides background information on bilingual legislation and the brief history behind the existence of drafting in two languages. It also includes a description of the purposes and objectives of this dissertation and a brief indication of

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<sup>7</sup> P. Salembier, 'Rethinking the Interpretation of Bilingual Legislation: the Demise of the Shared Meaning Rule' (2003-2004) 35 *Ottawa L Rev* 75, 77.

the importance of consistency in translating bilingual legislation. This Chapter also focuses on the hypothesis and methodology of this dissertation.

The second Chapter begins the dissertation with an explanation of the concept of bilingual legislation and the process of bilingual legislative drafting. It will include making references to jurisdictions which deals with bilingual legislation. This Chapter will also provide a background on the constitutional and legislative framework of some of these jurisdictions with respect to bilingual legislation.

The next Chapter contains an analysis of the importance of consistency as an essential element in achieving quality in bilingual legislation. It deals with the objective to produce quality bilingual legislation by identifying what constitutes quality in the bilingual drafting or translation of bilingual legislation. This Chapter will examine the arguments in support of the hypothesis in great detail. More importantly, it will deal with the issue on how important it is that consistency is maintained even if one text prevails over the other. This Chapter also includes identifying the role of the legislative drafter, the importance of the translator and others who are associated with producing the final outcome of bilingual legislation.

The last Chapter concludes the dissertation by summarising the issues raised in the previous Chapters. It will include identifying the possible solutions that have been undertaken by jurisdictions associated with bilingual legislation in order to achieve consistency between the two language versions of the same law. Most importantly, it will conclude the findings of the hypothesis that consistency is an essential element towards achieving quality in bilingual legislation.

## **2. Bilingual legislation and bilingual legislative drafting**

### **2.1. Constitutional and legislative framework**

Legislation is primarily a medium through which law is expressed.<sup>8</sup> It is the main body of formal rules that provides for the conduct of society.<sup>9</sup> Bilingual legislation can, therefore, be defined as a medium through which law consisting of formal rules that provides for the conduct of society is expressed in two languages. What governs the requirements to produce bilingual legislation in most jurisdictions is entrenched in their Constitution or other legislative framework. In most cases, the Constitution will provide that all legislation must be written and enacted both in the English language and the native language, and that both language versions are equally authentic texts. Moreover, both texts are given equal legal status in the sense that no one single text has superior status than the other text. In other words, one language version does not automatically take precedence over the other language version in case of inconsistency or discrepancy that may arise between the two language versions. Canada and Hong Kong are examples of such circumstances. Some Canadian jurisdictions were created as officially bilingual while others have evolved into being bilingual.<sup>10</sup> Legislation at the federal level must be developed, drafted and enacted in both English and French, but it must also reflect, in both of its language versions, the two legal systems that prevail in

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<sup>8</sup> W. Voermans, 'Concern about the Quality of EU Legislation: What Kind of Problem, By What Kind of Standards?' (2009) 2 *Erasmus LR* 59, 64.

<sup>9</sup> R. Rose, 'The Language of the Law: How Do We Need to Use Language in Drafting Legislation?' (August 2011) *The Loophole* 4 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Aug11.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Aug11.pdf) > accessed 23 May 2012.

<sup>10</sup> D. L. Revell, 'Bilingual Legislation: The Ontario Experience' (n 5) 32.

Canada, namely the French civil law tradition in the Province of Quebec and the English common law system in the rest of the country.<sup>11</sup> Both English and French are entrenched as the official languages, each being equal to one another, neither to be given special status or privilege over the other.<sup>12</sup> There is thus an explicit constitutional and legislative requirement for bilingualism in federal statutes.<sup>13</sup> Similarly, the constitutional framework in Hong Kong provides for the preparation and implementation of bilingual legislation in both the English and Chinese languages.<sup>14</sup> In drafting new legislation in Chinese and in translating existing legislation into Chinese, the legislative counsel and translators in Hong Kong are guided by the principles laid down in the laws as contained in the Interpretation and General Clauses Ordinance which provides for both the English language and the Chinese language texts of an Ordinance to be equally authentic.<sup>15</sup> The Interpretation and General Clauses Ordinance also provides that the provisions of an Ordinance are presumed to have the same meaning in each authentic text.<sup>16</sup>

On the other hand, there is also an addition in some jurisdictions to the provision in the Constitution which states that in the event that there are inconsistencies or discrepancies

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<sup>11</sup> L. A. Levert QC, 'Bilingual and Bijural Legislative Drafting: To Be Or Not To Be?' (2004) 25 Stat LR 151.

<sup>12</sup> J. L. Black-Branch, 'Constitutional Adjudication in Canada: Purposive or Political?' (2000) 21 Stat LR 163, 167.

<sup>13</sup> L. A. Levert QC, 'Bilingual and Bijural Legislative Drafting: To Be Or Not To Be?' (n 11) 152.

<sup>14</sup> See M. Thomas, 'The Development of a Bilingual Legal System in Hong Kong' (1988) 18 Hong Kong LJ 15.

<sup>15</sup> T. Yen, 'Bi-lingual Drafting in Hong Kong' (n 2) 67.

<sup>16</sup> Ibid.

between the two authentic texts, one of the texts will prevail over the other text. Jurisdictions like Brunei Darussalam and Malaysia have such a provision entrenched in their Constitution. Article 82 of the Constitution of Brunei Darussalam provides that an official version in the English language must be provided of any written law in addition to the official Malay version and both versions are accepted as authentic texts.<sup>17</sup> The Article also provides another clause which states that in the case of any doubt, conflict or discrepancy between the Malay and the English texts, the Malay text will prevail.<sup>18</sup> Similar provisions are also entrenched in Malaysia under the Federal Constitution of Malaysia and the National Language Act 1967 which states the Malay language as the official language and requiring all legislation to be in both the Malay and English languages. In addition, the Malay language version will be the authoritative text unless the law prescribes the English language version to be the authoritative text.

## **2.2. Bilingual legislation and the process of bilingual legislative drafting**

Bilingual legislation is not new to jurisdictions which have their own native languages. The relationship between laws, language, and society is close and complex.<sup>19</sup> The legislature or the government should respect and use in exemplary fashion the language of its people.<sup>20</sup> The addressee is the nation; and since ignorance of the law is no defence,

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<sup>17</sup> Constitutional Matters I of the Constitution of Brunei Darussalam, Revised Edn. 2011, art 82(2) (Constitution of Brunei Darussalam) < [http://www.agc.gov.bn/agc1/images/LOB/cons\\_doc/constitution\\_i.pdf](http://www.agc.gov.bn/agc1/images/LOB/cons_doc/constitution_i.pdf) > accessed 3 July 2012.

<sup>18</sup> Constitution of Brunei Darussalam, art 82(3).

<sup>19</sup> S. Lortie and R. C. Bergeron QC, 'Legislative Drafting and Language in Canada' (2007) 28 Stat LR 83.

<sup>20</sup> Sir W. Dale, 'Review Article: Canadian Draftsmanship, and the French Connection' (1984) 5 Stat LR 62, 65.

it is necessary that the text may be read, understood and, where necessary, remembered.<sup>21</sup> The state therefore has a fundamental obligation to ensure that its legislation is carefully composed, clearly expressed, and of consistently high quality in its language as a whole.<sup>22</sup>

Preparing bilingual legislation is a challenging and difficult task for any jurisdiction that requires their legislation to be produced in two languages. Clearly, in order to achieve effective bilingual legislation, a great deal of care and precision is needed in the use of language, and the basic attributes of clarity, comprehensibility, certainty, consistency and conciseness need to be applied towards this end. To a large extent, the preparation of bilingual legislation does not necessarily bring about a bilingual legislative drafting process. Revell argued that “drafters, draft and drafting” is the terminology of the traditional process of producing legislation in unilingual jurisdictions and was never intended to include translation.<sup>23</sup> Accordingly, it is more appropriate in bilingual jurisdictions to use the terminology “authoring”. Revell identified at least three possible models for authoring laws in more than one language, namely the translation model, the co-drafting model and the double drafting model.<sup>24</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> S. Lortie and R. C. Bergeron QC (n 19) 83.

<sup>23</sup> See D. L. Revell, ‘Multilingualism and the Authoring of Laws’ (June 2004) *The Loophole* 36 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Jun04.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Jun04.pdf) > accessed 26 May 2012.

<sup>24</sup> Ibid 38. See also D. L. Revell, ‘Authoring Bilingual Laws: The Importance of Process’ (2004) 29 *Brook J Intl L* 1085.

More often than not, the translation model is widely used for the authoring of legislation. It consists of two stages where the first stage involves the drafting of one language version and followed then by the second stage which is the translation of the original language version to another language version. In other words, the process of legislative drafting is the same as in any unilingual jurisdiction where the drafting of legislation is done by highly skilled legislative drafters. The basic tools of legislative drafting still apply in the drafting of bilingual legislation, in that the legislation must be clear, precise and unambiguous. Eventually, the draft legislation is submitted to the translator after the legislative drafter and the policy makers are satisfied with the draft legislation. It takes about three times the amount of work to draft a law in two languages, for example, original in English and translation in the language of the country.<sup>25</sup> To give a clearer picture, legislation drafted in both Brunei Darussalam and Malaysia, for instance, is often prepared in the English language.<sup>26</sup> In addition, negotiations and discussions held with the policy makers and other affected parties are based on considering the English language version only. The translation of the English language version to Malay will be made after the draft legislation has been finalised. The translation model also works the other way in that the drafting of legislation can start with the native language first and followed by a translation of it into English. Hong Kong and Ethiopia are examples of such instances where their legislation is first drafted in the Chinese and Amharic languages respectively. Whilst this approach is in some ways the simplest one, and only requires sufficient numbers of competent translators, it

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<sup>25</sup> R.K. Gordon and V. Thuronyi (n 3) 10.

<sup>26</sup> With the exception of Syariah legislation where the drafts are initially prepared, discussed and reviewed in the Malay language.

can have unintended consequences detrimental to the aim of true linguistic equality.<sup>27</sup> The detriment to the language which is being forced into the mould of the other is particularly marked if there are very large differences between the syntaxes of the two languages.<sup>28</sup>

The process of drafting in the local language involves more than literal translation and in fact consists in writing a new draft.<sup>29</sup> The co-drafting model involves preparing the legislation in two language versions simultaneously by two legislative drafters, each sufficiently fluent in his or her own language. With this model, it is not acceptable for one language version to be a mere translation of the other. The object of co-drafted legislation, as with translated legislation, is to write laws which, when read as a whole, say the same thing in both versions.<sup>30</sup> Hence, the aim of the co-drafting model is to ensure that both language versions of legislation are conveying the same intended meaning in clear and accurate language. Canada is the leading jurisdiction in establishing the co-drafting model. Hence, bilingual legislation in Canada is drafted in both English and French languages. In fact, this model is considered as providing the best approach that gives more respect to the equal legal status of two official languages. In the case of Canada, an anglophone lawyer is assigned to the drafting of the English

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<sup>27</sup> K. Bush, 'New Approaches to UK Legislative Drafting: The Welsh Perspective' (2004) 25 Stat LR 144.

<sup>28</sup> Ibid 147.

<sup>29</sup> R. K. Gordon and V. Thuronyi (n 3) 12.

<sup>30</sup> D. L. Revell, 'Bilingual Legislation: The Ontario Experience' (n 5) 36.

version and a francophone lawyer is put in charge of the French version.<sup>31</sup> In Wales, the effect on the form of legislation which stems from the requirement to produce legislation in both the Welsh and English languages leads to the adoption of the co-drafting model which draws heavily on Canadian experience. The fact that the bills must be produced in this way has the collateral effect of bringing out more consistency and clarity in each language version.<sup>32</sup> However, co-drafted legislation, when read clause by clause, may say the same things in different ways, for example, one version may have more clauses than the other, or they may say things in different places.<sup>33</sup> That is to say, when both versions are read from top to bottom, they have the same effect which may be called vertical equality.<sup>34</sup> On the other hand, the translation model provides a horizontal equality in that the two language versions are expected to mirror images of each other. In other words, both versions are expected to say the same thing in the same way at the same place in the text.<sup>35</sup>

As for the double drafting model, it requires a single legislative drafter to be responsible for drafting two language versions. One important disadvantage of such a drafting system is the fact that it is almost impossible for the drafter to be completely objective

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<sup>31</sup> L. A. Levert, 'Bilingual Drafting in Canada' (July 1995) *The Loophole* 39 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Jul95.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Jul95.pdf) > accessed 23 May 2012.

<sup>32</sup> P. E. Johnson QC, 'Legislative Drafting Practices and Other Factors Affecting the Clarity of Canada's Laws' (1991) 12 Stat LR 1.

<sup>33</sup> D. L. Revell, 'Bilingual Legislation: The Ontario Experience' (n 5) 36.

<sup>34</sup> D. L. Revell, 'Multilingualism and the Authoring of Laws' (n 23) 40.

<sup>35</sup> Ibid.

in his or her preparation of the second language version.<sup>36</sup> In addition, any error which the legislative drafter may have made in the first language version will result in making the same error in the second language version. Consequently, it does not necessarily result in the reduction of inconsistencies between the two language versions. To put it simply, the double drafting model is not highly recommended to be used for the bilingual drafting of legislation.<sup>37</sup>

Whatever process is used, it is essential that each version be compared and adjusted to the other so that they convey the same legal message, otherwise the legal effect of the text will be uncertain.<sup>38</sup> In drafting new bilingual legislation, or in translating legislation from one language to another language, the legislative drafter and the translator or jurilinguist must always make sure that the provisions of a bilingual legislation are understood and construed as having similar meanings throughout both language version texts. Because of this requirement of strict legal precision, bilingual drafting and law translation are much more difficult than drafting and translation for most other purposes.<sup>39</sup>

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<sup>36</sup> L. A. Levert (n 31) 41.

<sup>37</sup> The Canadian federal government does not recommend the double drafting model or single drafter approach and the Office of Legislative Counsel in Ontario rejected this approach partly because of the time constraints in the drafting process – there simply is not time in most cases to have just one person draft and polish both versions of a Bill, see D. L. Revell, ‘Bilingual Legislation: The Ontario Experience’ (n 5) and also L. A. Levert (n 31).

<sup>38</sup> M. J. B. Wood, ‘Drafting Bilingual Legislation in Canada: Examples of Beneficial Cross-Pollination between the Two Language Versions’ (1996) 17 Stat LR 66.

<sup>39</sup> T. Yen, ‘Bi-lingual Drafting in Hong Kong’ (n 2) 67.

Drafting law in more than one language necessarily comes with challenges.<sup>40</sup> A poorly drafted version in one language might arguably fail to convey the same rule as the other language version.<sup>41</sup> Equal legal status of both language versions of the legislation does not always render equal treatment in the actual preparation of the legislation. A challenge that the drafter often has to face is balancing urgency with quality and precision, working within a limited time frame.<sup>42</sup> Drafters are obsessed with the problem of shortage of time.<sup>43</sup> A legislative counsel is always given inadequate time for the writing of laws and there often is a deadline which the policy maker has indicated.<sup>44</sup> While a lack of time has a major impact on the legislative drafter, it may have an even greater impact on the translation staff.<sup>45</sup> In most jurisdictions, the translators have the task of translating the original language version at a later stage, that is, after the draft legislation has been finalised or after it has been enacted. In addition, their work is hampered by the fact that they have little time to complete the translation task. Hence, by this time it would be very difficult to improve the quality of legislation.

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<sup>40</sup> M-C. Guay, 'The Yin and the Yang of Drafting in Two Languages: From Finesse to Faux Pas' (January 2012) *The Loophole* 7 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Jan12.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Jan12.pdf) > accessed 1 June 2012.

<sup>41</sup> Ibid 9.

<sup>42</sup> Law Drafting Division, Department of Justice, 'How Legislation is made in Hong Kong: A Drafter's View of the Process' (June 2012) < <http://www.legislation.gov.hk/eng/pdf/2012/drafting2e.PDF> > accessed 29 July 2012.

<sup>43</sup> I. M. L. Turnbull, 'Problems of Legislative Drafting' (1986) 7 Stat LR 67.

<sup>44</sup> T. Perera, 'Legislative Drafting in Sri Lanka' (May 2011) *The Loophole* 16 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_May11.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_May11.pdf) > accessed 23 May 2012.

<sup>45</sup> D. L. Revell, 'Bilingual Legislation: The Ontario Experience' (n 5) 38.

Another major challenge in preparing bilingual legislation is the fact that it is often difficult to identify an equivalent translation of the English legal expressions or terms. Many English legal expressions or terms are often archaic and are not always possible to identify an existing expression in the native language that can accurately and fully convey the same ideas or concepts behind the English legal expressions or terms. In referring to the bilingual system in Hong Kong, Berry indicated that because of the semantic, grammatical and syntactic differences between the English language and the Chinese language, achieving exactly the same legal effect of the English statutory provisions by Chinese translation is far from easy.<sup>46</sup> In addition, much of the major challenges in bilingual legislative drafting and in the translation of laws are due to the complexity of the subject matter dealt with, specifically subject matter that requires legislation which deals with the need to be clear and precise and is often difficult to enforce. The best examples of complex subject matters are tax legislation, maritime laws or laws that generally deal with international obligations where most of the provisions contain technical terms. In fast developing areas there may be limited access to appropriate terminology.<sup>47</sup> These type of legislation are often difficult to read and understand in the first place, and to then have to translate them are even more difficult and challenging. The lack of an equivalent Chinese expression to exactly convey the English expression has sometimes compelled a bilingual drafter and law translator to

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<sup>46</sup> D. Berry, 'The Effect of Poorly Written Legislation in a Bilingual Legal System' (March 2007) *The Loophole* 88 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Mar07.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Mar07.pdf) > accessed 23 May 2012.

<sup>47</sup> D. L. Revell, 'Bilingual Legislation: The Ontario Experience' (n 5) 38.

coin a new Chinese expression.<sup>48</sup> In Brunei Darussalam, the translators are often compelled to retain the English expression and somewhat incorporate it in the Malay language version by adopting the exact terms to render them as being translated.<sup>49</sup> This defeats the purpose of the translation to make the translated language version more accessible and understandable to the reader who is not familiar with the English language version. Moreover, legal words which are often ambiguous such as “shall”, “reasonable”, “negligent” or “reckless” give an open-textured quality to the English laws and, at times, it is almost impossible to render them in translation. Accordingly, the lack of equivalent expressions or translations to convey the technical terms or any other English legal expressions or terms makes it almost impossible to have a high level of consistency in bilingual legislation.

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<sup>48</sup> T. Yen, ‘Bi-lingual Drafting in Hong Kong’ (n 2) 67.

<sup>49</sup> The translation is often made by transforming the term into a Malay word with changes made to the spelling of the term only. The pronunciation will remain the same as how it will be pronounced in English, for instance, the term “Convention” when translated into the Malay language will become “Konvensyen”.

### **3. Consistency as an essential element in the quality of bilingual legislation**

#### **3.1. Quality in bilingual legislation**

In general, the quality of legislation frequently deals with the efficacy, effectiveness and efficiency of the legislation. Effectiveness is the extent to which the observable attitudes and behaviours of the target population correspond to, and are a consequence of, the normative model; that is, to the attitudes and behaviours prescribed by the legislator.<sup>50</sup> Efficacy is the extent to which legislative action achieves its goal, and efficiency is the relation between the “costs” and the “benefits” of legislative action.<sup>51</sup> From a constitutional point of view (and the symbolic function which is closely related to it) the only right measure for the quality of legislation is its ability to express law.<sup>52</sup>

In a search for a qualitative definition of quality in legislation, one can resort to functionality.<sup>53</sup> Xanthaki has identified that the criterion for quality in legislation is effectiveness. That is to say, the quality of legislation is the ability of the law to achieve the regulatory aims proposed by the policy makers. A good law is one that is capable of leading to efficacy of regulation.<sup>54</sup> Hence, the only aim that a legislative drafter can

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<sup>50</sup> L. Mader, ‘Evaluating the Effects: A Contribution to the Quality of Legislation’ (2001) 22 Stat LR 119.

<sup>51</sup> Ibid 126.

<sup>52</sup> W. Voermans, ‘Concern about the Quality of EU Legislation’ (n 8) 67.

<sup>53</sup> H. Xanthaki, ‘Foreword: Special Issue on Legislative Drafting’ (n 6) 400; H. Xanthaki, ‘Quality of Legislation: An Achievable Universal Concept or an Utopia Pursuit?’ (n 6) 81.

<sup>54</sup> H. Xanthaki, ‘Foreword: Special Issue on Legislative Drafting’ (n 6) 402.

aspire to is in achieving effectiveness of the desired objectives of the policy makers. What makes a law a good law, therefore, is the ability of the drafter to use the criterion of effectiveness consciously and correctly.<sup>55</sup> She added that there are no precise elements of quality at the level of qualitative functionality.<sup>56</sup> In order to attribute to it specific elements, one needs to place it within the context of the legal system, culture, legislative environment and policy.<sup>57</sup> In other words, a legislative drafter must strive to do whatever is appropriate in order to achieve effectiveness, taking into account the national intricacies of the jurisdiction.

In the pursuit of effectiveness, the legislative drafter has to balance between applying the tools of clarity, precision and unambiguity and ensuring that the bilingual legislation is accessible and understandable. The provisions entrenched in the Constitution or other written laws regarding the legal status of bilingual texts are a contributing factor to assess the effectiveness in bilingual legislation. Simply concluded by Xanthaki, quality is effectiveness.<sup>58</sup> In applying this, it can be said therefore that quality of bilingual legislation is effectiveness of the bilingual legislation. Taking into account that there are no set rules or parameters in achieving effectiveness, and in considering the requirements of a bilingual legal system, the determining factor with respect to bilingual legislation is whether the two language versions will equally achieve the same intended regulatory aims proposed by the policy makers. More importantly, bilingual laws should

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<sup>55</sup> H. Xanthaki, 'Quality of Legislation: An Achievable Universal Concept or an Utopia Pursuit?' (n 6) 82.

<sup>56</sup> H. Xanthaki, 'Foreword: Special Issue on Legislative Drafting' (n 6) 401.

<sup>57</sup> H. Xanthaki, 'Quality of Legislation: An Achievable Universal Concept or an Utopia Pursuit?' (n 6) 84.

<sup>58</sup> H. Xanthaki, 'Quality of Legislation: An Achievable Universal Concept or an Utopia Pursuit?' (n 6) 85.

be drafted or translated so that it can be understood by a person of average intelligence and should be written in languages understandable by the reader. In order to do so, consistency in bilingual legislation is necessary. Quality legislation simply cannot exist without consistency.<sup>59</sup> Hence, consistency is not merely a desirable aim but a necessity in legislation, albeit unilingual, bilingual or even multilingual. In other words, the two language versions of the same law should be similarly clear and accurately expressed in order to achieve the same legal effect. As a result, the consistency in the drafting or translation of the bilingual laws plays an important role in determining the quality of bilingual legislation which is the reason for identifying consistency as the essential element. It is worth noting that only differences in meaning constitute discrepancies.<sup>60</sup> For example, there is not necessarily a discrepancy if one version simply contains more words than the other.<sup>61</sup> The important rule to note is that, in bilingual legislation, the same words and expressions are used in both language versions of the law to mean the same things so that only one interpretation is possible. In the view of Michael Beauprē,<sup>62</sup> equal authenticity means that by itself a single language version of a bilingual statute is incomplete; its true meaning can be determined only by reading and correctly interpreting both language versions.<sup>63</sup>

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<sup>59</sup> L. A. Levert QC, 'Work Methods and Processes in a Drafting Environment' (February 2011) *The Loophole* 29 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Feb11.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Feb11.pdf) > accessed 4 June 2012.

<sup>60</sup> M-C. Guay (n 40) 10.

<sup>61</sup> *Ibid.*

<sup>62</sup> R. M. Beauprē, *Interpreting Bilingual Legislation* (2nd edn, Toronto: Carswell 1986).

<sup>63</sup> R. Sullivan, *Statutory Interpretation* (2nd edn, Irwin Law Inc. 2007), *citing* R. M. Beauprē (n 62).

The essential need in legislation is law which is certain and which delivers the policy intention that underlies it.<sup>64</sup> An ambiguity arises when a text is capable of more than one interpretation.<sup>65</sup> It is essential to correct a text that contains an ambiguity even if the text is unilingual.<sup>66</sup> If the meaning of a provision is not beyond doubt or argument then the law is not clear.<sup>67</sup> If the two versions do not appear to say the same thing, the discrepancy must be resolved in a way that does not automatically give priority to one or the other version.<sup>68</sup> Having two language versions of a text highlights cases where that occurs and naturally suggests to the drafter ways of changing either or both versions to clarify the intended meaning.<sup>69</sup> The suggested changes will improve the quality of the text as a whole.<sup>70</sup> Accordingly, for the sake of legal certainty and consistency, the texts must be rewritten and continuously being reviewed so that only one interpretation is possible.

Moreover, the ultimate achievement in identifying the importance of consistency between two language versions will leave little or no room for the courts to be persuaded to interpret words used in one language version a meaning different from the other language version. It is entirely possible that different users may use different

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<sup>64</sup> D. Greenberg, *Craies on Legislation* (9th edn, London Sweet and Maxwell 2008).

<sup>65</sup> M. J. B. Wood (n 38) 69.

<sup>66</sup> *Ibid.*

<sup>67</sup> D. Greenberg (n 64).

<sup>68</sup> R. Sullivan (n 63).

<sup>69</sup> M. J. B. Wood (n 38) 69.

<sup>70</sup> *Ibid.*

language versions of the legal text, and their conduct will have to be judged according to the version they have used, although the ‘correct’ interpretation of the law will depend on interpreting both versions.<sup>71</sup> Necessarily then, this will involve the courts in an exploration of whether there is consistency between the two language versions and how this is to be resolved.<sup>72</sup> Discrepancies between the two versions can be resolved only by reading them both together and formulating a meaning that works for both.<sup>73</sup>

### **3.2. Consistency as an essential element**

Logically, the level of consistency between two language versions should depend on the requirements of the provisions entrenched in the Constitution or other legislative framework. That is to say, the level of consistency is higher if both language versions are required to have equal legal status whereas the consistency between the two language versions is low, and might be considered unnecessary, if one version prevails over the other. However, it is important to bear in mind the consequences resulting from an inconsistency in bilingual legislation. Also, in applying the criterion of effectiveness, inconsistency in bilingual legislation leads to ineffectiveness of the legislation and, therefore, does not result in achieving quality bilingual legislation.

Krongold<sup>74</sup> identified that legislation should be accessible, understandable and inviting to its reader. Taking this identification into context with consideration to the consistency

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<sup>71</sup> C. F. Huws, ‘Is Meaning Plain and Ordinary? Are You Sure About That?’ (2012) 0(0) Stat LR 1, 16.

<sup>72</sup> Ibid 17.

<sup>73</sup> R. Sullivan (n 63).

<sup>74</sup> S. Krongold, ‘Writing Laws: Making Them Easier to Understand’ (1992) 24 Ottawa L Rev 495.

between two language versions, bilingual legislation should also be accessible, understandable and inviting to its reader no matter which language version the reader opted to use. A combination of these ingredients, together with the essential element of consistency, can lead to effective bilingual legislation. In fact, effective bilingual legislation is considered as equivalent to achieving quality in bilingual legislation.

Access to legislation is a key element of the rule of law.<sup>75</sup> It is the duty of the state to make the law accessible to its citizens.<sup>76</sup> The legislatures may exercise their powers in any way they see fit acting within the limits entrenched in the Constitution and other legislative framework governing the preparation and production of bilingual legislation. Yet, the public has the right to know what the law is. It is of enormous importance that laws are made accessible to the public as soon as possible.<sup>77</sup> In bilingual jurisdictions, the reader must be able to have access to whichever language version of the legislation he or she decides to familiarise himself or herself with in respect of the concepts and rules of his or her own jurisdiction. While one language version of a bilingual legislation has an inferior status, one would expect that a high level of accuracy and consistency is still required in that version in order to improve access to the legislation if the reader alleges that he or she relied on the version. Having one version that is of poor quality would defeat that purpose, because it would force the members of the

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<sup>75</sup> As cited by W. Robinson, 'Accessibility of European Union Legislation' (February 2011) *The Loophole* 79 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Feb11.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Feb11.pdf) > accessed 23 May 2012.

<sup>76</sup> J. Beatson, 'Common Law, Statute Law and Constitutional Law' (2006) 27 Stat LR 1.

<sup>77</sup> D. Greenberg (n 64).

target linguistic group to read the other version in order to ascertain how they need to act to comply with the law.<sup>78</sup>

Logically, one cannot assert simultaneously that both versions are equally authoritative, and that one of the versions shall prevail in the case of any difference, conflict or inconsistency between the two versions, or even in the case of a difference in the time of enactment of each version.<sup>79</sup> On one hand, the provision that one language version prevails over the other language version in cases of discrepancy will certainly easily resolve the issue of interpretation if it ever gets to the courts. However, one can wonder if the objective of creating a second language version is achieved in such a case.<sup>80</sup> If both language versions of a bilingual legislation have equal legal status, the reader may be able to rely on either language version. Revell<sup>81</sup> has identified two significant effects with regards to the equal legality of the status of both language versions. Firstly, if one language version is vague or ambiguous, then the reader should be able to turn to the other language version to resolve the issue before looking elsewhere. Secondly, if the two language versions conflict with each other and the issue is one between the government and an individual, then the language version that favours the individual will prevail.<sup>82</sup> Hence, if one language version is to prevail over the other, the elimination of one official version as soon as one discovers that it differs from or conflicts with the

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<sup>78</sup> M-C. Guay (n 40) 9.

<sup>79</sup> R. M. Beaupr  (n 62).

<sup>80</sup> M-C Guay (n 40) 9.

<sup>81</sup> D. L. Revell, 'Bilingual Legislation: The Ontario Experience' (n 5) 39.

<sup>82</sup> Ibid.

designated version at a purely semantic level deprives the official version of its authoritative value before the content or the object of the provision have been consulted at any length.<sup>83</sup> It would also not be true bilingualism as the version in the second language would exist only as a reference document rather than as an official one.<sup>84</sup> For this reason, it is important that consistency in the two language versions exist in order to achieve effectiveness in bilingual legislation so that the reader is able to rely on either one of the language versions.

Two languages are never identical in structure and do not necessarily have exact equivalents for all terminology and some concepts can be expressed more simply in one language than another.<sup>85</sup> No two languages map precisely on to each other with the result that the translation of a text reveals that what is perfectly clear and unambiguous in one language, may be more nebulous in another.<sup>86</sup> It would violate the principle of equality under the law if the same provision could be understood to say something different.<sup>87</sup> More importantly, the reader must be able to understand the laws in either language version without having to seek legal assistance which is often costly. For this reason, it is very crucial that both language versions of the same law are consistent with each other, even though one language version will prevail over the other.

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<sup>83</sup> R. M. Beauprē (n 62).

<sup>84</sup> D. L. Revell, 'Bilingual Legislation: The Ontario Experience' (n 5) 39.

<sup>85</sup> M. J. B. Wood (n 38) 69.

<sup>86</sup> C. F. Huws (n 71) 16.

<sup>87</sup> R. Sullivan (n 63).

The use of clear language is not a luxury or a fad, but a fundamental necessity of legislative drafting.<sup>88</sup> As in the case of any unilingual legislation, the legislative drafting principles of clarity, precision and unambiguity is applied in order to produce effective bilingual legislation which can lead to a legislation that can be easily understood by the reader. In doing so, the use of plain language serves as one of the tools to achieve clarity, precision and unambiguity. Conventional wisdom suggests that badly drafted legislation hampers understanding and interpretation and thereby compliance.<sup>89</sup> In short, plain language can be used to make bilingual legislation easier to read and understand. In the preparation of bilingual legislation, the use of plain language also allows for the translation of one language version to another version made easier. Accordingly, the level of consistency is higher due to the fact that the expressions or terms can be accurately translated for the purposes of accurately conveying the same meaning. In addition, it will lead to a better quality in bilingual legislation.

In Hong Kong, it is found that if the English text of a piece of new legislation is drafted in plain language, preparation of the Chinese text is often much easier.<sup>90</sup> As a result of this experience, Hong Kong's legislative counsel became aware of the need to prepare the English texts of the laws in modern, plain language.<sup>91</sup> It is sometimes easier to draft complicated sentences than make the effort of synthesis necessary to achieve clear

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<sup>88</sup> D. Greenberg (n 64).

<sup>89</sup> W. Voermans, 'Styles of Legislation and Their Effects' (2011) 32 Stat LR 38.

<sup>90</sup> T. Yen, 'Bi-lingual Drafting in Hong Kong' (n 2) 68.

<sup>91</sup> Ibid.

wording.<sup>92</sup> However, this effort is essential in order to achieve a text which can be easily understood and translated.<sup>93</sup> More often than not, archaic and convoluted long sentences in English laws have no satisfactory equivalent in other languages and, therefore, prove to be complicated and misleading. It is also one of the reasons why laws are frequently considered dull and difficult to read. For this reason, the legislation is proven to be ineffective and, therefore, does not promote quality in legislation.

A terminology database which is an electronic lexicon of legal terms, instantly accessible and easily updatable, offers a useful way to encourage precision and consistency.<sup>94</sup> The Estonian Legal Language Centre, for instance, has developed into a centre of expertise in legal translation and terminology work in Estonia where a concept-based legal terminology database serving as a tool for legislative drafters, translators and the general public is created.<sup>95</sup> The use of terminology databases for the storage of relevant data to store words and phrases that can be used as templates in the preparation of bilingual legislation can aid in ensuring that the language versions are consistent. One of its greatest advantages is that it enables the legislative drafters to scan their drafts for consistency of words and phrases.<sup>96</sup> In addition, it prevents the use of synonyms or the use of the same word in more than one way in the legislation.

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<sup>92</sup> Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions (March 2000), point 4.6 (Joint Practical Guide 2000).

<sup>93</sup> Ibid.

<sup>94</sup> S. Lortie and R. C. Bergeron QC (n 19) 113.

<sup>95</sup> See M-E. Ilja, 'Estonian Legal Language Centre: Legal Translation and Terminology Work' (2005) 33 Intl J Legal Info 274.

<sup>96</sup> P. E. Johnson QC (n 32) 2.

Accordingly, this may give rise to a drastic improvement in ensuring that the expressions used are not only consistent within the draft itself, but also with other existing laws. As a result, it will make the bilingual legislation more understandable as the expressions assigned are understood to mean the same thing throughout the whole laws for both language versions. The fact that it is consistent to both versions proves that it has captured the intention of the policy makers which leads to effectiveness of the bilingual legislation. On the other hand, if inconsistency exists and the bilingual legislation does not express the true meaning as intended by the policy makers, it will certainly result in the ineffectiveness of the bilingual legislation.

The structure and layout of the bilingual legislation also plays an important role in enhancing the readability and understandability of the legislation. Stylistic improvements such as the use of marginal notes or tables are not essential to make, but they too enhance the quality of both versions of the text.<sup>97</sup> Some jurisdictions merge both the language versions of the laws into fully aligned side-by-side columns to allow for easy readability and comparison of the versions. This approach provides for checks and balances in ensuring that both language versions are consistent with each other and allow the reader to understand the laws better. It is also easier to read in that the reader does not have to look somewhere else for the other language version.

The drafting of bilingual legislation, as of any unilingual legislation, must also take into account the persons to whom they are intended to apply, with a view to enabling them to identify their rights and obligations unambiguously, and of the persons who are

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<sup>97</sup> M. J. B. Wood (n 38) 69.

responsible for putting those legislation into effect. If one version enjoys a lower status, no one will be able to consult and rely on it with confidence.<sup>98</sup> In addition, they are also entitled to have their rights and obligations clearly communicated to them without any misinterpretation due to inconsistencies between the language versions. To put it simply, equal legal status of bilingual legislation will allow the reader or the user of either language version to have confidence in each version of the law.

The exclusive use of English in legislation and in court proceedings has resulted in a “linguistic apartheid” and has alienated Hong Kong’s Chinese speaking local population from the legal system.<sup>99</sup> Hong Kong people who were not proficient in English were also disadvantaged in their dealings and communications with the Government, since almost all governmental documents and official correspondence were done in the English language and this system resulted in the public’s alienation from the law, and thus led to inequality and injustice.<sup>100</sup> This is also true in the case of the court proceedings in Brunei Darussalam where the English language is still very much the language of the courts.<sup>101</sup> In other words, the fact that one language version of the bilingual legislation has a superior status from the other language version has led to

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<sup>98</sup> T. Yen, ‘One Law, Two Languages’ (December 1997) *The Loophole* 4 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Dec97.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Dec97.pdf) > accessed 23 May 2012.

<sup>99</sup> T. Yen, ‘Bi-lingual Drafting in Hong Kong’ (n 2) 66. See also A. S. Y. Cheung, ‘Towards a Biligual Legal System – The Development of Chinese Legal Language’ (1997) 19 *Loy LA Intl & Comp LJ* 315.

<sup>100</sup> *Ibid.*

<sup>101</sup> As a matter of fact, a provision is inserted under the Supreme Court Act (Chapter 5), the Subordinate Courts Act (Chapter 6) and the Intermediate Courts Act (Chapter 162) respectively to state that all proceedings in the courts shall be in the English language; provided that the courts may, in the interests of justice, allow the giving of evidence by a witness in any other language. On the contrary, the language used for court proceedings in the Syariah courts is the Malay language.

unfairness of justice to the public who are subjected to the laws and may be affected by them. For this reason, it is important to stress out the necessity of being consistent in the language versions of the laws to prevent such situation, even if one language version is the prevailing version. To do less than to provide an accurate interpretation of the bilingual texts may cause difficulties for the public and may cause legal problems by providing text that is not readily understood or interpreted differently by the native speakers of the language. In addition, the quality of bilingual legislation is flawed. Hence, consistency is a necessary element in order to achieve quality bilingual legislation.

### **3.3. The role of legislative drafters, translators and others**

Above all, in order to successfully achieve quality in bilingual legislation by identifying that consistency is a necessary element towards achieving that quality, a legislative drafter and the translator or jurilinguist must understand each other's role. The skills are really very different and a misapprehension of roles can affect team spirit.<sup>102</sup>

The main responsibility for ensuring high quality legislation lies in the hands of the drafters themselves.<sup>103</sup> Legislative drafters are not by definition language experts.<sup>104</sup> Legislative drafters work with existing models and structures, thereby bringing a measure of consistency and predictability to the statute book.<sup>105</sup> The discipline of

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<sup>102</sup> D. L. Revell, 'Bilingual Legislation: The Ontario Experience' (n 5) 39.

<sup>103</sup> L. A. Levert QC, 'Work Methods and Processes in a Drafting Environment' (n 59) 36.

<sup>104</sup> L. A. Levert QC, 'Bilingual and Bijural Legislative Drafting: To Be Or Not To Be?' (n 11) 156.

<sup>105</sup> R. Sullivan (n 63).

checking that each language version of bilingual legislation conveys the same legal message as the other naturally suggests to the drafter ways of expressing the intended message more clearly and more precisely.<sup>106</sup> In bilingual drafting, both drafters must be ready to make necessary compromises in order to reconcile the need for linguistic quality with the need for identity of substance and close correspondence of structure.<sup>107</sup> The principal purpose of the check is to ensure, so far as possible, consistency between all the different official language versions. This will, in fact, lead to a better quality in bilingual legislation. The necessity of drafting in more than one language acts as a test of whether the drafter has clearly conceptualized the intended message.<sup>108</sup>

When drafters are members of a team, they must be mindful of the importance of clearly defining the duties of each drafter in order to avoid any kind of misunderstanding and to ensure the best possible cooperation between drafters.<sup>109</sup> Co-drafting is generally regarded as the best way of bringing consistency and clarity to each language version.<sup>110</sup> The role played by legislative drafters in the co-drafting of bilingual legislation is very important in order for co-drafting to work effectively. It goes without saying that the legislative drafters need to be bilingual in that they should at least be sufficiently fluent in the other language to be able to participate in meaningful discussions held in both

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<sup>106</sup> M. J. B. Wood (n 38) 76.

<sup>107</sup> P. E. Johnson QC (n 32) 12.

<sup>108</sup> M. J. B. Wood (n 38), *citing* N. Frye, *The Educated Imagination* (Toronto, Canadian Broadcasting Corporation 1963).

<sup>109</sup> L. A. Levert QC, 'Work Methods and Processes in a Drafting Environment' (n 59) 30.

<sup>110</sup> S. Lortie and R. C. Bergeron QC (n 19) 103.

official languages.<sup>111</sup> Even more importantly, legislative drafters must be able to fully comprehend the meaning of their colleagues' draft and be able to comment constructively on them.<sup>112</sup> In other words, each legislative drafter is expected to read thoroughly, and to comment on, every draft produced by the other legislative drafter. This interaction is considered to be one of the important features of bilingual drafting: each language version benefits greatly from the input of the two drafters.<sup>113</sup> Peter E. Johnson QC<sup>114</sup> observes that having drafters constantly reviewing each language version lead them to achieve more consistency and clarity in each version. In other words, as a result, the level of consistency between the two language versions is definitely higher and, in which case, raises the quality in bilingual legislation.

Legislative drafters need to be supported in their work both linguistically and legally.<sup>115</sup> Language experts such as legislative editors and linguists can provide assistance on language aspects, allowing the legislative drafters the opportunity of focusing on what they know best, namely the law and the legal aspects involved in legislative drafting.<sup>116</sup> Moreover, in order to aid the legislative drafters and translators, a set of bilingual drafting conventions have also been developed in most jurisdictions, including the formation of bilingual legal dictionaries. At times, inadvertent discrepancies between

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<sup>111</sup> L. A. Levert QC, 'Bilingual and Bijural Legislative Drafting: To Be Or Not To Be?' (n 11) 155.

<sup>112</sup> Ibid.

<sup>113</sup> L. A. Levert (n 31) 40.

<sup>114</sup> P. E. Johnson QC (n 32) 2.

<sup>115</sup> L. A. Levert QC, 'Work Methods and Processes in a Drafting Environment' (n 59) 31.

<sup>116</sup> Ibid.

the two language versions occur despite the best efforts of the legislative drafter. The legislative drafter and the translator must work together to reduce ambiguities and to resolve issues of vagueness.<sup>117</sup> In addition, the translator may find that some legal terms are difficult to translate and may require the assistance of the legislative drafter to come up with an appropriate translation. In this case, the legislative drafter and the translator must coordinate with each other to resolve the difficulty, which again serves to improve the final product. Although the aim of the legislative drafter is to draft legislation clearly, precisely and unambiguously, the nature of the subject matter often places significant limits on his or her ability to do so. Nevertheless, the legislative drafter when drafting for bilingual legislation must ensure that the texts will be able to be translated by the translators and that the different language versions will produce the same legal effects.

The translation process can be an aid to bilingual legislative drafting. There is a general consensus on the view that translation is a complex form of action which is much more than the substitution of lexical and grammatical elements between two languages.<sup>118</sup> A quote made by Poirier<sup>119</sup> that “if legal concepts are the skeleton of the law, the words are the muscles” sums up the role of legislative drafters, translators and jurilinguists in recognising the fact that their only tool is words and words are the only things they have to work with, whether they are drafting a legislation or translating the texts. Hence, the

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<sup>117</sup> D. L. Revell, ‘Bilingual Legislation: The Ontario Experience’ (n 5) 39.

<sup>118</sup> G. Peruginelli (n 1) 284.

<sup>119</sup> L. Poirier, ‘Whose Law Is It? A Jurilinguistic View From the Trenches’ (January 2010) *The Loophole* 50 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Jan10.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Jan10.pdf) > accessed 2 June 2012.

burden of interpretation, as well as of translation, is laid on the translator's shoulders.<sup>120</sup> On the other hand, it is important to note that any drafting process involving a translation in order to produce a bilingual version of the laws is bound to produce a significant number of incongruities between the original version and the translation. Jurilinguists in Canada are in charge of enhancing the linguistic quality of the English and French language versions. In addition, the jurilinguists are also in charge of ensuring consistency between the two language versions, even if the primary responsibility in that regard lies with the drafters and sponsoring departments.<sup>121</sup> In order to achieve quality in bilingual legislation, the drafters benefit from the support of a group of highly skilled language specialists (jurilinguists and legislative editors) who have a major role to play throughout the drafting process, reviewing the drafts to ensure textual consistency and logic and accuracy of terminology.<sup>122</sup> To ascertain if one version is saying the same thing as the other, the jurilinguists must think through the text.<sup>123</sup> It is an in-depth analysis, an examination of one version in relation to the other.<sup>124</sup> Therefore, it is evident that the translator or jurilinguist must at least have a sufficient knowledge of the subject matter in order to formulate an equivalent meaning through what they judge to be the most appropriate translation.

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<sup>120</sup> L. Dodova, 'A Translator Looks at English Law' (1989) 10 Stat LR 69.

<sup>121</sup> L. A. Levert QC, 'Bilingual and Bijural Legislative Drafting: To Be Or Not To Be?' (n 11) 157.

<sup>122</sup> L. A. Levert (n 31) 41.

<sup>123</sup> L. Poirier (n 119) 56.

<sup>124</sup> Ibid.

Finding out terminological equivalence between terms is a serious problem when comparable concepts do not exist in the legal system expressed by the languages to be mapped and can lead to a considerable danger of ambiguity and miscomprehension.<sup>125</sup> Quality bilingual legal dictionaries could play an important role in the translating process by providing translation suggestions and information on the linguistic context of terms in the target language, such as specific noun-verb combinations, or typical collocations.<sup>126</sup> In other words, bilingual legal dictionaries or glossaries of good quality assist by establishing the plausible translation of certain legal terms. They offer a useful starting point in the legislative drafting of bilingual legislation. In the preparation of bilingual legislation, a legislative drafter or a translator may rely on bilingual legal dictionaries or glossaries to ease the process. More importantly, it will also form consistency and uniformity in that the same term in the language is used to express specific ideas. In most cases, consistency leads to certainty and clarity.<sup>127</sup> As an ongoing project in Brunei Darussalam, the translators have undertaken to translate the English language versions of the laws more accurately to ensure the consistency between the English and Malay texts. The translators, at the time of receiving instructions to translate the English language version, will normally refer to any relevant Malay – English language legal dictionaries or bilingual materials that exist on the subject matter to be translated. These materials are considered as their sources for terminology and background information that will help them to understand the legislation that is to be

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<sup>125</sup> G. Peruginelli (n 1) 285.

<sup>126</sup> See G-R. D. Groot and C. J. P. V. Laer, 'The Dubious Quality of Legal Dictionaries' (2006) 34 Intl J Legal Info 65.

<sup>127</sup> P. E. Johnson QC (n 32) 2.

translated and find the appropriate equivalent translation of the English expressions. In short, the translators have a change in attitude regarding the translations of legislation in that literal translations are no longer acceptable. Consequently, this will not only lead to consistency between the two language versions of the texts but will also result in a better quality of the bilingual legislation with equivalent legal effects.

What is apparent from the sort of problems one reads about is that the translator, who admittedly exercises a most respectable and demanding discipline, has not been supervised effectively by the legislative drafter of the original version.<sup>128</sup> The translator's function is to prepare a text that accurately reflects the original text in law while at the same time being linguistically correct in the target language and this usually involves regular consultations between the drafter and the translator.<sup>129</sup> If the legislative drafter were to take the time to read the other version with a critical eye, he or she would exercise more effective control over the bill as a whole, thereby not only ensuring greater consistency between the versions, but also ensuring that the legislator's intent is not scuttled in the translation.<sup>130</sup> Therefore, it is very important that the translator work actively together with the legislative drafter who is responsible for the preparation of the legislation rather than working separately in isolation from each other. The collaboration between the translator and the legislative drafter is fundamental towards achieving consistency and has a positive effect on the quality of bilingual legislation. In addition, it will ensure that the translator understands what he or she is

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<sup>128</sup> R. M. Beauprē (n 62).

<sup>129</sup> D. L. Revell, 'Bilingual Legislation: The Ontario Experience' (n 5) 35.

<sup>130</sup> R. M. Beauprē (n 62).

supposed to be translating and the legislative drafter will be able to review the translation so that both texts convey the same interpretation. As a result, the level of inconsistency is reduced greatly and, invariably, producing a better quality in bilingual legislation.

Bilingual drafting is not, and cannot possibly be, the sole responsibility of the drafters.<sup>131</sup> There is no doubt that policy developers and legislative drafters must work closely together in the process of developing a given piece of legislation.<sup>132</sup> Too often, the ultimate responsibility for the quality of bilingual legislation lies on the shoulders of the drafters, jurilinguists and legislative revisers.<sup>133</sup> In jurisdictions where one text will prevail over the other, the policy makers often hold discussions and approve one language version only and rely on the legislative drafter to deal with any other process necessary that arises after the approval. The instructing Ministries who are the policy makers should not strictly depend on the legislative drafters to ensure that the legislation being proposed and drafted will achieve its objectives and is of good quality. This does not seem to be the case in jurisdictions where both texts have equal legal status. The sponsoring departments have a key role to play in this regard.<sup>134</sup> It is of primary importance that sponsoring departments are comfortable with both versions of the bills that are drafted to meet their needs.<sup>135</sup> As a general rule, both versions of the drafts are

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<sup>131</sup> L. A. Levert (n 31) 41.

<sup>132</sup> L. A. Levert QC, 'Work Methods and Processes in a Drafting Environment' (n 59) 31.

<sup>133</sup> L. A. Levert QC, 'Bilingual and Bijural Legislative Drafting: To Be Or Not To Be?' (n 11) 164.

<sup>134</sup> L. A. Levert (n 31) 41.

<sup>135</sup> L. A. Levert QC, 'Bilingual and Bijural Legislative Drafting: To Be Or Not To Be?' (n 11) 156.

sent out to the sponsoring departments at the same time, even if, as is usually the case, the first drafter's version is ready well in advance of the second drafter's version.<sup>136</sup> Signing off on one of the versions only is not sufficient since both versions have equal status in court and legal arguments can be based on either one of them.<sup>137</sup> The purpose of this practice is to incite sponsoring departments to read and compare the two versions, and also to avoid giving them the impression that the second drafter's version is only a translation of the first drafter's version.<sup>138</sup> In analysing this practice, it can be considered as a good starting point in producing quality bilingual legislation as the consistency in the bilingual drafts is taken into account from the outset.

On a different note, the involvement of legislative editors such as those in Canada have proven to be a contributing factor in the success of ensuring that both the English and French language versions of the legislation are consistent with each other. The use of professional legislative editors is a key measure to ensuring consistent quality.<sup>139</sup> Legislative editors are responsible for checking the content of the language versions and the quality of the language in consultation with the translators. Although a legislative editor is not required to edit legislative texts in both official languages, a good knowledge of the other official language is required to properly perform the duties, which occasionally includes comparing the text of the two language versions for

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<sup>136</sup> L. A. Levert (n 31) 40.

<sup>137</sup> L. A. Levert QC, 'Bilingual and Bijural Legislative Drafting: To Be Or Not To Be?' (n 11) 156.

<sup>138</sup> L. A. Levert (n 31) 40.

<sup>139</sup> S. Lortie and R. C. Bergeron QC (n 19) 112.

discrepancies.<sup>140</sup> In addition to checking for correct grammar and spelling, legislative editors check each draft for clarity, consistency of language and the logical expression of ideas.<sup>141</sup> In short, legislative editors are bilingual and can assist the legislative drafters in the drafting of effective bilingual legislation.

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<sup>140</sup> R. DuPerron, 'The Legislative Paralegal: The Role of the Legislative Editor in Canada' (December 1997) *The Loophole* 20 < [http://www.opc.gov.au/cales/docs/Loophole/Loophole\\_Dec97.pdf](http://www.opc.gov.au/cales/docs/Loophole/Loophole_Dec97.pdf) > accessed 2 June 2012.

<sup>141</sup> *Ibid* 21. See also S. Lortie and R. C. Bergeron QC (n 19) 104.

#### 4. Conclusion

Bilingual legislative drafting is a means of communication which places particular emphasis on the importance of language. Each language has its own accepted rules and conventions.<sup>142</sup> The aim of all drafters and law makers is ultimately the production of legislative texts that are capable of producing the desired regulatory results, as these are dictated by the policy makers.<sup>143</sup> In determining the quality of bilingual legislation, the criterion of effectiveness is applied. Hence, bilingual legislation must concern itself with creating versions of legislation with equal intended legal effects. In other words, in bilingual legislation, both language versions must convey the same legal meaning. In the production of bilingual legislation, the drafting of bilingual legislation often tends to begin with the preparation of the English language version. The version in the native language of the jurisdiction is then prepared based on the translation of the English language version. Moreover, the Constitution or any legislative framework of each jurisdiction with respect to bilingual legislation determines the rules governing the languages of the legislation of jurisdictions. In most cases, both the English language and the native language are recognised as the official languages and both language versions are equally authentic. Some jurisdictions acquire equal legal status of the bilingual legislation and others have an additional requirement to provide for one language version to prevail over the other. Even so, the legal effect of the non-prevailing version must be the same. On the whole, the main purpose of enacting

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<sup>142</sup> D. L. Revell, 'Multilingualism and the Authoring of Laws' (n 23) 47.

<sup>143</sup> H. Xanthaki, 'Quality of Legislation: An Achievable Universal Concept or an Utopia Pursuit?' (n 6) 84.

bilingual legislation is to allow the reader to have access to the laws in their own language. Because language has both political and cultural implications, the failure to use appropriate standards may lead to political embarrassment and it may cause difficulties in understanding the law.<sup>144</sup> Legislation directly affecting the citizen must be comprehensible to the ordinary citizen if the rule of law is to be maintained.<sup>145</sup> The reader need and expect access to laws in a language that he or she would be more familiar with in order to be able to fully understand his or her rights and obligations.

Essentially there are different models that can be adopted to produce bilingual legislation: translation, co-drafting or the double drafting model. The translation model is widely used in bilingual jurisdictions. Even in the United States where it deals with English-only laws, there exist a few states which are influenced by the many ethnicities and cultures which lead to the production of bilingual legislation<sup>146</sup>. In most cases of the translation process, a legislative drafter will concentrate on one language version of the draft legislation. The final product of the legislation will have to be translated by the translator or jurilinguist. In addition, the translator and jurilinguist are not often lawyers and have had little or no training in legislative drafting. For this reason, they often rely heavily on literal translation of the original text which may not necessarily reflect the intended interpretation of the text. More often than not, the translator or jurilinguist are

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<sup>144</sup> D. L. Revell, 'Multilingualism and the Authoring of Laws' (n 23) 47.

<sup>145</sup> T. Millett, 'A Comparison of British and French Legislative Drafting (With Particular Reference to their Respective Nationality Laws)' (1986) Stat LR 130, 157.

<sup>146</sup> The Constitution of the state of New Mexico provides for laws to be published in both the English and Spanish languages. The most important state for the subject of legal bilingualism in the United States is Louisiana with English and French language laws, see G. A. Bermann, 'Bilingualism and Translation in the U.S. Legal System: A Study of the Louisiana Experience' (2006) 54 Am J Comp L 89.

faced with the problem of attempting to coordinate the two language versions to ensure that both versions reflect the outcome of the intended objectives of the policy makers and have the same legal effect. However, with the use of terminology databases and bilingual legal dictionaries and glossaries has proven to assist not only the translator and jurilinguist in producing a better and consistent translation of the texts, but also assist the legislative drafter in ensuring that the expressions and terms used are carefully considered and consistently applied throughout the drafting process.

An alternative solution would be to involve the translator and jurilinguist at an earlier stage and to give them a more central role in the process of bilingual legislative drafting. Due to the fact that there is much difficulty in improving quality bilingual legislation at later stages in the process, it is highly desirable that the draft legislation is of the highest quality to start with. It goes without saying that having more time to carefully draft or translate bilingual legislation will produce effective bilingual laws. Ample time in the drafting of new bilingual legislation or in the translation of the legislation will greatly ease the tasks of both the legislative drafter and the translator or jurilinguist. Nonetheless, the legislative drafter and the translator or jurilinguist should work together for the purpose of producing quality bilingual legislation by acknowledging the need for greater consistency with the English and native language versions.

More jurisdictions are now heading towards adopting the co-drafting model based on Canadian experience. Hong Kong and Wales are examples of such jurisdictions. When two language versions of the same law have equal legal status, co-drafting is the model that has the most to offer in terms of equal treatment for each language version, since it allows for each language version to be drafted with the same level of care and

attention.<sup>147</sup> Legislation drafted in different languages by two legislative drafters at the same time will ensure that both language versions are consistent with each other. Although it is usually faster and may seem easier to conduct the drafting process in only one language and to prepare a translation once the unilingual draft is settled, the quality of both versions is significantly improved by co-drafting.<sup>148</sup> On the other hand, it is important to bear in mind that not all jurisdictions can afford to provide two legislative drafters to deal with the same subject matter, particularly where each legislative drafter has to be adequately fluent in their respective languages. In small jurisdictions where there is always the issue of shortages in the number of legislative drafters, the co-drafting system may be difficult to adopt. It may be quite possible if the co-drafting of bilingual legislation involves a team consisting of a legislative drafter and a translator or jurilinguist who has a legal background or training. Despite that, bilingual drafting of legislation has proven to be greatly effective in producing better quality bilingual legislation.

Where drafts are originally drafted in the English language, the fact that the native language version prevails over the English language version in cases of inconsistencies or discrepancies which may arise between two authentic texts justifies the need to have accurate and consistent translations of the English language laws. On the other hand, the quality of bilingual legislation might vary if the English language version is to prevail over the native language version in that the need to be consistent will not be such an issue. However, this defeats the principles of equality. In addition, this will also lead to

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<sup>147</sup> L. A. Levert QC, 'Bilingual and Bijural Legislative Drafting: To Be Or Not To Be?' (n 11) 157.

<sup>148</sup> P. E. Johnson QC (n 32) 12.

unfairness to access of justice for the reader who relies heavily on the native language version. The fact that one version will prevail over the other is not an acceptable reason to give the other version less consideration. Hence, the issue that the level of accuracy and consistency should depend on which language version prevails over the other version is unacceptable and should be set aside. What this dissertation has established is that the need for consistency between bilingual versions is essential even though the legal status of one of the language versions is superior from the other language version. Accordingly, the final outcome will be to achieve effectiveness which is equivalent to achieving quality in bilingual legislation.

Drafting legislation in two languages requires more skill, more careful consideration and more time in order to produce consistency. In addition, teamwork plays an important role in providing an inherent mechanism for assuring quality in bilingual legislation. Ultimately, the main objective is to produce two quality language versions of the same law, in which one should not be considered as a mere translation of the other. In order to produce quality bilingual legislation, the same level of care and attention is necessary. The two language versions must be assessed simultaneously in order to ensure its consistency with each other so that the final products of both versions are equally effective. If these requirements are taken into account, the result of the process by which bilingual legislation is developed can be of key importance in determining its effectiveness and acceptability. In turn, the consistency between the two languages of the same law would provide an accurate interpretation and will achieve the results of better quality of bilingual legislation. In other words, the main emphasis of any bilingual legislation to be effective must be on consistency of all the language

versions. Therefore, a full recognition of the equality of both language versions is necessary throughout the preparation and process of bilingual legislative drafting in order to provide bilingual legislation of the highest possible quality. The effectiveness of bilingual legislation is the ultimate pursuit, and the ultimate criterion of quality in bilingual legislation. Hence, the hypothesis that consistency is an essential element towards achieving quality in bilingual legislation has just been proven.

## Bibliography

1. Beatson J., 'Common Law, Statute Law and Constitutional Law' (2006) 27 Stat LR 1
2. Beauprē R. M., *Interpreting Bilingual Legislation* (2nd edn, Toronto: Carswell 1986)
3. Bermann G. A., 'Bilingualism and Translation in the U.S. Legal System: A Study of the Louisiana Experience' (2006) 54 Am J Comp L 89
4. Berry D., 'The Effect of Poorly Written Legislation in a Bilingual Legal System' (March 2007) *The Loophole* 88 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Mar07.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Mar07.pdf) > accessed 23 May 2012
5. Black-Branch J. L., 'Constitutional Adjudication in Canada: Purposive or Political?' (2000) 21 Stat LR 163
6. Bush K., 'New Approaches to UK Legislative Drafting: The Welsh Perspective' (2004) 25 Stat LR 144
7. Cheung A. S. Y., 'Towards a Biligual Legal System – The Development of Chinese Legal Language' (1997) 19 Loy LA Intl & Comp LJ 315
8. Dodova L., 'A Translator Looks at English Law' (1989) 10 Stat LR 69
9. DuPerron R., 'The Legislative Paralegal: The Role of the Legislative Editor in Canada' (December 1997) *The Loophole* 20 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Dec97.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Dec97.pdf) > accessed 2 June 2012

10. Gordon R. K. and Thuronyi V., 'Tax Legislative Process' in *Tax Law Design and Drafting: v.1*, edited by Thuronyi V. (International Monetary Fund 1996)
11. Greenberg D., *Craies on Legislation* (9th edn, London Sweet and Maxwell 2008)
12. Groot G-R. D. and Laer C. J. P. V., 'The Dubious Quality of Legal Dictionaries' (2006) 34 Intl J Legal Info 65
13. Guay M-C., 'The Yin and the Yang of Drafting in Two Languages: From Finesse to Faux Pas' (January 2012) *The Loophole* 7 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Jan12.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Jan12.pdf) > accessed 1 June 2012
14. Huws C. F., 'Is Meaning Plain and Ordinary? Are You Sure About That?'(2012) 0(0) Stat LR 1
15. Ilja M-E., 'Estonian Legal Language Centre: Legal Translation and Terminology Work' (2005) 33 Intl J Legal Info 274
16. Johnson P. E. QC, 'Legislative Drafting Practices and Other Factors Affecting the Clarity of Canada's Laws' (1991) 12 Stat LR 1
17. Krongold S., 'Writing Laws: Making Them Easier to Understand' (1992) 24 Ottawa L Rev 495
18. Levert L. A., 'Bilingual Drafting in Canada' (July 1995) *The Loophole* 39 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Jul95.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Jul95.pdf) > accessed 23 May 2012
19. Levert L. A. QC, 'Bilingual and Bijural Legislative Drafting: To Be Or Not To Be?' (2004) 25 Stat LR 151

20. Levert L. A. QC, 'Work Methods and Processes in a Drafting Environment' (February 2011) *The Loophole* 29 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Feb11.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Feb11.pdf) > accessed 4 June 2012
21. Lortie S. and Bergeron R. C. QC, 'Legislative Drafting and Language in Canada' (2007) 28 Stat LR 83
22. Mader L., 'Evaluating the Effects: A Contribution to the Quality of Legislation' (2001) 22 Stat LR 119
23. Millett T., 'A Comparison of British and French Legislative Drafting (With Particular Reference to their Respective Nationality Laws)' (1986) Stat LR 130
24. Perera T., 'Legislative Drafting in Sri Lanka' (May 2011) *The Loophole* 16 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_May11.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_May11.pdf) > accessed 23 May 2012
25. Peruginelli G., 'Accessing Legal Information across Boundaries: A New Challenge' (2009) 37 Intl J Legal Info 276
26. Poirier L., 'Whose Law Is It? A Jurilinguistic View from the Trenches' (January 2010) *The Loophole* 50 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Jan10.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Jan10.pdf) > accessed 2 June 2012
27. Revell D. L., 'Bilingual Legislation: The Ontario Experience' (1998) 19(1) Stat LR 32
28. Revell D. L., 'Multilingualism and the Authoring of Laws' (June 2004) *The Loophole* 36 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Jun04.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Jun04.pdf) > accessed 26 May 2012

29. Revell D. L., 'Authoring Bilingual Laws: The Importance of Process' (2004) 29 Brook J Intl L 1085
30. Robinson W., 'Accessibility of European Union Legislation' (February 2011) *The Loophole* 79 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Feb11.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Feb11.pdf) > accessed 23 May 2012
31. Rose R., 'The Language of the Law: How Do We Need to Use Language in Drafting Legislation?' (August 2011) *The Loophole* 4 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Aug11.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Aug11.pdf) > accessed 23 May 2012
32. Salembier P., 'Rethinking the Interpretation of Bilingual Legislation: the Demise of the Shared Meaning Rule' (2003-2004) 35 Ottawa L Rev 75
33. Sir Dale W., 'Review Article: Canadian Draftsmanship, and the French Connection' (1984) 5 Stat LR 62
34. Sullivan R., *Statutory Interpretation* (2nd edn, Irwin Law Inc. 2007)
35. Thomas M., 'The Development of a Bilingual Legal System in Hong Kong' (1988) 18 Hong Kong LJ 15
36. Turnbull I. M. L., 'Problems of Legislative Drafting' (1986) 7 Stat LR 67
37. Voermans W., 'Concern about the Quality of EU Legislation: What Kind of Problem, By What Kind of Standards?' (2009) 2 Erasmus LR 59
38. Voermans W., 'Styles of Legislation and their Effects' (2011) 32 Stat LR 38
39. Wood M. J. B., 'Drafting Bilingual Legislation in Canada: Examples of Beneficial Cross-Pollination between the Two Language Versions' (1996) 17 Stat LR 66

40. Xanthaki H., 'Foreword: Special Issue on Legislative Drafting' (2011) 37 *Commw L Bull* 391
41. Xanthaki H., 'Quality of Legislation: An Achievable Universal Concept or an Utopia Pursuit?' (Lecture Notes on Legislative Drafting 2011-2012) < [http://studyonline.sas.ac.uk/pluginfile.php/8915/mod\\_resource/content/0/LD\\_quality\\_of\\_legislation.pdf](http://studyonline.sas.ac.uk/pluginfile.php/8915/mod_resource/content/0/LD_quality_of_legislation.pdf) > accessed 4 August 2012
42. Yen T., 'One Law, Two Languages' (December 1997) *The Loophole* 4 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Dec97.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Dec97.pdf) > accessed 23 May 2012
43. Yen T., 'Bi-lingual Drafting in Hong Kong' (August 2010) *The Loophole* 65 < [http://www.opc.gov.au/calcs/docs/Loophole/Loophole\\_Aug10.pdf](http://www.opc.gov.au/calcs/docs/Loophole/Loophole_Aug10.pdf) > accessed 23 May 2012
44. Law Drafting Division, Department of Justice, 'How Legislation is Made in Hong Kong: A Drafter's View of the Process' (June 2012) < <http://www.legislation.gov.hk/eng/pdf/2012/drafting2e.PDF> > accessed 29 July 2012
45. Constitutional Matters I of the Constitution of Brunei Darussalam, Revised Edn. 2011 < [http://www.agc.gov.bn/agc1/images/LOB/cons\\_doc/constitution\\_i.pdf](http://www.agc.gov.bn/agc1/images/LOB/cons_doc/constitution_i.pdf) > accessed 3 July 2012
46. Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions (March 2000) (Joint Practical Guide 2000)