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Legal meaning in the interpretation of multilingual
legislations: Comparative analysis of Rwanda, Canada
and Ireland

LLM 2010-2011
LLM in Advanced Legislative Studies (ALS)

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Acknowledgements

My distinguished gratitude is expressed to my supervisor, Dr Constantin for professional advices and guidance and comments he provided me during the course of writing this thesis. Also, to Professor Helen Xantaki and Dr Stefanou for their brilliant lectures, critical and analytical advices, comments and remarks they provided me during the writing of my essays and the entire period of study for the LLM in Advanced Legislative Studies at IALS, I express my special gratitude. Thank you for the devotion you dedicate to the Legislative domain.

My thanks also are addressed to other visiting professors for their availability and wonderful lectures. Again, my thanks go to all my classmates for sharing their rich experiences.

My last but important gratitude is extended to the African Justice Foundation and the Government of Rwanda for funding my studies.

Dedication

This thesis is dedicated to my parents, all my brothers and sisters, my wife and Children.

1.0 Introduction

By its nature, language is an imprecise instrument of communication. Interpretation is a necessary part of communication, not only in the case of difficult or doubtful linguistic construction, but in every case where one wishes to understand that is written or spoken by another.¹

When the interpretation is relating to the statutory construction, where doubts do arise about the scope or meaning of a statutory provision, they may often be easily resolved for example by reference to some techniques of interpretation supplied by the context.²

Because of the existence of multilingual texts, all equally authentic, the job of interpretation become more complex,³ “various terminological and legal difficulties involved in drafting a multilingual document reappear during the process of its interpretation and application.”⁴ It is suggested that a comparison of the various texts can emphasise differences or conflicts between their various texts. On the basis that all the texts are of equivalent linguistic status, any conflict or incongruity between them requires that a meaning must be sought.⁵

In interpreting a statute, having access the second language version of a bilingual text can be a blessing, on one hand, the second version can be helpful in interpreting the first. On the other hand, the second can also raise doubts about the first.⁶ This situation raises the doubt about knowing the most effective rule to be applied for the interpretation of multilingual legislations. This doubt is based on the fact that, in some multilingual jurisdictions,

¹ Byrne R and McCutcheon JP, *The Irish Legal System* (3rd edn Butterworths 1996) 475.

² Miers D and Twing W, *How to Do Things with the Rules: A Primer of Interpretation* (5th edn, Cambridge University Press 2010) 231.

³ Jacometti V and Pozzo B, *Multilingualism and the Harmonisation of European Law* (eds) (Kluwer Law International, 2006) 64

⁴ Tabory M, *Multilingualism in International Law and Institutions* (Alphen aan den Rijn: Sijthoff & Noordhoff 1980) 190.

⁵ Jacometti V and Pozzo B, op cit 64.

⁶ Salembier P, ‘Rethinking the Interpretation of Bilingual Legislation: the Demise of the Shared Meaning Rule’ (2003-2004) 35 *Ottawa Law Review* 75.

constitutional or statute law provides for the primacy of one language version over the others while in other jurisdictions, all language version are equally authoritative.

1.1 Methodology

The hypothesis of this essay is that the combination of the “equal authenticity rule” and the contextual approach which take into account the legislative history is the best approach to be applied in the interpretation of multilingual legislations. In analysing this hypothesis, the thesis intends to examine the concept of multilingual statutory interpretation, particularly focusing on the equal authenticity rule and the prevalence of one language version over the other(s).

In order to point out the best rule to ascertain the intention of the legislature when interpreting multilingual legislations, the thesis will compare three jurisdictions which adopt the prevalence of one language version over the other(s) and one jurisdiction which consecrates the equal authenticity rule.

In this regard, the thesis will refer to and examine various forms of literature such as books, journal articles, pieces of legislation and essays. These sources of literature constitute a considerable available literature in the area of statutory interpretation, legislative drafting, rule of law, and jurisprudence, among other subject areas. These sources of literature contains views of researchers and authors offering a better insight on the concepts such as the legislative intent, the equal authenticity rule and the legislative history relevant to the better understanding of the topic under discussion and the analysis of the thesis’s hypothesis.

Specifically, in order to point out a better approach for construing multilingual ambiguous provisions, the thesis will explore and make a comparative analysis of the approaches adopted for the multilingual interpretation in Canada, Ireland and Rwanda; by a comparing the pre-eminence of one language and the equal authenticity rule, gaps will be pointed out in one or other approach. Specifically, the analysis will focus on the search for the shared meaning considered as the best approach to reconcile all language versions in the attempt to discover the legislative intent in case of an ambiguous multilingual provision. To this end, the thesis will examine selected judicial decisions on different approaches adopted for the multilingual statutory interpretation decided in the above three jurisdictions. This selection

will permit a comparison of these approaches, their merits and weaknesses. In addition to the judicial decisions, recourse will be made to the constitutional and statutory provisions relating to the multilingual statutory interpretation.

The gaps which will be pointed out from the above comparison will lead to a conclusion to be drawn as for a better approach to be adopted for the search of the intention of the Parliament in multilingual interpretation.

The comparison will be made in three jurisdictions (Canada, Ireland and Rwanda). As case studies, their main features are as follows:

- Canada has adopted the “equal authenticity rule”
- Ireland has opted for the pre-eminence of the National language in case of conflict of language versions
- Rwanda has chosen the language of adoption of the law

1.3 Justification

If much has been written on statutory interpretation, few authors have dealt with the interpretation of multilingual legislations. Also true is the fact that not much substantial works in this domain has been done in a comparative approach. This thesis therefore intends to contribute in providing readers with an analytical multilingual statutory interpretation in a comparative approach.

Canada and Ireland have been chosen as comparative case studies because they are all bilingual jurisdictions. Specifically, like Rwanda, Canada is a bijural jurisdiction in which the Common Law and the Civil Laws systems cohabit. The Ireland Republic, like Rwanda, does not recognize the “equal authenticity rule” in case of discrepancies of language versions. Thus, comparing Rwanda with two completely different features among them one has adopted a same multilingual statutory interpretation orientation as Rwanda will allow to identify lessons that Rwanda can learn from other jurisdictions.

1.4 Structure

In order to provide a logical discussion of the issues referred to in the methodology, this thesis is divided into three chapters. Chapter one provides an introduction upon which this thesis is based; it offers an insight on what the discussion is about by providing the methodology to adopt in order to prove the hypothesis. It also provides the justification of the reason why the topic is focused on the search for the legal meaning in the interpretation of multilingual legislations and the ground of the comparison of Canada, Ireland and Rwanda. Chapter two deals with the concepts of interpretation of laws, intention of Parliament, equal authenticity rule and legislative history. It also gives the background of the multilingual legislative interpretation in Rwanda, Canada and Ireland. Chapter three is the central part of the thesis and critically analyses the issues under discussion; it focuses on analysis of the approaches adopted for the multilingual statutory interpretation in Canada, Ireland and Rwanda. In this chapter the shared meaning rule, its merits and weakness will be pointed out in order to draw a conclusion in the Chapter four. This last chapter will sum up the whole work and provide a conclusion to be drawn from the examined subject.

2.0 Preliminary considerations

2.1 Concepts

Some concepts are related to the hypothesis of this thesis so that their earlier discussion offers a better understanding of the further developments that will be done during the analysis of the topic under discussion. These concepts include the concept of interpretation of laws, intention of parliament, equal authenticity rule and the legislative history.

2.1.1 Interpretation of Laws

The subject “interpretation of statutes” is concerned with the principles, rules, methods and techniques which jurists employ in order to understand statutes ie legal precepts deriving from legislative activity, and to apply their provisions to concrete, practical situations.⁷ However interpretation of laws is not the reserved domain of jurists and judges. In this regard, it is argued that interpretation is an intellectual operation by which, from a legislative text, any person, construe an enacted rule in order to know what is allowed or prohibited or makes an obligation to be done or an obligation of omission. In this sense interpreter means any end-user of the law.⁸

In the second sense, interpreter means any end-user of the law who reads a legislative text. It is indeed argued that “while the task of interpreting a statute falls primarily on the courts it should be noted that a number of other bodies, agencies and individuals might be involved in the interpretation of the legislation.”⁹

Given the fact that the intended meaning of every legislative proposition would be clear beyond doubt from the natural meaning of the words used and that those words would put beyond doubt the legislature’s intention in respect of the application of the proposition to every possible practical case, ideally, it may be considered that there would be no need to

⁷ Du Plessis L M, *The interpretation of Statutes* (Butterworths 1986) 1; Miers D and Twing W, *How to Do Things with the Rules: A Primer of Interpretation* (5th edn, Cambridge University Press 2010) 122.

⁸ Gémar JC, *Jurilinguistics: Between Law and Language* (Les Editions Themis Inc 2005) 130.

⁹ Byrne R and McCutcheon JP, op cit 477.

have any rules as to the interpretation of statutes or other legislations.¹⁰ Indeed, as it was held in *Smith v Smith*,¹¹ “every statute or statutory instrument would be expressed with such clarity and would cover every contingency so effectively that interpretation would be straightforward and the only task of the courts would be to apply their terms.”

But it is worth saying that this is a merely utopia because judges sometimes find ambiguous provisions which oblige them to search for the legal meaning intended by their authors when making or enacting them. In this regard, Neil Mack argues that we “interpret” only when facing some occasion of doubt about meaning, followed by a resolution of the doubt by reference to some reason(s) supporting the preferred ways of resolving it.¹² Moreover, it is argued that “it seldom happens that the framer of an Act of Parliament has in contemplation all the cases that are likely to arise under it, therefore the language used seldom fits every possible case.”¹³ Also true is the fact that the attempt to prepare for all conceivably possible application often results in obscurity and inevitably results in prolixity of a kind that can mislead the courts as much as or more than it assists.¹⁴ Again, it is argued that while drafters do aim to address clearly all the principal cases actually in the contemplation of the legislature when the legislation is enacted or made, the court will still be faced with matters arising which were either too subsidiary or apparently obvious to be worth addressing expressly or which for some reason or another were not actually within the contemplation of the legislature. In those cases, the courts have to apply rules of construction to determine the meaning of the legislature, namely discovering what the legislature would have certainly intended had they been able to contemplate the case at the time of enacting or making the legislation.¹⁵ One could take for granted that, to this end, judges should resort to the grammatical or literal and natural meaning of the words used in the statute considered as a

¹⁰ Greenberg D, *Craies on legislation: A Practitioners' Guide to the Nature, Process, Effect and Interpretation of Legislation* (9th edn Sweet & Maxwell 2008) 605.

¹¹ [2006] UKL 35.

¹² McCormic N, *Rhetoric and the Rule of Law* (Oxford University Press 2005) 121; Langan PSJ, *Maxwell on Interpretation of Statutes* (12th edn, Sweet & Maxwell Limited 1969) 29; Driedger EA, ‘Legislative Drafting style: Civil Law versus Common Law’ in Gémar JC (ed), *The Language of the Law and Translation: Essays on Jurilinguistics* (Lingatech & Conseil de la Langue Française 1982) 67; Sullivan R, *Sullivan and Driedger on the Construction of Statutes* (4th Edn, Butterworths Canada Ltd 2002) 9.

¹³ Greenberg D, op cit 605.

¹⁴ *ibid*

¹⁵ *ibid* 606

golden rule of literalism or the cardinal rule of statutory interpretation¹⁶. But, this has not always been the case and this approach has been considered as to be avoided. In this regard, in *Bewlay (Tabacconists) Ltd v British Bata Shoe Co. Ltd*¹⁷, Lord Evershed MR suggested -

“I prefer to avoid exegeses of the statutory language unless they are absolutely necessary; for the result would otherwise tend thereafter to substitute for the problem of construction of parliamentary language the problem of the construction of the judgement of *the court*.”

Professor Casey for example argued that one of the difficulties with the literal approach is that “the meaning that to one judge is plain may seem to another perverse and unreal.”¹⁸

Also against the ‘literal approach’ is the opinion according to which interpretation is about words and the use of words. Considering that words are but labels for ideas and that language is deeply rooted in social habits and cultures and the fact that most modern statutes are drafted in wide and general terms and compel consideration not only of the context of the Act, but of its background and objective, one can seldom stop at a clear grammatical signification.¹⁹

Another criticism made against the “literal method” of interpretation is the fact that it must be enforced even if the result may be harsh, unfair, and inconvenient²⁰ while it is rightly contended that ascertaining the intention of the legislature necessarily entails the filling in of “gaps” in enactment, in order to make sense of it, rather than merely opening it up to destructive analysis (...); the judiciary must intervene in order to remedy statutory defects.²¹ It is indeed true that “there is something more in the task of interpreting statutes than carrying out the intention of the legislator, a task which is particularly futile in those instances where the intention of the legislature is so obscured that it is undetectable. Interpretation is then not simply a process of drawing out of a statute what its maker put into it, but it is also in part,

¹⁶ Du Plessis L M, op cit 35; Langan PSJ, op cit 43.

¹⁷ Greenberg D, op cit 606 citing [1959] 1 WLR 45.

¹⁸ Humphreys RF, ‘Constitutional Interpretation’ (1993) 15 Dublin University Law Journal 59 citing Casey, *Constitutional Law in Ireland* (London 1987) 298.

¹⁹ Attorney General’s Department, *Symposium on Statutory Interpretation* (Australian Government Publishing Service Canberra 1983) 6.

²⁰ Burger AJ, *A Guide to legislative drafting in South Africa* (Juta 2002) 25.

²¹ Du Plessis L M, op cit 34; Lewis G, *Lord Atkin* (Butterworths 1983) 119 citing *Magor and St Mellons RDC v Newport Corpn* [1950] 2 All ER 1226.

and in varying degrees, a process of adjusting the statute to the implicit demands and values of the society to which is to be applied.²²

The “golden rule” of literalism, for some has to a large degree intermarried with the “governing rule” of intentionalism²³. The former deserves to be analysed in the following point.

While it is argued that, in principle, the system of interpretation for multilingual document is the same as for those which are unilingual, featuring only the added element of the comparison of the texts,²⁴ the multilingual legislative interpretation of a statutory instrument is unique in the sense that when a specific problem arises in one language version, it is considered that the recourse to the others versions sets the problem in context. Therefore, in such circumstances, the context approach seems to be preferable to other methods of interpretation. Indeed “the contextual approach has some interesting variations and adaptations when applied concurrently with the peremptory rule of equal authenticity in multilingual interpretation, which require versions of the same law to be reconciled.”²⁵

Again, it is suggested that one of the consequences of the separation of power is that courts prefer the literal approach to others legislative interpretation approach and that this arises directly from the courts’ desire to limit judicial legislating.²⁶ If the application of the literal approach can operate smoothly during the process of a monolingual legislative interpretation, it seems, on the other hand, to cause difficulties when applied on the case of an equal authenticity rule made for the interpretation of multilingual legislative text for the reason that no language version has precedence to others. But also, the case of a clearly fixed prevailing language does not go without suffering from any hurdle. Precisely, it raises the question of knowing that which the interpreter can have recourse to when the literal approach is revealing itself ineffective in the search for intended meaning.

²² Fuller LL, *The Morality of Law* (Yale University Press 1969) 59.

²³ Du Plessis L M, op cit 35.

²⁴ Tabory M, op cit 195.

²⁵ Beaupré M, *Interpreting Bilingual Legislation* (2nd edn, Carswell 1986) 19.

²⁶ Dodd D, *Statutory Interpretation in Ireland* (Tottel Publishing 2008) 282.

2.1.2 Intention of Parliament: A Controversial concept

While the purpose of construing legislation is said to be the search for intention of the legislature²⁷, it is important to remember that a number of commentators consider that this is to some extent an artificial concept, and is certainly to be kept distinct from the search from the motive or aim of individual players, in the legislative process.²⁸ The intention of Parliament is, in a sense, a fiction. It is not an intention formulated by the mind of Parliament, for Parliament has no mind, and it is not the collective intention of the members of Parliament for no such collective intention exists.²⁹ Dias considers that reference to intention seems to be superfluous and ambiguous.³⁰ In the same perspective Du Plessis wrote that this expression can refer to one or more of quite a few relevant notions, such as, the idea(s) underlying the language of an enactment, the will or thoughts of the legislature, the purpose of an enactment, or even the command of a law-giver.³¹ The biographer of Lord Atkin goes so far as to say that the very Parliament whose intention must be discovered is ‘an impersonal, indeed an imaginary one’.³² As suggested by Driedger, the only real intention is the intention of the sponsors and the drafter of the bill that gave rise to the Act. The intention of Parliament can only be an agreement by the majority that the words in the bill express what is to be known as the intention of Parliament.³³

²⁷ Strydom HA, ‘The legal theory of Lon L Fuller’ in Corder H (ed), *Essays on Law and Social Practice in South Africa* (Juta & Co Ltd 1988) 138; Dodd D, op cit 20; Byrne R and McCutcheon JP, op cit 478; Dias RWM, *Jurisprudence* (5th edn, Butterworths) 166; Popkin W D, *Materials on Legislation: Political Language and the Political Process* (University Casebook Series 1992) 309; Eskridge WJ, *Dynamic Statutory Interpretation* (Harvard University Press 1994) 16; Bottomley S and Corcoran S, *Interpreting Statutes* (The Federation Press 2005) 13; Lewis G, op cit 119 citing *Magor and St Mellons RDC v Newport Corpn* [1950] 2 All ER 1226; Burrows JF and Carter RI, *Statute Law in New Zealand*, (4th edn, LexisNexis 2009) 183; Scalia A, ‘Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws in Scalia A (ed), *A Matter of Interpretation: Federal Courts and the Law* (Princeton University Press 1997)16.

²⁸ Greenberg D, op cit 607; Driedger E A, op cit 82; Stark J, *The Art of the Statute* (Rothman 1996) 113; Humphreys RF, op cit 59; Forde M, *Constitutional Law* (2nd edn, First Law 2004) 51.

²⁹ Stark J, op cit 113; Driedger E A, op cit 82; Du Plessis L M, op cit 36; Byrne R and McCutcheon JP, op cit 478; Eskridge WJ, op cit 16; Bottomley S and Corcoran S, op cit 16.

³⁰ Dias RWM, op cit 166.

³¹ Du Plessis L M, op cit 37.

³² Lewis G, op cit 118.

³³ Driedger E A, op cit 82.

A more elaborate statement of the same idea was made in *Regina v Secretary of State for the Environment, Transport and the Regions and another, Ex p. Spath Holme Ltd*,³⁴ in which it was observed that-

“Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration (...) The ‘intention of Parliament’ is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the Minister or other persons who promoted the legislation. Nor is the subjective intention of the draftsman, or of individual members (...) of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-and-such a meaning ‘cannot be what Parliament intended,’ they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning.”

From the above, it appears that even if it is commonly said that courts, when construing the statutes, their task is to ascertain the intention of Parliament and that it is axiomatic that Parliament is to be taken to have an intention in everything it enacts³⁵, the interpretation of a statute rather amounts to the ascertainment of the meaning of an enactment by way of employing recognized canons of construction;³⁶ the meaning of a law is determined by what the law-maker enacted, not by what the law-maker meant.³⁷ The same point of view appears also in *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg*.³⁸ In the same perspective in *Salomon v A Salomon & Co Ltd*³⁹, it was considered that, in a court of law, what the legislature intended to be done or not to be done can indeed only be legitimately ascertained from that which the legislature chose to enact, either in express words or by reasonable and necessary implication. Indeed, it is suggested that statutory interpretation is concerned with written texts, in which an intention is taken to be embodied, and by which that intention is communicated to those it affects and that an Act is a statement by the democratic Parliament.⁴⁰ It is also suggested that the text of the Parliament is the final

³⁴ [2001] 2 AC 349.

³⁵ Bennion F, *Bennion on Statutory Interpretation* (5th edn, LexisNexis 2008) 469.

³⁶ Dodd D, op cit 23; Du Plessis L M, op cit 36 citing Wiechers M, *Administratitiefreg* (2nd edn Butterworth 1984) 47.

³⁷ Dodd D, op cit 23.

³⁸ [1975] AC 591.

³⁹ Strydom HA, op cit 19 citing [1897] AC 22.

⁴⁰ Geny F, *Méthode d'interprétation et sources en droit privé positif: Essai critique* (LGDJ 1919) 276.

indication of what was intended- *animus hominis est anima scripti*- and therefore, what the interpreter is required to do is to give effect to that statement.⁴¹ This paramountcy of legislative intention was reflected in *A-G for Canada v Hallet & Carey Ltd* in which it was held that

“There are many so called rules of construction that courts of law have resorted to in their interpretation of statutes but the paramount rule remains that every statute is to be expounded according to its manifest and expressed intention.”⁴²

Arguing that “ascertaining the intention of the legislature, boils down to finding the meaning of the words used”, Dias suggests clearly that what exists is ‘the intent of the statute’ rather than of Parliament.⁴³

However, it would not be right to say that there exist no proponents to the legislature intention. Thus, Dickson, reacting against a suggestion according to which the legislative intention is ‘a futile bit of fiction’ and ‘a transparent and absurd fiction’⁴⁴, argues that such statement deprive the word intention of a well-understood meaning. He furthermore suggests that there really is something approaching an institutional state of mind which should be recognized in a legislature.⁴⁵ He furthermore argues that legislative intent is ultimately rooted in individual intents and that those go right down to the democratic roots.⁴⁶ Arguing for the existence of the intention of Parliament Bennion suggests that “an Act of Parliament is usually the product of much debate and compromise, both public and private. The intention that emerges as the resultant of these forces is not to be dismissed as in any sense illusory. Such dismissal marks a failure to grasp the true nature of legislation. The judges know this well enough; and would not dream of treating a legislative text as having no genuine intendant.”⁴⁷

The intention theory purports to have gone beyond the idea of a narrow adherence to the “words”, ie the plain or literal meaning, of an enactment. It claims that the true meaning of

⁴¹ Bennion F, op cit 471.

⁴² *ibid* 469 citing *A-G for Canada v Hallet & Carey Ltd* [1952] AC 427.

⁴³ Dias RWM, *Jurisprudence* (5th edn, Butterworths) 167.

⁴⁴ Dickerson R, *Materials on Legal Drafting* (West Publishing 1981) 51.

⁴⁵ *ibid*

⁴⁶ *ibid*

⁴⁷ Bennion F, op cit 474.

the text is not only to be sought in the words or the language employed as such, but also in the will and/or thoughts of the author of the text, ie the legislature, “behind” or underlying the words.⁴⁸

Between two opposite tendencies, one considering the legislative intention as a fictive or nebulous concept and the other purporting the reality of the concept of the legislative intention, what position to confirm and support? The concept “intention of the legislature” points to a constitutional arrangement based on the relationship between the legislature and the judiciary. It recognises that the function of legislating is given the Oireachtas and that that function should not be undermined by the courts. The intention of the Oireachtas is expressed in legislation and the courts are required to give effect to that duly expressed intention. It conveys the idea that the principal constraint on statutory interpretation is that the courts are required to act in a manner which does not usurp the legislative intention.⁴⁹

An opposite point of view is to be advanced when one has to give a response to the question posed by Dias and relating to, namely in what sense are courts giving effect to the intention behind the enactment, if Parliament did take a mistaken view of the law?⁵⁰

2.1.4 Equal authenticity rule

In bilingual legislations, the requirement that legislation be enacted or made and not merely published in both language versions means that both language versions of a bilingual statute or regulation are official, original and authoritative expressions of the law. Neither version has the status of a copy or translation; neither enjoys priority or paramountcy over the other.⁵¹ This equal consideration treatment is known as the equal authenticity rule. As it will be seen in the analysis of the topic, the questions arise when both language versions are discrepant. And in many jurisdictions it is considered that “the various situations which can be imagined all proceed on the assumption that the existence of official texts excludes the possibility that one

⁴⁸Du Plessis L M, op cit 36 citing Steyn LC, *Die Uitleg van Wette* (5th edn Juta 1981) 1.

⁴⁹ Byrne R and McCutcheon JP, op cit 478; Bigwood R, *The Statute: Making and Meaning* (LexisNexis 2004) 188.

⁵⁰ Dias RWM, op cit 166.

⁵¹ Sullivan R, op cit 74.

should be preferred over another, implying the need to seek an objective meaning by comparing one with another.”⁵² As Pozzo suggests, a comparison of the various texts can indeed emphasise differences or conflicts between the various contents.⁵³

According to Beaupré, equal authenticity means that by itself a single language of a bilingual statute is incomplete; its true meaning can be determined only by reading and correctly interpreting both language versions.⁵⁴ It is also possible to argue that equal authenticity means that each reader can rely on the version of the statute written in his or her own language. While this understanding is more in keeping with the evident purpose of the rule, courts to date have preferred the former view.⁵⁵

2.1.5 Legislative history

In the past (the 17th, 18th and the 19th Centuries) reference had occasionally been made to what those who framed a statute, or individual members of the legislature, intended to do by the enactment, or understood it to have done.⁵⁶ But, this trend ended in the end of the 19th Century on the ground that a statute can only be regarded as the language of the three Estates of the realm, and the meaning attached to it by those who drafted it or by individual members of one of those Estates should not control its construction. The other reason was based on the danger that members of either House might, in the course of debate, attempt to influence the future interpretation of a statute by expressing their own “views as to its probable effect in the hope that these would remain uncontradicted at the conclusion of its passage through Parliament.”⁵⁷ The above said trend corresponds to what is called the parliamentary history and which have been rejected by courts as legitimate aid to interpretation. In this regard, for example, Denham J, contrary to Castello P’s point of view regarding the long established use of parliamentary material, noted that it has long been the common law that words spoken in parliamentary debates are not admissible in court construing statutes. Unlike the parliamentary history, an examination of law cases prove that it is considered that, in the

⁵² Jacometti V and Pozzo B, op cit 64.

⁵³ ibid

⁵⁴ Sullivan R, op cit 74 citing Beaupré M, *Interpreting Bilingual Legislation* (2nd edn, Carswell 1986)

⁵⁵ Sullivan R, *Statutory Interpretation* (2nd edn, Irwin Law 2007) 82.

⁵⁶ Langan PSJ, op cit 50.

⁵⁷ ibid

construction of an enactment, due attention should be paid to relevant aspects of the state of the law before the Act was passed and where an Act uses a form of words with a previous legal history this may be relevant in interpretation. This was the case in *Action Aid Ltd v Revenue Commissioners*.⁵⁸

It is suggested that “being informed to about the pre-Act law is central to the first two steps (of four) of the mischief rule described in Heydon’s Case, namely -(1) what was the common Law before the making of the Act (2) what was the mischief and defect for which the Common Law did not provide for- on the ground that it permits an understanding of the purpose of an Act.⁵⁹ It is also argued that legislative history may bolster views and inform as to the background, and may assist where two reasonable interpretations are open; tracing the legislative history may highlight relevant legal trends and the context and purpose of the provision.”⁶⁰ Thus, in *Finucane v McMahon*,⁶¹ Walsh J, in interpreting extradition legislation, considered the legislative history of extradition, amongst other things. In *Iarnrod Eirean v Holbrooke*,⁶² the Supreme Court of Ireland was satisfied, having looked at the legislative history of the Trade Union Act 1941, that it was enacted to enable employees in Small firms negotiate their pay and conditions of work, directly with their employer

Very earlier, judicial cases have stressed that in the construction of the Act, regard must be had not only to the words used, but to the history of the Act and the reasons which led to its being passed.⁶³

In the light of the above and based on commentators’ point of views, legislative history means (i) the legislative antecedents of the statutory provision under consideration, ie corresponding provision in previous enactments since repealed and re-enacted with or without modification (ii) pre-parliamentary materials relating to the provision or the statute in which it is contained, such as reports of committees and commission reviewing the existing law and recommending changes and (iii) parliamentary materials ie the text of a bill as first

⁵⁸ Dood D, op cit 221 citing [1997] IEHC 196.

⁵⁹ Dood D, op cit 221.

⁶⁰ ibid 222.

⁶¹ ibid citing [1990] IR 165.

⁶² ibid citing [2001] 1 IR 237.

⁶³ Langan op cit 48.

published and successively amended in its passage through parliament, explanatory memoranda, proceedings in committees and parliamentary debates.⁶⁴

Legislative history is used for two different purposes: in the first place, reference to it is only permissible when judges are in doubt about the meaning of the provision under consideration after considering it in its general context. Secondly, a distinction is made between situations in which judges ought to have regard to legislative history which may then provide reasons for the interpretation adopted, and situations in which judges receive such information to confirm an interpretation justified by the meaning of the words read in context.⁶⁵

2.2 Background of the multilingual statutory interpretation in Rwanda, Canada and Ireland

The table below shows the background and the multilingual statutory interpretation regime of Canada, Ireland and Rwanda

Country	Multilingual statutory interpretation prevailing rule		Status of bills when introduced, considered and voted
Rwanda	Between 1994 and 2010	Since 2010	Trilingual
	Equal authenticity of all language versions	Pre-eminence of the language of adoption of the law ⁶⁶	

⁶⁴ Bell J and Engle G, *Statutory Interpretation* (3rd edn Butterworths 1995) 152; Langan PSJ, op cit 47-54; Dodd D, op cit 221, 231; Jonathan Pratter, An Approach to Researching the Drafting History of International Agreements <http://www.nyulawglobal.org/globalex/Travaux_Preparatoires1.htm#_edn1> accessed 08 July 2011

⁶⁵ Bell J and Engle G, op cit 152.

⁶⁶ Article 18 of the amendment n° 04 of 17/06/2010 of the Constitution of the Republic of Rwanda of 04 June 2003 in *Official Gazette n° special*, 17 June 2010, p 1.

Ireland	Pre-eminence of the national language (Irish version) ⁶⁷		Unilingual ⁶⁸
Canada	Before 1969	Since 1969	Bilingual
	Equal authenticity rule (a judicial creation)	Equal authenticity of all language versions ⁶⁹	

3.0 Comparative Analysis of the approaches adopted for multilingual interpretation in Canada, Ireland and Rwanda

3.1 Search for the intention of the Parliament through the shared meaning

Considered as being the same for both language groups,⁷⁰ the shared meaning to all versions of a bilingual provision is, for many Canadian leading scholars⁷¹ on statutory interpretation, presumed to be the best interpretative approach to reflect the legislative intention. For this reason, these scholars argue that, in construing bilingual legislation, the search for the shared meaning is favoured to reconcile all language versions.⁷² In this regard, suffices it to consider the following views:

“The authorities are unequivocal in declaring that because the two versions are both official, reconciliation must be attempted... In practice, this involves finding a shared or common meaning in the two enactments... one version must may have a broader meaning than the other, in which case the shared meaning is the narrower of the two.”⁷³

⁶⁷ Article 25.4.6° of the Irish Constitution

⁶⁸ Hogan GW and Whyte GF, op cit 381.

⁶⁹ Article 13 of the Canadian Official languages Act and article 18 of the Constitution Act, 1982

⁷⁰ Sullivan R, op cit 84.

⁷¹ ibid 85; Côté P A, *Interprétation des lois* (Les Editions Yvon Blais Inc 1982) 277.

⁷² Côté P A, op cit 274.

⁷³ Salembier P, op cit 80 citing Côté P A, *The interpretation of Legislation in Canada* (3edn Toronto Carswell 2000) 326-327.

“The meaning that is shared by the French and English version is presumed to be the meaning intended by the legislature”⁷⁴

“The meaning of a bilingual provision is the meaning of both versions read together.”⁷⁵

“Where the two versions of bilingual legislation do not say the same thing, the meaning that is shared by both ought to be adopted unless this meaning is for some reason unacceptable.”⁷⁶

Repeatedly, Canadian courts applied the shared meaning rule to resolve ambiguity occurring in either or both texts. For example, in *R v O’Donnell*,⁷⁷ it was held that:

The words in both versions, of necessity, must be construed with the same meaning (...) it follows that, when construing, the common meaning must be accepted.

Similarly, in the Irish context, the courts have taken position that, where it is reasonably possible to do so, both versions should be reconciled⁷⁸. In this trend, in *O’ Donovan v Attorney General*⁷⁹, Budd J explained that

“it is not to be thought that those who framed or enacted the constitution would knowingly do anything so absurd as to frame or enact texts with different meanings in parts... It would seem to follow as a matter of commonsense that one should not approach the elucidation of the meaning of either text with a view to seeking a conflict, but rather with a view to seeing if they can properly be reconciled.”

The application of the shared meaning rule was reflected also in *Gael Linn Teo. v. Commissioner of Valuation*⁸⁰ where, delivering the judgment of the Supreme Court, Keane J.

⁷⁴ Sullivan R, op cit 84.

⁷⁵ ibid 85.

⁷⁶ ibid 80.

⁷⁷ [1979] 1 WWWR 385 (BCCA) 389.

⁷⁸ Forde M, op cit 57; Hogan GW and Whyte GF, *The Irish Constitution* (4th edn LexisNexis Butterworths 2003) 146.

⁷⁹ [1941] IR 114.

refers to his examination of both (...) texts of the Valuation Act 1988 in order to aid his interpretation thereof, saying that

“the intention of the Oireachtas” was “illustrated by the words in the English and Irish versions of the statute in question.”⁸¹

Another expressive example of the application of the shared meaning in the Irish case decisions is to be found in *State (Gilliland) v Governor of Mountjoy Prison*⁸² where one of the issues was the correct meaning of the terms “*costas*” and “charge” and Barrington J held that

“before admitting the existence of conflict one must enquire if the words “charge” and “*costas*” have a common meaning. If there is a common meaning it assumed that that is what was meant in both text of the Constitution.”

In the Irish commentators’ arena, also proponents of the shared meaning rule do exist. In this regard, suffices it to consider the following Forde M’s suggestion:

“any conflict between two texts could only result from inadvertence. Accordingly, the courts do not search for discrepancies between the texts but seek to reconcile them (...) The courts frequently examine the Irish text carefully in order to throw light on the English version.”⁸³

In Rwanda, the examination of the courts decisions reveals also that the shared meaning rule is not absent in the Rwandan jurisprudence.

In *Mutebwa v Public Prosecution Authority*⁸⁴, the Supreme Court of Rwanda reconciled the three official languages versions of Article 121(1) of Law n° 13/2004 of 17/05/2004 relating to the code of criminal procedure on the ground that these versions were not saying the same thing, because, according to the court the way they were written was creating ambiguity for the use the article. In this article, the Kinyarwanda word “*ibimenyetso*” was rendered in the

⁸⁰ Dáithí Mac Cárthaigh, ‘Interpretation and construction of bilingual laws: a Canadian lamp to light the way?’ (2007) 213 *Judicial study institute Journal* <<http://www.jsijournal.ie>> accessed 14 July 2011 citing [1999] 3 I.R. 296, at 304 (S.C.).

⁸¹ [1999] 3 IR 296.

⁸² [1987] ILRM 278.

⁸³ Forde M, op cit 57.

⁸⁴[2004] (CS) Inconst/Pen.0001/07/CS (not published)

French and the English version as “*indices sérieux de culpabilité*” and “strong evidences”, respectively. The court made an effort to make the versions saying the same thing. The court used the French version as a reference to shade light to the two other versions; the French version was not changed but the other two versions were changed by the Court. In the English version, the words “strong evidences” were replaced by the words “reasonable grounds to suspect wrong doing” and in the Kinyarwanda version, the word “*ibimenyetso*” was replaced by “*impamvu zikomeye zituma umuntu akekwa*”. At the end of this reconciliation exercise, all versions were bearing the same meaning to express a same concept. Having done that, knowingly or unknowingly, the court applied the shared meaning while it was searching the intention of the legislature. However, it is worth noting that the court did not point out the reason why the French Version was used to shade light to other versions. One cannot escape having such concern since the above mentioned law was adopted in and translated in French and English after its consideration and adoption processes. Unknown or known could be that reason, this is not a matter. But, one thing emerges from this decision as an observation: in the Rwandan statutory interpretation context, before the Amendment n° 04 of 17/06/2010 of the 2003 Constitution of the Republic of Rwanda⁸⁵, the adoption language version of the law was not the only one to be considered as shading the light to other versions in the search of the legislative intent in case of discrepancies of versions.

From the above considerations, it emerges that, in the Irish context, even though it is stated that where there is “a conflict” between the English version and the Irish version, the Irish prevails, it is revealed that, practically, in such a case, the first attempt of courts is to reconcile both versions of the statute. Similarly, the Rwandan courts of the period between 1994 and 2010 preferably adopted the reconciliation of versions and, therefore applied the shared meaning rule to ascertain the intention of the legislature. It is needless to recall that the shared meaning appears to be of a common practice in the interpretation of bilingual legislation in Canada.

According to the types of linguistic divergence faced when interpreting bilingual legislation, practically, different approaches have been adopted by courts. It is worth exploring and analysing how courts have addressed those linguistic divergences and how adequate or effective are the solutions adopted to resolve them.

⁸⁵ Official gazette n° special, 17 June 2010, p.1.

3.1.1 Canadian case: *Bastarache J's Approach and its application*

In Canada, the methodology for interpreting bilingual legislation was considered by the Supreme Court of Canada in *R v Daoust*⁸⁶. Delivering the English version of a judgement of the Supreme Court of Canada, Bastarache J set out the steps to be followed when construing bilingual legislation. He wrote:

I would ... draw attention to the two-step analysis proposed by Professor Côté in the *Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 324, for resolving discordances resulting from divergences between the two versions of a statute:

Unless otherwise provided, differences between two official versions of the same enactment are reconciled by educing the meaning common to both. Should this prove to be impossible, or if the common meaning seems incompatible with the intention of the legislature as indicated by the ordinary rules of interpretation, the meaning arrived at by the ordinary rules should be retained.⁸⁷

According to Bastarache, to ascertain the common meaning to all versions and bearing the intention of the Parliament requires first of all the comparison of texts. In this perspective, the following three types of linguistic divergences have been agreed upon by a number of commentators⁸⁸ to whom Bastarache refers in *R. v. Daoust*.⁸⁹

3.1.1.1 *Ambiguity in one version but not the other*

In the Canadian context, it is considered that a principle of bilingual statutory interpretation holds that where one version is ambiguous and the other is clear and unequivocal, the common meaning of the two versions would *a priori* be preferred;⁹⁰ the shared meaning is

⁸⁶ [2004]1 SCR 217, 2004 SCC6.

⁸⁷ [2004] 1 SCR 217.

⁸⁸ Sullivan R, op cit 90; Salembier P, op cit 83; Côté P A, op cit 277; *R. v. Daoust*, [2004] 1 SCR 217.

⁸⁹ [2004] 1 SCR 217.

⁹⁰ Côté P A, op cit 278; Derlén M, *Multilingual Interpretation of European Union*, (Kluwer Law International, 2009) 303-304.

the meaning of the plain version⁹¹ that is also found in the ambiguous version.⁹² For example, in *Tupper v The Queen*⁹³, to elucidate the English version, reference was made to the French version. The issue was about the interpretation to be given to the English version of Sub-Section 295(1) of the Criminal Code reads “any instrument for house-breaking”. This phrase was ambiguous because, in one sense, it could mean that the instrument must only be *objectively capable of being used for house-breaking* and that, in the other sense it could mean *any instrument used for such purpose*. Speaking for the court Judson J wrote:⁹⁴

In my opinion, this statement of the law is erroneous and ignores the plain wording of the section. The English version reads: “any instrument for house breaking”; the French version reads: “*un instrument pouvant server aux effractions de maisons*”. The French version makes the meaning clear. Both versions mean the same thing. An instrument for house-breaking is one capable of being used for house breaking.

In this case, the common or shared meaning was the meaning embodied in the version which was unambiguous (the French version). Commenting the above mentioned case Beaupré noted: “his statement that ‘both versions means the same thing’ is to say... that when read together, the two versions point to one conclusion: the English version, in light of the French, is reasonably capable of only one construction.”⁹⁵

⁹¹ “The plain meaning rule means different things to different people, but its proponents generally agree on the following propositions:

1. Upon reading a legislative text, it is possible to determine the meaning of the text and whether it is plain or ambiguous.
2. If a text has a plain meaning, extra-textual evidence of legislative intent (like legislative history or presumed intent) is inadmissible to contradict that meaning. The plain meaning constitutes definitive evidence of legislative intent and it is impermissible to rely on other factors to contradict it. Further, other factors may not be relied on to “create” ambiguity- that is, cast doubt on the meaning of a text that is otherwise plain.
3. If a text is ambiguous, interpretation is required. In interpretation, extra- textual factors such as legislative history and presumed intent may be relied on to solve the ambiguity” (Sullivan R, *Sullivan and Driedger on the Construction of Statutes* (4th Edn, Butterworths Canada Ltd 2002) 9.).

⁹² Sullivan R, op cit 90; *Goodyear Tire and Rubber Co. of Canada v. T. Eaton Co.*, [1956] SCR 610; *Kwiatkowsky v. Minister of Employment and Immigration*, [1982] 2 S.C.R. 856.

⁹³ [1967] SCR 589.

⁹⁴ *Tupper v. The Queen*, [1967] SCR 589.

⁹⁵ Beaupré M, op cit 20.

Fascinated by the clarity of the French version, Hall J, concluded that “whether Parliament intended it or not, s. 295(1), as it reads, permits of no other interpretation”. Therefore, the court opted for the application of the doctrine according to which where words are clear they should be applied, even where this may lead to undesirable, unreasonable or unjust result.⁹⁶

Commenting on the case, Wood expressed great disappointment in the court’s failure to apply the *ratio legis* of Section 295 of the Criminal Code. He was quite convinced that the inherent purpose of the particular law served to clarify the ambiguity of the English version and justified the rejection of the French version, as did the legal presumption against a departure from the general system or traditional principles of the law.⁹⁷

Indeed, it is undisputable that the above decision reflects a growing acceptance by the courts of parliament’s supremacy in most legal system.⁹⁸ “Often expressed in terms of Courts being ‘faithful agents’ of the legislature⁹⁹ and rendering the judiciary “as a mere interpreter and enforcer,”¹⁰⁰ the principle is taken, for some, as the best statutory interpretation approach to be in respect with the principle of the separation of power.¹⁰¹ However, on the other hand, it must be emphasized that this principle is, for an number of authors¹⁰² and jurisprudences,¹⁰³ considered as contrasting with the normal essence of legislative interpretation and therefore absurd. This point of view is based on the grounds that, since in respect of the literal approach, the statutes should be construed according to the intention expressed in the Acts themselves. This means that, in one sense, there is no actual interpretation, since

⁹⁶ Byrne R and McCutcheon JP, op cit 483; Driedger EA, op cit 33; Donelan EJ, ‘The Role of the Parliamentary Draftsman in the Preparation of Legislation in Ireland’ (1992) Dublin University Law Journal 1.

⁹⁷ Beaupré M, op cit citing Wood JCE, “Statutory Interpretation: Tupper and the Queen” (1968) 6 Osgoode Hall LJ 92, 95-107.

⁹⁸ Byrne R and McCutcheon JP, op cit 482.

⁹⁹ Goldsworthy J, ‘Parliamentary Sovereignty and Statutory Interpretation’ in Bigwood R (ed), *The Statute: Making and Meaning* (LexisNexis 2004) 188.

¹⁰⁰ *ibid*; Burrows JF and Carter RI, op cit 23.

¹⁰¹ Goldsworthy J, op cit 188.

¹⁰² Sherwin Lyman, ‘The Absurdity and Repugnancy of the Plain Rule of Interpretation’ (1969) 3 Manitoba Law Journal 53.

¹⁰³ *ibid* citing *Waugh v Middleton* (1853) 8 Ex 352 at p. 356 per Pollock CB; *Bradlaugh v Clarke* (1883) App Cas 354.

interpretation is unnecessary and the intention of the legislature is not to be speculated upon, due to the plain meaning.¹⁰⁴

3.1.1.2 When ambiguity is the result of the difference of the scope of words predictor

One of the types of linguistic divergence which affect the commonality of the meaning of the language versions of a statute occurs where one language version expresses a concept in clear but broad terms, while the other uses clear but narrower language, covering some but not all of the same ground.¹⁰⁵ Such discrepancies occur also when both versions are ambiguous.¹⁰⁶ In the both cases, a glance at a number of commentators' writings¹⁰⁷ and law cases¹⁰⁸ reveals that it is considered that where one version has a broader meaning than the other, the shared meaning is the more narrow of the two, due to the fact that the shared meaning rule requires that "the meaning that is shared by both ought to be adopted."¹⁰⁹ "For example, should a tax deduction be allowed for destroyed property, where the English version allows a deduction for property that has been 'disposed of' (transferred or destroyed), while the French covers only property that had been 'aliéné'(transferred)?"¹¹⁰ Salembier asks this question with the aim of making it its starting point to prove that the comparison of the narrow and the broader meaning does not offer any rational basis for the application of the shared meaning. Indeed, he contends that the linguistic divergences in the above example are the result of one of the two ways:

"The instruction to the drafters was that the provision was to apply to property that had been either transferred or destroyed and the French drafter misheard the instruction as being to extend only to property that had been transferred; or

¹⁰⁴ Sherwin Lyman, op cit 53-54.

¹⁰⁵ Salembier P, op cit 85.

¹⁰⁶ Sullivan R, op cit 90.

¹⁰⁷ Salembier P, op cit 85 citing Côté P A, *The Interpretation of Legislation in Canada*, 3d ed. (Toronto: Carswell 2000 at 327; Côté P A, op cit 278; Sullivan R, op cit 90; Derlén M, op cit 304; Sullivan R, op cit 90.

¹⁰⁸ *R. v. Dubois*, [1935] SCR 378; *Maurice Pollack Ltée v. Comité paritaire du commerce de détail à Québec*, [1946] SCR343; *Pfizer Co. v. Deputy Minister of National Revenue for Customs and Excise*, [1977] 1 SCR 456; *Gravel v. City of St-Léonard*, [1978] 1 SCR 660 669.

¹⁰⁹ Salembier P, op cit 85 citing Sullivan R, ed., *Driedger on the Construction of Statutes*, 3rd edn (Butterworths, 1994) 220.

¹¹⁰ Salembier P, op cit 85.

The instruction was that the provision was to apply only to property that had been transferred, and the English drafter misinterpreted the instruction or simply equated 'disposed of' with 'transferred' in his or her mind, and used the former expression without giving due consideration to the difference between the two concept."¹¹¹

Making a comment to the example he gives, Salembier explains that it can be taken as a given that the instruction was either to state a broad rule, or to state a narrow one and that in the absence of actual evidence, we can only assume that the odds are 50/50 the rule was to be broad, and 50/50 that it was to be narrow.¹¹² By this example from which he draws his suggestion, he concludes that if we apply the shared meaning rule, we will be directed to adopt the narrow meaning 100 per cent of the time, and will therefore be wrong 50 per cent of the time. Thus, he argues that the rule gives the right result half of the time, and the wrong result half of the time and concludes that because the shared meaning rule has only a random chance of success, it does not in consequence contribute to the determination of legislative intent in any meaningful way.¹¹³

From the Salembier's point of view, it emerges that he considers that the discrepancies of language versions in multilingual legislations are only inherent to the linguistic faulty which only occur in the drafting process. If this assertion is true in one sense, it is also right to say that, on the other hand, it is in its half way because it takes the statute as the product of the only drafter of the pre-enactment stage; it does not make any allusion to the law-maker and therefore to any source of discrepancies which may originate from the actions and decisions of the latter and relating to the enactment of the statutes, be it at the committee or the adoption stages. From our point of view, the discrepancies of language versions may originate from the choice made by the legislature in the use of terms and words, acting as a body elected and constitutionally competent to enact the laws. One could not disagree that statutes are not adopted and enacted in the same form as the one in which they are initiated by the Executive during their preparation. Therefore, Salembier does not make a clear demarcation between the role of the drafter and the ownership of the law by the Parliament. In this, he takes too lightly the responsibility of the Parliament in the enactment of the statutes. Also showing that the deficiencies of language are not only originating from the work of the drafters is the following suggestion: "Assuming that a statute is not drafted in

¹¹¹ Salembier P, op cit 85.

¹¹² *ibid*

¹¹³ Salembier P, op cit 86.

haste, which is by no means always the case, and the parliamentary has carefully fashioned and finessed its text, the fact remains that words are often an imprecise tool, however well wielded.”¹¹⁴

However it is worth noting that, arguing that the discrepancies of the language versions originate from the linguistic divergences in the drafting process, indirectly, Salembier invite the interpreter of the statutes not to neglect the legislative history in the search of the real meaning of a provision and testify that the law is not the product of the only legislator. The recourse to the legislative history may be of a great importance for the multilingual legislation when the language of the preparation of the statute is not the same as the language of adoption.

3.1.2 Ireland's case

In approaching the question of discordance between the language versions of the statutes, Irish courts typically try to find the conflicts between the English and Irish language versions in order to reconcile them¹¹⁵ “on the ground that it could not have been intended for an article to have different meanings depending on the language version.”¹¹⁶ The reconciliation of the language versions is done by means of elucidating the English version by the Irish version. An illustrative example of this reconciliation is the Section 9 of the Education Act 1998 which provides that a recognized school shall provide education to students which is appropriate to their abilities and needs and that it shall use its available resources to *inter alia*

(f) promote the development of the Irish language and traditions, Irish literature, the arts and other cultural matters

(f) chun forbairt na Gaeilge agus thraidisiúin na hÉireann, litríocht na hÉireann, na healaíona agus nithe cultúrtha eile, a chur chun cinn

Irish Law Statutes Annotated raises the question of whether ‘Irish literature’ refers to literature in the Irish language only or whether it also includes Anglo-Irish literature. This ambiguity in the English text is resolved by reference to the Irish text ‘*litríocht na hÉireann*’

¹¹⁴ Burrows JF and Carter RI, op cit 181; Dodd D, op cit 116.

¹¹⁵ Forde M, op cit 57; Dodd D, op cit 154.

¹¹⁶ Dodd D, op cit 154.

(the literature of Ireland) which encompasses literature written in languages other than Irish.¹¹⁷

In the same perspective, making a comment on the interpretation of the Irish Constitution, Hogan and Whyte wrote that “the courts have in recent years often looked at the Irish text of the Constitution (where the case in general has been conducted entirely in English) not in order to find a conflict, (...) but, in order to elucidate the meaning of the corresponding English expression.¹¹⁸ Many examples are expressive in this regard, suffices it to consider the following three illustrations:

“In *Murphy v Attorney General*¹¹⁹, Henchy J, in asserting that an unconstitutional measure was void from the moment of enactment and not merely voidable, said:

‘In its dictionary literary or colloquial connotation in modern Irish, ‘gan bhail’ means ‘worthless, void, ineffective’... In this context ‘gan bhail’ means ‘without legal effect’ and not ‘voidable’ or liable to be deprived of legal effect’.”¹²⁰

In *The State (McCaud) v Governor of Mountjoy Prison*¹²¹ Egan J said that there was ‘some merit’ in the applicant’s suggestion that the word ‘costas’ (unlike the corresponding English Expression ‘charge’) included expenses incurred in the incidental administration of an international agreement.¹²²

In *The State (Gilliland) v Governor of Mountjoy Prison*¹²³, Barrington said that “while the term ‘costas’ undoubtedly has the meaning ‘expense’, it is wide enough to include the meaning ‘charge’. The phrase ‘a charge upon public funds’ is rendered in the Irish text as ‘costas ar an gciste poibli’. Literally, this appears to mean ‘a charge on (or a cost or expense to) the public fund.’”¹²⁴

However, it would be wrong to consider that the reconciliation of the language versions is a single way where the English version is to be always elucidated by the Irish version, as one could erroneously tend to conclude basing his or her point of view on the fact that, in the Irish

¹¹⁷ Dáithí Mac Cárthaigh, op cit 219.

¹¹⁸ Forde M, op cit 57; Hogan GW and Whyte GF, op cit, 387; *O’Donovan v. Attorney General* [1961] I.R. 114.

¹¹⁹ Hogan GW and Whyte GF, op cit, 388 citing [1982] IR 241.

¹²⁰ Hogan GW and Whyte GF, op cit, 388 citing [1982] IR 241 at 310.

¹²¹ [1985] IR 68.

¹²² Hogan GW and Whyte GF, op cit, 388 citing [1985] IR 68.

¹²³ [1987] IR 201.

¹²⁴ Hogan GW and Whyte GF, op cit, 388.

context, almost all laws are voted in English and subsequently translated and published in the Irish. In some instances, a reverse way through which the English version is used to throw light to the Irish version is possible. Illustrations are to be drawn in *Bunreacht na hÉireann*, Article 12.4.4° and Article 28.9.1°.

Article Article 12.4.4° reads:

Tig le haon duine atá nó a bhí ina Uachtarán é féin d'ainmniú d'oifig an Uachtaráin.

Former or retiring Presidents may become candidates on their own nomination.

According to Dáithí Mac Cárthaigh, the Irish version can be construed in two ways. In this regard he wrote that “it is argued by Dr. Micheál Ó Cearúil that a former or retiring president could nominate his or herself for the office of President rather than as a candidate for election to that office meaning that there would be no question of an election.”¹²⁵ Dáithí Mac Cárthaigh further argued that “this is a liberal construction of the Irish text and that under a conservative construction “ainmniú d'oifig an Uachtaráin” (nomination for the office of president) implies nomination for election to said office given that, if more than one former or retiring president were to pursue such a course, only one could serve as president. The English version with its specific reference to candidacy resolves this ambiguity.”¹²⁶

Article Article 28.9.1° reads:

Tig leis an Taoiseach éirí as oifig uair ar bith trína chur sin in iúl don Uachtarán.

The Taoiseach may resign from office at any time by placing his resignation in the hands of the President.

The Irish version presents a taoiseach who wishes to resign with a wide range of options in relation to his communicating his resignation to the President given that he need only inform her of his decision (cur in iúl). The English version, however, is much narrower and calls for said resignation to be placed in the President's hands. Under the shared meaning rule the

¹²⁵ Dáithí Mac Cárthaigh, op cit 220 citing Ó Cearúil, *Bunreacht na hÉireann: Two Texts or Two Constitutions?* (The Ireland Institute 2002) 45-47.

¹²⁶ Dáithí Mac Cárthaigh, op cit 220.

English version would be preferred notwithstanding Article 25.5.4° because both texts can convey this meaning without conflict when read together.¹²⁷

The testimonial of the fruitfulness of the comparison of the two language version in Ireland appears also in the following observation of Mr de Valera:

“it is a great advantage to have a fundamental law in two languages. Ambiguities are found in practically every language. You will have those ambiguities no matter how you may try to provide against them...Where there is an apparent slight ambiguity in one text, when you turn to the other text you find that it is completely removed: that it quite clearly has one meaning and not another.”¹²⁸

It is worth noting that the recourse to the comparison cannot be made in the case of the enactments that are merely translated, printed or published¹²⁹ into the other language after the passing of the enactment. The reason behind is that it is considered that translation are not text enacted by the Oireachtas or a true representation of the Oireachtas’s will.¹³⁰

From the above illustrations it emerges that, in the Irish context, the reconciliation of the English and Irish language versions does not follow any methodical approach. The actual state practice reveals that the courts identify the discrepancies and make an empirical comparison between the two official language versions. From the comparison, a common meaning may be reached and the Irish version prevails in the event of an irresolvable conflict between the two language versions.

¹²⁷ *ibid*

¹²⁸ *ibid* citing 82 Dáil Debates 1259a (Second Stage, 2 April 1941)

¹²⁹ Article 7 of the Official languages Act 2003 provides that “as soon as may be after the enactment of any Act of the Oireachtas, the text thereof shall be printed and published in each of the Official languages simultaneously”. Article 25 (25.1-25.4) of the Constitution provides that bills may be presented and passed by the Oireachtas and then signed by the President either unilingually (either Irish only or English only) or bilingually and that, where a bill is passed and signed unilingually, that an official translation be issued in the other official language. In the case of unilingual bills, the Constitution only requires that the text which was passed by the Oireachtas and signed by the President be enrolled in the Office of the Registrar of the Supreme Court as conclusive evidence of its provisions (Article 25.4.5°).

¹³⁰ Dodd D, *op cit* 154.

3.1.3 Rwandan case: cohabitation of two statutory multilingual interpretation regimes

As mentioned earlier, the Amendment n° 04 of 17/06/2010 of the 2003 Constitution of the Republic of Rwanda ¹³¹ does not recognize the equal authenticity rule; “in case of conflict between the three official languages, the prevailing language must be the language in which the law was adopted.”¹³² As a result and, in accordance with Article 93 of the Constitution, the Rwandan courts are restrained from the use of other language versions, a part from the language of adoption of the laws.

It emerges from this state of affairs that, unlike the Canadian case, the search of the shared meaning by the Rwandan Courts would not be in conformity with the Law. Within the period starting on 17th June 2010 up to date under the fourth constitutional amendment regime, any case where the courts have applied the shared meaning rule is reported. If the Constitution has clearly prohibited the application of the shared meaning rule for laws adopted after the date of the above mentioned constitutional amendment, the question remains unsolved for the interpretation of the multilingual laws adopted before the 17th June 2010, because any indication of the language to prevail in case of conflict between the language versions has not been made. In such a silence of the Law, it could be argued that any obstacle cannot be raised to the application of the shared meaning rule by courts, as long as any indication of the language to prevail in case of conflict of language version of these laws has been made and that all three languages were equally authentic when those laws were enacted (before the 17th June 2010).

It could be argued that the Rwandan multilingual statutory interpretation is a dualist regime where a tacit equal authenticity rule - with the possibility of the application of the shared meaning rule for the laws adopted before 17th June 2010- cohabitates with the prevalence of the language of adoption for the laws adopted after 17th June 2010.

A comparison of these above two regimes suggests that the equal authenticity rule and its corollary application of the shared meaning canon are to be favoured, because the only recourse to the language of adoption restricts the sphere of action of the courts in the search

¹³¹ *Official gazette n° special*, 17 June 2010, p.1.

¹³² Article 93 of the Rwandan Constitution

of the legislative intent. In concrete terms, the strict respect of the language of adoption consecrates the supremacy of the Parliament to the judiciary. Therefore, it prohibits any departure from the will of the Parliament even if the former leads to the absurdity. Considering the fact that the legislative supremacy “is often expressed in terms of courts being ‘faithful agents’ of the legislature¹³³ and renders the judiciary “as a mere interpreter and enforcer,”¹³⁴ one could not disagree that when the recourse to one language version does not offer effective results, the interest of those for whom justice is supposed to be rendered do suffer. Again, in modern administration of justice it is considered that a more flexible approach to statutory interpretation is the better one because it allows the courts not to be bound by the will of the legislature when this will would lead to the absurdity. “To limit the meaning of the authors of a legislative document to the literal meaning of the words maximizes indeterminacy, absurdity.”¹³⁵ It is actually argued that “there is something more in the task of interpreting statutes than carrying out the intention of the legislature, a task which is particularly futile in those instances where the intention of the legislature is so obscure that is undetectable.”¹³⁶ Agreeing with the assertion according to which interpretation is “not simply a process of drawing out of a statute what its maker put into it, but also in part, and in varying degrees, a process of adjusting the statute to the implicit demands and values of the society in which it is to be applied,¹³⁷ one could not disagree that the obligation to apply the only language of adoption of the law reduces the advantages offered by the recourse to the purposive and contextual statutory interpretation approach when this approach would lead to effective results by means of consulting other language versions other than the language of adoption.

Also, the above mentioned obligation constitutes an obstacle to the active role that, in the modern statutory interpretation trend, judges are called upon to play and today considered as the best approach that the only search for and declaration of the intention of the lawgiver. In this regard, it is suggested that “the distinction between the making of laws, usually reserved for Parliament, and the interpretation of laws, usually reserved for the courts, falls away when

¹³³ Bigwood R, op cit 188.

¹³⁴ *ibid*; Burrows JF and Carter RI, op cit 23.

¹³⁵ Goldsworthy J, op cit 84.

¹³⁶ Strydom HA, ‘The legal theory of Lon L Fuller’, in Corder H, *Essays on Law and Social Practice in South Africa* (Juta & Co Ltd 1988) 137.

¹³⁷ Strydom HA, op cit 137 citing Fuller, *Anatomy of the Law* (New York, Frederick A Praeger 1968) 59.

we consider how much of the meaning of a statute depends not on the enacted words but on the judicial interpretation thereof. Judicial interpretation is primarily a part of the process of law-making in a concrete case.”¹³⁸ It appears from the above that instead of being “faithful agents” of the legislature, in interpreting the statutes, courts should be active and not bound to the usage of one language when looking for the real meaning of an enacted text.

The recourse to other language versions is of a great importance, if one has to consider the fact that in Rwanda, like in Ireland, the prevailing language version in case of conflicts is practically different from the language in which laws are prepared. Respectively, in Rwanda all laws are adopted in Kinyarwanda while almost all of them are prepared in English or/and French. In Ireland, the prevailing language is the Irish while almost all laws are prepared and adopted in English¹³⁹. It is out of doubt that the real meaning and the real intended will would also be accurately searched from words and expressions of the language of preparation of the law.

Canada and Rwanda share the character of being bijural jurisdictions. As a consequence to this character, in these jurisdictions, drafters are persons who have done their Law University studies either in the Civil Law system or the Common Law system. It is undisputable that when they are doing drafting of projects of pieces of legislations, they are not indifferent to the influence of one of the above Law system which, by contrast, does not affect the Members of Parliament when they are examining and adopting laws. From our point of view, this influence of these two Law systems on the drafters which is not perceived and taken into account by the lawgiver constitutes a gap between the two actors of the legislative process. This explains the alterations which may affect the words and expressions of the provisions of a law initially drafted with the inspiration of one or other of these two Law systems. In such circumstances, it could be argued that, the default of taking into account the legislative history and, mostly, the pre-legislative stage in interpretation of multilingual statutes will not permit the identification of the above mentioned alteration resulting to the said gap.

¹³⁸ Strydom HA, op cit 137 citing Fuller, *Anatomy of the Law* (New York, Frederick A Praeger 1968) 59.

¹³⁹ Hogan GW and Whyte GF, op cit 381.

Unlike in Rwanda, in Canada where the two language versions are authentically equal, the rule of Law is equally applied to the English and French speakers because they know what the law allows and what it prohibits. This is not the case in Rwanda where, in case of the existence of conflicting language versions of a same provision, one or the other category of the three official languages speakers relies in an existing but not effective provision. It could be argued that this situation constitutes a violation to the rule of Law principle if a due regard is to be had on the point of view according to which “citizens cannot be expected to conform their behavior to legislative desires that have not been publicly promulgated.”¹⁴⁰ Admittedly, this citation is relating to the “publicity of promulgation” of laws, but one also has to admit that an existing but not effective version is not far from unpublished promulgated provision. Again, if due attention is paid to the Irish context, it is to be noticed that, unlike in Rwanda, notwithstanding the prevalence of the Irish in case of language discrepancies, courts also apply the shared meaning rule. This reveals that the efforts made for the reconciliation of the two language versions respond to the concern of the use of all possible means to shade the light on a hidden meaning and to bring to the knowledge of all citizens what the Law prescribes and what it prohibits. This position concurs with a suggestion according to which Government by unexpressed intent is similarly tyrannical.¹⁴¹

3.2 *Absence of shared meaning*

It is argued that if all versions are irreconcilable, there is no shared meaning and the interpreter must rely on other principles and aids to determine the most appropriate or intended meaning.¹⁴²

In the Canadian context, the most illustrative example is to be found, in *Klippert v the Queen*.¹⁴³ In this case, section 659 of the Criminal Code defined a dangerous sexual offender as a “*person who.... has shown a failure to control his sexual impulses*”. These words were rendered, in the French version, as “*personne ... qui ... a manifesté un impuissance à*

¹⁴⁰ *ibid*

¹⁴¹ Scalia A, *op cit* 17.

¹⁴² Sullivan R, *op cit* 90; Côté P A, *op cit* 278; Dáithí Mac Cárthaigh, *op cit* 225.

¹⁴³ [1967] RCS 822.

maîtriser ses impulsions sexuelles” were irreconcilable in the both versions. The Court opted for the English version, basing its decision on the legislative history of the provision.¹⁴⁴

The impossibility to reconcile versions was also the case in *Slaight Communication Inc v Davidson*¹⁴⁵ where the Supreme Court of Canada had to consider the extent of the remedial powers conferred on adjudicators by section 61.5(9) of the Canada Labour Code.

In accordance with the section an adjudicator could order an employer to (a) pay compensation, (b) reinstate an employee, or (c) “*do any other like thing that it is equitable to require*”. The French corresponding version to sub-section c was “*faire toute autre chose qu’il juge équitable d’ordonner.*” Considering that “the word ‘like’ in the English version of s. 61.5(9) (c) of the Canada Labour Code does not have the effect of limiting the powers conferred on the adjudicator by allowing him to make only orders similar to the orders expressly mentioned in paras. (a) and (b) of that subsection,¹⁴⁶ the court removed the word “like” in order to have the two versions saying the same thing. It appears from Lamer J statement that the court had taken into account many considerations to reach this conclusion:

“The meaning found in the French version is much more consistent with the general scheme of the Code, and in particular with purpose of Division V.7, which is to give non-unionized employees a means of challenging a dismissal they feel to be unjust and at the same time to equip the adjudicator with the powers necessary to remedy the consequences of such a dismissal. Section 61.5 is clearly a remedial provision and must accordingly be given a broader interpretation (...) I believe that the legislator intended to vest in the adjudicator powers that would be sufficiently wide and flexible for him to adequately perform the duties entrusted to him (...) I therefore consider that the meaning to be given to both versions is what clearly appears on the face of the French version.”¹⁴⁷

In the Irish context, an example of the absence of shared meaning is Article 12.4.1° of Bunreacht na hÉireann, which provides:

Gach saoránach ag a bhfuil cúig bliana tríochad slán, is intofa chun oifig an Uachtaráin é.

Every citizen who has reached his thirty-fifth year of age is eligible for election to the office of President.

¹⁴⁴ Côté P A, op cit 278; Sullivan R, op cit 91; Dáithí Mac Cárthaigh, op cit 225-226.

¹⁴⁵ [1989] 1 SCR 1038.

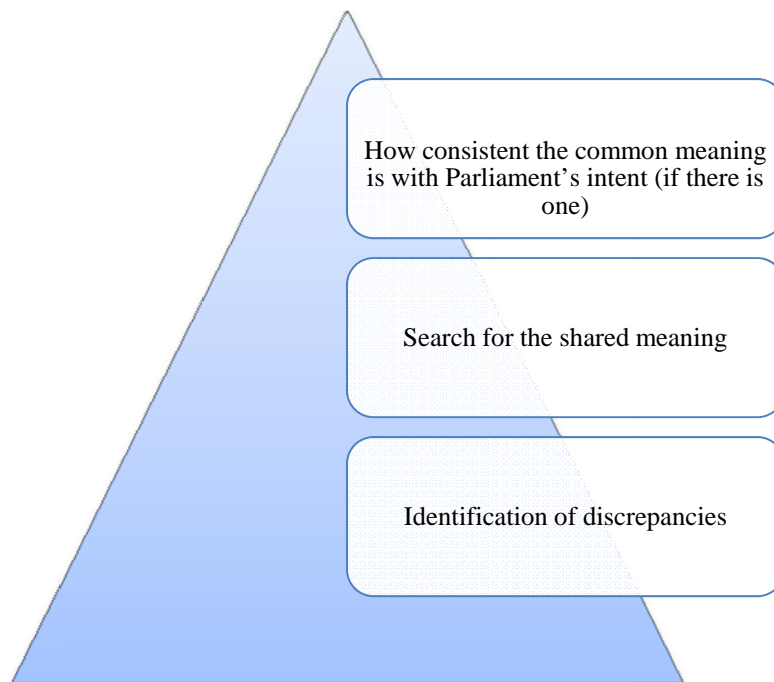
¹⁴⁶ Sullivan R, op cit 88; <http://scc.lexum.org/en/1989/1989scr1-1038/1989scr1-1038.html>

¹⁴⁷ [1989] 1 SCR 1038.

In the Irish text one must be 35 years of age to be eligible for election to the office of President. In the English text one need only be 34 years. It is to provide for just such situations that, pursuant to Article 25.5.4°, the text in the national language prevails and it would be difficult to imagine an argument to justify a departure from this constitutional canon of construction, in relation to this provision in any event.¹⁴⁸

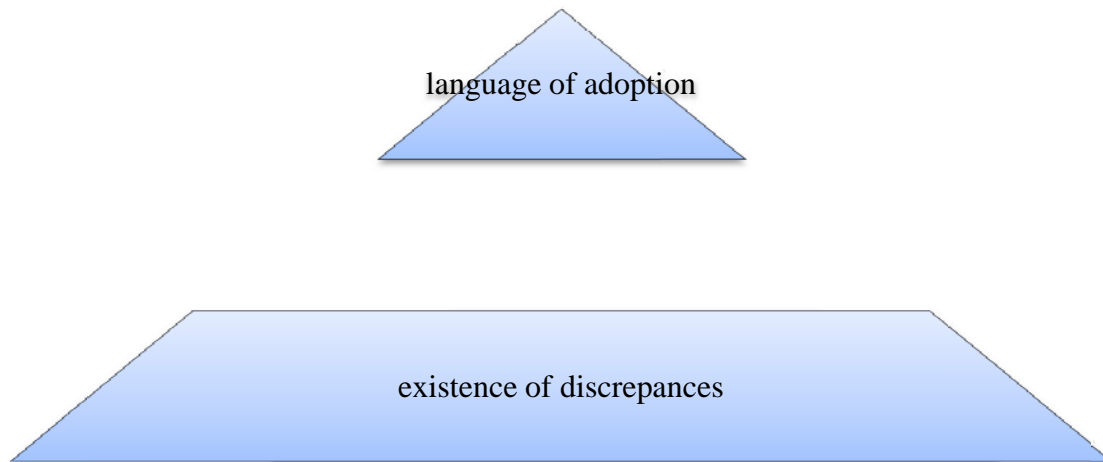
The following are comparative graphics of multilingual approaches adopted in the three examined jurisdictions

a. Canadian and Irish cases: A perfect pyramidal graphic



¹⁴⁸ Dáithí Mac Cárthaigh, *op cit* 227.

b. Rwandan case: A broken pyramidal graphic



The above two pyramids representing the multilingual statutory interpretation channel in Canada, Ireland and Rwanda, respectively, show clearly that the Canadian and the Irish approaches are the same while the Rwandan one is unique and is characterised by an absence of a link. This absence forms a gap between the first and the third steps of the multilingual statutory interpretation process pyramid.

3.2 Weakness of the shared meaning rule and application of other principle of interpretation

In earlier cases, the dominant trend of jurisprudence was to adopt shared meaning of bilingual provisions as conclusive without resort to other interpretative aids. Indeed, having discovered or constructed a meaning that is plausible for both versions, the court takes it for granted that this must be the intended meaning and there is no need to look to other interpretative aids.¹⁴⁹

Under the current approach however, it is submitted that the shared meaning is not conclusive¹⁵⁰ and therefore should be tested against other indicators of meaning so that if an alternative interpretation is for some reason preferable, the shared meaning should be rejected.¹⁵¹ Salembier P goes far and suggests that, because it does not coherently account for

¹⁴⁹ Sullivan R, op cit 87.

¹⁵⁰ Sullivan R, op cit 87; Salembier, op cit 80; Dáithí Mac Cárthaigh, op cit 223; Côté P A, op cit 280.

¹⁵¹ Sullivan R, op cit 87

the origin of linguistic divergences, in the majorities of circumstances in which it is applied, the shared meaning rule produces results that are no more accurate than random chance would predict and, therefore, does not contribute to the determination of legislative intent in any meaningful way.¹⁵²

The most eloquent case illustrating that the shared meaning is not decisive is *Food Machinery Corp. v. Canada (Registration of Trade Marks)*.¹⁵³ In this case, the shared meaning was tested against other indicators of meaning, leading to a rejection of the shared meaning by the Court as not embodying the rule which parliament intended to make law.¹⁵⁴ For example, if it is submitted that, in application of the shared meaning rule, the courts would opt for the narrower meaning against the broader one, surprisingly, in a number of instances they “have justified applying a clear but broader version over a narrower one: because it was more consistent with the purpose of the Act, with other legislative provisions, or with the legislative history or evolution of the Act ... or because the other language version was poorly drafted or lacked internal rationality.”¹⁵⁵

It is suggested that if the language versions are irreconcilable, the interpreter must rely on other principles.¹⁵⁶

Two cases of irreconcilable texts are to be differentiated. The first case is about the language versions that are completely irremediable. This case is considered as relating to an ordinary ambiguity. It is suggested that ordinary canons of statutory interpretation apply to it. In this regard, it is worth pointing out that, unlike the Canadian and Irish cases, in the Rwandan context, this kind of ambiguity must be resolved by means of the ordinary canons of interpretation. In the Rwandan context, the legislature has excluded the possibility of the ascertainment of the irremediable character of texts (see graphic 2). The second possibility is relating to the cases where the shared meaning is found but vain. In this case, the ineffectiveness character may be related to the fact that the word or expression which is used does not have a vertical internal coherence within the whole Act. The search for the intended

¹⁵² Salembier P, op cit at 80.

¹⁵³ (1946) 2 DLR 258.

¹⁵⁴ Further comments related to this case are annexed to this work as Annex I.

¹⁵⁵ Salembier, op cit 88.

¹⁵⁶ Côté P A, op cit 279.

meaning should take into account not only the horizontal coherence between the language versions but also the vertical coherence of the provisions within the whole Act.¹⁵⁷ In this regard, Burger argues that a statute as a whole is to be considered and that if any section is looked at or considered in isolation, this would be misleading.¹⁵⁸ In *Lloyd's Trustee v Kimberley Licencing Board*¹⁵⁹, it was held:

“It is beyond dispute that we are entitled and indeed bound when construing the terms of any provision in a statute to consider any other parts of the Act which throw light upon the intention of the legislature and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act”.

In enumerating the internal aids to which recourse may be had in order to achieve this result, Burger mentions the other official language in which the statute is translated.

The search for the intended meaning through the assessment of the horizontal and vertical coherence is an internal aid to the multilingual statutory interpretation and coexists with a number of external aids. Among the external aids, a purposive and contextual¹⁶⁰ approach is favoured in case the versions are irreconcilable.¹⁶¹ The contextual approach takes into account the legislative process and history¹⁶², relevant policy concerns, and relevant external evidence¹⁶³ and the pre-parliamentary materials¹⁶⁴. In the same perspective, Ruth Sullivan wrote that “an interpretative method that is often used to good effect in reconciling divergent language versions is the technique of tracing the legislative provision back to its origin. If it can be established that originally the provision was meant to incorporate a solution or concept

¹⁵⁷ *ibid* 280.

¹⁵⁸ Burger AJ, *A Guide to legislative Drafting in South Africa* (Juta 2002) 25.

¹⁵⁹ *ibid* citing [1930] GWL 17.

¹⁶⁰ Bell J and Engle G, *op cit* 152; Sullivan R, *op cit* 86; Bigwood R, *op cit* 171; Beaupré M, *op cit* 5; Miers D and Twing W, *op cit* 149; Driedger EA, *op cit* 87.

¹⁶¹ Côté P A, *op cit* 280; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 SCR 559, 2002 SCC 42; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 27; *R. v. Sharpe*, [2001] 1 SCR 45.

¹⁶² Bell J and Engle G, *op cit* 152; Sullivan R, *op cit* 258-289 171; Beaupré M, *op cit* 5; Miers D and Twing W, *op cit* 257; Jacometti V and Pozzo B, *op cit* 64; Langan PSJ, *Maxwell on Interpretation of Statutes* (12th edn, Sweet & Maxwell Limited, London 1969) 48.

¹⁶³ Burrows JF and Carter RI, *op cit* 182; Bell J and Engle G, *op cit* 152, Miers D and Twing W, *op cit* 240; Geny, *op cit* 287.

¹⁶⁴ Bell J and Engle G, *op cit* 160.

from another jurisdiction or to codify a pre-existing rule, then the language version that the best expresses that solution, concept or rule may fairly be adopted.”¹⁶⁵ In *Johnson v Laflamme*¹⁶⁶, for example, the method was used to justify a preference for the French version of an article in Quebec’s Civil Code. In the same perspective, Twing and Miers wrote that “consideration of an act’s legislative history means going back to the original statute (...) and to the successive amendments that were made to them.”¹⁶⁷ Repeatedly, judicial interpretation has shown the will to use historical analysis as one of its tools. This was the case in *R v Hammersmith and Fulham London Borough Council*.¹⁶⁸

It is suggested that “reports of law reform commission, parliamentary committee, interdepartmental committee and other governmental committees sometimes suggest the enactment of legislation to deal with the matters they have investigated”.¹⁶⁹ In the same perspective Bell and Engle wrote that “the decision in *Pepper v Hart* not only affects the use of parliamentary material but also the extent to which account can be taken of Government Green or White Papers and the reports of advisory committees, the Law Commission, Royal Commission and like. As with failure to consult *Hansard*, so failure to look at reports such as those of the Law Commission can lead to a divergence between what was proposed and how the courts interpret the resulting statute.”¹⁷⁰ In many cases, without legislative sanction, courts admitted such reports, primarily for the purpose of discovering the mischief or defect for which the law did not provide.¹⁷¹ This was the case in *Totalisator Agency v Wagner, Re Jhon Martin & Co Ltd, Andrews v John Fairfax & Sons Ltd, Orton v Melman*.¹⁷²

Hansard and extrinsic material were considered as admissible in many decided cases to identify the relevant mischief or purpose intended to be served by the provision in question. This was the case in *Gerhardy v Brown* and in *Hoare v R*.¹⁷³ Also it is suggested that “the

¹⁶⁵ Sullivan R, op cit 93.

¹⁶⁶ Sullivan R, op cit 93 citing (1916) 54 SCR 495.

¹⁶⁷ Miers D and Twing W, op cit 257

¹⁶⁸ *ibid* citing [2008] UKHL 14; [2008] 4 All ER 271.

¹⁶⁹ Geddes RS and Pearce DC, op cit 66; Côté P A, op cit 1982, op cit 69.

¹⁷⁰ Bell J and Engle G, op cit 160.

¹⁷¹ Geddes RS and Pearce DC, op cit 69.

¹⁷² *ibid* citing [1963] WAR 180; [1974] 8 SASR 237; [1980] 2 NSWLR 225.

¹⁷³ *Ibid* citing [1985] 159 CLR 70; [1989] 167 CLR at 360-1; Miers D and Twing W, op cit 257.

High Court affirmed that the common law permits the courts to refer both to reports of law reform bodies and explanatory memoranda to ascertain the mischief to be remedied by statute. In *CIC Insurance Ltd v Bankstown Football Club Ltd*¹⁷⁴ Toohery and Gummow observed that:

“the modern approach to statutory interpretation...uses ‘context’ in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as [reference to reports of law reform bodies], one may discern the statute was intended to remedy.”¹⁷⁵

4.0 Conclusion

A number of literature and many decided cases have revealed their tendency to accept the shared meaning as a conclusive approach in the attempt to find the will of the Parliament.

This dissertation contended that a better approach for the statutory interpretation of multilingual texts is the coupling of the equal authenticity rule with other ordinary canons of statutory interpretation among which the contextual approach taking into account the legislative history is to be more favoured.

In order to prove this hypothesis, a comparison of the approaches adopted in Canada, Ireland and Rwanda was made and revealed that, in Canada and Ireland, though these countries have adopted different regimes of multilingual statutory interpretation, respectively, the equal authenticity rule and the prevalence of the national language, the actual state practice shows that the courts of the both two jurisdictions apply the shared meaning rule in the search for the intended meaning.

While, in the Canadian context, several methods are used to determine the shared meaning considered to be the intended will, in the Irish context only an empirical comparison permits to discover the discrepancies existing between the English and the Irish versions. With this approach the reconciliation of versions is made from an elucidation of one language by the other. The Canadian approach is more elaborated in that it methodically establishes a difference between three cases of diverging language versions. In the first case, the ambiguity is in one version but not the other. In the second case, any version is ambiguous, or they both

¹⁷⁴ Geddes RS and Pearce DC, op cit 71.

¹⁷⁵ *ibid.*

are. The third case appears when the two versions are irreconcilable. These three starting points of identification of discrepancies are, in the Irish context, summed up in one step: the identification of differences.

It was revealed that the Rwandan case is special in that it is characterised by a cohabitation of an explicitly rule of the prevalence of the language of adoption of the law to other language versions and, for multilingual laws adopted before the 17th June 2010, a tacit possibility of application of the shared meaning to language versions in case of the discrepancies of their meaning. As far as the latter case is concerned, a decided case to which reference was made in this work proved that, other language versions, other than the language of adoption, can reveal themselves to be more helpful in the ascertainment of the intended real meaning than the language of adoption of the law. A comparison of these two regimes suggests that the equal authenticity rule and its corollary application of the shared meaning canon are to be favoured, because the only recourse to the language of adoption restricts the sphere of action of the courts in the search of the legislative intent. In concrete terms, it was revealed that the strict respect of the language of adoption consecrates the supremacy of the Parliament to the judiciary and inhibits the possibility for the judge to be completely free when attempting to discover the context and the purpose on which the enactment of a law is based. The work revealed that recourse to the legislative history would be a great aid to the multilingual statutory interpretation because it can shade the light to the linguistic circumstances of the preparation of the law and the Law family system from which the latter derives from. This was elicited by a comparison of the bijural character of Rwanda and Canada.

Considering the fact that, in Canada, there are instances where the shared meaning was conclusive and that, in Ireland, notwithstanding the rule of the application of the prevalence of the National language in case of the language versions discrepancies, the general tendency of the courts is the search for the reconciliation of all the two language versions, it could be concluded that the equally authoritative rule of language versions of an enacted text is to be favoured compared to the prevalence of one language version. But this conclusion is at its half way. Therefore, to be more complete, one could add that considering the fact that in some instances, in Canada, the shared meaning rule, to throw the light to the intended meaning, was associated with other ordinary canons of statutory interpretation among which the contextual approach was favoured, it could be argued that a better multilingual statutory

interpretation is the one which adopt the equal authenticity of all language versions and allows its combination with the contextual approach.

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Annex I

*Food Machinery Corp. v. Canada (Registration of Trade Marks) case*¹⁷⁶

In *Food Machinery Corp. v. Canada (Registration of Trade Marks)* the shared meaning was tested against other indicators of meaning, leading to a rejection of the shared meaning by the Court as not embodying the rule which parliament intended to make law. The matter in issue was whether the appellant was entitled to register its corporate name as a word mark under the Unfair Competition Act.

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

An application for the registration of a word mark otherwise registrable shall not be refused on the ground that the mark consists of or includes a series of letters or numerals which also constitute or form part of the name of the firm or corporation by which the application for registration is made.

Une demande d'enregistrement d'un mot servant de marquee autrement enregistrable ne doit pas être refusée pour le motif que la marque se compose d'une derie de lettres ou chiffre ou la comprend, qui constituent aussi le nom de la firme ou corporation, ou en font partie, par laquelle la demande d'enregistrement est faite.

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

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

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

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

¹⁷⁶ Dáithí Mac Cárthaigh, op cit 213, Sullivan R, op cit 87.

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

My own opinion of the English text is that its meaning is also clear, but two constructions have been advanced, one of which is objectionable and the other free from objection...[I]t seems to me that the Court should deal with the matter as it would deal with any other question of ambiguity, namely, seek to ascertain the true intent of Parliament, following the guidance of the canons of construction recognized as applicable in such cases. Under the circumstances, it would, I think, be sound to hold that where two constructions are advanced for either the French or English text of a statute, one subject to objection and the other free from it, that construction which is free from objection, according to the recognised canons of construction, should be adopted, even although the language of the other text is at variance with it and in accord with the objectionable construction; the objectionable construction is not rendered free from objection by reason of such accord and is not entitled to any support from it.

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

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

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