

The French Jurilinguistics Group of the Department of Justice

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Under section 133 of the British North America Act, the Parliament created in 1867 was to be a bilingual one. But the Fathers of Confederation did not consider all the problems involved in establishing real equality between the French and English languages. Nor did they have the technology necessary for such a grand project. In the years that followed, a number of measures were adopted in an attempt to create real linguistic equality in Parliament. These include the creation in 1885 of the position of Deputy Speaker of the House of Commons with the requirement he have a knowledge of the language other than that in which the Speaker is fluent; the establishment of a Translation Bureau in 1934; the introduction of simultaneous translation services in 1959, the adoption of the *Official Languages Act* in 1969 and, in 1982, of the Canadian Charter of Rights and Freedoms.

One of the most recent attempts to overcome the practical problems of legislating in two languages was the creation, in 1979, of the French Jurilinguistics Group in the Department of Justice. All legislative drafting in Canada has been centralized in the Justice Department since 1944 and is carried out by the Legislation Section.

French is, at the federal level, an official language on equal terms with English. Statute law, although originating from English law or common law, has been strongly influenced by roman-germanic legal concepts, or civil law in the broad sense of the term. The drafting of bills is done in co-operation by teams of French-speaking and English-speaking lawyer-drafters; the former with a civil law background the latter with common law training. As soon as the Cabinet authorizes the Legislation Section to prepare a bill, a lawyer is designated from each official language group and from each legal system. According to a task assignment procedure, each member of the team is alternately given a greater degree of responsibility.

This system has existed for only a few years. Until recently, bills were prepared in English and then translated, generally quite literally, by a service outside the Department. For many years this translation was final. It was not even re-read by a French speaking

lawyer before being tabled before Parliament. Hence, the French translator was, quite wrongly, the first, and in many cases, the only interpreter of the Act.

Aware that the situation had to be corrected, the Department appointed French-speaking lawyers with civil law training to vet the French version of bills.

This initiative certainly helped to improve the situation. The French version, however, continued to follow the lead of the English text. Furthermore, French-speaking lawyers, unlike their English-speaking colleagues, only vetted legislative texts and, despite the nature of their training and vocation, were prevented from trying their hand at drafting. For this reason, the Department decided, in a second phase, to create the bilingual-bilegal team mentioned above. To assure its operation, this practice had to be given theoretical and practical foundations.

On the theoretical level, the Department postulated that the objective was to draft statutes whose sense, spirit and legal effects are equivalent in both languages: the concept of a French version which merely reflects, word for word, the English "original" was deemed inadequate. This meant a radical change of approach, the emphasis being put from the outset on drafting rather than on translation. As the federal government had no French legislative drafting tradition, however, it had to create one in order to guide its lawyers in both drafting directly in French and in drafting from the English. That is why the Department defined the nature of legislative writing and established its optimal qualitative characteristics.

On the practical level, this led to the creation of a group responsible for implementing the concept into daily work structures, for promoting its progress, and for doing its fine-tuning. The French Jurilinguistics Group or JLF was born.

Composed of roughly twenty members, this group includes all the French speaking lawyers and linguists of the Legislation Section and of the Law Revision Commission (responsible for revising periodically the language of all statutes), as well as representatives of the editing unit of the Section, of the Legal Services of the Privy Council (regulations) and of the Translation Section (seconded to the Department by the Federal Translation Bureau, Secretary of State). The JLF meets regularly, circumstances permitting. It is entrusted with studying, and, as far as possible, resolv-

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ing, all French legislative problems brought to its attention by its members.

Its first task was to produce a paper entitled *Guide canadien de rédaction législative française (Canadian Guide to French Legislative Drafting)*. For reference purposes, the material is presented in a series of articles whose French and English titles have been classified alphabetically, and is followed by an index.

French legislative drafting is done, as we have seen, either directly in French (for bills), or indirectly from the English (for bills and, in the short term, the revision of existing statutes). The articles in the guide contain, therefore, unilingual French texts dealing with law or language (advice or rules, drafting models, terminology, and miscellaneous information, including format and typographical presentation) and bilingual texts reproducing the official English version of characteristic passages which now occur over and over again, in various forms, in the Statutes, as well as a non-official French version of these passages which can be used as a model.

The rules are either mandatory in character (this is partially the case with unilingual texts) or optional (this normally being the case for bilingual texts that often have to be adopted). The distinction can clearly be drawn from the subject matter at hand.

In its present form, this guide, first published in 1980, is but a starting point. New editions will incorporate the ongoing research of the JLF and benefit from any criticisms forthcoming from all those who make it a point to contribute to the quality of legislative French.

As a natural complement to their problem-solving and creative work, the senior lawyers have undertaken a self-training program. Newly arrived lawyers are trained and French-speaking lawyers will, with increasing frequency, be put in charge of drafting bills. In the past owing to a lack of seniority, the French-speaking are generally less experienced than their English-speaking colleagues. The latter, therefore, will continue to direct for some time yet the preparation of important or particularly complex bills. Moreover, even though the French-speaking drafter may have an excellent secondary training to his credit, he has, nevertheless, learned the law by studying many texts which have been translated with varied success from English, or which are full of English terms, formulations and structures. His teachers and professors have provided him, either unknowingly or because they judged it to be

legally essential, with a training which has been marked in many respects by the same influences. If this lawyer has practised law or some other profession in the private or public sector before occupying his current position, there exists a strong possibility – it is only human – that this anglicizing influence has become even more deeply rooted.

By participating in the work carried out by the JLF, lawyers benefit in two ways: They are freed from the habit of using English structures, and are also trained in the use of authentically French structures. Both aspects of the training are reinforced by the contributions of jurilinguists, that is of linguists specialized in the field of law.

Within the JLF, the jurilinguists assist in drafting and translating bills, and revising statutes. In this capacity their duties are: to review French versions which the lawyer-drafters present to them (produced either through drafting or through the translation of bills), and to take part in the versions' finalization; to provide consultation services on request; to examine French texts in order to adapt and prepare, terminological or phraseological cards to be placed at the disposal of their colleagues or included in the guide; to make presentations on any point considered appropriate; and to ensure communication with the Terminology and Documentation Branch of the Federal Translation Bureau and, where necessary, with the appropriate agencies in the provinces and abroad.

So far, the activities of JLF members, as a group and individually, have had numerous positive results. A number of bills whose French version is quite acceptable with regard to terminology and formulation have been introduced or passed. French legislative drafting and translation is tending to free itself more and more from the lexical or stylistic influence of English. Through the growing co-operation of members of the bilingual drafting groups, a fruitful exchange is taking place between French and English versions of a bill, a process of particular benefit in formulating the spirit and the letter of the law. It is therefore not utopian to expect the birth, in the medium term, of a truly Canadian bilingual legislative drafting school that could eventually serve as a model for those countries or groups of countries where juridical standards must be established in more than one language.

(Translated from French)