



# The Advocates' Society La Société des plaideurs

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The Honourable Chrystia Freeland, P.C., M.P.  
Deputy Prime Minister and Minister of Finance  
House of Commons  
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The Honourable Arif Virani, P.C., M.P.  
Minister of Justice and Attorney General of Canada  
House of Commons  
Ottawa, Ontario K1A 0A6

Dear Deputy Prime Minister, Minister:

## **RE: New Obligations to Simultaneously Publish Federal Court Judgments in English and French**

The Advocates' Society writes to encourage the Government to act quickly to provide the federal courts with sufficient resources to meet the courts' new, expanded obligations to publish key decisions in English and French simultaneously.

Established in 1963, The Advocates' Society is a not-for-profit organization representing approximately 5,500 diverse lawyers and students across the country—unified in their calling as advocates. As the leading national association of litigation counsel in Canada, The Advocates' Society and its members are dedicated to promoting a fair and accessible system of justice, excellence in advocacy, and a strong, independent, and courageous bar. A core part of our mission is to provide policymakers with the views of legal advocates on matters that affect access to justice, the administration of justice, the independence of the bar and the judiciary, the practice of law by advocates, and equity, diversity, inclusion, and reconciliation with Indigenous peoples in the justice system and legal profession.

### **I. The Federal Courts' New Obligations**

*An Act for the Substantive Equality of Canada's Official Languages*<sup>1</sup> has amended the *Official Languages Act*<sup>2</sup> (the "Act") to impose expanded obligations on the federal courts<sup>3</sup> to make their final judgments available in English and French simultaneously.

In addition to judgments that determine "a question of law of general public interest or importance" or that issue from bilingual proceedings, the amendments require judgments that have "precedential value"

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<sup>1</sup> [S.C. 2023, c. 15](#) (formerly Bill C-13).

<sup>2</sup> [R.S.C. 1985, c. 31 \(4th Supp.\)](#) [*Official Languages Act*].

<sup>3</sup> As defined in the *Official Languages Act*, *supra*, s. 3(1).

to be made available simultaneously in both official languages.<sup>4</sup> These amendments will soon come into force, on June 20, 2024.

The Advocates' Society supports the translation and simultaneous publication of federal court judgments in English and French. This is a worthy objective and one which ideally reflects Canada's unique official languages structure. Lawyers and the public alike should be able to access the federal courts' jurisprudence in the official language of their choice, without delay. If this initiative is adequately resourced and supported, more federal court jurisprudence will be available in the two official languages on a timelier basis. Canadian advocates and the clients they represent will benefit from the ability to maintain currency with authoritative case law in both of Canada's official languages. That outcome will increase access to justice for litigants across Canada and improve public confidence in the federal court system. If the initiative is not adequately resourced, these outcomes will be impossible. The federal courts will simply not be able to meet their obligations effectively.

## **II. The Immediate Need for Sufficient Resources, and a Thoughtful Approach**

The federal courts—including the Federal Court and Federal Court of Appeal—must be adequately resourced with sufficient funding, translation tools, and staff to be able to fulfil these new obligations. The Advocates' Society is aware that the Chief Justices of the Federal Court of Appeal, the Federal Court, and the Court Martial Appeal Court of Canada have expressed their need for significant additional resources to meet current and new expectations regarding the translation of judgments.<sup>5</sup>

The preparation of any written judgment is a fundamental matter of judicial independence. Judges must be able to make and express their judgments in a manner that is free from any form of external influence or interference. The Supreme Court of Canada has stated that one of the essential conditions of judicial independence is “the institutional independence of the tribunal with respect to matters of administration bearing directly on the exercise of its judicial function”,<sup>6</sup> otherwise known as administrative independence.

The translation of written judgments engages the administrative independence of the judiciary. Judges require a translation process and infrastructure that would enable them to release decisions that accurately express their reasons for decision, without compromise, in both official languages, without delay.

The Advocates' Society encourages the Government to approach this issue thoughtfully and in close consultation with the federal judiciary and the federal Courts Administration Service (the “CAS”). A point of particular focus should be the needs of unilingual judges who are unable to read the translations of their judgments. Every judge must have complete confidence in the quality and rigor of the translation process and its result.

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<sup>4</sup> See *Official Languages Act*, *supra*, s. 20, as amended.

<sup>5</sup> Letter from Chief Justices of the Federal Court of Appeal, Federal Court, and Court Martial Appeal Court of Canada to Standing Senate Committee on Official Languages, dated June 13, 2022, online: [https://sencanada.ca/Content/Sen/Committee/441/OLLO/briefs/2022-06-13\\_SM-C-13\\_Letter\\_Justices\\_e.pdf](https://sencanada.ca/Content/Sen/Committee/441/OLLO/briefs/2022-06-13_SM-C-13_Letter_Justices_e.pdf).

<sup>6</sup> *Valente v. The Queen*, [1985] 2 S.C.R. 673, p. 708.

The urgent need for a thoughtful approach to the process for translating judicial decisions is intensified by the fact that, at present, the CAS is already experiencing a significant translation backlog using its current approach.

In addition, representatives of The Advocates' Society have consulted with the CAS in respect of the federal courts' anticipated translation needs once the amendments to the *Act* come into force. The CAS has identified the need for a dedicated team of jurilinguists with a sufficient complement to meet the translation demand driven by the requirements of the *Act*. The CAS has also identified the need to employ more customized forms of neural machine translation/artificial intelligence-based translation tools that are designed for the Canadian legal and linguistic context. To meet the objectives of the *Act* most efficiently over the long term, the CAS will need the latitude to undertake pilot projects to build an optimal balance between software or AI-driven translation and the use of human jurilinguists. It appears clear that a new and far more robust approach to translation of judgments will be necessary.

As it will take the courts time to develop greater institutional translation capacity, the resources to do so must be provided to the courts as soon as possible. The Advocates' Society therefore encourages the Government to turn its mind immediately toward how to ramp up the courts' translation capacity and to begin taking steps to do so.

If the federal courts are not provided with the resources to fulfil their new obligations, access to justice and public confidence in the justice system will be undermined. The release of judgments may be excessively delayed for translation into the other official language,<sup>7</sup> denying the parties timely resolution of their matter and the ability to move on with their lives with the court's determination of their dispute in hand. We expect that if the federal courts are unable to release their decisions in a timely manner, public confidence in the administration of justice in a judicial system that is already suffering from concerning delay in the delivery of justice, will decline.

### **III. Comparative Multilingual Legal Decision-Making Bodies**

Canada is not alone in its pursuit of the worthy objectives set out in the *Act*.

The Advocates' Society, in its consultation with the CAS, was advised that the CAS has engaged in comparative outreach to certain other multilingual legal decision-making bodies outside of Canada to collect best practices and other comparative information. To assist the Government, we have undertaken some research on certain courts and decision-making bodies in other multilingual jurisdictions to validate the CAS's funding objectives and to identify best practices and approaches for the timely translation of judgments, which we summarize below.

#### *(i) International Criminal Court*

The International Criminal Court (the "ICC") has six official languages—Arabic, Chinese, English, French, Russian and Spanish—and two working languages, English and French. Pursuant to Article 50 of the Rome

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<sup>7</sup> Assuming that the matter does not fall into one of the limited exceptions to the requirement of simultaneous bilingual publication of judgments provided for in s. 20(2) of the *Official Languages Act*.

Statute,<sup>8</sup> all judgments and decisions “resolving fundamental issues before the Court” are to be published in each of the official languages.

To this end, the ICC has a dedicated Court Interpretation and Translation Section located within the Court’s Registry. As author Kritika Sharma observes: “The section has seven units, and the process appears to be conducted in teams, at least for decisions over 100 pages. In such instances, there is also a project manager who divides the tasks amongst the team and the process involves a layered approach to tasks with revision taking place in sections before the translation is complete, and proofreading taking place after revision of the text.”<sup>9</sup> The ICC reportedly employs approximately 50 staff members for interpretation and translation, and retains additional freelance individuals as required.<sup>10</sup>

Beyond translating, revising, and editing ICC documents, the Court Interpretation and Translation Section provides guidance on terminology and references, and management of language tools to ensure that consistent terminology is used in all organs of the ICC. The Section also uses an Electronic Court System tool for the digital management of the various translation tasks from the request to the delivery of a translation.<sup>11</sup>

The Office of the Prosecutor of the ICC, in turn, has its own Languages Services Unit, to ensure the independence of the Office. Interestingly, the Office of the Prosecutor has also recently launched Project Harmony, a new evidence management platform that will rely on artificial intelligence for various tasks, including automatic translation.<sup>12</sup>

The above translation infrastructures at the ICC underscore the importance of having a dedicated institutional translation team with a developed and consistent process for translation in a multilingual context at a scale commensurate with the volume of decision-making. The Office of the Prosecutor’s new project also highlights the possibilities for efficiencies offered by machine translation software.

(ii) *The European Commission*

The European Commission (the “EC”) is an independent supranational authority which is part of the executive of the European Union (the “EU”).

Among other functions, the EC serves as a decision-making body which enforces legislation passed by the EU. For example, the EC plays a prominent role as the European regulator in the competition law and antitrust areas.

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<sup>8</sup> The ICC’s constituting statute. Rome Statute of the International Criminal Court, 17 July 1998, in force on 1 July 2002, United Nations, Treaty Series, vol. 2187, No. 38544, Depositary: Secretary-General of the United Nations, online: <http://treaties.un.org>.

<sup>9</sup> Kritika Sharma, “Translation of Judgments: International Criminal Court (ICC)”, Oxford Public International Law, June 2020, online: <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3404.013.3404/law-mpeipro-e3404>.

<sup>10</sup> See Molly Quell, “Translating justice: Interpreters keep international courts running”, Courthouse News Service, September 3, 2022, online: <https://www.courthousenews.com/translating-justice-interpreters-keep-international-courts-running/>.

<sup>11</sup> See ICC, “Behind the Scenes: The Registry of the International Criminal Court”, May 18, 2010, online: <https://www.icc-cpi.int/sites/default/files/iccdocs/PIDS/docs/behindTheSce.pdf>.

<sup>12</sup> See “ICC Office of the Prosecutor to launch modern evidence management platform”, YouTube, February 8, 2023, online: <https://www.youtube.com/watch?v=rqt63ghnJSE&t=20s>.

In recognition of the cultural and linguistic diversity of the EU, the EC has identified multilingualism as one of its founding principles. The EC operates in 24 official languages. It has a Directorate-General for Translation (the “DGT”), described by the EC as one of the largest translation services in the world. The DGT has been very active, particularly over the last decade, in developing sophisticated translation processes in the multilingual legal context. The EC has used an evolving combination of human and automated translation systems over that time.

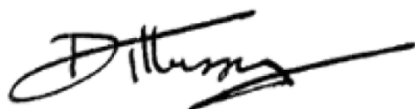
In the case of each of the ICC and the EC, each program reflects a well-resourced and independent structure. Each also employs innovative and customized processes created to meet their respective multilingual service demands. The CAS should be afforded the same in terms of resources and structure, including the ability to implement pilot projects aimed at building a custom system that works efficiently and effectively in the Canadian context.

#### **IV. Further Opportunities**

The expansion of translation capacity could achieve more than the timely availability of bilingual federal court jurisprudence. Should an efficient and cost-effective process be developed, provincial courts could emulate it to increase their own capacities to translate their judgments into English or French, broadening the impact of their jurisprudence and promoting consistency in the law across the country. Future aspirations may include expanding the Federal Court’s existing pilot project of issuing written and oral summaries of selected judgments in Indigenous languages of the parties<sup>13</sup> to translating full judgments into Indigenous languages. The Government’s support of the federal courts’ translation capacities has the potential to enable these courts to become national and even global leaders in this regard, in addition to increasing access to justice for litigants across the country.

Thank you for considering The Advocates’ Society’s submissions. I invite you to contact me should you wish to discuss them further.

Yours sincerely,



Dominique T. Hussey  
President

**CC:** The Honourable Yves de Montigny, Chief Justice of the Federal Court of Appeal  
The Honourable Paul Crampton, Chief Justice of the Federal Court  
Darlene Carreau, Chief Administrator, Courts Administration Service  
Vicki White, Chief Executive Officer, The Advocates’ Society

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<sup>13</sup> See Federal Court, Practice Guidelines for Aboriginal Law Proceedings, September 2021 (4<sup>th</sup> Edition), p. 7: “Indigenous Language Decision Summaries”, online: [https://www.fct-cf.gc.ca/Content/assets/pdf/base/Aboriginal%20Law%20Practice%20Guidelines%20Sept-2021%20\(ENG\)%20FINAL.pdf](https://www.fct-cf.gc.ca/Content/assets/pdf/base/Aboriginal%20Law%20Practice%20Guidelines%20Sept-2021%20(ENG)%20FINAL.pdf).

**The Advocates Society's Task Force on Translation of Federal Court Judgments**

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