

[1] 基本法第八條訂明：「香港原有法律，即普通法、衡平法、條例、附屬立法和習慣法，除同本法相抵觸或經香港特別行政區的立法機關作出修改者外，予以保留」。

[2] 在 1989 年 4 月制定的《證券及期貨事務監察委員會條例》(第 24 章)是香港第一條雙語條例。

[3] 基本法第九條訂明：「香港特別行政區的行政機關、立法機關和司法機關，除使用中文外，還可使用英文，英文也是正式語文」。

[4] Cheung, Eric T. M. "Bilingualism: Where Are We Heading?" In Reform of the Civil Process in Hong Kong. Butterworths Asia, 1999: 241-253.

[5] 釋義及通則(修訂)條例第 10B 條“兩種法定語文本條例的釋疑”訂明：

- (1) 條例的中文本和英文本同等真確，解釋條例須以此為依據。
- (2) 條例的兩種真確本所載條文，均推定為具有同等意義。
- (3) 凡條例的兩種真確本在比較之下，出現意義分歧，而引用通常適用的法例釋義規則亦不能解決，則須在考慮條例的目的和作用後，採用最能兼顧及協調兩文本的意義。

[6] 法定語文(修訂)條例第 3 條“法定語文與其地位與應用”訂明：

- (1) 現予宣布：在政府或公職人員與公眾人士之間的事務往來上以及在法院程序上，中文和英文是香港的法定語文。(由 1995 年第 51 號第 2 條修訂)；
- (2) 各法定語文享有同等待地位，除本條例另有規定外，在第(1)款所載用途上亦享有同等待遇。

[7] 王培光、冼景炬「香港中文判決書的語言問題」。此文曾在“語言與法律首屆學術研討會”(2002 年, 北京)上宣讀。

[8] 該條附例已於 1997 年廢除，案中附例第 35 條現已原文過渡至《食物業規例》第 34 條。

[9] 《食物業（市政局）附例》第 35(a)條原文為：「在任何牌照根據本規例批出或續期後，除非獲得署長書面准許，否則持牌人不得安排或准許對牌照所關乎的處所— (a) 進行任何更改或增建工程，而該更改或增建工程會令該處所與根據第 33 條獲批准的圖則有重大偏差」。

[10] 上述附例英文版本為 “*After the grant or renewal of any licence under this Regulation, except with the written permission of the Director, no licensee shall, in respect of the premises in relation to which such licence was granted, cause or permit - (a) any alteration or addition which would result in material deviation from the plan approved under section 33*”.

[11] *The Queen v Tam Yuk Ha* [1996] HKCFI 445.

[12] 見楊法官判詞第 38 段: “*In my view, the English language term of "addition to the plan" is ambiguous and the Chinese language term of "增建工程" (Zeng Jian Gong Cheng) is clear and plain. The Court must reconcile the difference of meaning of the two authentic texts in such a way as to give effect to the authentic text which carries a clear and plain meaning over the one which is ambiguous*”.

[13] *The HKSAR v Tam Yuk Ha* [1997] HKLRD 1031.

[14] 見廖法官判詞第 13 段: “*The term "更改工程" denotes, inter alia, alteration work, alteration job, and "增建工程" additionally erected work.... Once a universally acceptable definition is available for affirming the intended language assimilation in the two texts, cogent reasons must be lacking for rebutting the statutory presumption that they are compatible.... With these definitions in the Dictionary of Terms published by the Commercial Press.... In my view, there is no ambiguity to resolve in the English language text and on the above definitions there need not be any difference of meaning as between the English language text and the Chinese language text. For either of the texts, any form of alteration/addition would suffice.*”

[15] *Chan Fung Lan v Lai Wai Chuen* (MP No. 4210 of 1996).

[16] 《遺產稅條例》第 18 條相關原文為：「……但如該財產由不知情並付出有值代價的真誠購買人購入，則不得針對該購買人而對該財產施加押記」。

[17] 上述相關條例英文版本為：“...*Provided that the property shall not be chargeable as against a bona fide purchaser thereof for valuable consideration without notice*”。

[18] 見判決書第 16 段：“*It is not possible to reconcile the two texts.... One must bear in mind that the authenticated Chinese text started life simply as a translation of the original legislation and if there are errors in the translation, which are bound to arise in such a mammoth undertaking, such errors should not be given effect simply because under s.10B of the Interpretation Ordinance the two texts are said to be equally authentic*”。

[19] *HKSAR v Lau San Ching & Others* (HCMA 98/2002).

[20] 見判決書第 52 段：“*In this case there is clear conflict between the two authentic texts. The original official English text creates an offence when any person does any act whereby obstruction, whether directly or consequentially, may accrue to a public place, the Chinese authentic text creates an offence when any person does any act whereby obstruction, whether directly or consequentially, actually accrues to a public place (emphasis supplied)*”。

[21] 《簡易程序治罪條例》第 4(28)條英文原文為：“*does any act whereby injury or obstruction, whether directly or consequentially, may accrue to a public place or to the shore of the sea, or to navigation, mooring or anchorage, transit or traffic*”。

[22] 上述條例當時中文版本為：「作出任何作為，因而直接造成或導致公眾地方或海岸、航道、泊船處或下錨處、運輸或交通受損或遭受阻礙」。該條例已於 2005 年修訂，以使其意義與英文版相符。

[23] 見判決書第 55 段：“*if the Ordinance was initially enacted in English, the English text was the original official text from which the Chinese text was subsequently prepared and declared authentic. In ascertaining the ordinance’s legal meaning, the English text should be taken as more accurately reflecting the legislature’s intent at the time it was originally enacted. In this case, the meaning borne by the original official English text, which was already in existence as early as 1932, should take precedence over the Chinese authentic text*”。

[24] 見律政司討論文件第 2.2 段：「第 10B(1)條述明本港法例的兩種語文本平等的基本原則。該條規定條例的雙語文本同等真確，解釋條例須以此為依據。這裏的意思是指中文本既不從屬於其英文對應本，亦非僅為該英文本的翻譯本」。

[25] 見討論文件第 5.1 段：「第 10B.....雖然條例並無指出須在解釋過程中何時進行比較，但若非同時參看兩種文本，則不會發現有意義分歧。在進行協調以消除分歧時，縱使無明文訂定比較兩種文本的法律責任，但亦應要求法庭作比較。在未考慮兩種文本中的一種前，便不應採用另一種」。

[26] 見討論文件第 5.2 段：「兩種文本的歧異須按照第 10B(3)條，分兩個步驟解決。首先須引用通常適用的法律釋疑規則以解決問題，如無法如此解決，則須在考慮條例的目的和作用後，採用最能兼顧及協調兩文本的意義」。

[27] Tabory, Mala. "Multilingualism in International Law and Institutions." *The American Journal of International Law* 76, no. 2 (1982): 433-35.

[28] Fung, Spring Yuen-ching. "Interpreting the Bilingual Legislation of Hong Kong." *Hong Kong Law Journal* 27 (1997): 206. p. 216-218, 226.

[29] 加拿大大部分省份都行使普通法，除了魁北克省行使大陸法。見 Beaupré, Michael. *Interpreting Bilingual Legislation*. 2nd ed. Toronto: Carswell, 1986.

[30] 加拿大相關案例包括 *Food Machinery Corp. v Registrar of Trade Marks* (1946) 2 D.L.R. 258 (Ex. Ct.); *Jones and Maheux v Gamache* (1968) 7 D.L.R. (3d) 316 (S.C.C.); *Minister of Citizenship & Immigration v. Bhalrh* (2004) FC 1236 見 Bennion, Francis Alan Roscoe. *Bennion on Statutory Interpretation a Code*. 5.th ed. London: LexisNexis, 2008.

[31] Fung. (同註 28), p. 223-224.

[32] Cheung, Anne S. Y. "Constitutional and Legislative Provisions Governing the Use of Language in the Hong Kong SAR." (2010): 27-33.

[33] 香港法律改革委員會. 《使用外在材料作為法規釋義的輔助材料報告書》(1997 年 3 月) [http://www.hkreform.gov.hk/tc/docs/rstatutory\\_c.pdf](http://www.hkreform.gov.hk/tc/docs/rstatutory_c.pdf)

[34] Poon, Emily Wai-Yee. "The Pitfalls of Linguistic Equivalence: The Challenge for Legal Translation." *Target* 14, no. 1 (2002): 75–106.

[35] 文偉彥；許行嘉；勵啟鵬；張美寶；李秀莉 「法例之法——香港《釋義及通則條例》概覽」(2010) 34 <http://www.doj.gov.hk/eng/public/pdf/2010/idd20101118e.pdf> 見第 74 條註腳。

[36] 關淑馨. 「懂中文的不懂法律，懂法律的不懂中文---以中文進行民事訴訟的窘局」《香港法律雜誌》41 (2011): 324-42.

[37] Chen Yun, *Detoxing Chinese 中文解毒*. Enrich Publishing Ltd, 2009.

[38] 梁大律師曾說: "**Chinese has a very low level of precision, relatively speaking. Chinese depends more on implied meaning....If you want to achieve the same standard of precision in Chinese, you have to engage maybe three or four times more words.... If you want to express the law in Chinese, you have to express it in a redundant way; the Chinese used must be, by literary standards, 'bad' Chinese**". 見 Ng, Kwai Hang. *The Common Law in Two Voices: Language, Law, and the Postcolonial Dilemma in Hong Kong*. Stanford, Calif.: Stanford University Press, 2009.

[39] 吳靄儀. 「救救法律中文」《明報》(26/10/2009) <http://arnoldii.mysinablog.com/index.php?op=ViewArticle&articleId=2001969>

[40] Mellinkoff 指法律英語實質 "wordy, unclear pompous and dull"，並等於 "a zone where the language of law loses contact with speech"。見 Mellinkoff, D. *The Language of the Law*. Eugene Oregon: Resource Publications, 1963.

[41] Tiersma 稱法律英文實際上為一種「子語言」: "*Legal language has been called an argot, a dialect, a register, a style, and even a separate language. In fact, it is best described with the relatively new term sublanguage. A sublanguage has its own specialized grammar, a limited subject matter, contains lexical, syntactic, and semantic restrictions, and allows "deviant" rules of grammar that are not acceptable in the standard language*". 見 Tiersma, P. M. *Legal Language*, Chicago: University of Chicago Press, 1999.

[42] 有人甚至把法律英文形容為 “legalese” (「法律八股文」)，Tiersma 亦描述法律英文乃為將律師標誌成為專業族群而生的 “conspiracy of gobbledygook” . 見 Tiersma, P.M. “The Nature of Legal Language.” (2000) <http://www.languageandlaw.org/NATURE.HTM>

[43] 關淑馨 (同註 36): 336.

[44] 冼景炬. 「冼景炬博士第一版序言」《英漢民商事法律詞彙》(第四版) 香港: 律政司, 2015: x-xvi.

[45] 冼景炬. (同註 44).

[46] 陳兆愷等. 《香港英漢雙解法律詞典》香港: Butterworths, 2005.

[47] 當時確立以英文代替法文為審訊語言之法令名為“Pleading in English Act 1362”，亦作“Statute of Pleading”.

[48] 自法令“Proceedings in Courts of Justice Act 1730”施行後，英文終全面成為英國法定語文。

[49] Bettoni, C. and Gibbons, J. “Linguistic purism and language shift: a guise-voice study of the Italian community in Sydney.” *International Journal of the Sociology of Language* 72 (1988): 15–35.

[50] 法律語言學家 John Gibbons 評論指: “....*It has taken more than five hundred years for common law British English to get to the point where it can officially drop the last of its openly French legal jargon, and there are still accessibility problems with less overt calques from French and Latin. The system nevertheless manages to operate and is valued highly by many.*” 見 Gibbons, John. “Book Review: The Common Law in Two Voices: Language, Law, and the Post-colonial Dilemma in Hong Kong.” *International Journal of Speech Language and the Law* (2011): 325-328.

[51] Luk, Man Wai (ed) *Legal Translation Practice 法律翻譯: 從實踐出發*. Hong Kong: Chunghwa Book, 2002.

[52] Solan, Lawrence M. “Statutory Interpretation in the EU: the Augustinian Approach.” In Oslen, F., Lorz, A. and Stein, D. (eds.) *Translation Issues in Language and Law*. Palgrave Macmillan, 2009: 35-54.  
政治哲學家 Kymlicka 及 Patten 寫道: “....*countries that have moved in this multilingual direction are amongst the most peaceful, prosperous, free, and democratic societies around*” . 見 Kymlicka, Will and Patten, Alan. *Language Rights and Political Theory*. Oxford: Oxford University Press, 2003.

[53] Leung, Janny H.C. “The Object of Fidelity in Translating Multilingual Legislation”. *Semiotica*, 201 (2014): 223-238.

[54] Chan, Patrick Siu Oi. “The Honorary Graduates’ Speech 184<sup>th</sup> Congregation” HKU Faculty of Law.