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POETRY AND TAX STATUTE: TRANSLATION AS INTERPRETATION

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Summary

This paper applies the literary critique of translating poetry to the field of translating statute to raise significant constitutional and practical issues. The field of focus is taxation law, an area notable for its complexity and intricacy in a large number of countries. A linguistic argument is made that the demands that are made on the words of tax law parallel those made in poetry and this necessarily creates a demand for interpretation on the part of users of the law. This aspect of interpretation is then considered in situations that demand the translation of foreign and a number of constitutional and practical issues are highlighted in relation to the role of the translator. The issues raised in the paper are of significant importance in an increasingly globalised international tax world where statutes written in very different languages are called upon to interact with one another.

Introduction

The aim of this paper is to show that the translation of a statute will involve interpreting the law. This is important, as it is the constitutional role of the judiciary to interpret the law and not the translator. It also has practical implications for the operation of the law. Reviewing the literature on translating poetry between languages, one comes upon the assertion that any translation of a poem is an interpretation of a poem.[1] This observation is of fundamental significance to those who seek to interpret a poet's work but must rely upon a translation. This will

[1] Coetzee J. M. Doubling the Point: Essays and Interviews. London: Harvard, 1992, pp. 88–90.

occur when the poet has worked in a language the reader does not understand. The question that arises when law is considered is whether the same assertion holds true in the translation of statute. If it does, it raises fundamental questions in relation to practically working with foreign law. It also raises major constitutional issues when a Court has to consider a foreign language statute.

This paper reviews issues of language translation and equivalence to understand the assertion made about poetry. It then considers to what extent the assertion may hold true in relation to tax statute. It presents an argument that while the law may be more directly expressed than poetry, this is counteracted by the demands that law, particularly tax law, put on language. It seeks to assert that normal language may simply be inadequate to meet these demands with precision and the removal of interpretative debate. It therefore argues that any translation of a tax statute is indeed an interpretation. The paper then turns to consider the impact of these arguments in legal practice and constitutionally.

1. Translation

In other disciplines translation is often thought of as a mechanical process. It may be acknowledged as difficult in certain contexts but the neutrality of the outcome is taken for granted. That is, it is assumed that as long as the translator can understand both relevant languages well, they can simply read the document in the primary language and put it into the secondary language. This is the implied assumption in the processes of Australian legal institutions, where it is assumed that as long as an accredited translator is employed, the translated document simply represents the source document presented in the English language.[2] The translator is thought to have done no more than convert the document thorough a mechanical process they can perform as a result of their language skills.

Translation is not, however, a mechanical process. There is a number of reasons why it can be difficult and why translation is a skilled profession and not something that can be readily done by any person who possesses excellent skills in two languages. This is not to say that it is never possible to translate on the basis of bilingual skill only. The issues arise in relation to particular languages and particular contexts.

From the translation literature, a number of core features that make translation difficult can be highlighted. These are linguistic uncertainty, lexical uncertainty and structural and syntactical uncertainty. Linguistic uncertainty refers to the fact that language is often indeterminate. This results from linguistic vagueness,

[2] McComish J. Pleading and Proving Foreign Law in Australia. Melbourne University Law Review, 2007, No. 31(2) p. 400.

ambiguity or generality[3]. Commonly used words in any language[4] are often difficult to define precisely.[5] Some linguists have doubted translation can be ever possible. German philosopher and linguist W. von Humboldt wrote: "Experience and research show that no word in one language is completely equivalent to a word in another, apart from those expressions designated purely to physical objects".[6]

Lexical uncertainty is the term used to highlight the phenomenon that words and phrases in one language do not always have an exactly equivalent word or phrase in another language. When the words of two different languages have the same meaning, but one word has an additional meaning which another word does not have, these words are called partial equivalents[7].

For example, the Chinese word "好" will immediately be translated as "good" if any bilingual person is asked to translate it. However, the word is used in ways that are not the same as English, as well. For instance, it may mean "very". The English verb "to come" cannot be translated adequately in Russian without defining the way of travel. Two different verbs, *prijti* and *priehat'*, are used to distinguish between walking and using public transport, a car or a bike. Partial equivalents are what makes the word choice more challenging and the translator should be particularly careful with.

There are also words that have no equivalents. Sometimes such words describe a very specific object which exists only in a certain country like sauna or samovar. They can also name a particular notion that exists only in the mind of people who speak a certain language. For example, the Finnish word *sisu* which means "extraordinary determination in the face of extreme adversity, and courage that is presented typically in situations where success is unlikely". Obviously that the only way of translating the word is by giving a definition.

Finally, there is structural and syntactical ambiguity[8]. This refers to the fact that a sentence can have two or more meanings that are impossible to decide between without a wider context. For example, the sentence "the officer hit the man with the gun". Here it may mean that the officer had the gun and hit the man with it or it may mean that the officer hit the man who had the gun. It is impossible to say which meaning is correct on the face of the sentence.

The translation professional needs to resolve these uncertainties and ambiguities to create a correct translation. It must be inferred what the words, phrases and sentences mean from the context of the text and then the meaning of the words must be expressed in the other language. This expression may depart

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3 Alston W. The Philosophy of Language. New Jersey: Prentice-Hall, 1964.

4 Kashgary A. D. The paradox of translating the untranslatable: Equivalence vs. non-equivalence in translating from Arabic into English. Journal of King Saud University – Languages and Translation, 2011, No. 23 (1) p. 47.

5 Catford J. C. A. Linguistic Theory of Translation. Oxford University Press, 1965.

6 From introduction to his translation Aeschylus' Agamemnon, 1816.

7 Retsker Y. The Theory of Translation and Translation Practice. Moscow: Valent, 1974.

8 Oaks D D. Structural Ambiguity in English: An Applied Grammatical Inventory. United Kingdom: Bloomsbury Publishing, 2010.

from a literal translation from one language to the other when such a translation does not capture the intended meaning. Translating must primarily aim at "reproducing the message". [9] For example, particular animals may have different connotations[10] in different languages. Calling a person a pig in English will have different connotations to calling them a pig in Chinese. This may combine with lexical uncertainty.

2. Poetry

The translation of poetry raises particular difficulties. Clearly, there are numerous issues around the maintenance of rhyme, rhythm, etc. However, even if these are put aside, poetry remains difficult. The essence of this difficulty is that it is in the nature of poetry that it can be difficult to understand in its own language. This is a distinguishing feature of poetry, its writer may convey a lot in few words but it is also the case that the meaning may be obscure and require significant attention to deduce. Finding and debating all the meaning in great poetry is a significant field of scholarship in its own right. Referring back to the discussion of translation then, it is clear that any translator needs to know the meaning of that which they must translate. It is not possible to do a good translation of something that you do not understand.

On the basis of this situation, scholars such as J. M. Coetzee have argued strongly that all translations of poetry also represent an interpretation of the poetry.[11] This is important, they argue – as readers of the translation need to be cautious of the fact that when they are interpreting a translated poem, they are interpreting an interpretation of the poem and not the original poem[12]. This raises significant risks in making judgements about the original poem's meaning/s.

In response to the difficulty of interpreting poetry, some have argued that the specific or accurate originally intended meaning is not as relevant as what the poem means to different readers. This arguably tempers the issue a little but the point of all translations of a poem also being an interpretation of the poem remains an important one.

An example to illustrate the difficulties in translating poetry is the well-known poem by Alexander Blok which is named by the first line: *Night, street, streetlight* (1912).

Noch', ulica, fonar', apteka,
Bessmyslennyj i tusklyj svet.
Zhivi eshhe hot' chetvert' veka –
Vse budet tak. Ishoda net.

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[9] Nida E. A. and Taber C. R. The Theory and Practice of Translation. Belgium: Brill, 2003.

[10] Arkhipov V. Semantic Limits of Law in the Conditions of Medial Turn: Theoretical Legal Interpretation. Available at SSRN: https://ssrn.com/abstract=3454864 [viewed 16.09.2019.].

[11] Coetzee J. M. 1992, pp. 88–90.

[12] Minyar-Beloruchev R. K. Theory and methods of translation. Moscow: Moscow Lyceum, 1996.

Umresh' – nachnesh' opjat' snachala
I povtoritsja vse, kak vstar':
Noch', ledjanaja rjab' kanala,
Apteka, ulica, fonar'.

One of its special features is that it consists mostly of the short nouns which create atmosphere in the first line of the poem and are again repeated in the last line framing the poet's thoughts in the middle. Besides, these words have a certain melody and rhythm which convey their own meaning as well, they can symbolize the steps of the person going down the street at night or even the irreversibility of time.

We can compare two translations of this poem and see how the translators dealt with the problem.

Translation 1
Night, street and streetlight, drugstore,
The purposeless, half-dim, drab light.
For all the use live on a quarter century –
Nothing will change. There's no way out.

You'll die – and start all over, live twice,
Everything repeats itself, just as it was:
Night, the canal's rippled icy surface,
The drugstore, the street, and streetlight.
Translated by Alex Cigale[13]

Translation 2
But pointlessly the light shines dimly –
The chemist's, streetlight, street, and night.
For quarter-century hold on grimly –
It will not change. You can't take flight.

You'll die – again find all beginning,
And as before it all will go.
The night, canal's ice-dazzle spinning,
The chemist's, street and streetlight's glow.
by Rupert Moreton[14]

[13] Anthology of Russian Minimalist and Miniature Poems; Part I, The Silver Age. Available: https://www.albany.edu/offcourse/issue41/cigale_translations6.html#blok [viewed 01.03.2021.].

[14] Lingua Fennica. Available: https://linguafennica.wordpress.com/2020/03/12/night-street-streetlight-chemists-noch'-ulica-fonar'-apteka-alexander-blok/ [viewed 01.03.2021].

The first translation is very precise; the translator chose the words with the meanings very close to the original ones and the word order remained unchanged. But the rhythm of the poem changed, the translator used more words to convey the meaning, and some of them are more difficult to pronounce. Unlike the original poem, the translation has very few rhymes, so the style of the author is partly lost.

In the second translation, some changes are made. The two first lines of the original poem are switched for the sake of rhyme. And also, the order of the nouns is changed: it doesn't start with "the night", but with "the chemist's". For the poem which was written more than 100 years ago, the word "chemist's" is a much better equivalent for "apteka" than "a drugstore". The translator successfully uses short sentences, thus retaining the style of the original poem.

3. Statute

On the face of it, the translation of statute should be significantly removed from the translation of poetry. Unlike a poet, the legislative draftsperson should seek to draft the statutory provisions with precision to convey meaning without worrying about rhyme or rhythm and without trying to convey multiple meanings to demonstrate their literary prowess. Notwithstanding this, it remains the case that statute has often called for significant interpretative efforts and significant debate on its meaning. This is particularly the case with income tax law.

Income tax law is the subject of a very significant amount of interpretative effort. Within the profession, the academy, the executive and the courts. The long-standing definition of a resident individual for income tax purposes provides an illustration of this.[15]

In multiple limbs, the definition uses a range of concepts that have spawned numerous disputes notwithstanding its apparent directness and non-poetical nature. Amongst the most contested are the parameters of the concepts denoted by: resides; domicile; permanent; place of abode; & usual. These words have reached the High Court, the Federal Court and have been subject to numerous tribunal decisions. In addition, the relevant Australian decisions have referenced a number of decisions from other jurisdictions particularly in the case of "resides".

The apparent simplicity of these words is clearly not always borne out in practice. "Permanent", for example, was the subject of *Applegate*[16] where it was ultimately found that "permanent" did not mean "everlasting" but rather something that was not "temporary". This illustrates the linguistic vagueness of the word "permanent". It is a common word but when it is scrutinised it is found to have a spectrum of meanings from "everlasting" on the one hand to something that is simply "not temporary" on the other hand.

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[15] Section 6(1) of the Income Tax Assessment Act 1936 (Australia).

[16] F.C. of T. v. Applegate (1979) 9 ATR 899.

"Resides" has been the subject of far more debate. This follows the ruling that it carries its ordinary meaning. Questions that flow from this include extremes of whether you have to be in a country at all to reside there on the one hand to whether you can be there extensively without residing there. There are numerous other qualitative debates that have been spawned by the scope of the ordinary meaning of the word resides in tax cases.[17]

The wording of the section is not free of issues of structural and syntactical uncertainty either. The use of all of "resides", "permanent place of abode" and "usual place of abode" has raised issues of what these terms mean in contrast with one another. Some decisions have explained them in a way that indicates that they are very similar. Others have sought to distinguish them. The issue that arises is whether the legislator used different terms with the intention of drawing a distinction (as would generally be thought in statutory interpretation) or whether this is an example of the human tendency to poetics even in statute. Another example is the contrast between "domicile" and "reside". The statute clearly requires a difference between the two even though everyday language may view the two concepts as very similar.[18]

The issue that arises when considering the statute and comparing it to poetry is why the statute is subject to so much interpretational debate when it is not in the nature of poetry. As noted above, it is in the nature of poetry to be obscure in meaning. The obscurity arises through the poet endeavouring to instil multiple and deeper meanings into, often, relatively few words. This in itself often relies upon vagueness and suggestion to conjure meaning rather than precise exposition. At the same time, the poet seeks to fit the words to poetic devices such as, possibly, rhyme and rhythm. The demands of the latter may compromise comprehensibility. For example, an obscure or imprecise word may be employed, when a clearer one exists. However, the first one may fit the rhyme or rhythm, while the clear one does not. Ultimately, a clear exposition may simply not be poetic.

The statute writer does not have to deal with a similar array of constraints. Nevertheless, it is likely that there can be a tendency to the poetic and non-plain on the part of writers of official documents. This well observed phenomenon has been the subject of some critique in the area of tax law and law generally. It is the basis for the "plain writing" movement. However, simplification initiatives have not generally reduced interpretational debate in the area of tax law. I suggest that no amount of linguistic simplicity and precision (non-poetry) can rid tax law from interpretational debate. Rather the source of the need to interpret is in the demands that are put onto language by tax law concepts. The language itself is simply not developed enough to respond to these demands. The word and concept of "reside", for example, did not evolve in the English language to be tested and demarcated by precise boundaries in a way demanded by tax payers

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[17] Sharkey N. Departing Australia: A Complex Tax Situation with Possible Benefits and Hidden Traps. Tax Specialist, 2016, No. 19(5), p. 180.

[18] Legally domicile is quite distinct from residence.

and administrators. The demand in relation to the tax law arises as numerous taxpayers seek to see whether their factual circumstances are covered by the word in a situation where there may be significant financial implications for them. This seeking for boundaries is not a feature of day-to-day communication where the word "reside" may be perfectly suited to purpose and precise enough. Linguistic uncertainty is a reality with most words. It only becomes a problem when a higher amount of precision is demanded from language than in more common forms of communication. A consideration of the translation of animal related terms between Chinese and English illustrates how something as apparently precise as an animal name may in fact be conceptually vague.

Above it was noted that one response to the difficulty in interpreting poetry was to not demand precise and full interpretation. Rather it may be argued that it is right that a poem may mean different things to different readers. This argument cannot be sustained when dealing with tax law given the demands placed on it in relation to precise meaning.

In relation to the issue of translation, it can now be considered if J. M. Coetzee's assertion in relation to translation of poetry can be applied to tax statute. The assertion was that any translation of poetry was also an interpretation of the poem. That is, you cannot translate a poem without first deciding what it means in the first language. This deciding is an act of interpretation. Given that it is an act of interpreting a poem, there is the possibility that different interpretations can be made of the poem, although the translation locks in one interpretation. Once the translation is made, the poem in the new language may still be open to interpretation. However, these new interpretations are being made on the basis of an initial interpretation and the translation decisions of the translator. Ultimately, the translated poem is a different poem. Any analysis of it and its meaning may find meanings that cannot be found in the original work in any interpretation.

The discussion of the history of interpretative debate of the tax statute indicates that it will raise similar issues to a poem. If the meaning of the words was clear and precise to any reader, there would not have been the number of disputes that there have been. Therefore, any attempt to translate this statute into a different language is going to require the translator to first decide what it means. In other words, they need to interpret it. If this was done without reference to the published decisions and commentary on the section, it is clear that it is possible that different translators may decide upon different interpretations. This much is clear from the history of interpretation that has occurred. One translator, for example, may decide that "permanent" does indeed mean something substantive similar to everlasting or lifelong. This would differ from the alternative meaning of merely "non temporary". Of course, a translator of this specific Australian law may research the relevant case law and commentary to provide an interpretation that accords with these decisions. This would lessen the translator's own interpretation by substituting the established interpretations. There would still remain a scope for interpretation by the translator. However, a newer piece of legislation or one from a non-common law jurisdiction may not have these extra sources of interpretation

available. This would result in significantly more interpretative effort on the part of the translator.

Once the translator settles on their interpretations, consciously or unconsciously, they put them into the second language. In doing this, the interpretation may be locked in or words with new interpretative possibilities may be used. For example, the translator having decided that "permanent" means "everlasting" may adopt a second language word that means "everlasting". Due to lexical uncertainty, this word may only mean "everlasting" in the second language. It may not be open to the merely "non-temporary" interpretation. Therefore, the reader of the translated statute is forced into following the translator's interpretation in their reading of the translated statute. In addition, the word chosen by the translator in the second language may be open to a meaning that is not available in any interpretation of "permanent". Thus, the translated statute presents something quite different to the original statute. As with the poetry the translation of the law represents an interpretation of the law. In doing this it presents a different piece of law.

4. Impact

The impact of the above analysis is relevant to practically working with a foreign statute as an advisor or taxpayer. It is also relevant to fundamental constitutional (or rule of law) principles.

The practical impact is significant. Essentially, it means that translations of even apparently simple law should not be relied upon in providing advice or doing planning. In the event that the foreign authorities dispute a tax position, the dispute will be resolved in relation to the official foreign law and not the translation. Any interpretive disputes will disregard the original translation. Clearly, this problem is worse in areas that are more subject to dispute or more ambiguous. However, a translation may even hide this ambiguity. If a law needs to be assessed by a professional who does not know the relevant other language and a translation has to be done, it would be better to have a carefully done translation produced by a competent person (in both law and the language) who is made fully aware of the issues to be considered. It would be unwise to rely upon a translation that has not been specifically prepared in this manner. Ultimately, the deep involvement of a professional person who knows the foreign language and law would be prudent. Meanwhile, it must be emphasised that the issue is not with bad translations. The essential point is that a translation may be an interpretation regardless of the talent and effort of the translator.

When the foreign language law from a particular country is relevant to a dispute being considered in the courts of another country, more fundamental issues arise in addition to some of the practical issues that have been noted above. The essence of this issue is that it is strictly the role of the judge to interpret law. Still, it has been argued above that a translation of a statute is also an interpretation

of that statute. The idea that the Court and the Court alone must conduct all interpretation of law is fundamental.[19] It is also manifested in common law and statutory rules in relation to the proving of a foreign law in court.

Before exploring these ideas further, it should be considered in what circumstances a foreign law may become relevant in a dispute in another country (or forum). In particular, the analysis will consider the instances when a tax law may become part of a dispute in the courts of a different jurisdiction.

There are a number of ways that, say, Chinese tax law can become part of a dispute in an Australian court. Broadly these may either be as part of a non-tax civil dispute or as part of a tax dispute between a taxpayer and the Federal Commissioner of Taxation. Non-tax civil disputes in Australia may involve an issue of Chinese tax payable, and this may require reference to a Chinese law. In a tort matter, the taxability of amounts in China may be relevant in a matter. For example, the injury of a person in Australia may be argued to have resulted in a loss of profits in a Chinese business. In this case, the Chinese taxation of these lost profits may be relevant. A contractual dispute may arise in relation to tax paying contractual responsibilities and Chinese taxation. If the contractual dispute is heard in an Australian court, the Chinese tax statute may need to be interpreted by the Australian court. These examples are not likely to be the only ways in which the statute may be part of a civil dispute in Australia.

The Chinese statute can also be the subject of an Australian tax dispute between the Federal Commissioner of Taxation and a taxpayer. This is because the Australian Income Tax Act refers to foreign tax laws through double tax agreements, and effectively makes the foreign statute part of Australian law. Notably, the China Australia double tax agreement (DTA) is incorporated into Australian law. This DTA defines Chinese and Australian residents for DTA[20] purposes and then restricts Australia (or China) from taxing residents of the other state on amounts that they might otherwise tax. Thus, a person may assert that the Australian Taxation Office cannot tax an amount as they are a resident of China for DTA purposes. This is an assertion under Australian law. However, to be a resident of China for DTA purposes, one preliminary requirement is that the person is a resident of China for Chinese tax law purposes. If this particular issue is the subject of the dispute, the Australian court or tribunal will need to consider the Chinese law of tax residence and apply it to the facts of the taxpayer. Therefore, the Australian court may be called to interpret the Chinese residence rules in an Australian tax case. When this happens, the relevant law will be in the Chinese language.

In Australia and many other jurisdictions, it is a fundamental tenet that it is the constitutional role of the Judge or Court to interpret statute. It is part of

[19] Speech by Chief Justice, University of Melbourne, 7 November 2001: Gleeson M. Courts and the Rule of Law. Available: www.hcourt.gov.au/assets/publications/speeches/formerjustices/gleesoncj/cj_ruleoflaw.htm [viewed 01.11.2021.].

[20] Article 4.

the separation of powers and rule of law. It should be noted that the principle extends to it being the exclusive role of the Judge or Court to interpret statute. The role is carefully protected to ensure that no other party engages in the relevant statutory interpretation in a dispute.

Common law and statute in relation to evidence and the proving of a foreign law support this principle. At law, the content of the foreign law is a question of fact to be proved by evidence. Notwithstanding, no evidence can be adduced on the application of the foreign law in the foreign country.[21] Proving of content of a foreign law in litigation is a question of fact. Judicial notice cannot be taken in relation to a foreign law. The Court cannot make its own enquiries as to the nature of the law. Parties must prove the content of the foreign law.

However, application of proved foreign law to the facts is a question of law. Evidence in relation to application cannot generally be received. Proving of foreign law is normally done through expert evidence but when this leads to absurd results, the Court may make its own enquiries. If inadequately proved by a party, the Court will generally presume that the foreign law is identical to the local law. This presumption may not apply in significantly inappropriate circumstances. Judgments of foreign courts are treated with caution and are not regarded as proving the foreign law. They are another form of evidence that may play a part in proving the foreign law.

It can be seen that with the above principles, the common law has ensured that the Court alone can interpret a foreign statute. This is why evidence cannot be adduced as to the application of the law in the foreign jurisdiction. It is to ensure that the judge interprets the statute and is not swayed by foreign practice. The reluctance to allow case law also reflects this principle. Case law may hold more where the foreign jurisdiction is a common law jurisdiction and the case law reflects the law rather than the application of the law. This common law position is reflected in a slightly relaxed manner in sections 175 and 175 of the Evidence Act (1995).

In reality, the manner in which the foreign language evidence is dealt with in the Australian Court is to have the document translated into English by an appropriately qualified and registered translator. The Court then uses this translated document in the place of the statute.

It is in this allowance for translation that the problem at issue arises. This allowance is based upon the idea that the translation is a neutral mechanical process. The requirement for a qualified translator assumes that as long as the translator is skilled, the translation will represent the original document in the second language. However, it has been argued above that a translation of statute is an interpretation of statute. This does not refer to the competence of the translator. Rather, it refers to the fact that linguistic and lexical ambiguity ensure that any translation requires and initial act of interpretation. It was also argued that statute in areas such as tax are no different to poetry in the possibilities that arise in interpretation. It is

[21] National Mutual Holdings Pty Ltd v. Sentry Corp (1989) 22 FCR 209. Damberg v. Damberg & Ors [2001] NSWCA 87. Carl Zeiss Stiftung v. Rayner & Keeler Ltd (No. 2) HL 1966.

therefore the case that the translator is usurping the constitutional role of the judge in translating the statute. In addition, the translated statute that the judges do seek to interpret is already an interpretation. Hence, the final interpreted outcome is an interpretation of an interpretation.

The point is a salient one in a context where the common law has otherwise jealously protected the judge's interpretative role when dealing with foreign statute by disallowing evidence on application of the foreign law or (non-official commentary) to be adduced. This core principle is strongly challenged in allowing translated statute.

It was noted earlier that one way to improve a translation of a law was to have a translator that is familiar with all the relevant principles of the law and who does detailed research as to how the law works. In doing this they can prepare a more informed translation of the actual nature of the law. While this may improve a translation, although it is problematic. This is because such a process would appear to not only usurp the judge's role but also involve the translator going to sources that would not be allowed to be adduced to the judge in other circumstances. We have noted how the common law and Evidence Act provide strict rules on what can be adduced in relation to proving a foreign law. If the Judges would not be referred to wider sources on information when dealing with an English language foreign law, the translator should not go to these sources when interpreting the foreign language statute in preparing the translation.

It can therefore be seen that the exposure of translation as an act of interpretation raises a number of issues and contradictions in law. A significant contradiction is that it might be suggested that to get a better translation, the translator should do more appropriate secondary research to inform their interpretation on which to base their translation. The contradiction is that it might also be suggested that to better comply with constitutional principles the translator should do the exact opposite and avoid reference to materials that pushes the interpretation in a particular direction.

It is, of course, the case that this entire problem may be argued to be a necessary evil. For there does not seem to be an obvious solution to the overall problem other than having a judge who speaks the other language. That said, awareness of the issue is critical. Arguably, Courts and process should pay more attention to translations for accuracy and compliance with principles of law. They should not be assumed to be a neutral process when dealing with complex statute that is subject to detailed and nuanced interpretation in situations when significant outcomes can turn on the interpretation that is adopted.

Conclusion

This paper has applied to tax statute the idea formulated by J. M Coetzee, proposing that all translations of poetry are necessarily an interpretation of the poem. The basis for this assertion was investigated and shown to be relevant to the law

due to the demands placed on words in tax law – it was concluded that translating a tax statute requires that the translator commence by interpreting the statute. The practical and constitutional implications of this conclusion were investigated and found to be significant and serious. Translators necessarily engage in interpretation of the law before translating. This means that they are at risk of doing it erroneously and that they are engaging in the Court's constitutional role.

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