Dear committee members:

The Canadian government must always ensure that Canadians are in a position to understand their rights as established in rulings, laws and decrees, in order to fully assert their rights as citizens. This principle, which is an immutable corollary of the founding principle of the rule of law, exists independently of all statutory provisions.

Allow me to cite a former colleague, Sylvain Lussier, who wrote the following in an excellent article on the subject that appeared in the McGill Law Journal:

“The concept of the rule of law is conceived as a constitutional principle exerting an effective constraint on government action regardless of the existence of a formal constitutional or enabling statutory provision.” [Emphasis added]

There is a concept enshrined in the *British North America Act* that has been useful in the past whenever the legislature or the government took arbitrary administrative action in an attempt to venture into jurisdictions where they did not belong. Two Supreme Court rulings have been especially instrumental in

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shaping our democracy’s approach when confronted with arbitrary actions. *Roncarelli v. Duplessis* described the rule of law as the fundamental keystone of our constitution, noting that the opposite is arbitrary government action.

In *Roncarelli*, Justice Rand wrote the following:

“...that an administration according to law is to be superseded by action dictated by and according to the arbitrary likes, dislikes and irrelevant purposes of public officers acting beyond their duty, would signalize the beginning of disintegration of the rule of law as a fundamental postulate of our constitutional structure.”

In *Reference Re Alberta Statutes*, a Supreme Court ruling made in 1938, Justice Duff made the following comments regarding an attempt by Alberta’s Social Credit government to infringe on the freedom of the press:

“Under the British system, which is ours, no political party can erect a prohibitory barrier to prevent the electors from getting information concerning the policy of the government.

[...]

As stated in the preamble of *The British North America Act*, our constitution is and will remain, unless radically changed, “similar in principle to that of the United Kingdom.” At the time of Confederation, the United Kingdom was a democracy. Democracy cannot be maintained without its foundation: free public opinion and free discussion throughout the nation of all matters affecting the State within the limits set by the criminal code and the common law.

[...]

Every inhabitant in Alberta is also a citizen of the Dominion. The province may deal with his property and civil rights of a local and private nature within the province; but the province cannot interfere with his status as a Canadian citizen and his fundamental right to express freely his untrammelled opinion about government policies and discuss matters of public concern. The mandatory and prohibitory provisions of the Press Bill are, in my opinion, *ultra vires* of the provincial legislature. They interfere with the free working of the political organization of the Dominion. They have a tendency to nullify the political rights of the inhabitants of Alberta, as citizens of Canada, and cannot be considered as dealing with matters purely private and local in that province...”

Furthermore, this right is enshrined in sections 7 to 11 of the *Canadian Charter of Rights and Freedoms*, and above all protected by the supralegalisicative guarantee that no person may be deprived of their rights “except in accordance with the principles of fundamental justice”. However, the incursion of a non-lawyer into a legal field and its reduction to “quality” principles constitute a serious breach of this principle and prevent the reproduction, by means of translation, of the rights established by the courts and by Parliament.

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This incursion occurs through a dual mechanism:

1. First, this tactic operates through the confusion or conflation of translation in the general sense and legal translation, despite the fact that legal translation belongs to a privileged category, protected by the Constitution.

2. Second, because of this equivalence, every translation is subjected not to the rules of the science of law, but to the fluid and arbitrary realm of “quality,” and a fortiori through the weighting mechanism, which is merely the mathematical expression of this subordination to a non-legal system.5

This dual mechanism is the keystone of the Translation Bureau’s system. It is only a short step from accepting that every translation (from Supreme Court rulings to Kellogg’s cereal boxes) is nothing more than a mechanical reproduction of words and sentences to accepting the imposition of criteria that are subordinated to the overriding notion of “quality.”

Moreover, the importation of “seven guiding principles” and “four quality measurement tools” designed by “quality” experts from the École Nationale d’Administration Publique creates a parallel system that outright replaces actual legal analysis.

This artificial construct ab initio undermines the stability of the laws, the underlying principle of legal writing and legal interpretation, through the use of non-legal translation techniques. Consequently, this matter rises above the level of a mere anodyne encroachment on the legal realm and becomes an appropriation of res judicata by the apostles of efficiency.

In other words, this usurpation of the judicial function by experts from public administration schools “tends to nullify the political rights of the inhabitants” of Quebec, to quote Justice Rand.

The incursion of an approach that fails to take into account the specificity of legal language and its reduction to “quality control” principles constitutes a breach of the rule of law and prevents the faithful expression of rights as established by the courts and by Parliament. In short, in its very essence, this quality system, as preached by the Translation Bureau, is fundamentally incompatible with the rule of law.

This system effectively leads to a degradation of the judicial function, by eliminating legal expertise from the translation of rulings and by subordinating the text of rulings, among other things, to “quality” imperatives.

This illegal and potentially unconstitutional state of affairs exposes the government to a wide range of liabilities to citizens who could challenge the very validity of rulings and laws. The situation is so dire that it has already sparked serious concern from the Chief Justice of the Federal Court of Canada.6

The only solution to this illegality, which strikes at the very heart of our bijural and bilingual system, would be to completely separate legal translation from other forms of translation and ensure direct contact between the judges of the Federal Court and the translators themselves. Furthermore, legal translation tasks should be individually assigned exclusively to lawyer-translators.

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5 I will leave the issue of appropriation of intellectual property for another time.

6 For example, see the unprecedented initiative taken by Chief Justice Crampton of the Federal Court, who spoke to the media about this crisis: [https://www.cbc.ca/news/politics/federal-court-judiciary-court-1.4178317](https://www.cbc.ca/news/politics/federal-court-judiciary-court-1.4178317)
This new system could easily be developed in three simple steps:

1. The translation of all administrative and legal federal court decisions would no longer be delegated to the Translation Bureau.

2. That work would instead be entrusted to the Courts Administration Service (CAS) and the Administrative Tribunals Support Service of Canada (ATSSC).

3. Translation tasks would be individually assigned to experienced translators who are certified by the Ordre des traducteurs, terminologues et interprètes agréés du Québec (OTTIAQ) or by the Canadian Association of Legal Translators (CALT), with specific deadlines for each translation task.

If this system turns out to be effective, it could serve as a model for other aspects of legal and even legislative translation.

In summary, the current system has both hidden and visible flaws that are rooted in unconstitutionality and the confusion between the administrative requirements of bilingualism and the legal and constitutional requirements of translating rulings and legislation. However, these flaws can easily be remedied in the short term using the three-part solution outlined above.

If you have any questions about the intent of this letter, please feel free to contact me.

I hope the above comments will be useful for your review of the Official Languages Act.

Yours sincerely,

[signed]

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