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June 9, 2026

“Non”: Federal Court Refuses a $68.9 Million Translation Bill

Imagine inheriting a library of 6,000 old court decisions – handwritten, typed, and printed over nearly a century – and being told you owe up to $68.9 million to translate them because you scanned them and put them on a website. That was the argument before the Federal Court in *Droits collectifs Québec v Office of the Registrar of the Supreme Court of Canada*. The Court was not convinced.

In *Droits collectifs Québec*, the Federal Court (FC) dismissed an application by the advocacy group Droits collectifs Québec (DCQ) and its executive director, Etienne-Alexis Boucher. The applicants sought to compel the Office of the Registrar of the Supreme Court of Canada (ORSCC) to make available historical decisions rendered between 1877 and 1970 in both official languages on the Supreme Court of Canada (SCC) website by retroactively applying the *Official Languages Act* (*OLA*). The ruling provides a detailed review of statutory interpretation and the limits of legislative retroactivity, while offering broader potential guidance for managing digital legacy content online.

The Battle of the Digital Repository

The dispute arose because the applicants took issue with the SCC’s online decision repository. The Supreme Court Reports (SCR) have compiled SCC jurisprudence since 1877. Through 1969, the SCC delivered roughly 6,000 decisions that were essentially unilingual, usually in the language of the oral arguments or the personal choice of the authoring judge. During this period, the SCC was under no legal constraint to produce bilingual judgments; that specific statutory mandate came into effect only with the *OLA* in 1969, which declared English and French the two official languages of Parliament and the Government of Canada.

Relevant to the dispute, the OLA is structured into distinct, functional parts. The separation between Parts III and IV became the focus of the FC’s analysis:

- **Part III (Administration of Justice)**: Specifically dictates how courts handle languages. Under section 20, any final decision that sets a precedent or addresses a matter of

general public interest must be made available simultaneously in both official languages.

- **Part IV (Communications with and Services to the Public)**: Imposes general bilingual duties on federal offices and central headquarters when interacting with the public.

In 2019, the SCC began publishing historical scans of its decisions directly onto its website for free public access. The applicants launched a challenge under section 77 of the OLA, advancing two core arguments:

- The SCC's digital hosting triggered modern bilingual obligations under Part IV of the *OLA* which dictates how federal institutions must communicate with and serve the public.
- Posting the SCC's decisions online constitutes communication or service that must be provided in both languages.

Notably, the applicants conceded that if these historical decisions had remained as physical paper copies locked in a vault in Ottawa, there would be no cause of action. Only after the texts were pulled from storage, formatted for the web, hyperlinks added, and the content published online, did the acts of "reproduction" or "republication" occur as argued by the Applicants.

The ORSCC countered that judicial decisions are strictly governed by Part III of the *OLA*, which features no retroactive translation mandates. The financial stakes were stark: full human translation of roughly 30 million words was estimated to cost between $62.6 million and $68.9 million. Importantly, while the litigation was underway, the SCC took the unusual step of removing all pre-1970 decisions from its website and directing users to third-party databases. DCQ argued this move did not resolve the underlying legal question, so it pressed on to judgment.

The Federal Court's Reasoning: Form vs. Substance

The FC systematically dismantled the applicants' argument that digital migration alters the legal nature of archival text and found that Part III of the *OLA* applies. In doing so, the FC leaned heavily on classic maxims of statutory interpretation.

Specific Provisions Override General Principles

Applying the maxim *generalia specialibus non derogant*, the FC ruled that the language of judicial decisions is governed

exclusively by the specific provisions of Part III. Because Part III outlines a specific, exhaustive, and self-contained regime for court judgments, the more general "service" and "communication" provisions of Part IV cannot apply. Furthermore, decisions being "made available" did not constitute a "service to" nor "communication with" the public under Part IV, because Part III already addresses the concept of making decisions available.

The Presumption Against Retroactivity

The FC pointed out that laws are presumed to operate prospectively unless Parliament explicitly states otherwise. Because the *OLA*'s bilingual requirements took effect on September 7, 1969, forcing the translation of decisions rendered decades prior would retroactively impose an entirely new statutory burden. Moreover, the statutory use of terms in the *OLA* such as "simultaneously" and "at the earliest possible time" explicitly implied a forward-looking obligation.

Digitization Does Not Equal Transformation

The applicants argued that posting the decisions online constituted a "reproduction," "republication," or "retranscription" of the texts that meant a new version was being made, triggering an act of "communication" and a "service" under the *OLA*. The FC drew on section 37 of Canada's *Personal Information Protection and Electronic Documents Act* (PIPEDA) and various provincial electronic information laws to support the proposition that storing a document electronically does not amount to reproducing, republishing, or retranscribing it. The scan was the same document in a new container – nothing more.

Broader Implications

While the decision directly addresses a federal public institution, its logic should provide real comfort to corporate counsel and compliance officers navigating the Canadian digital landscape.

Many Canadian companies face regular anxiety over website compliance. A frequent corporate legal dilemma is whether legacy data, historical product manuals, old corporate press releases, or old technical specifications must be translated at immense cost when an organization overhauls its public website or opens an online customer portal. Consider a manufacturer that digitized its 1990s English-language product manuals when it launched a new customer portal. The FC's reasoning suggests that act alone does not retroactively require French translation of those documents.

More broadly, the ruling sets out a persuasive framework to resist compliance overreach regarding legacy material:

- **The Medium is Not the Message**: If a historical document was legally compliant and unilingual when it was authored years ago, migrating that document to a modern website database should not constitute a “fresh communication” or a “new service” that retroactively triggers modern language mandates.
- **Interface Compliance vs. Content Preservation**: The FC highlighted that while the SCC’s website interface (menus, search tools, and help pages) was bilingual, the historical content hosted within that database did not need to be. For companies, this means maintaining a fully compliant, bilingual web interface does not automatically obligate the retroactive translation of thousands of historical or legacy documents hosted inside it.

Key Takeaways

What began as a dispute over 6,000 historical decisions and a potential $68.9 million translation bill ended with the FC affirming a straightforward principle: a document does not become new simply because it has been scanned. By drawing a firm line between digital preservation and legal transformation, the ruling protects the integrity of historical archives while keeping modern compliance obligations focused where they belong: on what institutions and companies do going forward, not on the accumulated record of the past.