

The Benefits of Multilingualism for Statutory and Constitutional Interpretation in South Africa

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Abstract

Taking the South African experience as an example, this article considers the interpretive benefits to be reaped from having access to bi- and multilingual versions of a statutory text. The discussion takes place against the backdrop of a history of statutory bi- and multilingualism in the said jurisdiction as well as, at present, constitutional guarantees of language rights and the “parity of esteem” of eleven official languages. It is argued that, if invoked with due discretion and in a non-rigid way, statutory multilingualism can be a boon to statutory and constitutional interpretation. The South African courts – whose traditional approach to statutory interpretation has tended to be literalist, formalistic and formulaic – are, generally speaking, to be commended for their supple use of bilingualism as an aid to interpretation over the years. The advent of constitutional multilingualism and the (potential) availability of statutory texts (and the Constitution) in more than two languages, have moreover created conditions conducive to the further development and refinement of reliance on multilingualism in statutory and constitutional interpretation – certain challenges notwithstanding.

1. From bilingualism to multilingualism

Bilingualism was an essential feature of legislation in South Africa between 1910 and 1994 with, as pointed out previously, [1] English and Afrikaans as the privileged official languages. This bilingualism had decided consequences for the interpretation of statutes. A bilingual statutory text provides an opportunity for the comparison of its various versions. This could – as was shown on several occasions in the past – enhance a meaningful construction of it. [2]

With the advent of constitutional democracy in South Africa on 27 April 1994 English and Afrikaans started sharing their status and position as official languages with nine indigenous languages. [3] South Africa’s official languages according to section 6(1) of the Constitution are (in the order listed in the Constitution) Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu. Section 6(2) recognises that the indigenous black languages used to enjoy a diminished status and enjoins the state to take “practical and positive measures to elevate the status and advance

the use of these languages”. According to section 6(3) government in the various spheres may use any particular official languages for governmental purposes, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population it serves. The national and provincial governments must, however, use at least two official languages. They must further, according to section 4, regulate and monitor their use of official languages in such a way that, as was pointed out before, [4] all official languages enjoy parity of esteem and are treated equitably. It is, however, not required that the languages be treated equally.

The (constitutional) law on multilingualism as it stands today, and its impact on statutory interpretation, is best understood in a historical perspective and as part of an ongoing evolutionary process susceptible to being affected by the creative energy that constitutional recognition of eleven official languages can release.

2. Constitutional provisions until 27 April 1994

Three successive constitutions between 1910 and 1994 each contained a provision relating to statutory bilingualism. [5] The focal point of these almost identically worded sections had not, however, been the meaning-enhancing potential of statutory bilingualism. It was rather the predicament of possible conflict or inconsistency between the Afrikaans and English versions of a statute. Section 35 of the 1983 Constitution, the provision that obtained immediately prior to 27 April 1994, for instance, provided that as soon as may be after an act had been assented to by the state president, the secretary to parliament had to cause two fair copies of the act – one in English and one in Afrikaans – to be enrolled of record in the office of the registrar of the Appellate Division of the Supreme Court. Both copies were conclusive evidence as to the provisions of the act. In instances of conflict between the English and Afrikaans versions of an act the copy signed by the state president (when he assented to the act) prevailed. [6] Note that an English and Afrikaans version of each statute was required because the two languages were treated *equally* and not, for example, (just) *equitably* or with *parity of esteem*.

Traditionally the two versions of an enactment were referred to as “texts”, for example, “the English text” or “the Afrikaans text”. The integrity of a multilingual legislative text is, however, preserved if it is referred to as one text of which different versions in different languages exist. Prior to 1994 both versions of an act were at any rate seen to be equally authoritative embodiments of its provisions. The signing of a particular version was a matter of chance: statutes were signed in English and Afrikaans in turns, and in the course of the deliberations preceding the passing of legislation it was not predictable which version would eventually be signed. [7]

3. The case law until 27 April 1994

Though section 35 of the 1983 Constitution and its predecessors were all designed to deal with possible conflicts between the English and Afrikaans versions of a statutory text, the

case law that developed with reference to these constitutional provisions took its point of departure in an assumed compatibility of the two versions of acts. [8] The constitutional mechanisms to resolve deadlocks were usually invoked only as a last resort. The courts were indeed uncommonly non-literalist in their interpretation of section 35 and its predecessors. The fullest possible benefit was reaped from the existence of two versions of statutes in two different languages and these versions were often used to clarify each other reciprocally no matter which text was signed. [9]

The conflict provisions were invoked in instances of an outright and inescapable incompatibility between the two versions, [10] but it sometimes appeared to tip the balance in favour of the signed text in instances where the “conflict” was not much more than a mere “difference”. [11] This tendency was, however, qualified by yet another approach, the so-called “highest common factor approach”, [12] which required that, if possible, differences between the two versions of an enactment had to be eliminated as far as possible by reconciling them, since “[a] conflict between the two versions can only arise where one version says one thing and the other another”. [13] If, on reading the two versions of a statute together, one of the versions is capable of generating more meanings than the other version, preference is given to the shared meaning(s) that both versions generate. [14] The highest common factor approach was, however, not absolute [15] and proper care had to be exercised to invoke it only if the two versions were indeed capable of reconciliation, [16] that is, if they generated shared meanings.

Jurisprudence on section 65 of the 1961 Constitution, the predecessor to section 35 of the 1983 Constitution, illustrates the courts’ conciliatory approach to the interpretation of constitutional conflict provisions. Section 65 created the very problem that it professed to solve. The signed Afrikaans version referred to a “verskil” (that is, a “difference” or “discrepancy”) between the two texts. The English version used the narrower term “conflict” (that is, “clash” or “incompatibility”). “Verskil” in the signed Afrikaans version of the 1961 Constitution was, however, in effect and in practice understood to mean “conflict” (“teenstrydigheid”) as in the unsigned English version. [17] The highest common factor approach was invoked to arrive at this result. “Conflict” is the highest common factor when “verskil” and “conflict” are put alongside each other.

It did sometimes happen that a version of an act in one language was signed while in respect of an amendment to the act a version in the other language was signed. The amendment apparently then had to be treated as if it had been part of the signed version of the principal act right from the outset. [18]

Did the concept of “conflict” merely denote *prima facie* linguistic conflicts or did it rather import conflicts that could be discerned only after the English and Afrikaans versions of an enactment had more fully been construed? If the former possibility prevailed, as Van den Heever JA in his minority judgment in *New Union Goldfields Ltd v Commissioner for Inland Revenue* [19] suggested, it meant that the two versions of a statute had to be compared at the outset of the interpretation process. If, however, the latter possibility prevailed, as Hoexter JA in an obiter dictum in *Peter v Peter and Others* [20] suggested, it meant that the two texts first had to be fully construed separately from each other, and that the interpretive results then had to be compared. LC Steyn [21] emphatically opted for the first possibility. His

preference was probably tainted by literalist affinities, but it does seem as though the pre-1994 constitutional conflict provisions primarily foresaw a linguistic predicament that had to be unshackled, in the first place, with reference to the ordinary meaning of words in their immediate intra-textual context. [22] This makes the case law pertaining to the said constitutional conflict provisions all the more remarkable. The conflict provisions themselves anticipated, as it were, a literalist reading, but the conciliatory attitude of the courts resulted in quite a relaxed handling of both the conflict provisions themselves and the (potentially) conflicting statutory provisions to which they were held to apply.

Though the pre-1994 case law has so far been discussed in the past tense, this body of jurisprudence may well provide a basis for the development of a case law dealing with post-1994 constitutional provision for multilingualism. Potentially the pre-1994 case law thus forms part of the law as it stands – as developments (especially in constitutional jurisprudence) since 1994 have indeed indicated. [23]

4. The 1993 Constitution

The transitional Constitution contained, just like its successor still does, [24] separate conflict provisions for the Constitution and for other legislation. The original text of this Constitution was silent on possible conflicts in the first category, but section 15 of the Constitution of the Republic of South Africa Amendment Act [25] added a provision to the transitional Constitution dealing with the eventuality of such conflicts. This section provided that, notwithstanding the fact that the Afrikaans version of the Constitution had been signed by the then state president, its English version had, for the purposes of its interpretation, to prevail (Afrikaans: “voorrang geniet”) as if it were the signed version. This provision made sense because the transitional Constitution was negotiated and first drafted in English. The final text was officially translated into Afrikaans, but this translation was done in quite a hurry and was, generally speaking, not nearly as adequate as the Afrikaans translation of the 1996 Constitution. [26]

The phrase “shall, for the purposes of its interpretation prevail as if it were the signed text” in section 15 imported the notion of an inconsistency. It implicitly referred to the inconsistency provision in section 35 of the 1983 Constitution according to which, in the event of an inconsistency between the different versions of the transitional Constitution, the signed Afrikaans version actually had to prevail. Section 15 provided that, by way of exception, the English version had to prevail instead.

Section 65 of the transitional Constitution provided that an act of parliament had to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court (presently the Supreme Court of Appeal) in such official languages as may be required. [27] In the case of conflict between various versions of an act so enrolled, the version signed by the president had to prevail. [28] This provision was virtually similar to section 35 of the 1983 Constitution, except that it had become possible that statutes could be enrolled in more official languages than English and Afrikaans. Similar provision was made for provincial legislation. [29] The pre-1994 case law remained applicable to section 65. [30]

5. Section 240 of the 1996 Constitution

Section 240 of the 1996 Constitution states that “[i]n the event of an inconsistency between different texts of the Constitution, the English text prevails”. This provision, other than its predecessor in the transitional Constitution, [31] makes explicit reference to *an inconsistency* between the different versions. However, as was pointed out before, [32] the provision in the transitional Constitution implicitly referred to section 35 of the 1983 Constitution and was presumably therefore also only applicable in the event of a conflict or inconsistency. It did not, in other words, differ in substance from section 240, its successor in the 1996 Constitution.

6. Constitutional jurisprudence on multilingualism

The pre-1994 case law has remained applicable to inconsistencies and conflicts of the different versions of both Constitutions since 1994, because constitutional provision for such inconsistencies and conflicts is not essentially dissimilar to pre-1994 provision for conflicts between the English and Afrikaans versions of statutory texts. The compatibility of the different versions of the Constitution can therefore be assumed and reliance on mechanisms to resolve deadlocks is a last resort. This seems to have been accepted in constitutional jurisprudence on the issue.

In *Du Plessis and Others v De Klerk and Another* [33] Kentridge AJ, for instance, concluded (with section 15 of the 1994 Constitution Amendment Act in mind [34]) that the English phrase “all law in force” in section 7(2) of the transitional Constitution, had to be understood extensively with reference to the Afrikaans version “alle reg wat van krag is”. “All law in force” can be read as a reference restricted to statute law. The more inclusive Afrikaans word “reg”, however, indicated that “law” embraces common law as well as statute law. This much was clear from the Afrikaans wording of other sections of the transitional Constitution too, for example sections 8(1), and 33(1), where “reg” was used as the Afrikaans equivalent for “law”. In Kentridge AJ’s interpretation section 7(2) of the Afrikaans version thus in effect “prevailed” in spite of the section 15 requirement that, for purposes of the interpretation of the transitional Constitution, the English text had to prevail. Preference for the Afrikaans version, Kentridge JA (relying on a “well-established rule of interpretation”) thought, was possible because there was *no conflict* between the two versions:

“[I]f one text is ambiguous, and if the ambiguity can be resolved by the reference to unambiguous words in the other text, the latter unambiguous meaning should be adopted. There is no reason why this common-sense rule should not be applied to the interpretation of the Constitution. Both texts must be taken to represent the intention of Parliament.” [35]

Kentridge AJ finally justified his conclusion on the basis that Afrikaans had remained an official language with undiminished status in terms of section 3 of the transitional Constitution. Reference (albeit oblique) has since *Du Plessis v De Klerk* been made to the

Afrikaans versions of both the 1993 and 1996 Constitutions for clarification purposes. [36]

7. Section 82 of the 1996 Constitution

Section 81 of the 1996 Constitution provides that a bill becomes an act of parliament as soon as it has been assented to and signed by the president. It must then be published promptly and it takes effect either when published or on a date determined in terms of the act itself. Section 82 then continues:

“The signed copy of an Act of Parliament is conclusive evidence of the provisions of that Act and, after publication, must be entrusted to the Constitutional Court for safekeeping.”

Section 124 makes similar provision for the determination of the contents of provincial legislation as well as for its safekeeping. Schedule 6 item 27 makes it clear that sections 82 and 124 do not affect the safekeeping of acts passed before the Constitution took effect. Those acts are in safekeeping with the registrar of the Supreme Court of Appeal.

Section 82 makes no reference to the possible inconsistency of various versions of an act. It simply states that *one version* of an act (out of a possible eleven), namely the one signed by the president, shall be conclusive evidence of the provisions of the act. The explicit exclusion of an inconsistency mechanism, it is submitted, is an implicit recognition of the intrinsic concurrence of the different versions of legislative texts. It therefore opens the door to the fullest possible development of the principles of the case law as it stands.

Christo Botha [37] proposes that section 39(2) of the Constitution be taken into account when various versions of a statute are in conflict, and that the version that best reflects the spirit, purport and objects of the Bill of Rights be preferred. This conclusion, he thinks, is justified also as an outcome of the requirement that statutes be read in conformity with the Constitution. Botha’s proposal is commendable. The existing case law caters for the reading together of the various versions of an enactment in a constructive way, and what can be more constructive than reading provisions together in the light of and in conformity with the Constitution? This can be done even in the absence of any conflict between the different versions.

The absence of an explicit conflict resolution mechanism in section 82 does of course have repercussions and much will in future depend on how the concept of “conclusive evidence” in section 82 is going to be construed. To state, as JR de Ville [38] does, that section 82 appears to have done away “with the equality between the two or more versions of an enactment” and that “[o]nly the text that is signed will in future be regarded as being authoritative” is, however, too glib. First, if, as in the past, the president is going to continue signing different versions of acts by turns and the signing of a particular version is going to remain a matter of chance, [39] there is no “qualitative” reason for always preferring the signed text. Second, “conclusive evidence of the provisions of an Act” is not conclusive evidence of the meaning of an act: it simply says that “these are the linguistic signifiers used – the signed version is conclusive evidence of that”. Nothing precludes the use of other versions of a provision to place a construction upon the signifiers used in the corresponding

provision of the signed version. [40] De Ville's suggestion flies in the face of both sound strategies of statutory interpretation in the light of the Constitution and a commendable body of case law on dealing with statutory multilingualism.

The Supreme Court of Appeal [41] held that the signed English version of provisions of a pre-1993 act of parliament [42] prevails over an inconsistent Afrikaans counterpart. Regrettably the court reached this conclusion without ado, making no reference to either section 82 of the 1996 Constitution or its predecessors in pre-1996 South African constitutions.

8. Delegated or secondary legislation

The pre-1994 constitutional conflict provisions did not apply to delegated legislation. Neither does the successor to these conflict provisions in the 1996 Constitution [43] and on this point pre-1994 case law still reflects the law as it stands. The difference, of course, is that since 1994 there can be more than two (and in principle as many as eleven) versions of a delegated instrument. The different versions of delegated enactments are readily used for reciprocal clarification. [44] If the different versions diverge (either because they differ or are in conflict with one another) then, on the principle *ut res magis valeat quam pereat*, an attempt must first be made to reconcile them rather than to reduce the provision in question or the instrument as a whole to a nullity. [45] This means, first, that the one version can be used to clarify ambiguities in others. [46] Second, it means that the most meaningful version or versions can prevail while the absurd ones are rejected. [47] In the third place, conflicting portions in the different versions can be deleted if this will result in making sense of the rest of the instrument thereby giving effect to its provisions. [48] If all these attempts at reconciliation fail, the provisions in question (or the whole instrument) can be struck down [49] – not on constitutional grounds, but with reference to the common law requirements for the validity of delegated legislation.

In *Janse van Rensburg v Minister of Defence* [50] the Supreme Court of Appeal had occasion to revisit the pre-1994 case law on statutory multilingualism, particularly with regard to delegated legislation. The court confirmed the position as set out above. It also came to an instructive conclusion about reliance on the highest common factor approach [51] – in general and in dealing with delegated legislation: [52]

“A court fulfils its function by attempting to give effect to the intention of the lawgiver. If the highest common factor approach is applied mechanically it may result in a construction which is purely arbitrary and which could not have been intended. Save, perhaps, where penal provisions are concerned, this approach should not be adopted as a rule of first resort. All other methods of interpretation should be considered with a view to arriving at the intention of the legislator. I leave out of consideration the possibility that the two versions may be so irreconcilable that a regulation may be held to be a nullity.”

9. In conclusion

From the discussion above it appears that if invoked with due discretion and in a non-rigid way, statutory multilingualism can be a boon to statutory and constitutional interpretation. The South African courts – whose traditional approach to statutory interpretation has tended to be literalist, formalistic and formulaic – are, generally speaking, to be commended for their supple use of bilingualism as an aid to interpretation over the years.

The advent of constitutional multilingualism and the (potential) availability of statutory texts (and the Constitution) in more than two languages, has created conditions conducive to the further development and refinement of reliance on multilingualism in statutory and constitutional interpretation. However, for the last decade or so there has not been development in this area and resort to multilingualism as interpretive aid has actually been on the wane.

As was pointed out previously section 6(3)(a) of the Constitution requires the national and provincial governments to use at least two official languages. [53] What happens with legislation in practice, though, especially in the national sphere of government, is that it is published in *only* two languages – usually English plus one of the other official languages. [54] Whether this is a violation of the parity of esteem and the equitable treatment that languages must enjoy [55] is a question best considered in a discourse on language rights. From an interpretive point of view something valuable will be lost if the practice of publishing *only two* versions of statutes discourages reliance on multilingualism in statutory interpretation. This could conceivably happen should English increasingly be regarded as statutory *lingua franca* and the English version of every statutory text as the primary or anchoring version (which, in spite of what is happening in practice, is legally speaking not the case). There are no legal obstacles in the way of any court seeking to have resort to multilingualism in statutory and constitutional interpretation, and hopefully the courts will resume considered reliance on this very helpful interpretive aid.

10. Endnotes

[1] See 1 above.

[2] Devenish, GE *Interpretation of Statutes* 1992 Cape Town / Wetton / Johannesburg Juta & Co 144–146.

[3] Section 3(1) of the (transitional) Constitution of the Republic of South Africa, Act 200 of 1993 made the necessary provision. Section 6(1) of the Constitution of the Republic of South Africa 1996, as was pointed out in 1 above, presently provides for the eleven official languages.

[4] See 1 above.

[5] To wit the 1909 South Africa Act 9 Edw 7 c 9 section 67; the Republic of South Africa Constitution Act 32 of 1961 section 65 and the Republic of South Africa Constitution Act 110 of 1983 section 35.

[6] Similar provisions obtained with regard to provincial ordinances before 1 July 1986 (Provincial Government Act 32 of 1961 section 90(2)) and the enactments of the legislative assemblies of self-governing Black territories (National States Constitution

Act 21 of 1971 section 33(1)).

- [7] *Handel v R* 1933 SWA 37 40–41; *New Union Goldfields Ltd v Commissioner for Inland Revenue* 1950 3 SA 392 (A) at 405–406; *R v Silinga* 1957 3 SA 354 (A) at 358C.
- [8] Devenish, GE *Interpretation of Statutes* 1992 Cape Town / Wetton / Johannesburg Juta & Co 144.
- [9] See eg *Commissioner for Inland Revenue v Witwatersrand Association of Racing Clubs* 1960 3 SA 291 (A) at 302A–B; *S v Roos* 1963 2 SA 671 (N) at 677B; *Cresto Machines (Edms) Bpk v Die Afdeling Speuroffisier SA Polisie Noord-Tvl* 1972 1 SA 376 (A) at 391D–E; *SA Mutual Fire and General Insurance Co Ltd v Mapipa* 1973 3 SA 603 (E) at 606F–G; *Mphosi v Central Board for Co-op Insurance Ltd* 1974 4 SA 633 (A) at 643E–F; *A to Z Bazaars (Pty) Ltd v Minister of Agriculture* 1975 3 SA 468 (A) at 477F–G; *Distillers Corp (SA) Ltd v Stellenbosch Farmers Winery Ltd* 1979 1 SA 532 (T) at 535; *Tuckers Land and Development Corp (Pty) Ltd v Soja (Pty) Ltd* 1979 3 SA 477 (W) at 481H–482A; *S v Sekete* 1980 1 SA 171 (N) at 172G–H; *Rosenberg v SA Pharmacy Board* 1981 1 SA 22 (A) at 30A–B; *Kopel v Marshall* 1981 2 SA 521 (W) 526G–H; *Joint Liquidators of Glen Anil Development Corp Ltd v Hill Samuel (SA) Ltd* 1982 1 SA 103 (A) at 109A; *Barclays Zimbabwe Nominees (Pvt) Ltd v Black* 1990 4 SA 720 (A) at 723E–F.
- [10] See eg *Reddy v Port Shepstone Borough* 1955 1 SA 302 (N) at 304E–H; *Ex parte Lewis* 1969 3 SA 9 (C) at 12A; *Ex parte General Chemical Corp Ltd* 1971 2 SA 159 (T) at 160F–H; *Ex parte Reckitt and Coleman (Africa) Ltd* 1971 2 SA 545 (C) at 549A–H; *Northwest Townships (Pty) Ltd v Administrator Tvl and Another* 1975 2 SA 288 (W) at 291E–G.
- [11] See eg *S v Jeffers* 1976 2 SA 636 (A) at 642A–C; *S v Makoula* 1978 4 SA 763 (SWA) at 768–770; *Willis NO v Registrateur van Aktes Bloemfontein* 1979 1 SA 718 (O) at 719B–D; *S v Bedford* 1979 3 SA 656 (D) at 657A–H; *Saambou-Nasionale Bouvereniging v Friedman* 1979 3 SA 978 (A) at 990A–D; *S v Henckert* 1980 1 SA 178 (NC) at 181A–D; *Van Rensburg v Fouriesburg Hotel (Edms) Bpk* 1980 2 SA 26 (O) at 32A–B; *Subbulutchmi v Minister of Police and Another* 1980 3 SA 396 (D) at 399A–H; *Law Society Tvl v Behrman* 1981 4 SA 538 (A) at 555B–H.
- [12] *R v Silinga* 1957 3 SA 354 (A) at 358H; *Peter v Peter and Others* 1959 2 SA 347 (A) at 350D–E; *D v Minister of the Interior* 1962 1 SA 655 (T) 659F–H.
- [13] *New Union Goldfields Ltd v Commissioner for Inland Revenue* 1950 3 SA 392 (A) at 406 per Van den Heever JA (in a minority judgment); cf also *Whitla v Standerton Town Council* 1952 3 SA 567 (T) 570H–572G; *R v Singu* 1954 3 SA 555 (C) at 559A–H; *Ex parte Kommissaris van Kindersorg. In re: Steyn Kinders* 1970 2 SA 27 (NC) at 31A–32A; *SANTAM Versekeringsmpy Bpk v Kemp* 1971 3 SA 305 (A) at 320D–H; *S v Moroney* 1978 4 SA 389 (A) at 407H–409C; *S v Collop* 1981 1 SA 150 (A) at 162D–163D; *Cronje v Paul Els Investments (Pty) Ltd* 1982 2 SA 179 (T) at 190C–192H; *S v Moloi and Another* 1987 1 SA 196 (A) at 215H–216A; *Prinsloo v Van der Linde* 1997 6 BCLR 759 (1997 3 SA 1012) (CC) at para 47.
- [14] *Jaffer v Parow Management Board* 1920 CPD 267 at 271–272. A shared meaning may also be a “wider” meaning: *Derby Lewis and Another v Chairman, Amnesty Committee of the Truth and Reconciliation Committee and Others* 2001 3 SA 1033 (C) at 1057H.
- [15] *R v Silinga* 1957 3 SA 354 (A) at 358H–359A.
- [16] *Cronje v Paul Els Investments (Pty) Ltd* 1982 2 SA 179 (T) at 191C–192F.

- [17] *S v Opperman* 1969 3 SA 181 (T) at 185B; *SAS en H v Van den Berg and Another* 1983 1 SA 964 (A) at 975A; *Pace Real Estate (Pty) Ltd v Wilson* 1983 3 SA 753 (W) at 756G; *Van Rooyen v Van Staden and Another* 1984 1 SA 803 (T) at 807D–E.
- [18] *R v Silinga* 1957 3 SA 354 (A) at 358A–H; *Ex parte Reckitt and Coleman (Africa) Ltd* 1971 2 SA 545 (C) at 550A–H.
- [19] 1950 3 SA 392 (A) at 406.
- [20] 1959 2 SA 347 (A) at 350E–F.
- [21] *Die Uitleg van Wette* 5th ed 1981 Cape Town Juta 140.
- [22] Steyn LC *Die Uitleg van Wette* 5th ed 1981 Cape Town Juta 141.
- [23] See eg 7 below.
- [24] See 6 and 8 below.
- [25] 2 of 1994.
- [26] De Waal, Johan “A Comparative Analysis of the Provisions of German Origin in the Interim Bill of Rights” *South African Journal on Human Rights* 11(1) (1995) 1-29 at 4 n 4.
- [27] Section 65(1).
- [28] Section 65(2).
- [29] Section 141.
- [30] Lourens M du Plessis “Statutory Multilingualism and Textual Conflict under the 1996 Constitution” *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 61(2) (1998) 276-284 at 278 citing Botha, Christo *Statutory Interpretation. An Introduction for Students* 3rd ed 1998 Kenwyn Juta & Co at 84 with approval.
- [31] Section 15 of the 1994 Amendment Act; see 5 above.
- [32] See 5 above.
- [33] 1996 (5) BCLR 659 (1996 (3) SA 850) (CC) at para 44.
- [34] See 5 above.
- [35] At para 44. See also De Waal, Johan “A Comparative Analysis of the Provisions of German Origin in the Interim Bill of Rights” *South African Journal on Human Rights* 11(1) (1995) 1-29 at 4 n 4 who, on an assumption similar to that of Kentridge AJ, asserts that reference could be made to the Afrikaans version of the transitional Constitution to make sense of the term “constitutional state”. The Afrikaans version of this notion, namely “regstaat”, corresponds more closely to the original German term, *Rechtsstaat*.
- [36] *Langemaat v Minister of Safety and Security* 1998 4 BCLR 444 (T) at 448; *Wittman v Deutscher Schulverein, Pretoria* 1999 1 BCLR 92 (T) at 115H.
- [37] *Statutory Interpretation. An Introduction for Students* 4th ed 2005 Cape Town Juta & Co 89.
- [38] *Constitutional and Statutory Interpretation* 2000 Interdoc Consultants 115.
- [39] See 3 above.
- [40] See Lourens M du Plessis “Statutory Multilingualism and Textual Conflict under the 1996 Constitution” *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 61(2) (1998) 276-284 at 281–283 for hypothetical examples.
- [41] In *Middelburg v Prokureursorde Transvaal* 2001 2 SA 865 (SCA) at para 6.
- [42] In *casu* sections 20(1) and (4) of the Supreme Court Act 59 of 1959.
- [43] See 8 above. See also JR de Ville *Constitutional and Statutory Interpretation* 2000 Interdoc

Consultants 119–120. The conflict provision in the 1993 Constitution (see 5 above) also did not apply to delegated legislation.

- [44] See eg *Du Plessis and Others v Southern Zululand Rural Licensing Board* 1964 4 SA 168 (D) at 172F–G; *S v De Castro* 1979 2 SA 1 (A) at 22C–D; *S v Weinberg* 1979 3 SA 89 (A) at 100F; *S v Sparks NO and Others* 1980 3 SA 952 (T) at 953F–G; *Mkrola v Samela* 1981 1 SA 925 (A) at 934C; *Manyasha v Minister of Law and Order* 1999 2 SA 179 (SCA) at 188H–I.
- [45] *R v Shoolman* 1937 CPD 183 at 186–187; *R v Alberts* 1942 AD 135 at 140; *Maharaj v Barclays National Bank Ltd* 1976 1 SA 418 (A) at 422H–423A.
- [46] See eg *R v Madondo* 1956 2 SA 682 (N) at 684G–685H; *R v La Joyce (Pty) Ltd and Another* 1957 2 SA 113 (T) 117A–C; *Vitorakis v Wolf* 1973 3 SA 928 (W) 931B–D; *Barclays National Bank Ltd v Smith* 1975 4 SA 675 (D) at 681F–682B. This practice derives from the broader principle that both versions may serve the object of reciprocal clarification.
- [47] *R v Shoolman* 1937 CPD 183 at 187.
- [48] *R v Seckle* 1953 4 SA 329 (T) D–E; *R v Kungeka* 1954 4 SA 76 (E) 80A–F.
- [49] *Kock v Scottburgh Town Board* 1957 1 SA 213 (D) at 215A–D.
- [50] 2000 3 SA 54 (SCA) at paras 13–18.
- [51] The usability of which was (re-)confirmed in *Dawood, Shalabi, Thomas v Minister of Home Affairs* 2000 1 SA 997 (C) at 1042F–G.
- [52] At para 18.
- [53] See 2 above..
- [54] Malan, Koos “Observations and Suggestions on the Use of Official Languages in National Legislation” *SA Public Law* 23(1) (2008) 59-76 at 65-67.
- [55] See 1, 2 and 3 above...