

THE PERNICIOUS EFFECTS OF TERMS USED FOR AND BY THE LEGAL TRANSLATION PROFESSION

Juliette Rose Scott*

Abstract

This paper posits that the terminology used for and by the legal translation profession is not without significance, and may affect perceived status, professionalization, empowerment, and even remuneration.

Serious signalling issues in the translation profession as a whole were brought to the fore in a study by Pym *et al.* (2012), while Katan (2011a) reported on a widespread perception of low status by translators themselves. Facilitators and barriers to translators' professionalization and empowerment have been investigated extensively (e.g., Dam & Koskinen, 2016; Dam & Zethsen, 2010; Sela-Sheffy, 2011), while in recent years there has been a discernable downward pressure on the amount that clients seem willing to pay for legal translation. It would appear, however, that there is little discussion in the literature of the actual terms used within the legal translation procurement process and for the actors involved.

As a short illustration in English: we may establish a cline going from "asset", "resource", "vendor", "freelancer", "supplier", and "provider" to "professional" or "practitioner", and consider how such terms are applied to the translation and legal professions and the very different signals that are transmitted (Scott, 2015). Further examples from a recent global survey of stakeholders in the outsourced legal translation market (Scott, 2016a) are also examined.

Conclusions will be drawn regarding the potential of concepts such as occupational branding (Ashcraft *et al.*, 2012), and the implications of terminological awareness for legal translator training programmes, professional bodies, and for individual legal translators.

Keywords: Occupational prestige; professionalization; status; occupational branding; legal translation practitioners; legal translation, legal translators.

LES CONSEQÜÈNCIES PERJUDICIALS DELS TERMES UTILITZATS PER I PER A LA PROFESSIÓ DE TRADUCCIÓ JURÍDICA

Resum

Aquest article postula que la terminologia utilitzada per i per a la professió de traducció jurídica no és irrellevant i pot afectar la percepció de l'estatus de la professió, la professionalització, el seu apoderament i, fins i tot, la remuneració.

En un estudi realitzat per Pym et al. (2012) es posen en relleu problemes greus de senyalització en la professió de traducció en general; mentre que Katan (2011a) dona compte de la percepció generalitzada que tenen els mateixos traductors d'un estatus baix de la seva professió. S'han investigat de forma exhaustiva els factors que afavoreixen i obstaculitzen la professionalització i l'apoderament dels traductors (com ara, Dam i Koskinen 2016; Dam i Zethsen 2010; Sela-Sheffy 2011), mentre recentment s'ha registrat una forta tendència a la baixa de l'import que els clients sembla que estan disposats a pagar en concepte d'una traducció jurídica. No obstant això, sembla que en la literatura hi ha poca reflexió al voltant dels termes realment utilitzats en el procés de contractació de serveis de traducció jurídica i per fer referència a les parts implicades.

Com a mostra breu en llengua anglesa, podem establir una successió de termes que van des d'«asset», «resource», «vendor», «freelancer», «supplier» i «provider» fins a «professional» i «practitioner», i valorar com s'associen aquests termes a les professions del món del dret i la traducció i la gran varietat de connotacions que posseeixen (Scott 2015). Així mateix, també analitzem altres exemples procedents d'una enquesta feta a escala mundial a les diferents parts que participen en el mercat de serveis externalitzats de traducció jurídica (Scott 2016a).

Les conclusions tenen en compte el potencial de conceptes com la construcció de la marca d'una professió (occupational branding) (Ashcraft et al. 2012) i les implicacions de la creació de la consciència terminològica per als programes de formació dels traductors jurídics, organismes que representen grups professionals i per a traductors jurídics particulars.

Paraules clau: prestigi laboral; professionalització; estatus; construcció de la marca d'una professió; professionals en traducció jurídica; traducció jurídica; traductors jurídics.

* Juliette Rose Scott, Researcher & Lecturer in Legal Translation Studies at the Institute of Advanced Legal Studies, University of London. info@legaltranslationhub.org.

Article received: 03.04.2017. Review: 14.06.2017. Final version accepted: 27.07.2017.

Recommended citation: Scott, Juliette Rose. "The Pernicious Effects of Terms Used for and by the Legal Translation Profession". *Revista de Llengua i Dret, Journal of Language and Law*, issue 68, 2017, p. 57-75. DOI: [10.2436/rld.i68.2017.2969](https://doi.org/10.2436/rld.i68.2017.2969)

Summary

Introduction

1 Descriptors for legal translation practices

1.1 Can legal translation be classed as a profession?

1.2 Descriptors for the ‘profession’

1.3 Official occupational classifications for translators

1.4 Descriptors for legal translators

1.5 Descriptors for client specifications

1.6 Descriptors for legal translators’ remuneration

2 Pernicious effects

3 Countermeasures

4 Conclusions

References

Introduction

Words matter. Words have power. The hosts of copywriters, the billions spent on marketing, not to mention the endless deliberations of specialists construing meaning in law attest to this. The legal translation profession is all about words, needless to say. Why then, is this occupational group so bad at taking ownership of the terms used to describe itself and its practices?

In the last ten years, Translation Studies has taken an increasing interest in professionalization, often linked with status. Leading examples are the work of Dam and Zethsen (2008, 2010, 2011, 2012, 2016); Dam and Koskinen (2016); Pym *et al.* (2012); Sela-Sheffy and Shlesinger (2008); Sela-Sheffy (2011, 2016); and Katan (2009, 2011a, 2011b). Conclusions refer over and over again to low status and visibility issues. Very little of this research, however, concentrates solely on legal translators.¹ Still less relates to those working in ‘outstitutional’ contexts whose clients are law firms and the corporate world (Scott, 2016a) as opposed to staff legal translators (McAuliffe, 2016; Strandvik, 2014, 2015) or sworn/certified translators (Vigier, 2013; Monzó, 2011), and there does not seem to have been any investigation regarding legal translators working in-house at agencies.

None of these studies on professionalization and status focus on the terminology used for and by the profession and its practices, or on the effects that terms might have. My contention here is that the use of certain terms may propagate an ever-more uberized, commodified view of translation services, eschewing the expertise and high quality that are crucial in the legal domain.

Worse still, such terms may actually counter the efforts made by individual translators, by conscientious translation companies, and by some professional bodies to raise standards and professionalize. Outside academia, the professionalization of legal translation is a hugely urgent matter. Changes in working processes stemming mainly from technology no longer take years but months. There is intense pressure from a number of quarters, such as: hype surrounding the capabilities of machine translation (Garr & Berman, 2013); unqualified service providers and digital platforms (Pym, Orrego-Carmona & Torres-Simón, 2016; Lobel, 2016); and a focus on cost not quality which is driving experienced practitioners out of the market (Pym *et al.*, 2012). The lack of regulation of legal translation can no longer be ignored, nor can its professionalization.

By discussing a series of descriptor clines and their respective levels of perceived-emitted occupational prestige (Counts, 1925, Godbout, 2016), this paper aims to raise awareness and suggest that the routine use of denigratory descriptors is far from innocuous. A number of approaches are then put forward to address these ‘branding’ issues.

1 Descriptors for legal translation practices

It is important to emphasize that the illustrations that I provide in the next pages, drawn from a dataset resulting from a global survey of “outstitutional” legal translation practices² (Scott, 2016a), have a modest aim – simply to provoke a heightened awareness that further discussion and research is needed. The descriptors are all in English, and although I believe that there may be similarities in other languages and between other geographical, jurisdictional and in-house/institutional loci, such considerations are beyond the scope of this paper. Furthermore, the interpretation of associations with and responses to words is a highly specialised interdisciplinary matter embracing, *inter alia*, psychology, communication theory, advertising, marketing, and sociology. Each reader will have their own feelings/ideas/responses to the terms, so rather than instigating quarrels over about precisely where descriptors fall on the clines, I would simply stress the importance of further research – potentially using focus groups and other methods.

¹ The term “translator” refers throughout this paper to individuals working on written texts. More research has been carried out on the status of court interpreters (e.g. Hertog & Gucht 2008; Kinnunen 2010, 2011). A handful of studies examine the related specialism of business translators (e.g. Dam & Zethsen 2011).

² 303 translators, 84 principals, 41 countries, 6 continents.

1.1 Can legal translation be classed as a profession?

Before going any further, we should first reflect on whether legal translation can actually be classed as, let alone named, a ‘profession’ at all. In discussing professional liability in services, Reitz summarizes five elements required by US courts to define a profession and class it as such: (i) members with extensive qualifications; (ii) a stringent code of ethics; (iii) a high level of responsibility; (iv) regulation; (v) a system to discipline those who do not comply with standards or requirements (2003).

Such defining traits are also adopted by Dam and Zethsen, who add a number of others: the public recognition of status and prestige, monopoly over work (reserved title), autonomy of action, remuneration reflecting professional standing, and an effective professional body (2011).³

If we use Reitz’s criteria, legal translation cannot be defined as a profession in the current state of affairs. Although many legal translators are highly qualified and experienced, it is not the case that all legal translations are done by such individuals – far from it. Codes of conduct and ethics do exist, but there is no mandatory requirement to adhere to them, and their content varies considerably from country to country and from one professional body to another.⁴ The responsibility weighing upon those translating documents that involve very large sums of money (e.g. cross-border litigation), or individuals’ lives (e.g. criminal convictions) ought to be clear to all, but is rarely perceived.⁵

Regulation and disciplinary action, the fourth and fifth points listed by Reitz, are non-existent in the vast majority of countries in any form: “In no country that we have surveyed⁶ is any academic qualification – or indeed any kind of formal qualification at all – required in order to use the term ‘translator’ or its equivalent generic terms” (Pym *et al.*, 2012, p. 20). Professional bodies do not generally act as gatekeepers to the profession either – according to Gouadec (2007), only in Argentina, Denmark, Norway and certain provinces of Canada⁷ is access to the translation profession subject to approval by a local union of translators. Although there are a number of standards applying to translation with more under development,⁸ no disciplinary measures are currently in place to address any potential non-compliance.

1.2 Descriptors for the ‘profession’

There is no consistent name for the group of (legal) translation professionals, either when used by academics, by clients, or by professionals themselves. The two most common terms for the overall, umbrella field of translation are “industry” and “profession”. A comparison and critique of their use by Drugan suggests some nuances in meanings attached by academics (2013, pp. 6-8). She holds that “profession” for some scholars “can indicate regret regarding recent developments in translation, seen as a shift [...] to [...] mass production”, referring to Gouadec (2007). In this regard she refers to “crusade” and “daunting accounts”, and appears derisive of those who prefer this term. Many translation scholars employ these loaded terms without providing definitions or grounds for their use.

Figure 1 shows a range of terms used to describe the translation ‘profession’ by all stakeholders: scholars, clients, service provision intermediaries, and translators. It does not refer specifically or only to the legal specialism. Like Figures 6, 7, 9 and 10 later in this paper, it illustrates a terminological cline, where the direction of the arrow represents an increasing level of occupational prestige, and the most commonly used terms are shown in a larger font size.

3 For Dam & Zethsen “Translation in Denmark could probably be called a semi-profession aspiring to become a full profession” (2011, p. 79).

4 See International Federation of Translators (FIT) collection of codes of ethics: <http://www.fit-europe.org/en/what-we-do/completed-projects/codes-ethics>

5 Even in general Translation Studies, without the added responsibilities of the legal specialism, Sela-Sheffy remarks upon the contradiction between translators’ potential power and their “obscure professional definition and alleged sense of submissiveness [...] that makes them such an intriguing occupational group” (2016, p. 135).

6 The report by Pym *et al.* studied the European Union and drew “comparisons with the United States, Canada and Australia” (2012, p. 3).

7 Ontario, New Brunswick, Quebec and British Columbia (Godbout 2016).

8 ISO 9000 series; the German DIN 2345; (C)EN 15038: 2006 and ISO 17100; ASTM F2575-06; and the National Standard of the People’s Republic of China GB/T 19363.1-2003. Under development: ISO 20771 on legal translation. See also Drugan 2013, Biel 2011b, Strandvik, 2012.

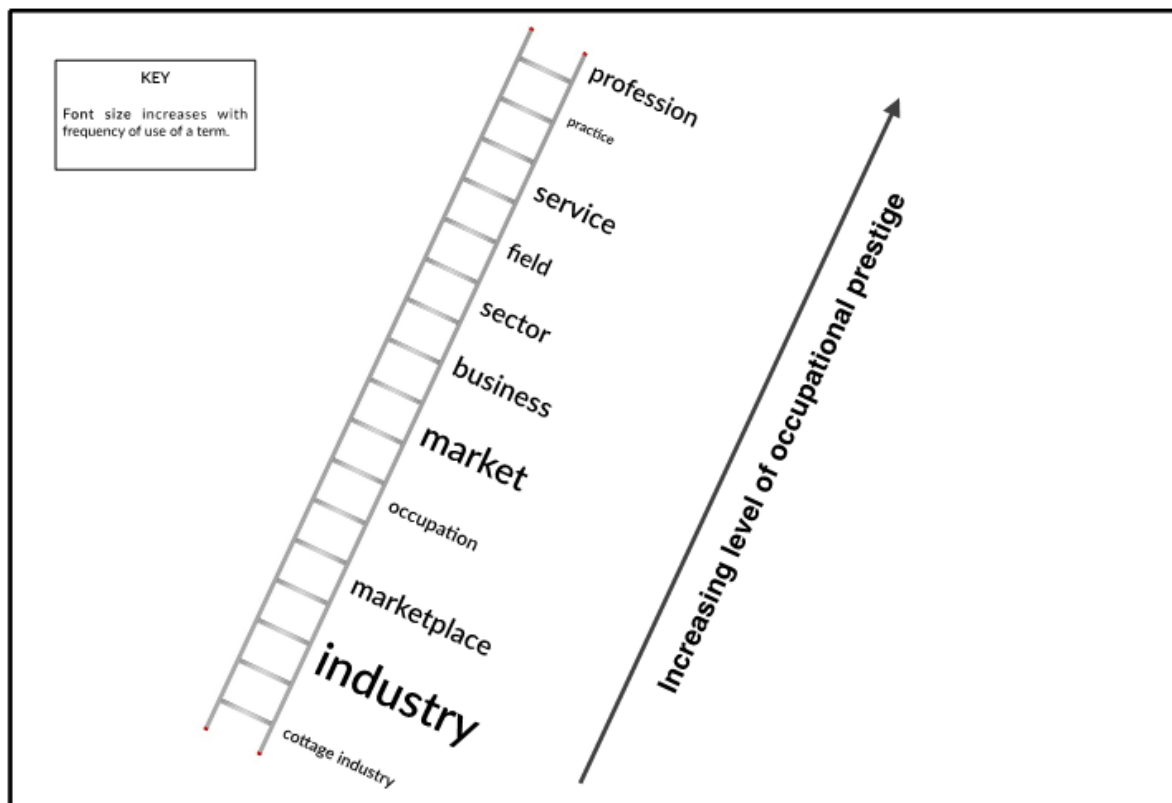


Figure 1: Terms used to describe the translation ‘profession’

The term “cottage industry” was employed by Katan (2009), following his survey of 1000 translators worldwide which highlighted fragmentation in translation practice. We find “marketplace” used by online platforms that seek to connect translators with buyers and thereby generate profit for the platform (e.g. Lingotek, Unbabel, Hyperlingo, ytranslate). It is interesting to note that at a conference held in Geneva entitled “The World in Crisis – And the Language Industry?”, the owner of a high-end financial translation practice reflected on the term, and discussed the then emerging “industry” paradigm for translation and its consequences (Fry, 2009).

Even stakeholders who work, ostensibly, to improve matters in the ‘profession’ use the term “industry” indiscriminately. Many professional bodies do so, somewhat surprisingly. The American Translators Association (ATA) refers to the “translation industry” in its Paper to the Department of Homeland Security on Language Access Plans (2014) aimed at defending its 11,000 members and supporting the implementation of standards of practice. The term “profession” does not appear in the Paper. The Chartered Institute of Linguists in the United Kingdom entitles its workshop for entrants to the “translation profession” as follows – “Working Successfully as a Freelance Translator: Getting Started in the Translation Industry” (2017). Another professional body based in the UK, the Institute of Translation & Interpreting, uses “About the Industry” as the fourth main tab for navigation on its website, within which we find: “*The translation and interpreting industry offers diverse, rewarding and stimulating career paths.*”.

1.3 Official occupational classifications for translators

We may gain further insights into perceptions of the translation ‘profession’ by examining how translators are categorized and referred to by official bodies. This sub-section compares the classifications of Canada, the United States, the European Commission, and the International Labour Organization.

In the 2016 version of the National Occupational Classification (NOC) produced by the Government of Canada, “translating” is classed within the broad category “Occupations in art, culture, recreation and sport”.



Figure 2: Government of Canada four-tiered job title classification for legal translators and related titles

As can be seen in Figure 2, the sub-groups also link translation work with art and culture, and also with communication. Example job titles relating to the legal specialism are specified within the NOC listings.

In the United States, on the other hand, the North American Industry Classification System (NAICS), 2017 version, places translation within the same second-tier category as Legal Services – within “Professional, Scientific, and Technical Services”, as shown in Figure 3 below. Translation specialisms are not specified.



Figure 3: United States Office of Management and Budget classification for translation services

The NAICS categorization of translation services confers rather more prestige than some others in this section, given its relative proximity to legal services and the systematic inclusion of “professional” in the three category tiers.

The EUROSTAT classification of the European Commission, formerly the European Community, has hardly changed its coding for translation since 1993, apart from minor changes in order. As with the US Government classification, translation specialisms are not segregated. In the current Statistical Classification of Economic Activities in the European Union, abbreviated as NACE Rev. 2,⁹ translation activities are grouped with secretarial activities, and the group also contains watchman and industrial cleaning.

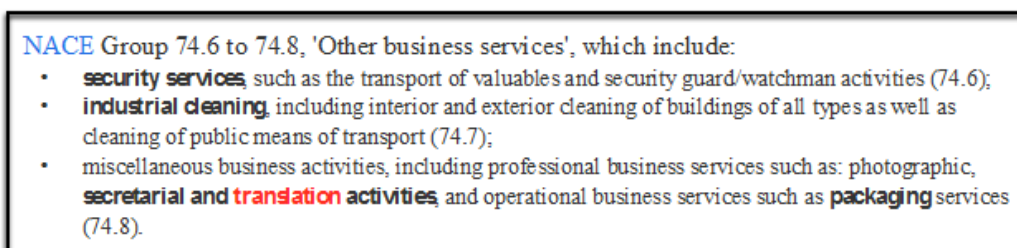


Figure 4: EUROSTAT classification for translation activities

The issues surrounding status are clear: highly inconsistent qualification levels between translation, secretarial and packaging services; significant differences of occupational prestige with respect to cleaning and security/watchman activities. This was noted as early as 1999 by Katan, who described it as “shocking” and posited that:

translators [...] need to change, both in how they are perceived and in how they work. They need to move away from being seen as photocopiers and working as human dictionaries to being perceived as visible agents in crating understanding between people (1999, pp. 2-3).

⁹ Derived from the French *Nomenclature statistique des activités économiques dans la Communauté européenne*. Version valid at the time of writing, March 2017.

The International Labour Organization (ILO), in its December 2007 Resolution Concerning Updating the International Standard Classification of Occupations (ISCO), classifies translators as shown in Figure 5. No deeper sub-categorization is offered for specialisms such as legal translation.

2 Professionals
26 Legal, social and cultural professionals
264 Authors, journalists and linguists
2641 Authors and related writers
2642 Journalists
2643 Translators, interpreters and other linguists

Figure 5: International Labour Organization ISCO categorization for translators

Like NAIC, the ILO classification bestows rather more occupational prestige, by categorizing translators as “professionals”, whilst like NOC it draws a link with the “cultural”, and focuses on writing skills, in common with journalists and authors.

In sum, official classifications of occupations diverge widely, ranging from positioning translators within arts and cultural activities to including them in professional services, to “bucket” classifications for those that do not fit elsewhere. Accordingly, the sub-occupation of legal translator finds itself classed nearer to or farther from the legal profession.

1.4 Descriptors for legal translators

As noted in section 1.1, in very few countries is there any regulation of the profession or set of rules laying down a reserved or protected title for legal translators.¹⁰ Such titles, by law or by voluntary measures, may be used only by persons registered with a regulatory body, whether that body is an arm of the State, a professional association or through licensing schemes. There is a multitude of job titles and even the use of a given title is inconsistent across different loci. Figure 6 should thus be viewed only as a rough vignette.

¹⁰ Although it is beyond the scope of this paper to go in detail on this point, it is revealing to consider a few examples of occupations that *are* subject to protected or reserved title – the following are protected in the United Kingdom, for example: dieticians, midwives, gas installers, electricians. These are not necessarily high status jobs such as lawyers, architects or doctors. In certain countries there may also be question of “‘reserved functions’ (activities that only a qualified member of the relevant profession is allowed to carry out)” (Lester, 2016).

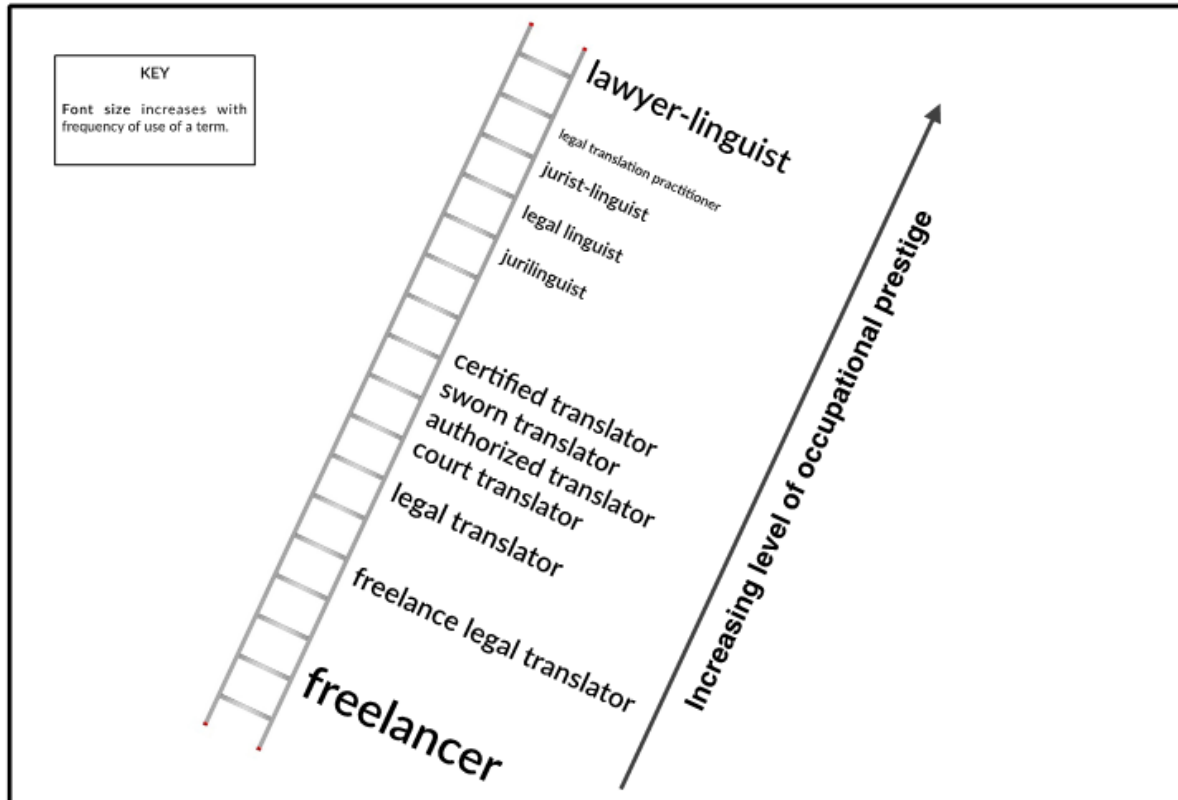


Figure 6: Examples of legal translators' job titles

Despite significant usage variations in this group of descriptors, we can confidently place “freelance(r)” towards the bottom of a hierarchy of prestige, whereas the word “practitioner” or the suffix “lawyer-” will lend weight to the title. “Legal translation practitioner” is far less frequently used, and persons using this title are more likely to be found working directly with law firms or corporate clients, and owning their own boutique practice. “Legal linguist” is a fairly uncommon term, generally but not exclusively associated with terminological work or statutory interpretation.

The descriptors “certified”, “sworn”, “authorized”, “official” and “court” refer to translators doing work which takes “extremely varied forms throughout the world” (Mayoral Asensio, 2003). Three examples, taken from Vigier’s extensive study across Europe and the Americas, must suffice to give an indication: the translation of documents required in order to enrol in a foreign university or to marry abroad; and court decisions (2013, p. 27-28). Although criteria for registration are so heterogeneous, most legal translators would perceive and be perceived as having slightly higher occupational prestige if they possess this official ‘recognition’. However, for some language pairs and/or in many countries, those with language capability alone may be accepted – such as teachers or professors. The latter example was cited by respondents in the survey of Pym *et al.*, who add “authorisation is something that many people [...] see as worth getting but then do not put in active use”. Pym *et al.* remark that “In such situations, authorisation as a sworn translator may actually be working against professionalization” (2012, p. 30).

Towards the top of the cline in terms of occupational prestige we find “lawyer-linguist”. The duties of “lawyer-linguists” diverge, depending on the locus of employment. At the European Commission, the latest call for job applications in December 2016 states that lawyer-linguists “recruited by the European Parliament and the Council are expected to revise legal/legislative texts in the language of the competition from at least two other languages as well as provide advice on legislative drafting” (emphasis added).¹¹ However, at the European Central Bank (ECB) the job title refers to a person who is “primarily responsible for translating ECB legal acts and other legal texts into [language] and for revising translations of such texts provided by external suppliers” (2015, emphasis added). At the Court of Justice of the European Union (CJEU), the job

11 EPSO/AD/332/16 <https://eutraining.eu/content/epso-2016-lawyer-linguist-competition-released-epsoad33216>

of “lawyer linguist” (unhyphenated) is described in an official brochure (QD-31-10-603-EN-C) as mainly entailing translation and revision.

Leveraging the prestige of this job title, certain translation agencies promote themselves by stating that their legal translations are carried out by ‘lawyer-linguists’. By the same token, some individual translators qualified both in the law and in translation/linguistics also describe themselves as lawyer-linguists.

The suffix “juri-” is found predominantly in geographical areas where there is a French influence on English terms. In Canada the descriptor ‘jurilinguist’ is used in relation to legislative drafting positions, defined as follows by Poirier:

A jurilinguist provides advice related to the terminology, syntax, phraseology, organisation of ideas and style that are appropriate to legal language and, specifically, to legislative language and to the subjects dealt with, and also, within the context of bilingual co-drafted Bills and regulations, comparison services to ensure equivalency of the English and French versions. (2009).

As already noted in section 1.3 Figure 2, we find three variants “certified translator”, “jurilinguist translator”, and “legal translator” among the job titles listed in the Canadian National Occupational Classification. Although separate descriptions of duties are given for “translators and translator-revisers, terminologists, and interpreters, no definition or information is given to disambiguate the three variants of certified/jurilinguist/legal translator.

Regarding universities’ course names, most courses, in different languages, refer rather to the subject than to the job title. The course titles thus include the term “legal translation” or “specialized translation” and sometimes “business communication/translation”, while in France the University of Poitiers has been offering a “*juriste linguiste*” program since 2001, and the Institute of Intercultural Management and Communication (ISIT) in Paris now offers a bilingual Lawyer-Linguist program (*juriste linguiste* in French).

In contrast to the terms used by translators themselves or their trainers, Figure 7 gives examples of the terms used by clients, particularly agencies, use as a title for the individuals working for them.

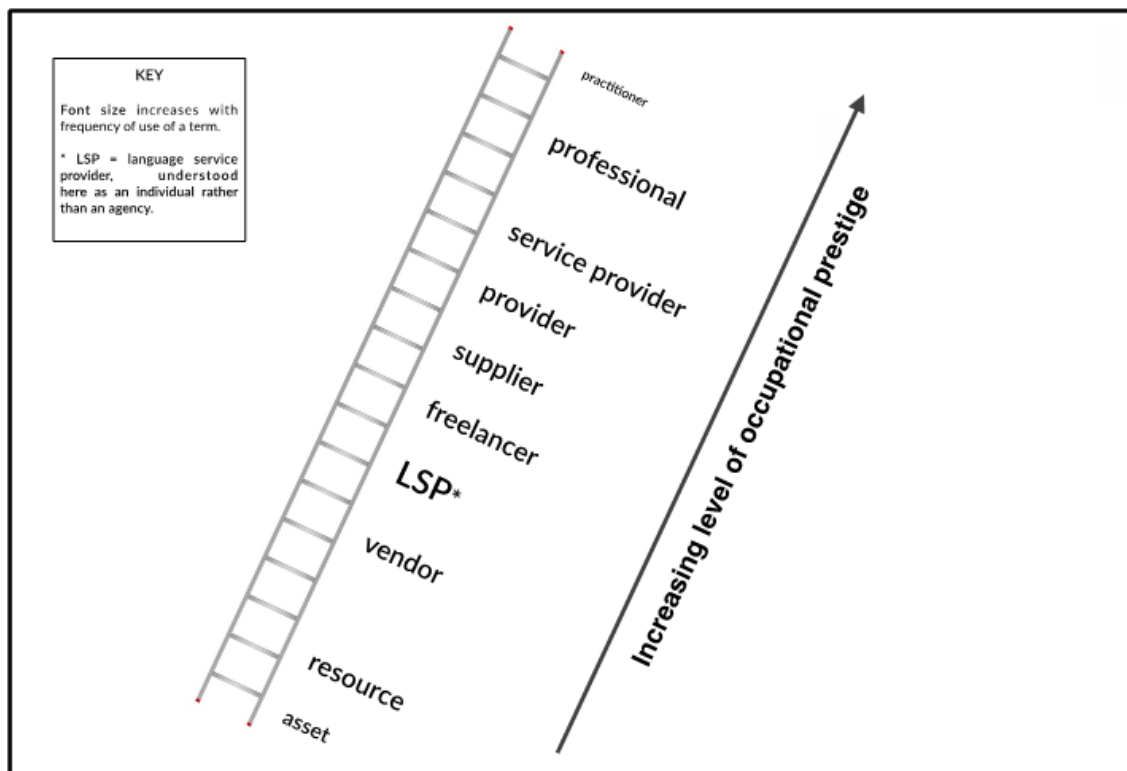


Figure 7: Examples of how clients refer to legal translators

To describe translators as “assets” or “resources” first dehumanizes them, and second creates associations with the verb “use”, and, by extension, with being “used”. At the other end of the scale, “practitioner” invites verbs such as “consult” and the lexically and semantically related “consultant” and “consultancy” – and transmits higher status signals.

Legal translation professionals participating in my fieldwork provide examples of the most-hated/disliked terms used by their clients: “*I hate being addressed as ‘Dear Vendor’ by agencies*” where we see a depersonalization of the translator as well as a focus on the monetary transaction rather than on expertise. It is worthy of note that we find the term “vendor” used by a Translation Studies scholar in the context of translator training (Washbourne, 2012). Equally, not all translation professionals appreciate being referred to by the acronym “LSP” (Language Service Provider): “oh here’s one I really hate...”; “reduced to an acronym”. LSP causes further issues as it may refer either to an individual or to a translation agency.

The term “supplier” creates associations rather with goods than with expertise, and places the translator in a position of inferiority – as opposed for example to a consultant or advisor. It is interesting to note that “service provider” is very often shortened to “provider” – might we thereby interpret a diminished focus on the service?

The term “freelancer” is very commonly used by translators, their clients and even professional bodies and is, potentially, one of the most toxic for professionalization attempts. Figure 8 shows the top results from a Google Image search performed for the word.

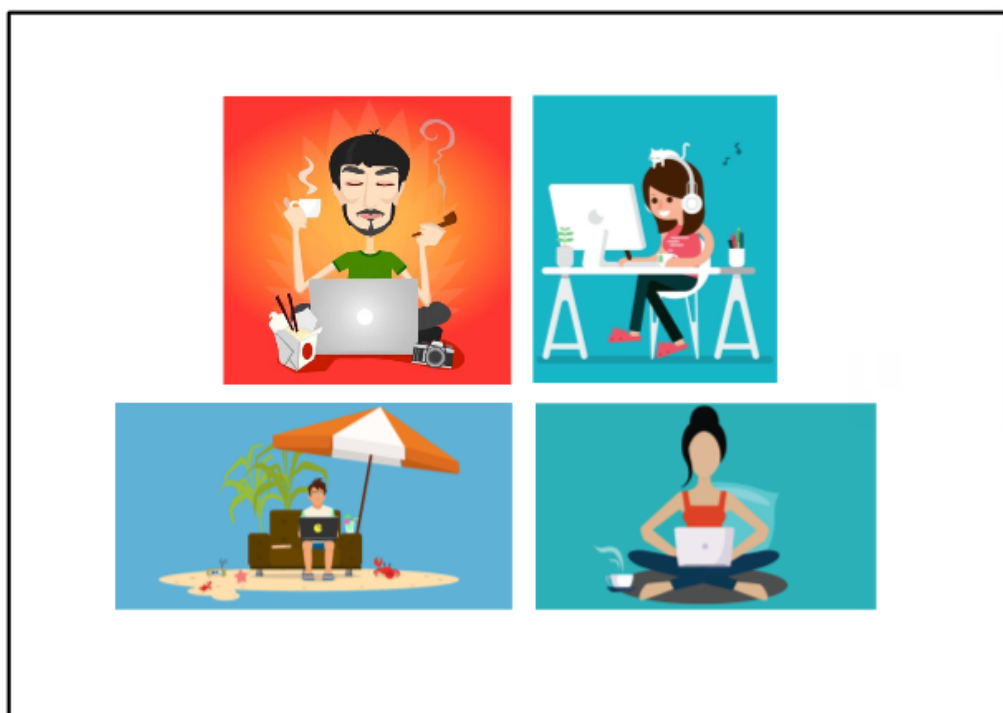


Figure 8: Top results from a Google Image search for “freelancer”

These images are, of course, only a “quick and dirty” way to ascertain some primary, albeit common associations with the word. The ‘professional’ is depicted as being dressed very informally in pyjamas or sports clothes; working on a beach, sitting on the floor, or at home with a pet; and doing other things at the same time (listening to music, drinking coffee, smoking, eating). Whilst for certain creative occupations (e.g. graphic artist, web developer, or travel journalist) these depictions may be entirely in keeping with their professional persona, we must ask ourselves whether the gravitas required by the legal context is compatible with such associations.

1.5 Descriptors for client specifications

The next set of descriptors to be foregrounded in this paper relate to the specifications provided by clients. Although it is now agreed by most scholars that a comprehensive brief is of fundamental importance in enabling fit-for-purpose legal translation to be performed (e.g., Scott 2012, 2015, 2016a; Strandvik, 2015; Garzone, 2000), in practice, awareness of this is very limited (Scott 2016a). In the current state of affairs, legal translators may receive only an “order” including deadline, tariff, language pair and file format, and rarely any reference material, specification of end user(s) or purpose/function of the target text, or whether it should be a covert or overt translation (Scott 2016a, Scott 2016c, House 1977).

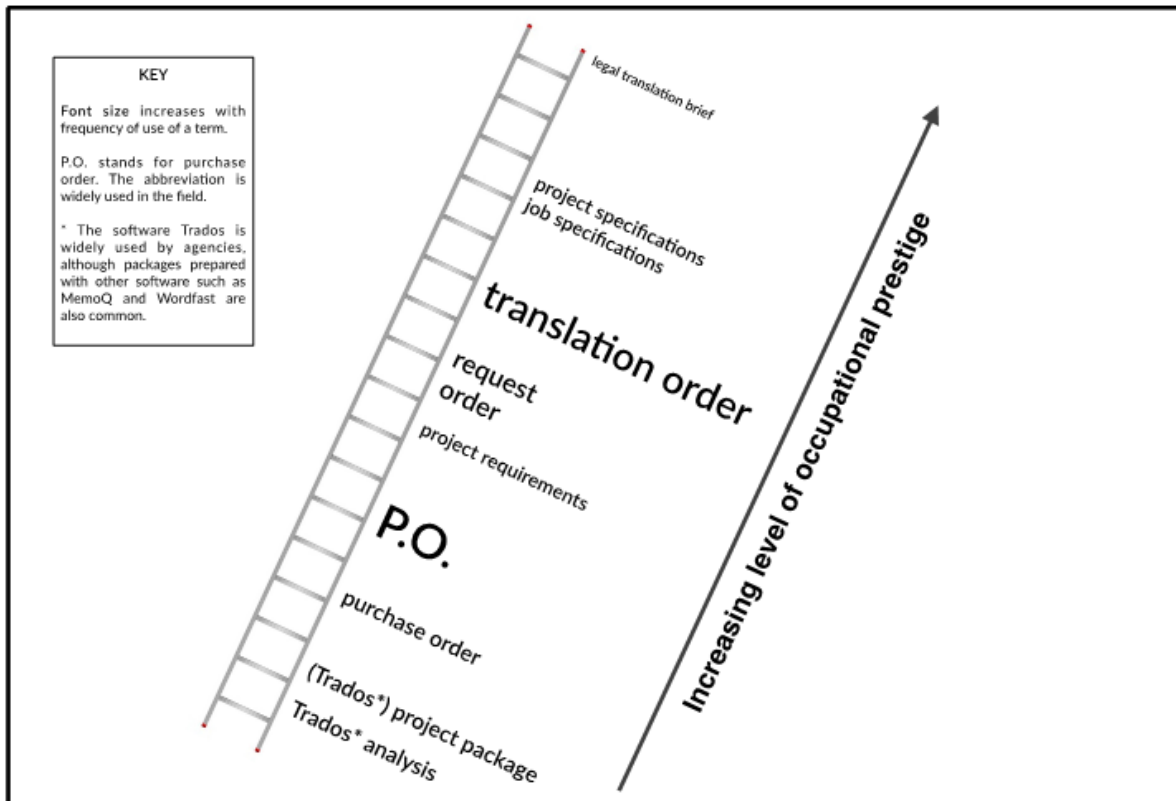


Figure 9: Examples of terms used to refer to the specifications provided by clients when legal translators are asked to carry out work

The most common descriptors for clients' (lack of) specifications are: “order”, “translation order”, “purchase order” and its abbreviation “P.O.”. The term “request”, also quite frequently used by clients, underlines the lack of contractual commitment commonly present in the translator-client dyad. Some agencies simply send the translator a project package or text analysis produced using a CAT tool, such as Trados, to act as a *de facto* purchase order.

The collocation to “place an order” versus “instruct” or “appoint” a professional such as an architect or lawyer have very different connotations with regard to the perceived position of the translator. The collocation to “agree on a brief” conveys collaboration among the parties to reach a required aim (build a house, win a case, etc.) where the client takes account of the professional’s expertise.

1.6 Descriptors for legal translators’ remuneration

The vast majority of legal translation practitioners and clients currently transact business based on the number of words included in the source or target text. In some languages or geographical areas the units of measure are characters, lines and, less commonly, pages. Hourly pricing has been put forward by Durban (e.g. 2010), who seems to be a relatively lone voice championing the use of this method, while very few professionals advocate the use of a “fee” per job.

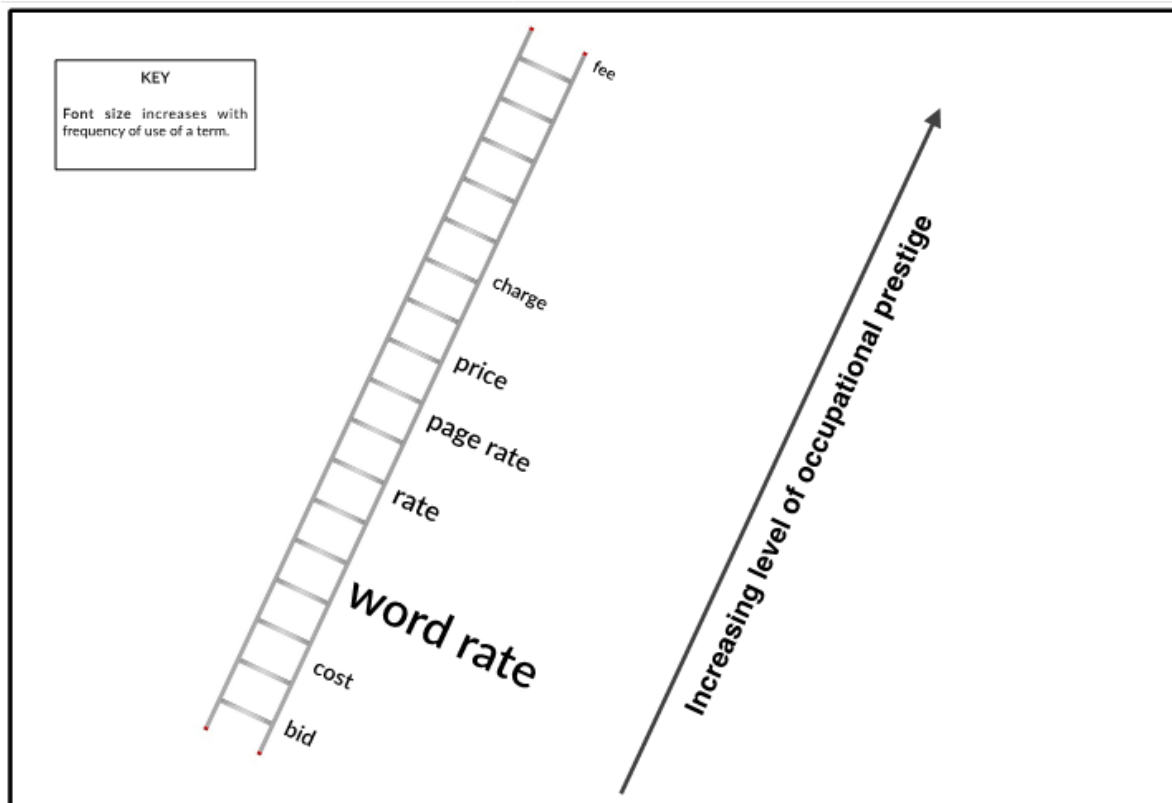


Figure 10: Examples of terms used to describe legal translators' remuneration

The terms used to describe legal translators' remuneration provide a clear illustration of low occupational prestige. By far the highest occurring term is "word rate", bringing with it associations of "piece work" – see also "cottage industry" in section 1.2 (Katan, 2009). "Rate" collocates with "discounted", "low", "competitive", "affordable" and "cheap". Translation agencies now impose "reduced rates" on grounds that TEnTs such as Trados have determined repetitions in documents to be translated. "Cost", "price" and "charge" place the focus on burden rather than outcome. There is seepage and uptake by translators entering the profession due to the predominance of these terms – agencies ask "What is your word rate?", and translators reply "My word rate is...".

If translators participate in online platform "marketplaces", their remuneration may be reduced to a commoditized "bid", where bidding is focused only on the lowest possible price and is not a bid as in the context of an institutional call for tender with a number of other criteria not the least of which is likely to be quality of service.

Although per word/character/line costing is easy to calculate when an estimate needs to be provided, quickly (not a negligible factor in translation circles), it engenders a mechanical view of the work involved, and encourages commodification. Fee-based costing focuses on the added value/benefit of the legal translation service (expand into a new market, successful merger, win case) and engenders associations with professions such as architects or consultants, not to mention lawyers, with higher occupational prestige. In fact, a more holistic view of the legal translation endeavour could encompass such fee-based support services as: drafting advice; terminological research and glossary production to serve the client on an ongoing basis; and/or research into relevant legislation.

2 Pernicious effects

The major issues highlighted in the foregoing sections include: confused and/or conflicting nomenclature in several key areas; denigratory connotations running through most terms used in practice; a lack of support from or regulation by either official sources or professional bodies as regards job title; low levels of

occupational prestige conveyed by the vast majority of descriptors. Clearly, this is a negative situation for legal translators as an occupational group, but in this section I aim to demonstrate why it is also detrimental for clients and for the quality of translation performance.

Confusion in “signalling” as regards translators in all fields, not specifically the legal specialism, has already been noted by Pym *et al.* (2012), who held that “when the signals of status are weak or confusing, [the] values [of expert skills] are low, market disorder results, and good translators may leave the market”. The latter study focuses particularly on economic models and downward price pressure. The loss of experienced and skilled legal translators, if it occurs, will be negative for clients, who would no longer have their needs met, and quality would suffer.

The denigration conveyed by many descriptors, particularly those used by agency clients, may result in: dehumanization, depersonalization, commodification, a focus on money not expertise, and mental associations with ‘product’ not quality of service. Apart from the ensuing difficulties in retaining highly skilled legal translators, such a professional image would make it very hard to attract new talent.

Moreover, how people believe others perceive them may, at least partially, determine their behaviour (e.g. Mead, 1934). Hence, a lack of occupational prestige may also affect the service clients receive if quality preconceptions are lowered. Additionally, clients’ confidence in the expertise and ability of the translator may be lowered, having an adverse effect on exchanges to elucidate a brief, and the extent to which the translator is able to educate the client regarding work involved and/or realistic deadlines.

Furthermore, the inconsistency in and lack of regulation of job titles makes it extremely difficult for clients to ascertain the levels of expertise that might enable them to differentiate and find the right person for their project (e.g. a driving licence as opposed to pleadings in multi million-dollar civil litigation).

3 Countermeasures

Assuming that it would be beneficial to alter the current status quo, I now examine a number of strategies that could be explored further, by all stakeholders involved: by professional bodies, by individual practitioners, by official/institutional regulators, and by academia.

The concept of “**occupational branding**” has been put forward by Ashcraft *et al.* (2012) and is defined as “strategic occupational identity work aimed at brand and value creation” (p. 475), utilized to foreground “collective identity work as a core professionalization activity” and to “yield a habitual association between an occupation and a preferred distilled image” (p. 468). Case studies give examples of how occupational branding was applied “to maintain or achieve professional standing” (p. 480) for airline pilots and for massage therapists. Another point made is the need to depict “practitioners, not only their expertise, as precious goods” (2012, p. 473). If this idea is transposed to legal translators, we may draw a parallel with the value placed on translation memories – their expertise, ‘extracted’ – as opposed to individuals themselves. The same research is particularly concerned with the effects of gender on professionalization and the perceived status of an occupation.

In general Translation Studies, the links between gender and status have been explored by Sela-Sheffy and Shlesinger, namely “the fact that translation/interpreting is largely a pink-collar profession” (emphasis added) and the profession’s “weak institutional boundaries and obscure role definition and criteria”, “non-standardized conditions and pay scales, as well as fragmentary career patterns” (2008, p. 80). The predominance of females has also been referred to as having a negative effect on professionalization by Dam and Zethsen (e.g. 2010, and 2016, p. 177). Hence **de-gendering** and **re-gendering** (Ashcraft *et al.*, 2012, p. 482) may be worth exploring in order to attract more men to the legal translation profession.

Measures could also be taken to encourage legal translation professionals to take a more **proactive attitude to client relationships**. A recurrent trait cited by many general Translation Studies scholars, attributed to the translator’s habitus by Simeoni, is that they are “submissive and subservient” (1988, p. 12). An encouraging report of higher levels of confidence in young people regards status change has been provided recently by

Ruokenen (2016), albeit in a limited geographical perimeter, Finland, which has a progressive gender profile in comparison to other loci.

A useful description of occupational proactiveness is provided by Hasan's model of "Higher Autonomy Professions" (HAP) and "Lower Autonomy Professions" (LAP), where autonomy is defined as "the degree of control on the workplace environment: the greater the possibility of making policy changes" (2002, p. 540). For Katan (2011a), a potential strategy for change in the translation profession would be to create two groups, a "text-centered LAP occupation while a new broader **HAP role** could be carved out for the professional [...] practitioner responsible with, or instead of, the client for output *during* and *after* submission" (p. 84, original emphasis).

In the same vein, legal translators could encourage **market segmentation** (Scott 2016b), rise above the crowd and claim their niche so that there is a clear demarcation between amateur and professional, thereby combating uberization.

Training may also be a means to raise awareness of pernicious terms and deliberately foster "prestigious" associations – both at entry level through pre-professionalization (Biel, 2011a) and as continuing professional development (CPD) focused on aspects of professionalism (Scott, 2015).

In the absence of moves by national or international authorities or institutions, **self-regulation** may be a further option. In case studies assessing strategies in the 'professions' of landscape architecture, conservation of cultural heritage, family mediation, and vocational/occupational rehabilitation, Lester holds that "even relatively small groups can develop, negotiate and operate effective, contextually-appropriate self-regulatory frameworks, including in the absence of any state involvement or endorsement". (2016). Useful data for further work may also be drawn from Deliverable 2.3 of the European Commission project SERVICEGAP (Paterson, Brandl & Sellner, 2012), a detailed comparative presentation of regulatory systems for professional services in EU Member States.

4 Conclusions

As stated in the introduction to this paper, it is a first foray into descriptors used for and by the legal translation profession, and, in particular, does not take account of any potential differences between languages and/or geographical areas. Additional international studies, for example using methods such as focus groups, are required. The following are therefore suggestions to be further developed and elaborated, which I will divide by stakeholder group. They are aimed at heightening awareness of the descriptors evoked and their impact on quality and, by extension, legal risk, as well as a sustainable future for the profession and its clients.

A policy-based approach could be adopted by institutions and authorities as regards: the harmonization of classifications; regulation of title and/or of activities; by providing official registers of legal translators;¹² and through international standards that support expert practitioners.

Academia has a significant role to play in guiding the use of appropriate descriptors: in curriculum development and delivery; through contributions to the wording of standards and classifications; and by exercising vigilance in scholarly writings that evoke the profession and practitioners. It could also support change by providing the profession with deeper insights into the insidious ramifications of terms used.

Professional bodies should be especially vigilant regarding the consequences of the descriptors they employ when referring to their members. They could also take a far more proactive role in exploring self-regulation and protected/reserved titles and/or activities. Further consideration could be given qualified entry procedures, especially where access is given to a certain job title. By acting cohesively with clear aims for the whole profession and its interactions with other professional groups, they could also educate clients in working effectively with 'precious' expert practitioners.

¹² E.g. LIT Search pilot project, 2015

Hand-in-hand with their professional bodies, individual translators could also instigate occupational branding initiatives, to shift the destructive focus on piece work which inhibits a holistic view of the range of services that can potentially be provided such as co-drafting, terminology management, or legal research.

The pernicious terms discussed in this paper reflect a severely deteriorated situation. A full realisation of what this tells us about the future for the professionals involved constitutes a watershed in the maturing of legal translation and could be repurposed into an opportunity to trigger ‘rebranding’ and create a robust and bona fide profession of pivotal use to civil society worldwide.

References

- Ashcraft, K. L., Muhr, S. L., Rennstam, J. & Sullivan, K. (2012). Professionalization as a Branding Activity: Occupational Identity and the Dialectic of Inclusivity-Exclusivity. *Gender, Work and Organization*, 19(5), 467-488.
- American Translators Association (ATA) (2014, November 13). Paper on Language Interpretation and Language Translation Services to the Department of Homeland Security on Language Access Plans. Alexandria, VA: ATA.
- Biel, Ł. (2011a). Professional realism in the legal translation classroom: Translation competence and translator competence. *Meta*, 56(1), 162-178.
- Biel, Ł. (2011b). Training translators or translation service providers? EN 15038:2006 standard of translation services and its training implications. *JoSTrans* 16, 61-76.
- Counts, G. S. (1925). The Social Status of Occupations: A Problem in Vocational Guidance. *The School Review*, 33(1), 16-27.
- Dam, H. V., & Koskinen, K. (2016). The translation profession: centres and peripheries, Introduction. *The Journal of Specialised Translation*, 25, 2-14.
- Dam, H. V., & Zethsen K. K. (2008). Translator Status: A Study of Danish Company Translators. *The Translator* 14(1), 71-96.
- Dam, H. V., & Zethsen K. K. (2010). Translator status: Helpers and opponents in the ongoing battle of an emerging profession. *Target*, 22(2), 194-211.
- Dam, H. V., & Zethsen K. K. (2011). The Status of Professional Business Translators on the Danish Market: A Comparative Study of Company, Agency and Freelance Translators. *Meta* 56(4): 976-97.
- Dam, H. V., & Zethsen K. K. (2012). Translators in International Organizations: A Special Breed of High-status Professionals? Danish EU Translators as a Case in Point. *Translation and Interpreting Studies*, 7(2), 212-33.
- Dam, H. V., & Zethsen K. K. (2016). “I think it is a wonderful job”: On the solidity of the translation profession. *The Journal of Specialised Translation*, 25, 174-187.
- Drugan, J. (2013). *Quality in professional translation*. London: Bloomsbury.
- Durban, C. (2010). *The Prosperous Translator*. *Sine loco*: FA & WB Press.
- European Central Bank (2015). Call for job applications “Lawyer-Linguist with German as main language Reference 2015-134-EXT”.
- Fry, D. (2009, November 13-14). Crisis, what crisis? Industry, what industry? In J. M. Vande Walle (Ed.), *Proceedings of the IALB-ASTTI conference: The world in crisis – And the language industry?* Geneva: Tradulex.

- Garzone, G. (2000). *Legal and functionalist approaches: A contradiction in terms?* Paper presented at Legal translation, history, theory/ies, and practice.
- Garr, B., & Berman, V. (2013). Machine Translation: The Enterprise Point of View. In A. Neustein, & J. A. Markowitz (Eds.), *Where Humans Meet Machines* (pp. 45-57). London: Springer.
- Godbout, M. (2016). Lack of status – are translators the authors of their own misfortune? *Circuit*, 131.
- Goddard, C. (2010). Legal Linguists: As (In)substantial as Ghosts and True Love? In D. Giannoni, & C. Frade (Eds.), *Linguistic Insights, Volume 121: Researching Language and the Law: Textual Features and Translation Issues* (pp. 199-211). Berne: Peter Lang.
- Gouadec, D. (2007). *Translation as a Profession*. Amsterdam: John Benjamins.
- Hammond, M. (1995). A new wind of quality from Europe: Implications of the court case cited by Holz-Mänttari for the U.S. translation industry. In M. Morris (Ed.), *Translation and the law* (pp. 233-245). Amsterdam: John Benjamins.
- Hasan, R. (2002). Ways of Meaning, Ways of Learning: Code as an Explanatory Concept. *British Journal of Sociology of Education* 23(4), 537–548.
- Hertog, E., & van Gucht, J. (Eds.). (2008). *Status Quaestionis. Questionnaire on the Provision of Legal Interpreting and Translation in the EU*. Antwerp: Intersentia.
- House, J. (1977). A model for assessing translation quality. *Meta*, 22(2), 103-109.
- Katan, D. (1999). *Translating Cultures: An introduction for Translators, Interpreters and Mediators*. Manchester: St. Jerome.
- Katan, D. (2009). Translation theory and professional practice: a global survey of the great divide. *Hermes*, 42, 111-53.
- Katan, D. (2011a). Occupation or profession: A survey of the translator's world. In R. Sela-Sheffy, & M. Shlesinger (Eds.), *Identity and status in the translational professions* (pp. 11-30). Amsterdam: Benjamins.
- Katan, D. (2011b). Status of translators. In Y. Gambier, & L. van Doorslaer (Eds.), *Handbook of Translation Studies. Volume 2*. (pp. 146-152). Amsterdam: Benjamins.
- Kinnunen, T. (2010). Agency, activity and court interpreting. In T. Kinnunen, & K. Koskinen (Eds.), *Translators' agency* (pp. 126-164). Tampere: Tampere.
- Kinnunen, T. (2011). Expertise sharing in the field of court translating and interpreting. *Apples – Journal of Applied Language Studies*, 5(1), 92–108.
- Lester, S. (2016). The development of self-regulation in four UK professional communities. *Professions and Professionalism* 6(1).
- Lobel, O. (2016), The Law of the Platform. *Minnesota Law Review*, San Diego Legal Studies Paper No. 16-212.
- Mayoral Asensio, R. (2003). *Translating official documents*. Abingdon: Routledge.
- McAuliffe, K. (2016). Hidden translators: the invisibility of translators and the influence of lawyer-linguists on the case law of the Court of Justice of the European Union. *Language and Law Linguagem e Direito*, 3(1), 5-29.
- Mead, G. H. (1934). *Mind, Self & Society* (C. W. Morris, Ed.). Chicago: Chicago.

- Monzó, E., (2011). Legal and Translational Occupations in Spain: Regulation and Specialization in Jurisdictional Struggles. In R. Sela-Sheffy, & M. Shlesinger (Eds.), *Identity and Status in the Translational Professions*, (pp. 11-30). Amsterdam: John Benjamins.
- Olohan, M. (2007). Economic Trends and Developments in the Translation Industry: What Relevance for Translator Training? *The Interpreter and Translator Trainer* 1(1): 37-63.
- Paterson, I., Brandl, B., & Sellner, R. (2012). *Regulation of Professional Services in EU Member States: Classification, Measurement and Evaluation*. Deliverable 2.3 of the SERVICEGAP project, Seventh Framework Programme.
- Poirier, L. (2009, April 1-5) *Whose law is it? A jurilinguistic view from the trenches*. Paper presented at the CACL Conference in Hong Kong.
- Pym, A., Grin, F., Sfreddo, C., & Chan, A. L. J. (2012). *The status of the translation profession in the European Union*. Luxembourg: European Commission.
- Pym, A., Orrego-Carmona D., & Torres-Simón, E. (2016). Status and technology in the professionalisation of translators. Market disorder and the return of hierarchy. *JoSTrans* 25, 33-53.
- Reitz, D. (2003). Professional liability: Defining 'Profession'. *National Underwriter*, 107(45), 27.
- Ruokonen, M. (2016). Realistic but not pessimistic: Finnish translation students' perceptions of translator status. *The Journal of Specialised Translation*, 25, 188-212.
- Scott, J. R. (2015, January 9). *Professionalizing legal translation... Do or die!* Paper presented at the symposium Becoming a legal translator, University of Roehampton, UK.
- Scott, J. R. (2016a). *Optimising the performance of outsourced legal translation* (currently unpublished doctoral thesis). University of Bristol, Bristol.
- Scott, J. R. (2016b). *Legal translation training – A way forward for aspiring lawyers in a clogged job market?* Paper presented at Bileta Annual Conference 2016.
- Scott, J. R. (2016c). *Legal Translation: Covert or Overt Action?* Paper presented at Law and Culture Conference 2016: (In)visibility.
- Sela-Sheffy, R. (2011). Introduction. In R. Sela-Sheffy, & M. Shlesinger (Eds.), *Identity and status in the translational professions* (pp. 1-9). Amsterdam: Benjamins.
- Sela-Sheffy, R. (2016). Professional Identity and Status. In C. V. Angelelli, & B. J. Baer (Eds.), *Researching Translation and Interpreting* (pp. 131-145). New York: Routledge.
- Sela-Sheffy, R., & Shlesinger, M. (2008). Strategies of Image-Making and Status Advancement of Translators and Interpreters as a Marginal Occupational Group. In A. Pym, M. Shlesinger, & D. Simeoni (Eds.), *Beyond Descriptive Translation Studies: Investigations in homage to Gideon Toury* (pp. 79-90). Amsterdam: John Benjamins.
- Simeoni, D. (1998). The Pivotal Status of the Translator's Habitus. *Target* 10(1): 1-39.
- Strandvik, I. (2012). Legal Harmonization Through Legal Translation: Texts that Say the Same Thing? In C. J. W. Baaij (Ed.), *The role of legal translation in legal harmonization*. Alphen aan den Rijn: Wolters Kluwer.
- Strandvik, I. (2014). Is there Scope for A More Professional Approach to EU Multilingual Lawmaking? *The Theory and Practice of Legislation* 2(2), 211-228.
- Strandvik, I. (2015). On Quality in EU Multilingual Lawmaking. In S. Šarčević (Ed.), *Language and Culture in EU Law: Multidisciplinary Perspectives* (141-168). Farnham: Ashgate.

Vigier, F., Klein, P., & Festinger, N. (2013). Certified translators in Europe and in the Americas: Accreditation practices and challenges. In A. Borja Albi, & F. Prieto Ramos (Eds.), *Legal translation in context* (pp. 27-51). Bern: Peter Lang.

Washbourne, K. (2012). Translation style guides in translator training: Considerations for task design. *JoSTrans*, 17, 2-17.