



Action Committee on Modernizing Court Operations

INTERPRETATION IN THE COURTS: CHALLENGES AND TIPS

A Statement from the Action Committee

Our Committee supports Canada's courts in their modernization efforts. It provides guidance for addressing challenges, and highlights opportunities and innovative practices to modernize court operations and improve access to justice for court users.

1. CONTEXT AND BACKGROUND

Section 14 of the *Canadian Charter of Rights and Freedoms* grants a party or witness who does not understand the language of the proceeding the right to the assistance of an interpreter. The jurisprudence has interpreted this right to involve access to interpretation services that are continuous, precise, impartial, competent, and contemporaneous. Interpretation is also a key component in ensuring that individuals with intersecting vulnerabilities have equitable access to court proceedings, since language barriers often disproportionately affect the elderly, newcomers, people with literacy difficulties or technology challenges, Indigenous people, those living in remote communities, and those with a visual or hearing impairment. Access to interpretation can safeguard procedural fairness and ensure an effective court process when one participant does not speak the language of the proceeding. However, interpretation adds a level of complexity to a court proceeding, and doing it well may require additional processes, resources, or steps.

Under its original mandate on court operations in response to COVID-19, the Action Committee considered the [Impact of the COVID-19 pandemic on interpretation and translation needs of court users](#). This updated guidance builds upon the challenges and promising practices identified in that publication. Unlike the original publication, this guidance only pertains to interpretation (the oral transmission of information from one language to another) and does not address translation (the written transmission of information from one language to another).

2. CHALLENGES: ACCESS AND QUALITY

A number of inter-related challenges can affect both access to, and quality of, court interpretation. While the court will pay for interpreters in some situations (such as, for example, substantive criminal matters), some litigants will have to add the cost of an interpreter to the already high financial burden of having their rights considered in court. Likewise, navigating the administrative steps required to access an interpreter could discourage a potential litigant from bringing their grievances to the court at all. And even when it is possible to find an interpreter, a person's case can be impacted if the interpreter is not familiar with the court setting, or the person's dialect or cultural context. For less common languages, including Indigenous languages, it can be difficult to find qualified and experienced interpreters. The flow and duration of the proceeding could be affected if the interpreter is not familiar with legal terminology or court processes. In the rare circumstances when the only person available is not a trained interpreter, there is a heightened risk that they will not understand their professional obligations to remain neutral, rather than to advocate for one party.



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There are two modes of interpretation, each of which can create opportunities and challenges. In consecutive interpretation, only one person speaks at a time, with pauses for interpretation. This mode is less costly and complicated to implement because it does not require specialized audio equipment. However, it can create challenges in a busy court, as pausing to interpret everything significantly increases the time required to hear a matter. In simultaneous interpretation, the interpreter speaks at the same time as the speaker. Simultaneous interpreters may operate from a sound-proof booth, and audio equipment connected to headphones is used by both the interpreter and the listeners. Simultaneous interpretation will be slightly slower than an uninterpreted proceeding, but much less so than consecutive. However, the equipment it requires can be expensive and may not be available in all courtrooms.

2.1 Special Considerations

While standardized practices can support equal access to interpretive services – and ultimately to the courts – some situations will require additional considerations and a differential approach to provide equitable services.

2.1.1 *Virtual and Hybrid Hearings*

As explored in the Action Committee's previous guidance on this topic, virtual or hybrid hearings create both opportunities and challenges for interpretation. On the one hand, the option for remote interpretation can both provide access to a broader pool of interpreters and significantly reduce costs by removing travel expenses. However, even while it has solved some problems, remote interpretation can create challenges. For example, remote simultaneous interpretation without the proper equipment can cause either auditory injury for the interpreter or reduced quality of interpretation due to muffled voices or overlap between speakers. In addition, remote simultaneous interpretation may not be an option if the court uses a video-conferencing platform that does not include this functionality. For these reasons, it may be necessary to use only consecutive interpretation in remote situations.

2.1.2 *Indigenous Languages*

Effective interpretation into Indigenous languages can be an important step in making the courts accessible to Indigenous people. However, the unique context of these languages may require specialized procedures to support effective access. Courts should keep the following factors in mind when organizing an interpreted proceeding in an Indigenous language:

- Formal interpretation training is only available for limited Indigenous languages. As a result, the people who fluently speak the languages for which formal training is not offered may not be able to obtain the qualifications necessary for court certification. This could result in inequities if the court has a tiered payment scale for interpreters that increases with additional qualifications. Further, this lack of official training may increase the need for a court to rely on an Indigenous-language interpreter with no court experience. Additional support or resources may be necessary to ensure these interpreters can support access to justice for the person who requires their services.



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- There are wide variations between dialects in many Indigenous languages. To ensure effective communication, it is necessary for the interpreter to speak the same dialect as the person for whom they will be interpreting. If the court is organizing the interpretation service, this may require asking additional questions to ascertain exactly what linguistic competencies are required.
- Despite the shortage of Indigenous language interpreters, courts should not expect Indigenous Courtworkers or other Indigenous frontline staff to act as an interpreter. These individuals are not trained to interpret and have other important functions that they should be performing on behalf of their clients.
- Many Indigenous languages do not have words that allow for one-for-one translation of Canadian legal concepts. This reality may require deviation from the standard mode of direct interpretation that is preferred in the courts.
- Cultural considerations may affect the appropriate way to proceed in an interpreted matter for an Indigenous person. For example, simultaneous interpretation is discouraged in some Indigenous cultures as talking over someone else is viewed as disrespectful.

2.1.3 Sign Language

Interpretation for people who are deaf or hard of hearing can also raise unique considerations. To begin with, there are two national signed languages in Canada: American Sign Language (ASL) and la Langue des Signes Québécois (LSQ). Further, sign language interpretation may be most effective when the ASL or LSQ interpreter is paired with a deaf interpreter. While sign language interpreters can communicate in both English or French and sign language, a deaf interpreter is a deaf or hard of hearing individual who works alongside the sign language interpreter to facilitate communication. Even if a deaf interpreter is not required, the physically demanding nature of sign language interpretation may call for two interpreters, so that they can take breaks.

Finally, the requirement for the person to clearly see the interpreter should be taken into account when deciding if remote interpretation is appropriate for individuals who are deaf.

3. TIPS FOR SUCCESSFUL INTERPRETATION

Courts across Canada have different processes to identify and access interpreters but, generally, they prioritize professionals who are trained in legal interpretation. Experienced court interpreters are trained to be familiar with the courtroom setting and legal terms and able to switch between simultaneous and consecutive interpretation and sight-translation (orally translating a document). Finding and retaining these qualified interpreters requires both effective administrative management of the recruitment process and, once an interpreter is identified, adapting court processes to account for their presence. For this reason, both court administration and the presiding judge have a role to play in promoting access to justice in interpreted proceedings.



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3.1 Managing Interpretation Services

Courts have different processes for accessing interpretation services. In some jurisdictions, the executive branch's court services division maintains a roster of qualified or accredited interpreters, while others rely on third-party certification, either within or outside of the government. While the government will generally pay for interpretation services for all criminally accused, the costs of interpretation services are not always funded for all civil matters in every jurisdiction. For example, the government may pay for:

- Interpretation in civil matters in both official languages and American Sign Language (ALS), but not in other spoken languages
- A broad range of languages for litigants who demonstrate financial need, but not for those who do not meet the financial threshold
- Interpretation for the duration of a witness's testimony and examination, but not for the rest of the proceeding

Each jurisdiction must make decisions about how to use its limited resources. To the extent that court administration is involved in arranging and/or paying for interpretation services, they can support access to justice by:

- **Establishing clear interpretation protocols.** Court users need to know how and when they should request an interpreter and who will pay for it. This information should be readily available on the court's website and, if possible, provided in a range of languages commonly spoken in the community.
- **Maintaining a roster of qualified interpreters.** Maintaining a roster can ensure the court has access to interpreters who are qualified, pre-vetted, and have experience working with the court. If a court is planning to develop a roster, it may choose to begin by focusing on both official languages and other common languages used in the community, before expanding to include rarer languages. If the jurisdiction is too small to manage a roster internally, a contract with a third-party provider can provide an alternative approach to ensuring timely access to qualified interpreters.

Tracking complaints or concerns about interpreters on the roster and having an established procedure for dealing with them can support the delivery of high-quality interpretation services.

- **Providing training and resources** for both interpreters and those who will participate in interpreted proceedings. For interpreters, training could include information about the role of different actors in the courtroom and the importance of professionalism and accuracy in legal proceedings, as well as a lexicon of legal words. It may be possible to work with local post-secondary institutions to develop targeted training for court interpreters.

Interpreters should also be considered if a court is developing resources to support staff who experience vicarious trauma because of their involvement in court proceedings.



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Training or guidance materials on best practices for working with interpreters can assist judges, counsel, litigants, and court staff in maximizing the effectiveness of an interpreted proceeding.

- **Cooperating with other jurisdictions** to gain access to a wider pool of interpreters. Since each court is most likely to be connected to interpreters who operate in the languages most commonly spoken in their community, court services in another jurisdiction may be able to help fill gaps in the local roster.
- **Setting clear expectations and proactively managing the interpreter pool.** Courts should develop procedures to help ensure interpretation services run smoothly. This could include, for example:
 - Establishing a code of conduct for all interpreters to follow, and ensuring their contracts cover expectations around matters such as conduct, ethics, confidentiality, and security
 - If there is a standing roster, establishing a scheduling protocol that balances allowing equitable access to contract opportunities with the realities of a) the need to quickly fill last minute requests for matters like bail hearings, and b) the benefits of interpreter continuity in longer matters
 - Designating staff in each court location to manage interpretation needs so participants and interpreters know who to contact with any queries or concerns

While court administrators will be responsible for most elements of managing interpretation services, some important steps fall under the judiciary's administration of matters directly related to the judicial function, including:

- **Considering the need for interpretation when setting the mode of a proceeding** and deciding whether allowing some or all participants to attend remotely will facilitate or impede access to justice.
- **Accounting for interpretation when scheduling proceedings**, since it will take longer for the same amount of information to be relayed in an interpreted proceeding.

3.1.1 Effective Practices in Managing Interpretation Services

British Columbia

British Columbia's Court Services Branch (CSB) maintains an internal directory of contracted court interpreters. The interpreter qualifications are assessed by independent organizations. Additionally, CSB has an internal process to track and review any reported incidents related to court interpretation services. Incidents may include a failure to appear, concerns about the quality or accuracy of the interpretation, or issues involving professionalism or conduct. These incidents are reviewed by CSB's [Court Interpreter Program \(CIP\)](#) team.

For minor incidents, the interpreter receives a letter outlining the concern and requesting a response or clarification. More serious matters—particularly concerns about accuracy or quality—trigger a quality review. In those cases, CSB hires an independent interpreter to review



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the court audio recording and provide an assessment. This process allows CSB to determine whether the incident requires additional follow-up, training, or other steps to ensure the integrity of court interpretation services.

Additional information about interpreters at the Provincial Court of British Columbia can be found on their [website](#).

Ontario

The [Court Interpretation Unit](#) of **Ontario's Ministry of the Attorney General** (MAG) maintains a registry of accredited freelance court interpreters. Ontario has a skills-based system of interpreter accreditation to ensure the courts have access to highly skilled interpreters. Court interpreters are bound by the Rules of Professional Conduct for Court Interpreters. Interpreters who violate the Rules are subject to removal from the registry. To become accredited, interpreters must:

- Complete an application
- Attend a test preparation session
- Pass a bilingual, English, or Indigenous court interpreting test
- Attend an information seminar and pass a test in courtroom procedure and interpreter ethics
- Successfully complete a background check

Manitoba

The [Interpretation Services Guidelines](#) for **Manitoba Courts** are readily available on the courts' website. These guidelines clearly outline when interpretation services are provided for free and when the requesting party must pay, along with information such as the type of interpretation available (simultaneous or consecutive) and expectations surrounding the provision of background materials in advance of an interpreted hearing. These clear guidelines help court participants who require interpretation to know their rights and responsibilities.

3.2 Maximizing an Interpreted Proceeding

The presence of an interpreter will require changes to normal courtroom processes and practices. By adopting these best practices, the judge – and others, where relevant – can create the optimal environment for the person who is relying on interpretation to understand, and therefore fully participate in, the proceedings:

- **Speaking directly** to the person who requires interpretation, rather than to the interpreter.
- **Speaking clearly**, at a moderate pace, and minimizing complex sentence structures. Avoid using acronyms, colloquial terms, or legal jargon. If the interpreter will be using audio equipment, speak directly into the microphone.



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- **Pausing at a natural point** to allow for interpretation when using consecutive interpretation.
- **Remembering the mental toll of interpretation:** interpreting – particularly in a complex context like court, in which material can be technically dense and traumatic in nature – is fatiguing. It is natural for interpreters to need breaks. Likewise, even the best interpreter might make a mistake: even though it may disrupt the flow of the proceeding, an interpreter should feel comfortable asking the court’s permission to seek clarification or correct a mistake on the record as soon as they realize it is necessary.

Judges can also facilitate effective interpretation through the exercise of their inherent jurisdiction to manage the courtroom. This can include:

- **Reminding all participants of best practices and responsibilities** when using an interpreter. In addition to the best practices outlined above, this may include ensuring only one person speaks at a time and reminding the individual who does not speak the language in which the proceeding is being conducted:
 - That everything they say will be interpreted
 - To tell someone if they don’t understand
 - To refrain from engaging in “private” conversations with the interpreter or asking for their advice or opinion

Case management conferences may provide an opportunity to ensure counsel or the parties have considered how to facilitate effective interpretation through, for example, sharing key documents ahead of time.

- **Reminding the interpreter of their responsibilities** to the court. These include interpreting what they hear faithfully, without inserting their own opinion or providing advice to the speaker. Interpreters should be aware of the gravity of consequences of interpretation errors, which could undermine someone’s right to a fair trial or opportunity to assert their rights.

Untrained community members should only be used as an absolute last resort. If such a person is the only interpreter available, it is particularly important to ensure they understand their role and to remain attentive to their interactions with the person requiring interpretation and intervene if necessary.

- **Setting the interpreter up for success.** This may include, for example, ensuring the interpreter is seated where they can hear and see everyone, allowing them to take notes and use a dictionary, and providing an opportunity for them to speak with the person who does not speak the language of the proceeding so they can establish communication before the matter begins.



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4. AREA OF FURTHER STUDY: ARTIFICIAL INTELLIGENCE

As artificial intelligence-driven solutions become more common, courts may wish to monitor developments in this emerging area of technology and explore using AI tools to facilitate understanding for non-native language speakers. One AI solution is automated translation, which converts the spoken word into text in a language different from that spoken. Another technology that may assist non-native speakers is automated transcription, which converts the spoken word into text without the added step of translation to a different language. Access to real-time written transcripts can assist court users who have some facility in English or French but whose comprehension is stronger when reading than when listening. The following factors may be relevant in considering options:

- **The seriousness of the outcome of the proceeding:** The risks associated with interpretation errors will be higher for proceedings with more serious outcomes. As such, automatic interpretation may be more appropriate for some routine administrative appearances but remain inappropriate for substantive matters.
- **Access to Justice considerations:** If a case will be significantly delayed due to an interpreter shortage, the interests of access to justice may be best served by providing access to automated tools, rather than waiting for an interpreter to be available. With the consent of all involved, this trade-off may be particularly appropriate when the person in question has some facility with the language of the proceeding.