



THE LAW REPORT

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## Interpreters in the courtroom

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We look at the role of interpreters in the courtroom. If they get it wrong the consequences can be enormous. An innocent accused might be found guilty—or a criminal might escape conviction.

Poor working conditions, a lack of qualifications, cultural miscommunications, and the attitudes of judges—all present challenges. And for indigenous interpreters, living in isolated communities, the pressures can be huge.

### Transcript

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**Damien Carrick:** Many of us who have travelled overseas come home with amusing stories of mangled English—menus that offer 'French creeps' or 'toes with butter' or 'pork with fresh garbage'.

But putting the shoe on the other foot, it's almost every traveller's nightmare that while overseas somehow they'll get caught up in a foreign justice system, and those twisted translations will end up forming part of a police interview, or court proceedings.

So imagine how difficult it is for non-English speaking Australians who come before our courts.

Today we look at the role of the court interpreter and discover it's a complex and demanding job.

**Man:** Arabic doesn't have any words for 'toes', so when I interpret that, when that is said in English by somebody, I need to use something like 'fingers of my foot'.

**Woman:** They were expecting the interpreter to act like a machine, where one word is the same as another word, and to do it accurately and quickly and without any breaks and without any problems, and that's not the way it works.

**Dominic McCormack:** Look we have many brave (and I use the word 'brave' deliberately) interpreters here in the Northern Territory, both male and female. Because the positions that they put themselves in at times, can in fact be life-threatening, when the other members of the community around them don't in fact understand what their role is.

**Damien Carrick:** Around Australia, indigenous people, migrants, the deaf, all use the services of court interpreters. Last year in New South Wales alone, 18000 interpreters were sent out to courts across the state.

Associate Professor Sandra Hale is the head of the Interpreting and Translation Research Group at the University of Western Sydney. Over the years she has closely studied how court interpreting works.

The role of an interpreter is to interpret as accurately and faithfully as possible. The interpreter is not an advocate or cultural support worker.

And Sandra Hale says if an interpreter doesn't clearly understand that role, sometimes there can be big problems.

**Sandra Hale:** The role is misunderstood by many, for a number of reasons. There are no requirements for adequate education for interpreters, so that's the first thing. So you get an array of people interpreting, from children to friends, who are completely laypeople, to others who have passed some test, or have some type of background, to others who have Masters degrees, or PhDs in interpreting. And so it's confusing for those who work with interpreters because they get all these different performances by different people. So yes, you get interpreters who think that they are there to make sure that the person wins the case for example, to make sure that they portray a good image to clarify all sorts of issues. For example, I've got an example where in the courtroom, the person was being asked a question and the interpreter interprets the question to him, and then he starts answering in a roundabout way, not directly to the question, and the interpreter whispers to him before she interprets, 'That's not what they asked you,' and then she interprets a part of what he said that obviously she thought was the relevant part. So that was obviously an interpreter who was trying to help, to help the person make a relevant answer.

**Damien Carrick:** That's amazing. What happened in that case?

**Sandra Hale:** Nothing happened because nobody knew. And this is an issue, because when you are an interpreter, you are the only person in that room who has knowledge of both languages.

**Damien Carrick:** So at the moment we have some interpreters who, if you like, are interpreting but also filtering the content and the nuance and the tone of what a witness might be saying?

**Sandra Hale:** Exactly, yes, and I have some examples here where the witness says 'I only saw the little blade that, I mean like, like, it was shiny, that's all and that'. That's a translation of the original, and the interpreter says 'I just saw the shiny blade of the knife'. So that gives you a very different impression of that witness, when you hear it through the interpreter. They also need to learn about the needs of the legal system. They need to understand how language is used strategically in the courtroom, for what purposes, why certain questions are asked in certain ways. In the data I've got I've seen interpreters getting offended, for want of a better word, or outraged at the way cross-examiners treat the person. Now they don't understand that that is the purpose of cross-examination, that the purpose of cross-examination is to discredit that witness, that it is to try to trick them, that it is to try to confuse them, and so the interpreter feels that this is somehow a racist way of treating a non-English speaker. Well that's because there's a misunderstanding about the whole purpose of cross-examination. There's a case that is reported in one of the publications about a situation where three interpreters were involved in interpreting at a police station, about a case. And one term – you can interpret terms in different ways, or phrases. So this one was something like, one interpreter had said something like 'he said he's going to kill me,' someone said, 'he's going to get me,' or 'he said he's going to stitch me up,' or something like that. So they all pretty much meant, colloquially, very similar things, because there isn't, or there wasn't in this case, from Russian a one-to-one correspondence. But then that became an issue because there were three different interpretations of the same thing, and they weren't sure which one was which, so that there had to be a discussion about the different ways that this expression could be interpreted.

**Damien Carrick:** **Sandra Hale**, pointing out that interpreting is not a straightforward task,

Sometimes it's the judges and the magistrates who get confused. There have been cases where the presiding judicial officer didn't understand the role of the interpreter.

Tony Foley is a lawyer and academic based at the Australian National University in Canberra. He says in Australia no-one has an automatic right to an interpreter. But we do have a more general right to a fair trial.

There have been a number of important court decisions dealing with interpreters, including several involving the deaf.

**Tony Foley:** My favourite case is a case which I call sort of the feisty sign-interpreter; it's a case of Gradige and Grace Bros., a 1998 case which began in the Compensation Court and then went to the New South Wales Court of Appeal. In that case the worker was deaf, and was using an Auslan or sign interpreter. She was in the witness box giving her evidence, and then legal argument began about some question that was asked or some

answer that she gave. So the legal argument commenced, but the interpreter kept signing, and the employer's counsel essentially told him to stop, the worker's counsel said 'Yes, that's fair enough, he should stop,' and indeed the judge then directed the interpreter to stop.

Now I think much to the credit of the interpreter, he refused, he said essentially, 'It's my job to interpret everything taking place in this court, and that's the notion so central to interpreters that I have to make this person linguistically present.' And in the Compensation Court the judge refused to take it any further, the case went on appeal, then the Court of Appeal said, 'The interpreter was right. That was an essential requirement.' And, Damien, I think that's a connection that the law was then able to make between an established legal perspective, if you like – the defendant has a right to a fair trial and in order to get that, the defendant has to be present. That legal precedent and that concept of being linguistically present, they're sort of married together.

**Damien Carrick:** So a witness or a defendant is not only entitled to have their words accurately interpreted back to the court, they're also entitled to know everything that is going on in the court, to be, as you say, present.

**Tony Foley:** That's exactly right. And there's a beautiful case of a Northern Territory case involving an Aboriginal who was also deaf, and he was charged with murder.

**Damien Carrick:** That was the Ebatarinja case, I believe.

**Tony Foley:** It was, yes. And in that case they couldn't find a suitable interpreter with the necessary qualifications, so the accused was unable to understand the charges. Still and all they had a preliminary hearing, and the legislation covering that preliminary hearing required it to be conducted in the presence or hearing of the defendant, and then the defendant, having heard that evidence, has a right of reply, which in a preliminary hearing is probably not exercised.

Well, the High Court said that preliminary hearing was a nullity, because once again, the defendant was not present for all intents and purposes.

**Damien Carrick:** They had to go back to stage one of the trial process, they had to go back and have another preliminary or committal hearing?

**Tony Foley:** Yes, because that first preliminary hearing was regarded as a nullity.

**Damien Carrick:** If there are problems with the work of an interpreter, in accurately interpreting, either at a police interview or indeed in a courtroom, how important is the odd mistake, and if you do make the odd mistake, can that be grounds for an appeal?

**Tony Foley:** My expectation as a solicitor, and I think it was a common expectation of solicitors and courts generally, was that the interpreter would interpret word for word, that they would find a match for something that somebody said and they would interpret

that precisely. And certainly the scales came off my eyes when I talked to interpreters about their task. For instance, in Tamil, there were two different words for 'he'. One was polite and one was offensive, and the interpreters were saying, 'Well, without a context when I start this task, if the Tamil person for whom I'm interpreting, says one of those words, I'm not certain what the context is.' And that's a big bugbear of interpreters, that they sit down and they begin, and they haven't been told anything about the substance of the case, and I guess the court of the law would say, 'Well we don't want them to be tainted by bias.' So I think that's a crucial thing for a lot of interpreters.

**Damien Carrick:** Did you ever find, I mean presumably some of your clients, you would have been able to communicate with them in English, but they would still want, or perhaps you would want for them, an interpreter in a courtroom. Did you ever find that situation?

**Tony Foley:** That happened often. My clients in practice tended to be—and the practice I had was basically litigation, so going to the Compensation Court, going to District or Supreme Court on personal injury matters—my clients, Italian, Greek, Arabic, often were quite comfortable in everyday English, but it was a different situation when they got to the courtroom, and the fact that a person can speak English sufficient to perform mundane social or business tasks, doesn't mean that he or she can cope with the added stresses imposed appearing as a party or a witness in the courtroom.

**Damien Carrick:** Tony Foley says even if an appeal court concludes that there were problems with interpreting, either at a police station or in court, they are reluctant to overturn a conviction unless there is a clear miscarriage of justice. He says there was a recent decision involving the trial of a Mr De La Espriella. He was a Colombian national, facing drug important charges.

**Tony Foley:** I think from recollection there may have been an interpreter one day and then the following day a different interpreter. The evidence was analysed by an American expert who found hundreds—I don't recall how many—

**Damien Carrick:** I think it was 588 errors and 539 omissions.

**Tony Foley:** But still and all, that conviction wasn't overturned on appeal. Now once again, in fairness to the court, there may have been overwhelming evidence other than those things, but it certainly seems to have the sense of unfairness, doesn't it, which is what upsets us, I think.

My most recent experience in the Canberra courts is with respect to more recent immigrants, particularly where they're using North African or Central African languages, and there's a sparsity of competent interpreters. I should say that my experience of interpreters both from training them and from the contact I've had with them, is that they've been excellent and outstanding, but it's these emerging languages in the sense that there's becoming a presence of those people from Darfur, Sudan, Ethiopia in Australia, then there isn't that level of competence of interpreters that can be drawn upon.

**Damien Carrick:** Tony Foley solicitor and academic at the ANU.

Stepan Kerkyasharian is chair of the New South Wales Community Relations Commission. One of the commission's jobs is to run the interpreter services used by New South Wales courts. He takes the commission's role very seriously, because he says there was a case some time ago where a convicted drug dealer was effectively let off the hook and his conviction overturned because of flaws in interpreting.

And when errors or miscommunications occur, sometimes they benefit the prosecution and sometimes the accused.

**Stepan Kerkyasharian:** One of the examples that I'm aware of relates to a case where someone was accused of rape (and this is going back a number of years). The victim was being cross-examined and she was using the term, 'I was robbed,' or, 'he was robbing me.' And the defence lawyer then tried to make good use of this term, saying that the person was actually on the premises of the victim for the purposes of robbery and theft and not for raping. Whereas what the woman was basically trying to say, use the cultural expression of being raped, as being 'he was trying to rob me of my honour,' or, 'I was being robbed of my honour.'

**Damien Carrick:** Clearly a mismatch between what the witness was trying to tell the court and what the court was hearing and understanding.

**Stepan Kerkyasharian:** Absolutely. And one has to, I guess, question, because it's a very fine line, whether the interpreter was taking a very literal approach to what was being said, or whether there were some other forces at play, or there was some other game plan. But quite fortuitously in that particular case, the prosecutor happened to be of that particular ethnic background, and at some stage intervened, and pointed all this out to the judge.

**Damien Carrick:** Stepan Kerkyasharian, Chair of the New South Wales Community Relations Commission.

Dominic McCormack is a Darwin-based lawyer and interpreter. An Anglo-Australian, he is a fluent speaker of the Murrinh-Patha language, which is spoken in the Wadeye region of the Northern Territory.

He says indigenous Australians who work as interpreters face a number of unique hurdles. Generally speaking, they live in small, isolated communities, bound by close-knit family and clan connections. This can make the job of an interpreter very complex.

**Dominic McCormack:** Look, it certainly is. One of the difficulties that arises initially is whether they can interpret at all for the person concerned. As you've alluded to, there are often very close family relationships or kin relationships, which actually rule out a particular interpreter immediately. So they have to think very carefully about what their position is first off, as to whether they can even interpret for a person.

**Damien Carrick:** And I imagine that there'd been a lot of burn-out. You wouldn't, as a person living in a small community, necessarily want to put yourself centre stage in every dispute and every conflict which comes before the court. So it would be pretty draining after a while.

**Dominic McCormack:** It certainly is, and that statement can be made with respect to a whole range of employment positions in Aboriginal townships and communities throughout the Northern Territory. You have many Aboriginal people who are just brilliant, they're wonderful people, they give of their time, they're immensely skilled, but what happens with those people is that in their particular area, they are one of a few only who have such skills. And therefore they are called upon to fill a myriad of positions, and local community interpreter is simply one of them. So they end up being extremely busy, they most certainly suffer from stress, and therefore the burn-out factor can be quite high. And often if you've lived and worked in such places, these people go missing and you'll wonder why they go missing, and what happens is, they disappear to try and get some space for themselves.

**Damien Carrick:** Do you find that in communities where there's only one or two people who can act as interpreters, and people don't necessarily understand the legal system, as in any community, that people perhaps blame the interpreter when things don't go their way?

**Dominic McCormack:** They certainly do indeed. People have been blamed here in the past, and there have had to be massive community meetings to actually sort the issue out between both sides, and try and get that role of the interpreter clear in the minds of not only the parties involved but in the wider community. And look, we have many brave (and I use the word 'brave' deliberately) interpreters here in the Northern Territory, both male and female, because the positions that they put themselves in at times by being an interpreter, can in fact be life-threatening when the other members of the community around them don't in fact understand what their role is. And that is, it's a neutral and independent role, not supporting the defence as such, and more dangerously perhaps, not supporting the prosecution, but in fact supporting both to aid clear communication.

**Damien Carrick:** Now, you're a lawyer, and you wear many hats, but you have worked in the past as a court interpreter. Tell me about some of your experiences and some of the issues which arise for you.

**Dominic McCormack:** Some of the issues that arise I think are just being able to communicate some of the most difficult terms that the English legal language does have. A simple example is things such as 'bail'. Trying to talk about bail is quite difficult. I engage in training interpreters now and I often ask them 'What does "bail" mean?' And often the answer is, 'You're free to go'. This is what they understand, because they see people get bail and leave a court. Whereas then you've got to engender the understanding in people that 'bail' in fact means, 'Yes, you can go, but it's conditional liberty; you actually have to come back again.' There'll be a court date that people have to return to. So being able to go through those terms and ensure that there's an understanding, means

that you have to have a good relationship with the prosecutor or the defence lawyer involved, so that often they don't just use that particular term. They in fact explain that term and give you adequate plain English by which to interpret, bearing in mind that an interpreter's job is to in fact interpret, and not to explain such terms. So legalese can be extremely difficult to convert into an indigenous language.

**Damien Carrick:** So you're saying that it's actually up to the participants in the court, the magistrate or judge and maybe the lawyers for either side, to actually make sure that they are communicating the concepts as well as the terms, so the interpreter who might not be familiar with them, will at least be able to translate that back to the language speakers in the courtroom.

**Dominic McCormack:** That's a major issue Damien, there's no question about that. What that then comes down to is training on both sides.

**Damien Carrick:** Dominic McCormack, Darwin-based lawyer and interpreter.

Now speaking of training, last week in Victoria there was a week-long National Orientation Program for newly appointed judges and magistrates.

One of the speakers who addressed the class was Ludmilla Stern. She's the coordinator of Interpreting and Translating Studies at UNSW. She told the class non-English speakers are at a special disadvantage in our adversarial system.

**Ludmilla Stern:** As we know, prosecutors and defence lawyers tend to ask very lengthy questions, and sometimes there would be another question within the major question or there would be lots of subordinate clauses, or these questions would be very poorly structured grammatically. I have lots of examples of paragraph-long questions, which actually are not even questions, but statements, and at the end you have a question, something like 'Is this correct?' And by the time you've heard the entire paragraph, you have no idea what this question refers to. And especially when you think that these questions have to be interpreted into another language with the time delay caused by interpreting. It would be sometimes very difficult to understand what is expected of the witnesses, what the actual question is. So this is one of the examples of a very common technique used in the Anglo-Saxon adversarial law, that does not lend itself very well to being interpreted.

**Damien Carrick:** In addition to having observed courts here in Australia, Ludmilla Stern has also spent time at the International Criminal Tribunal for the Former Yugoslavia, which is based over in the Netherlands.

When it comes to courts, there's no question that the tribunal is one of the best organised and well-resourced around. Because witnesses speak many different languages and because the court has three official languages, the tribunal has all the latest technology and very high interpreting standards.

**Ludmilla Stern:** Interpreting there is done in the simultaneous mode, in other words, interpreters are placed in booths, they listen to the speakers through the headphones, they interpret through the microphones and so everybody in that courtroom in a way relies on the bilingual, sometimes trilingual interpretation.

**Damien Carrick:** So you have, in that context, an extremely well-resourced court, with very, very high standards of interpreting. What can we expect here in Australia, given that those resources really can't be placed in every single local courtroom around the country?

**Ludmilla Stern:** Oh, understandably. And I think what we can learn from the Yugoslav tribunal, is not so much that we need expensive equipment, this is not necessarily the case, but – number one – that interpreters have to be properly educated and trained: that's number one. Number two, interpreters in the Yugoslav tribunal are given the opportunity to prepare for their assignments thoroughly. They are briefed: for example, they know that on that particular day, they would expect to have a witness, an expert witness, who is a ballistics expert, or a psychiatrist. For that purpose, they would be given not only their daily agenda, so they would know exactly what is happening, but they would also be given these highly technical witness statements, and they would have the opportunity to prepare themselves for this assignment, as if they were preparing for a conference. This is one thing that certainly could be done and should be done in any local, in any Australian national court.

**Damien Carrick:** Ludmilla Stern.

To get the best out of our interpreters, Sandra Hale thinks we need to focus on basic working conditions.

**Sandra Hale:** Sometimes the interpreters don't have a glass of water. They're the ones who speak more than anybody else, because they're constantly interpreting. Sometimes they don't have a place to sit. If they have to interpret for the defendant in the back of the court, they have to sit very close to someone and whisper next to someone they don't know, in an uncomfortable position. So there should be booths in the courts; this happens in the International Court, for example, where there are booths, where interpreters interpret there in pairs. It would be great to have interpreters interpreting in pairs, even if it's just for the major trials. They can take turns, they don't get fatigued, they have someone to help them, and so on.

**Damien Carrick:** And effectively, to check each other's work as well.

**Sandra Hale:** Exactly, yes. A preparation room for them—when you go to a court you have to sit in the waiting room with everybody else. Now that's an ethical problem, because the person for whom you are going to interpret will come and want to sit with you and ask you questions, and chat and so on. Now that can impinge on impartiality and so on. So a room where interpreters can go and prepare, where the material is given to them beforehand, so that even if it's not given to them a week before, which would be

ideal, it's given to them there, so they can go through it and check up on what they need to brush up and so on.

**Damien Carrick:** This idea of familiarising interpreters with the material in a court case is one that Tony Foley strongly supports, because he says right now it often doesn't happen.

**Tony Foley:** An interpreter told me recently that they came to the court, they were told that they were involved in a trial that was going to go for a couple of weeks, and they found out once the case commenced that it was about firearms. She had to acquire a whole vocabulary about firearms, about guns, about weapons generally.

**Damien Carrick:** Technical, specific terms to firearms?

**Tony Foley:** Yes, exactly. And she said, 'Well look, if someone had briefed me about this, I could have done a day or two boning up about those areas, just to make myself comfortable.'

**Tony Foley:** Tony Foley. Well given no government has unlimited money to throw at the court system, the way forward is of course to use limited resources strategically. Stepan Kerkyasharian says technology could play a big part in increasing accessibility and raising standards.

**Stepan Kerkyasharian:** I think the sooner we move into video conferencing situations—I think with the technology now, with the communication and satellite communication system, the web communication, I think it's something that we should give very, very urgent consideration to, a) because it will provide a better service, and b) because it will also be financially more productive, because instead of flying an interpreter out to Broken Hill or flying an interpreter out to Coffs Harbour from Sydney, we can do it all over the net through video. Video is important because body language is important as well.

**Damien Carrick:** And it might also be very useful in terms of things like police interviews too, to have those highly qualified interpreters on stand-by, because of course courts aren't the only place where legally important communications are taking place. Evidence obtained in a police interview is also very important.

**Stepan Kerkyasharian:** It is. The police situation is very important and critical as well because, as we know, the judicial process technically starts from the moment someone is charged, or from the moment someone is cautioned that they're going to be interviewed for the purposes of probably charges being laid against them. Now there are very strict procedures as to how that interview should proceed, what kind of records are to be kept, et cetera. And by using video technology, that enhances the quality of evidence, and I suspect it will also enhance the quality of the interviewing techniques.

**Damien Carrick:** Stepan Kerkyasharian, the Chair of the New South Wales Community Relations Commission.

That's the *Law Report* for this week. A big thank you to producer Anita Barraud, and to technical producer, Tim Symonds.

## **Guests**

**Stepan Kerkyasharian,**  
Chair, NSW Community Relations Commission

**Dominic McCormack,**  
Darwin-based lawyer and interpreter

**Ludmilla Stern,**  
Coordinator of Interpreting and Translating Studies, UNSW

**Associate Professor Sandra Hale,**  
Head Interpreting and Translation Research Group, University of Western Sydney

**Tony Foley,**  
Senior Lecturer, School of Law, Australian National University

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