



Interpreting Legal Discourse and Working in Legal Settings: An AVLIC Position Paper

Synopsis Prepared for ASL Translation Debra Russell - 2013



WHY DOES AVLIC HAVE A POSITION PAPER ON LEGAL INTERPRETING?

In 2012 AVLIC prepared a position paper entitled *Interpreting Legal Discourse and Working in Legal Settings*. This was the second time AVLIC has had a legal interpreting position paper, with the first paper released in 1994. The purpose of the position paper is to educate interpreters who work with legal discourse and in legal settings, and to serve as a basis for determining the skills and training interpreters require. The document is not intended to replace the on-going education that interpreters require for this type of discourse and legal interactions but rather it is a supplement to training.

Interpreters, both Deaf and non-deaf, might also use the document as a lobbying tool, in order to educate those working in the legal system about the working conditions required for professional interpreting.

By producing a paper that articulates standards and best practices that are evidence-based, AVLIC has chosen to take a position on the fundamental aspects of interpreting legal discourse and legal interactions. The content reflects the Canadian Anglophone legal system and is consistent with the AVLIC Code of Ethics and Guidelines for Professional Conduct.

AVLIC expects that the document will shape standards for interpreting legal discourse and working in legal settings in Canada in ways that can be supported by members of AVLIC and provincial Ministries of the Attorney General. We recognize that there are few interpreters in Canada who possess the specialized training to work in legal and courtroom settings. In a 2009 survey conducted by Roberson, Russell, and Shaw (2012), interpreters in Canada reported that they chose not to work in legal settings as the consequences of errors is grave and they lacked any specialized training to deal with the legal terminology, protocols and processes.

In some jurisdictions, police services and courts rely on staff members who may only have minimal signed language proficiency to interpret for interactions involving Deaf citizens. This almost always leads to miscommunications, and the very real potential for grave errors that have an impact on the Deaf person and the services that they are trying to access. In other regions, Deaf people can access experienced and/or certified interpreters; however, given the shortage of interpreters, they may have to have their proceedings

delayed in order to accommodate the scheduling of interpreters. All of these issues are important matters for AVLIC and major stakeholders of the justice system to address through consistent professional development, practices, and policies.

HOW WAS IT CREATED?

AVLIC chose to work with primary authors on the first position paper and with one author on this current version. As with other position papers that AVLIC produces, a series of Reading Circles were used, in order to gather feedback on the content and readability. The reading circles included Deaf and non-deaf interpreters, Deaf professionals, lawyers, and interpreter educators who specifically provide training in legal interpreting.

The position paper benefitted from the significant changes that have occurred in the field of interpreting, namely the number of research projects around the globe that have focused attention on the strategies, decisions and practices of interpreters who work in legal interactions. The paper blends effective practices based on evidence-based studies and the standards that have worked well to support Canadian interpreters. We received thoughtful contributions based on current knowledge and evolving practice from members of the Deaf, interpreting, and legal communities. In addition, we have drawn on the exceptional work of the National Consortium of Interpreter Education Centres (NCIEC). During 2005-2009, the NCIEC undertook research about legal interpreting in North America. NCIEC produced several documents, including *Best Practices: American Sign Language and English Interpretation within Legal Settings*, by drawing on their own research, plus evidence-based studies.

There are eleven sections in the document, ranging from interpreter qualifications, strategies necessary for producing effective work, approaches to team work, including working with Deaf interpreters, followed by information on creating a visual recording and working with technology in order to offer remote video interpreting. Further segments discuss the types of roles that interpreters perform in legal settings, including being a witness, and techniques for qualifying interpreters. There are also two appendices that further address team interpreting practices and a hiring checklist.

WHY IS THE TERM “DISCOURSE” USED?

One of the important changes to note is that this document addresses interpretation from a discourse frame of reference, in addition to viewing the work per the setting. This reflects the current knowledge that legal discourse can occur across many settings, from medical and mental health settings to video relay services. Interpreters have traditionally viewed their work as setting specific, which could allow someone to say that they don't provide interpreting services in legal settings. However, when looking at the type of interaction and type of language used in the interpreting work, it is likely that interpreters can recognize when they are dealing with legal discourse in a range of settings. Thus, we have chosen to emphasis legal discourse, in addition to working in legal settings.

WHAT ABOUT LSQ-FRENCH INTERPRETERS?

Many of the concepts and ideas presented here apply to LSQ-French interpreters as well, but it is beyond the scope of this paper to include all possible communication options.

Given that there are two legal systems in Canada (common law and civil law), we felt there would be significant features unique to the French legal processes, and we encourage our LSQ/French colleagues to pursue the development of a document that more accurately reflects their needs. Nor does this paper reflect the interpretation requirements of consumers who use oral communication facilitators or deaf-blind interveners. Once more, we encourage individuals with that expertise to use this document as a springboard to developing materials pertinent to their needs.



BEST PRACTICE APPROACHES TO EFFECTIVE INTERPRETATION

The NCIEC Best Practices document highlights that “the best practice for producing effective interpretation in court and other legal settings is to achieve an accurate, meaningful, and effective interpretation that meets the cultural and linguistic needs of the deaf person” (NCIEC, 2009, p. 13). In order for interpretation to meet this standard, there are a number of requirements.

TAKES TIME:

Historically, signed language interpreters have worked entirely in simultaneous mode, given that they can be signing, while listening to the spoken language. However, research demonstrates that when the ASL-English interpreter chooses simultaneous interpreting, she/he is at greater risk for errors that range from serious content errors to producing interpretation that is grammatically incorrect and therefore not understandable by the Deaf consumer (Russell, 2002).

INCREASED USE OF CONSECUTIVE INTERPRETING:

The research from both spoken and signed language interpretation demonstrates that consecutive interpreting, when performed well by interpreters who are familiar with the strategies needed for this mode, is more effective and accurate than simultaneous interpreting (Berk-Seligson, 1990, Mikkelsen, 1995; 2010, Russell, 2002; 2005). As well, the evidence supports consecutive interpreting for all direct witness testimony that is given in ASL (Russell, 2002; 2005).

BLENDING CONSECUTIVE & SIMULTANEOUS INTERPRETING:

There are other discourse events, such as cross-examination of a Deaf witness in a courtroom, where interpreters need to blend consecutive and simultaneous interpreting in order to realize the goals and intentions of speakers and signers (Russell, 2002, 2005; Russell, Shaw & Malcolm, 2009). However, at other times during a cross examination, it may be necessary for interpreters to use consecutive interpreting. For example, when dealing with linguistically complicated questions or when dealing with witness answers that are detail-laden and/or introduce new information. By blending the use of consecutive and simultaneous interpretation, the interpretation is handled effectively and accurately.

When operating from a discourse approach to managing interpretation, interpreters must be guided by the language in use in that setting, evidence-based practices, and use care in producing the most effective and accurate interpretation possible. This requires a shift in the predominate practice of providing simultaneous interpretation, and an emphasis in development the skills necessary to manage both consecutive and simultaneous interpreting modes.

RECOGNIZE THE LIMITATIONS OF SIMULTANEOUS INTERPRETING:

While the dominant practice in the field of ASL-English interpreting has been to provide simultaneous interpreting, the research conducted by Russell (2002, 2005) showed that there were increased errors when using this mode for direct evidence, cross-examination, and expert witness testimony. It is these errors that cause grave concern for all involved in the legal system, for example, errors produced at the time of taking a police statement cannot later be corrected in a courtroom.

USE OF NOTETAKING:

The NCIEC Best Practices document (2009) identifies that notetaking is a best practice that will significantly improve the interpreter's ability to recall details, organize ideas for deeper processing, and increase the accuracy of the interpretation (p. 16). As with any of the interpreting skills and strategies, notetaking must be practiced prior to using this technique in a legal setting. Finally, it is crucial that all notes are destroyed at the end of legal appointments or courtroom events, and this is often best accomplished by providing them to the clerk for shredding.



QUALIFICATIONS OF INTERPRETERS:

AVLIC has defined the skills interpreters require to work in legal settings as:

1. a superior level of ASL and English skills;
2. a superior level of interpreting skills;
3. specific knowledge of the legal, medical and mental health systems;
4. an understanding of protocol and expected behaviour in legal settings;
5. familiarity with legal discourse;
6. interpersonal characteristics which support professional behaviour, team work, an ability to be assertive when dealing with consumers and legal personnel, and respect for cross-cultural dynamics.

Additionally, AVLIC recommends that preference be given to hiring AVLIC certified interpreters (Certificate of Interpretation - COI) for legal environments. While there are several interpreter employer screening tools available (for example the Government of Canada has a accreditation process used by their Translation Bureau) they are not as comprehensive as AVLIC's national certificate. As well, preference should be given to Deaf and non-deaf AVLIC members versus a non-member, as there is protection afforded to consumers through the AVLIC Code of Ethics and Guidelines for Professional Conduct. When hiring interpreters who are not members of AVLIC, there is no mechanism available to deal with any concerns that arise in the process of delivering interpreting services.

Being mentored and supervised, in addition to taking additional training, are critical aspects of acquiring the specialized skills and knowledge for this area of specialization. Roberson, Russell & Shaw (2012) have identified the following skills needed for legal discourse and have suggested a training sequence to allow interpreters to gain the skills. The sequence includes:

1. Discourse analysis skills that hone translation, sight translation, consecutive and simultaneous interpreting;
2. Team processes, specifically working in Deaf and hearing interpreter teams;
3. Knowledge of the legal, medical and mental health systems;
4. Legal discourse;

5. Types of law;
6. Protocol - videotaping, qualifying, conflict of interest checks, preparation strategies;
7. Preparation for assignments
8. Message analysis and error correction.



TEAM INTERPRETING:

This section of the document covers the vital role that team interpreting plays in reducing cognitive fatigue and reducing errors. Care must be given to the team composition and factors that support the need for teams or multiple teams in order to offer consistency and accurate interpretation. While time requirements have traditionally been used to determine when more than one interpreter is required, AVLIC encourages interpreters and hiring bodies to examine all the contextual variables, as a 30 minute assignment may require a team while a ninety-minute assignment may be suited to a sole practitioner.



DEAF INTERPRETERS:

The AVLIC Code of Ethics and Guidelines for Professional Conduct requires that interpreters work with Deaf interpreters across a range of settings and discourse needs. In addition, the NCIEC Best Practices document (2009) and the Recommended Guidelines for the Use of Deaf Intermediary Interpreters (2010) draw on studies that demonstrate the need to work with Deaf interpreters to meet the linguistic and cultural needs of some Deaf consumers. Further, the commissioned report entitled *The Deaf Interpreter in Court: An accommodation that is more than reasonable* (2010) highlights the rationale for this team composition including when working with Deaf consumers who have:

- under developed ASL fluency;
- limited socialization in the Deaf community;
- limited education;
- cognitive and/or language delays;
- mental health issues;
- challenges shaped by addiction issues.



VISUALLY RECORDING INTERPRETATION:

The NCIEC Best Practices (2009) document identifies the best practice of creating a video recording of the interpretation of the Deaf person's statement, interview, affidavit, or testimony. This is based on the fact that ASL is a visual language, and should the interpretation need to be examined for effectiveness and accuracy, the only way it can be verified is to have a permanent record of the language used and the interpretation used to represent that language.

The recommended protocol for video recording interpreted interactions includes: ensuring the technology captures a full and clear view of both the Deaf person and interpreter, and that the quality of the sound production be sufficient to hear all parties using spoken English. NCIEC further recommends that two separate video cameras be used when the logistics will not allow for a full and clear view of the Deaf person and the interpreter. This would require one camera to record the Deaf person's statement, and the second camera to record the interpretation. When working with Deaf interpreters, this may require that one camera focus on the

Deaf consumer and the non-deaf interpreter, and the second interpret capture the image of the Deaf interpreter. This section of the AVLIC document also offers several cases where courts have successfully provided video recording and this can be helpful to interpreters educating courts and police officials about the need for recording.



INTERPRETING VIA VIDEO REMOTE INTERPRETING:

The use of VRI services can be useful in remote communities where it can be expensive to bring in teams of interpreters when the appearance will be a short one, such as setting a date, and is concluded in less than ten minutes. It can also be useful as a tool in communities where there is a shortage of qualified interpreters to work with such discourse or settings. Both spoken and sign language interpreters have delivered interpreting services through the use of VRI. There are several ways in which video conferencing has been used with ASL-English interpreters in Canada, for example:

- Deaf accused held in custody, appearing by closed circuit TV from the remand centre, while the interpreter is in the courtroom;
- Deaf accused appearing at a bail hearing, with the interpreter and police officer present, and the Judge appearing via video conferencing from a courtroom;
- preparation interviews between lawyers and Deaf parties, where they are present in the same facility and the interpreter is in another location;
- trials that involve Deaf parties where the interpreters are not present and appear via video conferencing.

VRI may not be suitable for situations involving the following:

- complex dialogue and discussions and/or complex trials;
- communications that are emotionally charged or when participants are under the influence of drugs and/or alcohol;
- individuals with challenges (e.g. Deaf-Blind) that may interfere with their ability;
- to use the technology;
- young children;
- individuals who are not fluent users of ASL or have unique communication needs.

Therefore the decision to use video remote interpreting services should be made with input from all participants, and AVLIC urges caution when considering VRI given the numerous limitations.



THE ETHICS OF PROFESSIONAL BEHAVIOUR:

This segment of the document addresses the kinds of decisions that interpreters dealing with legal discourse and/or interpreting in legal settings must make, from determining if they are suitable for the work, taking time, in the presence of counsel, to determine the interpreting needs of the Deaf consumer(s), to determining when a team of interpreters from outside of the geographical region should be used as opposed to local interpreters. As well, the segment stresses the skills necessary for accurate conveyance of information and avoiding conflicts of interest. Further, there is a discussion of dealing with requests to offer referrals to lawyers in the community, reducing community involvement during difficult assignments, setting reasonable fees, and managing media requests. Finally, interpreters are required to engage in continuing education as part of their duty to the profession.



ROLES:

NCIEC identifies the following best practice:

It is best practice for legal interpreters to be placed according to distinct and specialized functions when interpreting within court or administrative proceedings. (p. 24)

Often courts are under the impression that one interpreter will be sufficient to interpret any and all parts of court or legal proceedings. This section of the document addresses the distinct roles of arrest processing interpreters, pre-conference interpreters, court-appointed interpreters, table interpreters, monitor interpreters, interpreter coordinators and interpreter consultants. There is an accompanying section that also describes the protocols for these specific roles.



PREPARATION:

AVLIC recognizes the merit of the two dominant approaches to preparing for a trial (reading statements vs. not reading case materials) and recommends that interpreters consider carefully the options for preparation work. By holding discussions with colleagues experienced in legal settings, and legal personnel, one can examine the potential consequences of each strategy, within the context of a particular case, and make a decision that is ethically defensible and appropriate for the context.



INTERPRETER AS EXPERT WITNESS:

When summoned as an expert witness, AVLIC encourages interpreters to limit testimony to the topic of interpretation. Testimony regarding the nature of ASL, the Deaf experience, and/or Deaf culture should be provided by qualified members of the Deaf community, linguists who have studied ASL, and other specialists that possess the skills and knowledge needed.



QUALIFYING AS AN INTERPRETER:

When testifying in a qualifying examination an interpreter must be able to clearly articulate the following: (a) the role and function of an interpreter, (b) their own professional experience, and (c) related credentials and education.



APPENDICES

There are two other documents included: Team Interpreting and an Access Check List appropriate for hiring bodies.



CONCLUSION

This document is designed to offer guidance to individuals working as interpreters and the legal profession about best practices shaping interpreting of legal discourse. By identifying best practices, qualifications, roles,

responsibilities, and protocol for dealing with legal discourse and legal settings, the interpreting profession will be advanced by a consistent standard of service effectively provided to consumers and the legal profession. All interpreters working with legal discourse and/or working in legal settings should be familiar with all the content of the document while engaging in on-going education about standards and practices that support effective and ethical interpretation.