



Irish Translators' and Interpreters' Association
Cumann Aistritheoirí agus Teangairí na hÉireann

Submission of the Irish Translators' and Interpreters' Association
to the Law Reform Commission on the
Consultation Paper on Expert Evidence

April 2009

The Irish Translators' and Interpreters' Association/Cumann Aistritheoirí agus Teangairí na hÉireann (ITIA)

The ITIA was founded in 1986 and is a not-for profit organisation. It is the only professional association in Ireland representing the interests of practising translators and interpreters. The ITIA aims to promote the highest standards within the profession and to foster an understanding among translator and interpreter clients of the highly-skilled and exacting nature of the profession. Our individual members hail from many countries and cultures, reflecting the multi-cultural nature of Ireland today and providing a wide range of language combinations to meet the exponential increase in the demand for translation and interpreting services. In addition to providing guidance to our translator and interpreter members the ITIA acts in an advisory capacity to Government bodies, NGOs, the media and others involved in the provision of translation and interpreting services to the general public.

We welcome the inclusion of interpreters in the Law Reform Commission *Consultation Paper on Expert Evidence*. We are particularly pleased that our website was consulted in the process of drawing up the document and that you have drawn attention to the continuing lack of training and testing for court interpreters.

While we would like to see interpreters accepted as experts in their chosen field of interpreting we have reservations in the current unregulated climate. Garcia-Rangel writes in the United States context that:

Interpreters have to be qualified as expert witnesses to interpret in court proceedings. They take an oath or affirmation “to make a true translation” of the oral discourse as provided by Rule 604 of the Federal Rules of Evidence. The court interpreter’s oath requires that the interpreter “justly, truly, fairly and impartially” act as an interpreter in the case before the court. These duties include the interpretation of everything said in the courtroom during court proceedings and, if interpreting for a witness, they include the interpretation of the oath to the witness, the questions of the Court and counsel, and the answers thereto.¹

The key problem at present in the Irish courts is that interpreters are not actually qualified at all. Given these circumstances it is difficult to see how they can be deemed to be expert witnesses. If we had a situation where all court interpreters were trained and tested at an

¹ Garcia-Rangel, Sara (2002) ‘The Court Interpreter as Expert Witness’ *Proteus*
http://www.najit.org/members_only/proteus/PDF_Articles/Court%20Interpreter%20as%20Expert%20Witness.pdf

appropriate level, our association would be more than happy for interpreters to be considered expert witnesses.

Moreover, if interpreters are to be seen as expert witnesses, we believe there is a need for caution because of the danger that a judge might assume that an interpreter, being an expert witness, is in a position to provide an opinion on matters relating to a defendant, a witness or a case in general. Your own Consultation Paper provides that:

There are a number of reasons why opinion evidence by ordinary witnesses is not permitted. One is that an opinion may be based on a hunch rather than actual knowledge or expertise and would therefore be unreliable. Another reason is that the opinion – for example, as to whether a machine complies with safety standards – may be directly related to what is described as the ultimate issue to be decided by the court. (1)

We believe that these very reasons apply to the vast majority of interpreters in the Irish courts who are recruited because they speak English and another language, attend a one-day training course and start working in the courts without ever being trained or tested in how to interpret or how to behave in an ethical fashion. We would expect a properly trained interpreter to politely refuse to give an opinion on any matter but there is a very real danger that untrained interpreters would be tempted to give their opinion which could in turn influence the outcome of a trial.¹ We have come across cases where an interpreter was asked questions about a particular country or particular customs. An interpreter cannot be considered an expert on such matters.

In Manchester in 2007 an Asylum and Immigration Tribunal found in the case of AA vs the Secretary of State for the Home Department that:

It is no part of an interpreter's function to report on the language or dialect used. The expertise needed to identify a language or dialect is not typically the expertise of an interpreter. In any event, an interpreter should not be in the position of giving, or being asked to give, evidence on a contested issue.²

We would agree with this judgement. If there is a need to report on a language or dialect then an expert should be called to do that.

We welcome your provisional recommendation for research to be carried out in the area of court interpreting. One of the undersigned, Mary Phelan, who lectures at Dublin City University, has requested permission to have access to recordings of interpreted cases for research purposes but this request has been turned down by the Courts Service. We believe that the most meaningful way to assess the quality of interpreting in the Irish courts would be to obtain recordings in some of the languages most in demand and to carry out a discourse analysis of what was said and what was interpreted. We predict that if this were done the results would highlight a lack of accuracy, incompetency, lack of knowledge of

² AA vs the Secretary of State for the Home Department
<http://www.unhcr.org/refworld/pdfid/47fdd8982.pdf>

legal terminology and over-reliance on summarising on the part of the interpreter. We acknowledge that there are some very competent interpreters working in the courts but we firmly believe that they are a minority. The current situation is one where the Courts Service respects the letter of the law by providing interpreters but does not respect the spirit of the law. In reality, the right to an interpreter is a hollow one if the interpreting provided is incompetent.

There is also a need for judges and other court officials to undergo training in how to work with interpreters. We hear reports of a small number of judges who refuse to certify an interpreter because a defendant has been living in the country for a number of years. Some judges have difficulty understanding how a defendant can say his name and address but be unable to understand anything more complicated than that. Even where a defendant has a reasonable level of English, s/he is unlikely to be familiar for example with court terminology, court procedures etc..

We would be happy to meet up with you to discuss any of these issues or to provide supplementary information if necessary.

Yours sincerely,

Annette Schiller, Chairperson

Mary Phelan, PRO

Appendix A extract from Law Reform Commission *Consultation Paper on Expert Evidence*

vi) Meaning of Foreign Words

2.40 The court may also receive expert evidence as to the meaning of foreign words, where the language is out of the range of knowledge of the court, but the legal effect of these words remains a matter for the courts to determine.³⁶

2.41 The service provided by translators can also be considered under this category of expert evidence.³⁷ The right to an interpreter is laid out in Articles 5 and 6 of the European Convention on Human Rights³⁸ as incorporated into Irish law by the *European Convention on Human Rights Act 2003*. Court translators are commonplace nowadays in many cases coming before the Irish courts, and the Courts Service have access to interpreters in 210 languages and dialects through the use of private agencies.³⁹

2.42 However, the use of such interpreters in Ireland has been the subject of much criticism, as it has been pointed out that no process is provided where interpreters can be trained and tested and no qualifications are necessary or required in order to work as a court interpreter.⁴⁰

2.43 In the Court of Criminal Appeal decision in *The People (DPP) v Yu Jie*⁴¹ one of the applicant's grounds for appeal was based on the fact that the interpreter provided by the Gardaí to question to applicant while in custody, was in fact a Chinese policeman who was working for Interpol. This fact was not made known to the applicant at the time, but he discovered this by looking at the interpreter's laptop during the course of questioning.

2.44 The applicant argued that the realisation that it was a Chinese police officer may have in some way inhibited the Applicant, particularly as there is no right to silence under questioning in his own country.

2.45 The Court of Criminal Appeal rejected that any impropriety had taken place in respect of the interpreter, finding no suggestion that the interpreter was biased or acted from any improper motive or was in any way intimidatory towards the applicant.

2.46 However, this case does raise the possibility that interpreter services and their lack of regulation within the court system could become an increasingly common ground for appeal or challenge in cases in the near future.

2.47 The Commission provisionally recommends that further research be conducted into the functioning of translators in our court system in order to ascertain if reforms need to be taken to improve access to justice.

37 Hodgkinson & James argue that court interpreters can properly be described as expert witnesses in that they provide expert advice to the court, in evidential form, that is outside the specialist knowledge or ability of the court, and which can be evidentially challenged. (Hodgkinson & James *Expert Evidence: Law and Practice* (2nd ed Sweet & Maxwell 2007) at 5-016)

38 Article 5(2) provides: —Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. Article 6 (3) provides: —Everyone charged with a criminal offence has the following minimum rights: a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him...e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

39 The Courts Service *Strategic Plan 2005-2009* states that the Courts Service will continue to provide interpreters in court to ensure that all court users can do their business in the language of their choice. Courts Service *'Sustaining the Momentum – Courts Service Strategic Plan 2005-2009'* at 17. Available at www.courts.ie.

40 Phelan (2002) *'Working Group on the Jurisdiction of the Courts: Submission from the Irish Translators and Interpreters Association (ITIA)'* Available at http://www.translatorsassociation.ie/component/option,com_docman/task,cat_view/w/gid,28/Itemid,16; *Battles – Misinterpreting Court Interpreters are a Threat to Justice* *The Sunday Times* 6 May 2007; National Consultative Committee on Racism and Interculturalism *'Interpreting, Translation and Public Bodies in Ireland: The Need for Policy and Training'* (2007, NCCRI) Available at: http://www.translatorsassociation.ie/component/option,com_docman/task,cat_view/w/gid,10/Itemid,16.

41 [2005] IECCA 95.