

THE IMPLICATIONS OF THE RATIONALE FOR LEGAL INTERPRETING

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Discussion of interpreting in Australian legal proceedings tends to focus on the challenges of ensuring that non English speakers understand what is said to them and that those participating in such proceedings understand words spoken by the non English speaker. While the addressing of such issues is undoubtedly fundamental and a priority, it needs to be considered in the unique context of legal principles governing such proceedings, and not as just another form of public interpreting.

Interpreting words addressed specifically to and spoken by an interpreter's client constitutes merely a small albeit vital element of language assistance to which non English speakers participating in legal proceedings are entitled according to relevant principles of Australian law.

At the core of our notion of the administration of justice is natural justice, a requirement of procedural fairness which extends to decisions affecting the rights and freedoms of individuals, made under law by public officials and by quasi judicial bodies such as Boards and Tribunals.

In addition, justice is not only required to be done, but must also be seen to be done. This requires that not only those affected by judicial and quasi judicial decisions but also members of the public in whose name justice is administered, must be provided with such access to and understanding of the proceedings as would enable them, through informed scrutiny, to judge for themselves whether justice was done.

Accepting that the key rationale for the participation of interpreters in legal proceedings is to ensure that procedural fairness is accorded to non English speaking parties and participants, has significant implications for the role of interpreters, a role that interpreters, courts and lawyers need to appreciate and actively facilitate.

The unavoidable reality that language barriers prevent many participants, observers and interested members of the community from being able to follow and reach informed opinions on the administration of justice presents another, almost totally overlooked, rationale for the participation of interpreters (and translators) in legal proceedings. Open justice and its promotion of public confidence in the administration of justice is an essential prerequisite of the rule of law. It is consequently vital that non English speaking sectors of Australia's society not be excluded from the scrutiny of legal proceedings. This pressing and unaddressed rationale for the participation of Interpreters and translators in legal proceedings (and their publication) carries additional clear implications for the role of participating interpreters.

Thus Courts' and Tribunals' recognition of the needs and rights of non English speaking parties to proceedings, of persons otherwise participating in, or of those merely observing or following legal proceedings, calls for the introduction of reforms such as: the provision of a simultaneous interpreting service via headphones to courtroom participants and visitors, the appointment in-house interpreters, the publication of information regarding proceedings in languages other than English, and the introduction of mandatory awareness and skill training for judges, Tribunal members and staff.

Interpreters' recognition of the rationale underpinning their involvement in legal proceedings will require a reconsideration of their current role through greater emphasis on simultaneous interpreting of all that is said in court rather than the current emphasis on consecutive interpreting of communication directly involving their clients. Such recognition also highlights the desirability of interpreters acquiring a clear understanding of principles underpinning the administration of justice (especially principles of natural justice and open justice) as well as a working familiarity with legal terminology and processes.

Lawyers' recognition of the needs and rights of their non English speaking clients calls for the introduction of suitable awareness and skills training in law schools, reinforced through mandatory continuing legal education. Lawyers' appreciation of the rationale for the participation of interpreters in legal proceedings is crucial as their professional duties to their clients will require them to insist on their clients' language needs being accommodated by courts and other legal decision makers.



Dr Daniel STEPNIAK is a legal practitioner working as a Senior Sessional Member of the State Administrative Tribunal and as a Sessional Legal Member of the Mental Health Review Board of Western Australia. In these roles he frequently presides over hearings involving interpreters. He is also an Associate Professor of Law at the University of Western Australia, where in conjunction with the Australian Institute of Interpreters and Translators (AUSIT) he has introduced skills training for law students on working with interpreters. In Law Week 2008 and 2009 he coordinated a series of familiarisation seminars for interpreters. These sessions were presented by State and Federal court judges and magistrates in a number of Perth courtrooms. Together with AUSIT Dr Stepniak has also developed, coordinated and presented a 'Legalese for Translators' course.

His long standing interest in issues of cultural diversity stems from his non English speaking background. Through his earlier work in legal practice, education and the

media and his current legal and academic work he has developed a passion for social justice and the promotion of public access to, and understanding of, court proceedings.