



**CONSULTATION BY THE OMBUDSMAN ON
THE PUBLIC INTERPRETATION SERVICES IN HONG KONG
SUBMISSION**

1. The Law Society of Hong Kong ("Law Society") welcomes the Office of The Ombudsman's direct investigation into the HKSAR Government's arrangements for engaging outside interpretation services. The consultation was launched on 12 October 2020.
2. We are keen to see that Hong Kong could have proper provision of public interpretation services, and make this submission in response.

ACCESS TO JUSTICE

3. Provision of public interpretation services is an essential component of access to justice, especially in Hong Kong with its multi-linguistic heritage and multi-cultural diversity. The relevance and the importance of interpretation receives attention from the Court of Appeal, where the Court in the judgment in *HKSAR v. Moala Alipate* [2019] HKCA 537, [2019] 3 HKLRD 20(CACC 135/2017) pointed out that, under the Hong Kong Bill of Rights, persons facing criminal charges are, among other things, entitled by virtue of art.11 to interpretation facilities; such entitlement is a component to the art.10 right to a fair trial. That is also the position at common law (§ 43-45 of the judgment).

We draw the attention of the Ombudsman and the HKSAR Government to the above judgment (and other decisions of the Court, if available) for details on the standard of interpretation facilities for which the right of a fair trial calls.

4. We are not aware of any comprehensive study in Hong Kong on the provision of public interpretation services. We take the view that such a study is essential. This review/study helps develop and implement an effective public interpretation service system in Hong Kong and that promotes access to justice.

ISSUES IDENTIFIED IN THE PUBLIC INTERPRETATION SERVICES

5. The Law Society could identify the following issues on public interpretation services. These issues need to be addressed without delay:

- (a) **Insufficient interpretation services** provided in court proceedings, including, generally, tribunal proceedings, disciplinary and regulatory proceedings, and also during investigation by law enforcement agencies and government departments. The insufficiency manifestly itself more apparently in the taking of instructions from persons who are seeking legal assistance.

It is noteworthy that the Judiciary, the law enforcement departments, Government bureaux and departments and private legal practitioners are all competing for service from the same pool of interpreters.

- (b) **Lack of supervision and maintenance of standards and discipline.** There is no protocol or mechanism in place to ensure the quality of interpretation or to oversee and help address any problems arising in engaging outside interpreters.
- (c) **Lack of formal training (including continuing professional development training)** for outside or Part-time Interpreters (“PTIs”) in terms of understanding of legal and medical terminologies; court and law enforcement agencies procedures and rules; ethical issues; the role of interpreters; and cultural, religious, ethnic, age and sensitive issues arising from interpreting for e.g. victims of sexual abuses, children or persons with disabilities (in particular persons suffering from cognitive or psychiatric conditions), as well as persons of different faiths and religions, and of different genders.
- (d) **Lack of an accreditation or a certification system** to evaluate the levels of competency of PTIs, in order to allow for differentiation of skill-sets and consequent pay grade differentials. The above underpin professionalism.

- (e) **Lack of transparency in the recruitment, training and supervision of PTIs.**
- (f) **Lack of suitably skilled PTIs** to provide services to languages other than English, Cantonese (Punti) and Putonghua, and on occasions.

Our preliminary inquiries with our members reveal that some members encounter difficulties in engaging interpreters for foreign languages such as Sinhalese, Tamil, Urdu, Bengali, Punjabi, Hindi, Mongolian, Somali, Bulgarian, Bahasa, Nepali and Tagalog; and other members encounter difficulties in engaging interpreters on occasions, such as late night police visits or bail applications and legal visits at correctional services institutions.

- (g) **No Code of Ethics** or any mechanism to discipline those interpreters and PTIs whose conduct fall below the standards expected of them.
- (h) **No publicly accessible database of Interpreters or PTIs.**
- (i) **Lack of access to the Judiciary's registered list of Interpreters or PTIs** by legal professionals and law enforcement departments¹; and
- (j) **Absence of public interpretation services in Hong Kong** to provide interpretation services to all the stakeholders in the justice system (other than the Judiciary).

RECOMMENDATIONS

6. We set out below our preliminary recommendations for consideration by the Ombudsman and the HKSAR Government.

(a) Recommendation 1

A central register of properly trained and qualified public service interpreters should be established and be made publicly accessible.

¹ As noted from the Press Release by the Ombudsman dated 12 October 2020, the preliminary inquiries by the Ombudsman found that “*in the past, several law enforcement departments would refer to the Judiciary’s registered list of part-time interpreters, while looking for outside interpreters for foreign languages and Chinese dialects. The Judiciary Administration, however, has since August 2018, ceased making the list available to other parties.*”

Reference could be made to the National Register of Public Service Interpreters in the UK (“NRPSI”), which provides a register of professional, qualified and quality assured interpreters for use by the public service organizations and agencies in the UK.

(b) Recommendation 2

Accreditation/certification system should be introduced.

Accreditation or certification helps offer assurance that the interpreters meet the requisite assessment of knowledge, skills and competencies needed to practise as an interpreter. In this regard, reference could be made to the National Accreditation Authority for Translators and Interpreters (“NAATI”), which is the national standards and certifying authority for translators and interpreters in Australia. This organization issues certification to practitioners who wish to work in this profession in Australia.

(c) Recommendation 3

Interpreters should complete formal legal interpretation training and, additionally, training should be on an on-going basis. Particular attention should be given to continuing professional development training on issues such as ethics, confidentiality, impartiality and culture sensitivity.

Requirement for training should be formalized as, for example in Australia, the country’s national standards and certification body for translators and interpreters (called NAATI) requires practitioners to provide evidence of continuing work practice and professional development to recertify the certification periodically. Interpreters seeking re-certification must obtain a minimum number of professional development points in the *compulsory* categories of skills development, industry-specific participation and maintenance of language.

In Hong Kong, we have seen seminars and conferences on translations held by only a few organizations, sometimes in collaboration with academic institutions. However these trainings seemingly are organized only on an ad hoc basis and only irregularly/infrequently. Those do not assist in the setting up of uniform standards or upholding of quality of interpretation services.

(d) Recommendation 4

A Code of Practice for interpreters should be drawn up. A feedback mechanism should be established for service users and a set of complaint and disciplinary procedures should be formulated.

(e) Recommendation 5

The recruitment processes and the remuneration of interpreters should be made transparent.

The HKSAR Government could draw references from some of the practices of the NRPSI in the UK regarding recruitment.

(f) Recommendation 6

The use of remote interpreting should seriously be considered and be developed.

Remote interpreting or “over-the-phone” interpreting seem to be quite popular in Australia, the United States and Europe. With technological advancement, video remote interpreting services have on occasions been used to replace conventional face-to-face interpretation. For Hong Kong, consideration for remote interpretation is particularly timely and relevant, when the Judiciary in Hong Kong is at present more engaged in the use of, and investment in, information technology for court hearings, by virtue of COVID-19 pandemic or otherwise.

We append to this submission a copy of a research paper we produced on remote interpretation. Our paper is based on desk research. As we are having a very short consultation period (about a month or so), we have not been able to complete and finalize this research. Nevertheless, with the above caveat, we consider our paper should serve as a useful starting reference for a continual discussion of this matter.

(g) Recommendation 7

Lastly, there should be a bureau or central body at policy level within the HKSAR Government, that coordinates and oversees the overall implementation and development of the above recommendations (on training, accreditation, developments of ethics and complaint procedures, as well as investment in and deployment of information technology for

remote interpretation etc). This central body or bureau would also help liaise with the different departments (the Department of Justice, the Legal Aid Department, the various law enforcement agencies) and the Judiciary, on interpretation services in Hong Kong.

CONCLUSION

7. Provision of public interpretation services is important; fundamentally it enhances access to justice. Absent an overhaul of the public interpretation services in Hong Kong so far, there should be a comprehensive study on public interpretation services in Hong Kong, including a forward planning on the provision of public interpretation services and an in-depth analysis of the issues identified in the above paragraphs. The Law Society is ready to have discussions on the above with the Judiciary, the Government bureaux and other stakeholders.

The Law Society of Hong Kong

24 November 2020

APPENDIX

Preliminary Research on Remote Interpretation

(to be read together with the Law Society Submission on 24 Nov 2020)

A. Introduction

1. Remote interpreting could be taken to mean the use of communication technologies to gain access to an interpreter in another room, building, town, city or country. In this setting, a telephone line or videoconference link is used to connect the interpreter to the primary participants².
2. The participants may not actually be at the same site, but may be in different locations. In the context of court interpreting, examples of these would be a defendant in a videoconference room at a jail, a judge in a courtroom and an interpreter at a central videoconference office operated by the court system; an interpreter with the defendant in a videoconference room at a jail, with a judge in a courtroom; or an interpreter in the courtroom with the judge and other parties, with the defendant in a videoconference room at a jail³.
3. The first use of remote interpreting was by telephone, launched in Australia in the 1970s and then implemented in the United States and Europe in later decades, and telephone interpreting or “over-the-phone” interpreting (OPI) is still in widespread use today⁴.
4. With technological advancement, video remote interpreting (VRI) began to replace telephone interpreting as the prominent means of connecting interpreters with their clients in a number of settings, including the courts.

B. Examples of the Use of Remote interpreting

Australia

5. Remote or phone interpretation is provided in Australia by the Translating and Interpreting Service (TIS National)⁵ which is an interpreting service provided by the Department of Home Affairs of the Australian Government. It is a service for people who do not speak English and for agencies and businesses that need to communicate with their non-English speaking clients.

² Braun, S. (2015). Remote Interpreting. In H. Mikkelsen and R. Jourdenais (Eds), *The Routledge handbook of*

³ Mikkelsen, H. (2016). *Introduction to court interpreting* (2nd ed.). London: Routledge, Taylor & Francis Group. <https://books.google.com.hk/books?id=UC4IDwAAQBAJ&pg=PA17&lpg=PA17&dq=remote+interpreting+in+courts+new+zealand&source=bl&ots=e0Gduht208&sig=ACfU3U3y5lQ3AjcV7HG80RviVg8BBRtKCA&hl=en&sa=X&ved=2ahUKewjAgaStv7LpAhWPGaYKHUn8DasQ6AEwCnoECAkQAQ#v=onepage&q=remote%20&f=false>

⁴ Ibid.

⁵ <https://www.tisnational.gov.au/en/About-TIS-National>

6. TIS National has (i) more than 50 years' experience in language services; (ii) access to more than 3000 contracted interpreters across Australia; and (iii) access to interpreters speaking more than 160 languages. Apart from on-site interpreting, TIS National provide :
 - Immediate phone interpreting.
 - ATIS automated voice-prompted immediate phone interpreting.
 - Pre-booked phone interpreting.
 - Illegal Maritime Arrival (IMA) interpreting.
7. The TIS National immediate phone interpreting service is available 24 hours a day, every day of the year for the cost of a local call for any person or organisation in Australia who needs an interpreter.

Americas - The United States

Florida

8. VRI has been in place in the US for over a decade but largely remained a niche technology.
9. Until 2014, the Supreme Court of Florida began a study of VRI as a statewide solution and pursued funding for the initiation of a pilot program in the trial courts. The pilot program included the 7th, 9th, 14th, 15th, and the 16th judicial circuits⁶.
10. The 9th Judicial Circuit is one of the largest and most diverse circuits in Florida; on any given day in our communities one can hear conversations spoken in over 160 languages. On 1 March 2018, the 9th Circuit implemented on-demand VRI⁷.
11. To request an interpreter, the Judge simply selects an interpreter from an integrated touch screen, located on the bench. Within 15 seconds a certified interpreter appears from a remote location to provide simultaneous interpreting service.
12. In 2019, over 52% of all its court hearings requiring an interpreter were covered through on-demand VRI.

⁶ <https://www.flcourts.org/Resources-Services/Court-Services/Court-Interpreting/Virtual-Remote-Interpreting>

⁷ <https://www.ninthcircuit.org/about/programs/virtual-remote-interpreting>

California

13. California is home to a very diverse population, with over 200 languages and dialects spoken within its borders. Approximately 7 million of its residents are limited English proficient (LEP).
14. On 15 March 2019, following a VRI pilot conducted in 2018, the Judicial Council of California (“Judicial Council”) approved the updated Language Access Plan guidelines for video remote interpreting (VRI) that include recommended minimum technology guidelines to facilitate its use. The Judicial Council also voted to create a new VRI program for the judicial branch to expand LEP court user access to qualified interpreters⁸.
15. The Judicial Council has issued a set of guidelines for the utilization of VRI in court proceedings, which sets out, for example, minimum technology requirements for remote interpreting, and considerations for determining appropriateness of VRI for court event.⁹
16. Due to the COVID-19 health crisis, the Judicial Council on 28 March 2020 directed the superior courts to make use of available technology, when possible, to conduct judicial proceedings and court operations remotely. This includes the use of video, audio, and telephonic means for remote appearances, reporting, and interpreting in judicial proceedings¹⁰.

Indiana

17. The Indiana Supreme Court set up the Language Access Task Force (“Task Force”) in January 2017. Projects of the Task Force include the development and implementation of this Language Access Plan, the development and implementation program for remote video interpreting services¹¹.
18. The Indiana Court later implemented the Court Call’s Remote Interpretation Platform to allow both audio only and video remote interpretation (VRI), which has facilitated consecutive and simultaneous interpretation in open court and private sidebar settings¹².
19. The Indian Supreme Court launched the Video Remote Interpreting Technical Assistance Grant (“TAG”) Program in 2018 to provide funds to litigants for

⁸ <https://www.courts.ca.gov/VRI.htm>

⁹ <https://www.courts.ca.gov/documents/vri-guidelines.pdf>

¹⁰ <https://www.courts.ca.gov/VRI.htm>

¹¹ <https://www.in.gov/judiciary/files/language-access-plan.pdf>

¹² <https://www.in.gov/judiciary/iocs/files/interpreter-vri-tech-grant-app.pdf>

covering the cost of equipment and software licensing for three years using the vendor Court Call¹³.

20. The Language Access Advisory Committee, developed from the former Language Access Task Force, was created on 29 April 2019¹⁴.
21. As of February 2019, every court in Indiana has access to the services of LanguageLine Solutions®¹⁵, a telephonic interpretation service contracted and paid for by the Indiana Supreme Court. However, courts are reminded that the use of telephonic interpreting is intended for brief, routine matters only. It further provides that an in-person interpreter should be used for evidentiary proceedings, including trials, as well as guilty plea hearings and other contested proceedings.

Hawaii

22. As part of the Hawaii State Judiciary's 2020 Strategic Plan, its Judiciary continues to upgrade its facilities to meet standards of "courtrooms in the 21st century." Efforts include incorporating video remote interpreting capability in court rooms statewide¹⁶.

Europe

23. VRI is more commonly known as video-mediated interpreting (VMI) in Europe.
24. From 2008 to 2016, the European Union has sponsored the AVIDICUS, a long-term European project collaboration between academic researchers and non-academic institutions in Europe to investigate the quality and viability of video-mediated interpreting in legal proceedings (AVIDICUS: Assessment of Video-Mediated Interpreting in the Criminal Justice System)¹⁷.
25. During its first phase (2008-2011), the AVIDICUS Project conducted two surveys in European Union member states: the first aimed at judicial services and legal practitioners; the second at legal interpreters. In the surveys, legal practitioners were asked to rate the estimated overall frequency of use in their respective countries and to comment on the areas in which uses of VMI

¹³ Ibid.

¹⁴ <https://www.in.gov/judiciary/interpreter/3456.htm>

¹⁵ LanguageLine is a provider of remote telephonic interpretation in eighty languages and to obtain a telephonic interpreter.

¹⁶ <https://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/Called-to-Action/Innovative-Programs-and-Survey-Results/Action-Step-7.aspx>

¹⁷ https://ec.europa.eu/education/knowledge-centre-interpretation/eu-funded-research-projects-interpreting_en

(including videoconference interpreting (VCI) and remote interpreting (RI)) are planned. The results are set out in the table below¹⁸ ---

Used regularly	Used occasionally	Used rarely	Used but frequency unknown	Not (yet) used
Estonia Netherlands United Kingdom	Germany Poland Sweden	Czech Republic Denmark Malta Slovakia	Austria Belgium France	Lithuania

Table 1: Use of video-mediated interpreting by country

26. To give an example of the extent of videoconferencing facilities available – as an indirect indicator for the possible use of video-mediated interpreting – in February 2010, the British Ministry of Justice has made a report to the House of Commons¹⁹:

Each UK jurisdiction has a wide range of video-conferencing facilities as detailed below. Most of these can be used in cross-border situations in accordance with relevant national and EU legislation. The use of video-conferencing between the UK and other Member States has to date been fairly limited; however, as capacity increases it is anticipated that so will its use.

England and Wales (As of 2010):

- Over 40% of Crown and Magistrates' Courts have videoconferencing facilities.
- 389 Crown Court rooms have videoconferencing facilities in 85 sites.
- 468 Magistrates' Court rooms have videoconferencing facilities in 274 sites.
- There are video-conferencing links in 58 of 218 County Court sites.
- 28 prisons have a total of 38 video links which could be used in cross-border situations
- It is expected that equipment will be deployed to all 139 prison establishments in future.
- 160 National Probation Service sites have a total of 172 video links.
- 42 prisons and 38 probation sites will have 99 IP video links by the end of March 2010. While the early roll out of video-conferencing facilities focused on connecting prisons and courts, in England and Wales the use of available facilities are encouraged, and the country is in the process of increasing the capacity of available equipment and modernizing the underlying technology.

27. Another example is Poland, which states that VCI and RI are used “occasionally” (See the above table). However, during 2004 and 2005, Poland experienced a sharp increase in the number of video-mediated court hearings, from 22 in 2004 to 126 in 2005. By 2007, the number had increased to 431, of which 22 were cross-border cases. 2008 saw 774 video-mediated court cases,

¹⁸ http://www.videoconference-interpreting.net/wp-content/uploads/2014/04/04_Braun_Taylor_surveys.pdf
(Note: UK was a member state of EU as of the date the survey was conducted.)

¹⁹ <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/162/162we13.htm>

including 35 cross-border cases. During the period 2006-2008, 90 courtrooms in 45 regional Polish courts were equipped with video-conferencing (VC) terminals. 2009 saw district courts begin to be fitted with VC facilities, as well as 21 prisons and detention centres. 11 public prosecutors' offices were furnished with VC equipment in 2007.

**The Law Society of Hong Kong
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