



**INTERPRETING LEGAL DISCOURSE
& WORKING IN LEGAL SETTINGS:
AN AVLIC POSITION PAPER**

Updated 2011 by Debra Russell
on behalf of the
Association of Visual Language Interpreters of Canada ©1994, 2011
ISBN 1-896590-06-3
Second printing



ACKNOWLEDGEMENTS

The AVLIC Board of Directors would like to gratefully acknowledge the contributions of individuals who responded to draft versions of this updated document and provided feedback and recommendations. This document incorporates changes in our field and the most current research and standards in the field of interpretation specific to interpreting legal discourse.

We wish to acknowledge Debra Russell and Jan Humphrey, for creating the original 1994 document, and Denise Smith and Terry Janzen for their editorial assistance. As well, we acknowledge the role of the sub-committee chaired by Lesley Roach, with participation from Courtney Cockburn, Bonnie Heath, Leslie McPhillips, Glenda Messier, and Becky Stuckless, whose efforts moved this project forward between 2010 and 2012. Our sincere appreciation to Cheryl Wilson, Director of Ontario Interpreting Services (OIS) and CART Services, for her constant support of AVLIC and her willingness to bring the financial resources of OIS to support this document revision process.

Care has been taken to determine and locate ownership of copyright material used. In the case of any errors and or omissions, AVLIC will endeavour to make suitable acknowledgements in future editions of this document.



TABLE OF CONTENTS

• 1.0 PREAMBLE	5
1.1 INTRODUCTION	6
1.2 DELIMITATIONS	7
• 2.0 BEST PRACTICE APPROACHES TO EFFECTIVE INTERPRETATION.....	7
2.1 PRODUCING EFFECTIVE INTERPRETATION: LEGAL DISCOURSE.....	7
2.2 QUALIFICATIONS OF INTERPRETERS	9
2.3 TEAM INTERPRETING	12
2.4 DEAF INTERPRETERS.....	13
• 3.0 VISUALLY RECORDING ASL-ENGLISH INTERPRETATION.....	14
• 4.0 INTERPRETING VIA VIDEO REMOTE INTERPRETING SERVICES.....	15
• 5.0 THE ETHICS OF PROFESSIONAL BEHAVIOUR.....	17
5.1 ACCEPTING THE ASSIGNMENT	17
5.2 ASSESSING THE INTERPRETING NEEDS OF THE DEAF PARTY	17
5.3 USING INTERPRETERS FROM OUTSIDE OF THE REGION	17
5.4 EVALUATING THE INTERPRETER’S QUALIFICATIONS PRIOR TO HIRING	18
5.5 ACCURATE CONVEYANCE OF INFORMATION	18
5.6 CONFLICTS OF INTEREST	18
5.7 PROFESSIONAL COMPETENCE.....	19
5.8 REFERRALS.....	19
5.9 COMMUNITY INVOLVEMENT	19
5.10 MEDIA	20
5.11 INTERPRETATION OF SPECIAL TERMINOLOGY	20
5.12 FEES.....	20
5.13 CONTINUING EDUCATION AND DUTY TO THE PROFESSION	20
• 6.0 ROLES.....	20
6.1 SPECIFIC ROLES.....	21
6.2 COURT APPOINTED PROCEEDINGS INTERPRETER(S).....	21
6.3 TABLE INTERPRETER(S)	21
6.4 ARREST PROCESSING OR PRE-TRIAL PREPARATION.....	21
6.5 MONITOR INTERPRETER	22
6.6 INTERPRETING COORDINATOR	22
6.7 INTERPRETING CONSULTANT	23
• 7.0 INTERPRETER PREPARATION.....	23
7.1 PREPARING FOR TEAM WORK	24
7.2 CONSISTENCY IN SERVICE	24
• 8.0 INTERPRETERS AS WITNESSES.....	24
8.1 EXPERT WITNESSES.....	24
8.2 INTERPRETER AS WITNESS	25

- **9.0 QUALIFYING AN INTERPRETER.....26**
- **10.0 PROTOCOL.....26**
- 10.1 PROTOCOL FOR COURT APPOINTED INTERPRETERS.....26**
- 10.2 PROTOCOL WHEN INTERPRETING FOR A SPECIFIC LAWYER.....28**
- 10.3 PROTOCOL FOR INTERPRETER COORDINATORS.....28**
- **11.0 CONCLUSION29**
- **REFERENCES.....30**
- **APPENDIX A: TEAM INTERPRETING BEST PRACTICES33**
- **APPENDIX B: CHECKLIST FOR HIRING INTERPRETERS WHEN WORKING WITH DEAF PEOPLE.....38**
- **APPENDIX C: AVLIC CODE OF ETHICS AND GUIDELINES FOR PROFESSIONAL CONDUCT...40**



1.0 PREAMBLE

In 2008, the AVLIC Board of Directors sought a review of their 1994 AVLIC Position Paper on Legal Interpreting. A committee was struck that would oversee the work of updating this position paper. Lesley Roach from Ontario chaired the committee, with participation from Courtney Cockburn, Bonnie Health, Leslie McPhillips, Glenda Messier, and Becky Stuckless. The 1994 document was sent to the original authors, Jan Humphrey and Debra Russell for comment. Both suggested that there were aspects of the document that were dated and that may not reflect current practice. Based on this initial review, the ad hoc committee attempted to gather feedback from a broad range of interpreters in Canada. In 2010, the Ontario Interpreter Services agreed to support the development of a revised document and Debra Russell was contracted for this purpose.

The field of sign language interpretation has grown and changed significantly over the past thirty years. The manner in which we approach our work, the status of members of the d/Deaf¹ community, and the expectations we hold of one another *are* different today than they were some years ago. Therefore, the AVLIC Board of Directors is providing this document in order to highlight issues and to give direction related to interpreting in legal discourse and working in legal settings. We have sought input and 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. Drawing on their own research, plus evidence-based studies, they created several documents, including *Best Practices: American Sign Language and English Interpretation within Legal Settings*.

We expect that this revised AVLIC document will shape standards for interpreting legal discourse and working in legal settings in Canada in ways that can be supported by AVLIC members 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 a small amount of a 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

¹ The uppercase *Deaf* denotes individuals, who in addition to having a significant inability to hear, function by choice as members of the Deaf community, subscribing to the unique cultural norms, values and traditions of that group. When the word deaf appears in lowercase, it denotes an individual who has a significant audiological loss, regardless of their cultural or group identity. For a complete discussion of this concept, please refer to Markowicz, H, and J Woodward. 1978. "Language and the Maintenance of Ethnic Boundaries in the Deaf Community." *Communication and Cognition*. 2:29-38.

for AVLIC and major stakeholders of the justice system to address through consistent training, practices, and policies.

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 are dealing with legal discourse in a range of settings. Thus, we have chosen to emphasize legal discourse, in addition to working in legal settings.

This document will identify several issues of importance in the *area* of interpreting legal discourse and working in legal settings. This is not meant to be a "training guide"; rather it is designed to offer guidance to the reader. By identifying qualifications, roles, responsibilities, and protocol for legal discourse and legal settings, AVLIC seeks to advance the profession by ensuring consistency of service provision and encouraging a standard of service that will effectively serve consumers and the legal profession. This will also help consumers know what they can expect from a qualified interpreter in legal settings.

For the purposes of this document, we have used the word "judge" or "judges" to refer to our judiciary. In Canada, such members are referred to as Justice Brown or Madam Justice Brown when being addressed directly. Further, the use of "counsel" refers to lawyers.

Finally, it is understood that the content presented here applies to all interpreters, regardless of whether they are Deaf interpreters or non-deaf interpreters.

1.1 INTRODUCTION

As an organization, AVLIC endorses the concept of quality service provision and interpreting that stems from a meaning-based approach, believing this approach is broad enough to meet the various linguistic preferences within the diverse Deaf community. While AVLIC supports the right of Deaf consumers to be involved in the decisions surrounding interpreters in non-court proceedings, we recognize that within the litigation sphere a consumer may not have the right to be involved in those decisions. Professional legal advice sought during the writing of this document alerted AVLIC to the Courts' perceptions that the interpreter must be impartial and accordingly, if one seeks to select her/his "own" interpreter and have this individual interpret for the Court, there may be an appearance of bias. Hence the need to emphasize that all interpreters working with legal discourse and/or in legal settings need to demonstrate qualifications to meet the demands of the assignments.

The National Consortium of Interpreter Education Centres (NCIEC) has consistently worked with the field of ASL-English interpreting to document effective practices in order to enhance the quality of interpreting service provision. To this end, during 2005-2010, the NCIEC worked with experts, practitioners, educators, and consumers, in order to define best practices in the area of legal interpreting. While their work focuses on the legal systems within the United States of America, there are numerous principles that can be applied to interpreting in Canada. Their work has bridged research and practice, and it provides a current context for understanding the

challenges surrounding interpretation in legal domains. For all of these reasons, we have brought forward material from their work that can apply to Canada. The most relevant principles of producing effective interpretation across numerous legal settings shapes the first section of this document, followed by material that addresses working in teams, working with Deaf interpreters, visual recording of ASL-English interpretation, providing service by remote video interpreting, ethical considerations, roles, interpreter preparation and finally, witness preparation and protocol complete the document.

What follows is intended to assist interpreters wishing to provide effective interpretation services, through the provision of information based on evidence-based studies and effective practices, and issues for discussion.

1.2 DELIMITATIONS

Several examples in this document focus our attention on legal discourse within courtroom procedures, but the principles discussed can be applied to all settings within the legal system.

As will be noted, the document addresses ASL-English interpreters. It is believed that 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.

Finally, while we have acknowledged the distinction between lowercase *deaf* when referring to the audiological condition of not hearing, and the uppercase *Deaf* when referring to a particular group of deaf people who share a language and a culture, in the interest of the subject and reader, we have chosen to use uppercase *Deaf* throughout the majority of the document. This decision is meant to improve the readability of this document.



2.0 BEST PRACTICE APPROACHES TO EFFECTIVE INTERPRETATION

2.1 PRODUCING EFFECTIVE INTERPRETATION: LEGAL DISCOURSE

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 practice, there are a number of requirements.

Takes Time:

The NCIEC Legal Interpreting Workgroup has drawn on research about simultaneous and consecutive interpreting, highlighting evidence-based studies that show that even with highly

qualified interpreters, the complex process of producing an effective interpretation 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).

“To achieve an accurate, meaningful, and effective interpretation, it is necessary that legal interpreters put the fidelity of the interpretation above any pressure to produce a speedy, pseudo-efficient interpretation.” (NCIEC Best Practices, 2009, p. 14)

Increased Use of Consecutive Interpreting:

What is clear in the research from both spoken and signed language interpretation is 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). More specific to ASL-English interpreting is the evidence that supports consecutive interpreting for all direct witness testimony that is given in ASL (Russell, 2002; 2005). While there are United States of America statutes that require interpreters to use consecutive interpreting for all non-English speaking witnesses, there are no consistent guidelines in Canada. However, interpreters wishing to provide effective interpretation that is meaning based and accurate, would be well advised to learn how to effectively provide consecutive interpreting and use it when dealing with legal discourse where the consequences of errors is grave and potentially has long-lasting impact.

Consecutive interpreting can be applied to many interpreted interactions, for example:

- mental health assessments;
- medical interviews;
- police and lawyer interviews;
- courtroom proceedings involving a Deaf person giving testimony;
- examinations for discovery;
- Video Relay Calls between lawyer and client.

Blending Consecutive and 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). For example, content that has been canvassed during direct examination is now familiar to the interpreters and can be handled effectively via simultaneous interpreting. 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.

Recognizing 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. Further, the cognitive load of processing two different languages, in two different modalities (spoken and signed) creates a situation where interpreters may not be able to monitor their own production, thus not catching errors. It also leads to a situation where the interpretation can take on more of the structure of the spoken language, resulting in transcoding work (producing ASL signs in English grammar), which negatively impacts the ability of the Deaf person to meaningfully participate in the legal proceedings. This may result in the *appearance of judicial access*, in that participants unfamiliar with Deaf people, signed languages and interpretation, such as lawyers and judges, will observe interpreters working, and assume their work is accurate. However, the Deaf person may not be able to understand the interpretation, and therefore may not be in a position to assist counsel in his or her own defense. Thus interpreters working with legal discourse must remain cognizant of the limitations of simultaneous interpretation (NCIEC, 2009).

Use of Notetaking to Support Effective Consecutive Interpreting:

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). Mikkelson (2005) and Hahn (2006) provide evidence that is compelling in terms of using notetaking strategies to reduce the cognitive load on the interpreter's short-term memory and allowing for a more accurate rendering of an interpreted message. Notetaking systems are generally personal, and interpreters find strategies that work well to support their memory. For example, dividing the page in half and using one column for questions and the second column for answers can help to organize and show the cohesion between segments of discourse. Interpreters often create symbols that represent meaning, or note the affect of the speaker or signers. The emphasis on notetaking is that it must also be meaning-based, and not a literal transcription of questions or answers. As well, interpreters must refrain from adding any comments on their notes that they would not want to show those with whom they are working. 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.

2.2 QUALIFICATIONS OF INTERPRETERS

Given that the previous section has emphasized best practices that support effective and accurate interpretation, interpreters working with legal discourse and in legal settings must be sufficiently qualified. In the first edition of this document AVLIC stressed the need for the following skill sets, which are as valid today as in previous years. It should also be noted that these skill requirements also apply to Deaf interpreters.

AVLIC (1994) defined a qualified interpreter or interpreting team in legal settings as being able to demonstrate the following knowledge/skills:

- (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 Federal Government Screening Tool) they *are not* as comprehensive as AVLIC's national certification and should not be deemed as equivalent. As well, by hiring an AVLIC member versus a non-member, there is protection afforded to consumers through the AVLIC *Code of Ethics and Guidelines for Professional Conduct* (Appendix C) and the *Dispute Resolution Process* (www.avlic.ca/dispute-resolution). 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.

In order to increase the capacity of interpreters who can provide effective services, NCIEC has adopted a best practice that requires experienced interpreters to serve as mentors and supervisors of interpreters acquiring the skills necessary to deal with legal discourse and legal settings. This appears to be an area of consistent practice in the United States of America and is an aspect of development that Canadian interpreters may want to explore for their communities. Being mentored and supervised, in addition to taking additional training, are critical aspects of acquiring the specialized skills and knowledge, while ensuring interpretation provided is effective and accurate. Roberson, Russell, and 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 of content areas follows:

1. translation, sight translation, consecutive and simultaneous interpreting built on a foundation of discourse analysis;
2. team processes, specifically working in Deaf and hearing interpreter teams;
3. orientation to the legal system;
4. legal discourse;
5. types of law;
6. protocol - videotaping, qualifying, conflict of interest checks, preparation strategies;
7. case preparation;
8. message analysis and error correction.

For the purposes of this document, we have chosen to expand on several of these content areas.

Knowledge Of The Legal, Medical & Mental Health Systems:

As stated above, legal discourse is a key area for any interpreter. This is closely tied to knowledge of the legal, medical, and mental health systems as prerequisites to working with legal discourse. As stated at the outset, legal discourse can often occur in settings that have not traditionally been viewed as legal settings. The overlay between medical and mental health settings and legal processes is increasingly evident in Canada. Therefore, an interpreter should be familiar with the various personnel and the role/responsibility of each; the phases of civil, criminal, and family law; the role of powerful/powerless language forms; and the meaning and use of legal documents. (See <http://www.nciec.com> for a bibliography of legal related readings and materials that are useful to interpreters acquiring this knowledge).

Protocol:

"Protocol" refers to forms of behaviour that are recognized as correct in official dealings within particular settings. This can include how an interpreter addresses judges, lawyers, police officers, or other legal personnel; how s/he interacts with other members of the court; how s/he establishes her/his role and responsibility in a manner that is consistent with other professionals interacting in this setting. An interpreter should be familiar with the process of qualifying and be prepared to testify regarding her/his qualifications. It is incumbent on interpreters in legal settings to be familiar with and adhere to setting-specific protocol.

Legal Discourse:

Several registers of language use can be found in legal discourse. For example, in courtrooms, the language used may be formal and/or frozen, such as an oath or a charge to the jury. In other settings, for example, in interviews between social workers and family members, psychologists and clients, and police interviews with Deaf people, language may be used in consultative and/or informal ways. Terms have specific meanings and therefore must be stated in a particular way in order to be considered legitimate and meaningful. Interpreters must develop strategies for maintaining the intended precision of language as it is used in legal discourse and in systems while making the appropriate decisions required to achieve effective and accurate interpretation.

Interpreters should be familiar with particular components of legal language (Witter-Merithew, 1991) including (a) compound-complex linguistic forms and archaic language, (b) question forms, and (c) specialized legal vocabulary. In addition, interpreters require knowledge of the linguistic features of "first-time tellings" in ASL and English narratives, and the ways in which narratives are structured in both languages (Shaw, 2007).

Personal Characteristics:

Interpreters in legal settings should be mature, able to handle high levels of stress, and demonstrate effective interpersonal skills. These interpreters must manage communication between individuals who may be unfamiliar with the systems that are involved and who may be experiencing excessive stress and/or fear. Further, work in legal settings requires an interpreter who can work effectively as a member of a team. This includes the ability to communicate clearly, resolve conflict, compromise, and respect other team members. Finally, regardless of setting, an interpreter working in the Deaf community needs to have a strong sense of personal and professional ethics.

2.3 TEAM INTERPRETING

The NCIEC Best Practices Document (2009) stresses the need to perform work in teams in order to support effective and accurate interpretation. The NCIEC Legal Work Team drew on the work of the National Association of Judicial Interpreters and Translators (NAJIT) and research conducted by both Cokely (1992) and Moser-Mercer (1998) to stress the vital role that team interpreting plays in reducing cognitive fatigue and potentially reducing errors.

Traditionally, the interpreting profession has suggested that it is best practice for assignments over 1 hour to be teamed, emphasizing that mental fatigue sets in after 30 minutes of providing simultaneous interpreting. AVLIC adopts the stand that decisions about team interpreting must be guided by the particulars of the consumers, settings, and interaction demands. For example, a thirty-minute interview with a Deaf consumer who uses a signed language other than ASL (for example: British Sign Language, Kenyan Sign Language, Brazilian Sign Language, etc.) and/or has had little access to formal education may require a team comprised of a Deaf interpreter and an ASL-English interpreter. A full day examination for discovery with one Deaf participant may require a team of two interpreters. A two-day trial with multiple Deaf witnesses may require a team of three interpreters for sworn testimony, and if there is a Deaf accused in the matter, or Deaf parties in the body of the court, a second team of interpreters will be needed. Depending on the skills required of the interpreting team, a Deaf interpreter(s) may be needed. Thus the factors that determine team composition include the length of the interpreting assignment, the Deaf consumers' linguistic needs, the skills of the ASL-English interpreters, and the complexity of the discourse and/or interaction demands of the setting. For further support on this topic please see the Ontario Superior Court of Justice decision which addresses the need for teams of sign language interpreters in *R. v. Lucas, 2007 (O.J.#5532)*.

As well, it is a best practice to ensure team consistency throughout processes that have a legal overlay or are legal proceedings. Every time a team member changes, there is a knowledge gap in the shared context that has been built across multiple appointments or sustained events, and this can impact negatively on consumers when dealing with interpreters that are "new" to the situation. This is true for a change in counsel or a change in interpreters. While teams can prepare with new team members, it is preferred that the composition of teams remains consistent as much as possible (NCIEC, 2009).

The use of multiple teams is usually motivated by: the opposing/adversarial positions of the Deaf parties in a case; the variation in language used by the Deaf parties; the number of Deaf witnesses; and general logistics.

Where required, two or more interpreters collaborate for a given legal assignment and work together as members of a team to achieve accuracy of interpretation and full access to the proceedings by all parties involved. Working in a team also allows 20-30 minute work sessions in order to maximize interpreter energy and accuracy.

Although an interpreter may be appointed to work for the Court or employed to work with a specific lawyer, all interpreters *are* ultimately responsible to the Court. It is general practice for interpreters working for opposing sides to refrain from the appearance of collaboration or information exchange during the course of the trial. If there is a need to collaborate, the protocol for such interactions should be agreed upon in advance by the lawyers and/or the presiding judge.

Specific Assignment Phases:

According to Witter-Merithew in *Interpreting in the American Judicial System: ASL/English* (1992), there are three phases to working as a member of an interpreter team.

- The pre-assignment phase allows interpreters to agree on an assessment of interpreting needs and language preferences for the Deaf parties involved, engage in preparation conversations, and agree upon working conditions. This preparation and consensus is critical to the provision of effective and professional services in an assignment.
- The assignment phase relates to the actual delivery of service and includes supporting each interpreter's work to ensure accuracy and effectiveness. This phase will require that the working conditions established during the pre-assignment phase be applied and that the team make adjustments when necessary. During this phase, the team members will give each other feedback and it is important that the team agree about how to conduct feedback sessions. The team may need to discuss with the Court adjustments related to various aspects of the interpreting process. A successful team is responsive, cohesive, cooperative, productive, and sensitive to the needs of one another and the consumers of their services.
- The third phase of the process is the post-assignment phase. This phase provides an opportunity to review the work, to discuss strategies for improving the process for future assignments, to follow up on billing and other related administrative functions and to provide closure to the team process. The key to this is affirming the value of and commitment to team processes.

2.4 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. All of the above documents adopt a stance that there are characteristics of some Deaf consumers that can guide us in knowing when a Deaf interpreter will most effectively meet the needs of the situation. For example, *The Deaf Interpreter in Court* (p.9) states it may be necessary to hire a Deaf interpreter when working with Deaf consumers who have:

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

NCIEC (2009) has emphasized the need for Deaf interpreters when working with children and youth. They base this on the numerous factors that can impact the youth's ability to cognitively, linguistically, and developmentally comprehend an interpreter. A Deaf interpreter can more accurately assess the interpreting needs of a minor, taking into account age, educational and life experiences, exposure to American Sign Language, emotional state, and familiarity with communicating via an interpreter.

Given the diversity of Canadian society, there are Deaf people who have moved from other countries and may be fluent in another signed language (for example, Kosovo Sign Language, Japanese Sign Language, and so on) or they may not be familiar with any formal signed languages, relying on visual gestural systems. In these contexts, a Deaf interpreter should be included on the interpreting team.

The NCIEC (2009) also stresses the best practice approach that when a Deaf consumer is working with a Deaf interpreter, that this interpreter be present for all communication, regardless of whether the communication is viewed as insignificant. To offer interpretation without the Deaf interpreter present can undermine the effectiveness and accuracy of the interpretation, and contribute to the false impression that the Deaf person has received an accurate interpretation (p. 21).

With all interpreting assignments, the interpreter(s) must ascertain if the situation requires a Deaf interpreter. The interpreter will analyze the factors to determine if the interpretation to be provided may be unsatisfactory, and/or if the accuracy and effectiveness of the interpretation will be enhanced by a Deaf interpreter's services (p. 27 NCIEC). For more information on Deaf interpreters, please see March 2009 NCIEC Brief – *The Deaf Interpreter in Court* (p. 102).



3.0 VISUALLY RECORDING ASL-ENGLISH 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.

While Canada may have less experience with videotaping events such as examinations for discovery and courtroom events, there are courts that have implemented these measures as a safeguard to all. For example, a Toronto Superior Court (*R. v. Wright*) approved the videotaping of evidence interpreted by ASL-English interpreters. This decision is persuasive and has been used in other Ontario courts. When assisting courts to support teams and the videotaping of ASL interpretation, the following decisions may be useful and are available via QuickLaw:

R v. D.T., [2011] OJ No 1874 (QL)

R. v. Lucas, [2007] OJ No 5532 (QL)

R. v. Wright, [2006] OJ No 0535 (QL)

R. v. Stewart (Ont. Sup. Ct.), [2009] (Windsor - unreported)

In the Stewart matter, three cameras were approved, and set up with split screen of the witness and interpretation, which was very helpful when interpreters needed to check a potential error in the interpretation.

Police services across the country have experienced videotaping interviews with non-deaf people, and applying the concept to an interpreted interview is as simple as ensuring that the sight lines will allow for the interpreter and the Deaf person to be fully visible. Such recordings are the only way in which interpreting in a signed language can be examined should there be a question about the accuracy of the work. Spoken languages can be permanently captured via audiotape, however for visual-spatial languages like ASL, video recording is required in order to have a permanent record.



4.0 INTERPRETING VIA VIDEO REMOTE INTERPRETING SERVICES

Napier (2011) has conducted studies of sign language interpreters delivering interpreting services in legal settings through the use of video conferencing technology (also known as video remote interpreting services or VRI). Her findings suggest that when this approach to service delivery is used care must be taken to ensure that the quality of the sound and visual images is sufficient to allow interpreters to perform the work well and to the best practice standard of accuracy and effectiveness.

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 signed 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.

There is research that suggests that Deaf American Sign Language (ASL) users adjust their use

of ASL in direct deaf-to-deaf communication via videoconference to cope with the interference from video communication (Keating & Mirus, 2003). Napier (2011) offers the following recommendations for the technical and environmental requirements for the effective provision of services in video remote interpreting (VRI) environments. These include:

- a. a designated meeting room (multipurpose or dedicated VRI room) for instalment of VRI infrastructure with blue wall back drop; sound proofing; use of hands free speaker; a means of signalling to an outsider that the room is in use to avoid interruptions; free from distraction; and client confidentiality considerations including privacy and quiet;
- b. if equipment is on a trolley and moved around, the floor of the room should be marked to show where the trolley and chairs are to be placed when in use. Although VRI cameras can zoom in and out, the need for the client to see the interpreter clearly and vice versa to enable two-way signed conversation should be borne in mind at all times;
- c. display minimum resolution 1400x1050; pan and zoom; split screen to enable all parties to view each other; 25-30 frames per second for 95% of transmission; 115 frames per second for 5% of transmission;
- d. have the counsel indicate who is present in the courtroom and their physical placement, prior to the commencement of the proceedings. This is crucial if the Deaf person is in custody and not in the courtroom.

Regardless of the scenario, the same best practices of using consecutive and simultaneous interpreting, using notetaking, and establishing communication protocols are used. What is critical is that all parties ensure that the technology meets the requirements, and are prepared to work through any challenges that arise during an interpreted event in order to achieve effective interpretation. Remote regions in Canada, serving communities in Newfoundland and Labrador and Nunavut have had success using videoconferencing services that have included spoken language interpreters.

Both Medical Interpreting Services in British Columbia and the Ontario Interpreting Services have experience in delivering interpreting services using VRI. In terms of specific policies when dealing with legal related assignments, the Canadian Hearing Society suggests that two interpreters are required for any legal or police related matter that is handled through VRI. Additionally, the service requires that there is no recording capability on the system software or hardware during VRI events. While VRI provides a tangible alternative that can satisfy communication demands when qualified on-site interpreters are unavailable, may be cost effective in eliminating interpreters' travel and mileage expenses, and has a cost structure built in that can reduce interpreting costs, there are also significant limitations to its use. For example 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.



5.0 THE ETHICS OF PROFESSIONAL BEHAVIOUR

5.1 ACCEPTING THE ASSIGNMENT

NCIEC states:

It is best practice for legal interpreters to consider all of the complex factors that carry the potential to influence achieving effective interpreting outcomes prior to accepting and/or interpreting a court or legal assignment (p. 26).

This is also considered in the AVLIC *Code of Ethics and Guidelines for Professional Conduct*, which stresses the need to accept work for which the interpreter is qualified. The full AVLIC *Code of Ethics and Guidelines for Professional Conduct* can be downloaded at www.avlic.ca. For the purposes of this document, we have identified several pertinent ethical issues, yet interpreters working with legal discourse and/or in legal settings need to be familiar with the full *Code of Ethics and Guidelines for Professional Conduct*. Again, we emphasize these ethical guidelines apply only to members of AVLIC, and as such, preference should be given to hiring AVLIC members.

5.2 ASSESSING THE INTERPRETING NEEDS OF THE DEAF PARTY

Given the linguistic complexity within the Deaf community, interpreters will make decisions about their own appropriateness for the situation based on the Deaf consumers' needs. This can be a challenging area for personnel in legal, medical and mental health settings as they are often unaware of the communication diversity and the linguistic needs of the Deaf person. Deaf people may use ASL, or may communicate using more English-like sign language, may have limited sign language abilities depending on their early language and educational experiences, or they may use a sign language from another country and are just acquiring ASL since moving to Canada, and so on (NCIEC Best Practices, 2009, p. 26). Hence the interpreters may need to have time alone with the Deaf party to determine their language experience prior to the proceedings beginning in order to confirm that they are able to provide effective services. For parties who are Deaf and will be working with Deaf interpreters, it is crucial that they feel comfortable with the team chosen, given the closeness of the Deaf community. This should be done in the presence of counsel.

5.3 USING INTERPRETERS FROM OUTSIDE OF THE REGION

In legal proceedings of a sensitive nature, qualified interpreters from outside the local community *may* be required due to the closeness of the community and the Deaf litigant's need for privacy. This applies to both hearing and Deaf interpreters. Care should be taken to ensure

external interpreters are fully briefed on any local signs that may not be common knowledge outside the community. The provincial Attorney General departments in British Columbia, Manitoba, Ontario, Nova Scotia, and Newfoundland have covered all related expenses for such arrangements, thus supporting this practice.

5.4 EVALUATING THE INTERPRETER'S QUALIFICATIONS PRIOR TO HIRING

NCIEC recommends that interpreters and/or hiring bodies consider the following factors:

- the interpreting needs of the Deaf party;
- the role of the Deaf party in the interpreted event (witness, accused, lawyer, expert witness, etc.);
- the training, qualifications and gender of the interpreter;
- whether the interpreter has sufficient experience within the particular legal domain;
- whether or not a more qualified interpreter is available;
- how many interpreters are required for the team;
- whether the interpreter has any real or perceived conflict of interest.

5.5 ACCURATE CONVEYANCE OF INFORMATION

If an interpreter does her/his job well, applying best practices such as using consecutive interpreting when appropriate, notetaking, using simultaneous interpreting when appropriate, managing linguistic errors if and when they occur, the interpretation should be accurate and effective. An ethical interpreter will only accept assignments for which s/he is qualified and able to do. The interpreter must also be sensitive to cross-cultural communication dynamics in order to make appropriate decisions and to ensure consumers have access to the most accurate and effective interpretation possible.

5.6 CONFLICTS OF INTEREST

The AVLIC *Code of Ethics and Guidelines for Professional Conduct*, as well as the Registry of Interpreters for the Deaf *Code of Ethics* require that member interpreters avoid and disclose conflicts of interest prior to accepting interpreting assignments. The NCIEC guide suggests that conflicts may be of two types: rehearsal conflicts and appearance conflicts. NCIEC defines rehearsal conflicts as involving interpreters that provide interpreting services for witness preparation prior to interpreting the witness testimony, whereas they define appearance conflicts as those in which the interpreter's relationship with the parties raises the appearance of bias. Any condition that impinges on the objectivity of the interpreter or affects her/his professional neutrality constitutes a conflict of interest (Belliveau, 1989). When working in small communities, it may be challenging to avoid rehearsal conflicts, and in such cases, interpreters must be very cognizant of not using previous knowledge to influence their interpretation once in the courtroom.

When accepting the court appointed proceedings interpreter role, interpreters need to examine their prior personal or professional involvement with the parties (Deaf or non-deaf) for anything that can interfere with the impartiality of the interpreter, or the appearance of impropriety and to disclose potential conflicts to the lawyers/judges. For example, if the interpreter is acquainted with a party to the action facing the court; the interpreter has, in any way, an interest in the outcome of the case; and/or the interpreter is perceived by others as being biased in favour of one of the adversarial parties.

At times, lawyers and/or judges may ask if an interpreter and a Deaf party are previously acquainted. Since the community is small, an ASL-English interpreter often knows a Deaf party. If the acquaintance is simply a casual one, the interpreter may say, "Your Honour, I have met/know NAME. We have had casual contact within the Deaf community but I do not believe this constitutes a conflict."

The point of this behaviour is to acknowledge that real and perceived conflict of interest situations can arise. The goal is not to exclude interpreters from the legal setting, but to acknowledge the nature of the relationship between the interpreter and Deaf parties.

5.7 PROFESSIONAL COMPETENCE

A consumer of professional services expects that by virtue of being in practice, the interpreter is competent to provide the services offered. It is therefore incumbent on the practitioner to be competent to practice in her/his given field. This involves knowing one's own limits - physically, emotionally, experientially, linguistically, and culturally. It is paramount that interpreters keep the consumer's interests and well-being foremost in their minds when accepting or declining assignments of this nature.

"High-level proficiencies in the source and target languages and cultures, including knowledge of geographic variations, an understanding of the legal process and related terminology, the ability to manipulate the various discourse styles used, along with interpreting skills and adherence to standards of ethics and professional conduct [which are] essential in protecting a non-English speaker's right to due process." (de Jongh, 2008, p. 21)

5.8 REFERRALS

In addition, interpreters should be discouraged from acting as a referral service for a lawyer; this kind of activity has the appearance of impropriety. When asked by Deaf consumers recommend a lawyer, the interpreter could refer consumers to the lawyer referral service as offered by the provincial or territorial Law Society.

5.9 COMMUNITY INVOLVEMENT

Interpreters are expected to be involved in social aspects of the Deaf community, as a norm of Deaf culture. However, an interpreter should strive for a professionally detached relationship

between her/himself and the principals in a case during a legal proceeding. This may mean that the interpreter refrains from attending community or social events where principals in a case underway may be present.

5.10 MEDIA

An interpreter should not render opinions or make subjective statements of any kind through, or in connection with, a newspaper, radio, or other public medium regarding any legal matter in which the interpreter has interpreted or served as a translator of written material of a legal nature. Confidentiality is a key tenet of the *AVLIC Code of Ethics and Guidelines for Professional Conduct*, and members must abide by this tenet in all interpreted interactions.

5.11 INTERPRETATION OF SPECIAL TERMINOLOGY

In all instances where knowledge of special terminology is needed, or where the interpreter is required to comprehend dialectical forms, the interpreter should critically assess her/his abilities and disqualify her/himself if unable to provide accurate interpretation. Due care should be given to prepare for the special terminology which may occur in a case. This is especially important when expert witnesses are called.

5.12 FEES

An interpreter should negotiate a fair and reasonable schedule of fees with lawyers and/or a Court system. The interpreter should never accept gratuities or gifts of any kind from the parties involved in a case.

5.13 CONTINUING EDUCATION AND DUTY TO THE PROFESSION

Interpreters are responsible for elevating the standards of performance of the interpreting profession and should seek to maintain a professional relationship with all legal and court personnel. Therefore, interpreters are responsible for ongoing professional development and for keeping informed of matters that can improve their performance. Interpreters have the responsibility to pursue ongoing education regarding the legal system and interpreting in legal settings.



6.0 ROLES

Interpreters in legal settings assume specific roles and their respective responsibilities flow from those roles. Given the nature of working with members of a cultural/linguistic minority, it is critical that Deaf witnesses, victims, and defendants are comfortable with and able to understand the interpreting team with whom they are working. Lawyers, courts and interpreters

must ensure that Deaf individuals involved in legal matters are satisfied that the interpreters are qualified prior to working in that setting.

6.1 SPECIFIC 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. Depending on the number of Deaf people involved in the matter, their linguistic needs (see Section 2.4 for discussion of the use of Deaf interpreters) and the type of event, one interpreter will likely not be sufficient (Mathers, p. 82).

6.2 COURT APPOINTED PROCEEDINGS INTERPRETER(S)

Interpreters in these roles swear an oath to interpret accurately, and interpret all aspects of the court process. They provide interpretation of all parties, and ideally, do not provide interpretation between a Deaf client and his or her lawyer.

6.3 TABLE INTERPRETER(S)

A table interpreter facilitates communication between lawyers and Deaf clients. The table interpreter is not sworn in and does not interpret court proceedings.

Regardless of the role assumed by the interpreter, care and attention must be given to the sight lines. For example, interpreters need to face Deaf parties, and they also do not want their back to a judge. Sight lines will need to be reviewed prior to testimony, and if the court is videotaping the court appointed interpreters at trial, then attention must be given to creating a record that clearly shows both Deaf party and interpreter(s) and does not capture the conversations that are privileged between Deaf parties, their lawyer and the table interpreter. Flexibility on the part of all parties can create situations that are effective. For example, at times Crown and defense lawyers may wish to switch tables in order to allow a Deaf accused visual access to a Deaf witness during testimony or to seek an alternate courtroom that has better sight lines.

6.4 ARREST PROCESSING OR PRE-TRIAL PREPARATION

If an interpreter is involved during the arrest or the pre-trial phases of a case s/he should not function as the court appointed interpreter for the trial. This is done to protect the integrity of the judicial proceedings during the court phase and to avoid any accidental contamination that may occur due to an interpreter's familiarity with the case.

An interpreter must carefully assess the legal situation at hand and determine if s/he is qualified to provide service to consumers in this setting. If upon reflection s/he determines that s/he is not

the most appropriate interpreter for the setting, s/he should feel comfortable stating, "I'm not qualified or able to interpret for this matter." Additionally, if an interpreter begins an assignment and realizes s/he is not qualified, s/he should request the Court to replace her/him as soon as a qualified interpreter is available.

The interpreter should be familiar with the workings of the judicial system in order to effectively negotiate appropriate working conditions and to ensure effective interpretation can take place.

6.5 MONITOR INTERPRETER

There are occasions when courts or lawyers will hire an interpreter to monitor the interpreting, and to advise when there are challenges that arise in the interpretation. This is a practice that is used more frequently in the USA than Canada. When a monitor interpreter is selected, the role requires advanced skills and knowledge of interpretation and translation principles, the ability to discern what is accurate and effective interpretation, as well as the diplomacy needed to work with courts and personnel when bringing errors to the attention of the court.

6.6 INTERPRETING COORDINATOR

If a case involves multiple Deaf parties and/or covers an extended period of time, an interpreter coordinator may be contracted to secure qualified interpreters and to arrange for appropriate working conditions. The coordinator may advise the Court about the interpreting process, related procedures, and the accuracy and effectiveness of interpretation in order to ensure the recorded proceedings are correct.

The coordinator does not provide any direct interpreting services. When the interpreter functions in this role, it is expected that s/he will follow the ethical guidelines and protocol spelled out by the AVLIC *Code of Ethics Guidelines for Professional Conduct* and this document, as well as the interpreter protocols set out by the Ministry of the Attorney General.

AVLIC suggests a qualified interpreter coordinator as being able to demonstrate the following knowledge, skills and experience:

- (a) a superior level of ASL-English interpreting skills as demonstrated by AVLIC Certificate of Interpretation and a minimum of five years experience interpreting in legal settings;
- (b) sensitivity and respect for the history and cultural norms of the communities involved and the dynamics of cross-cultural interactions;
- (c) formal study of the legal system;
- (d) an understanding of and the ability to apply appropriate protocol and rules of behaviour in legal settings;
- (e) a strong foundation of legal language;
- (f) ability to be assertive when dealing with consumers and legal personnel, coupled with professional behaviour and ability to work in and with teams;
- (g) ability to monitor and analyze the accuracy of interpretation;

(h) ability to coordinate teams and negotiate contracts.

6.7 INTERPRETING CONSULTANT

A Deaf or hearing interpreter sometimes serves as a consultant to the defense or prosecuting lawyer, providing information regarding strategies for successful communication with Deaf parties, including linguistic choices; ways to pose legal questions which can be effectively interpreted; and basic awareness of cultural issues.

This consultant/consultant team may also interpret for private lawyer/consumer communication, e.g. preparing a witness in advance of testimony or private consultation with a Deaf individual during the legal process.

The involvement of an interpreter consultant is extremely important in (a) serious cases, (b) when the Deaf party has limited mastery of formal language use in English or ASL, and/or (c) when the Deaf party has limited knowledge of the majority cultural norms.

Great sensitivity should be demonstrated regarding this role. Due to the position of power held by an interpreter and the great potential for misunderstandings regarding the role of the interpreter, AVLIC encourages the involvement of a Deaf community liaison and/or having a Deaf community member jointly fill this role.



7.0 INTERPRETER PREPARATION

It is helpful for interpreters to prepare for all assignments, regardless of setting, and legal discourse requires this same standard. There are a number of tools available to interpreters that can help them to research relevant information, such as criminal charges, specific medical or psychological conditions, testing process, descriptions of medications and/or illegal drugs, and so on. It is also helpful for interpreters to have a contextual frame of reference for any legal matter in order to provide the most effective interpretation.

During the consultation process with lawyers and justices prior to writing this document, two schools of thought were noted on the nature of preparation.

One approach to preparation reflects the belief that interpreters should read witness statements and transcripts of preliminary inquiries, in order to be fully prepared to provide accurate and effective interpretation. Interpreters in support of this option believe it is incumbent on the interpreter not to be unduly influenced by this preparation.

A second option reflects the belief that it is imperative that interpreters not be “contaminated” by prior exposure to the specific details of a case. In the same way one should not interpret the police investigations and the trial, some interpreters feel they should not read transcripts of depositions or preliminary inquiries lest their neutrality be unduly influenced. This is not to imply that preparation is unnecessary, but rather that they would verbally prepare with lawyers and consumers, as opposed to reading detailed transcripts of previous testimony.

AVLIC recognizes the merit in both approaches 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.

7.1 PREPARING FOR TEAM WORK

Interpreter teams function best when they have had explicit conversations about the nature of how they will work together in order to achieve a cohesive and successful interpretation. Russell (2008, 2011) identifies several questions that can guide such conversations, drawing from data from interpreter preparation conversations. (See Appendix A for the complete article).

7.2 CONSISTENCY IN SERVICE

The NCIEC Best Practices document (2009) supports the best practice of promoting consistency and continuity in service provision. This means that whenever possible the same interpreter(s) should be used throughout a legal matter as opposed to bringing in new interpreters part way through a trial or an examination for discovery. The rationale for this practice is built on the idea that interpreters will engage in preparation for matters and that during an event, the knowledge gained will aid them in providing the most accurate and effective interpretation possible. Prior to accepting a lengthy legal assignment, interpreters should consider their ability to interpret the entire matter.

While Canada does not yet have the experience of Deaf people serving as jurors, this frequently occurs in the USA. In such settings, the same team of interpreters hired to interpret for the Deaf juror during a trial should remain the same team assigned to jury deliberations, again, building on their knowledge of the trial in order to provide the most accurate and effective interpretation.

Likewise, NCIEC suggests that Deaf witness testimony be handled by the same interpreter(s). Given the nature of giving direct evidence and then being cross-examined, an interpreter that is familiar with the context will provide the most effective interpretation.

NCIEC states that depositions, known as “examinations for discovery” in the Canadian legal system, are legal proceedings that take place outside a courtroom, and function to take testimony from a person under oath. This testimony can be used in future legal proceedings, and as such it is best practice to use the same interpreter(s) in order to offer consistency.



8.0 INTERPRETERS AS WITNESSES

8.1 EXPERT WITNESSES

In legal proceedings, lawyers sometimes call expert witnesses to testify about specialized areas of knowledge. In cases involving Deaf litigants the expert witnesses are often called to testify

regarding American Sign Language in general; about a particular individual's linguistic abilities using English or ASL; Deaf culture in general, as well as a particular individual's cultural identity and life experiences, and the interpreting process as it relates to interpreting in legal settings. While we recognize it is the judge who determines if one is qualified to testify as an "expert" on a given topic, it is the responsibility of the witness to inform the Court that s/he is not qualified to answer a particular question or that a question is outside of her/his area of expertise. In this way, the witness avoids misrepresenting her/himself in any way.

Individuals who have limited exposure to Deaf persons often assume a sign language interpreter is an expert in all these areas. 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. If a lawyer presses for a linguistic analysis or other information for which the interpreter does not have additional expertise, the interpreter should feel comfortable stating, "I am not qualified to answer that question."

It is important to note that if an interpreter is providing expert testimony in a specific case, then it is not appropriate for her/him to interpret for those court proceedings.

8.2 INTERPRETER AS WITNESS

In legal proceedings, lawyers occasionally call on interpreters to testify as to whether they provided interpreting services for a particular individual and the content of the interpreted interaction. In the event of testimony regarding "prior service," the *AVLIC Code of Ethics and Guidelines for Professional Conduct* cannot be used as an argument to avoid testifying because it has no legal standing. A response using the *AVLIC Code of Ethics and Guidelines for Professional Conduct* as a defense to not replying to the questions may result in an interpreter being viewed as an uncooperative witness.

If the event being questioned took place in the presence of a lawyer who is covered by legal privilege, the communication is considered confidential and an interpreter is not required to answer questions related to that event. If the event being questioned took place outside the above circumstance, the interpreter is legally required to respond to the questions posed.

In the event an interpreter is asked to testify about the provision of prior service there are considerations that may make it difficult for her/him to testify. These include the fact that the frequency and diversity of interpreting assignments make it difficult to recall a specific case or specific details, and that interpreters do not keep notes on the communicated events. Also, the process of interpreting is so cognitively demanding that it makes it difficult to retain details over a long period of time.

For the above reasons, interpreters should request videotaping of non-privileged interactions where the accuracy of interpretation can be called into question. The videotape may then be introduced as evidence in court, thus sometimes avoiding the need for the interpreter to testify.



9.0 QUALIFYING AN INTERPRETER

"Qualifying" refers to the interview process in which the Court determines if the interpreter possesses the knowledge, skills, and credentials necessary to meet the standards of the law to interpret the matter before the court. This may occur at the commencement of proceedings where the interpreter takes the witness stand and responds to questions posed by either lawyer and/or the judge. The judge, the lawyers, or the interpreter may initiate the process of qualifying 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.

If an interpreter has difficulty in articulating her/his role and function in a manner that allows others to understand the interpreting process and feel confident about the outcome, rehearsing the interview process may be helpful for interpreters. By practicing with a colleague, the interpreter can learn to avoid confusing the Court, and can strengthen an interpreter's ability to communicate information in a professional, clear, concise, and confident manner.

Interpreters are encouraged to develop a legal portfolio and present it to the Court. A portfolio should include a resume, evidence of certification, evidence of experience in legal settings, the types of legal settings, and amount of time spent in each setting (for example, on average provide services for Family Court x times per year; provide service for Criminal Trial Division X times per year; and typically provide interpretation for settings that involve legal discourse 2-3 times per week, etc.), and proof of education.



10.0 PROTOCOL

10.1 PROTOCOL FOR COURT APPOINTED INTERPRETERS

The following statements outline appropriate protocol for Court appointed interpreters and is consistent with interpreter guidelines as suggested by Ministries of the Attorney General across Canada.

- Interpreters are expected to appear on time and report upon arrival to the court clerk or other designated official.
- When asked, interpreters should provide their correct name and the languages to be interpreted to the clerk of the court.
- Interpreters should be sworn in or affirmed prior to interpreting legal proceedings. When reporting to the clerk of the court, interpreters should verify the wording of the oath that s/he would be most comfortable in swearing or affirming, for example, "interpreting" versus "translating," "American Sign Language" versus "the sign language."
- Interpreters should be prepared to respond to a qualifying examination by the Judge and to present evidence of education, interpreter experience, special training for work in legal settings, etc.

- Interpreters should not leave the courtroom until the proceedings are officially terminated or they are officially excused.
- Interpreters should develop a compendium of standard phraseology for handling interpretation of often-repeated portions of proceedings (e.g., Witness oath, Police Caution, etc.).
- If an interpreter believes that the quality of her/his interpretation is faltering due to fatigue, the parties/Court should be informed and short breaks taken; if the interpretation is faltering for reasons other than fatigue, the court also needs to be advised in order to resolve the challenges.
- Interpreters should be familiar with the legal system and understand the purpose of standard questions posed to both witnesses and counsel in order to provide accurate and effective interpretation.
- If an interpreter is unfamiliar with a lexical item or phrase, the interpreter should inform the Court of this fact. With the Court's permission, the interpreter may inquire further to determine the exact meaning of the lexicon/phrase, avoiding lengthy dialogue with the witness.
- To avoid the appearance of prejudice, the Court appointed interpreters should avoid unnecessary discussion with counsel, the parties to the action, criminal defendants, witnesses, other interpreters involved in the case, and/or other interested parties inside or outside of the courtroom. This includes taking great caution when breaks occur because even though interpreters may not be discussing case-related information, this behaviour could be perceived as inappropriate.
- An interpreter must never question erroneous facts posed in questions to witnesses. Conversely, the interpreter must never correct the testimony of witnesses, even if errors or misstatements are obvious. An interpreter must never infer a response from the witness. For example, if the witness is asked to clarify her/his prior answer regarding direction or place, the interpreter should pose the question as asked and not volunteer what the interpreter thought the witness meant.
- Interpretation should be conducted in first person.
- Interpreters should use consecutive and simultaneous interpretation as appropriate, considering that consecutive interpretation is likely to be more accurate for dealing with direct witness testimony (Russell, 2000).
- When waiting for the matter involving a Deaf person to be called, there are times when Deaf consumers will ask interpreters to interpret while sitting in the gallery of the court. The interpreter will need to use strategies that are culturally and linguistically appropriate (signing small as to not distract the court, using summary form, and at times, not interpreting at all, in order to conserve their energy to interpret for the matter for which they are booked) and that meet the needs of the situation.

If a serious communication problem arises between the interpreter and the Deaf party to the case, the interpreter should bring the matter to the immediate attention of the Court who may then allow time to resolve the problem. If no resolution can be reached, the interpreter should be replaced.

10.2 PROTOCOL WHEN INTERPRETING FOR A SPECIFIC LAWYER

While interpreting at counsel table, speak only loud enough to be heard by the hearing parties/counsel and sign in a way to be visible only to the Deaf defendant/counsel.

- If a serious communication problem arises between interpreters and the Deaf party, the interpreters should bring matters to the immediate attention of counsel who may then request that the Court allow time to resolve the problem. If no resolution can be reached, the interpreters should be replaced.
- To avoid the appearance of prejudice, interpreters working for a specific lawyer should avoid unnecessary contact or discussion with opposing counsel, other parties to the action, other defendants/witnesses, interpreters for other parties, and/or the court, and other interested parties inside or outside of the courtroom. This includes taking great caution during breaks because even though interpreters may not be discussing case-related information, this behaviour could be perceived as inappropriate.
- In matters with multiple Deaf parties, it may be necessary to ensure that Deaf parties present in the courtroom cannot see private conversations between counsel and Deaf individuals.
- If a party in the case who is Deaf uses dialectal or idiosyncratic signs which the lawyer-specific interpreter believes may be unfamiliar to the Court appointed interpreters, the lawyer-specific interpreter should inform the lawyer for whom s/he is working and ask for permission to advise the Court appointed interpreters.
- Interpreters at Defense and Crown tables should monitor the accuracy of interpretation provided by the Court appointed interpreters and notify counsel of any substantive errors. Agreement should be reached between the interpreters and lawyers regarding how corrections will be brought to the attention of the Judge so that the record can be corrected in the event this is necessary. Typically, if one interpreter notices a significant error in interpretation, s/he brings the error to the attention of the lawyer for whom s/he is interpreting, knowing that lawyer will decide if and how to correct the error noted.

10.3 PROTOCOL FOR INTERPRETER COORDINATORS

The interpreter coordinator, whether she/he is Deaf or hearing, does not provide direct interpreting services for the matter in which s/he works as a coordinator. The following statements outline appropriate protocol when working as a coordinator.

- Reports directly to the Judge, court clerk, or identified court personnel;
- Provides the names of qualified interpreters who may become Court appointed interpreters in a specified case;
- Should negotiate appropriate working conditions, including but not limited to: the hiring of teams interpreters for lengthy proceedings; the hiring of Deaf interpreters as needed to ensure full access to interpretation and the proceedings; appropriate backdrops, lighting, microphones; fair wages including cancellation fees; appropriate breaks to avoid interpreter fatigue and/or injury;

- Monitors the work of court appointed interpreters and notifies the court of any serious concerns or errors in interpretation;
- Provides feedback to the court interpreters regarding strategies that can increase the accuracy of communication exchanges.



11.0 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. Numerous examples have focused attention on courtroom proceedings, but the principles contained in this document can be applied to all settings within the legal system and to all areas involving 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.



REFERENCES

- Belliveau, G. (1983). Qualifying the interpreter. In Witter-Merithew, A. (1991) *Interpreting in the America Judicial System*. Northridge, CA: CSUN (unpublished document), Unit H, 484-485.
- Belliveau, G. (1989). Testifying to the prior provision of interpretation services. In Witter-Merithew, A. (1991) *Interpreting in the America Judicial System*. Northridge, CA: CSUN (unpublished document), Unit H, 486-488.
- Belliveau, G., and Mills, K. (1991). Special considerations for team interpreting. In Witter-Merithew, A. (1991) *Interpreting in the America Judicial System*. Northridge, CA: CSUN (unpublished document), 448- 458.
- Clark, T. & Marx, A. (2010). *Recommended guidelines for the use of Deaf intermediary interpreters*. Document prepared by the Judicial Council of California, Administrative Office of the Courts, Court Interpreters Program.
- De Jongh, E.M. (2008). Court interpreting: Linguistic presence v. linguistic absence. *Florida Bar Journal*, 82 (7), 21- 32.
- Hanh, P.H.(2006). *Notetaking in consecutive interpreting*. Retrieved from: <http://www.scribd.com/doc/42353314/Note-taking-in-Consecutive-Interpreting-1>
- Janzen, T. (2005). Introduction to the theory of practice of signed language interpreting. In Janzen, T. (Ed.), *Topics in sign language interpreting*. Philadelphia: John Benjamins, 3-24.
- Mathers, C. (2009). *The deaf interpreter in court: An accommodation that is more than reasonable*. Document prepared for the National Consortium of Interpreter Education Centres. Retrieved from: <http://diinstitute.org/wp-content/uploads/2008/10/Deaf-Interpreter-in-Court.pdf>
- Mikkelson, H. (2005). Teaching consecutive notetaking. *ATA Chronicle* XXXIV.11, 23-27.
- NAJIT (2006). *Modes of interpreting: Simultaneous, consecutive & sign translation*. Retrieved from: http://www.najit.org/publications/Modes_of_Interpreting200609.pdf
- NAJIT (2007). *Team interpreting in the courtroom*. Retrieved from: http://www.najit.org/publications/Team%20Interpreting_052007.pdf
- Napier, J. (2011). Here or there? An assessment of video remote signed language interpreter mediated interaction in court. In Braun, S. & J. L. Taylor (Eds.), *Videoconference and remote interpreting in criminal proceedings*. Guildford: University of Surrey, 145-185.

National Consortium of Interpreter Education Centres (2010). *An annotated bibliography of resources of interest to ASL legal interpreters*. Retrieved from: http://www.interpretereducation.org/wp-content/uploads/2011/06/Legal-Interpreting-Bibliography_NCIEC2010.pdf

National Consortium of Interpreter Education Centres (2009). *Best practices: American Sign Language and English interpretation within legal settings*. Retrieved from: <http://diinstitute.org/wp-content/uploads/2009/07/Best-Practices-Legal-Interpreting.pdf>

R v. D.T., [2011] OJ No 1874 (QL)

R. v. Lucas, [2007] OJ No 5532 (QL)

R. v. Wright, [2006] OJ No 0535 (QL)

Roberson, L, Russell, D. & Shaw, R. (2012). American Sign Language/English interpreting in legal settings: Current practices in North America. *Journal of Interpretation*.

Russell, D. (2003). *Interpreting in legal contexts: Consecutive and simultaneous interpretation*. Burtonsville, MD: Linstock Press

Russell, D. (2005). Consecutive and simultaneous interpreting. In T. Janzen (Ed.), *Topics in signed language interpreting* (pp. 135-164). John Benjamins: Amsterdam.

Russell, D. (2008). Interpreter preparation conversations: Multiple perspectives. In S. Hale & R. Russell (Eds.) *Studies in interpretation, volume 7: Issues in legal interpretation* (pp. 123-147). Gallaudet Press: Washington, DC.

Russell, D. (2011). Team Interpreting: Best Practices. Manitoba Association of Visual Language Interpreters, Fall Newsletter.

Shaw, R. (2007). *Meaning in context: The role of context and language in narratives of disclosure of sibling sexual assault*. Ph.D. dissertation, Union Institute and University, United States -- Ohio.

Witter-Merithew, A. (1987). Claiming our destiny: Part I, *VIEWS*, Winter. RID Publications: Silver Spring, MD

Witter-Merithew, A. (1988). "Claiming our destiny: Part II", *VIEWS*, Spring. RID Publications: Silver Spring, MD

Witter-Merithew, A. (1991). *Interpreting in the American Judicial System*: Unit D: pp. 150-151; pp. 448-458. (unpublished document).

Witter-Merithew, A. (1991). The development, use and function of legal language. In *Interpreting in the American Judicial System: Unit 2*. pp. 30-36; (unpublished document).

- Witter-Merithew, A. (1992). Phases of Work. In *Interpreting in the American Judicial System: ASL/ English*. (pp. 7-8). Unit G: Team Interpreting: Types, Function, Roles and Protocol and Teams with Deaf and Hearing Interpreters, (unpublished document, copyright held by RID/CSUN).
- Witter-Merithew, A. (1991) Cultural and linguistic analysis. In *Interpreting in the American Judicial System: Unit A*. pp. 102-107; (unpublished document).
- Witter-Merithew, A. & Hartman, J. (1981). Testifying in court: Suggestions for interpreters. In Witter- Merithew, A. (1991). *Interpreting in the American Judicial System: Unit H*. pp. 479-483 (unpublished document)



Debra Russell

(Reprinted with permission from the Manitoba Association of Visual Language Interpreters, Fall Newsletter, 2011)

Has team interpreting changed over the past ten years? A few years ago, I prepared an article designed to help interpreters ask questions that would structure their conversations in order to prepare themselves for teamwork. The material stemmed from workshops that I had taught, along with ideas and experiences from Karen Malcolm and Risa Shaw. When asked to write about team interpreting for this newsletter, it seemed that the previous material might serve as a springboard, and I have combined it with new data derived from looking at the kinds of written conversations that interpreters hold while working together.

Team interpreting refers to interpreting situations where two or more interpreters are working together with the goal of creating ONE interpretation, capitalizing on each other's strengths, and supporting each other for consistency and success. At the time of the original article, teams were often composed of interpreters who were both hearing. However increasingly, we see Deaf and non-deaf interpreters working in teams. One example of this occurred during the International Congress on the Education of the Deaf (ICED) held in July 2011 in Vancouver BC. At that congress, some forty-four interpreters came together to work as teams providing ASL-English interpretation and International Sign. The International Sign interpreter teams had Deaf and non-deaf interpreters, and depending on the language preferences of the Deaf interpreter, their team interpreter may have been feeding in ASL, BSL, Auslan, and so on. With any team it is important to have the conversation about how to work together, and when creating teams composed of Deaf and non-deaf interpreters, it is even more important to talk about the work, as our interpreting experience, along with our linguistic and cultural knowledge, may be very different.

A foundational premise in team interpreting is that all team members are responsible for the success or failure of the work. This is an important aspect when building team practices, in that it forms the foundation for sharing preparation work, actively supporting each in producing a cohesive interpretation, and managing any problems that may arise during the work. However when teams are new to working with each other, these practices may need to be honed. The following information may enhance the experience of teaming.

Pre-Assignment Preparation:

When asking interpreters about their most successful team interpreting experiences, it would appear that the success came from a shared guideline that "anything is talkable". However the challenge today may be that hearing interpreters are more comfortable having these conversations in English, and when working with Deaf interpreters, they must find new ways to talk about the work in ASL. The idea that "anything is talkable" may be a new notion for those who view teaming preparation sessions to involve only a discussion of how long each person will interpret and compensation considerations. However the concept fits nicely with our AVLIC *Code of Ethics and Guidelines for Professional Conduct* and the AVLIC *Dispute Resolution Process*.

Some of the following topics may be reviewed prior to an assignment, others may be discussed at an agreed upon time after the assignment. When working with colleagues that you have little experience with, it may take more time to hold these discussions, but inevitably, the time will be worth it. There are plenty of options for holding the face-to-face conversations via videophone or Skype, well before the assignment. When preparing with colleagues that you frequently work with, the time factor will be less, but it is still important to check in with each other on many of these issues. The following areas might guide your conversations:

1. Can you describe your interpreting process and style, including your:
 - interpreting model (how do you see interpreting – for example do you see interpreting as a meaning-based task, or as a task where lexical transcoding reveals the source message? If working with a Deaf interpreter, do they prefer to receive the source language in ASL or in more English-like structure?);
 - model of teaming (what strategies do you use to sustain active involvement in the interpreting when in the support role vs. the active role? What is your vision of ideal team support?);
 - processing time (do you like to wait for a complete thought? Do you typically start too soon and want your team interpreter to cue you to hold back?);
 - interpreting strengths and what you may need help with;
 - audience assessment (language preferences, pre-knowledge of consumers);
 - how and when to offer feeds that are effective for you (words, chunks, phrases, sentences) and whether to feed in ASL or English;
 - dominant ear or eye issues that affect positioning;
 - what decision-making process you use when determining whether or not to use a feed;
 - preferences for physical touch and distance.
2. What signals will you use for the assignment? Who will slow down or stop the speaker/signer, and how, if necessary? How will we signal the deaf consumer to let them know we have switched voice interpreters? Who will check with consumers about whether the signals are suitable for them? What signals will each interpreter use to request a feed?
3. When will turn-taking occur? How will we switch? How will we signal each other if we want the team member to take over prior to the agreed-upon time frame? If working within larger teams (e.g.: multiple services - LSQ/ASL/International Sign), can the switches be coordinated to reduce the visual distraction? What signal will work well in the setting? Who will be responsible for timekeeping?
4. Who will begin interpreting and who will begin monitoring the work, and why?
5. Feedback: Do you want encouragement during the assignment? Do you want feedback during the interpretation? Is there something that you are working that you would like me to note during the interpretation? Will it distract you if I take notes? When monitoring the interpretation for completeness and accuracy, what features do you tend to look for, and why? (I will come back to this area in order to share some

new data about the kinds of notes used between interpreters)

6. What preparation work needs to occur with consumers? Will the preparation tasks be shared or taken on by one interpreter? Who will ask for the preparation?

One trend I am seeing in my work is that interpreter coordinators are using Dropbox as a tool where presenters can deposit presentations, articles and papers, in order to make the material accessible to the interpreters. These tools are very useful in that the materials are always available to the team if they have internet access, the materials do not have to be downloaded to one's computer or printed, and if WIFI is available while interpreting, interpreters can be viewing the presentation via their iPad. The preparation materials can be so helpful in helping us work through accents, complicated content, and lead us to other sources that can aid us in understanding the material.

One of the other challenges that I see on teams is that some interpreters take the preparation seriously, and review the material in advance and others choose not to do so. These decisions impact the team dynamics and the overall quality of the work. While coordinating the large team at ICED, we had very positive feedback from consumers who said it was obvious when the interpreters had chosen to prepare and that shaped how they viewed the team. The same consumers indicated that they could also tell when interpreters were not well prepared and that also influenced their perceptions about the professionalism of those individual interpreters.

Finally, a tip from a cherished colleague: View the YouTube clips, not just the PowerPoint presentation!

7. What strategies will be used to deal with conflict? When will we debrief after the assignment?
8. Other issues: clothing/travel/parking/safe walks/meal breaks, etc.

Pre-Conference Between Interpreters And Consumers

While we prepare as teams, we also want to think about how we prepare with the consumers we will work with in a given assignment.

1. Does the person(s) you are meeting with know how to use interpreting services? If not, who will explain how to work effectively with the interpreters?
2. How will introductions be made? Is there a need to explain the use of simultaneous/consecutive interpreting within the assignment? If we plan to use notes with each other, how should this be explained to consumers? How will the notes be disposed of post-assignment?
3. What is the purpose/goal of the interpreted interaction? For conference work, what are the central messages the consumers hope to leave with the audience? If using audiovisuals, how will lighting be handled? Specific questions that arise from the preparation the team has done with the presenter's materials?
4. How should the interpreters signal you when we need to interrupt you, need time to complete the interpretation, or need to switch interpreters?

During the Interpretation

During the interpretation, it can be useful to communicate about the following issues:

1. Is there a need to adjust the volume of the spoken interpretation, or the signing size/style of the signed interpretation?
2. Do the time frames or processes need to be adjusted as the assignment proceeds? For example, do we need to split the process so one interpreter performs the ASL to ENG and the other interpreter performs the ENG to ASL, in order to enhance the work?
3. If the information that was fed was not used immediately, it may mean:
 - the feed was not heard (does the interpreter need a visual or tactile cue to signal that a feed is coming?);
 - the volume was too low, or the signing not seen;
 - the information may be incorporated later.

But, ultimately, the decision as to if, how, and when the feed will be used is the active interpreter's.

Notes as a Communication Tool

Over the years, I have often written notes to my teammates, when it was appropriate. Recently I asked several teams if I could review any written notes they used on an assignment. Six interpreters participated, offering their raw notes. Several themes emerged when looking at the notes that may be helpful to other teams looking for ways to enhance their interpreting work.

For example, all teams used the notes as a way of communicating positive feedback to each other about the interpretation. When interviewed after, it was clear that these notes had a further benefit as it strengthened the professional relationship between the interpreters. For example:

“Great affect and loved the word choices that spoke to the historical references to Shakespeare”

“Processing time – about 8 seconds – allows you to produce ASL grammar suitable for this consumer.”

“Great incorporation of signs from audience questions”

“Internalized passivity – great that’s a GREAT way of describing it. You are so accurate and effective today – clearly awake now!”

Such examples show the team investing in their professional relationship, noting positive elements within the work and bringing the features to the attention of their teammate. Further, the teams used notes to draw attention to language and interpretation patterns that may be a challenge for the other interpreter, for example:

“I notice that you have started each sentence with “so” and are using “and” to connect all of the thoughts - I wonder if you can pause more between thoughts?”

“Tell you later – suggest adding “frustrate” or other sign to deepen meaning and adjust packing for emphasis – I’ll follow up with you on break about this.”

“SL – research shows TL: research “proves” – never proves really; impact for audience that knows about research; what will they think about the Deaf consumer – let’s talk this through...”
“ Quay – pronounced KEY not qw”

The notes also showed examples of where the interpreters communicated about decisions that needed to be made, for example:

“I expect I’ll miss many of the names of who is speaker when the Deaf person shadows the audience and I don’t think its effective to interrupt and clarify. Your thoughts?”
“I am tiring – can we move to 15 minutes instead of 20?”

Finally, the notes contained practical information, like names of participants around a table, and notes of names signs if the interpreter’s were less familiar with the Deaf participants, timing of starts/ends of turns, and references to preparation to be read in advance of the next day.

The notes were professional in tone, had the occasional diagram or sketch on them, and would have been viewed as “interpreter working notes” if consumers had asked to see them prior to being disposed of post-assignment.

Post-Assignment Topics

The post-assignment conversation can be an opportunity to further enhance the team experience and to build professional relationships with your colleagues. You may wish to discuss the following, which may include reviewing the notes exchanged between the team, and/or talking about these three areas:

1. Review what specific features contributed to a successful interpretation. Were there features that hindered an effective interpretation?
2. What worked well; what was comfortable for you; what would you change next time, and why? What did your teammate do that you particularly appreciated?
3. Is there anything that needs to be resolved between team members? The idea here is that if you feel the need to go and tell someone else about your teammate, you need to talk to your teammate first. If that isn’t successful you might seek advice from a respected colleague and/or mentor. Is this a concern to be pursued, or is this something you can let go of in order to maintain relationships with your colleagues?

One of the keys to effective teamwork is communication, and these tips can help you structure your conversations toward the goal of providing successful interpretation within a team context, and building a professional community of interpreters engaged in thinking and talking together.



APPENDIX B: CHECKLIST FOR HIRING INTERPRETERS WHEN WORKING WITH DEAF PEOPLE

Debra Russell and Gary Malkowski

Definitions:

Interpreter: ASL-English Interpreters are qualified professionals who have at least 3 years of full time study as an interpreter and hold membership in their national and regional professional organization. In addition, Deaf Interpreters are also used in order to address the complex linguistic and cultural needs of some Deaf consumers. For example, there are Deaf people who have moved from other countries and may be fluent in another signed language (for example, Kosovo Sign Language, Japanese Sign Language, and so on) or they may not be familiar with any formal signed languages, relying on visual gestural systems. In these contexts, a Deaf interpreter should be included on the interpreting team. There are other circumstances that require a Deaf interpreter when working with Deaf minors or Deaf people that have:

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

A Deaf interpreter can more accurately assess the interpreting needs of a minor, taking into account age, educational and life experiences, exposure to American Sign Language, emotional state, and familiarity with communicating via an interpreter.

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 Federal Government Screening Tool) they *are not* as comprehensive as AVLIC's national certification and should not be deemed as equivalent. As well, by hiring an AVLIC member versus a non-member, there is protection afforded to consumers through the AVLIC *Code of Ethics* and *Dispute Resolution Process*. 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.

Captioning: Communication Access Real Time Translation (CART) providers provide captioning services in English on the screen. This is sometimes offered as a supplement to interpreting and other times it is the preferred communication option of the person. As with any service provide, AVLIC recommends that organizations check the qualifications and training of the service providers, in order to obtain the highest quality of service available.

As a system:

- ✓ Does your work place have a policy in place regarding the Duty to Accommodate Deaf and Hard of hearing people in the contexts in which you work?
- ✓ Does your work place have established protocols and procedures for securing professional interpreting services?
- ✓ Does your place of employment provide employee awareness training for working with deaf or hard of hearing individuals?
- ✓ Are there processes in place for deaf and hard of hearing people to file a complaint and/or appeal when communication supports and interpreting services have not been provided in accordance with the Duty to Accommodate?

Before events take place with Deaf people:

- ✓ Have you determined whether the person uses American Sign Language or another signed language (ex: British Sign Language, Mexican Sign Language, Punjabi Sign Language)?
- ✓ Have you contacted the resources/organizations locally that can provide professional and impartial interpreting services and have you check the credentials of the interpreter (ex: AVLIC Member, trained, certification)? If the person is hard of hearing and prefers captioning support, have you contacted the service that can provide professional and impartial captioning services?
- ✓ Does the referral service have a screening process in place to ensure that sign language interpreters or captionists are qualified to work in legal settings?
- ✓ Do you plan accommodation needs ahead of time for meetings? Some access resources require advance planning, ex: public meetings, hearings, etc.

During interviews with Deaf participants:

- ✓ Do you have a policy/procedure in place to videotape/record all interviews with deaf or hard of hearing individuals who use sign language interpreters or captionists?
- ✓ Have you reviewed all written materials with the deaf or hard of hearing individuals in order to ensure that they are able to access and understand these materials?
- ✓ Do you monitor employee interaction to ensure that deaf or hard of hearing individuals are not being marginalized, isolated, or treated with disrespect? Keep in mind that legal settings communication is often spoken and all parties need to be sensitive considering those with hearing loss when accessing information.

After interviews:

- ✓ Do you have a policy in place to handle needs or complaints pertaining to accommodation requests for those who are deaf or hard of hearing?
- ✓ Have you created a tracking system for logging all efforts for accommodation including grievances and follow-up efforts?



APPENDIX C: AVLIC CODE OF ETHICS AND GUIDELINES FOR PROFESSIONAL CONDUCT

The Association of Visual Language Interpreters of Canada (AVLIC) expects its members² to maintain high standards of professional conduct in their capacity and identity as an interpreter. Members are required to abide by the Code of Ethics and follow the Guidelines for Professional Conduct as a condition of membership in the organization.

This document articulates ethical principles, values, and standards of conduct to guide all members of AVLIC in their pursuit of professional practice. It is intended to provide direction to interpreters for ethical and professional decision-making in their day-to-day work. The Code of Ethics and Guidelines for Professional Conduct is the mechanism by which the public is protected in the delivery of service.

VALUES UNDERLYING THE CODE OF ETHICS & GUIDELINES FOR PROFESSIONAL CONDUCT

AVLIC values:

1. **Professional accountability:**
Accepting responsibility for professional decisions and actions.
2. **Professional competence:**
Committing to provide quality professional service throughout one's practice.
3. **Non-discrimination:**
Approaching professional service with respect and cultural sensitivity.
4. **Integrity in professional relationships:**
Dealing honestly and fairly with consumers and colleagues.
5. **Integrity in business practices:**
Dealing honestly and ethically in all business practices.

Members are to understand that each of these core values and accompanying sections are to be considered when making ethical and professional decisions in their capacity and identity as an interpreter. These values are of equal weight and importance.

1. **PROFESSIONAL ACCOUNTABILITY: INTERPRETERS ACCEPT
RESPONSIBILITY FOR ALL PROFESSIONAL DECISIONS MADE AND ACTIONS
TAKEN.**

1.1. CONFIDENTIALITY

1.1.1 Members will respect the privacy of consumers and hold in confidence all

² Members, for the purpose of this document, refer to both Deaf and hearing individuals who hold either Active or Supporting membership.

information obtained in the course of professional service. Members may be released from this obligation only with their consumers' authorization or when ordered by law.

- 1.1.2 Where necessary, a member may exchange pertinent information with a colleague in order to provide consistent quality of service. This will be done in a manner that protects the information and the consumers.
- 1.1.3 Members need to be aware that other professional codes of conduct may impact upon their work. In such circumstances, members will make appropriate professional decisions and conduct themselves in a manner befitting the setting and the profession.

1.2 PROFESSIONAL CONDUCT

- 1.2.1 Members will hold the needs of consumers primary when making professional decisions.
- 1.2.2 Members shall recognize that all work undertaken by them on an individual basis, whether pro bono or paid, will ultimately reflect the integrity of themselves and of the profession.
- 1.2.3 Members shall conduct themselves in a professional manner at all times. They shall not badger or coerce individuals or agencies to use their professional services.
- 1.2.4 Members shall take into account the limitations of their abilities, knowledge and the resources available to them prior to accepting work. They will remove themselves from a given setting when they realize an inability to provide professional service.
- 1.2.5 Members must be aware of personal circumstances or conflict of interest that might interfere with their effectiveness. They will refrain from conduct that can lead to substandard performance and/or harm³ to anyone including themselves and consumers.
- 1.2.6 Members are accountable to AVLIC and to their local chapter affiliate for their professional and ethical conduct. Further, members are responsible to discuss and resolve, in a professional manner, issues arising from breaches of ethical or professional conduct on the part of individual colleagues after they are observed. In the case where these breaches are potentially harmful to others or chronic, and attempts to resolve the issue have not been successful, such conduct should be reported to AVLIC and/or their local chapter affiliate in a manner directed by the appropriate Dispute Resolution Process.

1.3 SCOPE OF PRACTICE

- 1.3.1 Members will refrain from using their professional role to perform other functions

³ Harm refers to injurious behaviour that causes distress to the person. This can include but is not limited to actions which are sexual, physical, emotional or verbal in nature. It can also include performance of duties while under the influence of alcohol, drugs or mind-altering substances.

that lie beyond the scope of an interpreting assignment and the parameters of their professional duties. They will not counsel, advise, or interject personal opinions.

- 1.3.2 When functioning as part of a professional team (e.g., education, legal, medical and mental health settings) it is understood that members will limit their expertise to interpretation. In such settings, it may be appropriate for members to comment on the overall effectiveness of communication, the interpreting process and to suggest appropriate resources and referrals. This should be done only within the context of the professional team.
- 1.3.3 Members will refrain from manipulating work situations for personal benefit or gain. When working as independent contractors, members may promote their professional services within the scope of their practice. When working under the auspices of an agency or other employer, it is not ethical for the members to promote their professional services independent of the agency or employer.

1.4 INTEGRITY OF SERVICE

- 1.4.1 Members will demonstrate sound professional judgment and accept responsibility for their decisions. Members will make every attempt to avoid situations that constitute a real or perceived conflict of interest. Members will ensure there is full disclosure to all parties should their ancillary interest be seen as a real or perceived conflict of interest.

<p>2.0 PROFESSIONAL COMPETENCE: INTERPRETERS PROVIDE THE HIGHEST POSSIBLE QUALITY OF SERVICE THROUGH ALL ASPECTS OF THEIR PROFESSIONAL PRACTICE.</p>

2.1 QUALIFICATIONS TO PRACTICE

- 2.1.1 Members will possess the knowledge and skills to support accurate and appropriate interpretation. It is recognized that members work in a range of settings and with a variety of consumers. This demands that members be adept at meeting the linguistic needs of consumers, the cultural dynamics of each situation, and the spirit and content of the discourse.

2.2 FAITHFULNESS OF INTERPRETATION

- 3.2.1 Every interpretation shall be faithful to and render exactly the message of the source text. A faithful interpretation should not be confused with a literal interpretation. The fidelity of an interpretation includes an adaptation to make the form, the tone, and the deeper meaning of the source text felt in the target language and culture.

2.3 ACCOUNTABILITY FOR PROFESSIONAL COMPETENCE

- 2.3.1 Members will accept full responsibility for the quality of their own work and will refrain from making inaccurate statements regarding their competence, education, experience or certification.

- 2.3.2 Members are responsible for properly preparing themselves for the work contracted.
- 2.3.3 Members will accept contracts for work only after determining they have the appropriate qualifications and can remain neutral throughout the assignment.

2.4 ONGOING PROFESSIONAL DEVELOPMENT

- 2.4.1 Members will incorporate current theoretical and applied knowledge, enhance that knowledge through continuing education throughout their professional careers and will strive for AVLIC certification.
- 2.4.2 Members will aim to be self-directed learners, pursuing educational opportunities which are relevant to their professional practice. This could include but is not limited to peer review, collegial consultation, mentoring and regular feedback regarding specific areas of skill development.

3.0 NON-DISCRIMINATION: INTERPRETERS APPROACH PROFESSIONAL SERVICES WITH RESPECT AND CULTURAL SENSITIVITY⁴ TOWARDS ALL PARTICIPANTS.

3.1 NON-DISCRIMINATION

- 3.1.1 Members will respect the individuality, the right to self-determination, and the autonomy of the people with whom they work. They will not discriminate based on ethnicity, gender, age, disability, sexual orientation, religion, personal beliefs and practices, social status or any other factor.

3.2 COMMUNICATION PREFERENCES

- 3.2.1 Members will respect and use the form of communication preferred by those deaf and hard of hearing consumers for whom they provide service.

3.3 DEAF INTERPRETERS

- 3.3.1 The services of a Deaf interpreter may be required when working with individuals who use regional sign dialects, non-standard signs, foreign sign languages, and those with emerging language use. They may also be used with individuals who have disabling conditions that impact on communication. Members will recognize the need for a Deaf interpreter and will ensure their inclusion as a part of the professional interpreting team.

4.0 INTEGRITY IN PROFESSIONAL RELATIONSHIPS: INTERPRETERS DEAL HONESTLY AND FAIRLY WITH CONSUMERS AND COLLEAGUES WHILE ESTABLISHING AND MAINTAINING PROFESSIONAL BOUNDARIES.

⁴ *Cultural sensitivity refers to being aware of and responding to the uniqueness of each individual and of each context within which we work.*

4.1 PROFESSIONAL RELATIONSHIPS

- 4.1.1 Members shall understand the difference between professional and social interactions. They will establish and maintain appropriate boundaries between themselves and consumers. Members will assume responsibility to ensure relationships with all parties involved are reasonable, fair and professional.

4.2 IMPARTIALITY

- 4.2.1 Members shall remain neutral, impartial, and objective. They will refrain from altering a message for political, religious, moral, or philosophical reasons, or any other biased or subjective consideration.
- 4.2.2 Should a member not be able to put aside personal biases or reactions which threaten impartiality, the member will examine options available to them. This may include not accepting the work or withdrawing their services from the assignment or contract.

4.3 RESPECT FOR COLLEAGUES

- 4.3.1 Members will act toward colleagues in a spirit of mutual cooperation, treating and portraying them to others with respect, courtesy, fairness and good faith, etc.
- 4.3.2 Members have a professional obligation to assist and encourage new interpreting practitioners in the profession.
- 4.3.3 Members shall not abuse the good faith of other members or be guilty of a breach of trust or unfair tactics or the use of unfair tactics.

4.4 SUPPORT FOR PROFESSIONAL ASSOCIATIONS

- 4.4.1 Members shall support AVLIC, its affiliates, and other organizations representing the profession and the Deaf community.

<p>5.0 INTEGRITY IN BUSINESS RELATIONSHIPS: INTERPRETERS ESTABLISH AND MAINTAIN PROFESSIONAL BOUNDARIES WITH CONSUMERS AND COLLEAGUES IN A MANNER THAT IS HONEST AND FAIR.</p>

5.1 BUSINESS PRACTICES

- 5.1.1 Members will refrain from any unfair competition with their colleagues, including but not limited to: (a) engaging in comparative advertising (b) willfully undercutting; or (c) artificially inflating fees during times when market demand exceeds supply.
- 5.1.2 Members will conduct themselves in all phases of the interpreting situation in a manner befitting the profession, including negotiating work and contracts, obtaining suitable preparation material, and choice of attire and professional demeanor.
- 5.1.3 Members will honour professional commitments made when accepting work, and will follow through on their obligations. Members may not unilaterally terminate

work or a contract unless they have fair and reasonable grounds to do so.

- 5.1.4 Members shall take reasonable care of material and/or property given to them by a consumer and may not lend such or use it for purposes other than those for which it was entrusted to them.

5.2 ACCURATE REPRESENTATION OF CREDENTIALS

- 5.2.1 Members shall not by any means engage in, nor allow the use of, statements that are false, misleading, incomplete, or likely to mislead consumers or members of the public.
- 5.2.2 Members will refrain from making inaccurate statements regarding their competence, education, experience or certification. Only members certified by AVLIC (COI) may use the term "certified" in printed, electronic, signed or oral transmission. This may include, but is not limited to, interpreter directories, business cards and forms, promotional materials, resumes or publications they have authored.

5.3 REIMBURSEMENT FOR SERVICES

- 5.3.1 Members will bill only for services provided. Members will negotiate fees, including cancellation policies, preferably in writing or contract form before service is provided. Members will be sensitive to professional and community norms when establishing fees for services.
- 5.3.2 Members may also provide bartered or pro bono service in situations where the profession of interpreting and the livelihood of other practitioners will not be threatened.

RATIFIED AT THE AVLIC JULY 2000 AGM