



Action Committee on Court Operations in Response to COVID-19

THE IMPACT OF THE COVID-19 PANDEMIC ON INTERPRETATION AND TRANSLATION NEEDS OF COURT USERS

A Statement from the Action Committee

Our Committee exists to support Canada's courts as they work to protect the health and safety of all court users in the COVID-19 context while upholding the fundamental values of our justice system. These mutually sustaining commitments guide all of our efforts.

The ongoing COVID-19 pandemic has underscored, and in some respects compounded or even created, challenges to access to justice for many people in Canada. The impact of the pandemic on access to justice has been disproportionate, affecting certain segments of the population more than others, especially marginalized individuals.

Building on the Action Committee's overview document [Examining the Disproportionate Impact of the COVID-19 pandemic on Access to Justice for Marginalized Individuals](#), this document aims to examine the specific impact of the pandemic on English, French, Indigenous, and other minority language communities in their interactions with the court system. To do so this paper will:

- Highlight the fundamental role and importance of oral interpretation in court hearings and written translation of court information for access to justice
- Describe the impact of the pandemic on these court services and the disproportionate impact on minority language communities
- Offer some insight into the practical solutions and promising practices that have emerged in some jurisdictions in promoting access to justice for minority language communities

1. ISSUE

Timely and high quality interpretation of court proceedings and translation of court information is essential to providing equitable access to court services, particularly when procedures are in flux due to evolving health and safety advice.

The language of court proceedings and information can disproportionately affect individuals with important intersecting vulnerabilities including official language minorities, those who speak neither English nor French, the elderly, immigrants/refugees, people with literacy difficulties or technology challenges, Indigenous people, remote communities, and persons with a visual or hearing impairment.

In October 2020, the Office of the Commissioner of Official Languages issued a report on language needs in times of crisis entitled "[A Matter of Respect and Safety: The Impact of Emergency Situations on Official Languages](#)".¹ The Commissioner noted that emergencies are

¹ Office of the Commissioner of Official Languages, *A Matter of Respect and Safety: The Impact of Emergency Situations on Official Languages* (October 2020) (OCOL Report).



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inevitable and that in an emergency situation, “non-compliance with the Act risks jeopardizing public health and safety, not only for members of official language minority communities but for all Canadians.” The Commissioner recommended that federal institutions should develop and implement action plans to ensure that appropriate tools and structures are in place to facilitate the drafting and simultaneous delivery of emergency communications of equal quality in both official languages. The Action Committee hopes that this paper will contribute to that work.

This document will focus on two aspects of the issue, namely how the pandemic has affected 1) oral interpretation within court proceedings, and 2) the need for and availability of written translation of court information such as signage and other directions on public health measures in court facilities.

The information and analysis in this paper is sourced from detailed responses to a survey completed by the Heads of Court Administration (HOCA), follow-up conversations with court personnel, legal research, and an environmental scan of COVID-19-related reports from language rights experts.

2. THE IMPORTANCE OF LANGUAGE IN ACCESSING JUSTICE

Canada has been a multilingual country from time immemorial. Indigenous languages flourished on the land prior to the arrival of Europeans who brought their own languages. Since the adoption of the *Canadian Charter of Rights and Freedoms* in 1982,² Canada is recognized as a bilingual nation, English and French being the official languages of Canada and having equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada. Important recognition of Indigenous languages has come in recent decades. Protection and promotion of English, French, Indigenous, and other languages is a foundational element of an equitable society, and, in relation to the work of the courts, of access to justice for all members of our society.

2.1. English and French

Federally, the *Constitution Act, 1982*, confirms the right to use English or French in any federal court or any court established by the legislatures of Quebec and New Brunswick. The use of French and English in civil matters before any federal court is protected through the *Official Languages Act*.³ With respect to criminal matters, the *Criminal Code of Canada*,⁴ ensures individuals accused of a crime have the right to use English or French for their preliminary inquiry and trial, and that individuals whose first language is neither English nor French are able to use the official language in which they are more comfortable. Similarly, witnesses have the right to testify in the official language of their choice. These federal protections of English and French, and interpretation to/from other languages in criminal proceedings, are also important to uphold other legal protections found within the *Charter*.

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, C 11 [**Charter**].

³ RSC, 1985, c. 31 (4th Supp.).

⁴ RSC 1985, c C-46 Part XVII.



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Provincially, the use of both French and English in the courts in Manitoba was included in its founding legislation in 1870.⁵ Pursuant to the *Constitution Act, 1982*, New Brunswick is Canada's only officially bilingual province. The equality of status of English and French and rights and obligations relating to the use of both languages is also set out in the province's *Official Languages Act*.⁶ Several other provinces have passed legislation mandating French language services for certain public services, or in regions where there is a significant French-speaking population, for example in Ontario with the *French Language Services Act*,⁷ and in Alberta with the *Languages Act*.⁸ The Alberta Court of Queen's Bench has recently instituted a pilot project to augment French language services as discussed below.

2.2. Indigenous Languages

Any discussion of languages used in Canada must recognize the need to support efforts to protect and revitalize Indigenous languages that have been damaged by colonialism.

For example, the Northwest Territories *Official Languages Act*,⁹ identifies eleven official languages, nine Indigenous languages in addition to English and French: Chipewyan, Cree (nehiyawewin), Gwich'in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey (Sahtúot'įnę Yatj), South Slavey (Dene Dhah) and Tâîchô. Importantly the Act embeds these language rights in territorial court proceedings. The provision of high quality Indigenous language interpretation by the Northwest Territories courts is an important example that will be highlighted below.

The federal *Indigenous Languages Act*,¹⁰ establishes the Office of the Commissioner of Indigenous Languages with powers to promote and help support the efforts of Indigenous peoples to reclaim, revitalize, maintain and strengthen Indigenous languages. On request of an Indigenous community, government or governing body, the Commissioner may provide them with support in their efforts to establish certification standards for translators and interpreters. These certification standards could assist the courts in ensuring high quality translation and interpretation services in future.

Under the Act the Minister of Canadian Heritage may also cooperate with provincial, territorial, and Indigenous governments, and other Indigenous entities to provide Indigenous language programs and services in relation to the administration of justice. Such agreements may result in additional tools to provide access to justice for Indigenous people in their own languages.

2.3 Non-Official Languages

Canada's population is diverse in languages beyond Indigenous, French and English. The availability of interpretation and translation of these languages forms a necessary part of the

⁵ *An Act to amend and continue the Act 32-33 Victoria chapter 3; and to establish and provide for the Government of the Province of Manitoba*, 1870, 33 Vict., c. 3 (Can.)

⁶ SNB 2002, c O-0.5.

⁷ RSO 1990, c. F23.

⁸ RSA 2000, c L-6.

⁹ RSNWT 1988, c O-1.

¹⁰ SC 2019, c 23.



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discussion of access to justice for marginalized individuals, especially new Canadians who may not be familiar with the majority language or the terminology of the legal system. It is also an important legal right of accused persons found in the *Charter*.¹¹

Non-official language court services are often provided on an ad-hoc basis as needs are identified during the course of a hearing, particularly in criminal processes, or as an individual seeks assistance from court administrative staff. This may lead to delays in service, adjournments of hearings, and concerns about quality of translation and interpretation services, particularly during emergency situations.

Some jurisdictions have sought to meet the needs of non English/French speaking court users by issuing translations of some important documents in multiple languages. For example, British Columbia has translated the Victim Impact Statement template into nine languages, which allows the victim to read and complete the form in their own language before responses are translated into English by the court.

In Ontario, the Ministry of the Attorney General's Court Interpretation Unit (CIU) in the Court Services Division has made efforts to enhance its *Registry of Accredited Freelance Court Interpreters* to ensure the availability of high-quality interpretation services for languages of lesser diffusion. The CIU, working with Statistics Canada to obtain relevant data, has created profiles for several of these languages, including Amharic, Fuzhou, Georgian, Rohingya, Cebuano and Lingala. The profiles provide a high-level overview of the languages, including country of origin, number of speakers worldwide and in Ontario, and any official organizations within Canada, to make it easier to recruit interpreters for those languages. The CIU has also engaged in targeted recruitment for interpreters including presenting to Ontario colleges about the accreditation program to attract students and alumni and develop a pipeline of talent, contacting various community organizations and cultural associations, contacting foreign country embassies and consulates, and promoting recruitment in non-traditional community hubs, in person and online.

3. IMPACT OF THE COVID-19 PANDEMIC ON INTERPRETATION SERVICES

Interpretation in a court setting, and of legal terminology, is a specialized skill that is a critical service and supports access to justice for many marginalized individuals who do not speak English or French.

3.1 Pre-existing Interpretation Services

Many courts, especially in northern and smaller jurisdictions, and regarding less common languages, experienced a shortage of qualified interpreters prior to the pandemic. In some jurisdictions, courts have proactively approached community members and worked with them to develop a pool of local, trained, interpreters. Many courts use Language Line - a private, telephone-based, interpretation service - especially for short and urgent matters.

In May 2019, the HOCA Court Interpretation Working Group issued a Remote Court Interpretation Best Practices document to provide guidance for jurisdictions who were

¹¹ *Charter*, *supra* note 2 at s 14.



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considering initiating or expanding their use of remote interpretation. This foresight on the part of this Working Group put the courts in good stead to quickly adapt to the challenges of the COVID-19 pandemic.

Prior to the pandemic, remote interpretation was limited to situations where availability or a critical need rendered in-person interpretation impractical or cost prohibitive, and when the quality of the interpretation was not compromised by the remote nature of the service. This was generally used for brief proceedings requiring only one interpreter such as bail hearings, plea courts, arraignments, traffic violations, small claims court cases, injunctions, and family and child protection matters.

Using poor equipment on a sustained basis can have long-term detrimental effects on interpreters' hearing. For this reason, the Working Group set equipment standards to ensure optimum quality of service for clear sound and image, lip-synchronicity, and connection stability. This guidance included specific hardware and software standards for computer and videoconferencing equipment in the courtroom, as well as for headsets for the interpreters themselves.

Similarly, the Translation Bureau of Canada, the main provider of interpretation services to federal courts as well as to some provincial/territorial courts, has established technical requirements for simultaneous interpretation based on international organization for standardization (ISO) standard 20109: 2016. Remote requirements include unidirectional microphones, volume adjustment, sound and image synchronization standards, and technical requirements for laptops, bandwidth, and cameras.

While largely technical, these equipment standards are essential to ensuring quality of interpretation for all individuals and roles within a hearing, and the long-term health and safety of the interpreters themselves, thereby ensuring access to justice for court users in all languages.

3.2 Impact of the Pandemic on Interpretation Services

The pandemic has had three main impacts on interpretation services: it has restricted the ability of courts to obtain in-person interpretation services, led to a general acceptance of virtual interpretation, and created a need for additional space and resources to accommodate physical distancing.

3.2.1. Interpreter shortages

The pandemic created additional difficulties for obtaining in-person interpretation services due to travel restrictions and quarantine requirements. Some interpreters have also been reluctant to travel due to health and safety concerns.

This shortage is more acute in the Territories where there was already a shortage of interpreters. In order to ensure in-person interpretation, the Yukon Courts worked with public health officials to designate interpreters coming from outside the Territory as Critical Service Workers on a hearing-by-hearing basis, exempting them from quarantine requirements.



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Jurisdictions where interpreters are mostly sourced from local communities had fewer travel-related issues, but still experienced shortages due to health concerns and illnesses among interpreters.

Those courts who hear matters of national security, i.e. the Federal Court, experienced a shortage of interpreters with the necessary high-level security clearance.

3.2.2. Virtual Adjustment

The onset of the pandemic in March 2020 effectively reversed the starting point for the courts – instead of starting with a default of in-person interpretation and considering whether it served the interests of justice to permit an interpreter to appear virtually, courts now must consider under what circumstances to require in-person interpretation.

This new acceptance of virtual interpretation has been a huge benefit to court administrators and minority language communities by ensuring continued access to the court system throughout the pandemic. As we emerge from the pandemic, the acceptance of virtual interpretation, along with virtual hearings generally, may assist in ensuring timely access to the courts regardless of the language of the court or the individuals involved.

These benefits come with a strong caveat that quality of interpretation must be assured. Most courts noted difficulties in providing simultaneous interpretation due to overlapping voices over the audio systems. As both original and interpreted speech must appear on the court record, this has resulted in a move to consecutive interpretation, and significantly lengthened trials, until a solution can be found by the virtual platform service providers. Interpreters themselves have identified poor audio quality as leading to an increase in occupational injuries, exacerbating the shortage of interpreters.¹²

To address concerns with audio quality, and health and safety of interpreters, the Supreme Court of Canada and the Federal Court began sending high quality equipment to parties/counsel in order to ensure quality of audio. The Federal Court of Appeal worked with their IT department to ensure that hearings with interpretation receive priority for bandwidth.

To overcome some of the challenges individual users face in adapting to virtual interpretations, many jurisdictions have provided training to court staff, judges, interpreters, and, where possible, counsel and parties, on how to best use the technology.

Despite the challenges of technology, virtual proceedings have, in general, made interpretation services more accessible. This is likely to be a lasting legacy of the pandemic within the court system.

3.2.3. Accommodating Physical Distancing in Court Facilities

At the outset of the pandemic, courts were required to rearrange or renovate court facilities to ensure physical distancing by all participants, including interpreters, who often work in pairs in close quarters.

¹² House of Commons, 43-1, *Standing Committee on Procedure and House Affairs* (4 May 2021) (Greg Phillips, President, Canadian Association of Professional Employees; Nicole Gagnon, Advocacy Lead, International Association of Conference Interpreters): <https://www.ourcommons.ca/DocumentViewer/en/43-1/PROC/meeting-14/evidence>



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British Columbia has piloted “whispered interpreting assistive equipment” which enables physical distancing in courtrooms between the interpreter and the non-English speaker.

4. IMPACT OF THE PANDEMIC ON TRANSLATION SERVICES

Translation of information about court practices and procedures and those relating to health and safety measures in court facilities helps ensure access to justice as well as the health and safety of court users from minority language communities.

4.1 Pre-existing Translation Services

Many courts have well-established translation procedures set out in policies or legislation requiring proactive translation of certain materials into English/French and, in some jurisdictions, local Indigenous languages.

In many instances, Rules of Court are drafted in both French and English and are made available simultaneously. Some courts, particularly federal courts, issue practice directions and judgements simultaneously in French and English as well, as set out in policies or legislation. Most jurisdictions’ trial level courts proactively translate some court information into English or French, and post it in court facilities or online on either the courts’ or the relevant government department’s website. This is particularly common for information relating to criminal matters.

Generally, translation is handled through a combination of in-house and contracted (e.g. the Translation Bureau of Canada or provincial equivalents) translation service providers. Less complex documents, such as directions or general information, are more likely to be translated in-house. Most jurisdictions rely on translators with significant expertise in legal translation to ensure quality of work. Some jurisdictions maintain lists of suppliers prepared through their procurement branch.

4.2 Impact of the Pandemic on Translation Services

The two main impacts reported by courts have been ensuring timely translation of urgent materials and securely transmitting documents to translators.

4.2.1. Demand and Delay

While some jurisdictions noted that additional information related to court operations (e.g. operational plan updates, notices regarding health measures) has required translating due to the pandemic, demand for translations from court users has not increased significantly during the pandemic.

Established translation tools and services were largely able to adjust to the pandemic, though some jurisdictions noted delays in receiving translations, especially when working through translation contracts managed by another government department. To ensure timely translation services, especially for items required on short notice, British Columbia courts worked with their procurement department to maintain an open procurement for translation services.



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4.2.2 Electronic Transmission of Documents

The need to work from home, and especially the concerns with transmission of disease on surfaces in the early days of the pandemic, created challenges in providing documents to translators. This was particularly the case with classified documents which require secure systems to send electronically, and files that are too large to send easily.

To overcome these challenges, courts established secure file transfer protocols to transfer sensitive information.

5. CASE STUDIES

To better understand the impacts of the pandemic on the language needs of court users, and the ability of courts to provide continuous interpretation and translation services, the Secretariat of the Action Committee spoke with several court administrators and judges to learn more about their experiences.

5.1 Alberta Court of Queen's Bench – French Language Services

The framework for language rights in Alberta includes various federal statutes including the *Criminal Code* and the *Divorce Act* (language provisions not yet in force in Alberta), and the provincial *Languages Act*. The Court has sought to give meaning to federal and provincial language rights in multiple ways, including a long-standing French Language and Interpretation Steering Committee. The Court currently has seven judges and several clerks capable of running French or bilingual trials, as well as access to Language Line, an on-call telephone interpretation service, through a contract with the Alberta Government.

Despite these efforts, the Court has regularly experienced difficulties or delays in identifying French language needs of parties which, in turn, led to adjournments or other delays in order to source French-speaking court personnel or interpreters. In addition, the Court noted an increase in demands for French and bilingual matters over the last 2-3 years, from just a couple to a full dozen in the last six months of 2020.

To ensure access to French language services, the Court developed a policy which came to fruition around the same time the COVID-19 pandemic hit the courts in 2020 and was adopted as a pilot project. This timing was ultimately fortuitous as it allowed the Court to meet heightened demand through existing services during a time of crisis.

The policy has operated through two approaches. The first is internal with training for all court staff to ensure full awareness of the obligation to comply with language rights obligations. It also includes checklists for staff and the judiciary and a hiring policy. The second stream includes some new initiatives and other initiatives that predated the French policy, but are enhanced by its application. The court proactively offers services to French-speaking court users, for example, through a recording in criminal appearances court that advises people of their rights, and an acknowledgement box on the form for appointment of counsel confirming the accused has been advised of their language rights. In the family law area, the initiating document for



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Family Docket Court requires information about language needs. The Court has posted information in French on its website and is working on some new content.

It instituted proactive and early outreach to litigants through its [public website](#) to identify needs for French language services at the outset of a process with the [French Language Notice and Request Form](#) located on the QB website.

Importantly, through this policy, the Court created the position of Counsel for French and Interpretation Services. During the pilot project, this counsel will advise the Court on questions regarding language rights, will communicate with lawyers regarding their French and bilingual proceedings, will answer questions in French from the public and the media, will liaise with Interpreters Coordinators who book interpreters for the Court, participate in interpreter-related committees, and collect relevant statistics and prepare periodic statistical reports. Emails to a new dedicated [email address](#) for queries about French services are received by the same counsel. The email has seen significant traffic in its first few months. Having a single staff member receive all requests has allowed the Court to begin to track and identify needs at the earliest possible stage of hearings. The data collected through this initiative will include all matters heard in French, from short chamber matters to full trials.

The pilot project has already demonstrated savings in time due to early identification of needs that may have otherwise resulted in an adjournment.

5.2. Northwest Territories Courts – Indigenous Language Interpretation

The Northwest Territories *Official Languages Act* provides for the right to receive court services in 11 official languages. To provide this service to Indigenous language communities, the Northwest Territories Court Registry has identified community members who have the training and experience to interpret legal terminology for court users. This practice has allowed the Courts to provide quality interpretation services without the need to fly interpreters into communities. Even so, finding speakers fluent in some languages, in particular Inuit dialects, has become more challenging in recent years as fewer speakers are available in the community to be trained as interpreters.

The benefits of this pre-existing system have been felt throughout the pandemic. Having a system of local interpreters in place for Indigenous languages ensured continued service and removed the need for outsiders to fly in to provide interpretation, potentially bringing the virus with them. However, the system was put at risk by the pandemic due to the potential for illness or exposure among the available interpreters. While other community members may interpret to and from Indigenous languages, they may not have the necessary experience and training with legal terminology. This has required additional time on the part of the Registry to find alternative interpreters, especially to ensure that the interpreter does not have a conflict (e.g. family relationship) with the parties in the hearing. Additional time is also required during the proceedings to verify comprehension of legal terminology.

The pandemic has demonstrated a need to ensure that an adequate number of interpreters, with training specific to the legal context, are available in order to respond to future emergencies. The pre-existing system of local interpreters for Indigenous languages has proven to be resilient throughout the pandemic, helping to ensure continued access to justice for Indigenous languages speakers in the North at a time when access to interpretation in other languages became challenging



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6. PROMISING PRACTICES

The courts and their users have benefitted from well-established tools and practices for oral interpretation in court hearings and written translation of court information, which were largely able to adapt quickly to the virtual practices required during the pandemic. Nevertheless, there were some challenges and many practices have emerged that courts across the country may wish to consider adopting both during and beyond the pandemic to improve access to justice for minority language communities. The practices listed are examples, not an exhaustive list:

6.1. Interpretation Promising Practices

- Interpretation needs should be integrated into emergency preparedness planning by the courts, including inclusion in business continuity plans, and training of court personnel.
- Early identification of language needs, whether through public forms, proactive discussions with counsel, or designated court staff, can save time and effort and prevent adjournments or delays in obtaining services.
- Working with local governments, legal associations, and civil society organizations who serve minority language communities to identify the languages used in the local community may assist courts in anticipating needs for interpretation in particular languages.
- Working proactively with minority language communities to identify and train multiple individuals to act as interpreters can help ensure continuity of service should an interpreter be unavailable due to conflict of interest or illness.
- Having a single staff member to track statistics, identify needs and assist in coordination at the outset, helps to fill data gaps and ensure smooth coordination of interpretation services.
- Working with public health departments to have interpreters deemed “essential” to allow for travel and exemptions from quarantine requirements can ease interpreter shortages during times of crisis.
- Ensuring all parties have high quality audio equipment, both for clarity during proceedings and to avoid occupational injuries to interpreters, may require courts to set equipment standards for court users, or provide audio equipment to court users for the purpose of individual hearings.
- Having training and time set aside in advance of hearings to test and practice using the equipment can assist court users and interpreters in effectively using the virtual interpretation system and avoid delays during hearings or potential miscommunication.



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6.2. Translation Promising Practices

- Translation needs should be integrated into emergency preparedness planning by the courts, including inclusion in business continuity plans, and training of court personnel.
- Jurisdictions may benefit from having open or standing procurement offers that can be mobilized quickly to handle a surge in translation requests in the event of a crisis.
- Working with local governments, legal associations and civil society organizations who serve minority language communities to identify the languages used in the local community may assist courts in identifying needs for translation of court information in particular languages.
- Proactive translation of information about court processes as well as certain court forms and templates, such as Victim Impact Statements, into languages beyond English and French increases access to justice for minority-language communities and helps ensure continuity of services during emergency situations.

6.3. Areas of Further Study

All jurisdictions noted that they do not keep detailed statistics of language use in courts beyond the language of the hearing. This lack of data may hide unmet language needs, especially from non official language speaking court users. Collecting disaggregated data on what languages are used in the community surrounding each court facility as well as by recent court users may allow courts to better plan for future interpretation needs, and proactive translation of official court document and court information such as public health measures, during a future emergency.

Efforts to revitalize Indigenous languages and further incorporate Indigenous laws into the legal system may also increase interest and need for Indigenous language interpretation and translation. As noted in [Restoring Court Operations in Northern, Remote and Indigenous Communities](#), this work is already underway at community justice centres in British Columbia.

Finally, interpretation requirements should be a consideration in the decision whether to hold hearings in-person or virtually. The lack of availability of the technology required for high-quality interpretation may have a disproportionate impact on access to justice for minority language communities in future.