

BALANCE

JULY 1998

The Official Publication of the Law Society of the Northern Territory

Interpreting:- Practically Speaking

by Dominic McCormack, De Silva Hebron.

The Current Status Quo

Stop for a moment. Imagine that you have been involved in a single vehicle roll-over - the resultant injuries suffered are serious; emergency treatment has been administered and your condition has stabilised. You were the only person in the accident, and weren't carrying any identification. Your shared room at the Royal Darwin Hospital is comfortable enough, but there are difficulties - although you are able to see, hear and speak as well as anyone, you are ALONE ... you have no idea what is happening around you and do not understand what those examining you are saying - all you can see are troubled looks, as they also do not understand the frantic questions asked of them. Then, a familiar sound - your own language. You are, after all, a long-time Greek resident of Darwin - one of the nurses has guessed that you are either Greek or Italian, telephoned the NT Interpreter Service and brought an interpreter in for your benefit. Instant relief - this is even better than the morphine which has been administered ...

An immediate meeting with the duty doctor is held. You gain details of what occurred, your current prognosis - there is a likelihood that you may lose your right leg. You ask the interpreter to contact your husband ... family support is a premium ... decisions must be made that will affect many.

Now turn your mind to another scenario. Instead of the abovementioned being Greek, imagine them to be an elderly tribal Aboriginal, from an outlying community. How does the nurse react? It is obvious the person is Aboriginal, and they have not uttered a word of English or responded to questioning - where does the nurse turn to for assistance? To the NT Interpreter Service to call someone? Of course not - there isn't a register of Aboriginal Interpreters - so where to now? How do the medical staff proceed to remove a leg without informed consent?

A third scenario - be yourself, whether you be employed with Aboriginal Legal Aid, the public service or a private firm. The matter under consideration may be criminal, it may be civil. It may be litigation oriented, it may be commercial. Regardless,



Interpreting course - Port Keats

you have before you an Aboriginal client and are expected to take instructions. Do they understand you? Do you understand them? How do you make sure and how do you seek assistance?

In 1979, when I was about 7 years old, Ms Gloria Brennan of the Research Section, Department of Aboriginal Affairs, along with an Interpreter and Translating Needs team, conducted a study into the need for interpreting and translation services for Australian Aboriginals, but with specific attention paid to the Northern Territory.

The findings were all too familiar:-

"Although Aboriginal Agencies such as Aboriginal Medical and Legal Services and Government Departments have believed for some time that there was a considerable need for an interpreting and translation service, there has been little effort made to date to improve the situation. Almost always interpreters are still obtained for a particular need on specific occasions on an ad hoc basis. If an interpreter were needed for a court case, for instance, the field officer for the Northern

continued on page 6



Interpreting: Practically Speaking

continued from front page

Australian Legal Aid Service would go to Bagot Reserve to seek out someone who might be able to do the job.

Considering the ad hoc basis for recruiting interpreters it is not surprising that, from time to time, interpreters are simply not available although they are urgently needed. With minor exceptions there seems to be no comprehensive list of people who could carry out this sort of work and who have the necessary polyglot skills.

Nineteen years later, a question must be asked, and a challenge issued: - It is obvious that we are still dealing with the very same problems - why is this? Now, what are you and I going to do about it?

The topic of interpreting is one which legal practitioners have struggled with for a long period of time. In the Northern Territory, we continue to have our own particular problems. These stem specifically from the various Aboriginal communities and the difficulties which they experience dealing on a day-to-day basis with a different law, which is only compounded by a lack of understanding of the peculiarities of the English language and, in many instances, an understanding of English at all. Others have already written about this difficult area, however my purpose for writing is to provide a somewhat different perspective - that of both a current practising lawyer and an interpreter in the language of Murrinh-Patha, which originates from the Port Keats area.

Personal Background

My background is unusual compared to what may be described as a "normal" Australian upbringing. From the age of two until sixteen I was fortunate enough to spend my childhood in the Aboriginal community of Port Keats, which for those of you who do not know it, is approximately 400km south west of Darwin. While growing up, my parents ensured that all three of their children experienced the best of both worlds - non-Aboriginal and Aboriginal. Our days were spent in community life, playing with the children, engaging in primary schooling by way of correspondence through Katherine School of the Air, and generally being part of the community. Upon completion

Dominic McCormack, De Silva Hebron

of primary school, I later boarded at St John's College in Darwin in order to matriculate.

Having qualified as a lawyer through the Northern Territory University, my language ability later became known and I was asked on a number of occasions to interpret in the courts. It soon became obvious that if I was to do this, I required training of my own. In 1996 I was approached by Mr Michael Cooke, Linguist, of Batchelor College to assist in promoting the Aboriginal Interpreter Service by conducting one of many training courses around the Territory, which at that stage was being supported by Northern Territory Government funding. Both Michael and I travelled to Port Keats and conducted a two week interpreting course, where I participated as both lecturer and student. As a result, I later passed an interpreting test and am now accredited (through NAATI - the National Accreditation Authority for Translators and Interpreters) as a Para-Professional Interpreter in the language of Murrinh-Patha.

My Own Experience

My experience to date is a mixture of client interviews, Local and Supreme Court work, police interviews at the Peter McAulay Centre and meetings with Orthopaedic Surgeons at the Royal Darwin Hospital.

It has, at times, been extremely difficult to hold myself back and remember that I am actually present as an interpreter, and not a lawyer. I have found that the interpreting profession is indeed very similar to that of the legal profession, where high ethical, moral and personal standards are of the utmost importance. Those matters which pass between the interviewer and the interviewee are to remain in that realm only and when the interpreting assignment is complete, that is indeed the end of the matter. As an interpreter, one must constantly remember that you are there to interpret truly and faithfully to the best of your ability - nothing more, but importantly, nothing less.

The Difficulties

Of course, in relation to areas such as these, there are always going to be diffi-

culties which I am sure many of you have experienced. The most important difficulty to attempt to overcome in this area is misunderstanding, and unfortunately there are many points where misunderstanding can occur. Speaking from my own experiences, some of the crucial areas are as follows:-

- a) An intimidated and shy Aboriginal witness;
- b) Lawyers inexperienced in the use of interpreters, and the peculiarities of Aboriginal witnesses;
- c) Judges and Magistrates inexperienced in the use of interpreters, and the peculiarities of Aboriginal witnesses;
- d) The qualifications and actual experience of the interpreter involved;
- e) The various combinations of relationships and family background involved in Aboriginal communities.

Dealing with each of these, and with particular regard to the courtroom, my thoughts are as follows:-

a) An intimidated and shy Aboriginal witness -

Where the Aboriginal person is your witness you must spend time with them prior to placing them in the witness box. Through the use of an interpreter introduce yourself, explain what your role is and perhaps even ask general questions about that person's family, their position, where they come from etc. Of course, time is of the essence, but spending this little time with your own witness to let them know something about yourself should pay dividends during the case at hand. If the Aboriginal person is not your witness, and you are required to cross-examine, even at that point I would suggest that it is prudent to introduce yourself from the Bar table, explain your position, what your job is and then proceed.

b) Lawyers inexperienced in the use of interpreters, and the peculiarities of Aboriginal witnesses -

The most common example that I have seen with lawyers inexperienced in the use of interpreters is that all questions are directed to the interpreter instead of being directed to the witness as

continued on page 20

Interpreting: Practically Speaking

Dominic McCormack, De Silva Hebron

continued from page 6

would be done in the normal course. When utilising an interpreter, all questions should be directed in the first person to the witness, with the interpreter interpreting as literally as possible what those questions are and then the response.

Lawyers must also be aware that it is very, very difficult to interpret "legalese" and many of the convoluted sentences which make up questions. Therefore, the person asking the question must be extremely careful that those questions are concise, and if it is impossible for them to be so, at least broken down for the benefit of the interpreter. This should be discussed with the interpreter prior to the examination beginning.

I am sure that many of you who are experienced in the field of questioning Aboriginal witnesses are aware of various peculiarities. Two examples are, firstly, the length of time which Aboriginal witnesses may take to answer a question, and secondly, the habit which many lawyers have of raising their voice when asking a question of an Aboriginal witness. Lawyers should be aware that it is a matter of patience before an Aboriginal witness answers a question - there may be periods of silence of up to five minutes before an answer is received, which in the cut and thrust of a courtroom is an eternity. One's judgment does, however, have to be exercised in these circumstances. The questioner should also remember that, unless a medical condition exists, Aboriginal witnesses are able to hear the questions just as well as you or I, and particularly where an interpreter is present there is really no need to shout!

c) Judges and Magistrates inexperienced in the use of interpreters, and the peculiarities of Aboriginal witnesses -

The comments above apply equally to Judges and Magistrates as they do to lawyers in the field. When an interpreter is present in the court it is important that the presiding Judge/Magistrate ensures that the interpreter feels comfortable, but most importantly that the focus remains on the witness, and not the interpreter. All questions should be directed to the witness and then time permitted for the

interpreter to perform their task.

If I may be so bold as to suggest, Judges and Magistrates may wish to consider the manner in which they actually "hand down" a sentence. To interpret a sentence with constant references to legislation, a complete factual history and reference to the various sentencing criteria is an extremely difficult task. In most circumstances, I have attempted to interpret the general gist of what is happening during the sentencing process and then, through arrangement with the Aboriginal persons' defence counsel, stay with them after the sentence is complete to ensure that they understand what is to happen.

It must be borne at the forefront of any lawyer's mind, and also that of the sentencing Judge/Magistrate, that the concepts which one is explaining during the sentencing process are extremely difficult and complex to interpret. If these matters are required to be interpreted, then time must be permitted for this to occur in a proper fashion and the Judge or Magistrate must understand that the sentence will take quite some time to actually complete. The alternative, and perhaps the more appropriate manner in which to proceed, is for the sentence to be handed down and for counsel to undertake to the court that the sentence and its ramifications be interpreted to the Aboriginal person and for this to be reported back to the Judge/Magistrate.

The most unfortunate example I am able to provide in relation to interpretation of a sentence is where, although the handing down of the sentence was performed in an exceptionally even manner with time allocated for interpretation, I was required to interpret at the top of my voice in order that the court could also hear the fact that I was interpreting. The unfortunate part of this episode is that the person for whom I was interpreting was a very frightened 14 year old boy who simply could not understand why the hell I was yelling at him. To be frank, it didn't matter how loudly I interpreted the sentence, the court was never going to understand a word I said. I succeeded simply in further frightening an already scared young boy.

d) The qualifications and actual experience of the interpreter involved -

Prior to using an interpreter, it is my opinion that a lawyer should ascertain what their actual experience is, and what their qualifications are. Though I am rarely if ever asked, my qualifications are NAATI accredited at the Para Professional level, and I always make it a point of indicating to the lawyer involved that I left Port Keats at the age of 12 and returned only intermittently between the ages of 12 and 16. This has important ramifications for interpretation of legal/medical matters as the language ability which I possess, at its highest, is that of a 16 year old. One only has to think of the language/terminology used by 16 year olds in our own community to realise that the complexities of legal/medical expression are generally not utilised at such an age. The same applies to Aboriginal communities.

While at Port Keats participating in the interpreting course, we were required to translate various legal terms from English to Murrinh-Patha in an attempt to demonstrate how similar our two systems of law are. I was stunned when one of the members of our class, being in his late 30's, indicated that he understood what we were attempting to explain however did not know the corresponding Murrinh-Patha terms. Over lunch, he went and spoke to one of the senior members of the community who returned with him for the second part of the day, and at that time we were able to move forward and identify the corresponding terminology.

This is a very important example as it demonstrates a significant difference between our cultures - consider carefully the fact that you or I are able to easily go to any law book we wish, access the Internet etc, and find out what we want, when we want about any aspect of law up to the moment. In the Port Keats community, and I am sure it is much the same in almost every other Aboriginal community, people within those communities must reach a certain age or level before these matters are divulged to them. There-

continued next page

I nterpreting: Practically Speaking

Dominic McCormack, De Silva Hebron

continued from previous page

fore, for my work as an interpreter, even though I may know the meaning of certain words and how to express them fully, if I am parroting them to a 16 year old (or even a gentleman in his mid 30's) they may mean absolutely nothing, simply because they have not yet been exposed to that level of knowledge and expressive language within their own community.

The complexity of the matter may therefore also regulate the age and ability of the interpreter that is required to be employed.

e) The various combinations of relationships and family background involved in Aboriginal Communities

The most difficult, confusing, and at times frustrating aspect of dealing with Aboriginal persons and witnesses is the element of relationships, and it will have a great bearing on who can actually participate as an interpreter. This is a very important consideration and one which has extreme impact in most circumstances where an interpreter is required. I am able to identify a number of instances where people from Port Keats have refused to participate in an area where an interpreter is desperately required, either because a female is involved, a brother/sister are to be a witness, or that it is simply a "shame job" to interpret in a matter where sexual issues are being discussed in front of other people. This, of course, makes it very, very difficult to actually select an interpreter who is willing to perform the task!

At times, Aboriginal persons are willing to interpret while a hearing is taking place in their own community. Difficulties, however, can be encountered when an interpreter is required to come to Darwin or some other major regional centre. One of the most obvious difficulties in this regard, political correctness aside, is the fact that an individual may be willing to interpret when requested to do so at the community, and then upon coming into Darwin the attraction of the bright lights, and particularly alcohol, is simply too much of a temptation. Between stepping off the plane at 8:30am and being required to appear in Court at 10:00am, that individual may be lost for a week.

This aspect, in particular, is one of real concern for the court system and Aboriginal communities in attempting to address the important issues of initially requiring an interpreter, and then ensuring that the person(s) upon whom, for example, an extremely expensive Supreme Court trial may revolve, is/are actually present.

It is interesting to note the position which non-Aboriginal interpreters find themselves in. When I return to Port Keats I am often referred to by way of kinship terms - that is, brother, cousin, father, uncle etc. I attempt to abide by those rules to the best of my knowledge. However, my kin "sisters" will not refer to me by name but will talk to me, which within an Aboriginal family is not permitted to occur.

I am often described to the children as a "Murrinh-Patha man" because I grew up and am part of the community, and it is part of me. The reason for providing this example is that it is interesting to see how the Aboriginal communities actually operate - although I am considered to be a Murrinh-Patha man when I return to Port Keats it is also acknowledged that, when circumstances suit the community, I am a non-Aboriginal English-speaking person who is able to step away from the rigours of tribal customs. Therefore, it may be said that I hold the (sometimes unenviable) position of having one foot in one camp and one in the other. This is, at times, fully exploited by the people of Port Keats for their own benefit much to my dismay. However, in circumstances where an interpreter is required, it is recognised that I am able to interpret for females (although I prefer not to), a "kin sister", and in various other circumstances where if I were Aboriginal I would not be entitled to do so.

It may therefore be said that a non-Aboriginal interpreter, if they are able to perform the task correctly, is in some circumstances of greater benefit than a tribal interpreter.

5) The Need for Interpreters

There is no question, in my opinion, that the use of an interpreter must at least be considered in matters where Aboriginal persons are concerned. For that

matter, interpreters should be considered and then used on all occasions where the person being interviewed is a person whose first language is not English and there is doubt as to their ability to understand the matters being discussed.

It has sometimes surprised and annoyed me as to the number of occasions when matters have proceeded without an interpreter being used, and suddenly, at the last moment, an interpreter is sought, urgent instructions are taken, and the matter proceeds... in court. This is totally unsatisfactory for all parties concerned. The Aboriginal client has little or no idea what is happening, the lawyer (normally from NAALAS, or its equivalent) is frustrated at being unable to take proper instructions at the earliest opportunity, and the interpreter has been given little or no notice that they are required and has no idea of the matters for which they should prepare.

Although costs will be involved initially, of course, instructions with the aid of an interpreter must be taken if at all possible at the earliest opportunity. In dealing with Aboriginal languages in the Northern Territory, this is not always going to be possible due to the lack of suitable interpreters and a central register. However, if the opportunity is there, it should be taken without hesitation. This is fundamentally important due to the impact which this would have on the progression of matters through the court system. Simply put, proper instructions taken at the earliest opportunity would, in my opinion, lead to a truer understanding of the case, proper investigation, and proper opportunity to either plead at an early time or negotiate fully with police or others concerned.

The most recent matter in which I was involved was a case where a young man had been charged with sexual assault, indecent assault and deprivation of liberty. On the morning of the committal, the Aboriginal legal aid lawyer involved was for the first time able to take proper instructions from his client and, along with important clarification of evidence

continued next page

Interpreting: *Practically Speaking*

Dominic McCormack, De Silva Hebron

continued from previous page

from the complainant (also with the aid of an interpreter), the two more serious charges were dropped and the matter proceeded as a plea to the charge of deprivation of liberty. The Aboriginal client was most pleased at this result, and the lawyer involved was delighted at being able to get clear and reliable instructions which greatly assisted the resolution of the matter. The lawyer also utilised my services to explain the court process and sentence to his client. The lawyer later commented to me that this was a rare occasion where he was confident his client had a good understanding of what had actually taken place and the result.

It is interesting to note what occurred "behind the scenes" in this matter. The committal was to take place in Katherine and quite a number of witnesses for the prosecution had been flown from both Port Keats (NT) and Kununurra (WA). The expense involved in such an exercise is obvious - staff required to travel to Katherine, aeroplanes chartered from Darwin to both Port Keats and Kununurra to initially transport witnesses from their communities to Katherine, and then by way of return. For the whole morning, two things occurred - the prosecution utilised an interpreter to interview the complainant further, and the defence utilised myself to interview the defendant. At 2:00pm, the matter proceeded as a plea. Witnesses were then flown back to their respective communities. The message in terms of finance, administration, and justice, I think, is clear - but for two interpreters, this matter would have proceeded as a Supreme Court trial.

6) Preparation by the Interpreter
It is often difficult to prepare for an interpreting assignment. On most occasions, I have been called with little notice and am provided with scant details over the telephone. I have then been introduced to a lawyer, detective or doctor, who sometimes has not been informed that I am actually coming, and the interview proceeds.

In a perfect world, an interpreter should be treated in a similar fashion to a barrister. It is my view that the interpreter should be provided with a "brief"

in order that they are aware of the background to the matter, have some detail of the person for whom they will be interpreting, when and where the interview is to take place, and contact details of the person arranging or requiring the interview. It has not always been my view that it is best to know the background of the alleged incident (in legal matters), however the more interviews which I attend the more it seems that I must be aware of the background in order to prepare effectively and ensure that time is spent identifying words or sentence structures which are more than likely to be utilised during the interview. It is also extremely helpful to discuss the matter with the person organising the interview, who is normally the interviewer.

On interpreting assignments, I have always insisted on spending some time with the client prior to the interview proceedings. This allows me to explain to the client what my role is, what they are entitled to expect from me, and what will happen during the interview process. I have then introduced them to the interviewer and explained to them what the role of the interviewer is. Although this may take time, it is very important as it ensures that the client understands their position and the roles of those persons who will be present. They are then included and are indeed part of the process, not simply a silent and unknowing observer.

Briefly, it is interesting to note the amount of time which individual interpreters are expected to continue interpreting for. In American textbooks which I have had the opportunity to read on the manner in which their legal interpreters operate, it is a general rule that interpretation is only conducted for a continuous period of 20 minutes. At that time, interpreter (1) leaves the court room and interpreter (2) takes over - a most unlikely scenario in Northern Territory courts, where to have a single interpreter for any period of time is simply a luxury!

In providing this example, I urge all lawyers who utilise the services of an interpreter to be aware of the significance of the task which they are performing. Simply because somebody speaks

a second, third, fourth language does not mean that it is an easy task to, firstly, listen to a sentence spoken in language (1), secondly to allocate the appropriate words and sentence structure in language (2), and thirdly voice the same to the person concerned. Engaging in such a task for a great period of time is often extremely taxing. This is highlighted by the often impossible task of directly interpreting an English sentence to a directly comparable Murrinh-Patha sentence. What occurs on most occasions is that I as an interpreter have to identify the key words, the "concept" or "message" which the interviewer or questioner is attempting to convey to the client, and explain that concept. This may explain why often a short question is asked by the interviewer or questioner, and the interpreter then proceeds to speak with the client for a great period of time, and the resultant answer in English is again very short.

Further, this again demonstrates the need for skilled interpreters who are extremely conscious of their position and realise the concepts they are attempting to explain are extremely difficult, with the answers in return being so very important. In my role as an interpreter, if I have ever thought that I am unable to interpret in the precise fashion as required, I have advised the interviewer that I am required to explain a concept which may take some time. It is useful to discuss with the interviewer an appropriate manner to interpret a particular concept so that they do not feel (while I engage in a lengthy explanation) they have suddenly been left out of the realm of understanding. Teamwork is essential.

7) Where are the Interpreters?

I now return to my example scenarios. For the Greek lady about to be subjected to the amputation of a right leg, she has been provided with speedy access to an interpreter, and soon her immediate family. But for the elderly Aboriginal lady, about to face the same prospect, what is to be her plight? Implicit in this question is how are the medical staff involved going to approach this scenario - how do they proceed in the situation where the

continued next page

I nterpreting: Practically Speaking

Dominic McCormack, De Silva Hebron

continued from previous page

receipt of informed consent is nigh on impossible? The same can be said for our current court system - it seems obvious that many, many cases have proceeded over years, in fact decades, without Aboriginal clients actually knowing their position or rights.

The question then is:- "How long are we as a legal community, and community generally, going to allow this to continue?"

There is no telephone service that a lawyer can call to access an Aboriginal interpreter. There is no central register of Aboriginal interpreters. Until there is, it would appear that the current situation, which in my view is untenable, is to continue. It seems that, in this age of mounting court lists and overburdened Judges and Magistrates, the legal system is far more concerned with the administration of administration, rather than the provision of justice. Cost, as usual, becomes the bottom line. However it remains my firm view that should a central register be provided, with an organised structure between medical staff, legal staff and Aboriginal communities firmly in place, the cost of administration and court lists involving Aboriginal persons would decrease considerably.

Unfortunately, it seems obvious that at this point in time, the matter is simply "not an issue". The fact is, it is an issue but is being ignored in almost all circles. Perhaps, then, the only way for it to be recognised is for it to become an issue in all fields - medical, legal, cost, administration . . . and perhaps at some stage, justice. I ask you again to stop for a moment and consider . . . what happens if the elderly Aboriginal lady has her leg removed and is later informed that she had the right to say "no" if she didn't understand what the situation involved, and what the result would be, and she takes the brave step of bringing an action against the Royal Darwin Hospital?

Perhaps at that stage, the Northern Territory of Australia will take notice.

ENDNOTES

1. "The Need for Interpreting and Translation Services for Australian Aboriginals, with Special Reference to the Northern Territory - A Research Report", Gloria Brennan, Research Section, Department of Aboriginal Affairs, July 1979.
2. Ibid, page 28-29.
3. "Redressing the Imbalance Against Aboriginals in the Criminal Justice System", Honourable Justice D Mildren, Supreme Court of the Northern Territory, presented at the 1995 Conference of the Northern Territory Criminal Lawyers Association, Bali. "Language and Criminal Justice in the Northern Territory", Michael Cooke, Batchelor College, July 1995.
4. An Evaluation Report is being prepared regarding the success or otherwise of the Aboriginal Interpreter Service. It would appear that as the Aboriginal Interpreter Service was not continued, funding is not available and therefore such an important service is not to be offered in the future.

Amendment of Motor Accidents (Compensation) Appeal Tribunal Rules

The NT Attorney-General's Department advises that the Judges of the Supreme Court of the Northern Territory of Australia, in pursuance of section 29A of the Motor Accidents (Compensation) Act, make the following Rules, which came into effect on 1 July 1998.

AMENDMENTS OF MOTOR ACCIDENTS (COMPENSATION) APPEAL TRIBUNAL RULES

1. PRINCIPLE RULES

The Motor Accidents (Compensation) Appeal Tribunal Rules are in these Rules referred to as the Principal Rules.

2. INTERPRETATION

Rule 3 of the Principal Rules is amended by omitting from the definition of "Master" in subrule (1) all the words after "Supreme Court Act".