Communication – Lost in Translation

Plain English may not be enough

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This is not a research report written in a scholarly fashion – rather it is some thoughts based on personal experience. Nevertheless this article may set off echoes in your own mind of memories of frustrating outcomes to cases in which you have been involved.

Increasingly, there is a move towards the use of plain English. This has been evident in insurance contracts for some time. Lawyers who, as law students, studied the Graduate Diploma in Legal Practice (GDLP) or a similar legal practice course, will have also been heavily encouraged to avoid the old-fashioned legalese which used to completely bamboozle the average lay person.

In years gone by, when a rigorous course in English grammar was a standard part of any decent education, attention was drawn to the appropriate use, whether orally or in writing, of formal and informal language. Slang and other informal language might be used with one's friends and family but was not suitably used in any other communications. Probably as a result of increasing use of email to correspond, both with personal acquaintances and total strangers, informal language is now more often used when it might be highly inappropriate. Texting is currently highlighted as a source of communication problems affecting modern youth, but I am not going to go there. It will be another few years before the consequences of that development become clear.

However, the use of plain English does not necessarily solve the communication problems that arise when at least one party is speaking English when it is not their first language. If that party is also expected to understand slang or other informal language, the problems escalate. Particularly in the context of legal issues, there are terms which are second nature to lawyers which are not part of everyday communication for lay people. The problems are further compounded when there are significant cultural differences between the two parties.

Critical importance of effective interpreter services

In a former life I used to teach mathematics – a subject which is not universally popular, and might even be one which was a stumbling block for you in the past.

Trying to help students develop skills in mathematics made me very much aware that comprehension problems can arise because a particular individual has a brain which has not developed the connections necessary to understand the concepts involved. The same is true of those with two left feet on the dance floor because of a lack of motor coordination, but the consequences may differ. One can affect one's career or freedom while the other is more usually a cause of social embarrassment.

A fact to which many anthropologists and linguists would attest is that there are cultural concepts which are unique to a particular group of people, and for which those from a different cultural and language group cannot find equivalent words. Trying to explain mathematical concepts to a person who lacks the ability to understand those concepts is frustrating, and can be compared to talking to someone in a language of which the listener has no or limited knowledge.

In the Northern Territory, and particularly in Darwin, we rightly pride ourselves on having a cosmopolitan population which co-exists pretty happily on the whole. This overlooks the fact that many cultures, particularly the Asian ones, see it as important not to make others lose 'face', so that they will indicate that they understand when in fact they do not have a clue as to the real meaning of what has been said.

Rosemary Jacob

The Anunga Rules are a clear indication of awareness of this in relation to Indigenous clients, but the same problem arises with other clients. A case may turn on a word, and if there is a misinterpretation or misunderstanding the results can be dire.

The courts have often complained that there are insufficient interpreters to assist in translating court proceedings for Indigenous people. In addition to the many language groups which exist in the Australian Indigenous population, the Territory also has representatives from a multitude of countries. Those with a European background and a reasonable level of education are likely to be sufficiently

fluent in English, but many others, particularly those who arrived in Australia as refugees, are far less likely to have a high level of skill in spoken or written English. The Anunga rules provide a basis for an approach which should, in my opinion, be used for all for whom English is a second or even third language.

In all cases, finding an interpreter who has a sufficient level of language skills in English to be able to convey a sufficiently accurate interpretation of concepts unique to that culture, is not easy. It is also worth noting that an interpreter who is not properly qualified may indeed be able to communicate fluently in her or his first language, but may not interpret the client's answer to a question into English with adequate clarity. And all of the above ignores the issues that arise in terms of foetal alcohol syndrome.

Who should fund the services of an interpreter?

The Northern Territory Government has long recognised that the size of the NT population does not justify the expense associated with having all specialist areas of medical services provided through NT hospitals. In consequence, for public patients, there is an arrangement whereby the patient's airfare costs to a designated hospital interstate are covered by the NT Government, as well as the patient being provided with a small allowance towards living costs while away from home.

Given that a client in a criminal case may require an interpreter, the question of the necessary level of competence of the interpreter and the availability of a suitably qualified interpreter in the locality of the court become issues. In some jurisdictions, it is seen to be the duty of the court in a criminal case to provide interpreters for any parties or witnesses who may require them, whether they are called by the prosecution or the defence. If a client requires an interpreter, and one is available locally, then the question of cost is less significant. If, however, none is available locally or it is important to have an accredited interpreter, there is a much higher probability that one will have to be sought interstate – with clear cost implications for travel and accommodation.

Any judge, in summing up a criminal case to the jury, will stress the presumption of innocence. Yet, illogically, the accused, who is indeed innocent, may be profoundly out of pocket by the time that the jury brings down a verdict. This is not natural justice. At least in a civil case, costs are often awarded to the successful litigant, although admittedly the method of calculating the amount does not result in a recovery of all of the costs incurred.

In my opinion, there is clearly a case to be argued for the courts, with appropriate government funding, to be responsible for the provision of a service providing suitably qualified interpreters.

While it may not be unreasonable to expect a party who is not eligible for Legal Aid assistance to meet some part of the cost of providing an interpreter, I would submit that any part of that cost arising from having to bring an interpreter from interstate should not be recoverable from that party.

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