



The International Journal for
Translation & Interpreting
Research
trans-int.org

Interpreting in the Gray Zone: Where Community and Legal Interpreting Intersect

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DOI: 10.12807/ti.105201.2013.a05

Abstract: Interpreting in legal settings outside the courtroom is an area where community and legal interpreting intersect, a “gray zone” where the rules from each of these areas may mesh or collide. Thus legal interpreting outside the courtroom is an area that has caused great confusion for both the legal interpreters and the community interpreters who practice in its confines. Two neighboring countries, the United States and Canada, have adopted different approaches to interpreting in this area and to the kind of certification necessary for those community interpreters who work in legal settings. This article discusses non-courtroom legal interpreting in the broadest sense in both the United States and Canada, overviewing spoken non-courtroom legal interpreting in both countries, addressing the various challenges involved, and summarizing the emerging best practices for legal interpreting outside the courtroom, including some current and developing certification programs that affect, or may affect, non-courtroom legal interpreting.

Keywords: Community interpreting, legal interpreting, court interpreting, medical interpreting, United States, Canada, ethics, advocacy

1. Introduction

The purpose of this article is to review, contrast, and compare non-courtroom legal interpreting practices conducted in the U.S. and Canada and to propose guidelines for legal interpreters who perform their duties outside the courtroom. Following a brief overview of non-courtroom legal interpreting in both countries and a review of the challenges that face interpreters who perform legal interpreting in community settings, the authors will introduce a U.S. project that was created to guide both community and court interpreters who work outside the courtroom. The article will close with a discussion of

the impact of interpreter certification on non-courtroom legal interpreting in both nations.

It must be stated clearly that this article does not attempt to promote a programmatic re-categorization of the interpreting field, or a reassignment of the sub-categories into which the interpreting profession may be divided. It is also not an attempt to apply new standards and definitions. It does not address sign language interpreting in detail. Finally, its discussion, comparisons, and recommendations are based solely on the realities of life in the interpreter's workaday world. For the purposes of this article we will accept the premise accepted in many quarters that legal interpreting and community interpreting are in many ways different, though sharing many commonalities.

Section 2 will provide some general definitions, and section 3 will describe the gray zone that is the focus of this article. In section 4, U.S.-specific definitions will be provided, and in section 5, Canada-specific definitions. Section 6 will compare and contrast the U.S. and Canadian definitions and practices. Section 7 will introduce a program of training for non-courtroom legal interpreters and section 8 will draw some conclusions.

2. Definition of terms

While the following terms are uniquely defined by laws surrounding them in various countries, we propose generalized definitions which are widely applicable in many countries:

- *Legal interpreting* is a broad field that encompasses court interpreting as well as interpreting for any other legal process or proceeding.
- *Community interpreting* is an even broader field that, in many countries, encompasses and includes the field of legal interpreting. Community interpreting has many other names around the world, (e.g., *public services interpreting*, *liaison interpreting*, or *dialogue interpreting*) and is the interpreting sector that enhances equal access to public and community services for individuals who do not speak the language of service. Under this definition community interpreting excludes conference interpreting and most business, media, military, and escort interpreting. Although no single definition of this sector is common to all countries, community interpreting typically refers to interpreting that primarily directly benefits an *individual* rather than an *institution*, and thereby allows that individual to gain access to a service.
- In most countries around the world, *court interpreting* tends to be more established, strict, and professionalized than most areas of community interpreting. Court interpreting is only one area of the broader field of legal interpreting, yet most legal interpreter training in the U.S., and to a lesser extent Canada, focuses almost exclusively on court interpreting. This phenomenon, however, is easily explained. Historically court interpreting was often the first interpreting sector to become organized, and the courts have been the sponsoring institutions for court interpreter training, testing, and certification. Since the courts organized, sponsored, and financed these efforts for their own purposes, i.e., to provide qualified interpreters in their courtrooms, it is obvious—and very

understandable—that the courts have focused their efforts on their own institutional needs.

3. The Gray Zone

Many legal services and processes take place outside the courtroom. Consider these representative examples:

- Immigration services
- Discrimination complaints
- Employee arbitration
- Divorce and custody mediations
- Interpreting for law enforcement
- Sight translation of legal forms for any service

In addition, legal or quasi-legal interpreting can take place in a variety of other settings such as:

- Domestic violence shelters
- Refugee resettlement services
- Government social service investigations of child and vulnerable adult abuse
- Hospitals and health care organizations (e.g., police interrogations at the hospital, rape victim exams/questioning/statements)
- School Board hearings about suspension/expulsion of students where attorneys may be present
- Denial of benefit interviews for Social Services
- Investigations conducted by human rights offices and equal employment agencies

Furthermore, many private law firms and legal services providers may offer their services in other legal venues that may include:

- Legal aid offices
- Other nonprofit legal services (e.g., organizations specializing in the areas of employment, family, immigration, consumer or public benefits law)
- Private offices of pro bono attorneys
- Self-help clinics
- Courthouse facilitation services
- Legal clinics at universities, law schools, nonprofits, and other settings

Most community and court interpreters lack a clear understanding of when community interpreting transitions into legal interpreting, something that is nonetheless critically important for interpreters to know. Interpreters are not alone in their confusion. One of the authors of this article submitted a list of common community-interpreting situations to two U.S. judges and two U.S. attorneys, asking how they would categorize each situation, i.e., as “legal interpreting,” “quasi-legal interpreting,” or “community interpreting.” Interestingly, the two judges and two attorneys were by no means in agreement regarding many of the examples provided.

In practice, interpreters generally follow the conventions of the interpreting sector that they are most familiar with. Thus, court interpreters who provide non-courtroom legal interpreting are more likely to adhere to their court practices in such situations, though some will admit that they may be more flexible when they work outside the courtroom and may be more inclined to intervene if they feel that more help is needed to facilitate communication. Others will simply interpret as they would inside a courtroom. Community interpreters, on the other hand, are not typically aware when they cross the line from performing community interpreting (e.g., interpreting for a domestic violence victim when meeting with a counselor or victim advocate) to legal interpreting (e.g., interpreting for the same victim when she meets with an attorney).

Interpreters who perform legal interpreting outside the courtroom are expected to follow ethics and standards intended either for court interpreting or for community interpreting, neither of which were developed for the unique environment of non-courtroom legal interpreting. Some feel that the legal ethics and standards followed by court interpreters, with their courtroom focus, may not give sufficient practical guidance for legal interpreters outside the courtroom to provide appropriate services. On the other hand, community-interpreting standards in many cases may not protect the legal interests of the parties for whom the interpreting services are performed. Hence, there is a “gray zone” that exists in the area where legal and community interpreting intersect.

3.1. Challenges posed by the Gray Zone

The Gray Zone poses unique challenges to interpreters and certification programs. These may include:

- **Terminology:** Although court interpreters are trained in legal terminology, most community, conference and business interpreters in the U.S. receive little to no training in legal terminology.
- **Barriers to communication:** Even when they interpret accurately, interpreters may encounter communication breakdowns. These may be caused by such challenges as attorneys who speak in a high register, clients with low educational levels, and cultural barriers.
- **Requests by attorneys:** Attorneys unfamiliar with the legal and ethical requirements of interpreting sometimes ask interpreters to perform inappropriate tasks that violate an interpreter’s code of ethics.
- **Requests by clients:** Clients who feel confused often turn to the interpreter for guidance rather than to the attorney.
- **Three-way communication:** Instead of communicating directly with each other, the legal services provider and client may speak instead to the interpreter, often not realizing that what is said will be interpreted.

3.2 Unique challenges for non-courtroom legal interpreting

Non-courtroom legal settings (such as attorney-client interviews and police interrogations) are usually less formal than the courtroom and typically lack the presence of a neutral third-party arbiter in the person of the judge or hearing officer. Moreover, some sessions may involve both medical and legal interpreting, e.g., forensic interviews (see Zimányi, 2009), worker’s compensation exams and exams for disability insurance, or auto accident injuries involving insurance companies.

In these less formal settings, the lawyer, legal services provider, or legal official often requests that the interpreter do more than just interpret. They may request that the interpreter give opinions about the client's mental competence or truthfulness, provide cultural background information, or even run client-related errands. Clients in these less formal settings may also misunderstand the role of the interpreter and request that the interpreter give them advice or an opinion about the case or their attorney's competence. In some cases they may even ask for the interpreter's assistance in making phone calls, paying bills, or accessing other services.

With no one to control the situation and direct the interpreter's acts, confusion has often arisen about what the legal interpreter is permitted to do outside a courtroom in such situations, particularly when barriers to communication arise that are not removed through complete and accurate interpreting alone.

Although more and more courts in North America and around the world rely on interpreters with formal training and experience in court interpreting—thanks in part to organizations like the U.S.-based National Association of Judiciary Interpreters and Translators (NAJIT), which has recently sponsored language-specific trainings in Korean, Russian, Vietnamese, Haitian Creole, Khmer and Punjabi—legal interpreting outside the courtroom is still very likely to be performed by interpreters with very little or no training in the field or by interpreters whose training and experience has focused almost exclusively on non-legal sectors (community, conference, and business interpreting).

Anecdotally, it appears that interpreters face special challenges in many countries when interpreting for asylum seekers (Keselman et al, 2010), speakers of languages of lesser diffusion, and victims of sexual assault or torture (Fischman, 2008). For these types of appointments, emotions are often intense and untrained interpreters may feel added pressure that they should “help” the client or the provider. Interpreters who are themselves refugees or have sought asylum¹ may feel a particularly keen sense of obligation to assist others who are wending their way through the legal system. Some of these interpreters report that their own asylum cases were lost or nearly lost due to inaccurate interpreting (Bámbaren-Call et al, forthcoming).

3.3 The lack of specialized training for interpreting in the Gray Zone

The lack of specialized training for non-courtroom legal interpreting has become a critical concern in providing effective and appropriate legal interpreting and in ensuring equal access to services for those with limited language proficiency. For example, if the attorney senses that the client is not disclosing all the facts and asks the interpreter what the reason for the client's silence might be, how should the interpreter address that request? If the attorney misunderstands the client's legal name due to a foreign naming convention, may the interpreter clarify how that naming system works? When the attorney requests that an interpreter listen to a voicemail in another language and then summarize its content, should the interpreter do so? If confusion surrounding court dates is caused by cultural conventions, may the interpreter point out the relevant facts?

¹ Immigration practitioners use the term *asylum seekers* to refer to people who are applying for asylum but who have not yet been granted asylum; those who have been granted asylum are referred to as *asylees*. A number of interpreters for languages of limited diffusion are refugees or asylees.

The answers to these questions are not clear for many interpreters or even for their trainers or educators. The common rationale offered for making sure that interpreters deny the requests listed above can be summarized as follows:

- Interpreters are not expert witnesses or mind-readers: they must never comment on a client's mental state or reasoning. Interpreters do not have the education, training, and experience to draw such conclusions.
- In discussions about naming systems, the interpreter is restricted to interpreting and requesting clarifications; any other involvement may open the door to interpreter error and potential ethical violations and misconduct.
- The interpreter is not an anthropologist or cultural expert and must never offer cultural information that could be inaccurate, inappropriate, or misleading, since every client is an individual, rather than a cultural exemplar.
- By intervening to offer information, the interpreter is exposing him- or herself as well as the legal services provider (and the provider's organization) to liability for the interpreter's potential errors.
- When intervening, any information provided by the interpreter might be construed as offering legal advice or opinions, which could in turn constitute unauthorized practice of law, a crime in both Canada and the U.S.
- The summarization of a voicemail or any other spoken or signed message is prohibited in legal interpreting because the interpreter is not qualified to make decisions about which information is important or unimportant. That responsibility lies solely with the legal services provider or judge. (The interpreter could simultaneously interpret the voicemail, transcribe, and translate it, or alert the legal services provider to the general subject matter or topic so that the attorney could then decide whether the voicemail should be interpreted or transcribed and translated.)
- Sharing the language does not necessarily mean sharing the culture (religion, nationality, social status, etc. may differ), and therefore, expecting the interpreter to fully understand a speaker's culture throughout the communicative encounter is dangerous. The assumption that the interpreter is a cultural authority has led many legal service providers to ask the interpreter for a cultural opinion about a client without examining why they assume the interpreter's answers are valid. Such questions are best directed to the client, not the interpreter.

In short, legal interpreters need special training to know how to handle the many demands they encounter in non-courtroom settings.

3.4 Attorney needs: Implications for interpreting in the Gray Zone

The vast majority of a lawyer's time is spent outside of the courtroom. Most individuals who contact a lawyer for assistance will never enter a courtroom. Legal services provided outside of a courtroom may include initial consultations, preparation of wills, filing administrative applications (anything from a patent application to an immigration application to a tax return), and preparation for a court hearing. Thus, although court interpreting is the most developed sector of legal interpreting, it may actually be the least

commonly practiced due to the extensive legal work performed outside of courtrooms.

Out-of-court legal interpreting may be far more common, but there are fewer training resources and guidelines available for its practitioners. Of course, many attorneys do insist on using the services of certified court interpreters for their out-of-court needs, but this choice does not magically transform these non-court-related interpreted encounters into examples of court interpreting.

Attorneys are bound by their ethical duties, and ethical violations are subject to sanctions, including disbarment. Under the attorney's ethical code, whenever interpreting is necessary to ensure clear communication between the attorney and the client, an interpreter becomes a non-legal assistant to the attorney, and the attorney therefore becomes responsible for ensuring that the interpreter complies with all of the same ethical requirements that are imposed on the attorney.

This analysis of the role of the interpreter from the perspective of the ethical obligations of the attorney suggests that the interpreter is part of the legal team. This role may result in attorneys' expecting the interpreter to provide services that go beyond strict interpreting in order to improve the services provided to the client. The ethical requirements of the attorney most likely to cause difficulties for the interpreter are confidentiality, avoidance of conflicts of interest, and avoidance of the unlawful practice of law.

All of the above challenges are unique to the Gray Zone between legal and community interpreting and require careful consideration when establishing training and education programs for both legal and community interpreters. In addition, current certification programs for court and medical interpreters do not appear to address such concerns and challenges.

4. Interpreting in the United States

4.1. Definitions

The following set of U.S.-based definitions is taken from a manual used in the U.S. to train interpreters to perform non-courtroom legal interpreting (Framer et al., 2010, pp. xi–xii):

- *Community interpreting*: Interpreting that takes place within a community setting, typically for public and nonprofit services.
- *Court interpreting*: Interpreting in the courtroom or for an official legal proceeding. The interpretation is preserved on the record or transcript of the hearing, deposition or trial. Court interpreting is a subcategory of legal interpreting.
- *Legal interpreting*: Interpreting related to legal processes and proceedings, including but not limited to lawyer-client representation, prosecutor-victim/witness interviews, and law enforcement communications.

4.2. Overall picture of interpreting in the U.S

In the United States, the professions of court, community, medical, conference, sign language, and business interpreting exist as separate worlds, although overall court interpreting as a profession is more advanced and professionalized than community interpreting. In practice, many and perhaps even most community interpreters in the U.S. receive little to no training. However, whether adequately trained or not, community interpreters in the

U.S. are typically expected to perform cultural mediation and advocacy and to make extra efforts to ensure successful communication, all of which require a multi-faceted skill set and experience, whereas court interpreters working in the courtroom are generally prohibited from engaging in these activities. These differences in practice and training contribute to the confusion as to which rules to follow when performing non-courtroom legal interpreting in the Gray Zone.

Some limitations of the current U.S. approach to interpreting include:

- Much legal interpreting outside the courtroom in the U.S. is carried out by community interpreters who do not know, much less adhere to, legal interpreting ethics, requirements, and restrictions.
- Some court interpreters are more rigid outside the courtroom than they need to be.
- Some court interpreters occasionally antagonize legal services providers by their refusal to clarify or to help resolve basic communication breakdowns.
- Many legal professionals have unreasonable expectations as to what services they can or should expect interpreters to perform.
- It is often nearly impossible for attorneys to find qualified interpreters, particularly outside large urban areas and for languages of lesser diffusion.

4.3. Ethics and standards of interpreting in the U.S.

In the U.S., the national healthcare interpreting ethics and standards promulgated by the National Council on Interpreting in Health Care (NCIHC) in 2004 and 2005 are widely applied in other areas of community interpreting and are of critical importance to the field. In addition, the International Medical Interpreters Association (IMIA), then known as the Massachusetts Medical Interpreters Association, published more detailed, seminal standards in 1995. The IMIA standards were among the first ever published and are used in the U.S. and a growing number of countries (IMIA/MMIA, 1995).

In the U.S., codes of conduct (which may or may not include a code of ethics and standards of practice in the same document) and other guidelines have been established for court interpreters since the late 1970s and, more formally, since the 1990s.² The administrative offices of the various courts have adopted codes of ethics that are binding on interpreters. Thus, in the U.S. federal courts for example, interpreters must follow the *Standards for Performance and Professional Responsibility for Contract Court Interpreters in the Federal Courts*. Interpreters in state courts must adhere to the code adopted by that state, which is typically based on the Model Code adopted by the Consortium for State Court Interpreter Certification (now renamed the Council of Language Access Coordinators). This model code includes extensive commentary (Hewitt, 1995).

Legal interpreters in the U.S. may also follow the code of ethics of NAJIT, but are obliged to do so only if they are members of NAJIT. It should be noted that all codes of ethics for legal interpreters in the U.S. are very similar and cohesive and reference court interpreting. In contrast, the American national ethics and standards for medical interpreting, published by NCIHC in 2004 and 2005, focus solely on the medical context, yet these ethics and standards are broadly applied in community interpreting as well.

² See e.g., Administrative Office of the Courts (1990) and Hewitt (1995).

These NCIHC guidelines allow interpreters to engage in certain behaviours that are not permitted or endorsed in court and legal interpreting, such as culture brokering and advocacy.

4.4 Certification for interpreting in the U.S.

4.4.1 Certification for court interpreting

Court interpreter certification is relatively well established in the U.S. In 1978, Congress passed the Federal Court Interpreters Act, which mandated a process to certify interpreters in federal courts. Federal court interpreter certification, formerly offered in three languages, has for many years been limited to Spanish.

That same year of 1978, the National Association of Judiciary Interpreters and Translators (NAJIT) was founded. Today, NAJIT has about 1,300 members. It sponsors or hosts conferences, training, and testing programs and has developed a national Code of Ethics and Professional Responsibility for interpreters. NAJIT also administers its own certification test in Spanish for court interpreters.

Federal court interpreter certification for Spanish interpreters has been available since 1978. The Federal Court Interpreters Act, together with the support of NAJIT and the hard work of many state and district courts, led to the establishment of a growing number of certification programs in state courts. Until recently, 44 states plus the District of Columbia were members of a National Consortium on Language Access, and of these at least 20 have fully established programs for state court interpreter certification, with exams available in up to 20 languages as discussed above. However, as of December 2012, due to a restructuring of the Consortium, all 50 states, US territories and Washington, DC, are considered part of the Council of Language Access Coordinators (CLAC) and may each designate one individual to be a member of CLAC. In addition, the recent focus of the U.S. Department of Justice on enforcing Title VI of the Civil Rights Act and its requirements pertaining to language access in the courts, as well as the letters by the Department of Justice to several courts, have also had a positive effect on growing interest and activity around state court interpreter certification in the U.S.

The impact of all these certification programs with the concomitant professionalization that certification almost inevitably confers has been huge in the U.S. court interpreting culture. Certification has shaped the larger culture of legal interpreting with the consequence that culture brokering, advocacy, and other forms of intervention by the interpreter are largely both prohibited and frowned upon, even in other sectors of interpreting.

4.4.2 Certification for medical interpreting

In the healthcare field, two separate national medical interpreter certification programs—established in the U.S. by the National Board of Certification for Medical Interpreters (www.certifiedmedicalinterpreters.org) in 2009 and the Certification Commission for Healthcare Interpreters (www.healthcareinterpretercertification.org) in 2010—have helped to professionalize healthcare interpreting. By extension, these two programs have supported professionalization in other areas of community interpreting—such as social services interpreting—that take their lead from the ethics and standards of healthcare interpreting. Some of the ethical principles and standards of practice for healthcare (and thus community) interpreting in the U.S. have been memorialized and strengthened with the

advent of medical interpreter certification, and this clarity has helped to highlight the differences between court and community interpreting.

Historically, it is fair to say that medical interpreting as a profession in the U.S. has arisen in part because of many very negative health outcomes that have resulted in situations in which patients cannot communicate with their healthcare providers. There is also a certain tension that has arisen in response to the strictness of court interpreting regarding the issue of intervention.

While national medical interpreter certification in the U.S. seems firmly established, state certification for community interpreters in medical and social services currently exists only in the state of Washington, through a program that has been active since the early 1990s. Although efforts have been made in other states to set up similar programs, to date no other state certifies community or medical interpreters.

On the other hand, the impact of the two national medical certification programs has been profound, if recent. The idea that medical (and by extension community) interpreters can, should, and sometimes must intervene to address communication barriers in order to prevent potential tragedies or injuries to the health, safety, and well being of Limited English Proficiency patients or clients is deeply anchored in the culture of the profession.

4.4.3 Certification for community interpreting

With the aforementioned exception of the state of Washington, there is currently no national or state certification for community interpreting in the U.S., nor do there seem to be any plans to establish such a program at present.

Stand-alone training programs for community interpreters are rapidly proliferating across the U.S., and academic programs for spoken language community interpreter training are also swiftly growing in number, e.g., Des Moines Area Community College now offers an Associate of Science degree in interpretation and translation as well as 35-credit interpreting certificate program in five different specialties: Education, Business, Healthcare, and Human Services, as well as the much more commonly encountered training in Judiciary interpreting. A rapidly growing number of community colleges and four-year colleges offer certificate and degree programs for community interpreting. It is striking that despite this recent intense expansion of training and education programs for community interpreting in the U.S., there is not yet any movement toward national or state certification for community interpreting outside of Washington State's certification.

4.4.4 Certification for American Sign Language (ASL)

Although this article addresses spoken interpreting, it should at least be mentioned that in the U.S. there are many opportunities to obtain full interpreting degrees in sign language, far more than for spoken language interpreting. National certification for ASL interpreters exists quite separately from certification for spoken interpreting. The ASL certification program is well established. After obtaining national generalist certification through the Registry of Interpreters for the Deaf (www.rid.org), it is also possible to obtain a specialist certification in legal interpreting.

In the U.S., sign language interpreting is a far more professionalized and structured field than spoken language interpreting.

4.4.5 Future work in interpreting in the U.S.

As we speak, there is a movement in the U.S. to explore the concept of a generalist interpreter certification (Bancroft, 2010). It would appear that many in the U.S. see the need to transcend boundaries and sectors in order to establish a broader profession of interpreting. The question then arises as to how the challenges presented by the Gray Zone would be resolved within the parameters of a national code of ethics, national standards of practice, training, testing, and ultimately a generalist certification for interpreters in all sectors of spoken interpreting.

A historic first North American summit that united six distinct interpreting sectors (including sign language interpreting) was held on June 17, 2010 in Washington, D.C. (www.interpretamerica.net). This InterpretAmerica summit is now an annual event. While the result of work emerging from these summits over the long term may lead to a push to establish a more cohesive profession of general interpreting, currently a great deal of confusion still prevails about legal interpreting outside the courtroom.

5. Interpreting in Canada

5.1. Definitions

The following definitions are taken from the *National Standards Guide for Community Interpreting Services* in Canada (HIN, 2007, pp 9–10):

- *Community Interpreting*: Bidirectional interpreting that takes place in the course of communication among speakers of different languages. The context is the provision of public services such as healthcare or community services and in settings such as government agencies, community centers, legal settings, educational institutions, and social services. Other terms have been used to describe community interpreting such as “public service interpreting,” “cultural interpreting,” “dialogue interpreting,” “institutional interpreting,” “liaison interpreting,” and “ad hoc interpreting.” However, community interpreting remains the most widely accepted term in Canada.
- *Court Interpreting*: Interpreting that takes place in a court setting, in which the interpreter is asked to interpret either consecutively or simultaneously for a LEP/LFP (Limited English Proficient/Limited French Proficient) individual who takes part in a legal proceeding.
- *Interpreter*: A person who facilitates spoken language communication between two or more parties who do not share a common language by delivering, as faithfully as possible, the original message from source into target language.
- *Professional Interpreter*: A fluently bilingual individual with appropriate training and experience who is able to interpret with consistency and accuracy and who adheres to the Standards of Practice and Ethical Principles.

5.2. Overall picture of interpreting in Canada

While historically court interpreting is the more established profession, community interpreting is making great strides in Canada. The professional cultures of court and community interpreting vary from province to province. For example, in British Columbia, court interpreting carries some prestige

and court interpreters receive a higher pay rate than community interpreters if they possess the recognized qualifications and certification. In Ontario, by contrast, though court interpreting is a well-established profession, court interpreters may earn about the same hourly pay as community interpreters.

In Canada, the current movement is toward professionalization of community interpreting to meet the same standards as those for court interpreting, with the result that the professional culture of both professions is becoming increasingly similar.

5.3. Ethics and standards for interpreting in Canada

In recognition of the fact that interpreters work across sectors, as evidenced by the Gray Zone, a coalition developed in Canada that includes two language industry associations, the Language Industry Association (AILIA) and the Association of Canadian Corporations in Translation and Interpretation (ACCTI), as well as Critical Link (CLI), a Canada-based international organization that supports community interpreting, and the Healthcare Interpretation Network (HIN), a national organization in Canada that provides a forum for the development of standards for healthcare interpreters. This coalition deliberately adopted a generalist approach to both training and standards development to ensure consistency of interpreting across sectors. As a result, whether interpreters work in hospitals, courts, schools, or social services, they are expected to adhere to the same national standards (HIN, 2007), which require interpreters to avoid interrupting a session to provide cultural or other information to remove barriers to communication except when a clarification is needed. Although community interpreters in Canada may interrupt a session to request repetition or the clarification of terms they do not understand, according to these national standards they are otherwise expected not to intervene during the session.

After 20 years of interpreters working within the framework of the “cultural interpreter” (an interpreter who advocates and provides cultural information), a working coalition led by HIN, AILIA, and ACCTI conducted focus groups of working interpreters across the country, interviewed clients, formed committees that engaged in extensive discussions with all sectors and stakeholders (including government, nonprofit agencies, interpreter trainers, language service companies, institutions of higher education, etc.), and conducted hundreds of hours of research. Their conclusion was that the only way to professionalize community interpreting was to eliminate fragmentation, including that of training programs (for example, some agencies focused on medical interpreter training, others on domestic violence, and so forth). Canada’s *National Standard Guide for Community Interpreting Services* (HIN, 2007) is intended to apply to all interpreters except conference interpreters. In this sense, community interpreting is emerging as a possible proxy for a general interpreting profession in Canada. The advantages of that approach appear to be the following:

- A clear understanding about the role of the interpreter in all settings.
- A growing national consensus about that role.
- Explicit parameters for interpreters about what they may and may not do.
- Guidelines that limit inappropriate involvement by the interpreter.
- Standardized training across sectors.

Some limitations of the approach in Canada appear to be:

- Lack of understanding by many interpreters about what legal interpreting is.
- Lack of knowledge about the legal requirements for interpreting, the legal and ethical obligations of attorneys, and the legal risks involved in intervening (or failing to intervene) when addressing barriers to communication.
- Lack of specialized training for legal interpreting.
- Canada's national standards for community interpreting services date from 2007 (HIN, 2007). While no formal certification for community interpreters yet exists, groups in Ontario and Vancouver are collaborating with the Canadian Translators, Terminologists and Interpreters Council (CTTIC), the national professional association that created the long-established court and conference interpreter certification exams, to explore setting up a certification program for community interpreters.

Court interpreters in Canada may follow a professional code of ethics established by the provincial associations under CTTIC, e.g., OTTIAQ (the Ontario chapter of CTTIC), and/or the code of ethics provided by the court or the provincial court interpreters association (a code that is often adapted from the provincial association's code). However, the CTTIC Code of Ethics is binding only on its members. *The National Standard Guide for Community Interpreting Services* (HIN, 2007) includes both standards of practice and a code of ethics that apply to all settings, including legal, as specified in the standards (the only exclusion is conference interpreting). This is the only national Code of Ethics available in Canada for spoken interpreting. The guide itself describes legal interpreting as a subset of community interpreting, but its Annex V (Legal Interpreting) includes examples and guidance related only to court interpreting.

In Canada, where no professional distinction is made between legal and community interpreters, interpreters are expected to adhere to the same standards in all settings, which simplifies their decision-making process when faced with communication barriers, and in almost all cases limits their interventions to linguistic transfer. In Canada, community interpreters are prohibited from intervening to provide nonlinguistic cultural explanations.

5.4. Certification for interpreting in Canada

Certification for community interpreters is under development in Canada, and would explicitly include legal interpreting, but would in no way compete with, supersede, or (presumably) undermine court interpreter certification. In addition, nothing in the proposed certification plans appears likely to conflict with either the current training or practice of court interpreters in Canada.

In many provinces of Canada, court interpreting is an established profession. The certification process is administered by the provincial bodies of CTTIC. Clearly the certification of court interpreters has had a strong impact on the training, conduct, and professional culture of non-courtroom legal interpreting in Canada and on community interpreting in general there.

In Canada, training programs for community interpreting are becoming more widespread and often range from 60 to 180 hours for spoken language interpreting. Since 2006, Ontario has been offering a 180-hour standardized post-secondary training program. The Language Interpreter Training Program (LITP) is offered at several colleges across the province, and the program is also available online.

Canada seems clearly set on a path toward establishing community interpreter certification in Ontario, British Columbia, and ultimately across the country, a path that will likely reinforce the current practice of severely restricting the interpreter's role in almost any setting to intervening solely to requesting clarifications or repetitions. Indeed, certification for community interpreters may potentially close off further discussion of the interpreter's prerogative to address communication barriers during or outside the session, potentially imposing a "straitjacket" on the interpreter's judgment when a complete breakdown in communication looms.

6. Comparison of interpreting in the United States and Canada

In both Canada and the U.S., interpreters work across sectors—in the Gray Zone—and rarely within a single sector as noted in a significant study (Kelly et al., 2010). For example, the study noted that 82.8% of the 1140 interpreters surveyed have interpreted in medical settings, 70.4% in public/community/social service settings, and 69.1% in legal/judiciary settings. (Most of these interpreters also interpret in several other sectors.) However, despite these similarities there are many differences between these two countries in their approaches to interpreting in the Gray Zone.

6.1. Comparison of definitions

While the U.S. definitions for court and community interpreting agree with the Canadian definitions, the national Canadian standards provide definitions for community, escort, court, and conference interpreting, but do not include a definition for *legal* interpreting, despite the fact that the document does include legal interpreting in its list of settings (HIN, 2007, p. 20).

Second, the authors of the U.S. training manual³ cited above had difficulty finding a definition for legal interpreting appropriate for the U.S. As a result, the lawyers and legal interpreting experts in the project were obliged to craft their own definition. This exercise led the authors to conclude that while much attention has been paid to both court and community interpreting in the U.S., very little attention has been focused on legal interpreting in settings outside of the courtroom. Finally, in their definition of court interpreting provided above, these U.S. authors explicitly state that "[c]ourt interpreting is a subcategory of legal interpreting."

6.2. Comparison of approaches to interpreter challenges

Different approaches have evolved in the U.S. and Canada for resolving interpreter challenges faced in the Gray Zone. Historically, during the 1960s, community interpreters in Canada were less involved in interpreting for immigrants than for speakers of the two official languages or for indigenous residents (now known as First Nations, Inuit, and Métis). During that period, the term "cultural interpreter" came into widespread use and is still heard in Canada today. Interpreters were often expected to address cultural barriers to communication.

A more limited role for interpreters in Canada has evolved over time. Today, the community interpreting profession considers that acting as a culture mediator exceeds the scope of an interpreter's duty, training, and qualifications. There is also a concern that engaging in advocacy and culture

³ Three of the authors of this chapter were also authors of that training manual.

brokering may contravene ethical principles and standards for impartiality. In addition, a consensus has arisen about the inadequacy of current interpreter training programs to teach safe, effective cultural mediation skills. Other considerations include the following:

- People who share a common language may not share a common culture. The assumption that the interpreter truly understands a client's culture is often unfounded.
- Canada requires equal access to services. If interpreters act as culture brokers for allophone clients (those who do not speak fluent English or French), who will act as culture brokers for immigrants who do not need interpreters?
- It is difficult to assess when and how to provide culture brokering, even for interpreters with many years of training and experience.
- Interpreters in focus groups, discussions, and surveys have stated that the responsibility of "filling the cultural gap" is perceived as a burden and liability for interpreters, and many or most of them prefer to be linguistic conduits.
- The terms "advocate" and "cultural interpreter" raised high expectations that the interpreter's job is something more or other than interpreting, an expectation which caused problems for interpreters in the field.

In the U.S., by contrast, if interpreters have received any legal interpreting training at all it is typically focused on court interpreting, in which the role of the interpreter is strictly confined and opportunities for obtaining even important clarifications may be limited. Yet to this day, despite a growing number of concerns, the community interpreting profession in the U.S. generally follows a model that allows interpreters to use their own judgment in deciding when and how to intervene during a session, especially if the interpreter perceives a communication barrier or a risk to the client's well-being.

Since there is often no clear distinction drawn between legal and community interpreting in the U.S., an interpreter's conduct is often most influenced by the type of training he or she received and whether an interpreter is primarily a court or a community interpreter. Overall, community interpreters who perform legal interpreting without specialized training do not appear cognizant of legal boundaries and often jump in during the session to "clear up" misunderstandings or to "help out" the attorney. Yet as one U.S. lawyer wryly observed, "Comments from the interpreter about how to conduct settlement negotiations are truly not welcome" (Framer et al, 2010, p. 30).

However, national standards for U.S. healthcare interpreting (NCIHC, 2004, 2005) explicitly *embrace* aspects of culture brokering and advocacy. This contradiction attests in part to the impact of court interpreter culture in Canada and to reactions against that court interpreter culture in the U.S. In both cases certification and professionalization in general of court interpreters have had an impact—but an opposite impact in the two nations.

To summarize, historically in both Canada and the U.S., the interpreters who performed non-courtroom legal interpreting may have intervened often and inappropriately because they lacked both training and guidance. In recent decades, the pendulum has swung in the opposite direction. There has been a trend in both countries to restrict the legal interpreter's role to interpreting, with requests for clarification permitted only

as needed. However, in reality, there is wide variability in legal interpreting practices outside the courtroom due to a lack of adequate training combined with the pressures on interpreters in the field and the widespread use of untrained and unqualified interpreters in both countries who may not be trained to perform legal interpreting. In addition, even within court interpreting there is a growing recognition that the role of the interpreter is evolving and that cultural concerns and other communication barriers may sometimes need to be (very carefully) addressed in court interpreting, a topic addressed in the recent second edition of what is sometimes referred to as the “sacred text” of court interpreting in the U.S.: *Fundamentals of Court Interpreting* (González, Vazquez & Mikkelsen, 2012, pp 104; 811–12; 1109–13).

Community interpreting in Canada increasingly rivals court interpreting in terms of pay and prestige, with better training often available for community interpreters. In the U.S., court interpreting remains a more advanced profession than community interpreting, and enjoys more prestige, is better paid, and offers more opportunities for career advancement. Increasingly, U.S. courts endeavor to use certified interpreters wherever possible, whether for spoken or sign language interpreting. In the U.S. the two professions of court and community interpreting have evolved along separate pathways. Many community interpreters think, act, and conduct themselves differently from court interpreters, to a degree that has led to sharp differences of opinion between the professions as to what is the “best way” to interpret.

As a side note, in both countries the role of the interpreter in sign language interpreting is extremely complex and not easily reducible to broad generalizations. A discussion of sign language interpreters’ roles in both legal and community interpreting exceeds the scope of this article and merits a paper of its own.

7. U.S. training project for non-courtroom legal interpreting

7.1. Overview of the program

In 2007, a coalition of nonprofit legal services, community-based organizations, attorneys, and two law professors embarked on a project to establish a community legal interpreter bank in Washington, D.C. The project’s primary purpose was to provide trained, qualified interpreters for attorney-client interviews with low-income clients. The project organizers saw the need to train interpreters in non-courtroom legal interpreting and attorney-client interviews. Scouring North America for an appropriate training curriculum, and finding none, they created a three-day training curriculum. Three of the authors of this chapter are authors of that curriculum (Framer et al., 2010).

The training portion of this project brought together national experts in legal and community interpreting along with lawyers and community-based organizations. The result often resembled a tug-of-war. The legal interpreting experts maintained that the role of the interpreter should be restricted primarily to interpreting. Several attorneys and community-based organizations, on the other hand, felt the interpreter should have some freedom to clarify cultural barriers and misunderstandings. The process of forging a consensus grew intense, by turns exhilarating, stressful, and inspiring.

This experiment led to a practical conclusion: showing interpreters how to handle barriers to communication in legal interpreting safely and effectively is of paramount importance.

7.2. Curricular content

Four definitions developed by the curriculum authors (Framer et al., 2010:xi–xii) are key to the issues discussed in this article:

- *Attorney-client privilege*: Protection of confidential communications between a client and her attorney, invoked according to rules of evidence in response to a request, during a court case, for the disclosure of confidential information.
- *Mediation*: A term used in community interpreting in the U.S. and around the world to refer to any act or utterance by the interpreter that briefly suspends the interpreted session or takes place outside it and is intended to remove linguistic, cultural, or systemic barriers to communication, service delivery, and equal access to services.
- *Linguistic mediation*: Any act or utterance by the interpreter that briefly suspends the interpreted session or takes place outside it and is intended to remove a *linguistic* barrier to communication.
- *Unauthorized Practice of Law*: Legal services that are not provided in accordance with the relevant Code of Professional Responsibility, or are provided by individuals who are not licensed to practice law in that jurisdiction, whether or not they have attended law school or are authorized to practice law in another jurisdiction.

The curriculum content of the program under discussion centers on:

1. Procedures and ethics.
2. Linguistic mediation, i.e., how to intervene when there is a linguistic barrier to communication, a type of barrier that the legal interpreter is qualified and permitted to address. Interpreters also learn how to conduct a pre-conference with an attorney.
3. The U.S. legal system.

Predictably, the hardest skill for interpreters to address is learning when and how to intervene safely during a communication breakdown, which is a common need in legal interpreting. For this purpose, very specific criteria were developed for the program about if, when, and on what grounds the interpreter is permitted to interrupt a session. Clear steps were provided for interpreters about how to intervene if necessary.

7.2.1 Linguistic mediation: Intervention for linguistic communication barriers

Broadly speaking, legal interpreters may not perform *general* or *cultural* mediation or advocacy. However, when faced with a breakdown in communication caused by a linguistic misunderstanding or auditory barrier, the interpreter may intervene to provide *linguistic* mediation. To guide interpreters about whether or not to perform linguistic mediation, interpreters will need to:

1. Assess and monitor the situation.
2. If a barrier to understanding arises, identify a criterion that triggers the need to provide linguistic mediation.

3. Make a decision whether linguistic mediation is necessary, or whether accurate interpreting can take place without it.
4. If linguistic mediation is necessary, formulate an appropriate strategy.
5. Perform the linguistic mediation (e.g., a correction, clarification, or request for repetition).

The basic steps for performing linguistic mediation are:

1. Interpret the last thing said (unless the interpreter did not understand it).
2. Address the attorney first, referring to oneself as the interpreter. (E.g., “The interpreter would like to request that the attorney clarify a term.”)
3. Keep the linguistic mediation brief, clear, and to the point.
4. Interpret the linguistic mediation for the client
5. As soon as the attorney or client begins to speak, interpret that response.
6. Continue interpreting.

7.2.2 Teaching interpreters how to handle challenges

In the third unit of the curriculum under discussion, interpreters are guided by an attorney through topics that include attorney-client privilege, the legal/ethical requirements of the attorney, why the attorney may be liable for the errors of an interpreter, and differences between the U.S. and other legal systems.

Interpreters then learn to handle common requests from attorneys and clients. In the case of requests from the attorney, interpreters are trained how to decline graciously while offering practical solutions and convincing reasons. Thus, instead of angering or alienating attorneys with a blanket refusal, the interpreters may educate and convince them. In the case of client requests, interpreters are trained never to speak to a client outside the session but instead to direct the client back to an attorney, paralegal, or receptionist (the interpreter may offer to interpret) due to the legal risks involved. For example, in the U.S., an inadvertent comment to the client construed as legal advice could constitute a crime by the interpreter called the “unauthorized practice of law.” Interpreters need clear guidance on these and other important legal concerns.

8. Conclusion

The one conclusion that seems certain at this point is that broad issues raised in this article will be addressed in the context of any generalist interpreter certification plans for spoken language interpreting. The tension between practices in court, community, and non-courtroom legal interpreting will also have to be addressed, and decisions will have to be made as to how to reconcile some of the current U.S. contradictory positions in court, community, and non-courtroom legal interpreting.

However, it is unclear how many years it might take to establish a generalist certification in the U.S., and meantime it is also growing clear that the two fields of spoken and sign language interpreting are in urgent need of greater collaboration, given that the requirements of legal interpreting apply

equally to both spoken and sign language interpreting, and also given that the two fields have much to learn from each other.

What remains clear is this: whether a nation considers legal interpreting to be a part of community interpreting or an autonomous profession seems less important than the urgent need to train interpreters to perform legal interpreting safely, wisely, and well. In this way, the voice of the interpreter may become a voice for justice.

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