

## **BREAKING THE LANGUAGE BARRIER: ACCESS TO JUSTICE IN THE NEW IRELAND**

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### **INTRODUCTION**

Access to justice across language and cultural barriers has increasingly become an issue as Ireland evolves into a more diverse society. The Courts Service states that 210 languages and dialects are used in Irish courts<sup>1</sup>; CSO figures show that one person in ten in Ireland was born outside this country.<sup>2</sup> Both in criminal and in civil law, in cases involving asylum-seekers, migrant workers, or any persons for whom English is not a first language, more and more instances arise in courtrooms across the country where language is a barrier to effective communication.

Serious concerns can arise in cases where non-professional interpreting or translation services are provided. In some cases, miscarriages of justice can even occur due to language difficulties. This is a particular concern in criminal trials, either because non-English speaking accused persons are provided with an inaccurate translation from English into their own language – or where the evidence of non-English speaking witnesses is translated inaccurately into English.

At common law, the traditional position has been that access to an interpreter is at the discretion of the court. But there has been increasing awareness at international level of the importance of language in ensuring access to justice, and the right of access to the courts in a language one understands has become more universally seen as a human right, as the overview of relevant

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<sup>1</sup> “€15m is lost in translation by the courts”, *Irish Independent*, 20 January 2006.

<sup>2</sup> Principal CSO Statistics: Persons usually resident and present in the State on Census Night classified by nationality and age group 2006. Available at <http://www.cso.ie/statistics/nationalityagegroup.htm>.

international treaty provisions and European Court of Human Rights case law provided below shows. First, however, it is useful to review some of the basic issues underlying the use of interpreters in the courts.

### **I. PROFESSIONAL STANDARDS OF INTERPRETATION AND TRANSLATION**

Professional standards both in the interpretation (spoken) and the translation (written) of court proceedings and documents are essential where language barriers exist. An important distinction should indeed be made between the work of a translator and an interpreter.

To be a translator means having the key skill of understanding two languages. Translators are office or home-based and work using dictionaries, internet sources and translation memories. By contrast, interpreters work with and through the spoken language, performing their functions in a range of different environments and locations. They can provide interpreting services in a number of different ways.

To be an interpreter, it is not enough to speak two languages well. A trained interpreter must prepare for working in particular fields, such as in the court-room or hospital, by developing a specialised legal or medical vocabulary.<sup>3</sup> Legal or court interpreting is particularly highly specialised. The Irish Translators' and Interpreters' Association (ITIA) has pointed out that:

The [court] interpreter has to be able to deal with complex legal language, ambiguous questions, slang and references to the media. Poor interpreting can obviously affect a court's perception of a defendant.<sup>4</sup>

The danger is that, in the absence of specialised training, others will rely with undue confidence upon the work of seriously

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<sup>3</sup> For further information on the skills required of translators and interpreters generally see the website of DCU Language Services at [www.dcu.ie](http://www.dcu.ie).

<sup>4</sup> Submission from the Irish Translators' and Interpreters' Association (ITIA) to the Working Group on the Jurisdiction of the Courts, 2002, at p. 2.

under-skilled translation, without being aware that there is any problem with inaccuracy. The ITIA quotes from a US source that:

The error rate of untrained 'interpreters' ... is sufficiently high as to make their use more dangerous in some circumstances than no interpreter at all; this is because it lends a false sense of security to both provider and client that accurate communication is actually taking place.<sup>5</sup>

## II. INTERNATIONAL LAW ON INTERPRETERS

It is long-established internationally that the right to have a fair trial includes the right to be tried in a language one understands. Article 14.3 of the UN's International Covenant on Civil and Political Rights (ICCPR), 1966<sup>6</sup> provides:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

...

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court...

Article 5 of the European Convention on Human Rights and Fundamental Freedoms (the 'right to liberty and security' Article) provides at paragraph (2) that:

Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

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<sup>5</sup> *Assuring Cultural Competence in Health Care: Recommendations for National Standards and an Outcomes-Focused Research Agenda* (US Office of Minority Health 1999), cited in the submission of the ITIA.

<sup>6</sup> 19 December 1966, 999 U.N.T.S. Ratified by Ireland 4 October 1991.

Article 6 of the Convention (the 'right to a fair trial' Article) further provides at paragraph (3) (in wording almost identical to that of Article 14.3 ICCPR) that:

Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

...

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The emphasis on language rights in the fair trial Article underlines the importance placed upon such rights within the Council of Europe. The duty on the State under Article 6(3) is more explicit than the requirement contained in Article 5 that an arrested person be notified of the reason for their arrest, since the Article 6 provisions oblige the State to ensure that a person be promptly informed of the nature and cause of the accusation against them both in a language they understand, and *in detail*.

The right to free interpretation is also explicitly provided for in Article 6(3)(e). It is clear from the language of this provision that in every case interpretation must be provided for free of charge, regardless of the defendant's means or whether they are otherwise entitled to free legal assistance. The right must also extend to the translation or interpretation of all documents used in the proceedings and which the defendant must be able to understand in order to have a fair trial.<sup>7</sup> Article 3 of Resolution (78)8 of the Committee of Ministers of the Council of Europe recommends further that legal aid should provide for all the costs necessarily incurred by the assisted person defending his or her legal rights, and in particular for lawyers' fees, experts' fees, witnesses and translations.<sup>8</sup>

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<sup>7</sup> *Luedicke, Bellacem and Koc v. Germany* (1979-80) 2 E.H.R.R. 149. See Ovey, *Jacobs & White on the European Convention on Human Rights* (4<sup>th</sup> ed., Oxford University Press, 2006) p. 203.

<sup>8</sup> Available at [http://www.pili.org/library/access/resolution\\_78\\_8.htm](http://www.pili.org/library/access/resolution_78_8.htm).

A series of cases before the European Court of Human Rights has ensured that these issues have been explored in some detail.<sup>9</sup>

### III. ECHR CASE LAW

In *Kamasinski v. Austria*,<sup>10</sup> a US citizen was charged with offences in Austria and provided with an interpreter during the pre-trial stages, and with a lawyer who was a registered English language interpreter, appointed to represent him during the trial. However, he complained that he had not received English language translation of the indictment. The European Court held that Article 6(3)(a) did not require that the notification of the charge be given in writing nor translated in written form. There might be some cases where a difficulty could arise if no written version was provided, but in the circumstances of this case the oral explanation of the charges provided to the applicant in his first language constituted sufficient notification.

Discrepancies due to a clerical error in the statement of the charge sheet will not, however, constitute a violation of Article 6(3)(a), and an accused person whose own conduct has been the main reason why he has not received notification of the charges against him will not succeed in an allegation of breach of the Article.<sup>11</sup>

In *Cuscani v. United Kingdom*,<sup>12</sup> the applicant was the Italian manager of 'The Godfather' restaurant in Newcastle, and had pleaded guilty to serious tax offences carrying a substantial prison sentence.<sup>13</sup> At the sentencing hearing, his counsel told the judge that the applicant's "English is poor and his Italian is very Southern". The judge adjourned the case but although no interpreter was provided at the next hearing, he proceeded to sentence the applicant on the basis of the defence counsel's assurance that the applicant's brother, who had quite good

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<sup>9</sup> See for example *Brozicek v. Italy* (1990) 12 E.H.R.R. 371.

<sup>10</sup> Series A, No. 168 Application No. 9783/82.

<sup>11</sup> *Gea Catalan v. Spain* (1995) 20 E.H.R.R. 266; *Hennings v. Germany* (1993) 16 E.H.R.R. 83, para 26.

<sup>12</sup> (2003) 36 E.H.R.R. 2.

<sup>13</sup> (2003) 36 E.H.R.R. 2, at 11.

English, was present in court and that they would “make do and mend” with that. The Strasbourg Court held that a violation of Article 6(1)(e) had occurred, since the judge is “the ultimate guardian of the fairness of the proceedings” and should not have been satisfied with the assurances of the defence counsel, particularly since it appeared that he had difficulty communicating with his own client.

#### IV. EUROPEAN UNION DEVELOPMENTS

The right to an interpreter has thus been explored extensively in the ECHR jurisprudence, and it has also become an important issue at EU level. A series of detailed publications have been produced under the aegis of the EU, through three Grotius projects on lifting language barriers.<sup>14</sup> The first of these, Grotius project 98/GR/131, was dedicated to establishing equivalent standards, in EU Member States, for legal interpreters and translators in respect of their selection, training and accreditation; a code of ethics and guides to good practice; and interdisciplinary working arrangements. The findings of the project were published in 2001.<sup>15</sup> Two further publications developed out of the work of the sequels to the Grotius project, in 2003 and 2004.<sup>16</sup>

In 2003, the EU published a Green Paper on *Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union*, and among the issues covered was the right to interpreters and translators in legal proceedings.<sup>17</sup>

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<sup>14</sup> See further the website of the Grotius Projects at <http://www.legalinttrans.info>.

<sup>15</sup> Hertog (ed), *Aequitas - Access to Justice across Language and Culture in the EU* (Antwerp: Lessius Hogeschool, 2001).

<sup>16</sup> Hertog (ed.), *Aequalitas: Equal Access to Justice across Language and Culture in the EU* (Antwerp: Lessius Hogeschool, 2003) and Kejzer-Lambooy and Gasile (eds.), *Aequilibrium: Instruments for Lifting Language Barriers in Intercultural Legal Proceedings* (Antwerp: Lessius Hogeschool, 2004).

<sup>17</sup> [http://europa.eu.int/comm/justice\\_home/index\\_en.htm](http://europa.eu.int/comm/justice_home/index_en.htm). The Green Paper envisages the creation of a formal mechanism for ascertaining whether the suspect or defendant understands the language of the proceedings sufficiently to conduct his or her own defence. A further possibility considered is the setting up of national registers of legal translators and interpreters and of

In April 2004, the EU Commission published a proposal for a Council Framework Decision on Certain Procedural Rights in Criminal Proceedings throughout the European Union, again including the right to an interpreter.<sup>18</sup>

#### V. IRISH LAW ON INTERPRETERS

Thus, the right to an interpreter/translator, where necessary to ensure access to the courts, is well established in international law, and likely to become enshrined formally in Community law. We may believe that the issue is a relatively new one in Ireland, but in fact the right to an interpreter is also long-established in Irish law – even before the adoption of the 1937 Constitution – particularly in criminal trials.

As far back as 1929, in *Attorney General v. Joyce and Walsh*,<sup>19</sup> a case concerning the right of an Irish-speaking party to have the case heard through Irish, Kennedy C.J. said:

It would seem to me to be a requisite of natural justice, particularly in a criminal trial, that a witness should be allowed to give evidence in the language which is his or her vernacular language, whether that language be Irish or English, or any foreign language; and it would follow, if the language used should not be a language known to the members of the Court, that means of interpreting the language to the Court (Judge and jury), and also, in the case of evidence against a prisoner, that means of interpreting it to the prisoner, should be provided.<sup>20</sup>

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national schemes for training such professionals, coupled with an obligation on Member States to verify that they are adequately remunerated.

<sup>18</sup> COM(2004) 328. The proposal, presented by the Commission on 28 April 2004, concerns access by suspects and defendants to legal advice; access by foreign defendants to the services of an interpreter or translator; the protection of persons incapable of understanding or following the proceedings; the right of detainees to communicate, *inter alia* with consular authorities in the case of foreign suspects; and evaluation and monitoring (Consultation procedure CNS 2004/0113): <http://europa.eu/scadplus/leg>.

<sup>19</sup> [1929] I.R. 526 (S.C.).

<sup>20</sup> [1929] I.R. 526, at 531 (S.C.). The right to the assistance of an interpreter may be seen as an element of the due process rights under Article 38.1 of the

The consequence of a failure to provide adequate interpretation during a criminal trial was dealt with in another case a few years later. In *State (Buchan) v. Coyne*,<sup>21</sup> the District Judge had refused to order the interpretation into English of police evidence tendered through Irish, although the defendant could not speak Irish. Sullivan C.J. was highly critical of this decision, stating that:

It is quite obvious that in this case one of the fundamental principles of the administration of criminal justice has been disregarded and the conviction obtained in it could not possibly stand in any court of law.<sup>22</sup>

Both these cases dealt with what are, under Article 8 of the Constitution, the two official languages of the State. Given that Irish is declared to be the first official language and English as the second, it is indeed unsurprising that most issues around interpretation or translation in Irish law until recently have concerned English/Irish translations.<sup>23</sup>

Express provision for interpreters has also been made in criminal law for persons with hearing disabilities.<sup>24</sup> Regulation 12(8) of the Criminal Justice Act 1984 (Treatment of Persons in Garda Siochána Stations) Regulations 1987<sup>25</sup> provides that:

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Constitution: see Hogan and Whyte, *J.M. Kelly: The Irish Constitution* (4<sup>th</sup> ed., Butterworths, Dublin 2003), p.1080.

<sup>21</sup> (1936) 70 I.L.T.R. 185 (S.C.).

<sup>22</sup> (1936) 70 I.L.T.R. 185, at 186 (S.C.).

<sup>23</sup> Order 120 r.1 of the Rules of the Superior Courts ('Interpreters and Translations') provides that: 'There shall be such number of interpreters as the Chief Justice and the President of the High Court respectively may from time to time, by requisition in writing addressed to the Minister for Justice, request, and such interpreters shall attend the Courts and the Offices of the Superior Courts and be available to attend those Courts as required for the hearing of any cause or matter. The remaining provisions of Order 120 (Rules (2) – (5)) provide specifically for translation or interpretation between the Irish and English languages.

<sup>24</sup> The Centre for Deaf Studies at Trinity College Dublin runs a two-year full-time Diploma course in Irish Sign Language/English interpreting, and representatives from the Centre have attended Grotius events on court interpreting.

<sup>25</sup> S.I. No. 119 of 1987.

(a) Where an arrested person is deaf or there is doubt about his hearing ability, he shall not be questioned in relation to an offence in the absence of an interpreter...

Regulation 14 deals with foreign nationals, but interestingly concerns only their right to consular assistance; not their right to be dealt with in a language they understand. It is extraordinary that the Regulations refer throughout to the need for information to be provided to an accused person “in ordinary language”, but do not provide for any specific right to an interpreter. Thus no specific linguistic provision is made for defendants unable to speak English.

Thus, despite the fine general words of Kennedy C.J., there has been no statutory provision for the general right to an interpreter in Ireland for non-English or Irish speakers to date. There are some specific provisions for interpreters in particular types of case, such as those provided for under the Refugee Act 1996, as amended (concerning the asylum process). Section 8(2) of the 1996 Act (as amended by section 11 of the Immigration Act 1999) provides that persons claiming refugee status should be interviewed by an immigration officer, and that such interviews “shall, where necessary and possible, be conducted with the assistance of an interpreter”, and this “necessary and possible” formula is used elsewhere in the legislation as the criteria for the appointment of an interpreter.<sup>26</sup>

However, the international obligation to provide free interpretation services to those unable to understand the criminal process has never been enshrined specifically in law in Ireland, other than indirectly through the European Convention on Human Rights Act 2003.

Thus the common law position remains the case; that is, access to the services of an interpreter or translator is a matter for the discretion of the court. It appears further that difficulties in

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<sup>26</sup> Section 10 similarly provides for the right to have the assistance of an interpreter in order to consult with a solicitor for persons held in detention under the Act. Section 11(2) of the 1996 Act similarly provides that an interview with the Refugee Applications Commissioner ‘shall, where necessary and possible, be conducted with the assistance of an interpreter’.

gaining access to an effective interpreter must be dealt with through the normal trial process. In *D.P.P. v. Yu Jie*,<sup>27</sup> the applicant unsuccessfully sought an order from the Court of Criminal Appeal under section 29 of the Courts of Justice Act 1924 granting leave to appeal to the Supreme Court. The grounds he had put forward had included the suggestion that an interpreter of his own choosing should be present where he was being interrogated by the Gardaí, but McCracken J. for the Court held that this situation was covered by the decision in *Lavery*,<sup>28</sup> concluding that any possible prejudice caused to the applicant due to errors by an interpreter during interrogation in custody was a matter to be determined during the trial – initially by way of *voir dire* and ultimately by the jury.

## VI. CURRENT IRISH PRACTICE

The demand for interpretation services within the legal process is growing yearly. The Courts Service has recently indicated that it can access interpretation in 210 languages and dialects from a panel drawn up from amongst different private agencies.<sup>29</sup> The Courts Service Strategic Plan 2005-8 provides that:

We will ensure that all court users can do their business in the language of their choice. The growing ethnic diversity of our society means that there are many people interacting with the court system for whom neither Irish nor English is their first language. We will continue to provide interpreters in court. We will also continue to

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<sup>27</sup> Court of Criminal Appeal, unreported, McCracken J., 25 November 2005. In a different judgment in the same case, delivered some months previously, McCracken J. had ruled that there was no impropriety where the interpreter provided by the Gardaí was a Chinese police officer: *D.P.P. v. Yu Jie*, Court of Criminal Appeal, unreported, McCracken J., 28 July 2005.

<sup>28</sup> *Lavery v. Member in Charge Carrickmacross Garda Station* [1999] 2 I.R. 390 (S.C.).

<sup>29</sup> “€15m is lost in translation by the courts”, *Irish Independent*, 20 January 2006.

publish information in Irish, English and a range of other languages both in leaflet form and on our website.<sup>30</sup>

These are worthy aspirations, but the reality until recently has been rather different. The core problem remains the lack of any policy or central regulation of interpreting services. As the Irish Translators' and Interpreters' Association (ITIA) has pointed out:

While the Courts Service, with the help of [private] agencies, can access interpreters in 210 languages and dialects, there is no process in place where interpreters can be trained and tested.<sup>31</sup>

There is no policy on interpreting or guidelines for interpreters; most interpreters have no training; and there is no testing or independent quality control of interpreters. Only one training course in interpreting is available in Ireland; the Graduate Certificate in Community Interpreting at Dublin City University, which is a part-time course run over twelve weeks. In the UK, by contrast, the Chartered Institute of Linguistics runs a Diploma in Public Service Interpreting, allowing students to specialise in legal, medical or local government interpreting, with a rigorous test set at the end. There is no such test in Ireland at present.

In a recent article outlining current challenges for interpreters in Ireland, Mary Phelan of the DCU School of Applied Languages highlighted the urgent need for training of interpreters, writing that:

Unfortunately at present there is such demand for interpreters across so many languages that there are no real standards. The pressure is on translation companies to provide interpreters immediately. While some interpreters are skilled, a lot of interpreters are unclear

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<sup>30</sup> *Courts Service Strategic Plan 2005-8*, p.14. Available at [http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/61E4912A714C602680257123005C112F/\\$FILE/Strategic%20Plan%202005%20-%202008.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/61E4912A714C602680257123005C112F/$FILE/Strategic%20Plan%202005%20-%202008.pdf).

<sup>31</sup> Submission from the Irish Translators' and Interpreters' Association (ITIA) to the Working Group on the Jurisdiction of the Courts, 2002.

about their role, may not have enough English in certain domains, and may not be skilled in interpreting. This means that there is a serious question mark over the standard of a lot of interpreting happening in Garda stations, the courts and hospitals. The average English language student from a foreign university will not have a grasp of the legal terms that are constantly used in the district court. Furthermore, the standards required by bodies such as the Courts Service, Refugee Legal Services, the Office of the Refugee Applications Commissioner are far too low and relate to competency in languages rather than competency in interpreting.... I believe that all State bodies should start demanding proper standards.<sup>32</sup>

As Phelan explains, interpreters may be interviewed by translation agencies in Ireland but there is no overall testing system. She argues for a proper independent testing system for all interpreters, preferably administered by a State body; and for a National Register of accredited interpreters. The ITIA have similarly called for adequate training for interpreters; a testing system; a register; and a record to be kept of all cases in which interpreters are provided.

The current practice is clearly unsatisfactory. In a 2004 paper dealing with the use of interpreters in the criminal courts, Sean Guerin also made this point.<sup>33</sup> He recommended a number of important practical changes necessary in order to safeguard the rights of accused persons, including the need to ensure that suspects are informed of their right to an interpreter when detained in a Garda station, and to ensure that the interpreter in the Garda station is not the same as the person who acts as

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<sup>32</sup> Phelan, "Interpreting Services in Ireland, Setting Standards and Establishing Systems" (2006) 12 *Spectrum* 7 at pp.7-8. Available at <http://www.nccri.ie/pdf/spectrum12.pdf>.

<sup>33</sup> Guerin, *Criminal Practice: The Use of Interpreters and Translators in the Irish Courts*, paper to Bar Council conference on Criminal Procedure, Dublin, 7 February 2004.

interpreter at trial.<sup>34</sup> In addition, he noted the need to establish rules of method and protocol.<sup>35</sup>

Changes to the current position are being made in the criminal courts, with the recent appointment by the Courts Service of an international company called Lionbridge to provide all their interpreting services, following public tender.<sup>36</sup> Four language qualification levels were specified in the Courts Service tender, and Lionbridge has indicated that it will be in a position to supply interpreters with the highest level (Level 4) of qualifications in respect of the most frequently used languages in court: Cantonese, Mandarin, French, Romanian and Russian.<sup>37</sup> The implication is, however, that lower levels of qualifications may be accepted for interpreters in other languages.

Most attention has focused upon the Courts Service as a provider of interpreters within the legal process. However, other agencies within the justice system also make extensive use of interpreters. Within the criminal process, the Garda Síochána supply interpreters, where necessary, to those persons arrested and detained within Garda stations. Particular questions have

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<sup>34</sup> Guerin, *Criminal Practice: The Use of Interpreters and Translators in the Irish Courts*, paper to Bar Council conference on Criminal Procedure, Dublin, 7 February 2004, at p. 3.

<sup>35</sup> Guerin, *Criminal Practice: The Use of Interpreters and Translators in the Irish Courts*, paper to Bar Council conference on Criminal Procedure, Dublin 7 February 2004, at p. 5.

<sup>36</sup> "Lionbridge wins €1.96m court interpreter deal", the *Irish Times*, 11 July 2006.

<sup>37</sup> Information provided by the Courts Service, 7 November 2006. The qualification levels are:

- Level 1 The person can be shown to be competent in both English and the language concerned.
- Level 2 The person is a native speaker of the language concerned and can be shown to be competent in English or is a native speaker of English and can be shown to be competent in the language concerned.
- Level 3 The person is a native speaker of English with a third level qualification in the language concerned or a native speaker of the language concerned with a third level qualification in English.
- Level 4 The person has Level 3 qualifications plus qualifications specific to translating or interpreting.

however been raised concerning the selection of interpreters by Gardaí.<sup>38</sup> Other private companies are used to provide interpretation and translation services for the Refugee Legal Service, the Refugee Applications Commissioner and the Refugee Appeals Tribunal.

### CONCLUSION

While there is nothing to suggest any particular problems with any of these individual companies, it is simply unacceptable that the provision of interpreting and translating services within our legal process has been privatised in this way. In essence, private companies are providing the training for interpreters, setting the standards by which they will be judged, and supplying their services for profit, throughout the legal process.

There is a clear potential for conflicts of interest here, conflicts that may ultimately damage the right to fair trial for accused persons, and the right of access to the legal process for other applicants.

A statutory framework within which interpreters must work is urgently needed. Private companies may continue to provide interpreting services, but they should clearly be subject to overall training standards and ethical guidelines set at national level. In the absence of any central public regulation, difficult issues will continue to arise for practitioners and judges when dealing with litigants, witnesses or defendants through interpreters. Are the interpreters impartial? Do they provide advice where they should not? How accurately do they reflect back to the court what the witness is saying? How clearly do they translate court proceedings back to an accused person with no English?

All of these issues and more are arising every day in our courts, and not just in our criminal courts. The right to interpretation and translation services has been well established in other jurisdictions. Elsewhere, detailed codes and guidelines have been developed painstakingly by professionals to ensure the effective exercise of that right by litigants, defendants, witnesses

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<sup>38</sup> See for example the submission of the ITIA to the Garda Síochána on the force's need for translating and interpreting services, 29<sup>th</sup> April 2003, at <http://www.translatorsassociation.ie>.

and other court users. It is extraordinary that the entire framework for court interpreting has been delegated to the private sector without any system of public accountability. It is inexcusable that so little attention has been paid to such an important question in this jurisdiction before now.