



Research article

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Human Interpreters in Virtual Courts: A Review of Technology-Enabled Remote Settings in Australia

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Keywords

Court,
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virtual courtroom,
virtual hearings

Abstract

Objective: This interdisciplinary review intends to inform legal scholars, practitioners, and users of language interpretation services in the judiciary of challenges encountered by professional interpreters in virtual hearings and remote settings.

Methods: Situated at the intersection of law, language, and communication, this review analyses the latest discourses about technology-enabled remote settings and synthesises insights into recommended practices in effective legal communication mediated by interpreters in virtual courts.

Results: With an overarching aim to improve effective collaboration between interpreting service providers and users in multilingual legal communication for procedural equity and access to justice, this review establishes three central claims: (1) the technology-enabled virtual hearings is accelerated by the covid-19 pandemic, (2) the need for effective legal communication mediated by the use of interpreters in remote settings is mounting, and (3) successful collaboration between the service user and provider can achieve a win-win outcome.

Scientific novelty: A review of existing studies in law and language reveals three main gaps: (1) procedural justice in videoconferencing hearings and remote technologies, (2) equity and access for people with limited

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proficiency in the official language of the court system, and (3) effective legal communication mediated by human interpreters in virtual courts. This review bridges the existing gaps in knowledge.

Practical significance: it touches on three aspects of the law-language nexus: (1) Covid-19 accelerated adoption of the virtual courtroom technologies in Australia and its impact on court interpreting, (2) challenges for interpreters in remote settings, and (3) achieving linguistic accuracy and intercultural appropriateness when preserving the manner in which the content is expressed as intended or implied by the original speaker. Grounded in courtroom interpreting practices, it highlights the importance of effective collaboration in successful multilingual legal communication rooted in mutual purpose, shared expectations, and interprofessional understanding.

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Introduction

Much has been written and researched about monolingual legal communication in face-to-face settings. Little has been explored about interlingual and intercultural legal communication in technology-enabled virtual hearings and remote settings. A review of existing studies in law and language reveals three main gaps: (1) procedural justice in videoconferencing hearings and remote technologies, (2) equity and access for people with limited proficiency in the official language of the court system, and (3) effective legal communication mediated by human interpreters in virtual courts. This review bridges the existing gaps in knowledge. Situated at the intersection of law, language, and communication, this review analyses the latest discourses about technology-enabled remote settings and synthesises insights into recommended practices in effective legal

communication mediated by interpreters in virtual courts. This interdisciplinary review intends to inform legal scholars, practitioners, and users of language interpretation services in the judiciary of challenges encountered by professional interpreters in virtual hearings and remote settings. With an overarching aim to improve effective collaboration between interpreting service providers and users in multilingual legal communication for procedural equity and access to justice, this review establishes three central claims: (1) the technology-enabled virtual hearings is accelerated by the covid-19 pandemic, (2) the need for effective legal communication mediated by the use of interpreters in remote settings is mounting, and (3) successful collaboration between the service user and provider can achieve a win-win outcome. This review adopts the following structure: (1) Covid-19 accelerated adoption of the virtual courtroom technologies in Australia and its impact on court interpreting, (2) challenges for interpreters in remote settings, and (3) achieving linguistic accuracy and intercultural appropriateness when preserving the manner in which the content is expressed as intended or implied by the original speaker. Grounded in courtroom interpreting practices, it highlights the importance of effective collaboration in successful multilingual legal communication rooted in mutual purpose, shared expectations, and interprofessional understanding.

1. An Overview of Interpreters in Court

Court interpreting is a language service provided by a certified interpreter who is trained to interpret between English and community languages other than English, both spoken and signed languages. The provision of adequate language interpretation services provided by competent court interpreters is important to ensure that justice is carried out fairly for litigants, defendants, and other parties in court. Court interpreters are obliged by the professional code of ethics and conduct to interpret accurately to the best of their ability. Professional court interpreters are trained specialists who possess a near-native mastery of English and other language(s), acquire broad general knowledge, and perform under different modes of interpreting: consecutive interpreting, simultaneous or whisper interpreting, and sight translation in court. Court interpreters serve as a critical link to ensure equitable access and accessibility to court proceedings, particularly for new arrival migrants, asylum-seeking minorities, Indigenous and tribal people(s), victim-survivors, minors, vulnerable and mobile populations with limited English proficiency or those who are deaf or hard-of-hearing.

2. The Importance of Interpreters: An Australian Case

In Australia's multilingual and multicultural society, with over half of its population born overseas and more than 300 languages spoken at home, there has been applaudable progress made in certification and professionalisation. These efforts are evident from four trends: (1) the growing membership of the professional association Australian Institute

of Interpreters and Translators (AUSIT), (2) the introduction of the specialised certification for court interpreters, (3) the advocacy of JCDI in fostering effective collaboration rooted in mutual purpose, shared expectations, and interprofessional understanding, and (4) the increased recognition from the judiciary on the importance of interpreters, as reflected by Justice Robert-Smiths ([Robert-Smiths, 2009](#)) and Hon. Justice Perry and Zornada¹.

3. The Development of Technology-Enabled Virtual Courtrooms

The collaboration has extended from face-to-face to virtual courtrooms, marked by the increasing adoption of audiovisual link and videoconferencing technologies in court. Endeavourshavebeenmadefrombothsidesoftheaisle,evidencedbythreeclearachievements: (1) the court's technical note on working with interpreters, (2) the professional association's guidelines for remote interpreting practice and recommended national standards for working with interpreters in court and tribunals, and (3) the provision of additional resources for court interpreters, including briefing materials, glossary templates, and FAQs available on government home affairs², community legal centres³, Law Access⁴, and other community legal service websites.

However, despite the progress made, three emerging issues require urgent attention: (1) the impact of the covid-19 accelerated adoption of the virtual courtroom and remote interpreting option on how court interpreters are used and expected, (2) ethical dilemmas encountered by interpreters in remote settings, and (3) linguistic accuracy and intercultural appropriateness in preserving the same force and effect of the language used by lawyers in court, so that the power dynamics can be faithfully reproduced in another language for a fair outcome.

To put these concerns into perspective, a review of investments made in financial resources, technical expertise, time and energy, supported by sources of legislation and practical considerations, is necessary. In financial terms, millions of dollars have been allocated to the implementation of litigation technologies, such as audiovisual technologies, videoconference technologies, and electric file lodgment, before

¹ "The principles of fairness and equality before the law are fundamental to a democratic society, and their observance is essential to the maintenance of public confidence in the judiciary". See Perry, J. M., & Zornada, K (2015, March 13–14). *Working with Interpreters: Judicial Perspectives*. Federal Court of Australia. <https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-perry/perry-j-20150313>

² Australian Government Department of Home Affairs. Translation and Interpreting Service. <https://www.tisnational.gov.au>

³ <https://www.clcns.org.au>

⁴ <https://www.legalaid.nsw.gov.au>

the covid-19 pandemic⁵. The use of these litigation technologies is informed by the Evidence Acts⁶ and announced by Australian states and territories⁷. For practical considerations, audiovisual technologies and videoconferencing hearings are mainly intended for interstate proceedings that involve affected children witnesses and other special interest groups in remote locations. The use of these remote technologies is further endorsed by the Federal Court of Australia, exhibited in the 2016 Technology and the Court Practice Note (GPN-TECH), which includes a guide to the preparation and conduct of digital or hybrid hearings across Australian court jurisdictions⁸.

During the covid-19 lockdown, the adoption of technology-enabled hearings and remote interpreting options has been accelerated. However, the evaluations of virtual court experiences are rather mixed, with contested voices either appreciating or critiquing such experiences expressed by legal scholars, judicial officers, and professional societies. For example, members of the judicial sector perceived the transition to digital technology-enabled court proceedings as a 'forced innovation' during the early days of the covid-19 pandemic⁹. Such a view is further justified by legal scholars (Legg & Song, 2021) cautioning against the use of audio-visual links and its implications for vulnerable witnesses, witnesses based in foreign jurisdictions, prisoners in correctional facilities, and ancillary service providers, such as interpreters and experts. As a matter of fact, scholars who held cautionary views have highlighted the need to stay vigilant for the possibility of a loss of fairness and legitimacy due to the nature of court proceedings altered by the medium of the trial¹⁰. Similar concerns over the vulnerability of remote technologies also have been expressed by McIntyre, Olijnyk, and Pender (McIntyre et al., 2020), citing a number of challenges in decision-making, such as the issue of presence and zoom fatigue¹¹.

⁵ Smith, R., Savage, R., & Emami, C. (2021). Benchmarking the Use of Audiovisual Link Technologies. *Australian Government Institute of Criminology*. <https://www.aic.gov.au/publications/rr/rr23>

⁶ Evidence Act 1929 SA, Evidence Act 1939, Evidence Act QLD 1977, Evidence, Audio and Audio Visual Links Act NSW 1998, Evidence, Audio and Audio Visual Links Act TAS 1999.

⁷ Parliament of Australia, Factsheet 20 – The Australian System of Government. https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_20_-_The_Australian_system_of_government

⁸ Allsop, J. L. B. (2016). Technology and the Court Practice Note (GPN-TECH). *Federal Court of Australia*. <https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-tech>

⁹ Australia's courts keep the justice system going during coronavirus pandemic. (2020, 9 May). *SBS News*. <https://www.sbs.com.au/news/article/australias-courts-keep-the-justice-system-going-during-coronavirus-pandemic/meo0niykf>

¹⁰ Legg, M., & Song, A. (2021). The courts, the remote hearing and the pandemic: from action to reflection. *UNSW Law Journal*, 44(1), 126–166. <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2021/04/04-Legg-Song.pdf>

¹¹ Courts and COVID-19: Challenges and Opportunities in Australia. (2020). *Australian Public Law*. <https://www.auspublaw.org/blog/2020/05/courts-and-covid-19-challenges-and-opportunities-in-australia>

However, in spite of these concerning voices, virtual access to NSW courts has been favoured as a more flexible option for people to access the justice system. To exemplify this favourable position, NSW Attorney General Mark Speakman has marked that more than \$43 million had been invested in expanding audio-visual technologies and facilities for domestic and family violence victims in more than 17 courtrooms¹². This positive view on virtual legal access substantiated by financial and logistic investments is further supported by the overall positive feedback on virtual access to the justice system. A notable survey study conducted by the Law Society conducted in 2021 has revealed that more than 90 per cent of respondents favoured the online proceedings when compared with the face-to-face mode because these virtual proceedings allowed greater flexibility for online direction hearings and other appearances, not to mention other conveniences brought by the remote option for justice, including the hours of commuting have been saved for both legal professionals and applicants.

4. Ensuring Rights in Virtual Courtrooms: Challenges and Collaboration

With several scholars supporting that the remote option for justice is here to stay, it seems reasonable to understand the impact of interpreter-mediated remote justice on the multilingual population with limited proficiency in the official language of the court system. This commentary highlights three key approaches to the issue of interpreter-mediated interactions in remote settings: (1) human rights, (2) procedural justice, and (3) linguistic equity. Three central questions are noted here: (1) the right to a fair representation, as reflected by normative documents at international (Article 14, UNICCPR 1966), supranational (EU Directive 2010/64), and local (Evidence Act 1995 NSW) levels, (2) the right to the free assistance of an interpreter, as reflected by the Section 32, Human Rights Act 2019 QLD, and (3) the right to use one's own language, particularly for Indigenous people, as reflected by the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP)¹³ and the International Labour Organisation (ILO) Convention Concerning Indigenous and Tribal Peoples in Independent Countries¹⁴.

However, regardless of the recognition of the importance of language right and the right to an interpreter in court, little has been known about the linguistic challenges encountered by interpreters in remote settings, while mostly about technical and administrative challenges of remote interpreting to immigration tribunals (Grieshofer, 2022), police,

¹² Stonehouse, G. (2022, June 17). Survey finds virtual NSW courts favourable. *The West Australian*. <https://thewest.com.au/news/crime/survey-finds-virtual-nsw-courts-favourable-c-7196555>

¹³ United Nations Declaration on the Rights of Indigenous Peoples. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

¹⁴ International Labour Organization. Indigenous and Tribal Peoples Convention, 1989 (No. 169). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

and other legal scenarios (Braun, 2020). Anecdotal accounts from interpreters working in remote settings suggest that interpreters encounter ethical dilemmas when interpreting service users have little to no previous experience working with interpreters in remote settings. The lack of practical experience in collaboration with interpreters may lead to expectations that may go beyond the interpreters' professional duties and capabilities. For example, it would be technically challenging and ethically tricky for sworn interpreters to join the same videoconferencing hearing from different devices using multiple accounts in order to channel the off-record side conversations between a private client and their lawyer. It is ethically problematic because professional interpreters are bound by the professional code of ethics¹⁵ to faithfully interpret everything that has been said in the exact same manner as the original speaker.

This accuracy principle mandates interpreters to render both the content and the linguistic manner in which the content is expressed. In reality, the attainment of linguistic equivalence in the manner is very complex. The complexity is resulted from three main reasons: (1) the use of manner by the original speaker is nuanced, as represented by what is intended and implied by the original speaker through linguistic devices (Gallai, 2022), such as questioning techniques, discourse markers, tone and intonation, and gaze, and gesture; (2) the manner-related features can be decoded differently by different people, due to subject knowledge, socio-economic and educational backgrounds, psychological traits, individual and group cultural identity, and institutional norms and expectations in country of origin (Yi, 2023a, 2023b); and (3) they are difficult to interpret into an equivalent form with a matching force and effect in another language, given the issue of translatability (Lee, 2011) and difficulties in achieving linguistic equivalence (Liu, 2020) and intercultural appropriateness (Yi, 2022).

To address these challenges mentioned above, two-way communication is key to successful collaboration in multilingual legal communication. The two-way approach is characterised by two responses from both the interpreting service provider and the service user. These responses are: (1) for interpreters, understanding the expectations from the judicial users and (2) for judicial users, getting to know what makes the manner difficult to translate in remote settings. For interpreters, a useful reference to understand the judicial perspective on expectations for interlingual accuracy and intercultural appropriateness is the General Practice Note, "Working with Interpreters (GPN-INTERP)", released by the Federal Court of Australia on 24 March 2023¹⁶. The Note highlights two specific considerations in achieving accuracy expected by the judicial sector: (1) the meaning of interpreting "accurately" and (2) the importance of transferring both the content and the intent of the communication without omission or distortion, as shown below. "resulting in the optimal and complete transfer of the meaning from the other language

¹⁵ AUSIT Code of Ethics and Code of Conduct. (2012, November). https://ausit.org/wp-content/uploads/2020/02/Code_Of_Ethics_Full.pdf

¹⁶ Allsop, J. L. B. (2023, 24 March). *Working with Interpreters (GPN-INTERP)*. <https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-interpret>

into English and from English into the other language, preserving the content and intent of the communication made in the other language or in English (as the case may be) without omission or distortion and including matters which the interpreter may consider inappropriate or offensive”.

The judicial expectations on accuracy can be dissected into three elements: (1) interpreting everything that has been said in court, including emotionally charged expressions and languages, including curses and hated speech, (2) reproducing what is said and how it is said in court, including the content, manner (through use of fillers, hedges, self-repairs, tone, and intonation), intent (in explicit and implicit form), and (3) applying professional discernment in retaining the optimal and complete transfer to the best of their knowledge and ability. However, in practice, translating the manner intended or implied by the original speaker into the equivalent form with matching force and effect in another language is challenging. There are three main reasons for such difficulties: (1) the specificities concerning the indexicalities of these manner-related features, or in other words, manner-related features mean different things to different people, socio-cultural groups, and language communities; (2) they seem less visible, compared with a whole chunk of content-intensive speech marked by legal arguments, facts, and sources of law in courtroom examinations; and (3) they seem to be less substantive to the case.

In order to establish counter-claims, it is important to provide a working definition of the manner-related features in accordance with their functions and significance in courtroom examinations. In court interpreting studies, the literature on the Manner of Speech is scarce. Instead of affording a rigid linguistic definition, the applicability of which is yet to be tested in actual courtroom practices, the preferred approach here is to propose a working definition that is consistent with the occurrences of such features in practice. The Manner of Speech refers to the way in which the speaker expresses the content in a certain context to a specific audience. It can include a person's linguistic choice and use of discursive devices, such as markers and style features indicating the degree of clarity through fillers and hedges, the distinctness of characteristic style (e.g. politeness, register, and vulgar languages), and the individual manner of expressing (e.g. repetitions and self-repairs). It can also encompass the use of paralinguistic communication, such as tone of voice and intonation.

The Manner of Speech carries important pragmatic functions in intercultural/interlingual communication in the courtroom. The way in which a person speaks can directly influence the meaning given to the message or perceived by the receiver. For example, existing studies (Kerr-Thompson, 2002; Hildebrand-Edgar & Ehrlich, 2017) have shed light on how speech style features can influence the perception of assertiveness and power dynamics in face-to-face courtroom examinations. In remote settings, the perception of speech style features is further complicated by the use of technology. For instance, studies have pointed out that a lack of non-verbal communication cues and simulated eye contact restricted by camera angle, screen size, audio/video definition, and the quality of network connection could make it easier to misinterpret the intention and implications of the speaker through the use of manner-related features in virtual hearings.

Conclusions

Considering the significance of reproducing the manner-related features in remote settings, future studies are needed to facilitate successful multilingual communication in virtual courtrooms. In summary, this short commentary intends to provide legal scholars, practitioners, and users of language interpretation services in the judiciary with an up-to-date review of challenges encountered by interpreters in technology-enabled virtual hearings and remote interpreting settings. The right to a fair representation through a competent and ethical professional interpreter for court participants with limited proficiency in the official language of the justice system is not only a basic human right but also an integral part of procedural justice and linguistic equity in court. The commentary intends to raise awareness of the meaning and importance of the Manner of Speech in technology-enabled courtroom interactions mediated by interpreters.

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Люди-переводчики в виртуальных судах: обзор дистанционных технологических решений в Австралии

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Ключевые слова

Видеоконференции,
виртуальные слушания,
виртуальный зал суда,
нормы процессуального
права,
перевод в суде,
переводчик в суде,
право,
суд,
цифровые технологии,
языковое равенство

Аннотация

Цель: данный междисциплинарный обзор ставит своей целью информирование правоведов, практиков и пользователей услуг лингвистического перевода в судебной системе о проблемах профессионального перевода на виртуальных слушаниях и в дистанционных режимах.

Методы: исследование проведено на стыке права, лингвистики и теории коммуникации и анализирует новейшие подходы к использованию технологий в дистанционном формате. Результаты работы синтезируются в форме практических рекомендаций для эффективной коммуникации в юридической сфере, осуществляемой при посредстве переводчиков в виртуальных судах.

Результаты: преследуя глобальную цель – повышение эффективности сотрудничества между поставщиками и пользователями переводческих услуг в процессе многоязычного общения в юридической сфере для достижения процессуального равноправия и равного доступа к правосудию, данное исследование позволяет сделать следующие основные выводы: (1) переход к использованию виртуальных слушаний с применением технологий значительно ускорился благодаря пандемии COVID-19, (2) растет потребность в эффективной коммуникации в юридической сфере, осуществляемой при посредстве переводчиков в дистанционном формате, и (3) успешное сотрудничество между пользователями и поставщиками услуг может привести к обоюдной выгоде.

Научная новизна: обзор исследований в области права и лингвистики выявил три основные проблемы: (1) соблюдение норм процессуального права во время слушаний в формате видеоконференций и при использовании дистанционных технологий, (2) реализация принципов равноправия и доступности правосудия для лиц с ограниченным владением официальным языком судебной системы

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и (3) осуществление эффективной коммуникации в юридической сфере при посредстве людей-переводчиков в виртуальных судах. Представленная работа восполняет пробелы в изучении данных вопросов.

Практическая значимость: статья затрагивает три аспекта системы взаимоотношений между правом и языком: (1) пандемия COVID-19 ускорила внедрение технологий виртуальных залов судов в Австралии и повлияла на переводческую деятельность в судах, (2) переводчики испытывают трудности при дистанционной работе, (3) необходимо добиваться лингвистической точности и межкультурной адекватности при сохранении стиля передачи содержания, заложенного автором оригинального сообщения. Исследование опирается на практику судебного перевода и подчеркивает важность эффективного сотрудничества в процессе успешной многоязычной коммуникации в юридической сфере на основе общих целей, ожиданий и понимания между профессионалами.

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