

**COURT INTERPRETING IN MALAYSIA
IN RELATION TO
LANGUAGE PLANNING AND POLICY**

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ABSTRACT

The practice of interpreting has been a necessary feature of the Malaysian court since at least the 1930s under the British colonial administration and is still an integral part of the legal process in Malaysia today. Indeed, interpreting in a multicultural and multilingual country like Malaysia is a *sine qua non* for equal access to justice and one that must be maintained for as long as the society retains its present cultural and linguistic complexity.

This thesis aims to provide a description of current court interpreting practice, viewed against the complex socio-cultural and linguistic background of present-day Malaysia and explained in terms of national language planning and policy.

Specifically, the investigation focuses on the question of how effective the Malaysian court system is in providing an adequate interpreting service in the context of the present recurring problem of interpreter shortage. This requires the examination of a range of issues: the role of the Malaysian interpreter, the nature of the interpreting practised in Malaysian courts, the expectations and attitudes of the judicial officers, the extent to which the statutory requirement of providing competent interpreting is being satisfied and the degree of awareness of the need for standards.

It is argued that the present system is dysfunctional, since it is failing to provide an adequate interpreting service and that this has implications for the state and for the individual. The inadequacy of the provision highlights the overall issue of reliability and credibility and the potential threat of injustice for the individual, that is, the denial of a fundamental human right.

The research utilises a multi-method and multi-source approach involving judicial officers, administrators and official interpreters nation-wide. Some of the findings reveal that there are a number of practices which are entrenched in Malaysian courts and tend to hamper the smooth running of the system and reduce its overall effectiveness and efficiency.

There is a need for a serious review of these practices and for considered proposals for change which will bring improvements to the interpreting provision and enhance the quality of justice available to all who appear before the courts.

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ABSTRAK

Perkhidmatan jurubahasa merupakan ciri yang penting dan perlu dalam sistem mahkamah di Malaysia, dan telah mantap sekurang-kurangnya sejak tahun 1930'an di bawah pentadbiran British di Malaya. Ciri ini masih kekal hingga sekarang dan sesungguhnya, dalam masyarakat berbilang budaya dan bahasa seperti Malaysia, perkhidmatan jurubahasa adalah sebahagian daripada sistem yang memberi laluan samarata untuk mendapatkan keadilan dan mesti dikekalkan selagi masyarakat tersebut bercirikan kompleksiti bahasa.

Tesis ini bertujuan memberi pemerihalan tentang amalan jurubahasa mahkamah pada masa ini dan dilihat dari sudut masyarakat majmuk sebagai latar belakangnya dan juga dari konteks perancangan dan polisi bahasa.

Khususnya, penyelidikan ini menjurus kepada soalan: sejauh manakah sistem jurubahasa mahkamah Malaysia berkesan dalam memberi perkhidmatan yang memadai dalam menangani masalah kekurangan jurubahasa yang sering timbul dimasa ini. Soalan ini menimbulkan beberapa soalan lain antaranya: apakah sebenarnya peranan jurubahasa di mahkamah Malaysia; apakah amalan interpretasi yang dilakukan; apakah kehendak dan tanggapan pegawai-pegawai kehakiman terhadap jurubahasa; sejauh manakah keperluan statut dalam menyediakan jurubahasa yang cekap dipenuhi; dan apakah terdapat kesedaran tentang standard amalan yang baik, antara lainnya.

Adalah disarankan perkhidmatan yang mengandungi kekurangan membawa implikasi kepada negara juga individu, iaitu melibatkan isu kebolehpercayaan dan kehilangan hak untuk mendapat keadilan. Keperluan memperkenalkan standard dan syarat-syarat yang menjamin wujudnya jurubahasa mahkamah yang cekap tidak dapat disangkal.

Penyelidikan ini menggunakan pendekatan pelbagai-kaedah dan pelbagai-sumber dan melibatkan pegawai-pegawai kehakiman, iaitu pentadbir mahkamah, para hakim, dan juga jurubahasa diseluruh negara. Beberapa dapatan yang ditemui menunjukkan bahawa terdapat amalan-amalan yang begitu sebatl dengan sistem jurubahasa mahkamah Malaysia yang perlu dilihat semula dengan teliti, digubalsemula supaya perkhidmatan yang diberi boleh diakui sebagai sistematik, cekap dan berkesan.

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DEFINITIONS OF KEY TERMS

Accused	In a criminal trial the individual who is alleged to have committed the offence. Also referred to as the defendant.
Advocacy	Giving legal advice to another. Typical examples are the advice given by lawyers to their clients.
Applied Research	Research which focuses on social problems with a view to alleviating or solving them. Contrast: <i>basic research</i>
<i>Bahasa Malaysia</i>	An alternative term for the national-official language of Malaysia, literally 'The Malaysian Language'. The term was modelled on the Indonesian <i>Bahasa Indonesia</i> and was popular in the 1970s as a means of stressing the national rather than ethnic character of the language. It has subsequently been replaced by <i>Bahasa Melayu</i> .
<i>Bahasa Melayu</i>	The national-official language of Malaysia, literally 'The Malay Language/the Language of the Malays'.
BM	Acronym for Bahasa Malaysia or Bahasa Melayu.
Bazaar Malay	A pidginised variety of Malay used by less educated speakers of other languages (Chinese and Indian) in their day-to-day contacts with speakers of BM.
Bilingualism	The concept of an individual or community possessing the ability to communicate in more than one language, not necessarily having native-like proficiency.
Clerk of the Court	In the UK system, the Clerk of the Court/Justices Clerk is a legally qualified professional among whose roles are advising the Bench on matters of law and procedure. In Malaysia, this is one of the many functions of the Interpreter who, in contrast with the UK Clerk, has no legal training or qualifications.
Closed System	A system which is internally consistent by being isolated from its context for example the number systems of mathematics. Contrast <i>open system</i> .

Communicative Competence	Knowledge of the rules of a linguistic code, which permits the speaker to create grammatical sentences <i>plus</i> the ability to use that knowledge to participate in socially appropriate communication.
Community Interpreting	See Public Service Interpreting. Contrast <i>conference interpreting</i>
Conduit	The equation of the interpreter with a conduit pipe, through which the message contained in the original language is carried unchanged and issued as different in form but not in content in a second language.
Conference Interpreting	Interpreting at conferences and international meetings: one-to-many. In the conference setting, the interpreter is normally in a separate booth from the clients and interprets through an audio link, usually in simultaneous mode. Contrast <i>community/public service interpreting</i> .
Consecutive Interpreting	Interpreting where, after delivering a stretch of language, the speaker pauses and the interpreter interprets. The chunk dealt with may be long (as much as a whole discourse) or short (one or two sentences). Long consecutive requires skilled note-taking. Contrast <i>simultaneous interpreting</i> .
Context-Free	Isolated from context: immune from the influence of the setting. A closed system is context-free. Contrast <i>context-sensitive</i> .
Context-Sensitive	Linked to the environment, changing it and being changed by it. An open system is context-sensitive. Contrast <i>context-free</i> .
Corpus Planning	A style of Language Planning which focuses on making changes to the formal characteristics of a code: its grammar, lexicon, writing system, pronunciation. Contrast <i>status planning</i> .
Court Interpreting	Providing interpreting services in a court of law. Court interpreting is a special case of legal interpreting which is, itself, a special case of Public Service/Community Interpreting. In most instances, the short consecutive mode is used.

Cross Examination	The questioning of a witness by the opposing counsel for example the questioning of a prosecution witness by the defence. Contrast <i>examination in chief</i> .
<i>De Facto</i>	In practice. Contrast <i>de jure</i> .
<i>De Jure</i>	In principle. Contrast <i>de facto</i> .
Defendant	The Accused.
Endoglossia	A situation in which a state has decided on an indigenous language as national and/or official. Contrast <i>exoglossia</i> .
Ethnography	The branch of Anthropology concerned with the characteristics of different social, cultural and racial groups and their behaviour.
Evidence	Statements to prove the existence or non-existence of facts. It may be presented in the form of testimony, document, factual and admissible statements.
Examination in Chief	The questioning of a witness by the supporting counsel for example the questioning of a prosecution witness by the Prosecutor. Contrast <i>cross examination</i> .
Exoglossia	A situation in which a state has decided on a non-indigenous language as national and/or official. Contrast <i>endoglossia</i> .
Hearing	Trial of a case in court; usually refers to civil trial.
Interpretation	The process of 'making sense' of a signal received through sight or hearing: retrieving and understanding the message. Interpretation is central to communication, irrespective of the code(s) involved (one or more: monolingual or bilingual) or the mode (spoken or written). Also used (especially in North American English) to mean <i>interpreting</i> .
Interpreting	The transfer of a message originally spoken or signed in one language into another language by retaining (as far as possible) the meaning. Contrast <i>translation</i> and <i>interpretation</i> .

Juvenile	An accused between the ages of 10 and 18.
<i>Langage</i>	de Saussure's term for the language as both abstract knowledge and actual use i.e. <i>langue</i> + <i>parole</i> .
Language Planning	In general, the creation and implementation of an official policy about the way(s) in which selected languages and linguistic varieties are to be used.
Language Policy	The result of language planning.
<i>Langue</i>	de Saussure's term for the abstract knowledge of language shared by a speech community. Partially equivalent to Chomsky's <i>competence</i> . Contrast <i>parole</i> and <i>langage</i> .
Leading Question	A question which suggests an answer; usually answerable by 'yes' or 'no'. For example: 'Did you see David at 3 p.m.?' These are forbidden to ensure that the witness is not coached by their lawyer through his or her testimony. The proper form would be: 'At what time did you see David?' Leading questions are only acceptable in cross-examination or where a witness is declared hostile.
Linguistic Rights	The right to identify positively with one's mother tongue and have that identification respected by others, the right to learn it and have the minimum of basic education for the language and the right to use it in official contexts.
Litigant	A party to a civil action: either the <i>complainant</i> (who is seeking the cure of an alleged fault) or the <i>respondent</i> (who is defending him/herself against the complaint). A dispute is in "litigation" (or being "litigated") when it has become the subject of a formal court action or law suit.
Multilingualism	The use of more than one language by a society.
National Language	The language(s) selected by a state to express nationalistic sentiments. The linguistic equivalent of for example the national flag and anthem. Contrast <i>official language</i> .
Nationalism	The need to satisfy the need for social solidarity (a feeling of oneness shared by the members of the society) in order to make a society a cohesive whole. Contrast <i>nationism</i> .

Nationism	The need to satisfy organisational needs and run a society efficiently. Contrast <i>nationalism</i> .
Official Language	The language(s) selected by a state to achieve operational efficiency. The language(s) used for example on currency, road signs, the media, and in the press. Contrast <i>national language</i> .
Open System	A system which interacts with its environment for example human society, animals and plants and the ecosystem. Contrast <i>closed system</i> .
Para-Profession	A profession whose trained members provide support for the activities engaged in by professionals.
<i>Parole</i>	de Saussure's term for individual use of language. Usually translated as 'speech'. Partially equivalent to Chomsky's <i>performance</i> . Contrast <i>langue</i> and <i>langage</i> .
Planning	The attempt to organise action to change a situation.
Policy	The result of planning.
Pragmatic Meaning	Meaning derived from the context of use; the communicative value of an utterance. Contrast <i>semantic meaning</i> .
<i>Prima Facie</i>	(Latin) meaning 'on the face of it' or 'at first sight'. A legal presumption. A device often used by law-makers to establish that if a certain set of facts are proven, then another fact is established <i>prima facie</i> . For example, proof of mailing a letter is <i>prima facie</i> proof that it was received by the person to whom it was addressed and will be accepted as such by a court unless proven otherwise. Other situations may require a <i>prima facie</i> case to be made before moving to the next stage in the judicial process: trial. The Prosecution is required to demonstrate that, at least at first glance, there appears to be a case for the accused to answer.
Profession	Service providers who voluntarily agree to be bound by a set of standards for admission to the professional group and for the acceptable provision of the service. Typified by a code of ethics and a guide to good practice. Often professions also have legal protection of title.

Proto-Profession	A group of practitioners who are not yet a profession but are developing into one.
Pseudo-Profession	A group of practitioners who have some of the characteristics of a profession and/or falsely claim to be one.
Public Service Interpreting	Interpreting which helps to provide equal access to social services (for example legal, medical) for individuals who lack communicative competence in the language (for example deaf people and those who have not acquired proficiency in the official language). Usually one-to-one and in consecutive mode. Also known as Community Interpreting. Contrast <i>conference interpreting</i> .
Re-examination	A second – or subsequent – round of cross-examination or examination in chief.
Semantic Meaning	The context free semantic sense of an utterance. Contrast <i>pragmatic meaning</i> .
Sight Translation	Reading a text aloud in a different language from the one it is written in.
Simultaneous Interpreting	Interpreting without breaking the incoming signal up into chunks. Receiving and speaking at the same time. The part of the utterance being spoken in the second language by the interpreter is typically some five seconds behind what is being received. Contrast <i>consecutive interpreting</i> .
<i>Sine Qua Non</i>	(Latin) lit. 'without which not': an essential feature without which something cannot take place.
Status Planning	A style of Language Planning which focuses on changing the functions of a code: its domains of use, status (official language). Contrast <i>corpus planning</i> .
Summary Trial	A trial in which the accused pleads guilty and accepts the verdict of the Court without dispute.
System	A set of elements connected together to form a cohesive whole

Translation	The process of converting messages, irrespective of medium, from one language to another. Also the product of the process.
Vision 2020	A 30-year plan designed to turn Malaysia into a 'fully developed country' issued by the government in 1989
Whispered Simultaneous Interpreting	One-to-one simultaneous interpreting often used in negotiations between two parties and, in court, when the interpreter is only reporting what is happening to the defendant or witness. Contrast <i>simultaneous</i> and <i>consecutive interpreting</i> .
Witness	A person who takes an oath to tell the truth in a court of law when testifying or giving evidence.

ABBREVIATIONS

AIIC	Association International d'Interprete de Conference
ASP	Assistant Superintendent of Police
AUSIT	Australian Institute of Interpreters and Translators
BM	Bahasa Melayu or Bahasa Malaysia
CPC	Criminal Procedure Code
DAP	Democratic Action Party
DBP	Dewan Bahasa dan Pustaka
DPP	Deputy Public Prosecutor
ILKAP	Institut Latihan Kehakiman dan Perundangan
ITNM	Institut Terjemahan Negara Malaysia
MCA	Malaysian Chinese Association
MIC	Malaysian Indian Congress
MLJ	Malaya Law Journal
NAATI	National Accreditation Authority for Translators and Interpreters
NAJIT	National Association of Judiciary Interpreters and Translators
NLP	National Language Policy
NVQ	National Vocational Qualification
PAS	Parti Agama Islam
PO	Prosecuting Officer
PRM	Parti Rakyat Malaya
PSD	Public Service Department
PSI	Public Service Interpreting
SSM	Soft System Methodology
UMNO	United Malay National Organisation
UNDHR	United Nation Declaration of Human Rights