

Understanding Refugee Stories: Lawyers, Interpreters, and Refugee Claims in Canada

by

Tess Acton

J.D., University of Ottawa, 2012

B.Soc.Sci., University of Ottawa, 2009

A Thesis Submitted in Partial Fulfillment  
of the Requirements for the Degree of

MASTER OF LAWS

in the Faculty of Law

© Tess Acton, 2015  
University of Victoria

All rights reserved. This thesis may not be reproduced in whole or in part, by photocopy  
or other means, without the permission of the author.

## **Supervisory Committee**

Understanding Refugee Stories: Lawyers, Interpreters, and Refugee Claims in Canada

by

Tess Acton

J.D., University of Ottawa, 2012

B.Soc.Sci., University of Ottawa, 2009

### **Supervisory Committee**

Donald Galloway, Faculty of Law  
**Supervisor**

Dr. Avigail Eisenberg, Department of Political Science  
**Outside Member**

## **Abstract**

### **Supervisory Committee**

Donald Galloway, Faculty of Law  
Supervisor

Dr. Avigail Eisenberg, Department of Political Science  
Outside Member

The interpreter is overlooked when considering the refugee claim process in Canada, even though refugee lawyers most often work with interpreters to understand their clients. Through qualitative interviews with refugee lawyers, this thesis aims to better understand how interpreters affect the lawyer-client dynamic. Tension surrounding the appropriate role of the interpreter, the complexity of communicating through interpreters, and interpreters' effects on lawyer-client relationships emerged as themes and are explored with reference to the existing interpretation studies literature. The author proposes that an updated lawyer-interpreter-client relationships framework is necessary to fully encompass the realities of these complex relationships, and offers suggestions for best practices to ensure lawyers, interpreters, and clients maintain productive relationships.

## Table of Contents

Supervisory Committee .....	ii
Abstract .....	iii
Table of Contents .....	iv
List of Tables .....	vi
Acknowledgments .....	vii
Dedication .....	viii
Chapter 1 – Introduction .....	1
1.1 - Imagine .....	1
1.2 - Lawyers, Interpreters, and Refugee Claims .....	1
1.3 - ‘Interpretation’ .....	2
1.4 - Upcoming Chapters .....	3
Chapter Two – Understanding Interpretation Studies .....	5
2.1 - Interpretation Studies .....	5
2.2 - Tensions in the View of Interpretation .....	7
2.3 - Intricacy of Communication and Shared Understanding .....	13
2.4 - Ambiguous Role .....	23
2.5 - Towards my Thesis Research .....	35
Chapter Three – Methodology .....	36
3.1 - Situating the Research .....	36
3.2 - Research Goals and Questions .....	38
3.3 - Definition of Concepts .....	39
3.4 - Research Design .....	41
3.4.1 - Ethical Safeguards .....	41
3.4.2 - Sampling Design and Recruitment .....	42
3.4.3 - Data Collection .....	45
3.5 - Participant Characteristics .....	45
3.6 - Content Analysis: General Inductive Approach .....	46
3.7 - Validity .....	48
Chapter Four – Analysis .....	50
4.1 - Context .....	50
4.2 - Analysis .....	53
4.2.1 - Interest in this Research .....	54
4.2.2 - Tension in the Interpreter’s Role .....	55
(a) Expectations versus Reality .....	56
(b) Negative Aspects of Subjectivity .....	60
(c) Positive Aspects of Subjectivity .....	65
(d) Concluding Thoughts .....	70
4.2.3 - Tangled Communication .....	72
(a) (Mis)understanding .....	72
(b) Extralinguistic Cues .....	78
(c) Process of Communication .....	82
(d) Credibility .....	86
(e) Concluding Thoughts .....	91

4.2.4 - Layered Relationships .....	92
(a) Lawyer-Client Relationship.....	93
(b) Lawyer-Interpreter Relationship .....	101
(c) Client-Interpreter Relationship.....	108
(d) Concluding Thoughts .....	114
Chapter Five – Conclusion.....	115
5.1 - Answering Research Questions .....	115
5.1.1 - Interpreter’s Role.....	116
5.1.2 - Communication .....	118
5.1.3 - Relationships .....	120
5.2 - Suggestions for Best Practices.....	121
5.2.1 - Awareness.....	123
5.2.2 - Knowledge.....	124
5.2.3 - Skills .....	126
5.3 - Future Directions .....	127
5.3.1 - For Lawyers.....	127
5.3.2 - For Interpreters .....	128
5.3.3 - For Institutions.....	129
5.3.4 - For Research.....	131
5.4 - Final Thoughts.....	131
Bibliography .....	133

**List of Tables**

Table 1 - Participant Characteristics ..... 46

## Acknowledgments

Thank you to my Supervisor, Donald Galloway, whose guidance and encouragement made this experience an amazing one. I could not have asked for a better supervisory relationship and I am grateful for the opportunity to have learned from him. Thanks also to Avigail Eisenberg, for her insightful comments throughout the entire process, as well as her engaging course. Michael M’Gonigle and Hester Lessard also deserve thanks, as their Legal Theory and Legal Methodology courses challenged me and hopefully made me a more thoughtful researcher. Thanks to Peter Showler, whose course at the University of Ottawa and book chapter were part of the inspiration for this research. Thank you to all of the participants who took part in the interviews. And thank you to Sharmarke for reviewing my interview guide. I am also grateful for the colleagues at the University of Victoria with whom I shared this learning experience.

I would not have got to this point in my studies if it were not for the support of my family and friends. Thank you to my Mum and Dad for instilling me with a love of reading and learning from a young age, to Miles for always asking questions, and to Hudson for greeting me with a smile when I visit home. Many thanks also to my wonderful friends, both near and far. Finally, thank you to Andrew, whose love, patience, reassurance, and support know no bounds.

## **Dedication**

To all those advocating for refugee rights in Canada, your work is so important and truly inspirational.



## Chapter 1 – Introduction

### 1.1 - Imagine

To the reader, I invite you to carefully read aloud the following passage. When you are finished, turn the paper over and repeat the passage aloud exactly as you read it the first time.<sup>1</sup>

I was so afraid of the tormenting, vindictive and frightening husband of mine. On so many occasions, he put my life into danger and finally caused me to flee from the country. In Bangladesh, especially places like Charcharia and Sreenagar, but even if the big cities like Dhaka, the police do nothing to help women in these situations. Even though I managed to get a divorce I am still afraid.<sup>2</sup>

Did you miss anything? Even as the author of the passage I have not been able to repeat it with word for word exactitude. Now, imagine hearing that passage out loud once and repeating it immediately in a different language. This is the interpreter's task.

### 1.2 - Lawyers, Interpreters, and Refugee Claims

More than 20,000 refugee stories are told to decision makers in Canada each year.<sup>3</sup> But before refugees tell their stories to these decision makers, many will enlist the services of a lawyer.<sup>4</sup> As most refugees do not speak English or French, refugee lawyering is usually done with the assistance of language interpreters.<sup>5</sup> The lawyer-refugee client relationship is thus often entirely mediated by this third party: the interpreter. This aspect of refugee

---

<sup>1</sup> This task was inspired by Angela McCaffrey, "Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters" (2000) 6 Clinical L Rev 347 [McCaffrey] at 379 to 380.

<sup>2</sup> This excerpt is based on *Jahan v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 987.

<sup>3</sup> Immigration and Refugee Board of Canada, *Refugee Claims – Statistics, Trends and Projections, 2015-03-02*, available online: Immigration and Refugee Board of Canada, [www.irb-cisr.gc.ca/Eng/RefClaDem/Pages/RefClaDemStat.aspx](http://www.irb-cisr.gc.ca/Eng/RefClaDem/Pages/RefClaDemStat.aspx).

<sup>4</sup> Between 2005 and 2009, 79.1% of refugee claimants were represented by counsel at the Refugee Protection Division. See Sean Rehaag, "The Role of Counsel in Canada's Refugee Determination System: An Empirical Assessment" (2011) 49 *Osgoode Hall L J* 71 at 86.

<sup>5</sup> In my research, lawyers reported they worked with interpreters on refugee claims at least half to 95% of the time.

lawyering means that refugees' stories, the most important part of their claim,<sup>6</sup> will be told and re-told through the voice of another person.

This research joins the conversation within the existing literature on language interpretation in a legal setting. By conducting ten interviews with refugee lawyers who have worked with interpreters, I expand upon the tensions surrounding models of interpretation, the added complexity an interpreter brings to reaching shared understandings, and the dilemma of the interpreter's appropriate role. There are few studies examining lawyers' perceptions of working with interpreters with their clients, let alone the perceptions of refugee lawyers specifically. Therefore, this research fills gaps in the literature by exploring the complicated perceptions of lawyers, and offers insight into the implications that working with interpreters can have on the lawyer-client relationship and the refugee claim.

### **1.3 - 'Interpretation'**

Throughout the thesis, I use the word 'interpretation' to refer to "the oral transfer of meaning between languages".<sup>7</sup> However, interpretation also happens outside of language difference. In the larger context of the legal process, interpretation abounds: legislators interpret policy objectives when drafting legislation, judges and decision-makers interpret

---

<sup>6</sup> Refugees often come with little else as evidence of persecution. See Marita Eastmond, "Stories as Lived Experience: Narratives in Forced Migration Research" (2007) 20(2) *J of Refugee Studies* 248 [Eastmond] at 249; Donald Galloway, "Proof and Narrative: 'Reproducing the Facts' in Refugee Claims" in Hester Lessard, Rebecca Johnson & Jeremy Webber, eds, *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community* (Vancouver: University of British Columbia Press, 2011) at 315 to 316.

<sup>7</sup> Ruth Morris, "The Moral Dilemmas of Court Interpreting" (1995) 1(1) *The Translator* 25 [Morris, Moral Dilemmas] at 25.

facts and law, and lawyers interpret case law and legislation. Lawyers also interpret their clients' experiences.<sup>8</sup> Clients also interpret, as people are constantly interpreting their own experiences. Fundamentally, lives are narratives; they are a continuous "interpretation and reinterpretation" of experience.<sup>9</sup> Although this research focuses on interpretation in the context of language difference, it is important to remember that the other forms of interpretation will always be operating in the background.

#### **1.4 - Upcoming Chapters**

To prepare the reader, I will introduce the chapters in this thesis. In **Chapter Two**, I outline the existing conversations happening within the field of interpretation studies. I discuss the tensions within the legal system's view of interpretation. I also consider an interpreter's effects on communication and reaching shared understanding. Next, I discuss the ambiguities surround the interpreter's role.

In **Chapter Three**, I outline the methodology used to conduct this qualitative research. I situate the research, outline the goals and questions guiding the project, and define key concepts. Next, I outline the research design, including ethical safeguards, sampling design and recruitment, and the method of data collection. I also provide an overview of participant characteristics. I then review the analytic strategy used to derive meaning from the interviews. Finally, I briefly discuss validity with respect to this research.

---

<sup>8</sup> Writing about the interpreting that occurs between lawyers and clients, William Felstiner and Austin Sarat comment, "lawyer-client interaction is a process of story-telling and interrogation in which lawyer and client seek to produce for each other a satisfying rendition of her distinctive world." See William L F Felstiner and Austin Sarat, "Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions" (1991-1992) 77 *Cornell L Rev* 1447 at 1454 to 1455.

<sup>9</sup> Jerome Bruner, "Life as Narrative" (2004) 71(3) *Social Research* 691 [Bruner, Life as Narrative] at 691; see also Jerome Bruner, "The Narrative Construction of Reality" (1991) 18 *Critical Inquiry* 1.

**Chapter Four** is where I provide an analysis of the data gathered from the interviews with lawyers. I first offer context to refugee lawyering in Canada, summarizing the claim process and how lawyers come to work with interpreters. I then provide the thematic analysis of lawyers' perceptions that emerged during through the content analysis. I discuss tensions in the interpreter's role, contrasting lawyers' expectations with reality, as well as the implications of the interpreter's subjectivity. Next, I consider communication, expounding on the interpreter's effects on (mis)understandings, extralinguistic cues, the communication process, and credibility. Finally, I review the added layer the interpreter brings to the lawyer-client relationship, discussing the lawyer-client, lawyer-interpreter, and client-interpreter relationships. I offer quotes and descriptions demonstrating the different themes, linking the perceptions of the lawyers interviewed.

**Chapter Five** offers the conclusions to the research. First, I answer the research questions posed in Chapter Three. I then discuss suggestions for best practices for lawyers, including ideas for increasing awareness, knowledge, and skills. I finish with a discussion about future directions for lawyers, interpreters, institutions, and research.

## Chapter Two – Understanding Interpretation Studies

### 2.1 - Interpretation Studies

Cecilia Wadensjö, an interpretation and translation studies scholar, writes that

[i]n an interpreter-mediated conversation, the progression and the substance of talk, the distribution of responsibility for this among co-interlocutors, and what, as a result of interaction, becomes mutual and shared understanding – all will to some extent depend on the interpreter's words and deeds.<sup>10</sup>

Wadensjö's comments highlight the central role that interpreters play in any conversation in which they are a part. Her statements also provide a useful starting point for understanding interpretation studies in the context of this research: interpreters have an enormous impact on communication, and by extension, will have an impact on lawyer-client interactions.

Research on interpreters' impacts on communication has predominantly focused on interpreters in courtrooms, and to a lesser extent, interpreters in refugee hearings. Much of this focus can be attributed to the public nature of the courtroom. Moreover, the events that transpire in the court or hearing room frequently have a substantial impact on personal freedom, finances, family life, or immigration status. By contrast, interpretation that happens outside the courtroom is mostly invisible to the public and to the rest of the legal community. This invisibility should not be mistaken for insignificance. Even matters that proceed to court or hearing rooms will still involve an immense amount of non-courtroom interaction with clients. In cases where the client and lawyer do not speak the same language, as is the case with most refugee claims in Canada, an interpreter will have mediated all lawyer-client interactions. Often, the success of a claim will depend on

---

<sup>10</sup> Cecilia Wadensjö, *Interpreting as Interaction*, (London/New York: Longman, 1998) [Wadensjö] at 195.

the lawyer's ability to interview, obtain information, and prepare a refugee claimant client for her or his hearing. An interpreter's role in the success of this process is paramount.<sup>11</sup> For these reasons, I have chosen to focus my research on lawyering with interpreters in the refugee law setting. Additionally, given the lack of research on interpreters within lawyer-client relationships,<sup>12</sup> I have further particularized my research on lawyering with interpreters in the refugee law setting to the interactions between lawyers and clients before a hearing.<sup>13</sup>

In reviewing the literature,<sup>14</sup> I have identified several themes.<sup>15</sup> First, the difficulty in reconciling the conduit model of interpretation with the reality that interpretation involves active, subjective intervention by an interpreter. A second theme within the literature illustrates the intricacy of communication between speakers who come with sometimes vastly different cultural backgrounds and expectations. This theme is linked to the difficulties with intercultural communication, but focuses less on linguistic aspects of difficulty, and more on the personal characteristics of the speakers and the context of the communication. A third theme explores the impacts an interpreter has on relationships with other actors in the legal system.

---

<sup>11</sup> Muneer Ahmad, "Interpreting Communities" (2007) 54 *UCLA L Rev* 999 [Ahmad] at 1007 to 1010.

<sup>12</sup> Sandra Hale, *Community Interpreting* (New York: Palgrave MacMillan, 2007) [Hale, *Community Interpreting*] at 79 to 82; Ahmad, *supra* note 11 at 1007 to 1010.

<sup>13</sup> My focus on interpreting outside of the hearing room is also due in part to my inability to obtain access to information about policies relating to interpreters and interviews with current Board Members at the Refugee Protection Division. At the outset of my research, I made several attempts to contact representatives of the Immigration and Refugee Board, but received no response.

<sup>14</sup> Given that studies on interpreters outside of formal legal settings are few, I reviewed the broader legal interpretation literature, including studies on interpretation in asylum hearings.

<sup>15</sup> I thank Jon Minnes' insightful commentary in LAW 502 for drawing my attention to this useful way of looking at the literature, and providing an alternative way of organizing the paper that would eventually become this chapter.

## 2.2 - Tensions in the View of Interpretation

The role of an interpreter ... is to provide a clear channel of communication. ... Whatever is said in one language should be interpreted faithfully and accurately into the other language using the exact equivalent meaning and structure.<sup>16</sup>

The above quote comes from the *Interpreter Handbook* drafted by the Immigration and Refugee Board, the administrative tribunal that decides refugee claims in Canada. The quote captures what scholars such as Kathy Laster have termed the “conduit” model of interpretation.<sup>17</sup> The conduit model views interpreters as the channel between two communicators, mere tools used to repeat what was said in one language identically in another.<sup>18</sup> The conduit model assumes that languages are codes, and that language can transparently pass through a device, the interpreter, that transforms this code without distortion.<sup>19</sup> In this model, interpreters are akin to machines, and are often treated as such, with no breaks or reference to their actual name.<sup>20</sup> In support of the prevalence of the conduit-machine view of interpreters among lawyers, Laster notes the common references made by lawyers to ‘using an interpreter’, rather than ‘working with interpreters’ or being ‘assisted by interpreters’.<sup>21</sup> According to Laster, this view leads to

---

<sup>16</sup> Immigration and Refugee Board of Canada, *Interpreter Handbook*, December 2012, Government of Canada, online: Immigration and Refugee Board <http://www.irb-cisr.gc.ca/Eng/BoaCom/pubs/Pages/Interpret.aspx> [Immigration and Refugee Board Interpreter Handbook]. I do note that this quote refers to the Immigration and Refugee Board’s expectation of the interpreter’s role and may not reflect the views held by refugee lawyers or interpreters.

<sup>17</sup> Kathy Laster, “Legal Interpreters: Conduits to Social Justice?” (1990) 11(2) *J of Intercultural Studies* 15 [Laster] at 18.

<sup>18</sup> Laster, *supra* note 17, at 17 and 18.

<sup>19</sup> James White, *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago: University of Chicago Press, 1990) at 253.

<sup>20</sup> Laster, *supra* note 17, at 19. She notes it is more common for an interpreter to be referred to as “the interpreter”, if they are even acknowledged at all.

<sup>21</sup> Laster, *supra* note 17, at 19.

the diminishment of interpreters' perceived importance and influence in the courtroom.<sup>22</sup> Laster strongly argues that the conduit model is an unproductive legal fiction.<sup>23</sup> She suggests that in addition to treating interpreters as trained professionals, lawyers and decision-makers need to be better informed about the complexities of interpretation in order for the legal fiction of the conduit model to evolve.<sup>24</sup>

Muneer Ahmad also emphasizes that interpretation between languages is more complicated than the conduit model suggests. He notes the complex nature of language, and adopts a linguistic framework in his discussion of language and communication. He accepts that words, sentences, and discourses have no intrinsic meaning; they are simply symbols of what the speaker intends the listener to understand.<sup>25</sup> In communication without interpreters, miscommunication results when there is a difference between the speaker's intention and utterance<sup>26</sup>, or the speaker's utterance and the listener's understanding.<sup>27</sup> When an interpreter is added to communication, the possibility for miscommunication is increased because there are now more steps to the communication process. Further, in accepting that words have no inherent meaning outside of the speaker's intention and the listener's understanding, the added interpreter becomes another potential impediment between the first speaker's intention and the end listener's understanding. When communicating with interpreters, miscommunication can result

---

<sup>22</sup> Laster, *supra* note 17, at 19.

<sup>23</sup> Laster, *supra* note 17, at 18 to 19.

<sup>24</sup> Laster, *supra* note 17 at 18 to 19.

<sup>25</sup> Ahmad, *supra* note 11 at 1033.

<sup>26</sup> This accounts for when people incorrectly express themselves, use the "wrong" words, do not know the words, or also non-verbal differences in expression.

<sup>27</sup> Ahmad, *supra* note 11 at 1034.



when there are differences between the speaker's intention and utterance, the speaker's utterance and the interpreter's understanding, the interpreter's understanding and utterance, and the interpreter's utterance and the listener's understanding.<sup>28</sup> Added to this complex chain of understanding is the inherent difficulty in knowing whether miscommunication has occurred. This is because neither the lawyer nor client are able to verify the integrity of the interpretation as neither speak the other's language; hence the need to work with an interpreter.<sup>29</sup>

Ruth Morris' extensive work on interpreters in legal settings points to the incongruity in expecting interpreters to adhere to the conduit model of interpretation, which forces them to try to restrict their interpretation to verbatim, or word for word, interpretation.<sup>30</sup> She writes that as a form of communication, interpretation is so much more than word for word interpretation. It is subject to a variety of constraints on success, including physical, psychological, and cultural factors that shape speakers' understanding of language. In order to retain these nuances of communication, interpreters must go beyond the referential use of language to approach the goal of "true" communication.<sup>31</sup> To try to achieve this "true" communication, interpreters must develop strategies for "identifying misunderstandings, elucidating context, investigating intention, and clarifying meaning

---

<sup>28</sup> Ahmad, *supra* note 11 at 1035. These four sites for possible miscommunication is contrasted with only two sites in a non-interpreter-mediated conversation.

<sup>29</sup> Ahmad, *supra* note 11 at 1036.

<sup>30</sup> Morris, Moral Dilemmas, *supra* note 7 at 27.

<sup>31</sup> Morris, Moral Dilemmas, *supra* note 7 at 27. However, Morris believes that "true" communication is "unattainable", as communication is "unreliable" in nature.

explicitly.”<sup>32</sup> Morris believes this cannot be accomplished if interpreters are forced to restrict interpretation to verbatim interpretation.

Other authors provide empirical support for the proposition that in contrast to the legal fiction of the conduit model, interpreters are doing much more than simply rendering statements from one language to another. Susan Berk-Seligson analyzed more than 100 hours of tape-recorded Spanish-English court proceedings in federal, state, and municipal courts in the United States.<sup>33</sup> Her research confirms interpreters are not ‘neutral machines’ – they have an impact on the content of court proceedings. Interpreters make changes to the formality of a speakers’ testimony, insert or remove certainty or uncertainty terms, and distort the speakers’ active or passive verb choice.<sup>34</sup> Additionally, interpreters sometimes interrupt speakers, to ask them to clarify or repeat their words.<sup>35</sup> Importantly, her research indicates that these changes have an impact on decision-makers, affecting how they perceive a speaker’s credibility, intelligence, and trustworthiness.<sup>36</sup>

In another study, Sonja Pöllabauer analyzed transcriptions from 20 asylum hearings at an office in Austria using Critical Discourse Analysis, a framework used to investigate “the

---

<sup>32</sup> Morris, *Moral Dilemmas*, *supra* note 7 at 32.

<sup>33</sup> Susan Berk-Seligson, *The Bilingual Courtroom: Court Interpreters in the Judicial Process* (Chicago: University of Chicago Press, 1990) [Berk-Seligson] at 43 to 53.

<sup>34</sup> Berk-Seligson, *supra* note 33 at 146 to 185.

<sup>35</sup> Berk-Seligson, *supra* note 33 at 186 to 194.

<sup>36</sup> Berk Seligson, *supra* note 33 at 194 to 197. The mock juror evaluations demonstrated that there were many factors that influenced whether the speaker’s credibility, intelligence, and trustworthiness was augmented.

relationship between language and social structures.”<sup>37</sup> Her conclusions also indicate that interpreters are far from neutral communication conduits. Instead, her analyses show that interpreters affect communication in asylum hearings in a multitude of ways. They coordinate and control talk between parties, forge alliances with parties, omit perceived irrelevant information, engage in internal rounds of talk without interpretation between parties, employ face-saving strategies, use “us” versus “them” discourse, and create miscommunication from a lack of shared background or linguistic resources.<sup>38</sup> Pöllabauer concludes that interpreters are visible and important actors in the asylum hearing process.<sup>39</sup>

Olga Keselman, Ann-Christian Cederborg, Michael Lamb, and Örjan Dahlström write about asylum interviews with child asylum seekers in Sweden. Like other studies on interpretation in legal settings, their findings reveal the active role that interpreters hold. Interpreters do not simply translate; they control the kinds of information that the asylum seeker and interviewer receive from each other.<sup>40</sup> For example, their study found that interpreters often transformed the kinds of questions posed by interviewers.<sup>41</sup> Interpreters would most frequently simplify the questions, but this happened less frequently when the interviewers asked simpler, open-ended questions.<sup>42</sup> Transforming questions in this

---

<sup>37</sup> Sonja Pöllabauer, “Interpreting in Asylum Hearings: Issues of Role, Responsibility and Power” (2004) 6(2) *Interpreting* 143 [Pöllabauer] at 153.

<sup>38</sup> Pöllabauer, *supra* note 37 at 151.

<sup>39</sup> Pöllabauer, *supra* note 37 at 175.

<sup>40</sup> Olga Keselman, Ann-Christian Cederborg, Michael Lamb, and Örjan Dahlström, “Mediated Communication with Minors in Asylum-Seeking Hearings” (2008) 21(1) *J of Refugee Studies* 103 [Keselman et al] at 112.

<sup>41</sup> Keselman et al, *supra* note 40 at 112.

<sup>42</sup> Keselman et al, *supra* note 40 at 112.

manner could have implications on the answers that asylum seekers provide interviewers. As this research study examined the audio recordings of interviews with child asylum seekers, the researchers did not speak to the interpreters to see what their motivations were, if any, for changing the interviewer's questions.

In the Canadian context, Robert Barsky has examined the role of interpreters in Canadian refugee hearings in numerous works, arguing that the conduit model is not reflective of the realities of language interpretation. He cautions that insisting upon verbatim interpretation renders the experiences of refugees incomprehensible.<sup>43</sup> Barsky instead argues that interpreters play an active role in constructing the refugee's narrative into one that will be well received by adjudicators.<sup>44</sup> They interpret language, intention, verbal and non-verbal cues in order to construct contextualized testimony.<sup>45</sup>

The tension between the conduit model of interpretation and a more active, subjective model suggests that there is disparity between what the legal system believes interpreters do and what they may actually do. This discrepancy reinforces many of these authors' calls for more attention to be paid to the role of the interpreter.<sup>46</sup>

---

<sup>43</sup> Robert F Barsky, *Constructing a Productive Other: Discourse Theory and the Convention Refugee Hearing* (Amsterdam: John Benjamins Publishing Company, 1986) [Barsky, *Constructing a Productive Other*] at 154.

<sup>44</sup> Robert F Barsky, *Arguing and Justifying: Assessing the Convention Refugees' Choice of Movement, Motive and Host Country* (Burlington, VT: Ashgate Publishing Ltd, 2000) [Barsky, *Arguing and Justifying*] at 67.

<sup>45</sup> Barsky, *Arguing and Justifying*, *supra* note 44 at 66 to 78.

<sup>46</sup> Berk-Seligson, *supra* note 33 at 194 to 197; Pöllabauer, *supra* note 37 at 175.

### 2.3 - Intricacy of Communication and Shared Understanding

A second theme in the literature is the complexity of communication between speakers who have different backgrounds and expectations. Culture plays a role in the difficulties represented by this theme, as it is inextricability linked with expression through language. However, many extralinguistic factors also contribute to the intricacy of developing a shared understanding between communicators who speak different languages.

Most of the literature on interpretation begins from the standpoint that communication is a difficult endeavor in the best of circumstances. Even when both communicators speak the same language, misunderstandings are normal.<sup>47</sup> Morris characterizes this phenomenon as the “unreliable nature of the communication process in general.”<sup>48</sup>

Similarly, Ahmad writes, “language is inherently ambiguous”;<sup>49</sup> words and sentences are only cues to the meaning the speaker intends the listener to understand – any “listener can only approximate that meaning, for the simple reason that both the speaker’s intention and the listener’s comprehension are both circumscribed by the subjective experience of each individual.”<sup>50</sup> When shared understanding is successful, Susan Bryant characterizes this concept as “isomorphic attribution” – the ability of a listener to attribute the correct meaning to words as intended by the speaker.<sup>51</sup> She notes that this attribution depends

---

<sup>47</sup> For instance, Ahmad, *supra* note 11 at 1033.

<sup>48</sup> Morris, Moral Dilemmas, *supra* note 7 at 27.

<sup>49</sup> Ahmad, *supra* note 11 at 1032.

<sup>50</sup> Ahmad, *supra* note 11 at 1033.

<sup>51</sup> Bryant, Susan, “The Five Habits: Building Cross-Cultural Competence in Lawyers” (2001) 8 *Clinical L Rev* 33 [Bryant] at 43.

both on an understanding of the literal meaning of the words as well as sufficient overlap in the cultural context between communicators.<sup>52</sup>

Ahmad's work elaborates the ways that culture complicates the possibility of reaching a shared understanding between speakers. He defines culture as "a perceptual frame for viewing and understanding the world, one that is shaped by a set of "socially transmitted values, beliefs and symbols that are more or less shared by members of a social group.""<sup>53</sup> As language is the fundamental way of narrating experience,<sup>54</sup> it is infused with culture. Therefore, understanding between communicators is dependent on the interpreter's ability to bridge both the linguistic and cultural aspects of what has been said. While Ahmad underscores the importance of culture in communication, he is wary of relying on culture as an explanation for all miscommunication. He suggests that for lawyers representing clients through interpreters, culture is both "essential and treacherous".<sup>55</sup> He cautions against ascribing cultural significance to miscommunication, when in reality the miscommunication might be a result of the individual characteristics of the speaker or listener, such as age, gender, class, or life experience.<sup>56</sup>

Walter Kälin wrote one of the first studies about communication in asylum hearings, and his work highlights the importance of culture to communication. He describes how misunderstandings rooted in the differences between the cultural background of asylum

---

<sup>52</sup> Bryant, *supra* note 51 at 43.

<sup>53</sup> Ahmad, *supra* note 2, at 1038, citing Kevin Avruch, "Culture as Context, Culture as Communication: Considerations for Humanitarian Negotiators" (2004) 9 *Harvard Negotiation L Rev* 391 at 393.

<sup>54</sup> Bruner, *Life as Narrative*, *supra* note 9 at 691.

<sup>55</sup> Ahmad, *supra* note 11 at 1042.

<sup>56</sup> Ahmad, *supra* note 11 at 1041. Although these factors can be affected by culture.

seekers and decision-makers can negatively affect asylum seekers' claims.<sup>57</sup> Through his own experience as an asylum advocate in Switzerland, Kälin notes potential obstacles to accurate communication between asylum seeker and decision maker. These are manner of expression, communication through interpreters, and cultural influence on concepts, including notions of time, lie, and truth.<sup>58</sup> Kälin found that the greater the difference between the asylum seeker and decision-maker's culture, the more likely miscommunication was to occur.<sup>59</sup> Barsky echoes Kälin's conclusion, writing that claimants whose backgrounds differ the most from the decision-maker will be most disadvantaged by cultural differences in communication. Additionally, Barsky notes these claimants must rely entirely on interpreters, while being the least able to evaluate the effectiveness of their testimony.<sup>60</sup>

Angela McCaffrey also emphasizes the central role that culture plays in communication, and how communicating through an interpreter only intensifies the effects of culture, as there is a second person that may be making inferences about it.<sup>61</sup> She cautions that lawyers should be careful when making cultural generalizations, and should always be mindful of the individuality of the client.<sup>62</sup> Sandra Hale also discusses the complexity of

---

<sup>57</sup> Walter Kälin, "Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing" (1986) 20(2) *International Migration Review* 230 [Kälin] at 231.

<sup>58</sup> Kälin, *supra* note 57 at 231.

<sup>59</sup> Kälin, *supra* note 57 at 230 to 231.

<sup>60</sup> Barsky, *Constructing a Productive Other*, *supra* note 43 at 135.

<sup>61</sup> McCaffrey, *supra* note 1 at 355.

<sup>62</sup> McCaffrey, *supra* note 1 at 358.

attributing gaps in understanding to cross-cultural misunderstandings.<sup>63</sup> She warns against using “cross-cultural differences” to explain misunderstandings between people who speak different languages, warning that this can lead to “othering”<sup>64</sup> or stereotyping of the client. Bryant explains how this thinking can lead to false assumptions about clients or hinder rapport building.<sup>65</sup>

In addition to the complexities brought by disparate cultural backgrounds, the context of communication and personal characteristics of speakers influence communication and understanding. Roxanna Rycroft, an interpreter and researcher examining asylum procedures in the United Kingdom (the UK), writes that factors such as the flow of information, time management, and other extralinguistic factors are brought to the forefront when working with interpreters. In the context of asylum screening interviews in the UK, Rycroft notes that the pace of the dialogue and what parts of an applicant’s answers constitute the recorded answer are within the control of the interviewing officer.<sup>66</sup> Likewise, neither the applicant nor the interpreter controls time, including the start and end of an encounter and any breaks taken throughout; these factors belong to and are strictly enforced by the institution and the interviewing officer.<sup>67</sup> However, Rycroft notes that interpreters exert control over much of the content of the communication, as interpretation requires linguistic negotiation in order to render an

---

<sup>63</sup> Sandra Hale, “Interpreting Culture: Dealing with Cross-Cultural Issues in Court Interpreting” (2013) *Perspectives: Studies in Translatology* 1 [Hale, Interpreting Culture] at 1 to 3.

<sup>64</sup> Hale, Interpreting Culture, *supra* note 63 at 2 to 3.

<sup>65</sup> Bryant, *supra* note 1 at 52 to 53.

<sup>66</sup> Roxanna Rycroft, “Communicative Barriers in the Asylum Account”, in P Shah, ed, *The Challenge of Asylum to Legal Systems* (London: Cavendish, 2005) [Rycroft] at 237.

<sup>67</sup> Rycroft, *supra* note 66 at 237.



accurate account of what a person has said.<sup>68</sup> Other extralinguistic factors, such as the ability to maintain consistency with the original speaker's emotion, tone, demeanour, and linguistic levels are also within the interpreter's control. However, she cautions that even the best interpreter will have difficulty fully replicating the original speaker's voice, glances, gestures, facial expressions, and personality, so these nuances will always be affected by the insertion of an interpreter into communication.<sup>69</sup> These extralinguistic aspects can have significant influence on the communication and understanding that occurs between parties.<sup>70</sup> Rycroft provides the example of how an interpreter's ability (or inability) to maintain a speaker's "rapid, sharp" and "raised voice" during cross-examination will impact the dynamics of that encounter.<sup>71</sup>

Another factor that can influence understanding is the space in which communication takes place. Pat Carlen, a criminologist and sociologist, analyzes the use of social space in magistrates' courts in the UK. Her research found that:

[t]he spacing and placing of people on public occasions is strategic to their ability to effectively participate in them ... spatial arrangements ... will, in addition to determining the mode and range of verbal interaction, emphasize the relative status of those present.<sup>72</sup>

Rycroft also echoes this finding, observing that in the UK asylum procedure, the degree of assistance an interpreter can provide an applicant (beyond interpretation) changes with the interpreter's physical proximity to the applicant.<sup>73</sup> When interpreters are sitting next

---

<sup>68</sup> Rycroft, *supra* note 66 at 225.

<sup>69</sup> Rycroft, *supra* note 66 at 223 and 225.

<sup>70</sup> Rycroft, *supra* note 66 at 234.

<sup>71</sup> Rycroft, *supra* note 66 at 234.

<sup>72</sup> Pat Carlen, *Magistrates' Justice* (London: Martin Robertson, 1976) [Carlen] at 21.

<sup>73</sup> Rycroft, *supra* note 66 at 234.

to the applicant, they are expected to act only as a conduit of languages, but when a glass pane separates them, they are permitted to actively intervene to ensure understanding.<sup>74</sup>

Other researchers have echoed that the arrangement of space can impact communication, especially where proximity has the effect of creating a perceived alliance between interpreter and client.<sup>75</sup> Morris' research noted that different jurisdictions prefer interpreters be separated from the person for whom they are interpreting in order to reduce the tendency of the applicant to 'cling' to the interpreter.<sup>76</sup>

Although also present in legal communication between speakers of the same language, Rycroft points out there will also always be 'silent actors' in communication involving interpreters. By silent actors, Rycroft means the background legal concepts, such as the refugee definition or issues of state protection, which shape the communication in the first instance.<sup>77</sup> The information sought by the interviewer, the questions asked, and the substance derived from the content of the claimant's answers will be driven by the legal concepts of refugee law.<sup>78</sup> These silent actors may be further obfuscated when communicated through an interpreter, as the interpreter is squarely in the middle of this process. Rycroft theorizes that an interpreter will have knowledge of these silent legal concepts, but will be forced to choose whether to explain them to the

---

<sup>74</sup> Rycroft, *supra* note 66 at 234 to 235.

<sup>75</sup> Ruth Morris, "The Gum Syndrome: Predicaments in Court Interpreting" (1999) 6(1) *Forensic Linguistics* 6 [Morris, Gum Syndrome] at 10 to 11.

<sup>76</sup> Morris, Gum Syndrome, *supra* note 75 at 10 to 11.

<sup>77</sup> Rycroft, *supra* note 66 at 240. Rycroft paraphrases Foucault: "concepts that constitute the refugee experience as an object of knowledge by cutting out from the ensemble of social phenomena those that enable a non-reductive analysis of the phenomena specific to persecution." This idea, and its impacts on how the legal system and its actors allow refugee claimants to tell their stories is interesting, but beyond the scope of this thesis.

<sup>78</sup> Rycroft, *supra* note 66 at 241 to 242.

refugee claimant.<sup>79</sup> Thus, the interpreter can choose to keep these concepts silent, supporting the interviewing officer, or explain the legal expectations, supporting the refugee claimant and stepping outside of the conduit role.<sup>80</sup> There is also the possibility that the interpreter improperly explains the concepts, again stepping outside of the conduit role, but benefiting no one. Likewise, Pöllabauer writes that asylum interviews take place with the objectives of establishing and assessing “institutionally defined facts”<sup>81</sup>; these objectives drive the process and the treatment of information received from the asylum seeker.<sup>82</sup> Although these authors are writing about the refugee adjudication process and not lawyer-client interviews, this idea may still be present in lawyer-client communication, depending on the lawyer’s style and view of the interpreter’s role.<sup>83</sup>

Another ‘silent actor’ present in any form of communication is the difficulty of accurately narrating life experiences. Marita Eastmond describes the complicated relation between experience, expression, and understanding in refugee self-narration and research, distinguishing between:

life as lived, the flow of events that touch on a person’s life; life as experienced, how the person perceives and ascribes meaning to what happens, drawing on previous experience and cultural repertoires; and life as told, how experience is framed and articulated in a particular context and to a particular audience... [and] life as text, the researcher’s interpretation and representation of the story.<sup>84</sup>

---

<sup>79</sup> Rycroft, *supra* note 66 at 242. Such a theory assumes that interpreters are familiar in the basics of refugee law and process. This may not be the case for family members or friends who interpret.

<sup>80</sup> Rycroft, *supra* note 66 at 242.

<sup>81</sup> Pöllabauer, *supra* note 37 at 147.

<sup>82</sup> Pöllabauer, *supra* note 37 at 147.

<sup>83</sup> For example, lawyers may or may not explain the legal requirements of a successful refugee claim, and may or may not explain legal jargon.

<sup>84</sup> Eastmond, *supra* note 6 at 249.

Thus a refugee client's 'life as told' can never be fully authentic to the 'life as lived', as it has already been interpreted at different stages within a person's own experience. The presence of a language interpreter is merely one added level of interpretation that takes place between a client's 'life as lived' and the eventual 'life as told' heard by the lawyer and then decision-maker.

Additionally, the dynamic nature of communication means a listener frequently plays an important role in a how a person will tell his or her story. Studies have show that narrators will change their story depending on what they believe their audience wants to hear<sup>85</sup> and they may take on different positions depending upon the perceived cues provided by the listener.<sup>86</sup> These listener effects can impact refugee testimony as demonstrated by a Canadian study that examined the complexities of refugee determination. Researchers described how claimants who were unable to understand and adjust their narrative style to fit within decision-makers expectations were often met with skepticism or suspicion.<sup>87</sup>

Finally, other scholars have focused their research on the ways lawyers can overcome the communication difficulties experienced when working with interpreters. Susan Bryant writes that an important aspect of effective communication is cross-cultural competence,

---

<sup>85</sup> Dan P McAdams, "Personal Narratives and the Life Story" in Oliver P John, Richard W Robins & Lawrence A Pervin, eds, *Handbook of Personality: Theory and Research* (New York: Guilford Press, 2008) [McAdams] at 245.

<sup>86</sup> McAdams, *supra* note 85 at 245.

<sup>87</sup> Cécile Rousseau, François Crépeau, Patricia Foxen, and France Houle, "The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-Making Process of the Canadian Immigration and Refugee Board" (2002) 15(1) *J of Refugee Studies* 42 at 63 to 64. Similar research has been conducted about the Australian Refugee Review Tribunal, see for instance Anthea Vogl, "Telling Stores from Start to Finish: Exploring the Demand for Narrative in Refugee Testimony" (2013) 22(1) *Griffin L Rev* 63.

which can be developed through cognitive, behavioural, and emotional learning.<sup>88</sup> She believes good cross-cultural lawyers are aware of the differences and similarities between themselves and their clients. Reflecting on similarities can foster empathy for clients at the same time as building connection.<sup>89</sup> Recognizing differences is important because it can help prevent lawyers from making assumptions about their clients' actions or motivations.<sup>90</sup> She writes that ethnicity, economic status, marital status, race, social status, role in family, gender, language, immigration nationality, sexual orientation, religion, age, physical characteristics, education, time orientation, individualistic or collective culture, and direct or indirect communication style are some characteristics worth considering.<sup>91</sup> Bryant also believes the ability to focus on content over form is integral to effective cross-cultural lawyering, as language and culture can impact the form of the message.<sup>92</sup> Most importantly, non-judgmental thinking and the ability to reflect and self-monitor perceptions about clients are required for successful cross-cultural lawyering.<sup>93</sup> In striving to communicate well across cultures, Bryant states that lawyers should expect some miscommunication to occur. Therefore, the ability to recognize that communication may have gone astray is essential.<sup>94</sup>

---

<sup>88</sup> Bryant, *supra* note 51 at 48.

<sup>89</sup> Bryant, *supra* note 51 at 52.

<sup>90</sup> Bryant, *supra* note 51 at 53.

<sup>91</sup> Bryant, *supra* note 51 at 64.

<sup>92</sup> Bryant, *supra* note 51 at 55.

<sup>93</sup> Bryant, *supra* note 51 at 56.

<sup>94</sup> Bryant, *supra* note 51 at 95.

McCaffrey believes that developing culturally competent lawyers will involve learning to work with interpreters, and that this requires greater awareness on the part of lawyers.<sup>95</sup>

In supervising students at law clinics, McCaffrey focused on teaching law students ‘cultural fluency’ in interviewing techniques.<sup>96</sup> In addition to active listening, she suggests that warmth, respect, courtesy, and seeing the client as an individual are critical to developing cultural fluency in interviewing clients through interpreters.<sup>97</sup> She also writes that students and lawyers working with clients who have come from other countries should be cognizant of the client’s potential experience with this prior legal system, as these experiences will undoubtedly influence their perceptions of the lawyer’s role.<sup>98</sup> McCaffrey also articulates some practical considerations for lawyers working with interpreters: that interpreters should ideally have formal training and understand their ethical obligations.<sup>99</sup>

Each of these authors highlights the subjectivity of the interpreter within the communication process. The background and culture of both speakers matters, but so does the background and culture of the interpreter. Communication happens not only through the words spoken, but also through other extralinguistic factors that may be uninterpretable. Additionally, this theme in the literature emphasizes that the fusion between culture and language can make it difficult to perceive cultural biases when communicating with others, and especially so when working with interpreters.

---

<sup>95</sup> McCaffrey, *supra* note 1 at 349 to 362.

<sup>96</sup> McCaffrey, *supra* note 1 at 360.

<sup>97</sup> McCaffrey, *supra* note 1 at 360.

<sup>98</sup> McCaffrey, *supra* note 1 at 361.

<sup>99</sup> McCaffrey, *supra* note 1 at 377 to 383.

## 2.4 - Ambiguous Role

... [I]nterpreters have become an indispensable part of the legal process. Unfortunately, many people who work in legal settings have little or no understanding of interpreting and its complexities. Not infrequently they treat interpreters with suspicion, distrust and a lack of respect for the skills that they bring to the job.<sup>100</sup>

A third theme present in the interpretation literature is the ambiguity surrounding the role interpreters have and should have with other actors in the legal process. The above quote articulates the lack of understanding towards the interpreter's role, and how that uncertainty affects the perspectives of those working with interpreters. Many research studies demonstrate the disparate views on the appropriate roles that interpreters should hold and the relationships that they should have with lawyers, clients, and the justice system. Some scholars also theorize about a more productive way to characterize the interpreter's responsibility in both court or hearing rooms and lawyer-client relationships.

Sandra Hale focuses on whether interpreters and decision makers hold the same views about the interpreter's responsibility in asylum adjudication. She analyzed answers to a survey conducted across Australia, which asked whether bringing cross-cultural misunderstandings to the attention of the court falls within the interpreter's role.<sup>101</sup> She surveyed interpreters, judicial officers, and tribunal members working in courts and tribunals in 2009 and 2010.<sup>102</sup> The survey revealed that 55% of interpreters stated they would alert the court to potential cross-cultural misunderstandings, while 24% said they

---

<sup>100</sup> Joan Colin and Ruth Morris, *Interpreters and the Legal Process* (Winchester: Waterside Press, 1996) [Colin and Morris] at 15.

<sup>101</sup> Hale, *Interpreting Culture*, *supra* note 63 at 2 and 10.

<sup>102</sup> Hale, *Interpreting Culture*, *supra* note 63 at 6.

would not.<sup>103</sup> An overwhelming 87% of judicial officers responded that they expected interpreters to bring potential cross-cultural misunderstandings to their attention.<sup>104</sup> She found the discrepancy in interpreters' self-reported actions and the judicial officers' expectations to be significant.<sup>105</sup> Interestingly, the more years of experience an interpreter has, the more likely he or she was to bring potential misunderstandings to the attention of the judicial officer. Hale suggests that experience, familiarity with the process, and confidence influence an interpreter's view of their role within the legal process and relationship towards other actors within it.<sup>106</sup> Hale also presents a more troubling view of these findings: actors within the process are unclear about their expected roles. Judicial officers expect interpreters to be cultural experts, but interpreters are less willing to assume this role.<sup>107</sup>

Laster offers further insight into interpreters' views of their role. Her research demonstrates that interpreters see their role as more complex than a conduit between languages. They view themselves primarily as language experts, but also as aides to community professionals, advocates for the non-English speaker, and as cultural bridges between parties.<sup>108</sup> As aides to community professionals, interpreters view themselves as 'paraprofessionals' working alongside lawyers.<sup>109</sup> As advocates for non-English speakers, interpreters believe part of their role is to ensure the basic needs of the non-English

---

<sup>103</sup> Hale, *Interpreting Culture*, *supra* note 63 at 7.

<sup>104</sup> Hale, *Interpreting Culture*, *supra* note 63 at 7.

<sup>105</sup> Hale, *Interpreting Culture*, *supra* note 63 at 8.

<sup>106</sup> Hale, *Interpreting Culture*, *supra* note 63 at 7.

<sup>107</sup> Hale, *Interpreting Culture*, *supra* note 63 at 8 to 9.

<sup>108</sup> Laster, *supra* note 17 at 20.

<sup>109</sup> Laster, *supra* note 17 at 20.



speaker are met.<sup>110</sup> As cultural bridges, interpreters believe part of their responsibility is to ensure that lawyers attach the proper significance to words, attitudes, and behaviours of non-English speakers.<sup>111</sup> Importantly, interpreters recognize the intricacy in their role that is not acknowledged by the neutral interpreter role that is frequently expected of them.<sup>112</sup>

Other research reflects the wide-ranging views that other actors within the legal process hold of interpreters. Morris writes that interpreters in legal settings tend to be perceived in two drastically different ways. The legal process, including adjudicators and lawyers, most often views interpreters as mechanical instruments, a practical necessity by virtue of language difference.<sup>113</sup> This view depersonalizes the interpreter, denying them any interactive or participatory role that they might actually hold.<sup>114</sup> By contrast, the client who does not speak the language of the legal process tends to view the interpreter as a saviour: expressing the sentiment that they have “found somebody with whom they can communicate readily and who represents home.”<sup>115</sup> Morris also notes the natural empathy and intimacy that can sometimes form between interpreters and clients; clients may view interpreters as allies or friends, even if the interpreter clearly expresses their role is limited to interpreting spoken language.<sup>116</sup> Lawyers may also be unclear about their

---

<sup>110</sup> Laster, *supra* note 17 at 20.

<sup>111</sup> Laster, *supra* note 17 at 20.

<sup>112</sup> Laster, *supra* note 17 at 20.

<sup>113</sup> Morris, Gum Syndrome, *supra* note 75 at 8 to 9.

<sup>114</sup> Morris, Gum Syndrome, *supra* note 75 at 8 to 9.

<sup>115</sup> Morris, Gum Syndrome, *supra* note 75 at 7.

<sup>116</sup> Morris, Gum Syndrome, *supra* note 75 at 9 to 10.

relationship with interpreters, often viewing them and their role with suspicion, distrust, or sometimes more negative stereotypes.<sup>117</sup>

Rycroft's own experiences as an interpreter mirror the ideas expressed by Morris. Rycroft recounts how she often felt applicants viewed her as an ally who could help them bridge the divergences between culture and language, and also as an authority figure who was familiar with the legal process.<sup>118</sup> She recalls many applicants pleading with her to help them tell their story because they felt unable to do so adequately.<sup>119</sup> She also writes that politics within certain communities will affect the relationship an interpreter might have with an applicant; characteristics such as sex, age, ethnic identity, and appearance can both generate or diminish trust.<sup>120</sup> Overall, Rycroft writes that interpreters undoubtedly have a "participatory role in the dynamics of the interpreted encounter."<sup>121</sup>

Codes of Conduct for interpreters anticipate the divergent views surrounding the interpreter's role in the legal process. For example, the Chartered Institute of Linguists, an international organization that offers interpreter accreditation and professional development,<sup>122</sup> has a Code of Conduct that sets clear standards for member interpreters. On the one hand, the Code states that interpreters must "interpret truly and faithfully what

---

<sup>117</sup> See for example, Colin and Morris, *supra* note 100 at 15; Morris, Gum Syndrome, *supra* note 75 at 8 to 9; Ahmad, *supra* note 11 at 1003; Laster, *supra* note 17 at 18.

<sup>118</sup> Rycroft, *supra* note 66 at 235.

<sup>119</sup> Rycroft, *supra* note 66 at 235.

<sup>120</sup> Rycroft, *supra* note 66 at 239.

<sup>121</sup> Rycroft, *supra* note 66 at 236.

<sup>122</sup> *Chartered Institute of Linguists*, further information available online at: Chartered Institute of Linguists, [www.ciol.org.uk/images/Membership/CPC.pdf](http://www.ciol.org.uk/images/Membership/CPC.pdf).

is uttered, without adding, omitting or changing anything”.<sup>123</sup> However, interpreters are permitted to intervene to ask for clarifications; point out misunderstandings, including cultural inferences; and signal conditions that may impair interpretation, such as inadequate breaks or seating arrangements.<sup>124</sup> To be competent, interpreters are expected to act impartially, and must set aside any prejudice or preference when interpreting,<sup>125</sup> but they are expected to be aware of “cultural and political realities in relation to the country or countries concerned” and compensate accordingly.<sup>126</sup> They must also maintain confidentiality.<sup>127</sup>

Another example of a Code of Conduct for interpreters is drafted by the Multilingual Community Interpreter Services (MCIS), an Ontario social enterprise that hires, trains, and provides interpreting services to people across Ontario, including ongoing arrangements with more than 250 organizations.<sup>128</sup> In its Standards for Community Interpreting Services, MCIS states that interpreters should never act as cultural interpreters or attempt to resolve cultural misunderstandings; interpreters are simply expected to render the original speaker’s message without distortion.<sup>129</sup> However, the

---

<sup>123</sup> Chartered Institute of Linguists, *Code of Conduct*, [CIOL Code of Conduct] Annex II, article 6.4, available online: Chartered Institute of Linguists, [www.ciol.org.uk/images/Membership/CPC.pdf](http://www.ciol.org.uk/images/Membership/CPC.pdf).

<sup>124</sup> CIOL Code of Conduct, *supra* note 123 at Annex II, article 6.12.1 to 6.12.4.

<sup>125</sup> CIOL Code of Conduct, *supra* note 123 at Overarching Principles, article 3.12.

<sup>126</sup> CIOL Code of Conduct, *supra* note 123 at Overarching Principles, article 3.9.

<sup>127</sup> CIOL Code of Conduct, *supra* note 123 at Overarching Principles, article 3.11 and 3.13.

<sup>128</sup> *Multilingual Community Interpreter Services*, further information available online: Multilingual Community Interpreter Services, [mcislanguages.com/about-us](http://mcislanguages.com/about-us). MCIS has contracts with many Legal Aid Ontario offices.

<sup>129</sup> Multilingual Community Interpreter Services, *Standards for Community Interpreting Services*, available online at: Multilingual Community Interpreter Services [wiki.settlementatwork.org/w/uploads/MCIS-Tips\\_for\\_Working\\_with\\_Interpreter.pdf](http://wiki.settlementatwork.org/w/uploads/MCIS-Tips_for_Working_with_Interpreter.pdf). MCIS bases its standards off of the National Standard Guide for Community Interpreting Services.

interpreter is expected to retain culturally bound terms or words without direct equivalent meanings, and “attempt a translation of that word to provide the listener with an idea of what the word means”.<sup>130</sup> The Standards also state that interpreters should ensure that meanings of gestures, body language, and tone of voice are not lost.<sup>131</sup>

Thus, both organizations expect interpreters to adhere to a conduit model of language interpretation, while at the same time acknowledging that the cultural subtleties of language and extralinguistic factors will often require more active involvement on the part of the interpreter. Each organization imposes different constraints on how interpreters should maintain professional relationships with communicators. Reflecting on these contradictory demands that she experienced firsthand, Rycroft writes,

faithful interpretation very often inhabits the threshold between accuracy and transformation, and the difficulty of incorporating this standard of performance into a realistic code of interpreting conduct is one index of the predicaments of the interpreter.<sup>132</sup>

Barsky is critical of the limits placed on interpreters in the refugee determination system in Canada. Interpreters are tasked with representing the refugee voice, and there are serious consequences for any misrepresentation.<sup>133</sup> He writes that errors in interpretation can be fatal to a refugee claim, and if not recognized, the faulty interpretation may be seen to indicate that the refugee’s story is incoherent.<sup>134</sup> He cites cases where inconsistent

---

<sup>130</sup> Multilingual Community Interpreter Services, *Tips for Working with Interpreters*, available online at: Multilingual Community Interpreter Services [wiki.settlementatwork.org/w/uploads/MCIS-Tips\\_for\\_Working\\_with\\_Interpreter.pdf](http://wiki.settlementatwork.org/w/uploads/MCIS-Tips_for_Working_with_Interpreter.pdf) [Tips for Working with Interpreters].

<sup>131</sup> Tips for Working with Interpreters, *supra* note 130.

<sup>132</sup> Rycroft, *supra* note 66 at 235.

<sup>133</sup> Barsky, Constructing a Productive Other, *supra* note 43 at 135.

<sup>134</sup> Barsky, Constructing a Productive Other, *supra* note 43 at 146.

testimony, which was later revealed to be interpreter error, was the reason for rejecting refugees' claims.<sup>135</sup> Barsky therefore calls for the refugee determination system in Canada to be reformulated to better meet the needs of refugee claimants. In particular, he believes that the role of the interpreter should be expanded to include cultural translation.<sup>136</sup> In support of this role reformulation, Barsky provides examples of cases where potential pitfalls in the refugee's claim were 'saved' when an interpreter offered a cultural explanation, such as the relative cost of items, different concepts of time, or the different meaning of words in different cultures.<sup>137</sup> Additionally, Barsky discusses how claimants will frequently view the interpreter as a familiar person in an unfamiliar process, and come to depend on them in other ways than simply a language-to-language translation.<sup>138</sup>

When writing about the role of interpreters in lawyer-client relationships, Barsky theorizes that interpreters are a key link between claimants and their lawyers, capable of providing valuable cultural, linguistic, and relational insight.<sup>139</sup> Laster also discusses the interpreter's role in interviews between clients and lawyers, suggesting that their role is again not as straightforward as a neutral intermediary. She writes that the interpreter influences the flow of information. For example, a lawyer's cues about information

---

<sup>135</sup> Barsky, *Constructing a Productive Other*, *supra* note 43 at 143 to 145.

<sup>136</sup> Barsky, *Constructing a Productive Other*, *supra* note 43 at 155.

<sup>137</sup> Barsky, *Constructing a Productive Other*, *supra* note 43 at 152. Barsky had to review several hundred cases to find cases where an interpreter was permitted to go beyond the role of literal translator and offer cultural insight.

<sup>138</sup> Barsky, *Arguing and Justifying*, *supra* note 44 at 62.

<sup>139</sup> Barsky, *Arguing and Justifying*, *supra* note 44 at 66 to 67.

‘better left unsaid’ may not be understood.<sup>140</sup> Additionally, lawyering through an interpreter restricts a lawyer’s ability to conduct their work as quickly as possible, which could augment the institutional or economic pressures lawyers face.<sup>141</sup> Although Laster’s research focuses on interpreters, lawyers, and clients in Australia, the same economic pressures may also be present in Canada, where much of the refugee claim work is done through legal aid.

Other institutional or economic pressures include the need to work with interpreters over the phone or videoconference. In 2004, the Immigration and Refugee Board commissioned a evaluation to assess “the impact the [videoconferencing] technology may have on the fairness of the hearings and whether the practice maintains an appropriate balance between fairness and efficiency.”<sup>142</sup> In the evaluator’s interviews with counsel, counsel reported clients were more stressed and anxious about videoconference hearings, and counsel found it more difficult to develop rapport with decision-makers over videoconference.<sup>143</sup> Interestingly, the majority of Board affiliated respondents (decision-makers, Refugee Protection Officers,<sup>144</sup> and interpreters) did not report these same

---

<sup>140</sup> Laster, *supra* note 17 at 25 to 26. Laster provides the example of a client who confesses a crime to her lawyer, which would limit the kind of defence the lawyer can present.

<sup>141</sup> Laster, *supra* note 17 at 26.

<sup>142</sup> S Ronald Ellis, *Videoconferencing in Refugee Hearings – Ellis Report to the Immigration and Refugee Board*, 21 October 2004, available online at: Immigration and Refugee Board of Canada, [www.irb-cisr.gc.ca/Eng/transp/ReviewEval/Pages/Video.aspx](http://www.irb-cisr.gc.ca/Eng/transp/ReviewEval/Pages/Video.aspx) [Ellis]. The Immigration and Refugee Board prepared a response to the concerns and proposals raised in this report, see Immigration and Refugee Board of Canada, *Immigration and Refugee Board Response to the Report on Videoconferencing in Refugee Hearings*, available online at: Immigration and Refugee Board of Canada, [www.irb-cisr.gc.ca/Eng/transp/ReviewEval/Pages/VideoRespRep.aspx](http://www.irb-cisr.gc.ca/Eng/transp/ReviewEval/Pages/VideoRespRep.aspx).

<sup>143</sup> Ellis, *supra* note 142 at 20 to 22.

<sup>144</sup> Refugee Protection Officers were Immigration and Refugee Board officials assisting Board Members during the Refugee Protection Division hearing. Under current legislation, this position no longer exists.

concerns.<sup>145</sup> In his contribution to the evaluation, Mark Federman reviews relevant literature and concludes that videoconference hearings make shared understanding more difficult compared to face-to-face encounters.<sup>146</sup> In reaching this conclusion, he considers studies indicating how the slight delay in videoconference synchrony affects the receptivity of participants' perceptions of each other, and how non-verbal cues become more challenging to accurately read, especially where camera and screen angles influence a person's eye contact and body position.<sup>147</sup> Feedback about how one is being perceived is also harder to read over videoconference, which further diminishes the flow of communication.<sup>148</sup> Federman also notes that conducting hearings over videoconference creates more social and psychological distance between participants, which can lead to less interactivity and spontaneity.<sup>149</sup> Additionally, he notes research demonstrating that videoconferencing has a negative impact on establishing trust between participants.<sup>150</sup>

Ahmad writes extensively about the uncertainty and apprehension surrounding the role of the interpreter within lawyer-client interactions, and how this affects the lawyer-client relationship. He acknowledges that the insertion of an interpreter into the lawyer-client relationship fundamentally changes it. Unlike the lawyer-client dyad<sup>151</sup>, the use of interpreters creates a triad, which heightens concern about power distribution between

---

<sup>145</sup> Ellis, *supra* note 142 at 22 to 27.

<sup>146</sup> Mark Federman, "On the Media Effects of Immigration and Refugee Board Hearings via Videoconference" (2006) 19(4) *J of Refugee Studies* 433 [Federman] at 442

<sup>147</sup> Federman, *supra* note 146 at 438 to 440.

<sup>148</sup> Federman, *supra* note 146 at 441.

<sup>149</sup> Federman, *supra* note 146 at 439 to 441.

<sup>150</sup> Federman, *supra* note 146 at 444.

<sup>151</sup> This is not to suggest that lawyer-client relationships are straightforward or simple, or that they are not worth investigating further.

lawyer and client.<sup>152</sup> Ahmad is also concerned that an interpreter will alter a lawyer's attempts to respect and enhance client voice and autonomy.<sup>153</sup> Further, the interpreter may ask the client questions other than those asked by the lawyer, thus disrupting the lawyer's control.<sup>154</sup> Additionally, the interpreter may have previous interactions with the client or her community, possibly creating a conflict of interest or problematizing intracommunity dynamics.<sup>155</sup> Most fundamentally, Ahmad points out the added subjectivity of an interpreter. As a person, an interpreter possesses his own biases, which are difficult to separate from the role of language interpreter.<sup>156</sup>

Rather than fight the subjectivity of the interpreter, Ahmad suggests it is more productive to think of how an interpreter can fit into the lawyer-client relationship.<sup>157</sup> He identifies roles frequently taken up by interpreters, and theorizes how these roles could be transformed to fit within, and even enhance, the lawyer-client dynamic. First, Ahmad notes that interpreters will frequently act as guardians for the client, protecting the client's interests<sup>158</sup> by presenting the client's words more favourably.<sup>159</sup> However, the 'interpreter as guardian' role is problematic in that it assumes the client needs protection. It infantilizes the client and diminishes her autonomy. Further, the interpreter and client

---

<sup>152</sup> Ahmad, *supra* note 11 at 1051.

<sup>153</sup> Ahmad, *supra* note 11 at 1051.

<sup>154</sup> Ahmad, *supra* note 11 at 1052.

<sup>155</sup> Ahmad, *supra* note 11 at 1070.

<sup>156</sup> Ahmad, *supra* note 11 at 1051.

<sup>157</sup> Ahmad, *supra* note 11 at 1053.

<sup>158</sup> That is, the client's interests as identified by the interpreter.

<sup>159</sup> Ahmad, *supra* note 11 at 1054.



may not share the same interests or goals.<sup>160</sup> Ahmad suggests that viewing an ‘interpreter as a co-client’, instead of a guardian, may render this role less problematic. As a co-client, it would not be assumed that the interests of client and interpreter are aligned. The co-client construct would acknowledge any relationship the interpreter may have with the client, or any “real or perceived basis for interpreter-client trust.”<sup>161</sup> Despite this improvement, Ahmad ultimately concludes that the ‘interpreter as co-client’ role displaces the client’s voice and autonomy too much for it to be productive.

Second, Ahmad recounts how interpreters will frequently advocate for clients in addition to interpreting their words. He notes an example where a community interpreter would not interpret a client’s answer until the student-lawyers explained why the question was relevant.<sup>162</sup> Ahmad believes that thinking of the ‘interpreter as advocate’ is problematic because the role of advocate is nearly the same as ‘interpreter as co-counsel’. He opines that ‘interpreter as co-counsel’ is most threatening to lawyers because it removes some of their control.<sup>163</sup> However, the co-counsel model is positive in that it acknowledges the integral role interpreters play in the professional relationship. Interpreters are important in building client trust, gathering information, and may even be useful in strategizing about the case.<sup>164</sup>

---

<sup>160</sup> Ahmad, *supra* note 11 at 1055.

<sup>161</sup> Ahmad, *supra* note 11 at 1055.

<sup>162</sup> Ahmad, *supra* note 11 at 1056.

<sup>163</sup> Ahmad, *supra* note 11 at 1056.

<sup>164</sup> Ahmad, *supra* note 11 at 1057.

Finally, Ahmad discusses the linguistic and cultural authority role that interpreters often undertake. He writes that allowing interpreters to act as cultural brokers risks essentializing the client's cultural background, and this is further complicated because their information is influenced by their own subjective experiences.<sup>165</sup> But since the cultural nature of language "necessitates cultural information to be meaningful,"<sup>166</sup> Ahmad suggests interpreters be treated as experts. He views the 'interpreter as expert' reconstruction to be the most useful because it allows the interpreter's knowledge to be ascertained, acknowledged, and utilized. Importantly, it accepts that interpretation is a subjective endeavor, and creates a forum for evaluating an interpreter's knowledge, opinion, and judgment of culture, as well as language.<sup>167</sup> In evaluating interpreters like experts on a case-by-case basis and with client consultation, Ahmad believes that the interpreter's strengths will be best employed.<sup>168</sup> Further, he believes acknowledging the interpreter's expertise and subjectivity, rather than pushing for neutrality, will prevent the client's voice from being lost in that of the interpreter.<sup>169</sup>

In all of these discussions about the uncertainty and apprehension surrounding the role of the interpreter, one thing prevails: the role of the interpreter in legal settings, both in and out of the court or hearing room, is worth investigating. Further research is warranted to better understand the role of the interpreter, and to provide clearer guidelines on the

---

<sup>165</sup> Ahmad, *supra* note 11 at 1057.

<sup>166</sup> Ahmad, *supra* note 11 at 1057.

<sup>167</sup> Ahmad, *supra* note 11 at 1058.

<sup>168</sup> Ahmad, *supra* note 11 at 1072.

<sup>169</sup> Ahmad, *supra* note 11 at 1058 to 1059.

scope of the interpreter's role.<sup>170</sup> Such understanding and guidelines are important to ensure that the voices of non-English speakers are properly heard.<sup>171</sup>

## **2.5 - Towards my Thesis Research**

Overall, the authors whose work I engaged with have researched and offered insight into the tensions between the conduit model of interpretation versus and active model, have contemplated the intricacies of communication between speakers with different cultural and linguistic backgrounds, and have discussed the uncertainty and apprehension surrounding the interpreter's role. Like these researchers, I believe that a deeper understanding of the effects of interpreters on lawyer-client relationships is important in order for lawyers, interpreters, and refugee claimant clients to work together in the most productive way. Such considerations will be increasingly important to the legal community more broadly, especially as Canadian society becomes more diverse and lawyers work with interpreters in many areas of the law. Above all, I am interested in ensuring that refugee claimants can work with lawyers and interpreters in a way that enhances their voices. Justice and fairness demand no less.

---

<sup>170</sup> Hale, *Interpreting Culture*, *supra* note 63 at 10.

<sup>171</sup> Laster, *supra* note 17 at 30.

## Chapter Three – Methodology

### 3.1 - Situating the Research

Critical research should be carried out with the awareness that researchers are not objective observers of knowledge; rather, we are embedded in the process in which knowledge is formed.<sup>172</sup> Therefore, I have attempted to be self-reflective and to be aware of my own subjective influence on the research processes. As part of this effort, I have identified the methods through which I engage with knowledge, my epistemological framework,<sup>173</sup> in an effort to make more transparent the ways in which I construe my research.

In the field of legal research, there are different traditions of approaching knowledge. Neil MacCormick proposes four quadrants within which most legal understanding will fall: raw law, doctrinal law, law in social science, and fundamental values and principles.<sup>174</sup> As I am examining how lawyers, interpreters, and clients work together when preparing a refugee claim, my research is best described as investigating raw law. MacCormick describes raw law as the “bewildering plurality of activities” that takes place in everyday, informal settings and lives.<sup>175</sup> These activities represent the movements of the law that happen apart from any legal reasoning that justifies legal

---

<sup>172</sup> Margaret Davies, “Ethics and Methodology in Legal Theory: A (Personal) Research Anti-Manifesto” (2002) 6 *Law Text Culture* 7 [Davies] at 7; see also Max Horkheimer, “Traditional and Critical Theory” in Max Horkheimer, *Critical Theory: Selected Essays* (New York: Continuum, 1968).

<sup>173</sup> As suggested by Davies, *supra* note 172 at 7 to 9.

<sup>174</sup> Neil MacCormick, “Four Quadrants of Jurisprudence” in Werner Krawietz, Neil MacCormick, and Georg Henrik Von Wright, eds, *Prescriptive Formality and Normative Rationality in Modern Legal Systems* (Berlin: Duncker & Humblot, 1997) [MacCormick] at 53.

<sup>175</sup> MacCormick, *supra* note 174 at 54.

decisions.<sup>176</sup> Other researchers studying interpreters in the refugee adjudication process have adopted this approach, characterizing their research as “looking at law in its informal settings, as social practice in action” by observing the ways “immigration procedure interferes with the very account to which ... it will apply itself.”<sup>177</sup> Likewise, my research examines the way in which communication through an interpreter affects the refugee account that will later be considered by decision-makers. I seek to gain a deeper understanding of this “law-as-activity” that plays an integral role in the end result of a refugee claim.

I also situate this research within a narrative paradigm, where narrative is understood to be “somebody telling somebody else, on some occasion, and for some purposes, that something happened to someone or something.”<sup>178</sup> I do so because at its heart, the refugee process is about storytelling.<sup>179</sup> Lawyers, interpreters, and clients work together to provide decision-makers with stories that will meet the legal requirements for granting refugee protection. The narrative paradigm is present in both the method and product of my research.<sup>180</sup> In terms of the method, I collected and analyzed narrative accounts from

---

<sup>176</sup> MacCormick, *supra* note 174 at 55. Or, as MacCormick phrases it: “apart from and prior to any particular explanatory scheme or theoretical understanding.”

<sup>177</sup> Rycroft, *supra* note 66 at 224.

<sup>178</sup> James Phelan & Peter J. Rabinowitz, “Narrative as Rhetoric” in David Herman, James Phelan, Peter J. Rabinowitz, Brian Richardson & Robyn Warhol, eds, *Narrative Theory: Core Concepts and Critical Debates* (Columbus: Ohio State University Press, 2012) at 3.

<sup>179</sup> Stories permeate the Canadian refugee determination system. At the port of entry a claimant tells her story to the border official, in preparation for a hearing a refugee claimant tells her story to her lawyer, and during the hearing the refugee claimant tells her story to a Board Member. After the hearing the claimant’s story is re-told in the form of a decision authored by the Board Member. These stories are the most important part of a refugee claim, as refugees often come with little else in the way of evidence of persecution.

<sup>180</sup> Identified by Patricia Ewick and Susan S Silbey, “Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative” (1995) 29(2) *L & Society Rev* 197 [Ewick and Silbey] at 205.

lawyers to access experiences of the social practice of law that is the focus of my research.<sup>181</sup> The product of my research, this thesis, is also written through a narrative lens, as I act as a storyteller to weave an integrated account of lawyers' experiences.<sup>182</sup> Where appropriate, I share lawyers' insights in their own words to remain faithful to their experience.

### **3.2 - Research Goals and Questions**

The goals of my research are twofold. Firstly, I aim to deepen the understanding of how working with interpreters affects a lawyer's representation of a refugee client. And secondly, I intend to use this deeper understanding to develop best practice strategies for lawyers working with interpreters in order to ensure that lawyers, interpreters, and clients maintain productive relationships. To achieve these overarching research goals, I posed the research questions and sub-questions below.

*Question 1:* What is the interpreter's role when working with lawyers and clients?

*Question 2:* How is communication affected when communicating through interpreters?

*Sub-question:* Is it possible for the client's authentic voice to be heard when their story is always heard through an interpreter?

*Question 3:* How does working with interpreters affect the lawyer-client relationship?

---

<sup>181</sup> Ewick and Silbey, *supra* note 180 at 202.

<sup>182</sup> Ewick and Silbey, *supra* note 180 at 203.

### 3.3 - Definition of Concepts

To assist readers understand the ideas expressed in the analysis and discussion, I explain the important vocabulary used throughout this thesis. To expound these terms, I draw on interpreting literature, narrative theory, as well as scholarship discussing client-centered approaches to lawyering.

*Interpretation* refers to “the oral transfer of meaning between languages”.<sup>183</sup> This is contrasted with translation, which I did not investigate, which refers to the written transfer of meaning between languages.<sup>184</sup>

As the role and expectations of the *interpreter* is one of the questions asked in my research, it would not make sense to offer a closed definition of this concept. Yet in the context of my conversations with lawyers it was necessary to describe the person about whom I was asking questions. By interpreter, I was referring to a person, other than the client, who possessed language proficiency to interpret dialogue occurring between the lawyer and client. An interpreter can thus be explained circularly as a person who was interpreting. For the sake of specificity, I use the term *informal interpreter* to refer to a person who has no education, training, or accreditation in interpretation, but by virtue of speaking both communicators’ languages interprets for the parties. Friends, family members, community members, or other staff in a lawyer’s office could act as informal interpreters. Conversely, I use the term *trained interpreter* to refer to a person with education, training, or accreditation in language interpretation.

---

<sup>183</sup> Morris, *Moral Dilemmas*, *supra* note 7 at 25.

<sup>184</sup> Morris, *Moral Dilemmas*, *supra* note 7 at 25. Many people mistakenly use the terms interchangeably.

The *lawyer-client relationship* is the social practice this research explores. It encompasses all the activities that happen between lawyers and clients. As I was interested in each lawyer's experience of working with clients, it did not matter whether lawyers adhered to a traditional or more client-centered approach in their relationships with clients.<sup>185</sup> Indeed, some lawyers may not have thought about their relationships with clients in this way. Within the lawyer-client relationship, the *lawyer* is the person offering legal services.<sup>186</sup> The *client* is the person seeking these services.

The concept of *authentic voice* is more difficult to define, but can be understood through narrative theory and a narrative integrity approach to client-centered lawyering. Narrative theory tells us that narratives are the means by which a person conveys and understands reality.<sup>187</sup> People *are* the narratives they tell others about their lives.<sup>188</sup> Simply, people attempt to tell their story in their authentic voice, although these attempts can be impeded by the difficulties with conveying life experiences.<sup>189</sup> A narrative integrity approach to lawyering acknowledges that a person is the author of the most authentic version of this

---

<sup>185</sup> Katherine R Kruse, "Fortress in the Sand: The Plural Values of Client-Centered Representation" (2006) 12 *Clinical L Rev* 369 [Kruse]. Kruse explicates the plurality of views within a client-centered approach and contrasting this view with a 'traditional' approach.

<sup>186</sup> For example, see *Law Society Act*, RSO 1990 c L8 (Ontario) and *Legal Profession Act*, SBC 1998, c 9 (British Columbia).

<sup>187</sup> Barbara Hardy, "Towards a Poetics of Fiction: 3) An Approach through Narrative" (1968) 2(1) *NOVEL: A Forum on Fiction* 5 at 5.

<sup>188</sup> Bruner, *Life as Narrative*, *supra* note 9 at 694.

<sup>189</sup> Bruner, *Life as Narrative*, *supra* note 9 at 694.



story, and also acknowledges that lawyers can distort this authenticity.<sup>190</sup> The approach aims to preserve client authorship over their story.<sup>191</sup>

### 3.4 - Research Design

#### 3.4.1 - Ethical Safeguards

Research in Canada involving humans must abide by the *Tri Council Policy Statement: Ethical Conduct for Research Involving Humans*. The policy ensures that research at Canadian universities is conducted in an ethical manner.<sup>192</sup> These ethical standards embody three core principles: respect for persons, concern for welfare, and justice.<sup>193</sup> Abiding by these principles requires researchers to respect the autonomy of participants, protect them against any foreseeable risks, and treat participants fairly and equitably.<sup>194</sup>

Since my research proposed to interview participants, I was required to submit an ethics application to the University of Victoria's Human Research Ethics Board (HREB).<sup>195</sup> As part of this application, I drafted recruitment materials and a consent form. The recruitment materials informed potential participants about the nature of the research, the researcher, and instructions on how to participate. The consent form provided further

---

<sup>190</sup> Kruse, *supra* note 185 at 422.

<sup>191</sup> Kruse, *supra* note 185 at 420. See also Binny Miller, "Give Them Back Their Lives: Recognizing Client Narrative in Case Theory" (1994) 93(3) *Michigan L Rev* 485.

<sup>192</sup> Government of Canada, Panel on Research Ethics, *Tri-Council Policy Statement: Panel on research ethics*, 2nd Edition, 2010, available online: Panel on Research Ethics, [www.pre.ethics.gc.ca/pdf/eng/tcps2/TableofConcordance\\_1st\\_Ed\\_1998\\_to\\_2nd\\_Ed\\_2010.pdf](http://www.pre.ethics.gc.ca/pdf/eng/tcps2/TableofConcordance_1st_Ed_1998_to_2nd_Ed_2010.pdf) [Tri-Council Policy Statement]. I note an updated version was released in December 2014. However, the approval for this research was made pursuant to the 2010 version.

<sup>193</sup> Tri-Council Policy Statement, *supra* note 192 at 8.

<sup>194</sup> Tri-Council Policy Statement, *supra* note 192 at 8 to 11.

<sup>195</sup> Approval was granted on July 10, 2014. The Approval Certificate is on file with the author.

details about the research and outlined participant and researcher rights and responsibilities. At the outset of each interview, I ensured I had a signed copy of the informed consent from the participant. I also offered each participant the chance to ask any outstanding questions they may have had about the research or the informed consent.<sup>196</sup>

### **3.4.2 - Sampling Design and Recruitment**

When initially designing the research, I intended to interview lawyers, interpreters, and former refugee claimant clients to gain a deeper understanding of each participants' perspective. As I will elaborate upon below, this proved too expansive of an undertaking for a Master in Laws thesis, so I constrained my interviews to lawyers.

I decided to begin the research by interviewing lawyers who had worked with interpreters representing refugee claimant clients on at least five files. After obtaining ethical approval from University of Victoria's HREB, I sent an email through the Canadian Council for Refugees listserv, a listserv to which many lawyers, settlement service agencies, and academics subscribe. I received an overwhelming response the first day. I provided each person who contacted me with more details about the project and ensured he or she met my inclusion criteria. Ten lawyers agreed to be interviewed.

My sampling strategy can be characterized as purposive. Purposive sampling involves selecting participants based on "pre-determined criteria relevant to a research

---

<sup>196</sup> Participants were also given opportunities to ask questions during the recruitment process, after setting up an interview time, and after receiving a copy of the informed consent. I was available by email, telephone, and where realistic, in person.

objective.”<sup>197</sup> The appropriate size for a purposive sample is one where theoretical saturation occurs.<sup>198</sup> In homogenous populations, theoretical saturation occurs after six to twelve interviews, with overarching themes being stable after six.<sup>199</sup> As I interviewed refugee lawyers, a homogenous group, I was satisfied that ten interviews would lead to theoretical saturation.

At this point in the research process I knew I had a significant amount of data, but I was determined to obtain interpreter and former refugee claimant perspectives. I thus began recruiting interpreters and former refugee claimants for the next phase of my research. I wanted to interview interpreters who had worked with lawyers on at least five refugee files. My inclusion criteria for refugee claimants specified claimants who worked with a lawyer and interpreters during their refugee claim, who had a claim accepted within the last five years, and who felt comfortable being interviewed in English.<sup>200</sup> I sent another email to the Canadian Council for Refugees listserv, this time recruiting interpreters and former refugee claimants. I received one reply from an interested interpreter. I provided further information, ensured the participant met my inclusion criteria, and scheduled the interview. I was able to recruit another interpreter participant through my professional network.

---

<sup>197</sup> Greg Guest, Arwen Bunce, and Laura Johnson, “How many interviews are enough?: An Experiment with Data Saturation and Variability” (2006) 18 *Field Methods* 59 [Guest et al] at 61.

<sup>198</sup> Guest et al, *supra* note 197 at 61.

<sup>199</sup> Guest et al, *supra* note 197 at 74 to 79.

<sup>200</sup> Requiring these participants to be comfortable being interviewed in English undoubtedly limited my potential participant pool, but I did not want the very interpreter-dynamic factors I was studying to be present in my own research. Additionally, it is possible that refugee claimants speak a reasonable amount of English, but are more comfortable in their first language for an important legal proceeding such as a refugee claim.

Because of the difficulty I was having recruiting interpreter and former refugee claimant participants, I began contacting lawyer participants to inquire if they would pass on the research information and my contact details to interpreters or claimants they had worked with. Many lawyers were able to do so, but only one prospective interpreter participant contacted me. Unfortunately, this did not materialize in an interview. I also met with several community organizations working with interpreters and serving refugee populations. These organizations displayed my recruitment posters. Again, unfortunately, no interviews emerged from these efforts.

I therefore decided to restrict my research to the data gathered during my interviews with lawyers.<sup>201</sup> This was in part owing to the difficulty I was experiencing recruiting interpreter and former refugee claimant participants, but also because of the feasibility of completing my Master in Laws thesis. Importantly, I underscore this decision does not reflect a view that interpreters or former refugee claimants' perspectives are less valuable than lawyers'. Further, in restricting my data collection to lawyers I acknowledge that I am only able to offer a deeper understanding of one facet of the lawyer-interpreter-client relationship. Nonetheless, this perspective still remains an understudied aspect of legal studies and interpreting literatures, and I believe my research helps to fill that gap. I would encourage researchers to conduct similar research to mine, but with an interpreter and/or former refugee claimant focus; I would be excited to undertake such research myself as part of a different project.

---

<sup>201</sup> Although I did interview two interpreters, I did not feel that this amount of data was enough to contribute to a deeper understanding of the interpreters' perspectives. Both interpreters I interviewed also acted as advocates for refugee claimants, so much of our discussion centered on issues similar to those discussed with lawyer participants.

### **3.4.3 - Data Collection**

I conducted semi-structured qualitative interviews to gather detailed, narrative answers to my research questions. My interview guide contained a list of over-arching thematic questions to ask participants. The semi-structured nature of the interviews permitted me to ask follow-up questions inductively, according to the responses of the participants. However, I used the interview guide as a checklist to ensure that I covered all of the thematic questions with each participant.

I interviewed lawyers between July 29 and August 20, 2014. Nine of ten interviews were conducted over the telephone and one was in person. Interviews with participants lasted from just under one hour to just over two hours. Each interview was audio recorded.

### **3.5 - Participant Characteristics**

The research sample consisted of ten lawyers, all of whom practised refugee law. Two of the lawyer participants also acted as a Board Member of the Refugee Protection Division of the Immigration and Refugee Board, so were able to offer insight into the process from that perspective as well. Cumulatively, the lawyers I interviewed had over 150 years of refugee law practice experience, and had assisted between 1880 to more than 2400 refugee claimants. Of these claims, lawyers reported that they worked with interpreters more than half the time. The two lawyers who were former Board Members had a total of 17 years of experience as Board Members; they decided approximately 3500 refugee

claims during that time. The chart below provides more details on participant characteristics.

<b>Lawyer #</b>	<b>Years of practice</b>	<b># claimants</b>	<b>% with interpreters</b>	<b>Years as BM</b>	<b># claims decided</b>
1	2	50 – 100	80%	-	-
2	2	50 – 100	60%	-	-
3	22	100	50% +	-	-
4	2	120 – 150	90%	-	-
5	21	500 – 800	85 – 90%	-	-
6	4	60	50% +	-	-
7	36	500+	80 – 90%	-	-
8	37	300+	Majority	8	2000
9	20	200 – 300	80%	9	1500
10	5	100+	60 – 95%	-	-
<b>Total</b>	<b>151</b>	<b>1880 – 2410+</b>	<b>50% – 95%</b>	<b>17</b>	<b>3500</b>

**Table 1 - Participant Characteristics**

### **3.6 - Content Analysis: General Inductive Approach**

There are numerous methods to analyze qualitative data obtained through interviews, many of which are associated with a particular theoretical background or epistemology.<sup>202</sup> Instead of adopting a method of content analysis that requires the acquisition of technical jargon, I have chosen to analyze my data using a general inductive approach. A general inductive approach allows research findings to emerge from the themes present in qualitative data.<sup>203</sup>

Inductive content analysis involves several steps. First, researchers must prepare the data.<sup>204</sup> In my case, I transcribed each interview from the audio recording. Next,

<sup>202</sup> David R Thomas, “A general inductive approach for qualitative data analysis” (2006) 27(2) *American J of Evaluation* 237 [Thomas].

<sup>203</sup> Thomas, *supra* note 202 at 239.

<sup>204</sup> Thomas, *supra* note 202 at 241 to 246.

researchers read the text closely to develop an understanding of emerging themes and details in the text.<sup>205</sup> I did this by reading each interview several times, making notes in the margins of the text and in a notebook.

After developing an initial understanding, researchers then create upper level categories, often derived from research aims, as well as lower level categories, which originate from repeated reading of the texts.<sup>206</sup> I devised lower level themes by reviewing and re-organizing the notes in my notebook, as well as re-reading the texts and their marginal notes. This was initially overwhelming as there were many more ideas present than I had anticipated. However, I was able to identify upper level categories by reflecting on the literature review I had completed. This realization allowed me to see how many of the lower level categories fit within different upper level categories.

Finally, researchers consolidate upper level categories into broader over-arching themes with subtopics and tensions within them, looking for illustrative quotes and anecdotes.<sup>207</sup> Ideally, researchers should aim for three to eight overarching themes.<sup>208</sup> The process of consolidating the upper level categories into overarching themes became simpler when I reflected on the literature review and my research questions. I noticed three themes that the majority of the data fit within: tensions in lawyers' perceptions of the interpreter's role, communication complexities, and the added layers an interpreter brings to the lawyer-client relationship. I proceeded to copy text into different documents

---

<sup>205</sup> Thomas, *supra* note 202 at 241 to 246.

<sup>206</sup> Thomas, *supra* note 202 at 241 to 246.

<sup>207</sup> Thomas, *supra* note 202 at 241 to 246.

<sup>208</sup> Thomas, *supra* note 202 at 242.

corresponding to each overarching theme, according to which theme the data fit within. Once that was completed, I re-read the data in this format multiple times to ensure data was appropriately categorized into themes. This also helped me to re-label the subthemes within each theme and identify illustrative quotes to be used in the analysis chapter.

Like critical research, a general inductive approach to content analysis concedes that the researcher plays a role in shaping the research findings.<sup>209</sup> This shaping occurs when creating the research aims in the first instance, and also through the researcher's own interpretations of the data.<sup>210</sup> However, such an influence is not necessarily problematic so long as researchers are aware of their subjectivity within the research process and seek to minimize their dominance.<sup>211</sup> Finally, as I position my research within a narrative paradigm, my research assumes that narratives are a valid way to access to social world.<sup>212</sup>

### **3.7 - Validity**

A general inductive approach to content analysis offers several means of assessing the trustworthiness of resulting research findings. A manageable way for me to assess trustworthiness in my research has been to conduct informal stakeholder checks.<sup>213</sup> This involved speaking with research participants and others who may have an interest in the

---

<sup>209</sup> Thomas, *supra* note 202 at 241.

<sup>210</sup> Thomas, *supra* note 202 at 241.

<sup>211</sup> Davies, *supra* note 172 at 7 to 8; see also Thomas, *supra* note 202 at 241.

<sup>212</sup> Ewick and Silbey, *supra* note 180 at 203.

<sup>213</sup> Thomas, *supra* note 202 at 244.



research with the aim of seeking feedback.<sup>214</sup> When creating my interview guide, I was able to consult with a trained interpreter who now works in the settlement sector in Canada. He provided comments and assisted in creating more directed themes to address with participants. Additionally, after interviews with some participants I had informal conversations about data gathered so far in my research. During these conversations, participants verified many of my preliminary ideas about the data. I was also able to have discussions with other interested lawyers and stakeholders during the analysis stage of my research. These discussions provided further insight into emerging themes and potential implications. I will also seek feedback from users of my research findings after wider distribution.

---

<sup>214</sup> Thomas, *supra* note 202 at 244.

## Chapter Four – Analysis

This chapter first offers background in order to provide context about refugee lawyers in Canada who work with interpreters. I also outline some of the reasons lawyers in my research felt compelled to participate. I then provide the thematic analysis of the data, exploring the themes that emerged from the general inductive analysis. Throughout the thematic analysis, I describe the comments made by lawyers and juxtapose their reflections with the existing interpretation studies literature. I also provide my own commentaries in an effort to contribute to the conversation and highlight where omissions may be equally as noteworthy as articulated observations.

### 4.1 - Context

To better situate the analysis that follows, I believe it is useful to begin with an overview of the context of refugee lawyers working with interpreters. I will briefly describe the refugee process in Canada and provide a summary of how lawyers come to be working with interpreters.

Under Canadian law, a refugee is:

a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, ... is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or ... not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.<sup>215</sup>

More simply, decision-makers must believe that refugee claimants cannot return to their home country because they fear persecution because of their race, nationality, religious

---

<sup>215</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, [IRPA] s 96.

beliefs, political opinions, or membership in a particular social group, which can include gender or sexual orientation.

Refugee claimants can make a refugee claim at a Port of Entry or at a Citizenship and Immigration Canada (CIC) or Canada Border Services Agency (CBSA) office in Canada. If the claim is made at a Port of Entry, claimants will have 15 days to fill out a Basis of Claim form, which sets out the reasons they are seeking refugee protection in Canada. If the claim is made at a CIC or CBSA office, claimants will normally bring a completed Basis of Claim with them when they make the claim. A CIC or CBSA officer will determine if the claimant is eligible to have his or her claim referred to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB). Under normal circumstances, claimants will have a hearing at the RPD 60 days after making their claim. An IRB accredited interpreter<sup>216</sup> will be present at the RPD hearing if the claimant requests the assistance of an interpreter on his or her Basis of Claim form. If the claim is not successful at the RPD, claimants may have appeal or judicial review options, depending on their circumstances.

Lawyers may represent refugee claimants during this process. Claimants may retain lawyers at any point in the process – before making a claim at a CIC or CBSA office, before or after completing the Basis of Claim form, before a hearing, or before an appeal of a negative RPD decision. Unless refugee claimants are able to pay out of pocket legal

---

<sup>216</sup> The IRB accreditation process is comprised of three tests (a hearing simulation, a sight translation, and an official language test). Candidates must get a mark of 70% on all tests to be successful. The IRB does not keep statistics related to pass rates or re-testing. There is no policy on limits for re-testing. This information was obtained through an *Access to Information and Privacy Act* request and is on file with the author.

fees or do not qualify for Legal Aid, lawyers who practise refugee law are frequently paid through the provincial Legal Aid system.

In refugee files in Ontario, lawyers are authorized 16 hours for case preparation for an RPD hearing, plus actual time at the hearing.<sup>217</sup> Legal Aid Ontario will pay up to 10 hours of interpretation services in case preparation, with authorization required for any additional time.<sup>218</sup> Interpreters are paid \$31.40 for the first hour and \$19.20 for each subsequent hour.<sup>219</sup> In British Columbia, the Legal Services Society authorizes 16 hours for case preparation, with an additional 8 hours permitted if there is a second adult client, and an additional 4 hours for any further adult clients.<sup>220</sup> Lawyers are also paid for their time at the RPD hearing.<sup>221</sup> The Legal Services Society will pay up to 10 hours of interpretation services per adult client, with additional hours requiring authorization.<sup>222</sup> In British Columbia, certified interpreters<sup>223</sup> are paid \$35 per hour and uncertified

---

<sup>217</sup> Lawyer Services & Payment Departments, Legal Aid Ontario, *Tariff and Billing Handbook, Chapter 4: Civil Tariff*, October 2014, available online: Legal Aid Ontario, [www.legalaid.on.ca/en/info/manuals/Tariff%20Manual\\_04%20civil%20tariff.pdf](http://www.legalaid.on.ca/en/info/manuals/Tariff%20Manual_04%20civil%20tariff.pdf) at 18 to 19.

<sup>218</sup> Lawyer Services & Payment Departments, Legal Aid Ontario, *Disbursements Handbook*, June 2014, available online: Legal Aid Ontario, [www.legalaid.on.ca/en/info/manuals/disbursements%20handbook.pdf](http://www.legalaid.on.ca/en/info/manuals/disbursements%20handbook.pdf) [Legal Aid Ontario Disbursements Handbook] at 21.

<sup>219</sup> Legal Aid Ontario Disbursements Handbook, *supra* note 218 at 21.

<sup>220</sup> Legal Services Society, *Immigration Tariff*, December 2012, available online: Legal Services Society, [www.lss.bc.ca/assets/lawyers/tariffGuide/immigration/immigrationTariffDec2012.pdf](http://www.lss.bc.ca/assets/lawyers/tariffGuide/immigration/immigrationTariffDec2012.pdf) [Legal Services Society Immigration Tariff] at 1.

<sup>221</sup> Legal Services Society Immigration Tariff, *supra* note 220 at 3.

<sup>222</sup> Legal Services Society, *Disbursements Tariff*, September 2014, available online: Legal Services Society, [www.lss.bc.ca/assets/lawyers/tariffGuide/disbursements/disbursementsSept2014.pdf](http://www.lss.bc.ca/assets/lawyers/tariffGuide/disbursements/disbursementsSept2014.pdf) [Legal Services Society Disbursements Tariff] at 7 to 8.

<sup>223</sup> According to the Legal Services Society Disbursements Tariff, *supra* note 222 at 7:

LSS recognizes certification through membership status with the Society of Translators and Interpreters of BC (STIBC), completion of the Vancouver Community College Court Interpreter Program, and/or completion of a recognized interpreter certification program.

interpreters are paid \$25 per hour.<sup>224</sup> The lawyers whom I interviewed acknowledged that preparing a refugee claim often takes longer than these permitted hours. Additionally, working with interpreters lengthens the time any meetings will take, but longer case preparation is not provided in claims where interpreters are required.

Lawyers reported a variety of ways that they came to work with interpreters. Many lawyers told me that clients would bring an informal interpreter with them to an initial meeting, and that if the meeting went well, they would continue to work with this informal interpreter. Others said that after an initial meeting with an informal interpreter, they would try to engage the services of an interpreter with whom they had a good professional relationship. Others reported that after an initial informal meeting, they would use the services provided to them through their clinic's agreement with an interpreter organization. If working with an informal interpreter, some lawyers made a point of switching to a second interpreter at some point during the preparation as a precaution. Some also switched to a different interpreter as a way to prepare claimants for having a new interpreter present at the RPD hearing.

#### **4.2 - Analysis**

The next sections of this chapter offer a thematic analysis of the data. I explore the perceptions, reflections, and insights expressed by lawyers during the semi-structured interviews. I address each of the themes that emerged from the general inductive analysis: the tensions in the interpreter's role, the tangled communication that occurs when

---

<sup>224</sup>Legal Services Society Disbursements Tariff, supra note 222 at 7.

working with interpreters, and the layered relationships between lawyers, interpreters, and clients. It bears mentioning that although all of these themes are intertwined and overlapping, for analytic purposes I have done my best to tease them out separately. First though, I detail some of the reasons why lawyers were interested in this research area.

#### **4.2.1 - Interest in this Research**

Although I did not ask lawyers why they had volunteered to participate in this research, many told me that they were very interested in the topic of interpreters. Lawyer #2 recognizes that interpretation can “*make the difference in the claim.*” Likewise, Lawyer #3 sees the importance of interpreters to not only refugee lawyering, but also to the other areas of law he practises. Lawyer #7 told me she has been interested in the role of interpreters for as long as she has practised law, and mentioned that these issues were “*dear to her heart.*” Similarly, Lawyer #9 says he has been contemplating this topic “*only for the last 20 years.*” Lawyers also noticed the general lack of information about interpreters as it relates to the practice of law. Lawyer #8 notes, “*there hasn’t been a lot of work done in this area, I don’t think*” and how knowledge of these issues and their implications is “*a gap in our [lawyer] education.*” Finally, lawyers reported that they would welcome research and recommendations in this area, and that any materials about working with interpreters would be “*such a valuable tool*” (Lawyer #9).<sup>225</sup> Thus overall, the lawyers I interviewed recognized the importance of interpreters to the success of refugee claims, and agreed that there is a lack of available resources. Lawyers felt that participating in this research could benefit their practice and their clients.

---

<sup>225</sup> Only one lawyer felt that training and resources for lawyers was unnecessary, saying “*Surely to God, we’re lawyers, we can figure this out*” (Lawyer #5).

I mention these comments not simply to demonstrate the merits of this research, but also to highlight the real interest in the topic among one of the groups that it affects.

Additionally, these comments provide real-world support for the call for further research made by scholars in this area.<sup>226</sup>

#### **4.2.2 - Tension in the Interpreter's Role**

As highlighted in the literature review, there is tension between the conduit model of interpretation and a view that acknowledges interpreters take on a more active role in the process of interpreting language. Proponents of the conduit approach iterate that interpreters should strive to be neutral, language interpreting machines. Those advancing a more activist view remind us that language interpretation is more complex and interpreters must always make subjective decisions when transforming meaning from one language to another.<sup>227</sup>

Appropriately, this theme was apparent in my interviews with lawyers. Each of the ten lawyers interviewed stated that the interpreter's role should be to provide neutral interpretation of words and meanings; but, at the same time, every single lawyer also acknowledged that interpretation would always have a subjective element. When recognizing the subjectivity of interpretation, lawyers further acknowledged that this element of the interpreter's role could have both positive and negative aspects.

---

<sup>226</sup> See for example, McCaffrey, *supra* note 1; Morris, *supra* notes 7 and 75; Wadensjö, *supra* note 10; Ahmad, *supra* note 11; Hale, *supra* notes 12 and 63; Laster, *supra* note 17; Berk-Seligson, *supra* note 33; Barsky, *supra* notes 43 and 44; Rycroft, *supra* note 66.

<sup>227</sup> See for example, Morris, *supra* note 75.

**(a) Expectations versus Reality**

The first sub-theme is the idea that although lawyers acknowledge interpretation is a subjective endeavour, they still expect interpreters to be neutral conduits.

First, many lawyers expressed that the conduit model of interpretation is the ideal standard for interpreters they work with. Lawyer #1<sup>228</sup> put it simply:

*Well, I think ideally the role of the interpreter is solely to be the interpreter. To interpret word for word exactly what I'm communicating to my client and what my client is communicating to me.*

Lawyer #3 echoes this idea. He says he explains to interpreters: “*their role is to interpret as precisely as they can everything that I say from English to whatever language, and then back again.*” Consistent with this idea, Lawyer #2 says he expects interpreters to interpret words “*verbatim*”, to the best of their ability. Lawyer #10 also explains to interpreters, “*interpret as close to word-for-word as you can.*” Lawyer #5 says she expects interpreters to convey “*the sense, and as far as possible, the exact words in translation and certainly the exact meaning.*”

Lawyer #4 states the conduit model’s expectations of neutrality more explicitly:

*The ideal interpreter in their role would be a perfect translator, would be someone who doesn't intervene, doesn't shape the situation at all, and is*

---

<sup>228</sup> I refer to each lawyer participant as Lawyer #1 through #10, based on the order in which I interviewed them. To preserve anonymity, the gendered pronouns I use (he, she, him, her) do not necessarily correspond to the gender of the participant.



*really just a medium through which we can understand each other. ... Like a perfect unbiased conduit, who is just making the words change.*

He also expresses the idea that working with interpreters in the first place is not ideal, and that “*the best situation is being fluent in the same language as the person you’re working with.*” Interestingly, these comments are consistent with the expectations of the role of the interpreter as set out by the Immigration and Refugee Board of Canada, which explains that interpreters should “provide a clear channel of communication”<sup>229</sup>. Further, such ideas support Laster’s conclusions that the conduit model of interpretation is prevalent in the legal system.<sup>230</sup> It is therefore no surprise that lawyers, consciously or unconsciously, adopted this standard. It is also consistent with the Morris’ research, which demonstrates that those in the legal process tend to view interpreters de-personally and as machine-like instruments.<sup>231</sup>

Some lawyers were less focused about the emphasis on word for word or verbatim exactitude, and iterated a slightly different expectation of the interpreter’s role. Lawyer #8 told me:

*The role of the interpreter is to be the voice of claimant, without adding or subtracting anything of their own. Anything. Not even the blink of an eye. A good interpreter, you don’t even know they’re in the room. It’s like they occupy space, but they actually are so attuned to being the voice of your client that they lose their own identity.*

---

<sup>229</sup> Immigration and Refugee Board Interpreter Handbook, *supra* note 16.

<sup>230</sup> Laster, *supra* note 17 at 19.

<sup>231</sup> See for example, Morris, Gum Syndrome, *supra* note 75 at 6.

Although worded differently than some of the lawyers' quotes above, Lawyer #8's is still consistent with the conduit model expectation, as she expects the interpreter to maintain a neutral, almost anonymous presence. Such an idea is in direct contrast to studies by scholars like Wadensjö, Berk-Seligson, Pöllbauer, and Keselman et al demonstrating that interpreters, as human beings, will almost always shape the language they interpret.<sup>232</sup> It is also contradictory, as every lawyer acknowledged that interpreting is ultimately a subjective endeavour.

Some lawyers did acknowledge that interpreters might have more than one role when interpreting for lawyers and clients. Although Lawyer #7 says she wants "*the exact words*" interpreted, she mentions that developing a rapport with the client, helping relax the client's distress, or being a source of country information are benefits that could come from working with an interpreter. Likewise, Lawyer #9 states that primary job of the interpreter is to "*accurately convey the words and meanings of the claimant*", but that they can have other secondary roles. He identifies one secondary role as providing emotional support, especially if the interpreter has a close relationship with the client. Lawyer #9 also mentions that interpreters can often be a source of background, supplemental, or even specific information about the client's claim; again, this would especially be the case if they have a close relationship with the client.

However, although all of the lawyers expressed that the conduit model of interpretation was their expectation, all also acknowledged that this was rarely the reality. Lawyer #3

---

<sup>232</sup> Wadensjö, *supra* note 10; Berk-Seligson, *supra* note 33; Pöllbauer, *supra* note 37; and Keselman et al, *supra* note 40.

captured the subjective nature of language and interpreting expressed by Ahmad, Morris, and Bryant.<sup>233</sup> “*there’s always choices interpreters are going to make, in terms of what words they use ... certain things can be interpreted in different ways.*” Lawyer #6 expresses a similar idea, noting, “*even if they’re not outright changing what’s being said, the way they choose to emphasize things in their interpretation can change.*” All lawyers acknowledged this subjectivity in various ways.

Lawyer #7 recalled a dramatic example of this subjectivity. Her refugee claimant client was an educated man, but at the Refugee Protection Division hearing, she felt he was coming across as inarticulate and evasive. She recalls thinking, “*this is not the client.*” At a break in the hearing, she was able to speak with him as he did speak some English. She asked him why he was not presenting well, and he said the interpreter “*doesn’t seem to know the words.*” Fortunately, Lawyer #7 was able to address this problem with the Board Member, and ultimately, a new hearing was required because of the issues with interpretation. Lawyer #1 recounts a similar, less extreme experience, describing how when a different family member interpreted in a client meeting, she felt she saw her client’s story from a whole new perspective; she reveals, “*that piques my interest, it really makes clear how much of a difference the identity of the interpreter makes.*”

Most lawyers agreed that the subjectivity of the interpreter is especially apparent when the interpreter is an informal interpreter (family member, friend, or community member), compared to a trained interpreter. Lawyer #1 characterizes this concern:

---

<sup>233</sup> Ahmad, *supra* note 11; Morris, *supra* notes 7 and 75; and Bryant, *supra* note 51.

*Because if it's not a professional interpreter, it may just be that they don't know that that's what their role is. They often perceive that their role is to help their family member along, which is fair, so it's important to keep reminding them: you're here as an interpreter, please just interpret word for word.*

When working with informal interpreters, lawyers worry that interpreters can more easily “*slip from that role that's just strictly interpreting to paraphrasing and interrupting the conversation to give their opinion and what not.*” (Lawyer #3) Lawyer #2 captures the conundrum: “*interpreters are human and they don't simply often act as word for word interpreters, but channel the thoughts and words through themselves.*” Again, these acknowledgments are especially interesting in light of lawyers' persistence in endorsing the conduit model at the outset of our interviews. Further, this brings us to an important observation about the interpreter's role: the potentially negative aspects of the subjectivity of the interpreter.

#### **(b) Negative Aspects of Subjectivity**

As discussed in the literature review, the legal system and lawyers often view interpreters with suspicion or distrust.<sup>234</sup> This theme was present with the lawyers I interviewed, as lawyers often expressed concern over the negative aspects of the interpreter's role and subjectivity.

---

<sup>234</sup> Colin and Morris, *supra* note 100 at 15; Morris, Gum Syndrome, *supra* note 75 at 8 to 9; Ahmad, *supra* note 11 at 1003; Laster, *supra* note 17 at 18.

Lawyers were concerned about how an interpreter's subjectivity could distort the meaning of communication. Lawyer #3 articulates this apprehension because the choice of words attributed to the claimant is ultimately the choice of the interpreter. He says, discussing the choice of words chosen by the interpreter:

*Some of that will depend on where the interpreter's sympathies lie, whether in terms of political sympathies, in terms of sympathies in terms of the refugee determination process in itself – you may have an interpreter who is quite sympathetic to claimants in the process, you may have another interpreter who is quite cynical about claimants in the process. And that I think is going to make a difference in terms of the kinds of words they choose or how they maybe struggle with what words to choose.*

Lawyer #7 builds on this idea of an interpreter's personal views potentially distorting the meaning of communication. She says that there's "*all sorts of issues that can happen*" when working with informal interpreters because "*they're not necessarily trained people that are experienced in doing that and they would start putting their own views forward rather than doing straight interpretation.*"

Lawyer #2 has similar experiences with trained interpreters. He recounts that some trained interpreters he works with

*feel that they've had so much experience within the system that they should be contributing, that it's beneficial for them to contribute their own thoughts and embellishments and ideas.*

He admits that often interpreters do have value to add in this capacity, but it becomes a problem “*if they don’t make it clear where the interpretation ends and where their own thoughts begin.*” Lawyer #3 also finds it problematic when interpreters make their own contributions without signalling they are doing so.

Another major concern expressed by lawyers about the subjectivity of interpreters is the possibility of fraud. Most of the lawyers whom I interviewed described how a community member would sometimes take on a facilitator role.<sup>235</sup> In such a role, interpreter-facilitators assist refugee claimants with settlement needs, but also act as the referral source to lawyers and then the informal interpreter when working with that lawyer. Many informal interpreters take on this role without nefarious intentions (Lawyer #6), but there are some who “*play a more questionable role in certain communities*” (Lawyer #4). Lawyer #4 describes how some lawyers are dependent on informal interpreters for a large portion of client referrals, and this can become problematic if the interpreter is acting unscrupulously. For instance, he describes the possibility of some lawyers being unwilling to openly critique interpreters, as “*you can’t cut off the hand that’s feeding you.*” This practice could place lawyers in a position of conflict, as even though their obligations are to their clients, they want to remain on good terms with their client referral source. Further, lawyers are not permitted to pay referral fees to non-lawyers,<sup>236</sup> so doing so could breach professional and ethical rules. Additionally, this kind of business relationship between lawyers and interpreter-facilitators could create an

---

<sup>235</sup> Seven out of ten lawyers described this phenomenon.

<sup>236</sup> Law Society of British Columbia, *Code of Professional Conduct for British Columbia*, October 2014, Rule 3.6-7(b); Law Society of Upper Canada, *Rules of Professional Conduct*, October 1, 2014, Rule 3.6-7(b).

employer-employee relationship, and may create obligations in terms of effective oversight of employees.<sup>237</sup>

Lawyer #1 told me about her experience with one such interpreter-facilitator:

*... he presents himself as an interpreter. In reality I think his role is more of a facilitator; he sees his role as a facilitator of the whole process. So he refers clients to our office, and then he's involved with the whole process from start to finish. And he's not a great interpreter to be honest, he puts his own spin on things, and I've always had concerns that he's involved with more than just interpretation, [that] he's helping people to formulate their narrative.*

Because of the concerns Lawyer #1 had about working with this interpreter-facilitator, her office no longer works with or accepts referrals from him.

Speaking about the same problematic interpreter-facilitator, Lawyer #1 describes another common concern of the subjectivity of interpreters: that interpreters may go beyond interpretation to coach or act as a second advisor to clients. She describes the problem with the interpreter-facilitator with whom her office no longer works:

*... long before my meeting with the client he would have been involved because he's the person bringing the client to me, at our offices. Even before I've met with my client, it's always very obvious to me that he's*

---

<sup>237</sup> Law Society of British Columbia, *Code of Professional Conduct for British Columbia*, October 2014, Rule 6.1 and Commentary; Law Society of Upper Canada, *Rules of Professional Conduct*, October 1, 2014, Rule 6.1 and Commentary.

*spoken to them about the refugee process, about their story, about what works and what doesn't, about what the process is going to be like.*

Lawyer #7 has had similar experiences with interpreters who “*will basically tell the client 'you shouldn't be saying that.'*” Lawyer #9 also describes problematic incidents where the interpreters were friends:

*And they were problematic because they came in with very fixed ideas on the case or what the claimant should say or shouldn't say. And I can think on two occasions at least where it was completely obvious to me that the claimant had been coached in answers by the informal interpreter before they had arrived.*

Interestingly, Ahmad's research on lawyer-interpreter-client relationships foresees lawyers' apprehensive views of this interpreter-facilitator role, which he refers to as the interpreter as advocate.<sup>238</sup> He predicts that lawyers will find this role most threatening to their authority. However, his discussion that follows focuses on the possible positive benefits to the client and do not address the possibility that the interpreter as advocate could provide misleading or bad advice, or even encourage clients to falsify their experiences. Further, it is worth noting that this kind of intervention is expressly disallowed in both international and Canadian standards regarding the interpreter's role.<sup>239</sup>

Although I will discuss this subtheme in more detail below, another possible negative aspect of the subjectivity of the interpreter can be the effect they have on a claimant's

---

<sup>238</sup> Ahmad, *supra* note 11 at 1056.

<sup>239</sup> See CIOL Code of Conduct, *supra* note 123; Tips for Working With Interpreters, *supra* note 130.



willingness to be forthright about experiences. This is usually apparent when working with an informal interpreter. As Lawyer #7 told me, “*sometimes family members don’t want their family members to know what they’re saying... even their husbands or wives.*”

Lawyer #7 also mentions that this reluctance to divulge can happen depending on the gender, ethnicity, or perceived political background of the interpreter, whether they are informal or trained. These factors may be real or perceived.

Finally, lawyers expressed that the biggest danger of the subjectivity of the interpreter is the difficulty for both lawyers and clients to know if the subjectivity is impacting the communication in a negative way. This is partly because only the interpreter speaks both languages and therefore has access to the full communication.<sup>240</sup> However, as Lawyer #7 and Lawyer #5 point out, the difficulty also exists because interpreters will be “*very skilled at hiding*” any ill intention and it usually only become apparent “*over time by putting two and two together.*” Although this may be true, lawyers should still be aware of any signs of these negative aspects of interpreter subjectivity.

#### **(c) Positive Aspects of Subjectivity**

On a more optimistic note, lawyers also acknowledged positive aspects of the subjectivity of interpreters.

---

<sup>240</sup> See for example Ahmad, *supra* note 11 at 1036.

In her work, Wadensjö conceptualizes interpreters as authority figures of the communication process.<sup>241</sup> Lawyers identified this authoritative role as a positive aspect to an interpreter's presence. For instance, speaking from the perspective of a former RPD Board Member, Lawyer #8 recounts that a good interpreter will ask a speaker for clarification or reformulation if a question is overly complicated. She also recounts that good interpreters will let the lawyers and Board Members know if the client is trying to have side conversations with an interpreter in a hearing. Also speaking from the perspective of a former RPD Board Member, Lawyer #9 says that in a hearing, interpreters are expected to speak up if they are having difficulty with interpretation because of a person's manner of speaking or other factors. Unfortunately, he believes that *"in many instances they wouldn't have the confidence or the courage to do that."* This reluctance to speak up on the interpreter's part, even though decision-makers appreciate this kind of undertaking, mirrors the findings of Hale's research in the Australian setting.<sup>242</sup> Her research also found that part of this ability to control talk came with experience and confidence.<sup>243</sup>

In the same way, many lawyers recounted appreciating when interpreters took authority over ensuring clear communication. Lawyer #3 told me:

*...some interpreters I've worked with know their role very well. And one of the ways it's obvious is in a conversation they'll turn to me and say 'I just want to clarify a word' before they actually ask for the clarification. So they*

---

<sup>241</sup> Wadensjö, *supra* note 10 at 195.

<sup>242</sup> Hale, *Interpreting Culture*, *supra* note 63 at 7 to 8.

<sup>243</sup> Hale, *Interpreting Culture*, *supra* note 63 at 8 to 9.

*know exactly what their role, they know their role is to just be doing interpretation back and forth, and if they're going to say anything, they want to indicate to me, and ask permission, before they ask the claimant something, even to clarify something.*

Lawyer #1 also appreciates this ownership over the communication process on the part of interpreters, telling me that with the professionally trained interpreters she works with, if she's "*speaking too long they'll stop me, translate and then let me continue; same thing for the client.*" Some interpreter codes of conduct envisage this 'communication authority' role for the interpreter, allowing interpreters to intervene to signal conditions that could impair communication.<sup>244</sup> This sentiment is also consistent with the contradictory demands identified by Hale, Laster, and Rycroft, who each explicate that the legal system's expectations of interpreters may not be clear to interpreters themselves.<sup>245</sup> Given the positive view of this kind of interpreter action, and the benefits to ensuring clear communication, interpreter training should highlight these expectations and teach appropriate strategies for meeting them.

Another area where lawyers thought that the subjectivity of the interpreter brought positive effects was the interpreter's ability to be a support to the refugee claimant client. Lawyer #3 notices this effect especially when working with an informal interpreter who is a family member or friend, in that they are "*often a support.*" Speaking about an interpreter's role beyond language interpretation, Lawyer #4 says, "*they also have a good role in terms of making someone comfortable*". Likewise, Lawyer #7 explains that "*a*

---

<sup>244</sup> For example, the CIOL Code of Conduct, *supra* note 123.

<sup>245</sup> Hale, Interpreting Culture, *supra* note 63; Laster, *supra* note 17; Rycroft, *supra* note 66.

*rapport with the client, or a relaxing of the client's distress*" is a welcome bonus of working with skilled interpreters. Lawyer #9 also agreed that one of the positive aspects of working with informal interpreters where there is a "*close and appropriate relationship*" between the informal interpreter and client is that they can provide "*emotional support*". This supportive role might become more salient if the claimant is a child or otherwise particularly vulnerable. Lawyer #10 experienced this in her work with unaccompanied minors, telling me that in those circumstances the minor would often get "*support and consolation*" from the interpreter. This aspect to the interpreter's role is hinted at in Morris and Rycroft's work, where they recount that clients often view interpreters as allies.<sup>246</sup> Ahmad also grazes this idea in his conceptualization of interpreter as guardian or co-client.<sup>247</sup> However, the lack of more explicit acknowledgement of the supportive role the interpreter can play is puzzling; I hypothesize that this is because much of the research did not involve interviews with participants. Additionally, since much of the literature focuses on courtroom or hearing room interpretation, the setting is more formal than the lawyer office and there may be less room for this aspect of the role to develop. Further, these court interpreters will all likely be trained or certified and thus they may avoid taking on this role as it falls outside their prescribed professional standards.

Lawyers also expressed that interpreters could often be a valuable source of supplemental information. Lawyer #10 gives the example of a time a client referenced a political party's name, and the interpreter provided context to the political party's operations,

---

<sup>246</sup> Morris, Gum Syndrome, *supra* note 75; Rycroft, *supra* note 66.

<sup>247</sup> Ahmad, *supra* note 11 at 1054.

making it clear that this information was coming from him and not the client. Similarly, Lawyer #7 finds it helpful when interpreters alert her to potential misunderstandings, and indicate when additional information should be sought. She recalls an example where the interpreter and client were from different regions:

*... there's colloquial phrases that they don't understand ... If it's a good interpreter they'll say 'the person is saying something to me and it's obviously a local phrase and I'm not understanding it. May I have permission to just ask a couple of questions myself to make sure that I'm really getting this particular phrase correctly.' That's a good interpreter, where they're coming out, they're saying this is the issue, this is what I need to do, and you see if you get permission to do that.*

Lawyer #4 recognizes that if the interpreter has a background from a particular country, they “*will know certain things better ... I'd like it if they can fill me in to something I'm blind to.*”

Lawyers also recognized that in circumstances where they are working with an informal interpreter who is a family member or friend, the interpreter may be able to provide supplemental information directly related to a client's claim. For instance, Lawyer #9 tells that informal interpreters would sometimes “*know the claimant's story in other ways*” and be able to provide “*supplementary information, background information about the client themselves.*” Lawyer #3 has also experienced this, telling me that if the informal interpreter is “*a family member they may have information that the claimant doesn't have about their circumstances*”. Again, the literature does not address this

potential role of the interpreter, likely because it focuses on trained interpreters and more formal settings.

**(d) Concluding Thoughts**

This tension in lawyers' views of interpretation corresponds to the theme that was developed in Chapter 2: the contrast between the legal fiction of the conduit model compared to the realities of interpretation. As Laster observed in her studies, many of the lawyers whom I interviewed spoke of "using" interpreters, rather than "working with" interpreters.<sup>248</sup> However, although lawyers initially endorsed the conduit model of interpretation as the ideal model, they acknowledge, and even appreciate, many of the interpreter's subjective influences. This acknowledgement coincides with Ahmad's view that it is difficult to separate an interpreter's subjectivity from the role of language interpreter.<sup>249</sup>

An important question that flows from this observation is why the conduit model is so pervasive. Given that lawyers revealed they had received little or no training on interpretation or working with interpreters, it is even more puzzling as this model would not have been explicitly taught. Perhaps lawyers unconsciously adopt the conduit model views through the Immigration and Refugee Board Interpreter Handbook that restricts the interpreter's role.<sup>250</sup> Another possibility is that lawyers are reluctant to admit their lack of control over the communication process when working with interpreters. Although the

---

<sup>248</sup> Laster, *supra* note 17 at 19.

<sup>249</sup> Ahmad, *supra* note 11 at 1051.

<sup>250</sup> Immigration and Refugee Board Interpreter Handbook, *supra* note 16.

listening and speaking aspects of a lawyer's role are undeniably diffused to another party when communicating through interpreters, this admission is different than acknowledging that the interpreter holds the most control over the substantive information conveyed. To concede this would mean lawyers retain very little actual control over the communication process. Since lawyers are trained to be experts and authorities in their respective areas of law, such an admission would be too disruptive to their status. Thus perhaps the conduit model prevails as a means of protecting lawyers' perceived control and authority over the legal process.

Interestingly, lawyers were focused on the interpreter's role interpreting the client's words, and being the client's voice, even though the interpreter is also the voice of the lawyer. Accurate interpretation of the lawyer's words is just as important as accurate interpretation of the client's words if lawyer-client relationships are to be productive. In fact, the interpreter's interpretation of the lawyer's words plays a crucial role in the kind of information the lawyer will receive through the client's answers. If questions are changed, even subtly, such as through changing from passive to active tense or vice versa,<sup>251</sup> answers could reflect this difference. In legal settings, and especially in refugee settings where details are central, these subtle effects could amount to decisive differences.

---

<sup>251</sup> Some of these changes may be inevitable as the structure of language varies between languages.

### 4.2.3 - Tangled Communication

In the literature on the communication aspects of interpretation, researchers have highlighted the complexity of communication between speakers of different languages. Research reveals the difficulties in developing a shared understanding<sup>252</sup>, as well as the added intricacy when speakers come from different cultural backgrounds. Potential cultural misunderstandings feature prominently in the literature,<sup>253</sup> as do extralinguistic cues.<sup>254</sup>

Not surprisingly, similar themes materialized in my interviews with lawyers. The cultural context of communication emerged as an important preoccupation, as did the difficulty of retaining extralinguistic nuances when working with interpreters. Interestingly, the impacts an interpreter can have on the process of communication arose as an unexpected theme. Finally, lawyers were concerned about the effects of interpreters on their clients' credibility. In this section of the analysis, I will discuss each subtheme citing the relevant literature.

#### (a) (Mis)understanding

Kälin's research on communication in asylum hearings reveals that culture influences communication. He highlights that certain concepts, such as time and truth, will often

---

<sup>252</sup> For instance, Ahmad, *supra* note 11 1033; Morris, *Moral Dilemmas*, *supra* note 7 at 27; Bryant, *supra* note 51 at 43.

<sup>253</sup> See discussions in Ahmad, *supra* note 11; Kälin, *supra* note 57; McCaffrey, *supra* note 1; Hale, *supra* note 63.

<sup>254</sup> See discussions in Rycroft, *supra* note 66; Carlen, *supra* note 72; Morris, *supra* notes 7 and 75.



pose difficulties for communicators from different cultures.<sup>255</sup> During my interviews, lawyers recounted many similar difficulties.

Many of the anecdotes lawyers told me about cultural misunderstandings intersected with the subjectivity of the interpreter. For instance, Lawyer #8 often encountered difficulties in interpretation if the client and interpreter learned their language in different regions. She encountered this in particular where the interpreter learned the language in Canada and not in the same country as the client. Lawyer #2 provides an example:

*'Arbab' was the word; it's a rare word in the Dari or Farsi language, and basically the way that it had been interpreted the first time, was that this land baron's name was 'Arbab' and this guy named 'Arbab' had taken over their land and killed her brother... And so we get to the hearing and the interpreter says, or the member asks 'can you tell me more about this 'Arbab' person, can you tell me more about his identity'. She's like 'the boss took our land, the boss, you know, he was the one who was persecuting us'. And the member says 'can you tell me more about him, you obviously know more about him, can you tell me more about this 'Arbab' person' and she kept saying 'well he's the boss, I don't know anything about his identity, he's just the boss.' And the member said, was saying, 'well you have right here his name, do you know his last name' and she's like 'I don't have his name. We just knew him as the boss.' And so it turned out that the word 'Arbab' means boss; it's a rare word that means boss in the Dari language.*

---

<sup>255</sup> Kälin, supra note 57 at 231.

*And the interpreter at the hearing knew that, but the interpreter who'd interpreted for the original narrative didn't know that. The interpreter for the original narrative had simply assumed 'Arbab' was the person's name, and the interpreter at the hearing was interpreting it as the boss, which is how it should have been interpreted.*

Lawyer #10 recounts the example where her client was experiencing persecution from the Muslim Brotherhood. During one of her interviews with the client, the interpreter used the word 'brother' instead of 'brotherhood', which resulted in confusion for both client and lawyer. She explains:

*The client kept saying I don't understand what you're talking about. And I was getting frustrated, you know, 'What do you mean you don't understand what I'm talking about? You're the one who told me that you were getting targeted by the brotherhood!' And I speak some Arabic so I finally understood that the interpreter was translating brotherhood as brothers. ... it's the same words, it's the difference between a formal and informal way of saying brothers. So, the interpreter kept saying 'Why were your brothers targeting you? How did you know they were your brothers?' And this was just ultimately strange obviously to this client who doesn't have brothers in the country.*

Lawyer #1 also recounts a similar experience where there was a difference in how the interpreter with whom she worked in her office and the interpreter at the RPD hearing interpreted the Spanish word 'callejon'. The interpreter at the RPD hearing was adamant that the only English interpretation was 'alley', even though the client and previous interpreter suggested a less common meaning was a wooded area.

Lawyer #6 describes the particular difficulties caused by dates and time references. He was involved in an appeal of a decision where the interpreter had misinterpreted a client's reference to "*the fifth month*" as May, when in reality the claimant's cultural calendar system did not align with the Western calendar. Lawyer #6 also speaks about the differences in how different languages describe emotions:

*Because some languages have very colourful language to describe different emotions that we might sum up into something very general in English. ... When they look at subjective fear in refugee matters, 'well geez, the way they described it, they didn't seem to be that worried about it.' But they might have been describing it much more emotionally, but there's the disconnect in interpretation that 'horrified' becomes 'scared', which has some difference to it. You lose some of the finer points.*

These examples of cultural miscommunication highlight the importance of context to understanding, and how culture complicates the possibility of reaching a shared understanding between speakers.<sup>256</sup> They also support Kälın and Ahmad's idea that culture is embedded within language.<sup>257</sup>

Other examples of cultural miscommunication highlight the importance of context to understanding. Lawyer #3 explains that the importance of context to understanding often becomes apparent during a hearing, where answers to questions would be inadequate

---

<sup>256</sup> See for example, Bryant, *supra* note 51.

<sup>257</sup> Kälın, *supra* note 57; Ahmad, *supra* note 11.

without contextual details. He describes an example where a Board Member is seeking specific information about the colour of a car that had targeted a claimant:

*So if they [the Board Member] ask a question ‘what colour was the car?’ they want to know was it red, blue, white; that’s all they want from the claimant. But the claimant may come from a culture where you can’t understand my answer unless you understand what colours we have. So I’m going to have to tell you ‘we only have cars of one colour, and this is the reason why’. So when I tell you ‘well it was a white car’ – well all we have is white cars, so you have to understand that context.*

By contrast, the client may not find it necessary to explain why his country only has white cars because in his experience, this detail is a normal part of existence and is not worth mentioning. This example also highlights how ‘silent actors’ shape the expectations of decision-makers. Board Members must fit the refugee’s experience within the refugee definition to grant refugee protection, so they are seeking information to meet those requirements. Likewise, lawyers are also shaped by these legal expectations, although their role as advocate allows more flexibility in gathering context. In the first instance, refugees’ stories will also be shaped by their interpretation of their life events. The context of their experiences and their cultural frameworks will shape how they experience and share these events.<sup>258</sup>

Faced with the heightened prospect of miscommunication when working with interpreters, lawyers mentioned a few strategies that they would employ to detect

---

<sup>258</sup> Eastmond, *supra* note 6.

miscommunication. Every lawyer mentioned the scenario where one person speaks at length and the interpreter relays only a short message as red flag for potential miscommunication. In terms of other strategies, many lawyers indicated they would “*know it [miscommunication] when you see it*” (Lawyer #4) or would “*get the feeling that there’s something that is not quite right*” (Lawyer #2). Additionally, lawyers indicated that “*just reading social cues if something hasn’t come across*” (Lawyer #4) is also important to avoid miscommunication.

As Bryant and McCaffrey’s work emphasizes, all lawyers, and especially those working with interpreters, need to be attuned to potential miscommunication.<sup>259</sup> The scarcity of articulable strategies for recognizing miscommunication does not suggest lawyers are unaware of signs of miscommunication; undoubtedly, lawyers who work with interpreters do recognize miscommunication and utilize strategies regularly. Part of developing these strategies will be ‘learning through doing’.<sup>260</sup> However, the difficulty in expressing these strategies suggests two, likely interrelated, explanations: first, lawyers have not had the opportunity to develop advanced skills in recognizing signs of miscommunication or cross-cultural lawyering, and secondly, they have not developed a language for discussing these issues.<sup>261</sup> This is not surprising as working with interpreters is not part of the legal curriculum or continuing legal education, and the only lawyers who reported receiving guidance on working with interpreters were those who had worked as RPD Board Members or for an international organization. But since accurate

---

<sup>259</sup> Bryant, *supra* note 51; McCaffrey, *supra* note 1.

<sup>260</sup> Bryant, *supra* note 51 at 48.

<sup>261</sup> I am not suggesting that any of these lawyers were doing an inadequate job. I am suggesting that these kinds of issues are not adequately researched or taught in law schools in Canada.

communication is so important, developing these skills and a language to discuss them is important.

**(b) Extralinguistic Cues**

Rycroft's experience as an interpreter and her academic writing on the subject discuss how trained interpreters will try to maintain consistency with the original speaker's tone, emotion, and demeanour.<sup>262</sup> Although it is difficult, interpreters will also often try to mimic the speaker's glances, gestures, and facial expressions.<sup>263</sup> The theme of extralinguistic cues and the impact of interpreters on this aspect of communication came up repeatedly in my interviews with lawyers.

On the importance of body language, Lawyer #5 says clients will often indicate misunderstanding "*through faces or gestures*", while Lawyer #7 says, "*you look at the body language and other indicators of what your client thinks*". Lawyer #9 elaborates that making eye contact with clients may be changed when working with interpreters, as there is a tendency to direct body language gestures to the person to whom you are directly speaking. He acknowledges that this is something which lawyers should be "*constantly aware of*". Lawyer #8 speaks of extralinguistic cues when working with talented trained interpreters:

*And some interpreters get to where they just sort of subsume their identity into that of the person ... It's like they even begin to mimic little tiny body movements that the witness is going through. If they tilt their head to one*

---

<sup>262</sup> Rycroft, *supra* note 66 at 223 and 225.

<sup>263</sup> Rycroft, *supra* note 66 at 223 and 225; Berk-Seligson, *supra* note 33 at 146 to 185.

*side, the interpreter will tilt their head to that side. If they shift in their chair, the interpreter will shift in their chair in exactly the same way. It's remarkable to watch.*

By contrast, tone of voice and manner of expression frequently become tangled through working with interpreters. Lawyer #9 provides an illustrative example:

*It was a Russian claim and he's a huge guy, big voice, but kind of a soft manner of speaking. And the interpreter was this tiny little squeaky-voiced quick woman. You know, you could almost do a comedy sketch on it.*

He explains that even if the content of communication remained unchanged, the refugee claimant lost the benefit of the other aspects of communication, such as tone of voice and gestures. Lawyer #8 points out that it is possible to pick up on some aspects of a person's tone of voice even if you do not understand the language; for example, "*the inflection in a person's voice to ask a question is quite common*". Lawyer #8 also notes that trained interpreters will be able to retain the "*client's language at their level, whether this is a street version or a university educated version*". By contrast, Lawyer #3 worries about parts of a speaker's manner of expression that are lost when working with interpreters, such as the nuances of hesitations and way of phrasing. He says, "*I'm relying on the interpreter for that. But the interpreter may not pick up on it.*"

One form of extralinguistic cue that lawyers considered that they were able to retain when working with interpreters was a client's emotional signals. Lawyer #6 acknowledges that some displays of emotion will be culture-specific, but he observes that

apprehension, fear, and anger, which are emotions that frequently come up during refugee claims, tend to be universal. Likewise, Lawyer #7 and Lawyer #9 concur that many emotions are apparent from watching clients speak.<sup>264</sup>

However, the ability to benefit from extralinguistic cues is greatly affected when working with interpreters via telephone or videoconference. In her work for an international organization, Lawyer #10 would sometimes communicate with clients over the phone with the assistance of an interpreter who was also on the phone. She found these interactions particularly difficult, as she never heard the client's voice, only the interpreted version. Lawyer #1 has experienced telephone interpretation at numerous RPD hearings; she states that communication is much harder when the interpreter is on the telephone:

*... there's body language, there's gestures that make a difference in how you understand what someone is saying. ... there's definitely an element that is lost when an interpreter is over the phone. ... it's just the nature of human interaction that if you're in the same room it's easier to interact.*

Lawyer #8 tells how she perceives telephone interpretation makes the interpreter's task more difficult:

*... it's very hard for the interpreter because they get cues from watching a person speak. It's not just the sound that comes out of the mouth, it's more subtle than that. There's all kinds of stuff that goes on when we speak a language. So it's harder for them to simply listen.*

---

<sup>264</sup> Consequently, lawyers may wish to convey to their clients the fact that many emotions come through despite interpretation and language difference, as it may be useful for the client to convey those emotions at the RPD hearing.



Lawyer #4 also speaks about the difficulty of not seeing a client's demeanour if both the client and interpreter are on the telephone, characterizing these interactions as taking on "*more of a vibe of passing a message.*"

Lawyer #6 speaks about some of the technical difficulties of working with interpreters over telephone or videoconference in a RPD hearing, as often "*the sound isn't great; there's a lot of shouting.*" He also found it difficult because he would not have the opportunity to speak with his client, as there was nowhere private or apart from the Board Member. From the perspective of a former Board Member, Lawyer #9 discusses how telephone or video interpretation also makes it more difficult for Board Members and counsel to control the physical set up of the hearing:

*If the interpreter is sitting beside the claimant you can't talk to them in the same way. Sometimes the camera will only be on the claimant or only on the interpreter so you don't even see what the interpreter is doing.*

*Sometimes the interpreter is sitting beside the Board Member and in which case the level of alienation between the claimant and the interpreter is very bad.*

Lawyer #2 echoes this sentiment, saying that when working with an interpreter over the phone, he believes "*a client is a lot less likely to trust some faceless voice over the phone than if the interpreter was sitting there with them and they could see them and know who they are.*" These comments confirm Federman's descriptions of how trust is more difficult to establish via videoconference compared to face-to-face interactions.

Overall, every lawyer agreed that when working with interpreters, whether by telephone, videoconference, or in person, there is a risk of losing part of the depth of communication. Lawyer #9 provided a useful analogy, comparing communicating through interpreters to first listening to the melody of a song, and then afterwards hearing the lyrics. If this is the case, Bryant's emphasis on focusing on content over form is extremely important.<sup>265</sup> Lawyers should also take into account that different interpreters will be able to retain extralinguistic cues to varying abilities.<sup>266</sup> They should therefore be observant and be aware of the subjectivity of the interpreter. Finally, although lawyers tried to work with interpreters in person when preparing a refugee claim, many reported that interpreters would be via telephone or videoconference at the RPD hearing. Given the added difficulties of telephone interpretation, this is not a best practice and should be avoided if at all possible. If required, Board Members should be extra cautious about making inferences from testimony heard through the telephone or videoconference interpretation.<sup>267</sup> They should also be wary of the way that the spatial set-up will affect communication.<sup>268</sup>

### **(c) Process of Communication**

Interestingly, a subtheme that was not explicitly apparent from my literature review emerged in my interviews with lawyers. Although related to Bryant's discussion on

---

<sup>265</sup> Braynt, *supra* note 51.

<sup>266</sup> Bryant, *supra* note 51; McCaffrey, *supra* note 1.

<sup>267</sup> The IRB does not keep records of the number of hearings where interpreters are via phone or videoconference. In the training material provided to new Board Members, there is no mention of interpretation via telephone or videoconference. The topic is also not covered in the Interpreter's Manual. This information was gleaned from material received through an *Access to Information and Privacy Act* request by the author received in December 2014. The material received is on file with the author.

<sup>268</sup> Carlen, *supra* note 72.

content over form, I believe this subtheme to be somewhat distinct and more overarching. Lawyers discussed at great length how working with interpreters affects the process of communication itself, such as time management, formality of meetings, and manner of speaking.

First, working with interpreters will affect the amount of time it takes to prepare a refugee claim. Lawyer #6 points out that a lot of refugee work is done through Legal Aid, and the amount of hours approved for a lawyer will usually remain the same whether the client requires the assistance of an interpreter to communicate or not. He says that the effect of this is that it *“doesn’t give the same opportunities to lay things out with the client, explain the implications.”* Lawyer #2 agrees, noting that when working with interpreters *“sometimes we don’t have the time to get into the heart of each issue, or areas of concern as you would like.”* Lawyer #1 explains that the logistics of meeting with a client becomes more difficult as now the schedule of a third party must be taken into account. When working with an excellent trained interpreter, their schedule may become difficult to accommodate, especially given the tight timelines in the refugee determination process. Lawyer #1 says this can have an impact on *“how much time I’m spending with the client.”* Overall, as Lawyer #6 notes, working with interpreters *“adds opportunity for things to be missed.”* Laster did explain that working with interpreters augmented the institutional and economic pressures faced by Australian lawyers, and it is not surprising that Canadian refugee lawyers experience similar difficulties.

Lawyers also spoke about how working with interpreters renders communication more formal and rigid. Lawyer #2 elaborates on this idea:

*... working with an interpreter seems like a question and answer session, not having to use an interpreter seems like an actual conversation with the client, an intimate, detailed, frank, open conversation, whereas with interpreters it's much more of a formal question and answer session.*

Overall, he says the whole process is much more formalized, he is more likely to follow a “*set of questions prepared in advance*”, and useful tangents are far less likely to materialize. Lawyer #4 characterizes the conversation as being more “*superficial*”, while Lawyer #10 says, “*you lose the flow*” of conversation. Lawyer #1 says she is going to be “*very direct, very focused on the important points*” when working with an interpreter, compared to when she is interviewing a client without an interpreter. Lawyer #3 and Lawyer #4 add that small talk aimed at making a client comfortable is more difficult when being interpreted through an interpreter. Interestingly, this formalization of the communication process did come up in the context of the impacts of videoconferencing on communication. Federman writes that in technology-mediated conversations, more social and psychological distance is created, which results in less interactivity and spontaneity. In interpreter-mediated conversations, the same seems to occur, at least from the point of view of the lawyers I interviewed. The social and psychological distance of communicating through a third party results in less interactivity, such as small talk. This reduced interactivity could contribute to the distance as small talk at the beginning of conversations can often put people at ease. The reduced spontaneity created by the

interpreter's presence may also be detrimental, as conversational tangents can often lead to valuable information.

Lawyers also spoke about the altered manner of speaking that is required when working with an interpreter. Lawyer #4 explains:

*Speaking through an interpreter is not intuitive, so I think it's something I've picked up. It's being able to speak in a way that can be interpreted, and the big thing is stopping every, like I'm doing now, stopping every two sentences.*

Lawyer #6 echoes the importance of stopping frequently when working with interpreters, especially if the person is an informal interpreter. Lawyer #7 also iterates the importance of stopping every two sentences, and points out that this is something clients must learn as well. She cautions that it is very important to remind clients that even if they must stop after two sentences to allow an interpreter to interpret, *“that doesn't mean that's the end of their answer.”*

Lawyers also discussed how working with interpreters forces them to be more aware of the language they use. Lawyer #10 says *“you have a double filter of does the client understand this vocabulary, but first and foremost, does the interpreter understand this vocabulary.”* This can be positive in that lawyers are more likely to avoid culturally bound idiomatic expressions,<sup>269</sup> but also detrimental as it can eliminate more subtle or precise words (Lawyer #10). Lawyers were also conscious about using legal language in a way that interpreters and clients would understand. They were conscious of the

---

<sup>269</sup> For example, many lawyers mentioned the example of “off the top of my head” as being an expression that may be difficult to interpret.

trickiness of communicating legal language and the importance of ensuring these legal terms are accessible. This focus on the precision of language suggests that lawyers are aware of the background legal concepts that are influencing the shape of the communication, which Rycroft refers to as ‘silent actors’.<sup>270</sup> However, unlike during the formal legal procedure where Rycroft describes that interpreters must decide whether to explain these silent legal concepts, during lawyer-interpreter-client meetings, the lawyer will likely explain these concepts to the client. Therefore, if a lawyer is able to adequately explain these concepts and the interpreter interprets them competently, the silent actors may not remain silent to the client. This will of course depend on numerous factors, including the lawyer’s style, the interpreter’s language skills, the client’s understanding, and institutional pressures like time and financial constraints.

#### **(d) Credibility**

Finally, the last subtheme that emerged through my interviews with lawyers relates to the overall impact that interpreters have on the refugee claim process. The end goal of a refugee claim is a positive decision at a RPD hearing, and issues of credibility are paramount in a Board Members’ assessment of a claim.<sup>271</sup> Berk-Seligson’s research on interpreters working in courts in the United States revealed that interpreters had effects on a decision-maker’s assessment of a witness’s credibility, intelligence, and trustworthiness.<sup>272</sup> Pöllbauer’s research on asylum hearing transcripts in Austria reached

---

<sup>270</sup> Rycroft, *supra* note 66 at 240.

<sup>271</sup> See for example, Audrey Macklin, “Truth and Consequences: Credibility Determination in the Refugee Context”, Paper presented at the 3<sup>rd</sup> Annual Conference of the International Association of Refugee Law Judges, Ottawa, Canada, 1998.

<sup>272</sup> Berk-Seligson, *supra* note 33 at 194 to 197.

similar conclusions. Not surprisingly, lawyers believed working with interpreters affected the perceived credibility of refugee claimants.

Lawyers described how Board Members might assess credibility by evaluating whether a claimant's story is consistent. Lawyers observed that working with an interpreter could affect consistency, especially as there will always be a new interpreter at the RPD hearing.<sup>273</sup> Lawyer #2 expresses that the "*slightest error in interpretation really can make the difference in the claim.*" He elaborates:

*... they concentrate on the minutiae, the minor inconsistencies, these minor omissions, that may simply have been lost. I mean, even if you speak the same language it's sometimes it's just unreasonable, how consistent they expect stories to be, just within the realm of human variance. But when you add the buffer of the interpreter, and the fact that everything goes through the interpreter, and often things are paraphrased, it's unreasonable for the Board Member to expect that level of detail and that level of accuracy.*

Lawyer #5 summarized an interpreter's potential effects on a claim, saying that interpretation "*doesn't affect their credibility, it distorts what they're saying so that the Board Member thinks they're not credible.*" To reduce this observed tendency, Lawyer #3 says that he will always mention during his submissions that "*certain things can be interpreted in different ways*" to emphasize that perceived inconsistencies may not actually reflect discrepancies in a claimant's story.

---

<sup>273</sup> At RPD hearings, the IRB provides interpreters. There is a chance that the interpreter could be an interpreter that assisted the lawyer with the preparation of the claim, but this occurrence was not brought up in any of my interviews.

Lawyers were also concerned about the effects of interpretation on the authentic voice of a claimant, worrying that hearing a claimant's story through an interpreter may make it more difficult to maintain integrity with the original story. Lawyer #4 describes how he has the "*concern that because I always use the same Arabic interpreter all my narratives are in their voice.*" He says the way beliefs are articulated is central to the credibility assessment, especially in claims involving political opinion or religious beliefs. He explains:

*It's all on the interpreter – I've seen interpreters who have just put it perfectly, who really convey what they're saying, and others who are just stumbling. Just like it's luck of the draw with Board Members,<sup>274</sup> it's luck of the draw with interpreters.*

Lawyer #10 depicts the difficulty in really connecting to what the claimant is saying when it is heard through an interpreter, describing it as losing "*the impact of their words*". By contrast, Lawyer #8 describes that when working with excellent trained interpreters, she feels the claimant's voice can come through more powerfully:

*... when everything hangs together – when there's a real coherence to what they're saying, when there are nuances you hadn't known existed and come through, and there are details that are clearly authentic – and it's because of the interpreter that you've been able to hear that. It's actually a tremendous pleasure, it can be a joy to work with a good interpreter*

---

<sup>274</sup> Lawyer #4 is referencing Sean Rehaag, "Troubling Patterns in Canadian Refugee Adjudication" (2008) 39(2) *Ottawa L Rev* 335, where Rehaag found that the acceptance rate between different Board Members ranges from six percent to over 95 percent after controlling for factors that could affect the discrepancy (at 349).



*because the voice of the client comes through so powerfully. Maybe even more powerfully if they just spoke on their own...*

Lawyer #9 builds on this idea, noting that working with an interpreter will always be a filter to communication, but it can both enhance and detract from the communication, sometimes at the same time.

These observations are especially interesting in light of my research question about maintaining a client's authentic voice when working with interpreters. The literature suggests language has no inherent meaning, so gaps in understanding between speaker and listener are normal.<sup>275</sup> Further, as articulated by Eastmond, even a refugee's rendition of her or his story is never entirely consistent with how the events unfolded.<sup>276</sup> In the context of working with interpreters in refugee claims, these caveats should not be forgotten. Even in the best of circumstances, maintaining authenticity is never entirely possible – at the very least clients will be constantly interpreting their experiences. When you add the subjectivity of interpreters and the choice they have over words, the goal of authenticity becomes further obfuscated. But while maintaining exact authenticity may not be possible, there is a point where deviating too far from a refugee's experience would become inauthentic. However, although lawyers did acknowledge that deviating too far from the authentic experience is problematic, they did not develop this idea further during the interviews. They did, however, report strategies to compensate for the impacts of interpretation on a client's authentic voice, in so far as it might affect a decision-maker's credibility assessment.

---

<sup>275</sup> See for example, Morris, *Moral Dilemmas*, *supra* note 7 at 27; Ahmad, *supra* note 11 at 1033.

<sup>276</sup> Eastmond, *supra* note 6 at 249.

Inaccurate interpretation was one of the main concerns expressed by lawyers during interviews. To help identify if this happens, Lawyer #3 states that he will try to have a person in the room who speaks both languages, and will be able to alert him if interpretation is not accurate. Lawyers also mentioned that as counsel, they have the advantage of knowing the claimant's story. If the story seems drastically different during the hearing, it could be an indication that interpretation has gone awry. Many lawyers also expressed the wish that Board Members be more attuned to the risks of hearing testimony through interpreters. Many felt that Board Members should have greater awareness about the difference between “*actual inconsistencies, errors, or omissions [and] translation errors or omissions, interpretation differences, cultural differences in how you say things and how it gets interpreted.*”<sup>277</sup> Again, it is interesting that although lawyers expressed concern over the possibility that interpretation could distort their client's authentic voice or impact credibility, articulable strategies were limited. This further supports the idea that lawyers and their practices would benefit from developing skills about working with interpreters. In crafting these strategies, the subjectivity of everyone in the process cannot be forgotten.

---

<sup>277</sup> Both lawyers whom I interviewed who had been Board Members acknowledged that credibility was a particular challenge for them as Board Members, especially when the claimant's testimony was heard through an interpreter. Both also agreed that if an issue about inadequate interpretation was raised in a hearing, it was serious. Lawyer #8 said:

*quite often the person that thought they detected errors is correct. People rarely make this kind of complaint – it doesn't happen that often, and when it does it's for a reason. People don't want to keep going and get a positive result. So it's unusual, and when it does happen, it's a very serious flag that something is going on. You need to follow up on it. And then if there has been in fact anything other than a very minor mistake of interpretation, you would stop the hearing completely and it would rescheduled to be heard in front of a different Member with a different interpreter.*

Many lawyers reported that although some Board Members were receptive to concerns over interpretation, they felt that many Board Members were resistant to the idea.

**(e) Concluding Thoughts**

I called this section ‘Tangled Communication’ in an attempt to capture the complicated pathway towards reaching shared understanding that is undertaken when speakers do not share a language. These complicated pathways are a reflection of the additional steps to reaching shared understanding that occurs when an interpreter is added to the communication.<sup>278</sup> However, the complexity is also a consequence of the aspects of extralinguistic communication that may be lost or misinterpreted, as well as the effects that the inclusion of an interpreter has on the process of communication itself. Importantly, the complexity is also linked to the subjectivity of all of the speakers involved, and understanding is always circumscribed by speakers’ interpretation of their own subjective experiences.<sup>279</sup>

I also called this section ‘Tangled Communication’ because it is usually possible to untangle something that is tangled. As Lawyer #8 explains, when working with interpreters it is possible for “*the voice of the client comes through so powerfully.*” This is important to remember in the context of refugee lawyering, as although the authentic voice of the client may be difficult to maintain, positive credibility assessments are still fundamental to refugee claims.

---

<sup>278</sup> See Ahmad, *supra* note 11 at 1035.

<sup>279</sup> Ahmad, *supra* note 11 at 1033.

#### 4.2.4 - Layered Relationships

The final theme that emerged during interviews with lawyers concerns the layers that interpreters add to the lawyer-client relationship. As discussed in Chapter 2, there is an absence of literature focusing on the effects that interpreters have when inserted into the lawyer-client relationship. The available research tends to focus on the differing views lawyers and clients hold of interpreters in the court or hearing room. For instance, Morris and Rycroft note clients often view interpreters as allies,<sup>280</sup> while Morris, Colin, Rycroft, Ahmad, and Laster note that lawyers frequently perceive interpreters with suspicion or distrust.<sup>281</sup> Barsky and Laster examine the effects of working with interpreters further, writing that interpreters affect the very flow of information between client and lawyer.<sup>282</sup> Barsky believes that if lawyers reconsidered the role of the interpreter to go beyond simple language mediators, interpreters could provide lawyers with valuable cultural, linguistic, and relational insight into clients.<sup>283</sup> Ahmad builds on this idea, discussing the ways in which interpreters do affect lawyer-client relationships, and how their role could be conceptualized to be more beneficial to both lawyers and clients.<sup>284</sup>

Lawyers generally agreed that working with interpreters added a layer to their lawyer-client relationships. Instead of a relationship between two people, the relationship now had three facets; it became a lawyer-*interpreter*-client relationship.<sup>285</sup> Lawyers also

---

<sup>280</sup> Morris, Gum Syndrome, *supra* note 75; Rycroft, *supra* note 66.

<sup>281</sup> Morris, Gum Syndrome, *supra* note 75; Colin and Morris, *supra* note 100; Rycroft, *supra* note 66; Ahmad, *supra* note 11; Laster, *supra* note 17.

<sup>282</sup> Barsky, Arguing and Justifying, *supra* note 44; Laster, *supra* note 17.

<sup>283</sup> Barsky, Arguing and Justifying, *supra* note 44 at 66 to 67.

<sup>284</sup> Ahmad, *supra* note 11 at 1043 to 1075.

<sup>285</sup> And, if lawyers work with multiple interpreters during a single claim, then there could be multiple lawyer-*interpreter*-client relationships.

pointed out the relationships are layered because the lawyer not only needs to build the trust of the client, but also needs to trust the interpreter; likewise, the client needs to build trust with both the lawyer and interpreter. And, especially in cases where an informal interpreter is a family member or friend, the interpreter will need to trust the lawyer.<sup>286</sup> Some lawyers went as far as acknowledging that an interpreter “*almost ... holds the most sway in the three party relationship*” (Lawyer #2).

Overall, lawyers provided insight into the gaps in the literature concerning the effects that interpreters have on lawyer-client relationships. In this section of the analysis, I will discuss the themes that emerged, grouping them by the lawyer-client relationship, the lawyer-interpreter relationship, and the client-interpreter relationship.

#### **(a) Lawyer-Client Relationship**

When working with refugee clients, lawyers pointed out the importance of establishing a foundation of trust at the outset of the lawyer-client relationship. Speaking about this idea, Lawyer #10 says:

*establishing a trusting relationship is more than just sort of, you know, something to check off the list. It's the foundation of your legal representation because vulnerable clients tend to drop off the map if they don't trust their lawyer. And so, when working with an interpreter it takes ... a lot more effort and more time to establish that kind of relationship. But it really has to be done and I think that there is [sic] ways of doing it.*

---

<sup>286</sup> These ideas were implied in most of my conversations with lawyers. As Lawyer #9 put it: “*I had to win the allegiance of both them in the beginning, sometimes even more the informal interpreter.*”

Lawyer #9 refers to this practice as the “*fundamental technique*”, elaborating that it would not change when working with interpreters. He would always “*establish an area of trust, develop a rapport*” with clients, and especially when working with interpreters.

To help build this trust, lawyers were conscious of creating a safe atmosphere. Lawyer #10 mentions “*making eye contact with the client not with the interpreter*”, greeting them in their own language if possible, and providing “*coffee, tea, water, and breaks, things like that*” as ways of doing this. Overall, she felt that it was important to “*humanize the experience as much as possible.*” Lawyers also found emphasizing the confidential nature of the lawyer-client relationship to be helpful in building trust. Several lawyers mentioned the importance of discussing confidentiality in front of both the client and the interpreter. As Lawyer #8 notes, this is essential to make “*sure that everybody understands ... you have to set the stage so that everybody understands what the expectations are.*”<sup>287</sup> Lawyer #9 points out the importance of doing this at the outset with a new client, as even if the lawyer has worked with the interpreter before it would be the client’s first experience. He says this gives the client a “*sense that they are involved and they have an element of control in all of this.*” These techniques for developing trust are consistent with suggestions articulated by McCaffrey, who emphasizes that showing professional warmth, respect, and courtesy will help create fluency in interviews when working with interpreters.<sup>288</sup>

---

<sup>287</sup> Not all lawyers described emphasizing to the client that the interpreter was part of this confidential relationship; see *Lawyer-Interpreter Relationship* below.

<sup>288</sup> McCaffrey, *supra* note 1 at 360.

To ensure that this trusting relationship is going smoothly, some lawyers also found it useful to check-in with clients as the relationships develop. This monitoring is suggested by Bryant in her research on cross-cultural competence in lawyers,<sup>289</sup> so it is not surprising that lawyers do so within their lawyer-client relationships. Lawyer #7 describes that part of this monitoring comes from developing a “*sensitivity ... towards what was happening*” and being able to check-in with clients about their comfort levels. In an ideal situation, many lawyers described it would be beneficial to check-in with clients without the interpreter present part way through the preparation of a claim. Lawyer #2 describes the benefits, as well as the difficulties, with this practice:

*I think finding a way to ask clients without the interpreter's presence, and this may be hard because there is a language barrier, but asking them if they are comfortable explaining details of their claim to this interpreter or if they aren't comfortable with this interpreter for any reason. Or what they feel, sometimes the client feels there's an issue with the interpretation, but they're not really willing to say it or they feel embarrassed to say it in front of the interpreter. So if you don't take time away from the interpreter, with whatever level of English the client speaks to be able to communicate with them to say 'if you're not comfortable, or if there's something that you want to tell me away from the interpreter, or if there's something you think the interpreter isn't doing properly, just let me know directly'. I think that's something that could be a key thing for all counsel to do.*

---

<sup>289</sup> Bryant, *supra* note 51 at 56.

During my interviews, lawyers agreed that this was a good practice in theory, but that given the language, time, and financial constraints, it may not always be possible.

Lawyers mentioned that these constraints have been heightened in recent years, as the timelines for preparing claims before the hearing has been significantly reduced.<sup>290</sup>

Lawyers who had the experience of communicating with refugee clients without interpreters agreed “*it’s a lot easier to establish a rapport and trust with a client when there’s no interpreter involved*” (Lawyer #1). Speaking from his experience working with clients in their own language, Lawyer #2 observes

*there’s an almost automatic level of trust that’s created just by virtue of the fact that I can speak to them in their own language. They feel connected to me as a person and comfortable with me being their representative.*

Lawyers #4 and #10 reiterate this sentiment, describing relationships with clients with whom they need to work with an interpreter as “*more superficial*” and as being able to develop “*less of a personal connection*”. This experience parallels the idea in the literature that clients tend to perceive those that speak their language as allies, as well as discussions about the natural intimacy that can form between two speakers of a non-dominant language.<sup>291</sup> Although the research that discussed this tendency was referring to clients and interpreters, it is not surprising the same predisposition to trust would happen if a lawyer speaks the same language as a client.

---

<sup>290</sup> For a description of recent changes to laws surrounding refugees in Canada and a summary of the shorter timelines, see Jennifer Bond and David Wiseman, “Shortchanging Justice: The Arbitrary Relationship Between Refugee System Reform and Federal Legal Aid Funding” (2012) 91 *Canadian Bar Review* 583 at 605.

<sup>291</sup> Morris, Gum Syndrome, *supra* note 75; Colin and Morris, *supra* note 100; Ahmad, *supra* note 11; Laster, *supra* note 17.



Characterizing the interpreter's presence as a "barrier" was another common theme amongst lawyers when discussing the effects of interpreters in the lawyer-client relationship. Lawyer #4 provides the example of how clients would tell his receptionist they had an appointment with the interpreter instead of an appointment with him, the lawyer. Lawyer #1 differentiates between working with trained interpreters compared to informal interpreters; in her experience, when working with a "*good professional interpreter, it can have very little impact on the trust I establish with a client*". By contrast, she speaks about her experiences with the interpreter-facilitator, where his presence affected the trust relationship with those clients, as she believed he was coaching their answers. She provides a perspicuous example of an informal interpreter being a barrier to trust:

*I have a client who I found out months later after we presented all the documents, that she spoke perfect French. But she'd been told by members of her community that it wouldn't look good for her to speak French because there wasn't a good reason for her to have learned French. ... So they told her to come in with an interpreter and pretend that she didn't understand anything that I was saying. And then she came to me months later distraught saying, very apologetic for having misled me basically. And saying 'this is what I've been told' and the interpreter who was there was a member of her community; one of the people who'd told her to do this. So that's why she'd done it, she didn't feel comfortable disclosing this to me until she came to me on her own later. So that was a really clear example of*

*the person in the room getting in the way of my work with her. And I think that's probably the clearest example I've ever had.*

Lawyer #1's anecdote is an extreme example, but it exemplifies the ways the interpreter's presence can interrupt the trust between lawyer and client.

Further, as discussed briefly in the **Negative Aspects of Subjectivity** analysis above, and as will be discussed in further detail in **Client-Interpreter Relationship** analysis below, lawyers worried that one way an interpreter is a barrier is if clients are unwilling to discuss certain matters with an interpreter present. All the lawyers I interviewed except for one made this observation. They observed that sometimes the reluctance was because the interpreter was a family member, friend, or community member, but it sometimes had to do with the interpreter's perceived community affiliations or gender. In terms of being aware of how these perceptions could impact the client's relationship with the lawyer, Lawyer #10 says part of this awareness comes from "*getting used to some of the issues that could come up within the community.*" She says that this awareness can help avert some of the barriers that the insertion of the interpreter might create between lawyer and client.

Lawyers also spoke about other ways interpreters added layers to the relationships with clients. They described that in addition to the logistics of all interactions taking longer, the ability to build a connection with a client when working with an interpreter itself also takes longer. Lawyer #2 describes the connection building as being "*organic*" when lawyer and client speak the same language, and as more quickly becoming "*an intimate,*

*detailed, frank, open conversation*". By contrast, he describes connection building with clients where he works with an interpreter as more "*rigid*", and as less "*connected, real*". Some lawyers also spoke about the interpreter creating a distance between them and their clients. Lawyer #4 describes it as "*their being a middle man between you.*" He elaborates, "*The clients I've become closest with usually speak some English.*" Lawyer #10 expresses a similar reaction, recounting that she has "*definitely cried more when I'm talking to a client in their original voice than when an interpreter is interpreting for us.*" Interestingly, these descriptions about distance created by the interpreter's presence echo Federman's findings about the effects of videoconferencing. It seems that whether the mediating factor is technology or another person, both have the effect of creating more distance between communicators. As establishing a close relationship of trust is acknowledged as fundamental to lawyer-client relationships, this observation is significant. It may only be possible to overcome if lawyers speak the same language as their clients.

On the other side of the spectrum, lawyers spoke about an interpreter's ability to augment the connection between lawyer and client. Firstly and somewhat obviously, without an interpreter, lawyers would be unable to build any sort of connection with clients who do not speak the lawyer's language. Lawyer #5 says, "*[I]f I have no interpreter, I have no relationship with the client.*" Similarly, Lawyer #8 describes the interpreter's presence as a "*window into a world which would be hidden from you otherwise.*" However, in a more nuanced way, interpreters can augment the connection between lawyer and client by impacting how the client views the lawyer. An interpreter who endorses a lawyer's

competence will help the client trust the lawyer. Lawyer #6 states that if an interpreter vouches for him, “*their word is going to carry more weight than mine alone necessarily would.*” Lawyer #9 describes this endorsement as especially important when working with informal interpreters, although trained interpreters could also vouch for his professional competence.<sup>292</sup> He describes this trust as stemming from a “*language and nationality connection.*” Lawyer #9’s perception is consistent with the idea in the literature that people have a tendency to trust those from similar cultural and linguistic backgrounds.<sup>293</sup> These observations make it especially important for lawyers to develop good working relationships with interpreters with whom they have established trust. Such relationships will in turn foster trust connections between lawyers and clients.

Lawyers also observed that clients had a tendency to look to interpreters when speaking to the lawyer. This occurred even when lawyers explained that they wished clients to look at them when speaking, and happened especially if the interpreter was a family member or friend (Lawyer #6). Lawyers explained that they always tried to make appropriate eye contact and look at clients when speaking to them, even if working with an interpreter. Again, just like Federman’s explanation of the effects of videoconferencing, where screen angles and size impact eye contact,<sup>294</sup> the mediating presence of the interpreter can create confusion for clients about where to look when communicating through interpreters.

---

<sup>292</sup> This idea was present in both of my interviews with interpreters. Interpreter #1 described frequently telling clients that a lawyer was competent and could be trusted. He also told me that some clients would tell him that they wished he could represent them instead of the lawyer, but that he was often able to help build confidence in the lawyer because the client perceived him as an insider. Evidently, this is an area that warrants further study, especially from the perspectives of the interpreter and client.

<sup>293</sup> See for example, Rycroft, *supra* note 66.

<sup>294</sup> Federman, *supra* note 146 at 439 to 442.

I asked every lawyer about the physical set up of interviews with clients when working with interpreters, and most lawyers agreed that the physical set up could enhance or detract from the rapport and trust building between lawyer and client (Lawyers #1, #3, #6, #7, #8, #9, #10). For example, Lawyer #9 always tried to ensure that he was “*opposite the claimant not opposite the interpreter so that creates that kind of direct relationship.*” Additionally, he would seat the interpreter next to the client “*for their comfort*”. Lawyer #8 would have the interpreter sit off to the side to avoid “*the client and the interpreter establishing an independent line of communication.*” Certain lawyers also acknowledged that the set up for meetings with clients varied depending on whether an interpreter was present (Lawyers #1, #2, #4). Although many lawyers expressed curiosity at this interview question, the physical space in which communication takes place should not be underestimated. Carlen and Rycroft emphasize that the physical placing of people will affect their ability to participate in communication, as well as their relationship to those who are part of the communication.<sup>295</sup> However, the physical space will in part be determined by factors beyond the lawyer’s control, such as the size of the office or meeting room or the available tables and chairs.

#### **(b) Lawyer-Interpreter Relationship**

Although there is little literature about lawyer-client relationships when working with interpreters, there is even less literature about the lawyer-interpreter relationship.<sup>296</sup> Not surprisingly then, lawyers reported little training or resources on working with

---

<sup>295</sup> Carlen, *supra* note 72; Rycroft, *supra* note 66.

<sup>296</sup> Hale, Community Interpreting, *supra* note 12 at 79 to 82; Ahmad, *supra* note 11 at 1007 to 1010.

interpreters.<sup>297</sup> Lawyer #1 reported that she received some exposure to the issues during a law school course and had learned about Canadian *Charter of Rights and Freedoms* guaranteed standards during a professional development course.<sup>298</sup> Lawyers #8 and #9 received training on working with interpreters as part of their orientation as RPD Board Members. Lawyer #10 received training as part of her work at a legal clinic during law school and with an international organization. Other than these experiences, the majority of lawyers had not received any formal training on working with interpreters. Most lawyers reported they learned from experience during their practice.<sup>299</sup>

Similarly, the lawyer-interpreter relationship is not explicitly addressed in ethical rules of professional conduct, whereas the lawyer-client relationship is the cornerstone of such professional standards.<sup>300</sup> However, lawyers did note that working with interpreters could engage ethical rules about third parties, referral fees, conflicts of interest, supervision of employees, and confidentiality. Lawyer #4 expressed potential ethical concerns about the role of interpreters:

---

<sup>297</sup> It is worth acknowledging that like building lawyer-client relationships, building lawyer-interpreter relationships will be learned through doing. However, there is a plethora of research, suggestions, and frameworks for building lawyer-client relationships, whereas there is very little literature addressing lawyer-interpreter relationships.

<sup>298</sup> Referring to section 14 of the Canadian *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, which guarantees that a “party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.”

<sup>299</sup> One lawyer expressed surprise that I would ask this question: “*It was never mentioned. It didn’t need to be. Surely to God, we’re lawyers, we can figure this out. We’re not freaking social workers or I don’t know what. Good Lord. There weren’t courses on this.*” (Lawyer #5)

<sup>300</sup> For example, there are over 50 pages devoted to the lawyer-client relationship in Ontario’s *Rules of Professional Conduct* and nearly 50 pages in the *Code of Professional Conduct for British Columbia*. By contrast, the word ‘interpreter’ is not mentioned in Ontario’s *Rules of Professional Conduct*, and is only mentioned once in the *Code of Professional Conduct for British Columbia* in the context of Affidavits and Solemn Declarations (at 97).

*Interpreters are very powerful, I think in the private refugee law bar. In the sense that when people come to Canada to make a refugee claim, they're not usually aware of the lawyers in Canada, and communities go to certain lawyers usually. If someone arrives, they're referred to this interpreter, who is really playing the role of immigration consultant. And the interpreter makes the referral to the lawyer. In a weird way, I think many lawyers are dependent on interpreters for their client base. And so that creates a scenario ... where your duty, where there's a conflict of interest. You shouldn't be in that situation; it creates a situation where your role is as a lawyer would be to say no that I don't think that interpretation is good, or to advocate for your client in that respect, and you have your business interest based on these interpreters. And it could stop you from, in your office, from maybe being more critical.*

Other lawyers expressed similar concerns, some noting that “*you hear all sorts of horror stories*” about how some interpreters steer clients towards certain lawyers for a finder’s fee (Lawyer #7). Lawyer #5 described a situation where it became obvious to her that the interpreter had charged the client a large sum of money for interpreting services beyond what she was paying the interpreter. This perspective highlights the influence interpreters hold in communities and in relationships with lawyers. It also suggests that clearer professional guidance for lawyers working with interpreters may be warranted. Further, the interpreter profession could benefit from additional standardization and training.<sup>301</sup>

---

<sup>301</sup> Although this may not fully deter the interpreter-facilitator conduct that seems to be the problem as described by lawyers.

Lawyers had differing practices of discussing their expectations about the interpreter's role. Some lawyers said they would not discuss their expectations with interpreters, either because it was someone they had worked with before or because they assumed the interpreter knew his or her role. Lawyer #8 explains that she usually starts "*out by assuming everybody knows*" their roles, but if something bothered her she would explain the interpreter's role and obligations to "*try and build their [the client's] confidence in them.*" Similarly, Lawyer #10 says that it was "*always a little bit surprising*" when an interpreter went beyond their interpretation role, because she "*went into the interview assuming that all interpreters or anyone that calls themselves an interpreter anyway knew the basic rules.*" Lawyer #2 says he does not normally explain his expectations to the interpreter, because he says, "*it feels patronizing to say that.*"

Some lawyers who normally would not explain expectations made a point to do so if the interpreter "*is an amateur that is a family member*" (Lawyer #5). Lawyer #6 explains that if working within a "*more informal arrangement, friend or family, that's where I really have to emphasize privacy and their words not your interpretation of them.*" Other lawyers made it their practice to always explain their expectations to interpreters. Lawyer #7 has interpreters sign a sheet explaining confidentiality. Lawyer #9 clarifies that discussing expectations became something he did "*more carefully and more thoroughly*" as his practice evolved. Likewise, Lawyer #1's practice has evolved to "*try right from the start to speak directly to the interpreter, explain what their role is*". At the end of their interviews with me, Lawyers #2 and #3 decided that they would like to incorporate going



over their expectations with interpreters at the outset of meetings with a new client. Lawyer #3 even mentioned that having a one or two page document explaining these expectations would be useful to provide to the interpreter for his or her reference. These differing practices are interesting in light of Hale's study that found Australian decision-makers and interpreters had conflicting expectations about the interpreter's role within asylum adjudication.<sup>302</sup> Combined with the contradictions explored in the **Tension in Perceptions of Interpreter's Role** section, it is possible that without clear guidelines of lawyers' expectations, interpreters may not be aware of what lawyers expect of them. This would especially be the case with informal interpreters who do not have any training in interpretation.

This gap in expectations is problematic, both in terms of establishing a baseline of competency and in order for clients' experiences to be authentically portrayed. If interpreters and lawyers are not in agreement about what constitutes acceptable interpretation services from the outset, it will be difficult for interpreters to monitor their behaviour and for lawyers to be able to offer constructive critiques. Further, if interpreters, especially informal interpreters, are not aware that embellishments or added information of the client's story is beyond their role and unacceptable, they may not be aware this behaviour could be detrimental to the client's claim. In adding their perspectives or opinions without delineating it from the client's, they may be distorting the story beyond what is acceptable. Establishing these expectations is fundamental to maintaining the lawyer's control over the legal process.

---

<sup>302</sup> Hale, *Interpreting Culture*, *supra* note 63 at 7 to 8.

When discussing their relationships with interpreters, some lawyers reported that the relationship developed against a background of concerns regarding the quality of interpretation and the integrity of the interpreter. These background concerns are influenced by many of the themes discussed in the previous sections, but especially tensions about the role of the interpreter; concerns about the negative aspects of interpreters' subjectivity, particularly the dynamics of informal interpreters such as family members or friends, and the potentially nefarious role that some interpreter-facilitators might play; concerns about miscommunication; and the interpreters' effects on credibility and the client's authentic voice. Such a view of the interpreter is not surprising, given the literature that indicates lawyers often perceive interpreters with suspicion or distrust.<sup>303</sup>

By contrast, some lawyers reported that their relationships with interpreters developed amidst a background of trust. As Lawyer #2 explains, sometimes this trust develops over multiple meetings with the same client, when the lawyer observes the interpreter's language competence and respect for confidentiality; this can happen with both trained and informal interpreters. However, lawyers overwhelmingly expressed that this background trust is usually established from working with the same interpreter across several cases. Lawyer #3 describes one such informal interpreter with whom he has worked:

---

<sup>303</sup> Morris, Gum Syndrome, *supra* note 75; Colin and Morris, *supra* note 100; Rycroft, *supra* note 66.

*There is one individual in particular that I've used over the years for Spanish to English, so we've developed a rapport over the years. He's not certified, but we've developed a rapport and I have confidence in his abilities as an interpreter.*

Lawyer #4 has also developed relationships with certain interpreters whom he trusts and respects, saying they “*are like co-workers, and I trust them and know what I'm going into.*” He iterates that “*when you find interpreters who are good hold onto them – they are incredibly valuable. ... It shouldn't be undervalued.*” Lawyer #7 also tells that she, like “*most lawyers*”, tends to rely on a few good interpreters because they “*understand the way the lawyer works*” and “*there's a level of trust that is put up between that interpreter and the lawyer*”. Lawyer #8 summarizes this sentiment, stating she regards “*interpreters as my partners. We stand shoulder to shoulder to get this claim forward.*” This perspective is an important contrast to the distrust frequently mentioned in the literature, as lawyers trust interpreters whom they view as professionals.

Finally, some lawyers discussed how their relationships with interpreters benefited from ongoing reciprocal feedback. Lawyer #10 explains:

*it would be good for interpreters and legal advisors, to have sort of a periodic review of each other because it's really easy for me to critique interpreters. But sometimes they would critique us back and it was surprising and it was true but it was surprising. And they would tell us things that we were doing which was making the interview more difficult or which was, you know, exhausting them whatever it was or that was alienating the client that*

*we really weren't aware of. So I think a good back and forth is really necessary – because the interpreter, if they care about their work, have amazing insight. And you know, even though they're not supposed to have side conversations the truth is the client afterwards will say I don't like that legal advisor. Or, you know 'can you tell her to talk slower.' I mean they'll say things off the record to the interpreter.*

Lawyer #1 also spoke about how she found it helpful when a trained interpreter would give her feedback on her interviewing technique when working with the interpreter. Ahmad's conception of the interpreter as expert skims this aspect of lawyer-interpreter relationships, but focuses more on how the lawyer evaluates the interpreter, rather than the interpreter providing feedback to the lawyer.<sup>304</sup> If lawyers and the legal process view interpreters as professionals, then this sort of reciprocal feedback makes sense. Interpreters have valuable insight into language and communication, as well as potentially the client's perspective. However, as Ahmad suggests, in considering this information, lawyers should be mindful of evaluating the interpreter like they would any other expert.

### **(c) Client-Interpreter Relationship**

Although they are not directly part of this relationship, lawyers directly observe the client-interpreter relationship. So with the caveat that these observations would be enriched with the inclusion of the interpreter and client perspectives, I will discuss the client-interpreter relationship from the lawyer perspective.

---

<sup>304</sup> Ahmad, supra note 11 at 1058 to 1059.

Lawyers observed how clients and interpreters seemed to develop a supportive relationship with each other when working with lawyers. Informal interpreters were often able to provide this support if they were a family member or friend. Describing the relationship between client and an informal interpreter, Lawyer #2 observes “*there is already that trust between them.*” Lawyers believed informal interpreters can also help in making a client “*comfortable*” (Lawyer #4) or in helping to relax the client’s unease with disclosing personal information (Lawyer #7). Trained interpreters could also provide this support, especially if the client perceives them as neutral or outside of the client’s immediate community (Lawyer #2). Lawyer #8 believes that with trained interpreters, clients are often less concerned about confidentiality. She observes that this level of trust often develops into what she describes as

*a comfort level when they realize that this person [the interpreter] is in fact highly professional, not going to repeat what they’ve said to other people because we had a meeting three weeks earlier and nothing of what they’ve said has gotten out into the community.*

It is because of the positive relationship formation that many lawyers reported they would try to work with the same interpreter consistently with a client, as clients and interpreters would “*build a relationship*” (Lawyer #4).

Lawyers also felt that clients often viewed interpreters, whether informal or trained, with trust because they shared a language and background. Lawyer #2 describes that he felt clients often “*instinctively*” trusted interpreters, likely because the client views the

interpreter as “*someone who is like them, and been through the process, and understands the process from their perspective.*”<sup>305</sup> Lawyers who had worked with unaccompanied minor claimants observed that this support role between client and interpreter was augmented in these circumstances. Lawyer #10 describes “*a much more dependent relationship with the interpreter*” when the client is a child with no guardian. If the informal interpreter is also the minor client’s designated representative,<sup>306</sup> then Lawyer #9 observed that the interpreter will often take on an expanded, “*quasi-parental role.*” He describes this as a “*subset of interpretation challenges*” and one where this supportive role is paramount.

These observations about trust confirm the literature discussing clients’ tendencies to view the interpreter as an ally. Morris describes this as one of the predicaments of interpreting, as claimants tend to view interpreters as allies, even when lawyers and the legal system expect them to remain neutral.<sup>307</sup> Rycroft’s research and her own experiences as a court interpreter also support this tendency; she often felt like claimants expected her to equalize the power imbalance the clients were experiencing.<sup>308</sup> However, Pöllbauer’s analysis of asylum interview transcripts in Austria suggests that interpreters, not clients, may be the ones to forge these alliances as a strategy for establishing rapport

---

<sup>305</sup> Some lawyers pointed out that this instinctive trust could be misplaced, as “just because someone is of your ethnicity or your cultural background ... doesn’t mean that they’re necessarily a good person.” (Lawyer #7).

<sup>306</sup> A designated representative is appointed by the IRB and is responsible for protecting the interests of the minor or the person who is unable to appreciate the nature of the proceedings, as well as explaining the process to them.

<sup>307</sup> Morris, Gum Syndrome, *supra* note 75 at 7.

<sup>308</sup> Rycroft, *supra* note 66 at 236.

during interviews.<sup>309</sup> Her research focused on interpreters who worked for the interviewing Asylum Office, and not interpreters contracted by lawyers, but her research nonetheless provides a second perspective to the lawyer's tendency to ascribe this ally-seeking behaviour to the client. Perhaps in reality the interpreters undertake this behaviour to assist the lawyer with whom they are working. Investigating this potential motivation from the interpreter perspective would be useful.

Conversely, lawyers also observed clients perceiving interpreters with apprehension. Lawyers felt that when working with informal interpreters (family members, friends, but even other community members acting as interpreters) clients appeared to worry about confidentiality. Lawyer #2 says that clients often have the concern whether the informal interpreter understands "*the importance of confidentiality, if they understand the rules about not discussing anything that happens, even if the details seem unimportant, with anyone else.*" The genders of the interpreter and the client can play a role in this apprehension, especially if the client has experienced sexualized violence or other gender-based persecution. Lawyer #6 says that in these kinds of cases he will try to work with a female interpreter because her presence would be "*somewhat less intimidating, as opposed to having two men say, 'OK, now tell us all this stuff.'*"

Another factor affecting a client's relationship with the interpreter is the politics within his or her community. Clients seemed especially cognizant of this factor when the interpreter was an informal interpreter from their community. Lawyer #7 explains:

---

<sup>309</sup> Pöllbauer, *supra* note 37 at 169.

*The other thing we have to be very careful about, even when you're using an interpreter that's not a family member or friend, people could be very sensitive because they might be of the same tribe or sector of society and they're very cognizant of the fact that people will gossip and they don't their troubles to be known to their particular cultural group.*

But even when a lawyer works with a trained interpreter, clients may still be wary of their personal information being disclosed to their communities. Lawyer #2 explains that although he may have utmost confidence in the trained interpreter's discretion, the client may not share that feeling. He recounts:

*... the [trained] interpreters have done this for so long that for them, they understand the need for confidentiality and they understand that. ... But the clients might not understand that, clients might think that what they're saying is going to offend the interpreter or the interpreter might take particular offense to it or go tell others about it, have basically the same reaction someone back home would have to their claim, which isn't the case with professional interpreters who do these claims on a daily basis. So I don't think that from my end there's a concern about confidentiality, but I think clients often have that concern.*

Lawyers described the most worrisome consequence of this apprehension is a client's potential reluctance to disclose details about his or her experiences of persecution.

Lawyer #1 provides an extreme example of this reluctance, where a client came to her with a different interpreter to “convey information they didn't want the first interpreter to know.” Since the client may view the lawyer as more of an outsider than the interpreter,



Lawyer #2 believes these gender or cultural hesitations may not factor as strongly in clients' relationships with lawyers.<sup>310</sup> These concerns about confidentiality also exist with the interpreters working at the RPD hearings. Lawyer #9, a former Board Member, felt that claimants before the Board might feel there are "*certain things they can or cannot say because they assume that they're going to go back into the community.*" He also acknowledges that usually, the client would not have "*the confidence to say that [the concern regarding confidentiality] to the Board Member*" as it would first have to be interpreted by the interpreter. Again, this apprehension highlights the importance of establishing expectations, especially regarding confidentiality, with all parties at the outset of relationships.

Lawyers also observed that with informal interpreters who were family members, "*there may be a power relationship and a dependency by the claimant*" (Lawyer #3). Lawyer #4 is careful about having children act as informal interpreters for their parents as he worries that it "*messes up the balance of power in the family.*" When working with an informal interpreter who is the client's friend, Lawyer #4 is cautious, as "*you just don't know their relationship.*" Similarly, Lawyer #9 recalls a situation where he was representing husband and wife clients. During the interviews, it became obvious that the wife's answers were "*more precise, they were more thorough, they provided information and perspective he [the husband] was not providing.*" However, he was tactful about getting

---

<sup>310</sup> However, Lawyer #2 – as well as most of the other lawyers I interviewed – mentioned that they were sensitive to how their gender could influence a client's willingness to disclose information. For example, Lawyer #4 says, "*In a very gender-based claim, one that has quite a few instances of sexual violence, I would as a male lawyer, often refer to a female lawyer in my office.*"

information from the wife in a way that would not disrupt the couple's relationship dynamic, as after the refugee claim process they would still be in the relationship.

Although these observations about the client-interpreter relationship are incomplete without the perspectives of the client and interpreter, they nonetheless offer insight into this unique relationship. Unlike the typical description of clients viewing interpreters as allies, lawyers observed numerous factors affecting how clients and interpreters relate to each other. Further research could only deepen these understandings.

#### **(d) Concluding Thoughts**

Given the lack of literature on interpreters in lawyer-client relationships outside of formal legal settings, it is not surprising that many of these themes were not present from my review of the literature. Lawyers did find that interpreters could be barriers in their relationships with clients, but they also recognized that interpreters can enhance and complement their understanding of the client's perspective. Some lawyers did view interpreters with distrust, but many also developed confidence in trained and informal interpreters with whom they worked. Clients may view interpreters as allies in the process, but some also view interpreters with apprehension and concern. These themes suggest that lawyer-interpreter-client relationships are far more complex and nuanced than they are usually conceived. Overall, this complexity supports the need for further research, especially research that includes interpreter and client perspectives, as well as research that observes these relationships as they develop.

## Chapter Five – Conclusion

In order to summarize the findings of this research within the existing literature and elaborate upon its practical implications, this concluding chapter has three objectives: 1) answer the questions posed at the outset of the research, 2) recommend suggestions for best practices when working with interpreters and sketch a model how these practices might be achieved, and finally, 2) identify areas in need of further consideration.

### 5.1 - Answering Research Questions

In the Chapter Three, I identified three research questions:

*Question 1:* What is the interpreter's role when working with lawyers and clients?

*Question 2:* How is communication affected when communicating through interpreters?

*Sub-question:* Is it possible for the client's authentic voice to be heard when their story is always heard through an interpreter?

*Question 3:* How does working with interpreters affect the lawyer-client relationship?

These questions were posed to help organize my semi-structured interview with participants. Further, these questions aimed to help me meet my research goals of deepening the understanding of how working with interpreters affects a lawyer's representation of a refugee client, and suggesting best practices for lawyers working with

interpreters. In this section of the Conclusion, I discuss how my research has answered these questions.

### **5.1.1 - Interpreter's Role**

As expected from the literature review, lawyers initially adhered to the idea that interpreters should provide word-for-word interpretation of what is said during lawyer-client interactions. When asked the question, "In your view, what is the role of the interpreter?", lawyers followed this vision of the interpreter's role. However, as the semi-structured interviews progressed, lawyers acknowledged that interpretation was much more of a subjective endeavour than they had originally stated. Taken as a whole, lawyers acknowledged that this subjective nature of interpretation presented both negative and positive aspects. Lawyers were concerned that interpreters could overstep into an interpreter-facilitator role, many providing salient examples of when this had occurred in their practice. By contrast, lawyers also recognized that interpreters could be valuable cultural and relational resources, and appreciated the support and comfort they could offer clients. These concerns and benefits straddled the informal and trained interpreter divide, with potential positive and negative aspects to each level of interpreter training.

Thus, the first research question can be answered by confirming the need to move past the conduit model conception of the interpreter's role, by confirming existing research that demonstrates interpreters are not neutral language-changing machines. Further, I propose the way to reconcile the seemingly contradictory concerns and benefits is to characterize lawyers' expectations of the interpreter's role as follows. Lawyers expect

interpreters to primarily interpret the meaning of one language to another, imparting as little personal intervention on the interpreted meaning as possible. However, recognizing that interpretation is not a straightforward process, if interpreters must step outside this primary role, they should make it clear where their subjectivity begins.

This reformulation of the interpreter's role comes closest to Ahmad's conclusion that interpreter's should be viewed as experts.<sup>311</sup> Recall that in his work, Ahmad discusses and dismisses the conceptualizations of the interpreter as co-client or co-counsel as being too disruptive to lawyer-client relationships – either pushing the client or lawyer's voice too far from the forefront.<sup>312</sup> Ultimately, he concludes that re-conceptualizing interpreters as experts, the same as other experts a lawyer might employ, is the best way to harness interpreters' language and cultural skills.<sup>313</sup> I would add to this reformulation the caveat that given the institutional, financial, and time constraints faced by lawyers when representing refugee clients, sometimes lawyers will work with 'less than ideal' experts. However, even still, regarding interpreters as experts is advantageous as it allows lawyers to factor the potential weakness of the chosen expert into their legal strategy. I would further add that the interpreter as expert conceptualization does not capture the supportive role that interpreters may provide or the fact that the interpreter's presence could contribute to a client's reluctance to share personal details for fear of it getting back to their community. The consideration of these potential benefits and drawbacks would need to happen outside of Ahmad's framework.

---

<sup>311</sup> Ahmad, *supra* note 11 at 1058, 1059, and 1072.

<sup>312</sup> Ahmad, *supra* note 11 at 1055 to 1056.

<sup>313</sup> Ahmad, *supra* note 11 at 1058, 1059, and 1072.

### 5.1.2 - Communication

In even the best circumstances, communication is an intricate process. Communicators are always approximating the meaning the speaker intended.<sup>314</sup> When communicators come from different backgrounds, the possibility for miscommunication or misunderstanding is increased.<sup>315</sup> Adding an interpreter, a third person replete with his or her own subjectivity, further complicates the communication process.<sup>316</sup>

Unsurprisingly, the possibility of miscommunication is augmented when communicating through interpreters. Lawyers were aware that different cultural frameworks and contexts influence communication, and reported numerous examples where these differences resulted in miscommunication. Lawyers were also conscious of the effects an interpreter could have on the extralinguistic aspects of communication. Although they felt some emotions came through despite the language difference and intervening interpreter, many lawyers worried about how the interpreter's presence affected the extralinguistic cues such as tone of voice or subtle physical gestures. All lawyers agreed that interpreting over the telephone or videoconference exacerbated these concerns. The process of communication itself is altered when working with interpreters. Lawyers suggested that communication becomes more formal and rigid when working with interpreters, and felt more superficial. Therefore the answer to the second research question is that working

---

<sup>314</sup> Ahmad, *supra* note 11 at 1033.

<sup>315</sup> Kälin, *supra* note 57 at 230 to 231.

<sup>316</sup> Ahmad, *supra* note 11 at 1035.

with interpreters affects communication in a multitude of ways, adding to the already demanding task of the lawyer.

Lawyers also discussed how working with an interpreter affects credibility. Lawyers felt that working with an interpreter adds another opportunity for decision-makers to find fault with a client's credibility, even though perceived inconsistencies could be explained by the subjective nature of interpreting one's own experiences, as well as the potential miscommunication arising by virtue of language interpretation. Lawyers also expressed concerns that interpreters could distort their clients' authentic voices, although some lawyers felt that if the interpreter was skilled, this distortion would be minimal or could even help enhance clients' voices. Lawyers seemed to touch upon the idea that deviating too far from the 'authentic' voice is problematic, but did not elaborate upon this idea further. However, the literature provides a useful starting point, describing how narrating life experiences exactly as they occurred is nearly impossible. Eastmond explains how 'life as lived' will be different from 'life as experienced', which is still different from 'life as told'. Adding a layer of outside interpretation before a lawyer or decision-maker hears the 'life as told' renders authenticity even further removed from the original event. Other factors such as the effects of listeners also contribute to potential deviations in versions of a refugee's story. So to answer the sub-question, while it may be near impossible to fully replicate a client's authentic voice when working with interpreters (or in any situation), lawyers must still strive to present the most authentic version possible. It then becomes the decision-maker's choice as to whether this version is adequate.

### 5.1.3 - Relationships

Working with an interpreter adds a third person to the lawyer-client relationship. The lawyer-client dyad becomes a triad of dyads – the lawyer is part of both the lawyer-client and lawyer-interpreter relationships, and also an observer of the client-interpreter relationship. Existing research focuses on lawyer and client perceptions of interpreters, with the frequent conclusion that lawyers tend to view interpreters with distrust and clients tend to view interpreters as allies.<sup>317</sup>

My interviews with lawyers revealed a more complicated picture. Lawyers did view some interpreters with distrust, but many also reported developing long-standing and trusting relationships with interpreters over years of practice. Lawyers managed their relationships with interpreters in different ways: some lawyers clearly delineating their expectations, while others assumed interpreters understood their responsibilities. Lawyers observed that clients often viewed interpreters as allies, but also noted that this closeness could lead to apprehension in disclosing personal details about their experiences. In terms of their relationships with clients, lawyers iterated the importance of developing trust and rapport, although they acknowledged that when working with interpreters this foundation usually takes longer.

Thus the best answer the third research question is that interpreters add a layer to lawyer-client relationships. If the lawyer-interpreter relationship is a good one, it can enhance the lawyer's connection with the client. If the lawyer-interpreter relationship is itself

---

<sup>317</sup> Morris, Gum Syndrome, *supra* note 75; Rycroft, *supra* note 66; Colin and Morris, *supra* note 100; Laster, *supra* note 17.



difficult, it can add a further barrier in establishing rapport and trust with a client. During our conversation, Lawyer #9 and I generated an analogy that I believe captures the dynamics of lawyer-interpreter-client relationships. We analogized that just like a special lens for a camera that zooms into or helps bring out certain qualities in a subject that would otherwise be undetected, an interpreter can enhance the lawyer's relationship with the client. The interpretation renders the client's experience understandable to the lawyer and cultural interpretation can highlight or accent a client's story. At the same time, in the same way an incorrect or improperly used lens can distort a photograph, an interpreter can detract from the lawyer's relationship with the client. The interpreter could provide incorrect interpretation, or allow his or her subjectivity to affect the client's voice. This parallel captures the dual nature of interpreters within lawyer-client relationships – they can both enhance and detract from the relationship, sometimes at the same time.

These answers contribute to the research goal of gaining a deeper understanding of how working with interpreters affects a lawyer's representation of a refugee client. Lawyers negotiate tensions in the interpreter's role, extra complexities to communication, and the layered relationships between themselves, clients, and interpreters. All of these factors are intertwined and contribute to the intricacy of successfully representing a refugee client.

## **5.2 - Suggestions for Best Practices**

The second goal of my research was to develop best practices for working with interpreters. This goal became increasingly important during my interviews, as lawyers

were clear that for the most part, they had not received training on working with interpreters, nor were they familiar with resources for developing these skills. Although it is beyond the scope of this thesis to fully develop these best practices,<sup>318</sup> conducting this research has given me insight into the substance of these best practices and how they might be achieved. Many of the lawyers whom I interviewed were incorporating some or all of these strategies into their practices. However, developing consistency amongst refugee lawyers (and lawyers in general) is preferable, as it would ensure clients receive the best representation. It would also enable lawyers to provide decision-makers with the most authentic client voice possible, which will in turn enable decision-makers to make more just, fair decisions.

In an ideal setting, all refugee claimant clients would be able to find a lawyer who speaks their language. This would eliminate many of the complexities encountered when working with interpreters. Given the tendency of clients to view lawyers who speak their language as allies,<sup>319</sup> trust building would be easier to establish if lawyer and client speak the same language. However, increasing the language diversity in lawyers who represent refugee clients is challenging, as a multitude of studies by scholars and provincial law societies have identified numerous barriers experienced by diverse lawyers trying to enter the profession.<sup>320</sup>

---

<sup>318</sup> I plan on developing these practices more explicitly as part of another project.

<sup>319</sup> For example, Rycroft, *supra* note 66; Laster, *supra* note 17.

<sup>320</sup> See for example, Canadian Bar Association, CBA Futures Initiative, *The Future of Legal Services in Canada: Trends and Issues*, June 2013, available online: CBA Futures, [www.cbafutures.org/cba/media/mediafiles/pdf/reports/trends-issues-eng.pdf?ext=.pdf](http://www.cbafutures.org/cba/media/mediafiles/pdf/reports/trends-issues-eng.pdf?ext=.pdf) at 26; Law Society of Upper Canada, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*, October 31, 2014, available online: Law Society of Upper Canada,

Beyond increasing the language diversity of lawyers representing refugee claimant clients, lawyers must develop awareness, knowledge, and skills. I will discuss each suggestion below, touching upon some of the challenges in doing so.

### **5.2.1 - Awareness**

First, lawyers need to develop their awareness of language, culture, and interpretation. To do so, bilingual lawyers could reflect upon the differences between the languages they know, in terms of word order, manner of expressing emotions or time, and differences in verbosity between languages.<sup>321</sup> Unilingual lawyers could be exposed to examples of these differences. When thinking about these linguistic differences between languages, lawyers could also contemplate how culture affects the meaning of words and language. It would also be useful to reflect upon the use of idiomatic expressions, different regional or localized dialects, and technical language, including legal jargon and the legal process' underlying expectations.<sup>322</sup>

Part of deepening awareness about interpretation will involve acknowledging a more nuanced model of interpretation, like the example provided above. The conduit model of interpretation needs to be rejected as the ideal by lawyers, interpreters, as well as the larger legal process. This is likely to prove to be one of the biggest challenges in

---

[http://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members/Challenges\\_for\\_Racialized\\_Licensees/Consultation\\_Paper\\_Offical%2812%29.pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Offical%2812%29.pdf).

<sup>321</sup> McCaffrey, *supra* note 1 at 350.

<sup>322</sup> This goes back to Rycroft.

developing awareness as the conduit model is embedded in numerous institutional procedures and the legal system.<sup>323</sup>

Lawyers also need to understand how interpretation can affect relationships, communication, credibility, and other aspects of the legal process. For example, working with interpreters takes longer, affects rapport and trust building, and can impact a decision-maker's credibility assessment of the client. Working with interpreters via telephone or videoconference presents additional challenges. Lawyers should also be aware of the potential advantages and drawbacks of working with informal versus trained interpreters, as this can greatly impact communication and relationships. Finally, as the exercise at the beginning of Chapter 1 demonstrated, interpretation is a difficult task; above all, lawyers should not forget this idea.

### **5.2.2 - Knowledge**

Second, lawyers need to acquire knowledge about representing refugee clients that goes beyond legal concepts. Lawyers will want to become familiar with the general cultural, political, religious situations in countries of their clients. However, when doing so, lawyers should be critical of the sources of this information and be mindful of over-generalizing. Lawyers might also want to consider clients' perceptions about legal systems. This kind of knowledge is usually part of preparing a refugee claim (i.e. establishing country conditions related to persecution), but developing knowledge about the positive aspects of clients' cultures will help in contextualizing their stories.

---

<sup>323</sup> For example, the Analysis Chapter of this research; Morris, Gum Syndrome, *supra* note 75; Rycroft, *supra* note 66; the Immigration and Refugee Board Interpreter Handbook, *supra* note 16; CIOL Code of Conduct, *supra* note 123.

Lawyers will also require knowledge of the ethical and professional standards guiding working with interpreters, such as their own professional obligations and codes of conduct for interpreters. Lawyers should be especially wary of interpreters who demand referral fees, as this contravenes a lawyer's professional obligations and jeopardizes their ability to critically evaluate the interpreter's ability. They should be familiar with legislated and common law standards for interpretation, and how this might differ across various tribunals and courts.<sup>324</sup> Lawyers should know how to evaluate whether a client requires an interpreter to communicate. Many clients will have some knowledge of the lawyer's language, but will find it difficult to express complex ideas. In stressful and fast-paced situations, clients will be more likely to want to communicate in their first language.<sup>325</sup>

Lawyers should also know where to find trained interpreters and the different standards of training and accreditation obtainable. Importantly, whether working with informal or trained interpreters, lawyers should know how to evaluate the interpreter's qualifications. The interpreter's knowledge of languages and dialects, familiarity with associated culture(s), training on the interpreter's roles and responsibilities, and experience within the legal process are some factors to assess.<sup>326</sup> An assessment might not always reveal the 'ideal' interpreter, but at least a lawyer will know this moving forward in the relationship.

---

<sup>324</sup> For example, the standard of interpretation required by section 14 of the *Charter of Rights and Freedoms* varies between immigration and criminal proceedings.

<sup>325</sup> McCaffrey, *supra* note 1 at 374.

<sup>326</sup> McCaffrey, *supra* note 1 at 375 and 391.

Developing this knowledge could also prove challenging, as much of it falls outside of typical lawyer responsibilities. Further, refugee lawyers are already working with limited resources, both in terms of time and finances, so expecting them to undertake further responsibility may not be realistic. Until law schools and provincial law societies take these issues seriously, developing consistency in knowledge amongst lawyers will likely be difficult to achieve.

### 5.2.3 - Skills

Most importantly, and despite the challenges, lawyers need to transfer their awareness and knowledge into skills they can implement in their practices. Lawyers readily identified the need to speak slower, simpler, and in short segments when working with interpreters. They also highlighted the importance of asking open-ended questions, seeking the broader context, looking directly at the client, and incorporating ‘checks’ into their interviews. Like any successful lawyer-client relationship, lawyers working with interpreters must remain patient and flexible in their approach.<sup>327</sup>

Importantly, lawyers should practise explaining their expectations of the interpreter to both the interpreter and client, perhaps having an interpreter sign a document indicating they understand these responsibilities.<sup>328</sup> Lawyers should also create opportunities for ongoing feedback about the relationships from all parties, and constantly monitor the client’s comfort with the interpreter. Finally, lawyers should be able to readily raise

---

<sup>327</sup> McCaffrey, *supra* note 1 at 385.

<sup>328</sup> Although the enforceability of such a document may not be strong, lawyers felt it might highlight the importance of these expectations, especially regarding confidentiality.

concerns regarding interpretation at a hearing, as putting such concerns on the record could help with any appeal or review should the concerns have a negative impact. Again, these expectations may be difficult to implement given the constrained resources refugee lawyers work within.

Law school courses on interviewing, advocacy, and ethics might be suitable settings for teaching this awareness, knowledge, and skills, as are affiliate student-staffed legal clinics. The ethical and professional standard aspects of provincial bar admission courses could also be opportunities for learning these skills. Continuing Professional Development courses or workshops could also be tailored to include this information. Community organizations serving immigrant and refugee populations might also be interested in working with lawyers on developing these practices.

### **5.3 - Future Directions**

#### **5.3.1 - For Lawyers**

As is hopefully apparent from Chapter Four and the best practices discussion above, it is important to both increase language diversity amongst refugee lawyers and increase all lawyers' awareness, knowledge, and skills of working with interpreters. Developing a toolkit to cultivate the best practices identified in **Suggestions for Best Practices** section above would go a long way to enhancing refugee lawyers' representation of clients when working with interpreters. Wherever possible, lawyers should work with trained interpreters whom they trust. Furthermore, as Canadian society continues to become more diverse, these skills and resources will become essential for lawyers working in all areas of the law.

### 5.3.2 - For Interpreters

This research demonstrates that there is a tremendous variation in interpreter skill and practice, at least anecdotally. Given the importance of interpreters to the legal process, both in informal and formal legal settings, there is a need to create better professional standards for interpreters. Some provinces and organizations have interpreter certification bodies, such as the Society of Translators and Interpreters of British Columbia in British Columbia,<sup>329</sup> and the IRB, which accredits interpreters who interpret during refugee hearings. Codes of Conduct also exist to regulate interpreter behaviour.<sup>330</sup> However, given the issues this research indicates, these procedures are not adequate.

Better training for interpreters is required. This training should include a more nuanced view of their role, guidance on how to convey cultural or other information beyond interpretation, and more detailed training about the ethical considerations of working with lawyers. National or provincial organizations that not only accredit, but also regulate interpreters, should be established. Lawyers made it clear that there are many very skilled and ethical interpreters who could be consulted in generating these kinds of changes.

In making these recommendations, I am conscious of Laster's critique that a "call to improve the 'professionalism' of interpreters is frequently a euphemistic demand for them to comply with the law's version of their proper domain."<sup>331</sup> I am not suggesting that

---

<sup>329</sup> For more information see Society of Translators and Interpreters of British Columbia, [www.stibc.org](http://www.stibc.org).

<sup>330</sup> See for example, CIOL Code of Conduct, *supra* note 123.

<sup>331</sup> Laster, *supra* note 17 at 21.



interpreters should be confined to the legal vision of ‘conduit interpretation’. This research clarifies that this expectation is indeed a ‘legal fiction’. Instead, the recommendations for better professional standards for interpreters would be a chance to allow their skills and expertise to be acknowledged and more fully utilized by lawyers and the legal system.

### **5.3.3 - For Institutions**

As an institution, the legal profession needs to change its views about interpretation as it tends to deny the multi-faceted role that interpreters hold in formal and informal legal settings. This contradiction is endorsed by the IRB, as evidenced by their *Interpreter Handbook* expectation that interpreters provide a “clear channel of communication”.<sup>332</sup> This research confirms that this belief is also present among practising lawyers who regularly work with interpreters. Therefore, it would be beneficial for lawyers, interpreters, and clients if these institutions acknowledged the more nuanced role that interpreters hold. Again, the “legal fiction” of the conduit model needs to be discarded. Change at the institutional level would help reinforce the valuable role that interpreters play in interpreting communication.

Further, an understanding of the complex nature of communication, as discussed in the **Tangled Communication** section, reveals that telephone and videoconference interpretation is far from ideal. Although the IRB does not keep statistics on the number of RPD hearings conducted using these technologies, lawyers indicated that this happens

---

<sup>332</sup> Immigration and Refugee Board Interpreter Handbook, *supra* note 16.

as much as a quarter to half of the time. The IRB should limit this practice as much as possible. Further, the IRB should keep records of the frequency that this practice occurs. It would also be beneficial for the IRB to keep records regarding the number of hearings where interpretation is required, the pass rates and re-testing rates for interpreters accredited by the IRB, and the number of hearings where non-accredited interpreters are engaged.<sup>333</sup> Overall, increased transparency in the accreditation, review, and procedures surrounding working with interpreters at the IRB would improve confidence in refugee decision-making.

At the educational institutional level, law schools should offer courses that address working with interpreters. As many Canadian law schools have affiliated legal clinics that serve vulnerable communities,<sup>334</sup> these clinics could be an ideal location for teaching these skills. Further, provincial law societies should address the lack of explicit guidance about the ethical concerns that are raised when working with interpreters. Lawyers need to be exposed to these issues and develop resources for ensuring their practices remain competent and ethical. To help support these improvements, Continuing Professional Development courses should be created to address the complexity of working with interpreters. These ideas will be easier said than implemented, as change at the institutional level is often gradual. Again, time and financial resources will likely be a constraint to achieving change.

---

<sup>333</sup> I asked for this information as part of my *Access to Information and Privacy Act* request. The IRB indicated they did not keep records of this information. However, the IRB website notes that over 90% of IRB hearings requires interpretation services: Immigration and Refugee Board of Canada, *Complaints Concerning Interpretation*, June 2006, available online: Immigration and Refugee Board, [www.irb-cisr.gc.ca/Eng/BoaCom/references/procedures/Pages/InterpretComPla.aspx](http://www.irb-cisr.gc.ca/Eng/BoaCom/references/procedures/Pages/InterpretComPla.aspx).

<sup>334</sup> For example, the University of Ottawa Community Legal Clinic or the University of British Columbia's Law Students' Legal Advice Program.

Finally, the financial pressures of working as an interpreter should be addressed. Trained interpreters possess skills integral to the legal process, yet they are not well compensated for their expertise. Given the seriousness of interpretation to refugee claims, provincial legal aid should direct more of their limited resources towards paying interpreters at a higher rate. To increase retention of skilled interpreters and maintain better consistency in the quality of interpretation, the IRB should consider hiring interpreters as full-time employees for in-demand languages.<sup>335</sup>

#### **5.3.4 - For Research**

This research uncovers interesting themes regarding lawyers working with interpreters on refugee claims. However, as stated from the outset, this research only examined this activity from the perspective of lawyers. Further research is needed that includes the perspectives of interpreters and clients. Conducting case studies examining lawyers' relationships with clients with and without interpreters would also increase understanding. Any research that focuses on working with interpreters outside of formal legal settings would contribute to gaps in this literature.

#### **5.4 - Final Thoughts**

This thesis examined law at an informal, yet important site: the lawyer-client relationship.

My interviews with lawyers covered a wide range of topics, and revealed many themes

---

<sup>335</sup> This would help train and retain the best interpreters. In my informal conversations with interpreters, many acknowledged that interpreting in refugee hearings is the “bottom of the barrel” work. Good interpreters will frequently move onto more lucrative interpretation positions after gaining experience in the immigration or refugee context.

that illuminate this social practice within the legal process. I am confident that lawyers will find these insights useful, and that they will reflect upon and perhaps implement some of the suggestions for best practices. Above all, this research has confirmed my belief that ensuring effective communication and productive relationships between lawyers, interpreters, and clients is critical to advancing justice.

## Bibliography

### LEGISLATION

*Law Society Act*, RSO 1990 c L8.

*Legal Profession Act*, SBC 1998, c 9.

*Immigration and Refugee Protection Act*, SC 2001, c 27.

### JURISPRUDENCE

*Jahan v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 987.

### SECONDARY MATERIALS: MONOGRAPHS

Barsky, Robert F, *Constructing a Productive Other: Discourse Theory and the Convention Refugee Hearing* (Amsterdam: John Benjamins Publishing Company, 1986)

Barsky, Robert F, *Arguing and Justifying: Assessing the Convention Refugees' Choice of Movement, Motive and Host Country* (Burlington, VT: Ashgate Publishing Ltd, 2000).

Berk-Seligson, Susan, *The Bilingual Courtroom: Court Interpreters in the Judicial Process* (Chicago: University of Chicago Press, 1990).

Carlen, Pat, *Magistrates' Justice* (London: Martin Robertson, 1976).

Colin, Joan, and Morris, Ruth, *Interpreters and the Legal Process* (Winchester: Waterside Press, 1996).

Hale, Sandra, *Community Interpreting* (New York: Palgrave MacMillan, 2007).

Wadensjö, Cecilia, *Interpreting as Interaction*, (London/New York: Longman, 1998).

### SECONDARY MATERIALS: ARTICLES

Ahmad, Muneer, "Interpreting Communities" (2007) 54 *UCLA L Rev* 999.

- Avruch, Kevin, "Culture as Context, Culture as Communication: Considerations for Humanitarian Negotiators" (2004) 9 *Harvard Negotiation L Rev* 391.
- Bond, Jennifer, and Wiseman, David, "Shortchanging Justice: The Arbitrary Relationship Between Refugee System Reform and Federal Legal Aid Funding" (2012) 91 *Canadian Bar Review* 583.
- Bruner, Jerome, "Life as Narrative" (2004) 71(3) *Social Research* 691.
- Bruner, Jerome, "The Narrative Construction of Reality" (1991) 18 *Critical Inquiry* 1.
- Bryant, Susan, "The Five Habits: Building Cross-Cultural Competence in Lawyers" (2001) 8 *Clinical L Rev* 33.
- Davies, Margaret, "Ethics and Methodology in Legal Theory: A (Personal) Research Anti-Manifesto" (2002) 6 *Law Text Culture* 7.
- Eastmond, Marita, "Stories as Lived Experience: Narratives in Forced Migration Research" (2007) 20(2) *J of Refugee Studies* 248.
- Ewick, Patricia, and Silbey, Susan S, "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative" (1995) 29(2) *L & Society Rev* 197.
- Federman, Mark, "On the Media Effects of Immigration and Refugee Board Hearings via Videoconference" (2006) 19(4) *J of Refugee Studies* 433.
- Felstiner, William L F, and Sarat, Austin, "Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions" (1991-1992) 77 *Cornell L Rev* 1447.
- Galloway, Donald, "Proof and Narrative: 'Reproducing the Facts' in Refugee Claims" in Hester Lessard, Rebecca Johnson & Jeremy Webber, eds, *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community* (Vancouver: University of British Columbia Press, 2011).
- Guest, Greg, Bunce, Arwen, and Johnson, Laura "How many interviews are enough?: An Experiment with Data Saturation and Variability" (2006) 18 *Field Methods* 59.
- Hale, Sandra, "Interpreting Culture: Dealing with Cross-Cultural Issues in Court Interpreting" (2013) *Perspectives: Studies in Translatology* 1.
- Hardy, Barbara, "Towards a Poetics of Fiction: 3) An Approach through Narrative" (1968) 2(1) *NOVEL: A Forum on Fiction* 5.
- Horkheimer, Max, "Traditional and Critical Theory" in Max Horkheimer, *Critical Theory: Selected Essays* (New York: Continuum, 1968).

- Kälin, Walter, "Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing" (1986) 20(2) *International Migration Review* 230.
- Keselman, Olga, Cederborg, Ann-Christian, Lamb, Michael, and Dahlström, Örjan, "Mediated Communication with Minors in Asylum-Seeking Hearings" (2008) 21(1) *J of Refugee Studies* 103.
- Kruse, Katherine R, "Fortress in the Sand: The Plural Values of Client-Centered Representation" (2006) 12 *Clinical L Rev* 369.
- Laster, Kathy, "Legal Interpreters: Conduits to Social Justice?" (1990) 11(2) *J of Intercultural Studies* 15.
- McAdams, Dan P, "Personal Narratives and the Life Story" in Oliver P John, Richard W Robins & Lawrence A Pervin, eds, *Handbook of Personality: Theory and Research* (New York: Guilford Press, 2008).
- McCaffrey, Angela, "Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters" (2000) 6 *Clinical L Rev* 347.
- MacCormick, Neil, "Four Quadrants of Jurisprudence" in Werner Krawietz, Neil MacCormick, and Georg Henrik Von Wright, eds, *Prescriptive Formality and Normative Rationality in Modern Legal Systems* (Berlin: Duncker & Humblot, 1997).
- Miller, Bonny, "Give Them Back Their Lives: Recognizing Client Narrative in Case Theory" (1994) 93(3) *Michigan L Rev* 485.
- Morris, Ruth, "The Gum Syndrome: Predicaments in Court Interpreting" (1999) 6(1) *Forensic Linguistics* 6.
- Morris, Ruth, "The Moral Dilemmas of Court Interpreting" (1995) 1(1) *The Translator* 25.
- Phelan, James, & Rabinowitz, Peter J, "Narrative as Rhetoric" in David Herman, James Phelan, Peter J Rabinowitz, Brian Richardson & Robyn Warhol, eds, *Narrative Theory: Core Concepts and Critical Debates* (Columbus: Ohio State University Press, 2012).
- Pöllabauer, Sonja, "Interpreting in Asylum Hearings: Issues of Role, Responsibility and Power" (2004) 6(2) *Interpreting* 143.
- Rehaag, Sean, "The Role of Counsel in Canada's Refugee Determination System: An Empirical Assessment" (2011) 49 *Osgoode Hall L J* 71.

- Rehaag, Sean, "Troubling Patterns in Canadian Refugee Adjudication" (2008) 39(2) *Ottawa L Rev* 335.
- Rousseau, Cécile, Crépeau, François, Foxen, Patricia and Houle, France, "The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-Making Process of the Canadian Immigration and Refugee Board" (2002) 15(1) *J of Refugee Studies* 42.
- Rycroft, Roxanna, "Communicative Barriers in the Asylum Account", in P Shah, ed, *The Challenge of Asylum to Legal Systems* (London: Cavendish, 2005).
- Thomas, David R, "A general inductive approach for qualitative data analysis" (2006) 27(2) *American J of Evaluation* 237.
- Vogl, Anthea, "Telling Stores from Start to Finish: Exploring the Demand for Narrative in Refugee Testimony" (2013) 22(1) *Griffin L Rev* 63.

#### SECONDARY SOURCES: OTHER

- Canadian Bar Association, CBA Futures Initiative, *The Future of Legal Services in Canada: Trends and Issues*, June 2013, available online: CBA Futures, [www.cbafutures.org/cba/media/mediafiles/pdf/reports/trends-issues-eng.pdf?ext=.pdf](http://www.cbafutures.org/cba/media/mediafiles/pdf/reports/trends-issues-eng.pdf?ext=.pdf).
- Chartered Institute of Linguists*, further information available online at: Chartered Institute of Linguists, [www.ciol.org.uk/images/Membership/CPC.pdf](http://www.ciol.org.uk/images/Membership/CPC.pdf).
- Chartered Institute of Linguists, *Code of Conduct*, available online: Chartered Institute of Linguists, [www.ciol.org.uk/images/Membership/CPC.pdf](http://www.ciol.org.uk/images/Membership/CPC.pdf).
- Ellis, S Ronald, *Videoconferencing in Refugee Hearings – Ellis Report to the Immigration and Refugee Board*, 21 October 2004, available online at: Immigration and Refugee Board of Canada, [www.irb-cisr.gc.ca/Eng/transp/ReviewEval/Pages/Video.aspx](http://www.irb-cisr.gc.ca/Eng/transp/ReviewEval/Pages/Video.aspx).
- Government of Canada, Panel on Research Ethics, *Tri-Council Policy Statement: Panel on research ethics*, 2nd Edition, 2010, available online: Panel on Research Ethics, [www.pre.ethics.gc.ca/pdf/eng/tcps2/TableofConcordance\\_1st\\_Ed\\_1998\\_to\\_2nd\\_Ed\\_2010.pdf](http://www.pre.ethics.gc.ca/pdf/eng/tcps2/TableofConcordance_1st_Ed_1998_to_2nd_Ed_2010.pdf).
- Immigration and Refugee Board of Canada, *Complaints Concerning Interpretation*, June 2006, available online: Immigration and Refugee Board, [www.irb-cisr.gc.ca/Eng/BoaCom/references/procedures/Pages/InterpretComPla.aspx](http://www.irb-cisr.gc.ca/Eng/BoaCom/references/procedures/Pages/InterpretComPla.aspx).



Immigration and Refugee Board of Canada, *Immigration and Refugee Board Response to the Report on Videoconferencing in Refugee Hearings*, available online at: Immigration and Refugee Board of Canada, [www.irb-cisr.gc.ca/Eng/transp/ReviewEval/Pages/VideoRespRep.aspx](http://www.irb-cisr.gc.ca/Eng/transp/ReviewEval/Pages/VideoRespRep.aspx).

Immigration and Refugee Board of Canada, *Interpreter Handbook*, December 2012, Government of Canada, online: Immigration and Refugee Board <<http://www.irb-cisr.gc.ca/Eng/BoaCom/pubs/Pages/Interpret.aspx>>.

Immigration and Refugee Board of Canada, *Refugee Claims – Statistics, Trends and Projections, 2015-03-02*, available online: Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/Eng/RefClaDem/Pages/RefClaDemStat.aspx>.

Law Society of British Columbia, *Code of Professional Conduct for British Columbia*, October 2014.

Law Society of Upper Canada, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*, October 31, 2014, available online: Law Society of Upper Canada, [http://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members/Challenges\\_for\\_Racialized\\_Licensees/Consultation\\_Paper\\_Offical%2812%29.pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Offical%2812%29.pdf).

Law Society of Upper Canada, *Rules of Professional Conduct*, October 1, 2014.

Lawyer Services & Payment Departments, Legal Aid Ontario, *Disbursements Handbook*, June 2014, available online: Legal Aid Ontario, [www.legalaid.on.ca/en/info/manuals/disbursements%20handbook.pdf](http://www.legalaid.on.ca/en/info/manuals/disbursements%20handbook.pdf).

Lawyer Services & Payment Departments, Legal Aid Ontario, *Tariff and Billing Handbook, Chapter 4: Civil Tariff*, October 2014, available online: Legal Aid Ontario, [www.legalaid.on.ca/en/info/manuals/Tariff%20Manual\\_04%20civil%20tariff.pdf](http://www.legalaid.on.ca/en/info/manuals/Tariff%20Manual_04%20civil%20tariff.pdf).

Legal Services Society, *Disbursements Tariff*, September 2014, available online: Legal Services Society, [www.lss.bc.ca/assets/lawyers/tariffGuide/disbursements/disbursementsSept2014.pdf](http://www.lss.bc.ca/assets/lawyers/tariffGuide/disbursements/disbursementsSept2014.pdf).

Legal Services Society, *Immigration Tariff*, December 2012, available online: Legal Services Society, [www.lss.bc.ca/assets/lawyers/tariffGuide/immigration/immigrationTariffDec2012.pdf](http://www.lss.bc.ca/assets/lawyers/tariffGuide/immigration/immigrationTariffDec2012.pdf).

Macklin, Audrey, “Truth and Consequences: Credibility Determination in the Refugee Context”, Paper presented at the 3<sup>rd</sup> Annual Conference of the International Association of Refugee Law Judges, Ottawa, Canada, 1998.

*Multilingual Community Interpreter Services*, available online: Multilingual Community Interpreter Services, [mcislanguages.com/about-us](http://mcislanguages.com/about-us).

Multilingual Community Interpreter Services, *Standards for Community Interpreting Services*, available online at: Multilingual Community Interpreter Services [wiki.settlementatwork.org/w/uploads/MCIS-Tips\\_for\\_Working\\_with\\_Interpreters.pdf](http://wiki.settlementatwork.org/w/uploads/MCIS-Tips_for_Working_with_Interpreters.pdf).

Society of Translators and Interpreters of British Columbia, available online: Society of Translators and Interpreters of British Columbia, [www.stibc.org](http://www.stibc.org).