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# ITIA BULLETIN

December 2011

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## ■ Editorial

Dear Readers,

It's that magical time of the year again so let's forget about all our woes and sorrows and focus on the bright side of life. I want to share two positive professional experiences which have recently filled me with a lot of joy and optimism for the future. The first one took place at the Letterkenny Civil Registry Office. I was delighted to learn there that the registrar's awareness of the quality of interpreting services was a lot higher than I had previously imagined. The registrar actually had refused to conduct the appointment for notification of marriage on the grounds that the interpreter present had no proper qualifications and was not registered. When I attended the rescheduled appointment as the interpreter, I was required to present proof of professional qualifications. I was even more pleased to find out that the registrar was familiar with the ITIA live register of Professional Members.

The second positive experience occurred when a client contacted me with a request to attend a medico-legal assessment. The client emphasised that the interpreter must be "certified and registered" as this was demanded by the plaintiff's solicitor. While I explained to the client that "certified" in Ireland really refers to translators and not to interpreters, he was more than happy to use my service on the basis that I was registered as a Professional Member of ITIA.

It seems that our association's long years of hard work aimed at raising awareness of our profession are finally paying off. On behalf of all professional translators and interpreters I hope that this trend continues and that we gain the level of recognition that we truly deserve. Happy Christmas and a prosperous New Year!

Nollaig Shona!

**Adam Brozynski**  
Editor ITIA Bulletin  
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## ■ Trial aborted after juror criticises interpreter

A DISPUTE about the alleged mistranslation of the Indonesian word "push" has cost taxpayers tens of thousands of dollars after it caused a criminal trial to be aborted. The suspected mistake occurred as an accused Indonesian people smuggler gave evidence in his trial at the District Court last month. The perceived problems were raised by a juror who speaks Indonesian and wrote a note to the judge alerting him to "some discrepancies in the translation" of the questions put to the accused. The problem - which the now retired District Court

Judge David Freeman said he had not encountered in 31 years on the bench - led to the discharge of the jury on the 10<sup>th</sup> day of the trial, which will now have to be run again next year.

In a second note, the juror gave two examples; in one the words "did you stop anyone moving" were allegedly translated as "did you push anyone", in the other the interpreter allegedly translated the word "deny" as "push".

The head of the school of language and linguistics at the University of NSW, associate Professor Ludmila Stern, said some interpreters were not very good and their work should be assessed by independent experts or other interpreters.

In this case, lawyers debated for several hours if the trial should be aborted, or the accused be asked to give his evidence again with the help of another interpreter. Ironically, the interpreter criticised by the juror was used only after the accused's lawyer had criticised an earlier interpreter. The court heard both interpreters had the appropriate level of qualification, and the first interpreter - who was substituted after objections - was a university lecturer in Indonesian.

The problem was exacerbated because the juror had told the other members of the jury about the observations. Judge Freeman said he could not question the juror about it to determine what the impact on the jury might have been. "I must not intrude into the jury room. I can't ask you questions about what you are thinking or why you are thinking it because that would be entirely improper," he told the jury.

Judge Freeman also told the juror their reaction was "perfectly understandable". "In a sense, that juror has become like a witness in the trial ... Now that is a situation which we can't allow to exist, because at the end of the trial I have to be in a position where I say to you that the evidence upon which you reach your decision is that which comes from the witness box." Eventually, he agreed that the trial had to be aborted.

Geesche Jacobsen  
November 8, 2011

Original source: <http://tinyurl.com/cfuxckf>

## ■ Translation Vexation: Non-English speakers and affidavit evidence

*PRACTITIONERS INSTRUCTED BY CLIENTS WHO CANNOT UNDERSTAND ENGLISH WILL UNDOUBTEDLY ENCOUNTER DIFFICULTIES WHEN THEIR CLIENTS ARE THEN CALLED UPON TO SWEAR AFFIDAVITS. DAVID BROUGHTON CRACKS OPEN THE DICTIONARY.*

“In the view of this court, a solicitor or commissioner for oaths administering an oath for the purpose of taking an affidavit owes a duty to the court to be satisfied that the deponent is competent to make the affidavit in English. Such a duty is inherent in the nature of the function being performed and the authority conferred by law on such officers to administer an oath for that purpose” (*Cooke J in Saleem v Minister for Justice*).

Practitioners instructed by clients who either cannot read or speak the English language will undoubtedly encounter difficulty when their clients are then called upon to swear affidavits – an integral part of most litigation. The manner in which sworn affidavit evidence should be adduced from non-English speaking deponents has been the subject of recent judicial comment.

The procedure for the swearing and filing of affidavits by litigants who speak little or no English is not provided for either in legislation or in the rules of court. It may be the case that practitioners have proceeded on an ad hoc basis when taking instructions from, and drafting affidavits for, non-English speakers. However, the decision of the High Court in *Saleem v Minister for Justice* has illustrated that affidavits that are not sworn pursuant to certain procedures cannot be relied upon.

The implications for practitioners in the area of asylum and immigration law are obvious – however, the problem presented is one that will be seen across the spectrum of litigation.

### Communication error

In the *Saleem* case, the applicant, a Pakistani national, had applied for long-term residency to the Minister for Justice. No decision had issued some 15 months later, and the applicant sought mandamus by way of judicial review. Those proceedings were compromised, with the minister giving a commitment to make a determination on the application. A refusal followed, on the basis that the applicant’s work permit had expired shortly after the institution of proceedings.

The applicant then sought to quash the refusal, essentially on the ground that his work permit had been valid at the time of application and only expired during a period of allegedly unlawful delay.

At the hearing of the proceedings, the respondent drew attention to an error in the grounding affidavit in the first set of proceedings: the applicant had averred that he was in certain employment at the time of the swearing, whereas he had later admitted to having been made redundant some 12 months earlier.

The applicant sought to explain the error by stating that he did not speak English and that there must have been an error in communication between him and a friend who translated his instructions prior to the drafting of the affidavit. In consequence of this, the court considered whether to strike out the applicant’s affidavit, on the basis that he could not have understood the contents of it.

### Appropriate certification

Cooke J found that, in light of the above, the applicant’s affidavits were inadmissible as sources of evidence. He noted that the issue of translation of affidavits had arisen previously in *ANM v Refugee Appeals Tribunal*, but that the “correct procedure for adducing evidence on affidavit from a witness who speaks neither English nor Irish does not appear to have been the subject of direct statutory regulation or provided for in the Rules of the Superior Courts and has not been addressed ... in any modern case law”.

The starting point in relation to this issue, according to Cooke J, was with order 40, rule 14 of the Rules of the Superior Courts 1986, which provides: “Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature or mark in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.”

Having found that the applicant was illiterate as concerned the English language, Cooke J found that rule 14 applied and that the affidavit should have contained the appropriate certification. The judge then indicated that, even in the absence of certification, the court retained a residual discretion to admit the affidavit

if satisfied that it has been “read over and perfectly understood” by the applicant. That not being the case, the affidavit was inadmissible.

The requirement of order 40, rule 14 was further emphasised by Cooke J in the case of *AA v Refugee Appeals Tribunal*, where, again, the applicant’s affidavit was ruled inadmissible due to failure to comply with the requirements of the rule.

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## FAST FACTS

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- The procedure for the swearing and filing of affidavits by litigants who speak little or no English is not provided for either in legislation or in the rules of court
  - Affidavits that are not sworn pursuant to certain procedures cannot be relied upon
  - Where a deponent does not speak English at all, the ‘three affidavit’ procedure must be adopted, whereby the affidavit is sworn in the language of the deponent, translated, and both the original and certified translation exhibited to the affidavit of the translator
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## Correct approach

Cooke J went on to find that, given that the applicant did not speak English at all, a further procedure should be followed for the swearing of affidavits by such persons. The judge stated: “The correct approach is that the affidavit should be sworn originally by the applicant in the language he speaks. This should be translated by an appropriately qualified translator and both the original and the certified translation should be put in evidence as exhibits to an affidavit in English sworn by the translator.”

This approach is one that was recommended in the commentary on order 41 of the Rules of the Supreme Court of England and Wales, and subsequently adopted into the practice directions to the English Civil Procedure Rules 1998. Cooke J noted that there may exist “a practice whereby a non-English speaking deponent swears an affidavit in English containing an averment or a certificate in the jurat to the effect that it has been first read over to the deponent in translation and a separate affidavit is filed by the interpreter to that effect”. The judge pointed out that such a practice was deprecated by Vaisey J in the 1947 English case of *In re Letters Patent Granted to Sarazin*. It is submitted that this practice would not be greeted favourably in light of the Saleem decision, and that the “three affidavit” procedure outlined by Cooke J should be followed as a matter of best practice.

## “Three affidavit” procedure

It is clear, therefore, that where a deponent is able to speak – but not write – English, the requirements of order 40, rule 14 must be complied with by the solicitor or commissioner for oaths taking the evidence. In the absence of the appropriate certification in the jurat, an affidavit will be inadmissible as evidence.

Where a deponent does not speak English at all, the “three affidavit” procedure must be adopted, whereby the affidavit is sworn in the language of the deponent, translated, and both the original and certified translation exhibited to the affidavit of the translator.

This process is an onerous one. No doubt the process will present difficulty to practitioners in terms of the additional time and expense of translation.

In most cases, the initial draft will be in English, thereby requiring two bouts of translation. Furthermore, there remains a lack of clarity as to whether the foreign language affidavit may be sworn before a solicitor or commissioner for oaths with the assistance of a translator, or whether the solicitor or commissioner for oaths must speak the language of the deponent.

However, there is no doubt that failure to adhere to the procedure will likely result in the inadmissibility of the evidence.

It may be the case that failure to adhere to the procedures outlined above will require that proceedings be adjourned to facilitate the filing of corrective affidavits. This was not the case in Saleem or AA, as Cooke J rejected the applications on their merits in any event. However, in time, litigants may find themselves fixed with costs orders for such adjournments, as could their legal advisors pursuant to order 99, rule 6.

As such, it is incumbent upon all practitioners to be familiar with the procedures in relation to illiterate or non-English speaking deponents and to ensure their duty to the court is upheld. “There remains a lack of clarity as to whether the foreign language affidavit may be sworn before a solicitor or commissioner for oaths with the assistance of a translator, or whether the solicitor or commissioner for oaths must speak the language of the deponent”

This article was originally published in the Law Society Gazette and is reproduced with permission of the publisher.

David Boughton, Practising Barrister

Original source: <http://tinyurl.com/d8kza7s>

## ■ Joining the ITIA

The *Irish Translators' & Interpreters' Association* is pleased to welcome new members to the association. We currently have the following categories of membership:

- ◆ Professional
- ◆ Associate
- ◆ Corporate
- ◆ Institutional
- ◆ Student
- ◆ Honorary

*Professional Membership* is awarded to translators or interpreters who meet the strict criteria of the ITIA based on qualification and level of experience. Applicants must also achieve a PASS in the annual Professional Membership Examination (translator or interpreter) set by the ITIA.

*Associate Membership* is available to translators and interpreters who are starting out on their careers and to those who do not work full-time as a translator or interpreter. Many members avail of Associate Membership until such time as they have acquired the requisite experience and/or qualifications to apply for Professional Membership. Associate Membership is also availed of by people with a professional interest in the professions of translation and interpreting (e.g. terminologists, translation/interpreting tutors etc.) and by those who have a general interest in these professions.

*Corporate Membership* is available to translation companies. As this category is currently under review, we are not accepting applications at the moment.

The next issue of the ITIA Bulletin will be out in two months. If you have any contributions, suggestions or scandals that you would like to share with over 1,000 subscribers worldwide, send them to Adam Brozynski at [theitiabulletin@gmail.com](mailto:theitiabulletin@gmail.com).

### Subscribing to the ITIA Bulletin

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*Institutional Membership* is available to bodies that do not function as commercial agencies, for example university centres for translation and interpreting studies or cultural institutes. Application documents for Institutional membership are currently being prepared.

*Student Membership* is available to persons undertaking undergraduate studies in any discipline or those undertaking postgraduate studies in translation or interpreting.

*Honorary Membership* is awarded by the ITIA AGM to persons in Ireland or abroad who have distinguished themselves in the field of translation or interpreting. For further details and application forms, please see our website at <http://tinyurl.com/y65bg7b>

### New Associate Members of the ITIA - November / December 2011

#### RENATA BAIDAN

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commercial, legal, financial, tourism

#### OLEKSANDR GRACHOV

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RUSSIAN and ESTONIAN from English – legal, technical

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ENGLISH to and from POLISH - academic, websites

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## CHRISTOPHER ROBERT TAUCHEN

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ENGLISH from Russian – literary, legal, marketing

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To keep up-to-date with our latest activities, events and news you can now follow the Irish Translators' and Interpreters' Association on both Facebook and LinkedIn.

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## ■ Judge hits out at interpreters' service

During a district court sitting in Longford recently, Judge Seamus Hughes directed that a manager at Lionbridge – the company which provides the courts with interpretation services - attend one of his courts “as soon as possible” to enable him to address what he believes is “a serious decline” in the service being provided by the company. The judge’s order was made after a case involving a foreign man who was being assisted by a female interpreter from the company.

The full story is not available online. It was published in Longford Leader on 9 November, 2011.

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## ■ Conference Report: IPCITI

The International Postgraduate Conference in Translation and Interpreting (IPCITI) is an annual event, co-run by Edinburgh University, Heriot-Watt University, Dublin City University and Manchester University, and which brings together PhD students, recent PhD graduates, M.A. students and experienced researchers, translators and interpreters from all around the world. I attended the latest conference from 28th to the 30th of October at Edinburgh University, Scotland.

I enjoyed the keynote lecture on simultaneous conference interpreting by Dr Kilian G Seeber of the University of Geneva. He believes that Interpreters are reluctant to engage in areas that have long been used in other disciplines, such as the area of cognitive workload.

PhD student Magdalena Dombek from Dublin City University examined why people are willing to help with crowdsourced translations. Her research explores how internet users provide translations on a voluntary basis, and she explored in more detail the motivation which is turning global media consumers into active producers of online content, making modern translation widely accessible and providing social networking platforms as new collaborative environments for translation production and evaluation.

On a related topic, PhD student Luciana Kaross from the University of Manchester in her presentation entitled “The translation of Morrissey’s Irony and Humour in the Context of Brazilian Portuguese Media” referred to the translation of pop songs especially the practices of translation employed in communities that depend heavily on translation in order to understand the lyrics.

This is the case of the translation of Morrissey’s lyrics from English to Brazilian Portuguese taking into consideration the media in which they appear (magazines, websites, and social networks) and the fact that all these translations are produced by non professional translators

One of the workshops I attended was presented by researcher An-Chi Chen of the University of Leeds. The title of the workshop was “Pathways to Expertise - Exploring the Development of Interpreters from Novice to Experts” and it began by focusing on interpreters’ career development and looked at how interpreters improve their performance once they leave university. Her study looks into the nature of interpreting learning and the development of professional knowledge in the interpreting profession. She used the idea of Community of Practice and the notion of trajectory to study how a student interpreter develops from a novice to a professional interpreter.

The study seeks to identify the correlation between interpreter learning and interpreting development, analysing the various scenarios, taking into consideration not only the acquisition of cognitive interpreting skills but also gradual participation in the interpreting community.

Another very useful workshop was on the subject of note taking for interpreting, presented by Kirsty Heimerl-Moggan of the University of Central Lancashire. She referred to various experimental techniques and strategies in notetaking, with a

particular focus on reformulating the concept of the notetaking symbols.

Dr Nilce Pereira of the University of Sao Paulo, Brazil, gave a paper entitled “Book Illustrations in Translated Classical Works of Fiction in Brazil: A Translational Approach”. She spoke about book illustration through the prism of translation studies. Her research shows that book illustrations are created in very similar ways to translations and are recreated to fit in with a particular literary or cultural trend.

After the presentations and key lectures there was time for discussion. I found this particularly informative as many participants were able to comment on and add to the panelists’ suggestions. The entire conference was a very enjoyable experience. Most translation and interpreting academics and researchers were very approachable and happy to have a chat during coffee breaks. Next year’s IPCITI conference will be organized by Dublin City University. For anyone interested in what’s happening in the field of translation and interpreting, IPCITI 2012 is the place to be. Hopefully see you there.

Miren Maialen Samper

For more info: <http://tinyurl.com/d4gx3gk>

## ■ Interpreter/detective provides startling evidence

### ARTICLE EXCERPTS

[...]Hadi is the self-appointed “investigator” who first offered his services as a translator to the defence team representing Mohammad Shafia, Tooba Mohammad Yahya and their eldest son, Hamed, after their arrests in the drowning deaths of four of their family members made headlines about two years ago. Shortly after being hired, however, and without the lawyers’ knowledge, Hadi had morphed into the Afghan version of Inspector Jacques Clouseau, the bumbling character played famously by the late Peter Sellers in the Pink Panther series.

Though Peter Kemp and David Crowe, who respectively represent the 58-year-old Shafia and the 41-year-old Yahya, hired Hadi, it was purely as a translator. He didn’t tell them what he was doing in his investigation, though Kemp, the lawyer who seems to have been most involved with him, might have put his mind to why a simple translator, let alone this one, needed to have every lick of evidence in the case.

In any case, Hadi duly signed confidentiality agreements with the two lawyers and then proceeded to blithely ignore them. He cheerily nodded in agreement when Crowe in cross-examination said mildly, “You decided the search for the truth was more important?” In other words, on one level, he was working for Kemp and Crowe as an interpreter.

On another, unknown to the two lawyers, he was working for Shafia and blossoming into Insp. Clouseau - visiting the scene at the Kingston Mills locks; meeting and talking to the family’s surviving children (“I told them that yes, your parents are absolutely innocent”); once even travelling with a Shafia family relative, who was also his friend, to Toronto. “Okay,” Hadi pronounced, “for now, you are not guilty in my eyes, I mean not guilty of murder.” His transition from detective to judge was complete.[...]

The full article can be found at: <http://tinyurl.com/brvqbdh>

## ■ Freelancing for a translation company – DCU Language Services Ltd.

During the one day ITIA event on “Starting out as a Translator/Interpreter”, I gave a brief presentation on Freelancing for a Translation Company, written from the perspective of working for DCU Language Services as a freelance translator or interpreter. My aim with this article is to provide advice to anyone looking to become a full-time freelance language professional, based on DCU Language Services’ experience working with freelancers.

### Background information – DCU Language Services

DCU Language Services provides professional and high quality translation, interpreting and language testing services and we have been in operation for the past 20 years. Established in 1992 out of the School of Applied Languages and Intercultural Studies (SALIS) in Dublin City University, the Company now operates as an independent subsidiary of the University. We provide services to a broad range of clients and our main areas of specialisation include:

- ◆ Document translations for both corporate and private individuals into and from all European languages and most world languages, and across a vast assortment of subject matters.
- ◆ Oral Interpreting at international conferences in Ireland and abroad, business meetings, Driver Theory Test centres, medical appointments, health and safety courses, and for tour groups.

- ◆ Language testing and assessment for the purposes of recruitment.
- ◆ We also act as the English Language Training Centre of DCU, providing professional language training to the adult and junior markets. The range of programmes includes Exam Preparation, English for Academic Purposes, Teacher Development Courses, English for Special Purposes (Law, Mining, etc.), Day and Evening Classes for General English.

As a translation company operating for the past 20 years, we have established a very broad customer base in industries such as: Professional Services, construction, engineering, financial, government, healthcare, hospitality, IT, legal, media, multinationals, NGOs, pharmaceutical, sporting bodies, scientific, event organisers.

## Important Factors when Freelancing for a Company

### Qualifications:

We prefer to work with freelancers who have educational qualifications in their field, preferably up to Masters Level. If you don't have a qualification directly related to your field of work then it is advisable to at least have a language related qualification and/or relevant experience in the area. If you want to boost your profile and qualifications even further, there are many professional organisations which you can become a member of, such as the ITIA and its equivalents in other countries. For Irish language translators, *Foras na Gaeilge* certification is very highly regarded.

### Experience:

In addition to education it is vital for us that our freelancers have prior working experience, and our ideal minimum is 3 years' working experience. If you are just starting out as a translator or interpreter, this is going to be harder to compete with so make sure that you highlight any working experience through your studies, internships, or volunteer work completed. We are also interested to know freelancer's experience with software and IT related knowledge (translation technology tools, design packages, Microsoft office, etc.) and any areas of specialisation which may set you apart from others.

### Languages:

This always depends on customer demand, but usually constantly in demand are main European languages (Irish, French, Spanish, German, Italian, Dutch); Scandinavian languages; Eastern European languages (Polish, Lithuanian, Latvian, Slovak, Czech, Romanian); Russian; Chinese; Japanese and Arabic.

As much as possible, we endeavour to only allow freelancers to work into their native language. It is imperative to highlight your language pairs to companies, and keep up to date your languages. Be clear about your languages and the extent of your knowledge of them – there is no point in lying about your level of knowledge, as this will become apparent through the course of your work.

### Availability:

There is no point in contacting a translation company unless you are available to take on work, and when you do contact a company you should outline the level of your availability (i.e. any days not available). Also, ensure that you let the company know of any holiday periods and how free you are to travel for assignments, especially as an interpreter.

Another essential factor for freelancers from the perspective of a Company is to be contactable. This means regularly checking emails, answering your phone and replying to voicemails. Due to the nature of how you work, we need to ensure that we can rely on contacting you – if we can't contact you, we can't use you.

### Relationship with the Company:

Freelancers should look to translation companies as their employers, and this means they should be professional at all times: maintain high standards of quality, stick to deadlines, and maintain strict confidentiality with documents, and during interpreting assignments. We want to work with people who are going to be personable, professional and flexible; who have good communication styles and customer service abilities.

### Freelancers working for DCU LS

We currently have a network of around 700 freelancers on our lists, and these are based in Ireland and abroad. Of these, we work with a handful for the main language pairs on a regular basis, but we are always looking for new translators or interpreters.

If you would like to work with us, please review our website at [www.dculs.dcu.ie](http://www.dculs.dcu.ie), and if you would like to work with us, please email your CV and cover letter to [interpreting@dcu.ie](mailto:interpreting@dcu.ie), or [translations@dcu.ie](mailto:translations@dcu.ie).

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## ■ ITIA Resources for Translators

For more information about the *Irish Translators' & Interpreters' Association* and its activities, please visit our website at [www.translatorsassociation.ie](http://www.translatorsassociation.ie).