



## **INTERNATIONAL ASSOCIATION OF JUDGES**

### **STUDY COMMISSION 3**

**SUBMISSION OF: TE HUNGA KAIWKAWA O AOTEAROA**

**THE JUDGES ASSOCIATION OF NEW ZEALAND**

## **INTERPRETATION OF CRIMINAL COURTS**

### **Introduction and statutory context:**

We have two 'official' languages Te Reo (Maori) and English. New Zealand is a multicultural country with a predominance of European, Maori, Pacific and Asian residents. Most courts and tribunals in Aotearoa New Zealand conduct their hearings in the English language. For many participants, English is not their first language. They may struggle to understand and speak English, which could disadvantage them in the hearing process. Aotearoa New Zealand's approach to interpretation is however broader than mere protection of linguistic presence.

Here the role of an interpreter is to provide effective communication assistance. The term "interpreter" is defined by s 4(1) of the Evidence Act as including "a person who provides communication assistance to a defendant or a witness". Interpretation from one language to another is a form of "communication assistance", a term also defined by s 4(1) of that Act.

Section 80 of the Evidence Act 2016 provides a defendant in a criminal proceeding is entitled to communication assistance to enable the defendant to understand the proceeding and give evidence if the defendant elects to do so, on the application of the defendant or the initiative of the judge. A witness is also entitled to assistance on the application of the witness, any party or the initiative of the judge.

Following consideration of the legal and practical issues involving the use of interpreters in Court, a Cross Bench Committee made recommendations for a proposed Practice Note to the Chief Judges of the High Court and District Court. The recommendations are presently under consideration and are likely to be incorporated into criminal procedure rules.

The following Acts, rules and regulations govern the use of interpreters in New Zealand courts:

- [Witnesses and Interpreters Fees Regulations 1974](#);
- [Subpart 3 of Part 1](#) of the DCRs 2014: Affidavits in languages other than English must be translated ([r 1.19](#)); translation into Māori ([rr 1.16](#) and [1.18](#));
- [Section 6](#) of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- [Section 7](#) and [sch 6](#) of the Māori Language Act 2016: Sets out a right to speak Māori in legal proceedings and sets out a regime for the certification of Māori interpreters;
- [Section 24\(g\)](#) of the NZBORA: Provides a general right to an interpreter;
- [Section 14](#) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003: Requires the provision of interpreters in respect of care recipients where the care recipient cannot understand English.
- [Section 78](#) of the Evidence Act 2006: Interpreters to act on oath or affirmation.
- [Section 9](#) of the Children, Young Persons, and Their Families Act 1989: The services of an interpreter are to be provided to any child or young person in any proceedings under this Act, and to any parent, guardian or other person having the care of the child or young person, whose first or preferred language is te Reo Māori or any language other than English

## **QUESTIONS AND ANSWERS**

### **1. What criteria must be met for an interpreter to be appointed? Does this differ if it is for a party to the case, or a witness?**

The starting point for the appointment of interpreters is rights based. Every participant is entitled to effective communication in any court proceeding. Any participant must have their communication rights protected including their right of “Linguistic Presence” in any court proceeding. This includes where necessary the interrelated ‘translation’ of court exhibits, reports, statements and other material used in court proceedings.

### **2. Is the interpretation limited to certain languages?**

No. All languages. All modes of communication.

### **3. Who appoints the interpreter?**

The Court has the power to order that the State provide an interpreter(s) provided that the Court is satisfied that it is in the interests of justice.

### **4. Are there standard requirements for the quality of the interpretation or qualifications of the interpreter?**

Yes. These are contained in broad guidelines that form part of the interpreters ‘contract for services’ to the Ministry of Justice. Guideline and Standard Contract at Appendices 1 and 2.

#### **(a) If so, how does the judge ensure compliance?**

Judges do not ensure compliance; this is performed by the Minister

**(b) In any event, how does the Judge ensure that the interpretation is accurate and meets good standards?**

There is no formal requirement for a Judge to ensure that the ongoing interpretation is accurate and meets good standards beyond an application brought by a party to a judicial proceeding for a separate hearing on that issue

**5. Are there legal obligations for court interpreters?**

Yes. See Appendices 1 and 2. Interpreters working in Courts and Tribunals will be required to make an oath, or affirmation, in the appropriate form before the interpreter commences to undertake their role.

**6. For the main hearing of the case is the translation of the whole hearing or only part of the hearing? If it is only part, which parts, and why is the whole hearing not translated?**

The lead decision on the right of linguistic presence is found in: *Chaka Sani Abdula v The Queen (SC 80/2010) [2011] NZSC 130*. (See summary at Appendix 3) The preference is for entire interpretation of court proceedings and entire translation of exhibits. However, an individual's linguistic ability for English as a second language can modify that preference by agreement with the individual, the parties and the court and so adapt the interpretation mode to provide effective communication assistance.

**The Importance of Good Interpretation and Good Communication for the Verdict**

**7. If the quality of interpretation could affect the outcome of a case:**

**(a) Do you consider this applies more in certain types of cases than others and, if so, what types of cases?**

As a right based effective communication approach is taken the right of linguistic presence or effective communication assistance is fundamental to a fair hearing of any court proceeding.

**(b) Is it a problem that can be remedied, or a problem that the judiciary must live with? And if yes, how do we secure that no one is wrongfully convicted?**

As a right based effective communication approach is taken the remedy is found on appeal where communication is ineffective and/or linguistic presence unprotected.

**8. Is there a risk that people who have difficulty explaining themselves, possibly due to low intelligence or poor education, suffer disadvantages at the court? If yes, what remedies exist?**

Yes. Collateral to a right of effective communication are a suite of statutory and inherent powers to direct alternate modes of giving evidence and vary the usual conduct of proceedings. For example:

(a) Intensively judge managed Sexual Violation trials where witness questions are prepared in advance of trial and asked by a communication assistant as opposed to counsel.

(b) The accused person may be obscured from the view of the witness while the witness is required to appear in court;

(c) Evidential statements from complainants are pre-recorded and become their primary testimony. Cross examination may be pre-recorded or undertaken by Closed Circuit television. In either circumstance from a witness friendly video enabled suite where only the witness, a court attendant a support person and if required a communication assistant are present.

(c) The public and any person not required by the court are excluded from the courtroom when the complainant is giving evidence.

Furthermore, New Zealand Courts – are increasingly alive to the need to consider whether communication assistance should be provided for vulnerable witnesses. Vulnerability may encompass a wide range of factors rather than the more traditional interpretation and hearing disability issues.

Communication assistance is a matter of entitlement, not indulgence and the possible need for its provision is addressed well before trial to ensure that when the trial takes place it is a fair one. The proactive onus on defence counsel and trial Judges is clear. The assessment and communication assistance orders are focussed on the needs of the defendant or witness in question.

**9. Is intercultural communication a subject of training for judges or part of the instruction of juries?**

Yes. There is intensive intercultural communication training throughout judicial service. Yes, instructions are given to a jury about intercultural communication, the use of English as a second language and any communication assistance used in the proceedings.

**Nonverbal Communication in the Courtroom**

**10. Can the body language of accused persons, victims, or witnesses influence the outcome of a case?**

Yes. There is a standard direction on this issue as part of ‘How to judge ‘credibility and reliability. A Jury is directed that witness demeanour is not a reliable tool for assessment of either credibility or reliability. Due to the multicultural nature of Aotearoa New Zealand society, judges must be alert to cultural difference in the courtroom.

**11. Is nonverbal communication a subject of training for judges or part of the instruction of juries?**

Yes, there is training specifically directed to this point especially around effective communication assistance. Yes, there is a jury warning on witness demeanour, the layout of the courtroom, the use of prisoner escorts or alternate modes of evidence.

**Judge Gerard Winter**

**President J.A.N.Z.**

**Te Hunga Kaiwhakawa o Aotearoa**

**Judges Association of New Zealand**

## **Appendix 1: Guidelines for interpreters**

These Guidelines set out the conduct we expect of all Ministry-appointed interpreters in a hearing. They also explain court protocol. You'll need to be familiar with these Guidelines before you start working as an interpreter for our Ministry.

The Guidelines also form part of the Standard Terms and Conditions for Interpreters in Courts and Tribunals (Standard Terms), which apply to every booking agreement made by our Ministry. The Standard Terms require that the interpreter comply with any guidelines or policies for interpreting while providing their services.

Read our Ministry's [Standard Terms and Conditions for interpreters in Courts and Tribunals](#)

Undertake a criminal record check

Before you can provide interpreter services in courts and tribunals, you must have undertaken a recent criminal record check and sent us a copy of your record to notify us of any convictions. If you have a conviction, the Ministry will assess whether we will continue to engage your services. This process takes around five working days.

You can request a copy of your criminal record on the Ministry of Justice website:

[Get your criminal record](#)

Conduct expected of interpreters in court or tribunal hearing

Rules of professional conduct for interpreters  
Interpreters working in courts and tribunals act strictly in the interests of the court or tribunal they serve. This overrides any duty to the parties in a case.

The interpreter's main task is to interpret statements, evidence, and legal exchanges for those who find it hard to understand or respond in English. It's important to remember that an interpreter must not act in any way as an advocate for the person they're providing interpreter services for (for example, trying to influence a case on behalf of that person or anyone else participating in the hearing).

An interpreter must demonstrate professional behaviour by:

- being respectful and cooperative and impartial at all times
- being fully informed of the nature of the proceedings, and the running of the court or tribunal
- avoiding professional and personal conduct that could discredit the court or tribunal
- keeping all case details confidential
- not recommending, or commenting on, any lawyer, law firm, business or agency to clients
- not researching into the case or making conclusions about the law or facts of the case.

Disclosing a conflict of interest  
Interpreters should disclose a conflict of interest to the Central Registry (CR) before they confirm their availability for a booking. However, if they become aware of a conflict of interest after taking the booking, interpreters must talk to CR, court staff or the presiding judicial officer (the judge, disputes tribunal referee or tenancy adjudicator), who will work with them to determine whether they can continue with the booking.

A conflict of interest arises when the interpreter's independence, objectivity or impartiality can be called into question. A conflict of interest may occur if the interpreter has:

- any personal knowledge or involvement with the case
- involvement with the parties or other person connected to the case, such as a lawyer, witness, or victim
- an appearance or perception of a conflict of interest. An example could be interpreting for a hearing where you or your business could financially benefit from the outcome.

An interpreter must be impartial. Interpreters have a duty to interpret accurately and to remain impartial. Professional detachment must be maintained at all times.

When interpreting a court or tribunal hearing, being impartial means setting aside personal, religious, or cultural beliefs or circumstances. It also means avoiding unnecessary contact with witnesses, victims, jurors, and parties to the case, including their families/whānau and lawyers. This shouldn't limit appropriate contact, such as what's needed to adequately prepare for an assignment.

Being impartial also means an interpreter must not give advice of any kind to the person they're interpreting for, or express a personal opinion on the case before the court or tribunal. If the person the interpreter is interpreting for is confused about the proceedings, the interpreter must tell the person's lawyer or representative, case manager from the court or tribunal, or the presiding officer.

If an interpreter feels their objectivity is threatened, they should withdraw from the assignment.

Competency standards expected of an interpreter. Interpreters must take all reasonable care to be accurate, competent and professional. Competency standards expected of an interpreter are to:

- speak clearly and loud enough to be heard in the hearing room
- interpret in the first and second grammatical person - that is, using "I" or "you", except when summarising legal argument or exchanges between parties
- not alter, add, or leave out anything when interpreting - the interpretation should be precise including, as far as possible, translating offensive language such as derogatory terms and swear words
- ask for a statement to be repeated, rephrased, or explained if it's unclear
- immediately acknowledge mistakes by informing the court and parties. The interpreter can ask for a pause in proceedings and inform the court when they're ready to continue.
- immediately inform the court or tribunal if the interpreter and the person who requires the interpreter need to have a conversation for the sake of clarifying something
- immediately inform the court or tribunal if a statement or question cannot be accurately interpreted because of cultural or linguistic differences between the two languages. If possible, the interpreter should help the lawyer, representative, party, or presiding officer to rephrase the statement or question so it can be accurately interpreted.
- decline to interpret in a case, or ask to be replaced if the case has begun, if they feel they don't have the required interpreting skills.

Information is to be kept confidential. Interpreters must keep all case information confidential, unless a court or tribunal orders them to disclose it.

Interpreters may be given documents about the case in advance to help them prepare for the hearing. If this happens, the interpreter must keep these documents confidential. The documents may include a copy of the charges, summary of facts, witness statements, and expert witness briefs. In cases where there is simultaneous interpretation, such as a jury trial, the interpreter may be given the lawyer's opening and closing addresses or the judge's summing up.

You must keep all details relating to a case confidential. There may also be suppression orders in place.

[Read more about name suppression](#)

The Ministry of Justice Privacy Guidelines for providers of Justice Services are a useful resource that can help you to keep information confidential and secure, and meet our requirements in the Standard Terms. You can read the guidelines on our website:

[Privacy Guidelines for providers of Justice Services](#)

Information is not to be used for personal gain. An interpreter must not take advantage of knowledge obtained when acting as an interpreter or through access to court information, facilities or privileges, for their own personal gain or to benefit another person.

If an interpreter feels their role as interpreter is being misused by any party, they must inform the court or tribunal.

Unauthorised payments or gifts must not be accepted. Where the interpreter has been engaged by the court or tribunal, the Ministry will authorise payment for an interpreter's services. An interpreter must not accept any other payment (remuneration), gift or gratuity.

Court protocol. Courts are generally formal places. Make sure you know what's expected of you before you provide interpreter services in a court or tribunal.

Dress standard is formal. It is expected that interpreters will maintain the appropriate dress standard to reflect the function of the court or tribunal. No jeans or casual clothes are to be worn.

Ensure you arrive 15 minutes before the court event. An interpreter must arrive on time for the start of the court or tribunal hearing. This includes returning from breaks on time. You must arrive 15 minutes before the hearing is scheduled to begin.

Addressing a presiding officer in a court or tribunal hearing. A judge is addressed as "Your Honour", "Sir" or "Ma'am".

An associate judge, chair, or referee is addressed as "Sir" or "Ma'am".

Interpreters must not interrupt the presiding officer when they're speaking.

Interpreters don't need to stand when speaking to a presiding officer, or when a presiding officer speaks to them.

Referring to a presiding officer  
A judge of the High Court, Court of Appeal, and Supreme Court is referred to as "Justice" followed by their surname.

A judge of the District Court or other court (such as the Employment Court or Environment Court) is referred to as "Judge" followed by their surname.

A presiding officer of a tribunal or authority is referred to by their specific role. For example, Disputes Referee, Tenancy Adjudicator, Chair, Member.

Court and tribunal officials  
Court and tribunal officials can help interpreters with any questions about court or tribunal procedures. Officials in the courtroom such as the Registrar (court taker) or Crier (in a jury trial) oversee the running of the court and tribunal process, including swearing in witnesses and interpreters. This can include the transfer of documents between lawyers and the presiding officer, and displaying evidence (exhibits) to witnesses and the jury.

Taking notes  
Interpreters are allowed to take notes in hearings. All notes must be kept secure to ensure information about the hearing remains confidential.

## **Appendix 2: Ministry of Justice Standard Terms and Conditions for Interpreter Services in Courts and Tribunals (Standard Terms)**

### **1 Interpretation and definitions**

1.1 These terms, as amended from time to time, apply to any agreement for Interpreter Services between:

(a) The Ministry of Justice (**We or Ministry**) and

(b) You, being the party (whether an individual or organisation) who has agreed to provide Interpreter Services.

1.2 For the purposes of these Standard Terms:

**Agreement** means the agreement for Interpreter Services reached between the Ministry and You, based on the details set out in any connected Booking Confirmation, and which incorporates these Standard Terms.

**Booking Confirmation** means a notice in writing from the Ministry confirming Your engagement to provide Interpreter Services, which sets out the identity of the appointed Interpreter, the details of the Event(s) for which the Interpreter will be required, the Charges payable to You for the Interpreter Services and any other relevant matters.

**Charges** means the Fees and Expenses payable to You under these Standard Terms for Interpreter Services.



**Confidential Information** means any information that is disclosed by the Ministry to You or the Interpreter, as well as any information disclosed by a Recipient to You or the Interpreter, in the course of the Interpreter Services.

**Court** means a court or tribunal, and includes a judge, registrar or tribunal member.

**Criminal Record Check** means a criminal record check obtained from the Ministry, which covers criminal and traffic convictions. Information on how to obtain a criminal record check is available at <https://www.justice.govt.nz/criminal-records/>

**Expenses** means any out-of-pocket costs or disbursements actually incurred by You in the delivery of the Interpreter Services.

**Event** means the individual Court event (such as a hearing) for which Interpreter Services are required. A single Booking Confirmation may identify multiple Events at which Interpreter Services are to be provided.

**Fees** means the amount payable for the Interpreter Services, comprised of an hourly or daily rate for the Interpreter as well as any other agreed fees in connection with the provision of such services.

**Interpreter** means the individual booked by the Ministry to attend the Event and deliver the Interpreter Services for that Event (whether You or a person provided by You), and includes any replacement Interpreter provided by You (subject to the prior approval of the Ministry).

**Interpreter Services** means the interpreter services provided by You for an Event.

**Guidelines** means the Ministry of Justice guidelines for interpreters available at: <https://www.justice.govt.nz/about/lawyers-and-service-providers/service-providers/interpreting-in-courts-and-tribunals/guidelines-for-interpreters/>

**Recipient** means a person whose communications are being interpreted from one language to English (or another language accepted by the court) by an Interpreter for an Event.

**Request** means a written request made by the Ministry for Interpreter Services that seeks details from You regarding, for example, your availability and fees. Note: A Request is solely for the information of the Ministry and is not an offer of contract or promise of future work.

**Supplier Terms** means any of Your standard terms and conditions that purport to, or could be interpreted to, add to or amend the agreement for Interpreter Services between You and the Ministry.

**Working Day**, in relation to a notice period, means a full day, excluding:

- i. Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's Birthday and Waitangi Day;
- ii. a day in the period commencing 25 December in any year and ending with 15 January in the following year;
- iii. if Waitangi Day or Anzac Day fall on a Saturday or Sunday, the following Monday; and
- iv. the day observed as the anniversary of the province in which the relevant Event is to be held; and
- v. excluding the day when notice is given.

## **2 Booking process**

2.1 When seeking Interpreter Services for an Event, the Ministry may send You a Request. The Ministry will specify in the Request the expected duration of the Event, or of each Event if there is more than one (**Expected Duration**), and the date and time at which any Event is expected to start (**Start Date**). Both the Expected Duration and Start Date are subject to change at any time before or during the relevant Event.

2.2 The parties will seek to agree the Fees and any Expenses payable for Interpreter Services. The Fees proposed by You will be no more (but may be less) than the fees and rates referred to in Your Supplier Terms.

2.3 If You and the Ministry reach agreement on the services to be provided, including the Interpreter to provide the Interpreter Services, the Charges to be paid to You and all other relevant details, the Ministry may:

(a) send You a Booking Confirmation; and if so

(b) endeavour to give You reasonable notice of any changes relevant to the provision of the Interpreter Services (for example, the location where an Event is to take place, its Start Date or the Expected Duration);

for the avoidance of doubt, the Booking Confirmation records the Ministry's agreement to the Interpreter Services being provided and the Ministry is not bound to engage or pay for an Interpreter where no Booking Confirmation has been given.

2.4 The Ministry will, unless otherwise specified in the Booking Confirmation, make any travel and accommodation arrangements required for the Interpreter to attend the Event.

2.5 Except where explicitly confirmed in writing by the Ministry in the Booking Confirmation, Your Supplier Terms (in whole or in part) do not apply and do not form part of any contract for Interpreter Services.

## **3 Interpreters**

3.1 You will ensure that the Interpreter is punctual and appropriately skilled, experienced and qualified to provide appropriate Interpreter Services for the Event(s).

3.2 The Interpreter must comply with the Guidelines and any other relevant Ministry interpreter policies and guidelines at all times in the course of the Interpreter Services being provided.

3.3 If the Interpreter booked for the Event(s) is unavailable to provide the required Interpreter Services for any reason (including because of a conflict of interest) for the full duration of the Event(s), You will give the Ministry notice in writing immediately and will, if requested by the Ministry, provide a suitable replacement Interpreter if available.

3.4 If You are asked by the Ministry to provide Interpreter Services for a case or proceeding in which You have already provided Interpreter Services for an earlier Event, You will, unless otherwise agreed with the Ministry, provide the same Interpreter for the new Event to ensure continuity of service.

3.5 You will provide the Ministry with updated contact details for the Interpreter if requested at any time.

3.6 You will ensure that any Interpreter providing Interpreter Services has undergone a Criminal Record Check to ensure they do not have any criminal convictions. Subject to any restrictions under law, to the extent You become aware (through checks or otherwise) that any Interpreter has criminal convictions, You must immediately notify the Ministry. You will make the results of Criminal Record Checks available to the Ministry, and arrange an updated Criminal Record Check for any Interpreter, as and when requested.

#### **4 Cancellation and Events that do not proceed as expected**

4.1 The Ministry, in its absolute discretion and at any time before or during an Event, may terminate the Agreement (in respect of a single Event or all Events) immediately by giving You notice in writing.

4.2 Where We give You two Working Days' or more notice of termination before the Start Date of an Event, We will reimburse any reasonable non-refundable Expenses incurred by You to provide the Interpreter Services for that Event prior to the date of termination (subject to clause 6 below).

4.3 Subject to clause 5 and Your compliance with all other obligations under this Agreement, where We give You less than two Working Days' notice of termination before the Start Date of an Event, or We give You notice of termination during an Event, We will:

- (a) pay the Charges incurred up to the date of termination; and
- (b) pay You an additional amount based on the agreed hourly or daily rates for the Interpreter up to an additional five days or the number of days or hours remaining in the relevant Event (determined by reference to the Expected Duration) after the date of termination, whichever is less.

By way of example:

Notice of cancellation given by the Ministry at any time on Wednesday (e.g. 1<sup>st</sup> July 2020) will be two Working Days before an Event starting at any time on the following Monday (6<sup>th</sup> July 2020), assuming there are no intervening public holidays. If the Event were instead to start at any time on Thursday or Friday (2<sup>nd</sup> or 3<sup>rd</sup> July 2020), less than two Working Days' notice would have been given and compensation under clause 4.3 may be payable.

4.4 We may reschedule the time or date of an Event by notice to You at any time, with the following effect:

- (a) If You cannot provide the Interpreter Services for the rescheduled time, or do not confirm your availability by the required deadline, the Agreement will be deemed to be terminated by the Ministry effective from the notice of the rescheduling;
- (b) If You agree to provide the Interpreter Services at the rescheduled time, and we had given You two Working Days or more notice of the rescheduling, You will be compensated in accordance with clause 4.2 above as if the rescheduling were a termination by the Ministry;
- (c) If You do agree to provide the Interpreter Services at the rescheduled time, and we had given You less than two Working Days' notice of the rescheduling before the original Start Date of the Event:
  - i. you will be compensated in accordance with clause 4.3 above as if the rescheduling were a termination by the Ministry, however,
  - ii. no compensation will be paid for any days or hours required for the rescheduled Interpreter Services which were already booked prior to the rescheduling (i.e. to the extent the cancelled Event and rescheduled Event overlap).

4.5 In the event of cancellation or rescheduling of an Event, or termination of the Agreement, the Ministry will be liable to pay no more than the amounts described in this clause 4.

4.6 If an Event extends beyond its Expected Duration, the Ministry will pay:

(a) for the additional Interpreter Services at the rates agreed in the Booking Confirmation for the additional days or hours the Interpreter Services are required; and

(b) any additional Expenses agreed in writing, provided such Expenses are charged on a similar basis to those agreed in the Booking Confirmation.

## **5 Remedies for breach**

1.1 If:

(a) it appears to the Ministry there is a conflict of interest; or

(b) the Court is dissatisfied with the Interpreter Services; or

(c) You or the Interpreter otherwise breaches the Agreement,

the Ministry may, at its absolute discretion, without prejudicing any other rights or remedies available to it, either:

(i) require You to provide a suitable replacement Interpreter immediately on request by the Ministry; or

(ii) terminate the Agreement immediately on notice in writing, in which case no more than the Charges incurred up until the date of termination shall be payable.

## **6 Expenses**

6.1 The Ministry will be responsible for arranging all flights and accommodation for Interpreters unless otherwise specified in the Booking Confirmation.

6.2 The Ministry will reimburse You for reasonable Expenses incurred by You in providing the Interpreter Services, provided:

(a) the Expenses are agreed and referred to in the Booking Confirmation; and

(b) the Expenses are charged at reasonable cost, and are evidenced by GST receipts if required by the Ministry.

## **7 Confidentiality**

7.1 You confirm that You have adequate security measures to safeguard all Confidential Information from unauthorised access or use by third parties, and that You will not use or disclose any Confidential Information to any person or organisation other than:

(a) to the extent that use or disclosure is necessary for the purposes of providing the Interpreter Services;

(b) if the Ministry gives prior written approval to the use or disclosure;

- (c) if the use or disclosure is required by law; or
- (d) if the information has already become public, other than through a breach of the obligation of confidentiality by the person who made it public.

7.2 You must ensure that any of Your personnel to whom You provide Confidential Information as part of the services, including (but not limited to) the Interpreter, understand and are bound by the same or equivalent obligations of confidentiality in respect of the information.

7.3 For the avoidance of doubt, it is essential that You and the Interpreter comply with all court suppression orders and other requirements of law relating to the confidentiality of court proceedings in which the Interpreter takes part.

### **Appendix 3:**

**Chala Sani Abdula v The Queen (SC 80/2010) [2011 ] NZSC 130 PRESS SUMMARY** This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).

In 2009, the appellant, Mr Abdula, was tried and convicted with a co-accused on a charge of rape. During the trial, he and the co-accused shared the assistance of one interpreter as neither spoke nor had an adequate understanding of English. One of the appellant's grounds of appeal to the Court of Appeal against his conviction was that the quality of interpretation during the first week of his trial was poor and did not meet the standard required to comply with his right to an interpreter under s 24(g) of the Bill of Rights Act 1990. His appeal was dismissed, and he appealed against the Court of Appeal's decision to this Court. The Supreme Court has held that the right to an interpreter under the New Zealand Bill of Rights Act 1990 entitles an accused person to full and contemporaneous knowledge of what is happening at a criminal trial. Interpretation will not be adequate if, because of its poor quality, an accused is unable to sufficiently understand the trial process, or any part of the trial that affects the accused's interests, to the extent that there was a real risk of an impediment to the conduct of the defence. While the standard required of interpreters is high, it is not one of perfection. Where compliance with it is challenged, the cumulative effect of deficiencies in the interpretation must be evaluated to determine whether the accused had a sufficient understanding of what took place. This is a matter for judicial assessment and if the right is breached the trial will have been unfair. The appellant's counsel argued that the qualifications of the interpreter to interpret between the English and Oromo (Ethiopian) languages were inadequate. The Supreme Court however, decided that, while it is clearly desirable that programmes for training court interpreters should be further developed, it is not the case that only those holding particular qualifications may be recognised as competent to interpret trials. The appellant also complained about problems said to arise from the interpreter's soft voice and the lapse from time to time into simultaneous interpretation as evidence was given. The Supreme Court accepted that there were some occasional difficulties of this kind during the trial. However, the trial Judge had regularly taken the initiative in a number of ways to ensure that the interpretation process was working. Another relevant consideration was the failure of the accused or his counsel to raise any objections to the quality of interpretation during the trial. Taken together, these factors indicated that the interpretation provided enabled the accused to understand the nature and detail of the case against him and to make intelligent decisions concerning his defence. For these reasons the appeal was

dismissed. The Supreme Court recognised, however, that the trial did not at times reflect best practice. In future cases, interpretation should not become simultaneous with the giving of evidence. This separation will give accused time to react appropriately and will avoid the risk that the interpreter misses passages of evidence. The interpreter should also speak in a voice loud enough for all in the courtroom to hear and an audio recording should also be made of all criminal trials in which there is an interpreter providing assistance for an accused person. The availability of a recording provides the best means to resolve issues on appeal about the accuracy and general competence of interpretation.