

For Information

Legislative Council
Panel on Administration of Justice and Legal Services
Use of Simultaneous Transcription Service in Court Proceedings

Purpose

The purpose of this paper is to provide Members with the following information:

- (a) The present position regarding the use of simultaneous transcription service in court proceedings in Hong Kong;
- (b) The practices regarding the use of simultaneous transcription service in court proceedings in some other jurisdictions; and
- (c) The considerations related to the feasibility and desirability of using simultaneous transcription as a standing and regular service for all court proceedings in Hong Kong.

Background

2. At the meeting of the Panel on Administration of Justice and Legal Services of the Legislative Council held on 14 December 2012, Members enquired about the current practices regarding the use of simultaneous transcription service in court proceedings in other jurisdictions and whether such service should be made to become a standing and regular service for all court proceedings in Hong Kong.

Use of Simultaneous Transcription Service in Court Proceedings

3. Simultaneous transcription is a service which provides instantaneous access by both the judge(s) and the court users to the verbatim record of the judicial proceedings at the time when the latter are progressing in parallel. In providing such service, a reporter/stenographer who sits in the courtroom will, with the use of a stenographic machine, take down verbatim what is being said during the proceedings. Simultaneously, a specialized software will convert the stenographic codes

into normal text, which will be displayed immediately on the laptops of the judge, counsel, witnesses, jury, etc. A hard copy and/or soft copy of the properly amended transcript of proceedings will then be provided usually after each day's hearing.

Present Position in Hong Kong Courts

(a) Use of Audio Records and Transcripts

4. Since 1998, all court proceedings are audio-recorded under the Digital Audio Recording and Transcription Services ("DARTS"). This enables the production of audio records and transcript of court proceedings if required.

5. When the court proceeding is still in progress, the audio records of the previous parts of the proceeding can be played back if considered necessary with the approval of the court. Upon the completion of the proceeding, the Judge has ready access in his/her chambers to listen to the audio recording of the proceedings if he/she considers this useful in preparing the judgment. For the parties to the case, audio records of the proceedings in the form of audio tape, Compact Disc ("CD") or Digital Versatile Disc ("DVD") can be provided by DARTS on their request with the approval of the Court, if required. Under the current practice, audio tape, CD or DVD is provided without charge to parties in criminal proceedings. For civil proceedings, these audio records are supplied at a charge (e.g. \$210 for a DVD which can cover as long as about 98 hours of proceedings).

6. In other cases, a transcript of part or whole of the proceeding can be produced from the DARTS. This is done either on the request of the court or upon the request of the parties with the approval of the Court. In 2012, 32,393 and 137,359 pages of transcripts were produced as requested by judges and parties with the approval of the Court respectively.

(b) Use of Simultaneous Transcription Service

7. At present, while simultaneous transcription service can be used in all courtrooms, it is not used as a standing practice.

8. Under the present arrangements, if a party wishes to use the service in a given court proceeding, he has to seek approval from the court

for engaging such service from the commercial market and bear the relevant costs for the service. Since not all cases merit simultaneous transcription service, the court will have to consider the circumstances of each case to determine whether it is appropriate for such service to be engaged. Generally speaking, simultaneous transcription service is used in special, complex or long cases, e.g. cases involving multiple parties or large amount of evidence, etc.

9. According to our records, simultaneous transcription service was used in 5 and 7 cases in the High Court involving 76.5 and 69 hearing days in 2011 and 2012 respectively. Only one case (heard in 2008 - 2011) was recorded in the District Court to have made use of simultaneous transcription in recent years.

Practices in Other Jurisdictions

10. We have attempted to gather relevant information regarding the practices in other jurisdictions, mainly through desktop research. Based on information gathered so far, a brief summary is prepared at the **Annex**. Whilst we do not have comprehensive information, we are given to understand that the practices regarding the use of simultaneous transcription service vary from jurisdiction to jurisdiction. In many cases, we are given to understand that simultaneous transcription service is not used across the board for all types of cases at all levels of court and that the parties have to seek permission from the court and/or to bear the costs.

Annex

Considerations Related to Feasibility and Desirability of the Use of Simultaneous Transcription as a Standing Service in Court Proceedings

11. In response to Members' request, the Judiciary has considered whether simultaneous transcription service should be used as a standing and regular service in all court proceedings. After careful consideration, the Judiciary takes the view that such service should not be used in all proceedings at all levels of court. The detailed considerations are set out in the ensuing paragraphs.

12. First, the Judiciary takes that view that while simultaneous transcription service may be useful for certain long and complex cases, it is not critical and essential for the effective handling of most of the court proceedings. As the majority of court proceedings, particularly those at the

lower levels of court, are comparatively not so complex in nature, we do not agree that it is necessary to use simultaneous transcription service for all proceedings.

13. Secondly, the Judiciary considers that it is not cost-effective to require the use of simultaneous transcription service for all court proceedings. The costs involved under such scenario can be extremely substantive and indeed, prohibitive.

14. At a case level, according to recent market information available, the engagement of a service provider to provide simultaneous transcription service would cost at an average of \$15,400 per day if the hearing is conducted in English and at an average of \$14,000 per day if the hearing is conducted in Chinese. Under the existing practice, a party is at liberty to consider whether the engagement of simultaneous transcription service for a given proceeding is a cost-effective option, and if so, he/she may seek the approval of the court for its use. The party may also sound out the other side before the hearing whether the latter will share the costs of the simultaneous transcription service. In civil cases, where a party obtains an order for costs in his favor, the costs occasioned by the use of simultaneous transcription service, which are part of his costs, can be recoverable from the paying party subject to taxation. In criminal cases, the party requesting the service will normally be required to shoulder the costs.

15. If the use of simultaneous transcription service is mandated to be used in all court proceedings and the costs are to be borne by the parties, parties will be deprived of the option to consider whether its adoption is cost-effective and merited. Moreover, it should be pointed out that the average cost of \$14,000 to \$15,400 per hearing day will be considered prohibitive and disproportionate for parties in most court proceedings. This will only add to the costs of litigations, thereby creating further hurdles to access to justice.

16. A question may arise as to whether the use of the simultaneous transcription service for all court proceedings should be funded by the public purse. The Judiciary's views are as follows:

- (a) As a matter of principle, we cannot see the justification for the costs for simultaneous transcription service for all court proceedings, which is considered not essential for the effective

administration of justice in most court proceedings, to be borne by taxpayers, particularly in civil cases;

- (b) Public resources are not unlimited and the costs involved will be extremely substantial and prohibitive if such service is to be provided for all proceedings by the public purse. According to a rough estimation, the annual recurrent costs of providing such services for all court proceedings may amount to HK\$653 million; and
- (c) Even if additional substantial public funds can be made available, the Judiciary will not support a proposal on spending substantial amount of public funds on the provision of simultaneous transcription service for all court proceedings indiscriminately without charge. This is not considered good value for money and will likely lead to wastage of public resources.

17. Thirdly, the Judiciary considers that the existing arrangements as set out in paragraphs 4 to 6 is a viable and much more cost-effective alternative to the proposed use of simultaneous transcription service in all court proceedings.

18. For the above reasons, the Judiciary does not support the idea of using simultaneous transcription service in all court proceedings, be it paid by the parties themselves or funded by the taxpayers.

Related Matters

The Needs of the Hearing Impaired

19. To safeguard the rights of individuals and to ensure that open justice is accessible for all, audio-typing service is currently provided by the court for cases involving hearing-impaired persons. For audio-typing service, an audio-typist will, on hearing what is being said in the proceedings, type the spoken words directly in his computer (without using any stenographic codes or associated conversion software) and such words will be displayed immediately on a large screen in the courtroom to enable all parties in the courtroom to read the text on-screen. Our experiences show that the existing arrangements are working satisfactorily to cater for the needs of the hearing-impaired persons in court proceedings.

Conclusions

20. Having regard to the above, it is considered not worthy to use or provide simultaneous transcription as a standing service for all court proceedings. Instead, it is considered that the use of such service should continue be engaged and used on a case-by-case basis.

Judiciary Administration
January 2013

Practices on Simultaneous Transcription in Other Jurisdictions

Jurisdictions	Service Availability
<i>Common Law Jurisdictions</i>	
Australia	<p>Each jurisdiction has different practices regarding transcription. For the High Court of Australia, there is no indication that simultaneous transcription is automatically provided. Transcripts can however be made available on-line at the end of the hearing each day, the earliest. The costs involved are borne by the court. It is also noted that for the Federal Court of Australia, Federal Magistrates Court and Family Court of Australia, parties may make request to the service provider for production of “same day progressive” transcripts. The charge amount is in accordance with the length of the hearing. However, it could not be confirmed that “same day progressive” transcripts are equivalent to real-time transcripts.</p> <p>As regards other court levels, relevant information is not readily available.</p>
Canada	Relevant information is not available.
New Zealand	<p>It is noted that all hearings in courtrooms equipped with a recording system will be recorded and transcribed by court reporters who “listen in” from around the country.</p> <p>“Contemporaneous transcripts” are provided for all High Court criminal trials. In other jurisdictions, “contemporaneous and non-contemporaneous transcripts” may be provided if the judge requests.</p> <p>It is not clear whether the parties will have to seek permission of the court and/or to bear the cost of service.</p>

Jurisdictions	Service Availability
Singapore	<p>For civil cases in the Supreme Court, parties may seek to arrange simultaneous transcription and they will have to seek permission of the court for cases in actions not begun by writs.</p> <p>For criminal and civil cases in the Subordinate Courts, parties may seek to arrange simultaneous transcription and they will have to seek permission of the court.</p> <p>Costs of simultaneous transcription as mentioned above are borne by the parties.</p>
United Kingdom	<p>In the Supreme Court, for both civil and criminal appeals, if a party wishes to have a stenographer present at the hearing, the party must notify the Registrar before the hearing. Any cost of the stenographer will be borne by the party making such a request.</p> <p>The relevant information relating to other court levels is not readily available.</p>
<i>Non- Common Law Jurisdictions</i>	
Mainland	<p>It is noted that, for some court proceedings, simultaneous transcription is provided on the internet.</p> <p>It is not clear whether the parties will have to seek permission of the court and/or to bear the cost of service.</p>
Taiwan	<p>Some sort of simultaneous transcription service is made available across the board to both civil and criminal cases at all court levels, but it appears that the transcript is not verbatim but covers the main points (not the full record) of a case only.</p> <p>Parties do not need to make application or to pay extra for the service. Apparently, the cost of such service is covered by litigation fees.</p>