

Interpreting Consent

A Rights-Based Approach to Language Accessibility in Ontario's Health Care System

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Introduction

If you are arrested or charged with a crime and do not speak the language in which the court proceedings are conducted, you have the right to assistance from an interpreter. This right is explicitly codified in Canada's Charter of Rights and Freedoms.¹ In the judicial system, it is recognized that effective communication – which includes language interpretation – is necessary for meaningful participation in the legal process.

Like in legal settings, a patient's ability to understand and participate in their own health care is critical. When it comes to health care there is no room for error in communication. However, patients in health care settings must navigate around language barriers without guaranteed supports. Patients may not receive care in a language that they understand despite the strong evidence that those with language barriers are more likely to have poor health and face major obstacles in accessing health care.^{2,3,4}

Regardless of a patient's language, they have the right to understand the harms and benefits of the care they are receiving, ask questions of their provider, and make their own decisions about their health care. Informed consent is an essential component of health care; it is intrinsically linked to the right to be free from discrimination and our commitments to multiculturalism. Ontario's failure to provide language interpretation services for patients with language barriers infringes on their fundamental right to informed consent.

Understanding Ontario's Language Interpretation Services

Although Ontario is one of Canada's most linguistically diverse regions, access to interpretation services in health care settings is not widespread. In Ontario, nearly 2.5 percent of the population has no knowledge of official languages (English or French), and over 15 percent of households primarily speak a non-official language at home.⁵ Both proportions are well above the national average. In the Greater Toronto Area, over 4 percent of the population have no knowledge of either official language and over 25 percent of households speak a non-official language at home.⁵ In the decades to come, linguistic and ethno-racial diversity is expected to grow. By 2036, half of the Canadian population is expected to have a mother tongue other than English, up from 44 percent in 2011.⁶

Mother tongue and home language are not necessarily indicative of a patient's proficiency in English or their need for interpretation. However, even patients who are generally comfortable using English in their day-to-day activities may prefer to receive health care in another language in some circumstances.^{7,8} For example, language support is critical to mental health care, where highly nuanced verbal communication is often used in assessments and treatments.⁹ In cases of dementia and cognitive decline, multilingual individuals often lose language ability and can revert from English to another language.¹⁰

Despite the growing need, Ontario has yet to develop coordinated standards around language interpretation services in health care settings. Instead, interpretation services in health care settings across Ontario are largely delivered on a decentralized basis, without provincial guidance or oversight. There is a lack of comprehensive data on interpretation services among health care organizations. However, a needs assessment conducted prior to the implementation of a new phone interpretation program in Toronto, suggests that services are far from adequate.¹¹ The initial assessment by Toronto Central LHIN found that over 20 percent of organizations offered no professional interpretation services at all and those that did relied on a patchwork of contract interpreters, in-house interpreters, and over-the-phone services. Most often, organizations reported using untrained interpreters. The most commonly used approach was to use a patient's family member or friend as an interpreter, but health care organizations also reported using bilingual clinical staff, non-clinical staff, and hospital volunteers.¹¹

Research consistently demonstrates that unmet language needs can put patients' health and safety at risk. When health care providers and their patients are not able to communicate clearly and effectively, it can lead to adverse clinical outcomes like inappropriate medical testing¹² and medication errors.¹³ Patients are also more likely to under-utilize health care services,¹⁴ and less likely to follow health provider recommendations.¹⁵ While an absence of interpretation services is an obvious concern, these risks are present even when untrained interpreters like patients' family members are used since the communication between patient and provider may be inaccurate, incomplete, or biased.

Beyond the health implications, a lack of interpretation services can also lead to compromises around the ethical and legal standards of medical practice. Health care organizations are required to adhere to strict standards to protect patients' privacy and confidentiality. However, in encounters involving patients with language barriers, this ethical obligation is often overlooked.² Family members, volunteers, or non-clinical hospital staff are often called upon to help with interpretation, although it may not be appropriate to share the patient's health information with them. They also may not be aware of, or trained in, privacy and confidentiality standards. To uphold the patient's right to privacy and confidentiality, patients need to have the ability to choose who is involved in their health care treatment⁶

Informed Consent and Language Barriers

One of the most significant implications of inadequate interpretation services is that it can exclude patients from the informed consent process. Regardless of a patient's preferred language, they have the right to understand the harms and benefits of the care they are receiving, ask questions to their health care provider, and make their own decisions about their health care. If adequate interpretation is not provided, patients are unable to meaningfully take part in their health care decisions.

Ontario's Health Care Consent Act, 1996 states that prior to receiving treatment, consent is required from the patient or their substitute decision-maker, and health care providers must take reasonable steps to ensure there is no treatment without consent¹⁶ Informed consent is critical in protecting patient health and safety, maintaining health care accessibility, and supporting patients' right to control their health information and decision-making.

There are four key considerations for informed consent: the consent must (1) relate to treatment, (2) be informed, (3) be given voluntarily and (4) not be obtained through misrepresentation or fraud.¹⁶ When a patient cannot adequately communicate with their provider due to language barriers, these criteria cannot be met and the entire consent process is compromised.^{17,18,19}

Consent cannot be considered truly "informed" if patients don't have access to all of the relevant information about their medical care. Without comprehensive, high quality and accurate interpretation, patients cannot make informed choices about their health care treatment and options. When professional interpretation is not offered, there is no guarantee that the health care information pertaining to a treatment is accurately and completely interpreted.¹⁷ Untrained interpreters like family members or volunteers may not have the language proficiency or knowledge of medical terminology required to interpret correctly. Moreover, when family members or other untrained staff are involved as interpreters, patients may be uncomfortable asking questions or clarifying information because there is a lack of privacy.

The use of family members as interpreters can also undermine the voluntary nature of the patient's consent. The patient themselves should accept or refuse treatment. Yet in situations where a family member interprets on behalf of a patient, they may unduly influence the consent process by blurring the line between interpreter and decision-maker.¹⁸ For example, the health care provider may look to the family member to confirm the patient's consent and understanding, even though the patient is capable of representing themselves but lacks language skills.

The involvement of untrained interpreters opens the possibility of misrepresentation of the patient's medical options. The interpretation provided may not be impartial and free from bias, especially if the interpreter has a vested interest in the outcome, as is often the case for family members. They may interject their own opinions and preferences into the discussion, colouring the patient's and provider's perception of the situation.¹⁸ For example, they may downplay the risks of a procedure when talking to the patient to make it seem preferable to other options. Even family members who are trying their best to interpret in the interests of a patient may not be accurately conveying the message. This poses the risk of misrepresenting the patient's concerns and choices.

Freedom from Discrimination in Health Care

All Ontarians have the right to informed consent. Yet if people with language barriers cannot access this right, we are allowing for discrimination in the provision of care. This violates a number of commitments that Canada and Ontario have made towards ensuring non-discrimination in health care.

The International Covenant on Economic, Social, and Cultural Rights²⁰ (ICESCR) – a legally binding international treaty that Canada has ratified – sets out a right to health which includes the creation of conditions that assure medical service and medical attention in the event of sickness. In Article 2, the ICESCR acknowledges that everyone is entitled to their rights without discrimination on the grounds of “race, colour, language, national or social origin...” Denying the right to informed consent on the grounds of language is thus in violation of Article 2 of the ICESCR. The principle of non-discrimination is also recognized in General Comment 14,²¹ which stresses that all States have an important obligation to eliminate health-related discrimination, especially for the most vulnerable populations.

While health care is governed by national legislation, the province is responsible for delivering health care. National and provincial legislation clearly reflects the principle of non-discrimination by emphasizing that essential services should be accessible to everyone. The Charter of Rights and Freedoms states that, “every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination.”²² The Supreme Court of Canada has determined that hospitals and medical services are implementing government policy, and are obligated to uphold the Charter.²³

Similarly, Ontario’s Human Rights Code prohibits discrimination on the grounds of ancestry, race, colour, ethnic origin, and place of origin.²⁴ While neither the Charter nor the Human Rights Code explicitly identifies “language” as a prohibited ground for discrimination, the Ontario Human Rights Commission recognizes that language is closely linked to ancestry, race and ethnic origin; language barriers disproportionately affect ethnic minority groups.²⁵ The principle of non-discrimination is echoed in the Canada Health Act which states that there should be “continued access to quality health care without financial or other barriers.”²⁶ When patients with language barriers are not afforded the same right to informed consent as official language speakers, it ultimately infringes on their right to good quality health care free from discrimination.

Upholding our Commitments to Multiculturalism

Canada and Ontario have had long-standing commitments to the principles and values of multiculturalism, diversity, and inclusion. Yet a health care system that does not adequately support those with language barriers cannot meet the needs of our increasingly multilingual province.

The Canadian Multiculturalism Act affirms the government’s policy to ensure every Canadian receives equal treatment by the government in a manner that respects, embraces, and celebrates the diversity of the nation.²⁷ Furthermore, it outlines areas that must be respected such as our multicultural heritage, and recognizes that while English and French are our official languages, others may be used as well. In addition, the Charter should be interpreted “in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.”²⁸ This demonstrates that we as a society understand that as our population grows and diversifies we must be willing to respond in a way that affirms and respects those differences.

Furthermore, these commitments have also been included in our legislation pertaining to health and health care in Ontario. The Patients First Act clearly establishes that “respect[ing] the diversity of communities” is an important element of patient-centered care.²⁹ As Ontario’s health care system pushes towards culturally competent and equitable care, language must be considered a vital component.

Without adequate support for those with language barriers, a growing proportion of Ontario’s population will continue to face major obstacles in accessing health care, and their health may suffer as a consequence. If we are serious about our commitment to diversity, linguistic accessibility must be a priority for our health care system.

Implementing Interpretation Services in Ontario

Ontario has a clear legal responsibility to deliver high-quality health care without discrimination to its multicultural communities. How can the province tackle the challenge of language accessibility in health care? Policy-makers and program planners can learn from initiatives and organizations that are already offering services and supports.

The most robust interpretation service available in Ontario is Language Services Toronto (LST), developed by Toronto Central LHIN in 2012. LST uses a bulk-purchase model to minimize the costs for telephone interpretation services. Trained medical interpreters are available over the phone 24/7 in 175 languages on a fee-for-service basis. LST has been well received and is available to all health care facilities throughout the province, but currently participation remains concentrated in the GTA.³⁰ The Ontario-based Healthcare Interpretation Network has also established national guidelines for interpretation to help health care providers understand how to effectively work with interpreters.³¹ It is worth considering whether these initiatives can be expanded and scaled up to ensure access to high quality interpretation services across the province.

Ontario can also learn from the example of other provinces that are meeting the challenge of linguistic accessibility. In 2003, British Columbia created the Provincial Language Service, an initiative that provided interpretation and translation services for all regional health authorities in the province.³² This service highlights the potential for developing provincially-coordinated initiatives to serve linguistically and culturally diverse communities.

Conclusion

Informed consent is a fundamental component of the provision of health care services. Not having appropriate language supports in health care infringes on patients' right to informed consent, undermines Ontario's obligations to provide health care without discrimination, and weakens our commitments to creating a multicultural society. As we move towards a more inclusive and diverse province, we must work together to develop policy solutions and ensure we honour our existing commitments. Moving forward, it is clear that we must work towards making linguistically accessible health care a reality in Ontario. We have a strong foundation to work with and now is the time to develop a strategy that ensures equitable health care services for all of Ontario's diverse communities.

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Appendix 1: Human Rights and Legislative Documents

Legislative Document	Year	Jurisdiction	Relevant Section	Website
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966	International	<p>Article 2.2</p> <p>“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”</p> <p>Article 12</p> <p>“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for... (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”</p>	http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx
The Right to the Highest Attainable Standard of Health (General Comment 14 of ICESCR)	2000	International	<p>Article 12</p> <p>The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:</p> <p>(b) Accessibility: Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party.</p> <p>Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds</p>	http://www.refworld.org/
Canadian Charter of Rights and Freedoms	1982	Canada	<p>Section 15</p> <p>“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical ability.”</p> <p>Section 7</p> <p>“Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”</p>	http://laws-lois.justice.gc.ca/eng/const/page-15.html

Human Rights Code	1990	Ontario	<p>“Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.”</p>	https://www.ontario.ca/laws/statute/90h19
Canada Health Act	1984	Canada	<p>The Canada Health Act sets out the primary objective of Canadian health care policy, which is “to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers.”</p> <p>The Parliament of Canada recognizes “that continued access to quality health care without financial or other barriers will be critical to maintaining and improving the health and well-being of Canadians”</p>	http://laws-lois.justice.gc.ca/eng/acts/C-6/page-1.html
Health Care Consent Act, 1996	1996	Canada	<p>“A health practitioner who proposes a treatment for a person shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless</p> <p>(a) he or she is of the opinion that the person is capable with respect to the treatment, and the person has given consent...”</p>	https://www.ontario.ca/laws/statute/96h02
Multiculturalism Act	1985	Canada	<p>Preamble</p> <p>Within the text of the preamble of the Act, there is reference to the need to allow linguistic minorities the ability to enjoy one’s language as well as the need to have all Canadians achieve equality in all dimensions of life, including social services such as health care.</p> <p>“AND WHEREAS the Government of Canada recognizes the diversity of Canadians as regards race, national or ethnic origin, colour and religion as a fundamental characteristic of Canadian society and is committed to a policy of multiculturalism designed to preserve and enhance the multicultural heritage of Canadians while working to achieve the equality of all Canadians in the economic, social, cultural and political life of Canada;”</p> <p>Section 3</p> <p>“preserve and enhance the use of languages other than English and French, while strengthening the status and use of the official languages of Canada;”</p>	https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-24-4th-supp/latest/rsc-1985-c-24-4th-supp.html#sec2_smooth

OHRC Policy on Discrimination and Language	1996	Ontario	"Language is a characteristic that is often closely associated with ancestry, ethnic origin or place of origin. Thus, the Code may be breached where a language requirement, such as 'proficiency' in English,[11] excludes, gives preference to, or restricts persons because of their ancestry, ethnic origin or place of origin".	http://www.ohrc.on.ca/sites/default/files/attachments/Policy_on_discrimination_and_language.pdf
Patients First Act, amendment to the Local Health Systems Integration Act	2016	Ontario	Section 5 of the Act is amended by adding the following clause: (e.1) to promote health equity, including equitable health outcomes, to reduce or eliminate health disparities and inequities, to recognize the impact of social determinants of health, and to respect the diversity of communities and the requirements of the French Language Services Act in the planning, design, delivery and evaluation of services	http://www.ontla.on.ca/web/bills/bills_detail .