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## An introduction to the activities of English-Spanish part-time court interpreters in Hong Kong

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**UNIVERSITÉ  
DE GENÈVE**

**FACULTÉ DE TRADUCTION  
ET D'INTERPRÉTATION**

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**AN INTRODUCTION TO THE ACTIVITIES OF ENGLISH-SPANISH  
PART-TIME COURT INTERPRETERS IN HONG KONG**

Mémoire présenté à la Faculté de Traduction et d'Interprétation

Pour l'obtention du MA en Interprétation de Conférence

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## 1. Introduction

Due to the historically bilingual and international nature of Hong Kong (currently and officially the Hong Kong Special Administrative Region of the People's Republic of China, or HKSAR), interpreters are important fixtures at the courts of the region. As a legacy of a century and a half of British dominion over this region of Southern China, dozens of full-time interpreters with the Cantonese-English linguistic combination work every day to ensure a smooth interaction between the different parties at court, and hopefully allow justice to be served. Their activities are complemented by those of a small army of part-time interpreters with English and other languages in their linguistic combinations. Cantonese-English court interpreters in Hong Kong have already been the subject of some academic studies, but to my knowledge, no substantial overview of the working conditions of part-time court interpreters in that city has been written. This thesis intends to somewhat remedy this situation.

The main research question for this study is: what are the conditions under which part-time court interpreters with the English-Spanish linguistic combination work in a Hong Kong courtroom? In order to answer it, the particular historical and political context of the SAR should be explained first. The information in this thesis will be outlined according to the following structure:

A chapter outlining the origins of the British Colony of Hong Kong, its handover to China, and an overview of both of those entities' legal systems and their differences, for readers unfamiliar with those matters.

- A more detailed description of the basic structure of Hong Kong's legal system, to give an idea of where full-time and part-time court interpreters work.
- A literature review of court interpreting.
- An overview of Cantonese and Mandarin, the languages usually spoken in a Hong Kong courtroom aside from English.

- A chapter about interpreting in such a setting, with some historical information.
- A chapter about English-Spanish part-time interpreters in a Hong Kong courtroom.
- An interview with a former English-Spanish part-time Hong Kong court interpreter.

This thesis is written from my own perspective as a former part-time interpreter for the Judiciary of Hong Kong following a retrospective, inductive, qualitative, autoethnographic approach. It was conceived almost two years after I left that Special Administrative Region in the aftermath of the political crisis of 2019-2020. As such, it relies heavily on my own recollections, conversations with colleagues and other court actors recalled to the best of my skill, ability and understanding, and on publicly available Court materials online, aside from a few academic sources. I was not a detached scholar sitting at the gallery analyzing the development of court proceedings, but an active participant in them, listening to and observing the way barristers, solicitors, judges, juries, witnesses and defendants would interact so as to better grasp the crux of the matters at hand and so be able to fulfill my duty (which incidentally was never plainly stated in any court document or proceeding, unless the affirmation taken by all interpreters before each hearing counts): to ensure that the defendant would be able to follow the proceedings that would have a direct and serious effect on their life. Court developments and interactions would affect my understanding of the language and terminology employed, and changes in the situation would also have an unconscious effect on my performance. Therefore, my participation in legal proceedings and my personal beliefs may have biased the views expressed in this thesis, but they are grounded in actual observations made during three years of activities at the courts. Additionally, and as mentioned above, in order to have a wider view of the activities of Spanish part-time court interpreters in Hong Kong, this thesis will include an analysis of an interview with a former English-Spanish court interpreter in that territory, to obtain her impressions on her experiences and give a more rounded view

of the status of part-time court interpreters in Hong Kong with that specific linguistic combination.

It must also be mentioned that the current situation regarding part-time interpreters in a Hong Kong courtroom may have changed since I left the SAR, but I can inform the reader that, upon the declaration of COVID-19 as a pandemic by the World Health Organization (WHO) in early 2020, Hong Kong's borders were closed shut, dutifully following Mainland China's 'zero COVID' policy, with very strict and onerous measures being enforced against anyone desiring to enter the territory, including a 21-day mandatory quarantine at designated hotels and a battery of PCR tests every seven days, everything at one's expense. As a result, almost all inbound travel grounded to a halt, and there was a sudden lack of legal cases necessitating the services of part-time interpreters, as the transient Spanish-speaking population that would mostly need said services (more on this further below) was not able to enter Hong Kong anymore: it could be said that only current cases were still being heard at the courts between February 2020 and the time of writing of this thesis. On late September 2022, the mandatory quarantine requirement was lifted and Hong Kong's borders were reopened to foreign travelers, albeit with mandatory COVID tests for a week and the prohibition to enter bars and restaurants for the first three days of their stay. By early January 2023, the only Covid-related restriction in place to enter Hong Kong was presenting a negative PCR test. Because of all this, it could be said that the situation for part-time English-Spanish interpreters in Hong Kong courtrooms remains similar to what I witnessed from 2016 to 2020.

## **2. A Brief Overview of Hong Kong's and China's History and Legal Systems**

By the time Hong Kong entered world history in the 19<sup>th</sup> century, it was part of the polity traditionally known as 中国 (*Zhōngguó*, the 'Middle Kingdom,' known in the West as China), which was governed by the Qing dynasty, which in turn had wrested power from the Ming some 200 years prior and eventually taken the Chinese Empire to its largest territorial expansion (Spence and Wills, 1979). China was by then largely closed to foreign trade, and only accepted dealing with Western merchants desirous of silk, tea and porcelain

at Guangzhou (then known in English as Canton) in the South China Sea coast (Keller & Shiue, 2020). This situation ended during the era of the so-called unequal treaties in the mid-19<sup>th</sup> century, when at the height of European colonialism the Qing, weakened among other factors by the Dungan revolt, the White Lotus, Panthay, Nian and Red Turban uprisings, and the massive Taiping Rebellion (the bloodiest civil war in human history), found themselves unable to defend their territorial integrity against foreign encroachment: the Empire was forced at gunboat-point to cede several coastal and inland regions and make trade and extraterritoriality concessions to European powers (plus Japan and later the United States) (Fairbank & Goldman, 2006). Hong Kong Island was ceded in perpetuity to the British Empire by virtue of Article III of the Treaty of Nanking that ended the First Opium War in 1842. After a second Opium War, the Kowloon Peninsula, originally only leased, was also ceded in perpetuity by Article VI of the Convention of Peking in 1860. In 1898, a further portion of territory north of Kowloon, to be known as the New Territories, was leased to Great Britain for 99 years under the Second Convention of Peking, becoming part of the Crown Colony of Hong Kong (Spence, 1990).

Almost a century later, after the First Sino-Japanese War, the so-called Boxer Rebellion, the Xinhai Revolution that overthrew the Qing, the creation of the Republic of China, the Warlord Era, the Second Sino-Japanese War and the Chinese Civil War between the Chinese Communist Party (CCP) and the Kuomintang, and having controlled the Chinese Mainland for almost 30 years, the People's Republic of China (PRC) declared it would take the entirety of the Crown Colony back, not only the New Territories, upon the expiration of the latter's lease (Fairbank & Goldman, 2006). In the 1980s, negotiations between the United Kingdom and the People's Republic resulted in the Joint Declaration on the Question of Hong Kong (1984) to solve the issues pertaining to the expected handover in 1997. It is important to remember that negotiations between Great Britain and the PRC did not involve the local Hong Kong population (Tsang, 2004). China undertook to respect the Joint Declaration and the Basic Law, which would become the city's mini-constitution, under a policy called 'one country, two systems.' Among other things, the People's Republic agreed to preserve the Hong Kong way of life, economic and legal



systems<sup>1</sup> for fifty years, despite their major differences with the current corresponding systems in China. However, this proved to be false some two decades later in the aftermath of the 2019 extradition bill crisis and related protests. Interestingly, the People's Republic has also used the 'one country, two systems' policy to try and entice de-facto independent Taiwan into 'reunification with the motherland.' A majority of Taiwanese (and even more after the events of 2019-2020) have always seen through the Chinese Communist Party's intentions and refused China's advances.

As for Hong Kong, the common law legal system has been applied there since its seizure by British forces in 1842, and for most of the colony's history English was the only language of government and the judiciary (see chapter 4), despite more than 90% of its inhabitants having another language as their mother tongue (2021 Population Census Office, 2022). This is in marked contrast with the People's Republic of China, where the legal system, officially called the 'Socialist legal system with Chinese characteristics,' is based on civil law, but the ruling Communist Party retains authority and paramountcy over all courts in the country, and authorities at the local, regional and provincial levels frequently interfere with the handling of sensitive cases (Congressional-Executive Commission on China, *Judicial Independence in the PRC*). Many politically-sensitive cases (especially those concerning foreigners) are tried behind closed doors before a panel of judges –the concept of a jury does not exist in the Chinese legal system– and defendants are routinely denied access to their lawyers and to consular representation (as seen during the recent cases of Canadian citizens Michael Spavor and Michael Kovrig). The conviction rate of Chinese courts is regarded as one of the highest in the world.<sup>2</sup>

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<sup>1</sup> "The Laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law, shall be maintained, except for any that contravene this Law or are subject to any amendment by the legislature of the Hong Kong Special Administrative Region" Article 8 of the Basic Law. "The laws previously in force in Hong Kong, including the common law, rules of equity, ordinances, subordinate legislation and customary law, shall be adopted as laws of the Hong Kong Special Administrative Region, except for any that contravene the Basic Law" (Standing Committee of the National People's Congress, 1997).

<sup>2</sup> It is generally accepted that convictions are one of the many tools used by the CCP to maintain control over the country, given that there is no popular mandate for its regime. See the Dui Hua Foundation (2015): "Chinese prosecutors tend to explain low acquittal rates as an indicator of good work. In 2012, a Beijing

Under the Chinese Communist Party, and especially under President Xi Jinping's regime, lawyers and human rights activists are often rounded up and/or detained without trial (one needs only remember the infamous 2015 crackdown) if their activities risk –in the government's view– upsetting the achievement of a 'harmonious society,'<sup>3</sup> while academics and bloggers are also censored and detained when the authorities fear the effect the spreading of their views could have on the general population, accusing them of the classic 'picking quarrels and provoking trouble.' (BBC, 2021) (Chen, 2016) (Goldkorn, 2014). It is generally accepted that there is currently no real rule of law in China: as put by Gaylord et al (2009, p. 9), "despite considerable advances in recent years, respect for basic principles that have long been taken for granted in Hong Kong, such as the presumption of innocence and the right to due process, remain embryonic at best in mainland China," while it could be argued that the will of the Party very often becomes the law followed at the courts:

When Chinese leaders refer to 'judicial independence,' they are generally not referring to the independence of individual judges, but instead to the autonomy of the courts in relation to other entities and government institutions. Moreover, while the Chinese Constitution provides that the courts are not subject to interference by administrative organs, social organizations, or individuals, judges are expected to adhere to the leadership of the Party and submit to the supervision of the people's congresses and the procuratorate. (Congressional-Executive Commission on China, *Judicial Independence in the PRC*)

On the other hand, the common law system in Hong Kong has traditionally been regarded as fair, impartial and independent. Judicial independence has been considered as one of the

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prosecutor told Legal Daily that a high level of "judicial precision" allowed good prosecutors to "filter out" cases likely to result in acquittal so that the majority of people standing trial were "guilty." ... Like prosecutors, judges see convictions as a means to career advancement, but they also see them as tools for maintaining stability. Judges worry that finding defendants not guilty causes an uptick in petitioning because victims' family members may feel that the judiciary failed to deliver justice and punish the real culprits, the SPC [Supreme People's Court] Research Office wrote in 2014."

<sup>3</sup> For a basic explanation of this infamous Chinese political term, see the University of Hong Kong's China Media Project: [https://chinamediaproject.org/the\\_ccp\\_dictionary/harmonious-society/](https://chinamediaproject.org/the_ccp_dictionary/harmonious-society/). For a more in-depth review, see Zheng & Tok (2007). For even more extensive insights, see Guo & Guo (2008). For laughs, look up 'river crab Chinese Internet' and 'Hexie Farm.' As an aside, the authoritarian government of Singapore also employs the term, although arguably more successfully in their multiracial society.

reasons behind Hong Kong's development into a world-class financial and services center in the second half of the 20<sup>th</sup> century, with foreign companies able to open local branches to begin entering the enormous Chinese market, freely move funds and profits in and out of the territory, and plead and argue cases in court without political interference.<sup>4</sup> It could be argued that there is almost no difference between the SAR's legal system and that of Great Britain, Canada, Australia and other former British colonies,<sup>5</sup> so much so that foreign-born-and-educated justices can and do become permanent judges of the High Court,<sup>6</sup> while practicing overseas justices from the abovementioned jurisdictions are regularly invited to and do join the Court of Final Appeal<sup>7</sup> as non-permanent judges. Trial by jury is an essential component of the common law system, and it remained the case in Hong Kong courts for all criminal cases<sup>8</sup> until late June 2020, when as part of its efforts to control the fallout of the 2019 protests, the Standing Committee of the National People's Congress of China passed a wide-ranging, draconian national security law (NSL) for Hong Kong targeting acts of secession, subversion, terrorism and collusion with foreign or external forces, and allowing cases of this nature to be tried behind closed doors and without a jury of peers.<sup>9</sup> As time goes by, it is feared current and further political

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<sup>4</sup> "The courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions" (Hong Kong Basic Law, article 85).

<sup>5</sup> Differences are mostly of a procedural nature: "In Hong Kong, unlike the United Kingdom, there is no obligation on magistrates to consider the grounds of refusing bail and to record them. In the absence of specific finding of facts or grounds for refusing bail, the principle of 'res judicata or something analogous to it' may not be easily invoked. Thus, it is more difficult here to bar an accused from arguing a renewed bail application on each subsequent remand hearing" (The Law Reform Commission of Hong Kong, *Bail in Criminal Proceedings*).

<sup>6</sup> "Judges and other members of the judiciary of the Hong Kong Special Administrative Region shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions" (Hong Kong Basic Law, article 92). A list of all judges at the High Court, the names of many of whom denote their origins, can be found at [https://www.judiciary.hk/en/about\\_us/judges.html#HC](https://www.judiciary.hk/en/about_us/judges.html#HC). Their biographies are only a quick online search away.

<sup>7</sup> "The power of final adjudication of the Hong Kong Special Administrative Region shall be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal" (Hong Kong Basic Law, article 86).

<sup>8</sup> "The principle of trial by jury previously practised in Hong Kong shall be maintained" (Hong Kong Basic Law, article 86).

<sup>9</sup> "NSL Article 46 is yet another key provision that allows the government to limit procedural rights of those accused of NSL crimes. That article allows for some cases to be tried without a jury if the secretary for justice believes that such a move is necessary to guard state secrets, to prevent foreign interference, or to protect the safety of would-be jurors and their family members. ... Legal experts, both in Hong Kong and beyond,

interference in the Judiciary will erode the rule of law in Hong Kong (Cowie et al, 2022) (Tse & Lee, 2021), and one could speculate that the right to an interpreter during a criminal trial, as enshrined in Hong Kong law (see chapter 4), may be discarded in the future.<sup>10</sup>

### **3. Basic Structure and Functioning of the Hong Kong Legal System**

Despite the current issues outlined above, the well-oiled machinery of the Hong Kong legal system keeps on functioning. If we leave courts such as the Coroner's Court, the Probate Court, the Labor Tribunal, and the Family Court aside, at its most basic the Judiciary of Hong Kong is composed of four ascending levels: the Magistrates' Courts (seven in total), the District Court, the High Court (which encompasses the Court of First Instance and the Court of Appeal) and the Court of Final Appeal. As described by Gaylord et al (2009), the processing of a criminal case in Hong Kong begins upon the commission of a crime or the suspicion thereof, provided it is believed said crime violates the Ordinances passed by the Legislative Council (the law-making body of the SAR).

Most criminal offences liable to prosecution are contained in an Ordinance (Gaylord et al, 2009). The Magistrates' Courts, which have civil and criminal jurisdiction, are where every legal proceedings in Hong Kong will begin; for criminal cases, depending on the seriousness of the charges the case will be dealt with either summarily or by trial before the different Magistrates, or after an initial hearing it will be transferred to either the District Court or the High Court (HKSAR and Singh Ramanjit, 2018). The Magistrate sits alone and there is no trial by jury at this level of the local legal system. A defendant can apply for bail at the Magistrates' Court (if they have not been granted it by the Police after arrest), but if refused, they can apply again every 8 days<sup>11</sup> without limitation; however, a

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acknowledge the role that jury trials play in guarding against politically motivated prosecutions—when prosecutors know that they will have to convince a group of disinterested citizens of a defendant's guilt, they will be less likely to try to prosecute individuals merely for criticizing the government. The right to trial by jury also plays a key role in preserving judicial independence, by ensuring that judges cannot be so easily pressured by government officials to deliver guilty verdicts" (Wong et al, 2021).

<sup>10</sup> All laws in Hong Kong are written in both English and 'Chinese.' The NSL was drafted in 'Chinese' and does not currently have an official English translation.

<sup>11</sup> "If, in the course of committal proceedings, it becomes necessary or desirable in the opinion of the magistrate—(a) to defer any stage of those proceedings; or (b) in the event of a preliminary inquiry, to defer

judge will be more inclined to consider bail for the defendant if there occurs a material change in the circumstances of the case. A defendant can waive their right to ask for bail every 8 days at any time. Also, an application can be made to the High Court for bail if it is denied at the Magistrates'. A defendant has the option to plead guilty to a charge that due to its serious nature will not be dealt with at the Magistrates' Court, in which case no trial will take place and they will be committed to a higher court for mitigation and sentencing (HKSAR and Abiona Ayola Fahouziath, 2021).

Magistrates' Courts can only impose sentences of up to 2 years' imprisonment (3 years in some special cases) and fines of up to 100,000 HK dollars (up to 5 million HKD in some special cases) (Judiciary of Hong Kong, 2021, p. 9). The language of the trial to follow, either Punti (see chapter 4) or English, will be determined at this court. The Magistrate will also establish the need for an interpreter for all subsequent hearings of the case if appropriate. This is also the place where a defendant unable to afford legal representation may request subsidized legal aid: after the Duty Lawyer Service assesses the defendant's means, they may be assigned a lawyer for the duration of the case after payment of a one-time fee which may also be waived.

More serious cases will be heard at the District Court. This court cannot start legal proceedings by itself: it will only deal in cases transferred to it from the Magistrates' Courts. Like the latter, it also has civil and criminal jurisdiction, but there are limitations to the cases it may try and the sentences it may impose: murder, manslaughter and rape cannot be tried at this court and will go directly to the High Court, while the maximum prison term a defendant can be imposed at the District Court is 7 years. A judge at this court will also sit alone and no jury will be empanelled for trial.

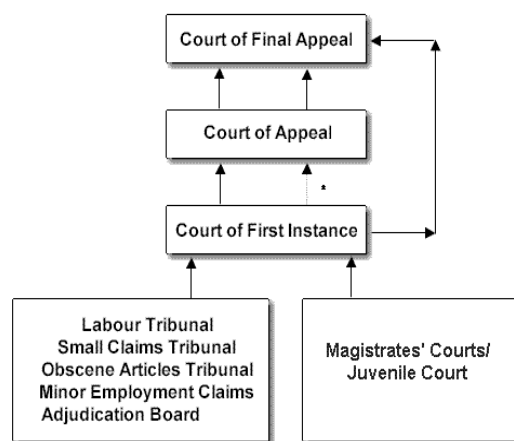
The High Court, which replaced the previous Supreme Court upon the handover in 1997 and which is composed of the Court of First Instance and the Court of Appeal, is

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the examination or further examination of the witnesses for any time, the magistrate before whom the accused appears or is brought may from time to time by his warrant remand the accused to a prison or, some place of security, for such time as the magistrate may think reasonable, not exceeding 8 clear days, unless the accused and the prosecutor consent to a longer remand" (Magistrates Ordinance, Section 79, Subsection (1)).

where serious cases where the defendant has already pleaded guilty at the Magistrates' level will go for sentencing, and where those serious cases where the defendant has pleaded not-guilty will go for trial. Its first component, the Court of First Instance, has both appellate and original jurisdiction, as it may hear appeals from trials at the Magistrates' Court, while it will also deal directly with serious crimes such as murder, manslaughter, rape, armed robbery, drug trafficking (in amounts ranging from a few hundred grams to several kilos) and elaborate commercial fraud. Its second component, the Court of Appeal, will deal with appeals arising from trials at the District Court and the Court of First Instance, with the possibility of the case then going to the Court of Final Appeal. See the figure below:

Figure 1: Appeal Structure of Magistrates' Courts and Tribunals



Source: [https://www.judiciary.hk/en/court\\_services\\_facilities/hc.html](https://www.judiciary.hk/en/court_services_facilities/hc.html)

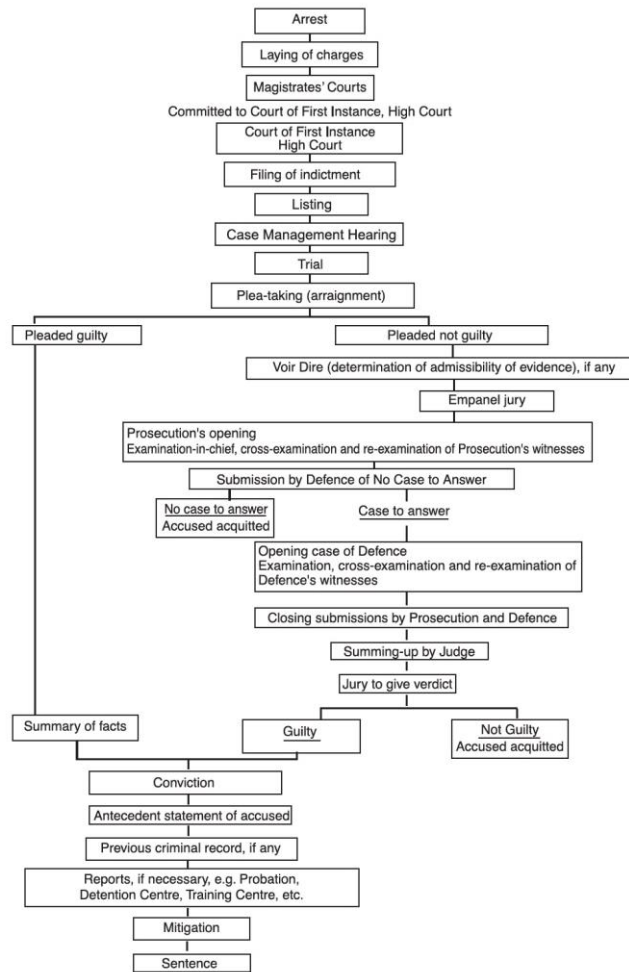
It is at the High Court that a jury will be empanelled for trial, consisting of either 7 or 9 jurors as the judge may decide. Sentences in the local legal system are usually handed down according to jurisprudence and the guidelines established in the different Ordinances (for example, the Theft, Offences against the Person, and Homicide Ordinances).<sup>12</sup> Appeals can

<sup>12</sup> For example: “Any person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for 3 years” (Offences against the Person Ordinance, Section 19).

be filed against a conviction, against a sentence, or both (HKSAR and Gutierrez Alvarez Keishu Mercedes, 2016), and they must be filed within a certain period from the handing down of the sentence (14 days for cases dealt with at the Magistrates' Court and 28 days for criminal cases dealt with at the District Court or the Court of First Instance); they can be filed *ex tempore*, but in that case leave for appeal shall be first obtained from the Court of Appeal.

A defendant can apply to have the language of the trial changed from English to Chinese and vice-versa, but it will be up to the Court of Appeal to decide. As noted by Ng, E. (2016), often jurors will not have a sufficient command of English to appreciate the eloquence and finer points of language uttered by a barrister during closing arguments; and it could be said that they would be biased against a foreigner who the previously-well-regarded HK Police argues was bringing illegal harmful substances into their healthy city ("There was also a view that the importation of drugs was a more serious offence than carrying or supplying it locally, so that foreign couriers were viewed as deserving of far higher or enhanced sentences for what the courts called the international element." (Reading, 2017, p. 3). Thus, it appears that some foreign, non-Chinese-speaking defendants will request their appeals to be conducted in the Chinese language (with English interpreting provided for them) so as to improve their chances of it being successful (personal communication, 2018). The following figure gives an overview of how a serious criminal case is processed up to the High Court:

Figure 2: Criminal Procedure in Hong Kong up to the High Court.



Source: [https://www.judiciary.hk/en/court\\_services\\_facilities/hc.html](https://www.judiciary.hk/en/court_services_facilities/hc.html)

Should a judge's decision at the Court of Appeal be appealed in turn, the matter will be transferred to the Court of Final Appeal, the highest court in the territory. While Hong Kong was a British colony, appeals at this level would be heard in London by the Judicial Committee of the Privy Council. Appeals at the Court of Final Appeal are heard by five of its members: the Chief Justice, three permanent judges and one non-permanent justice. As mentioned above, foreign judges from other common law jurisdictions are commonly invited to sit at this court as non-permanent members. When a judgment is handed down by this court, it becomes final, and theoretically not even the Supreme People's Court of the People's Republic of China could revoke one of its judgments, as per the 'one country, two systems' policy (see chapter 2). However, with the forceful implementation of the



National Security Law (NSL) for Hong Kong in mid-2020, the Office for Safeguarding National Security of the Central People's Government, with powers to investigate cases separately from the local Police and Department of Justice, was established in the SAR, and it is not subject to the local courts' jurisdiction, not even the Court of Final Appeal's. Importantly, that Office shall "exercise jurisdiction over a case concerning offence endangering national security under [the NSL]" (Hong Kong National Security Law, article 55), and Mainland authorities will decide on the court it will be tried at (Hong Kong National Security Law, article 56). For the first time since the handover, indictments in Hong Kong are to be tried without a jury (Hong Kong National Security Law, article 56)<sup>13</sup> by judges handpicked by the Chief Executive<sup>14</sup> (the highest office in the territory and a willing, cynical puppet of Beijing,<sup>15</sup> chosen not by universal suffrage but by a cabal of local CCP loyalists). This has effectively created a parallel legal system in the SAR under the full control of the Party, and it means that Hong Kong residents can now be extradited to and tried in Mainland China. Let us remember that millions of local residents took to the streets in the summer of 2019 to protest against a bill that would have allowed local extradition to the Mainland, something unthinkable before 2019. Furthermore, the Court of Final Appeal itself has decided it has no jurisdiction over the interpretation of the NSL (HKSAR and Lai Chee Ying, 2021) and appears to wash its hands of the general erosion of the rule of law in the city (Kellogg, 2021), although others consider it is being wise and strategic under the current political situation in the SAR (Young, 2021).

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<sup>13</sup> The interested reader will spend his time well reading on the case of 'Fast Beat' Tam Tak-chi, an activist and radio host jailed in April 2022 for 'sedition' (the first person jailed for such a crime in Hong Kong since the handover in 1997).

<sup>14</sup> "Before making such designation, the Chief Executive may consult the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region and the Chief Justice of the Court of Final Appeal." (Hong Kong National Security Law, article 44).

<sup>15</sup> Because the last three Chief Execs of Hong Kong (the despised CY Leung, the hated Carrie Lam, and the newly-installed, feared John Lee) have been precisely that. Anybody familiar with the recent political landscape of Hong Kong will confirm this. A taste of the matter by the articulate veteran journalist Michael Chugani: <https://www.ejinsight.com/eji/article/id/2612753/20201022-Dictators-are-immune-to-criticism:-Carrie-Lam-says-she-is-immune>. As an aside, Chugani was famous for his pieces toeing the government's line during CY Leung's period and for his criticism of the Occupy Central movement in 2014, until the extradition bill crisis of 2019 made him rethink his intellectual position.

### 3. Court Interpreting

Given the long and continuous history of interpreting in court settings around the world, with interpreters recruited for court work on a regular basis, it is only natural that the field has attracted continued academic interest and inquiry as part of the wider field of interpreting studies. Court interpreting, understood as the provision of interpreting services in a legal setting, could be defined as a separate branch of interpreting, different from conference and consecutive interpreting (Edwards, 1995) but incorporating elements of both, while aiming for a desirable legal equivalent and juggling with the preservation of form and content. Indeed:

The goal of court interpreting is to produce a legal equivalent, a linguistically true and legally appropriate interpretation of statements spoken or read in court, from the second language into English or viceversa. Legal equivalence is the distinguishing characteristic of court interpreting, and sets it apart from all other branches of interpretation. ... Instead of a summary, the court interpreter is required to interpret the original source material without editing, summarizing, deleting, or adding while conserving the language level, style, tone, and intent of the speaker or to render what may be termed the legal equivalence. ... The interpreter is required to render in a verbatim manner the form and content of the linguistic and paralinguistic elements of a discourse, including all of the pauses, hedges, self-corrections, hesitations, and emotion as they are conveyed through tone of voice, word choice, and intonation; this concept is called conservation. (Dueñas González et al, 1991, p. 16).

Court interpreting in the United States makes up a considerable portion of the available literature in English, but there are many works available covering the practices in other jurisdictions. Mikkelsen (1998) analyzes accuracy, impartiality, confidentiality, the scope/limitations of the role, continuing education as a duty to the profession, and certification tests. The latter is an important concept that is sorely lacking for part-time court interpreters in Hong Kong, as mentioned and recommended by Ng, E. (2018) following the examples of jurisdictions with such tests, as seen for example in Hale (2004), Mikkelsen (2017) and Ortega Herráez (2011); while accuracy/fidelity, impartiality and

confidentiality seem to be a running theme when analyzing the profession as a whole, as seen in De Jongh (1992), Edwards (1995), Hale (2004), Inghilleri (2012), Liu (2017). For his part, Gamal (2009), while deploring the lack of training for court interpreters, considers that court interpreting insists on fidelity, impartiality and confidentiality more than other interpreting modes. However, it begs the question whether medical or high-level bilateral interpreting do not require the same performance standards. Moreover, accuracy is a thorny issue for any interpreter faced with a situation in which cultural, systemic and linguistic differences prevent understanding by one of the parties: the defendant in the court interpreter's case. The issue is how to make sure that the interpreted output is intelligible when the technical language is beyond the defendant's comprehension.

This situation frequently arises in criminal cases with Spanish-speaking defendants in Hong Kong: many of them will have little to no formal schooling, and their understanding of the legal proceedings deciding their fate will be limited. But this does not apply exclusively to defendants: procedure delays and various issues, as noted by Martinsen and Dubslaff (2010) and Roberts-Smith (1989) can happen across a variety of jurisdictions due to a court interpreter's lack of formal training and understanding of legal proceedings—or even to a lack of communicative competence (Horváth, 2012)—, but these authors' reviews do not consider a possible lack of understanding of the judge's instructions by the jurors, while in the linguistically-special Hong Kong courtroom, Ng, E. (2016) has observed the little understanding that Cantonese-speaking jurors will have of an English trial in Hong Kong, caused by their unfamiliarity with legal terminology and their limited proficiency in the English language, and the issues it may cause, ranging from avoidable procedure delays to the quashing of verdicts. Something that seems to be assumed by most authors is that court interpreters are freelancers; however, as seen by Mikkelsen (2017) and confirmed by Ng, E. (2018), in Hong Kong each court will have full-time interpreters with the city's official languages in their linguistic combinations, while the courts of other bilingual or multilingual jurisdictions such as the different Swiss cantons will not have permanent interpreters and will rely instead on freelancers.

Most courts will not provide formal training for court interpreters (Edwards, 1995; Du, 2015), or very little and insufficient training (Dueñas González et al, 1991; Hale, 2004; Ng, E., 2018; Todorova, 2021). It is almost universally acknowledged by these authors that a great majority of jurisdictions should provide training for their court interpreters, and Berk-Seligson (2017) maintains that academic training in court interpreting would be a guarantee of quality interpreting: the salient lack thereof in Hong Kong was mentioned by Morris (1995) but has not been correctly addressed so far (Ng, E., 2018), although the Master of Arts in the Field of Translation offered by the University of Hong Kong, which has a legal interpreting component, could eventually remedy this.

A large portion of the literature deals with court interpreting as being practised mainly in the consecutive mode (De Jongh, 1992; Edwards, 1995; Mikkelsen, 1998); Steytler (1993) does not specify the mode utilised in South African courts but from his description it is evidently the consecutive one. Gamal (2009) and others do discuss the diverse modes that may be used at different stages of trials, while Adelo (2008) does not specify the interpreting mode in his treatment of the matter, but from the context it appears the cases he dealt with in Texan courtrooms are similar to those in the Hong Kong court circuit, where *chuchotage* for extended periods of time is the technique most often used.

For her part, while describing the usual conditions of court interpreting in her native Mainland China, where the consecutive mode is practically the only mode employed, Du (2015) compares it to the situation in Hong Kong, where “the interpreter uses the modes of consecutive and whispering interpreting interchangeably” (Du, 2015, p. 513). Tse (2020) describes how in the 1990s there were attempts to incorporate simultaneous interpreting (SI) in the Hong Kong courts (although it is not clear whether it was SI with headsets and microphones or merely *chuchotage*), but it encountered resistance from the legal profession which found this interpreting mode was not accurate enough for submissions in court. This lack of accuracy may arise from the interpreters not being given access to information about the case to prepare beforehand, as discussed by Ng, E. (2016) and Gamal (2009), the latter of whom espouses the opinion that “it seems unrealistic to expect an interpreter to

walk into a courtroom without any knowledge of the topic, terminology or chronology of the case and still be able to perform efficiently” (Gamal, 2009, p. 65).

The issue of interference with or effacement of the interpreter’s role, task and even identity by judges and barristers has also drawn scholarly analysis: let us remember the confusion over the role of court interpreters mentioned by Hale (2008), and how interpreters have been regarded before as mere conduit pipes (Cárdenas, 2001; Fenton, 1997). Morris (1999) has found that interpreters are often regarded by professional courtroom users as tools, machines or instruments, the use and functions of which can be defined by those same users almost at will, all while their working conditions leave much to be desired; according to Du (2015), interpreters may well be silenced by judges who — wrongly— consider that a defendant has enough command of the court language to make do without the interpreter’s services so as to speed up legal proceedings, but this ends up causing delays and confusion; while Mikkelsen (2008) finds that court actors insist time and again for the interpreter to limit himself to ‘verbatim translation,’ which may surely curtail the transmission of the speaker’s intention that is indispensable for achieving accuracy of interpretation. Fowler (1997) had already found the verbatim expectation from judges and barristers alike, and that magistrates usually prefer interpreters to discharge their duties as silently as they can, and to become more of a decorative courtroom object instead of a potentially intrusive participant. Judges and barristers in Hong Kong sadly do indulge in these behaviours from time to time, as noted by Ng, E. (2018).

#### **4. Languages Used at the Hong Kong Courts**

Hong Kong having been a British colony for almost a century and a half, the common law legal system of the territory was exercised exclusively in the English language until 1974 (Ng, E. 2018), despite the local population then and now overwhelmingly speaking Cantonese (廣東話, *Gwóngdūngwá*, the language of Guangdong, the Chinese province that surrounds the territory of Hong Kong) and a handful of other Sinitic languages/dialects, and not the language of the colonial masters (2021 Population Census Office, 2022). During the first days of the Crown Colony, most British residents and officials in Hong

Kong were unable or did not deign to learn Cantonese, and thus the need to employ interpreters arose immediately. Reading James Clavel's classics like *Tai-Pan* or *Noble House*, one would believe plenty of *gweilos* (foreign devils)<sup>16</sup> in Hong Kong would eventually achieve mastery of Cantonese, but only a very small minority did so, and English-speaking Chinese had to be assigned to the role of ad hoc interpreters when the British set up shop on the barren rock with hardly a house upon it (Palmerston *dixit*). However, it appears that the quality of interpreting left much to be desired (as it will be seen in chapter 5), and remained so for decades to come. Eventually, with the professionalization of the role of court interpreter in the second half of the 20<sup>th</sup> century, effective interpreting began to be commonly heard in the courts of Hong Kong.

The unchallenged supremacy of English as the language of government and the judiciary in Hong Kong ceased in 1974, when the Official Languages Ordinance was enacted and made 'Chinese' an official language for the territory (the inverted commas on 'Chinese' are intentional, as will be explained below). On that year, 'Chinese' started to be used unofficially at the Magistrates' and other smaller Courts, but the District and the High Court remained exclusively English-speaking, and would remain so until 1996 (Ng, E., 2018). In the run-up to the handover of Hong Kong to the People's Republic of China in July 1997, the Ordinance was amended in 1987 so that all new legislation would be enacted bilingually. The Basic Law that was to govern Hong Kong from 1997 onward (see chapter 2) established in 1990 that 'Chinese' and English would enjoy the same status after the handover. It has been the case since then, after some hiccups (Re Cheng Kai Nam Gary, 2002). In 1995, the Official Languages Ordinance was amended again so that 'Chinese' could officially be used to conduct business in courts.<sup>17</sup> However, the definition of

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<sup>16</sup> Gwai<sup>2</sup> lou<sup>2</sup> (鬼佬) has been variously translated as 'ghost man' or 'foreign devil' throughout the years, and although not considered very polite nowadays, depending on the context it can be a humorous way for locals to address foreign friends in Hong Kong, or for the latter to refer to themselves.

<sup>17</sup> "The English and Chinese languages are declared to be the official languages of Hong Kong for the purposes of communication between the Government or any public officer and members of the public and for court proceedings." (Official Languages Ordinance, 1995).

‘Chinese’ is a thorny issue with strong political overtones, and an explanation will be attempted in the following paragraph.

The traditional territory of China has for millennia been the home of peoples speaking a myriad of languages that belong to the Sinitic family, characterized by being highly tonal and having a disparate, fragmented geographical distribution (Du, 2015). Throughout the history of the Chinese dynasties, there was not a single, unifying language for the majority of the population. It was only in the late 19<sup>th</sup> century that the first attempts at imposing a majority language were made, and it would take until after the creation of the People’s Republic of China for a single national language to be ‘created.’ In the 1950s, the ruling Communist Party chose a ‘standard’ variety of ‘Chinese’ (based on the Beijing dialect) as the official language of the People’s Republic, and called it 汉语 (*hànyǔ*, the ‘Language of the Han’ (the largest ethnic group in China)) or 中文 (*zhōngwén*, the Middle Script), also known as 普通话 (*pǔtōnghuà*, the ‘Common Tongue’), and set about imposing its use for national education, business, entertainment, and as many aspects of life as possible, so as to better exert control over some 550 million Chinese back then (around 1.4 billion by the early 2020s) that however spoke and still speak the aforementioned myriad of tonal languages and dialects, more often than not unintelligible between each other. James (1975, p. 221) summarizes it so:

Putonghua (PTH) was defined and endorsed at the standardization conference of October, 1955, as the common language of the People's Republic of China. It has the following features: 1. The pronunciation of the general Peking Dialect, 2. the grammar of the Northern Chinese Dialects, 3. the vocabulary of modern colloquial Chinese literature. ... The basic reason given for the need to popularize Putonghua is that it will lead to national unity, which has been an historical goal of the Chinese peoples. ... A broad base of literacy is also likely to make adaptation to modern technological innovation easier and more rapidly accepted and spread, and make political and social impact of China on the world more quickly felt.

Most Mainland Chinese’s mother tongue will be the local dialect or language, and they will begin learning Putonghua upon entering preschool. But their Putonghua will often remain

accented and affected by the local dialects (Du, 2015). There are still millions of people in China that speak little to no Putonghua (Xinhua, 2021), preferring instead their regional languages or dialects.

Acknowledging this linguistic diversity, the right to an interpreter for a non-Putonghua-speaking defendant in legal proceedings is enshrined in Article 139 of the Chinese Constitution. Putonghua is intimately linked to one of the few unquestionable achievements of the Chinese Communist Party (CCP), that of literacy. It is believed around 90% of the country's population was illiterate by the end of the Chinese Civil War in 1949, but through a massive compulsory education effort, the simplification of Chinese characters and the creation of Pinyin (the official transliteration system used in the PRC), over 96% of Chinese citizens are nowadays classified as literate (Statista, 2022). It is because of all this that the term 'Chinese language' is conflated with Putonghua, to the detriment of all other Sinitic languages spoken in China, regarded as mere 'dialects of Chinese' by the CCP (James, 1975; Du, 2015). However, the linguistic situation in Hong Kong developed differently from the Mainland: since the city was already a British colony by the time the CCP started its national language standardization efforts, it was spared them, and the local Sinitic language, Cantonese (again, regarded as nothing more than a dialect by the Central Government of China), continued its evolution largely unimpeded. Cantonese is also known as Punti ('local,' which in an ethnographic and sociological context refers to the original inhabitants of the New Territories of Hong Kong, as opposed to the Hakka ('guests'), Hoklo, Tanka and other groups that later settled in the area) (Constable, 2005). When the courts of Hong Kong establish the language of a criminal trial, they employ the term Punti to refer to the variety of Cantonese spoken in Hong Kong, and tend to avoid using the term 'Chinese.' However, many government and legal instruments continue employing the term 'Chinese' instead of 'Cantonese' when referring to the main local language, for political reasons (Du, 2015): Hong Kong belongs *de jure* and *de facto* to the People's Republic of China, which remains extremely sensitive to any perceived or actual threat to its uniform vision of the Chinese people(s). Acknowledging the existence of Cantonese not as a dialect but as a language on par with Putonghua would



undermine the Party's linguistic standardization efforts, and in the past decade the rise of localist sentiment in Hong Kong has been linked to its Cantonese and Hong Kong English linguistic identity (Cheong, 2021; Hansen Edwards, 2017). It is for this reason that the Hong Kong government, controlled by Beijing, employs the term 'Chinese' instead of Punti or Cantonese when referring to the majority language in Hong Kong, so as to align itself with the One China principle, the Central Government's monolithic interpretation of the country and its culture (MFA of the PRC, 2022).

In Hong Kong, the law dictates that every defendant has the right to appear before a judge aided by an interpreter into their mother tongue if necessary (Hong Kong Bill of Rights, article 11), and no legal proceedings in the criminal circuit may be conducted without an interpreter present should the defendant speak any language other than English or Punti/Cantonese. All permanent court interpreters in Hong Kong have those two languages as their linguistic combination, and a growing number also have Putonghua.<sup>18</sup> However, Hong Kong being an international city with hundreds of thousands of neither-English-nor-Cantonese-speaking residents of foreign origin, other languages have a tendency to appear regularly at the Hong Kong courts, but there are no permanently appointed court interpreters for any language other than English/Cantonese/Putonghua.<sup>19</sup> There are over 300,000 Indonesians and Filipinos living and working in the SAR and speaking Bahasa Indonesia or Tagalog (and/or any other of the innumerable languages of the Indonesian and Philippine archipelagos); other well-represented languages include Hindi, Nepali, Urdu, Thai,<sup>20</sup> and Chinese dialects like Shangainese, Hokkien and Fujianese, to cite but a few. As for Spanish, although not spoken by a considerable swathe of the local or expatriate population, it enjoys the dubious distinction of being an important language

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<sup>18</sup> Since the handover, the permanent Court Interpreters at each Magistracy are also supposed to be able to interpret in between the SAR's two official languages and Putonghua: "Full-time court interpreters have been trained to become proficient in Putonghua. ... 95% of full-time interpreters are now considered qualified in Putonghua" (Ng K.H. 2009, p. 178).

<sup>19</sup> "There are currently two broad categories of court interpreters providing interpretation service in court. They include full-time Court Interpreters providing interpretation in Chinese and English, and part-time interpreters providing interpretation in foreign languages (other than Chinese and English) and Chinese dialects (other than Cantonese)" (Hong Kong Legislative Council, 2012).

<sup>20</sup> By 2021, there were 203,359 Filipinos, 145,754 Indonesians, 32,796 Indians, 26,779 Nepalese, 18,178 Pakistanis, and 13,838 Thais in Hong Kong. (2021 Population Census Office, 2022).

of the international drug trade,<sup>21</sup> and Hong Kong, being one of the main ports of entry into China and a rich city by itself, is a frequent destination or layover for drug mules and traffickers from not only Latin America and Spain but the world over, who risk over twenty years in jail for the price a kilogram of cocaine can fetch in the streets: around one million Hong Kong dollars, some 119,000 Swiss francs (HKSAR v Rojas Montoya Juan Pablo, 2021).<sup>22</sup> Aside from drug-related offences, from personal observation at the courts it could be said that Spanish-speaking defendants are usually brought before a judge accused of overstaying/violating their conditions of stay in the territory, or of theft (robbery, burglary, etc.). However, the judgments for these cases are usually rendered by a Magistrate or a Justice of the District Court, and only a very small fraction of judgments rendered at these two levels are available online, while there is a higher proportion of drug-trafficking judgments rendered by the High Court available online for researchers located overseas.

## **5. Interpreting in a Hong Kong Courtroom**

As mentioned in the previous chapter, oral interpreting has always been necessary for criminal procedures in the Hong Kong legal system due to English being the language of government and the judiciary in a Cantonese-speaking society. But the system was apparently plagued by a dearth of competent interpreters from day one. Although there had been Western missionaries conversant in Chinese (and most likely there would have been locals versed in English in the area) before the British takeover of Hong Kong, it would seem that by 1843 “there was in the government no one who had any knowledge of the Chinese language and could act as an interpreter,” (Ng, E., 2018, p. 12) but for a couple of persons: Daniel Richard Caldwell and John Robert Morrison. The former, born in Saint Helena from a soldier, had been active as a merchant in Canton (the modern Guangzhou) before the establishment of the colony of Hong Kong, and spoke English, Portuguese,

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<sup>21</sup> “The Drug Enforcement Administration reports that more than three times as much cocaine is seized in Miami than anywhere else in the United States [...] According to DEA sources, an estimated 80 percent of the cocaine confiscated in southern Florida in 1988 was controlled by Colombia’s Medellín cartel” (De Jongh, 1992, p. 79). One can imagine these figures will have severely increased since then.

<sup>22</sup> The interested reader will find an appendix at the end of this thesis with extracts from legal judgments exemplifying the penalties incurred by foreign drug traffickers in Hong Kong.

several Chinese dialects and Malay. The latter was born in Macau, the son of the first Protestant missionary in China and also an interpreter for the embryonic colonial government, Robert Morrison. It seems that Caldwell became indispensable thanks to his fluency in Chinese, and occupied several important positions aside from that of General Interpreter to the Government. However, he fell from grace due to accusations of corruption and association with Chinese pirates. Morrison Jr. had had extensive experience in the area as an interpreter for private merchants and for the British army (he actively participated in the negotiations of the Treaty of Nanking (see chapter 2)); however, he died from a fever a week after having entered the newly-formed colonial administration of Hong Kong in 1843 (Choa, 2000).

Robert Thom was another interpreter active in that area and time, but he was mostly engaged in the private sector and on assignment to British military forces, and not for the government of Hong Kong (Wang and Tang, 2018).

It would seem that Caldwell remained active as an unofficial interpreter for the courts for a long time after his fall from grace, until his death in 1875, as “there were no competent interpreters attached to the Police Magistracy (now the Magistrates’ Courts) or the Supreme Court (now the High Court)” (Ng, E., 2018, p. 14). Apparently local Chinese who had learned some English and missionaries like the late Morrison Sr. were also employed by the courts, but either their performance left much to be desired or their main interests lay in proselytism and spreading Christianity.

In the 1860s, a Student Interpreter Scheme was launched intending to improve the situation, but it ended in failure: it would provide capable young Englishmen with a two-year study sojourn in Hong Kong to learn Cantonese, at the end of which they would sit an examination to establish if they were fit to become government interpreters. However, none of the graduates ever worked as such, and instead took up positions of responsibility in the government. Ng, E. (2018, p. 17) speculates those graduates were not qualified as interpreters, given that “two years would never have sufficed to master a new language, let

alone the skills of court interpreting, which – as we now know – itself requires rigorous and specialised training.”

It would seem the situation remained unsatisfactory for a very long time: in the 1950s there were only five fully-qualified court interpreters (not surprising, considering the hardships Hong Kong endured under Japanese occupation during WWII and the social transformation caused by the massive influx of refugees from the Chinese Civil War in the late 1940s), while by 1974 there were 60 (Hui and Djung, 1994). On that year, with the passing of the Official Languages Ordinance, court interpreters became actual government officials, and by the early 1990s there were 145 of them; by 2004 there were 163 full-timers and 402 part-timers (Panel on Administration of Justice and Legal Services, 2004), while by 2007 there were 167 full-time court interpreters and 395 part-time court interpreters (Ng, K.H., 2009). The Part-Time Interpreters Unit of the Court Language Section of the Judiciary was the office that dealt with recruiting, testing, hiring and assigning part-timers to different courts as needed. This office was recently renamed as the Freelance Interpreters Management Unit, and its functions remain the same, but since its old name appears on documents consulted for this thesis, I will continue to refer to it as the Part-Time Interpreters Unit.

There are three ranks or levels for full-time court interpreters in Hong Kong: Court Interpreter II, Court Interpreter I, and Senior Interpreter (Hui & Djung, 1994), but these are unrelated to the Government Simultaneous Interpreters, who are civil servants that interpret between Cantonese and English during official visits by foreign dignitaries, or that accompany local high-ranking officials on their overseas travels.<sup>23</sup> Full-time court interpreters have Cantonese, English and Putonghua as their language combination, and part-timers usually have English and another language as theirs: there were 340 of them working for the Judiciary in 2016, with a linguistic combination representing 35 languages

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<sup>23</sup> Of these, there are two Chief Simultaneous Interpreters and twelve Simultaneous Interpreters, compared to the 498 translators working for the Hong Kong Government under the title of Official Languages Officer. See <https://www.csb.gov.hk/english/grade/ol/1475.html>

and 18 Chinese dialects.<sup>24</sup> However, it is important to mention that previous interpreting experience has never been a requirement to become a court interpreter in Hong Kong. The entry requirements are very low for both full-timers and part-timers (see chapter 6): prospective interpreters who hold a university degree in any discipline and who have passed a simple translation and interpretation test (Hong Kong Legislative Council, 2012) receive four weeks of training in court procedures and terminology, and they are also sent to interpreted trials as audience members to see how the established professionals work. Upon completion of their training, an experienced interpreter will be assigned to supervise them during their first assignments. However, as noted by Ng, E. (2018), the short training period and the basic entry requirements cannot guarantee a good performance by new full-time court interpreters. It would seem that new part-time interpreters receive a similar training of sorts: induction courses in a real courtroom setting to review procedures, legal structure, basic terminology, court documents and professional conduct are organized,<sup>25</sup> but from personal experience, not all part-timers are given them.

After a new part-time interpreter has been onboarded, their name will be added to the pool of active part-timers, and as cases arise, be it a same-day hearing or a trial scheduled to take place in 9 months, the Court Language Section will call an interpreter from their roster to check their availability. If the interpreter is available, they will be given the details of the case, usually the date, time, court number, and case number, and will be expected to attend for the duration of the proceedings. Upon arrival at the court in question,

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<sup>24</sup> Amharic, Arabic, Bahasa Indonesia, Bahasa Malaysia, Bengali, Bhutanese, Burmese, Cambodian, Danish, Dutch, French, German, Greek, Hindi/Punjabi, Igbo, Italian, Japanese, Korean, Mongolian, Nepali, Portuguese, Russian, Sinhala, Somali, Spanish, Swahili, Tagalog, Tamil, Thai, Turkish, Twi, Urdu/Punjabi, Vietnamese, and Yoruba, plus the Chinese dialects (Panel on Administration of Justice and Legal Services, 2016).

<sup>25</sup> “The Judiciary attaches much importance to the training of, support for and supervision of the PTIs [part-time interpreters]. Court visits are arranged for all new PTIs. They also attend an induction class in real courtroom setting on court structure, court procedures and code of practice. They are also given handouts on relevant subjects including oath/affirmation of court interpreter and witness, specimen charges and brief facts, different nature of sentences in the judicial system, and legal terms commonly used in court proceedings. On supervision, feedback on interpreting service provided by PTIs is received from court users from time to time. Moreover, as an integral part of the performance management system, inspections on the performance of PTIs in courts are conducted by the Judiciary and views on their performance are also collected from the full-time CIs [court interpreters]” (Panel on Administration of Justice and Legal Services, 2016, p. 3).

the interpreter will fill up an attendance and payment slip that is countersigned by the head court clerk when the case is over for the day, establishing the total time period worked for the session. Part-time interpreters are paid a fixed sum for the first two hours of each assignment, and every extra hour is paid an extra half of the fixed sum. At the end of each calendar month, interpreters will be paid for the total hours worked during that period.

Both new full-timers (Court Interpreters II) and part-timers are first assigned to cases at the Magistrates' level; Court Interpreters I are assigned to the District Court, and Senior Court Interpreters to the High Court (Ng, E., 2018), while part-timers will be assigned cases at the District Court and the High Court as they build up experience or as the need arises. Full-time interpreters will be rotated within the different Courts or chambers of their assignment, unlike decades ago, where an interpreter would be assigned to a given judge for years and years until either of them would be transferred or promoted. In the usual layout of a criminal case involving a Cantonese-speaking defendant tried before an English-speaking judge, interpretation of the procedures is provided as *chuchotage* into Cantonese for the defendant, and whenever they or another Cantonese speaker would give testimony, or whenever the judge addresses them directly or hands down a decision, interpreting will switch to the consecutive mode.<sup>26</sup> The jury will not be provided with their own interpreting, and due to the layout of the court they will not be able to follow the interpreter's utterances to the defendant's ear. According to Ng, E. (2018: 43), *chuchotage* is therefore not appropriate for the normal Hong Kong courtroom with a jury composed mostly of local Cantonese speakers "without a knowledge or a native command of the English language." Also:

Interpretation in the Hong Kong courtroom is provided to cater for the needs of the Cantonese-speaking witnesses and defendants and not for those of the jurors, who are

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<sup>26</sup> "Under existing arrangements in the Hong Kong courtroom, interpretation is conducted in the consecutive mode during examination-in-chief, cross-examination and re-examination. The judgment is also interpreted in the consecutive mode for the benefit of the accused and other parties to the trial. Simultaneous interpretation is usually restricted to counsel's submissions, where the interpreter stands next to the accused and translates the submission to the accused. This form of whispering interpretation is also known as dockside interpretation" (Tse, 2020, p. 3).

selected for jury service because they are supposed to have an adequate knowledge of the English language. Although jurors with a comprehension problem may benefit from the interpretation provided in open court, not all the interpretation provided is actually accessible to everybody in the courtroom because of the different modes of interpretation used and the need for the interpreter to shift from one mode to another throughout the trial. (Ng, E., 2016, p. 176).

## **6. English-Spanish Part-Time Court Interpreters in Hong Kong**

As described in the Introduction, this chapter's content will be presented from a retrospective autoethnographic perspective, as I will describe what I experienced as a first-hand participant in interpreter-mediated trials in the Hong Kong courts. According to Adams et al (2017, p. 2), autoethnography is "a research method that uses personal experience ('auto') to describe and interpret ('graphy') cultural texts, experiences, beliefs, and practices ('ethno')," in this case in a retrospective manner, as the events were experienced during a period when the intention of writing about them was not there yet. The intention is to paint a picture that will necessarily be incomplete, but that will be rendered valid by personal, candid first-hand observations that may not be found in an essay by a detached social scientist. After all, autoethnography "aims to offer tales of human social and cultural life that are compelling, striking, and evocative (showing or bringing forth strong images, memories, or feelings)" (Poulos, 2021, p. 5). Memories may be biased, but more often than not they are the only means available to retrieve a given human experience to be examined, all while exercising the required hindsight to reflect on them (Adams et al, 2017).

It could be said that the issues faced by English-Spanish part-time court interpreters in Hong Kong are, *mutatis mutandis*, the same as those faced by part-timers with different linguistic combinations in the same jurisdiction. They all deal with similar situations arising from the specialized activity of court interpreting. It could be assumed that the various linguistic combinations of the part-timers would not have a differentiating impact between their experiences, as the legal proceedings do not change substantially according

to the interpreter used. Therefore, what follows could be generally construed to apply to all part-time court interpreters in Hong Kong, although similar studies outlining the particular situation of interpreters with other language combinations could shed new light on that sector of our profession. However, to my knowledge such studies have not yet been written.

Court interpreting in Hong Kong for linguistic combinations outside of the classic Cantonese-English-Putonghua one is for the most part performed as *chuchotage* for the benefit of the defendant during interactions between counsel, the jury and the judge, but oftentimes it may switch into a consecutive mode during interactions between the defendant, the witness, counsel and the judge. Court interpreting will not be performed inside a booth, and while interpreting at the court the interpreters will go back and forth between the language of the defendant (which is assumed to be the interpreter's A language) and the language of the court.

At the Magistracy level of the Hong Kong legal system, almost all interpreting is performed as *chuchotage* or whispering for the benefit of the defendant. As mentioned above, due to the nature of offences usually committed by native Spanish speakers in Hong Kong, cases have an initial hearing at the Magistracy level (usually at Eastern Court), and are then transferred to either the District Court or the High Court. It is rare for Spanish-speaking cases to stop at the Magistracy level due to the sentences most likely to be imposed: as seen before, a Magistrate cannot impose a sentence of more than three years' imprisonment, whereas up to ten years may be imposed for theft, up to fourteen years for burglary, and up to life in prison for robbery. Trafficking in Dangerous Drugs will attract a sentence depending on the drug quantity and type, and the starting point will usually be several years (Theft Ordinance, articles 9 and 10).<sup>27</sup> It will thus be up to the District Court and the High Court, the judges of which can impose longer sentences, to process most of the Spanish-speaking cases in Hong Kong.

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<sup>27</sup> For readers interested in an overview of criminal procedures in Hong Kong, see [https://www.clic.org.hk/en/topics/policeAndCrime/court\\_procedure](https://www.clic.org.hk/en/topics/policeAndCrime/court_procedure).



Still at the Magistracy level (and at the District Court as well), cases are dealt with without a jury: it is the judge alone who will hear the evidence and mitigation and decide on the defendant's case. This means there will not be a jury needing interpreting services from a part-timer: usually only the defendant will need interpreting into his/her language, and only on rare occasions will he/she have to give evidence to the judge and thus need to be interpreted.

Because of all of the above, the activities of Spanish interpreters at the Magistracy and District Court levels can be of a short duration, consisting mainly of individual hearings that will usually take less than an hour. The main activities for a *competent* Spanish court interpreter in Hong Kong take place at the High Court, during long trials and complex appeal hearings. The italics on *competent* are intentional: although the concept is open to discussion (Malmkjær, 2009; Mikkelsen, 2017), my very personal definition of *competent* in this thesis would be an interpreter that can hold their own under the pressure of a heated, rapid exchange at the courtroom and continue producing an intelligible, generally correct output for the duration of a hearing (usually from 10:30 to 13:00 and from 14:30 to 17:30 for trials at the High Court). Only one interpreter is assigned per hearing and per language, and thus they will interpret alone for the duration of the proceedings. It is known among Spanish-speaking part-time court interpreters in the territory that some of them will only be called to interpret at the Magistracy level and never at the High Court, as it seems the Court Language Section (which assigns freelance interpreters on its roster to the different courts) is aware to a certain extent of some kind of feedback from counsel and judges regarding the interpreters assigned to their trials (personal communication, 2018).

Again, establishing who is a competent interpreter at the SAR's courts is difficult, and even the Law Society of Hong Kong (the professional association of local solicitors) has written to the Government about it. Among other issues, it has identified that there is a

(c) Lack of formal training (including continuing professional development training) for outside or Part-time Interpreters ("PTIs") in terms of understanding of legal and medical terminologies; court and law enforcement agencies procedures and rules; ethical issues; the

role of interpreters; and cultural, religious, ethnic, age and sensitive issues arising from interpreting for e.g. victims of sexual abuses, children or persons with disabilities (in particular persons suffering from cognitive or psychiatric conditions), as well as persons of different faiths and religions, and of different genders.

(d) Lack of an accreditation or a certification system to evaluate the levels of competency of PTIs, in order to allow for differentiation of skill-sets and consequent pay grade differentials. The above underpin professionalism. (The Law Society of Hong Kong, 2020, p. 2)

This does not mean that perfect interpretation is generally achieved or expected, although it would not be hard to imagine some judges would indeed expect an automatic-like performance from the interpreter that gives a semblance of perfection.<sup>28</sup> However, as previously mentioned, the entry requirements to become a part-time interpreter are extremely low, and thus a first filter to establish interpreting competency is weakened. Applicants can be hired merely by virtue of holding a university degree in any field and passing a short written translation and sight translation test, the level of which is nowhere near that which the interpreters will be expected to work at if they make it into the roster. This means that practically anyone can become a part-time court interpreter, provided they speak the language in question and they hold a bachelor's degree, regardless of their profession.<sup>29</sup> Despite their bilingualism, they may well impede the correct serving of justice

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<sup>28</sup> “The judge sat on the bench. He proceeded to read the sentence into the microphone in front of him in a barely audible, monotone voice. I interrupted, ‘Excuse me, Your Honor, the interpreter cannot hear you. Can you please check the microphone?’ He replied, ‘You don’t have to hear, just interpret!’ (Cárdenas, 2001, p. 24). See also: When the law calls for interpreters to restrict themselves to verbatim translation and prohibits the use of techniques which go beyond the referential use of language, it is making it impossible to achieve anything approaching the in any case unattainable goal of ‘true’ communication” (Morris, 1995, p. 27).

<sup>29</sup> It would seem that even the bachelor's degree requirement is sometimes waived in the case of speakers of ‘uncommon’ languages: “In his evidence, Mr Afu testified that he was working in Hong Kong, as a professional rugby player and a coach, when he was approached to perform the duties of a Judiciary interpreter in the applicant’s trial. He had no previous experience as an interpreter. [...] He said he learnt the Tongan language from his parents and the Tongan community whilst growing up in Brisbane. At school the teaching medium was English. He did not attend university and on leaving high school he embarked on a career as a professional rugby player” (HKSAR and Moala Alipate, 2017).

and prevent a defendant from being fully present at their trial, as put by Dueñas González et al (1991, p. 155):

An interpreter is a bilingual person who has the duty to act as the medium between the court and the non-English-speaking person. ... The interpreter is required to transfer all of the meaning he or she hears from the source language into the target language, not editing, summarizing, adding meaning, or omitting. The court interpreter is required to transfer the message into the other language exactly, or as close to exactly, as originally spoken. ... Specifically, the court interpreter is a language mediator who through interpretation allows the defendant to be linguistically and cognitively present in a legal setting.

In the specific case of Spanish-English part-timers (which would not be hard to extend to other linguistic combinations as well), no-one at the Court Language Section will acknowledge it, but former and long-serving part-time interpreters in Hong Kong with that combination suspect that persons from all walks of life are admitted into the roster (provided they speak enough Spanish) in order to have enough ‘interpreters’ available for when there may be an extraordinary case load or for when experienced interpreters are not available (personal communication, 2018); the objective would seem to be to meet the legal requirements outlined in article 5 of the Official Languages Ordinance<sup>30</sup> and articles 1, 11, 16 and 22 of section 8 of the Hong Kong Bill of Rights. The aforementioned, crucial article 11 reads:

**Rights of persons charged with or convicted of criminal offence**

(1) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

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<sup>30</sup> “**Judicial proceedings**

(1) A judge, magistrate or other judicial officer may use either or both of the official languages in any proceedings or a part of any proceedings before him as he thinks fit. (Amended 21 of 1999 s. 24)

[...]

(3) Notwithstanding subsection (1), a party to or a witness in any proceedings or a part of any proceedings may—

(a) use either or both of the official languages; and

(b) address the court or testify in any language” (Official Languages Ordinance, Cap. 5).

(2) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality—

(a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

[...]

(f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

However, in reality this practice incurs a high risk of yielding undesirable results in the form of appeals, quashing of convictions and retrials (HKSAR and Moala Alipate, 2017). It would seem the authorities equate a speaker of a language which the defendant understands with a knowledgeable interpreter that will truly enable understanding between parties in the courtroom. It is known that both defendants and counsel will argue that the interpretation was not up to par in order to obtain a retrial (personal communication, 2018), although it would be difficult to establish just how can they justify their critique of the interpreter's performance, merely arguing that the defendant could not understand the interpreter.

Whenever the Judiciary of Hong Kong drafted its operative procedures for interpreting at local courts, it would seem they failed to consult other jurisdictions or international organizations employing interpreters on the appropriate length of time for interpreters to perform their duties. As mentioned by Edwards (1995), international organizations, such as those in the United Nations system, and the European Union and United States government institutions, understand that 30 minutes is the maximum period a conference interpreter should work before being replaced by a colleague for the next 30 minutes, so as to guarantee accuracy and avoid mistakes. Despite the differences between conference interpreting and court interpreting, court interpreters do get tired during the performance of their duties, and 30-minute periods of interpreting between rests would be welcome. Furthermore, it is known that “the concentration and effort required to carry out the task of interpreting is extreme, and interpreters should not work alone, all day, on one case” (De Jongh, 1992, p. 51). However, although cases at the Magistracies rarely go over

this period, hearings and trials at the High Court can drag on for hours or even full working days, and as mentioned before, a single interpreter is employed for the duration of the proceedings. Mid-morning, lunch and mid-afternoon breaks are usually only granted by the judge to relieve their fatigue and that of counsel, but the interpreter's fatigue is rarely (if ever) taken into account. The High Court of Hong Kong falls squarely among the infamous courtrooms mentioned by De Jongh (1992, p. 52) where "interpreters are called to interpret alone, without relief, in complex trials for [long] periods of time. Under such circumstances, the quality of the interpretation will inevitably suffer." To my knowledge, no Spanish court interpreter in Hong Kong has outright refused to work under these conditions, but if they did, it is likely that they would simply not be assigned cases at the High Court anymore.

Aside from the difficulty arising from single-handedly interpreting for hours and hours, one of the main issues while interpreting at the High Court, that of the difficulty of hearing what is being said in the courtroom in order to safeguard the defendant's rights (Adelo, 2006), arises from the fact that chambers in that facility are built with the dock (actually resembling a cage) located at one end of the room, facing the judge but with the lawyers' and solicitors' backs turned to it. Almost all interpreting is performed as *chuchotage*, as confirmed by personal experience and other studies<sup>31</sup>: only when the judge directly addresses the defendant or when a decision is handed down will the interpreter switch to the consecutive mode. This agrees with the findings of Tse (2020), while Hui and Djung affirm that interpreting in a Hong Kong court is done simultaneously, but whispering:

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<sup>31</sup> "In many other courtrooms, where interpreting is provided for linguistic minorities, who do not speak the language of the court, interpreting is most of the time provided in the simultaneous whispering mode, professionally known as *chuchotage*, audible only to the person for whom the service is provided. In Hong Kong, however, since the majority of witnesses choose to testify in Cantonese, interpreting is mostly provided in the consecutive mode in open court, with the interpreter and the other interlocutors taking turns to speak, and the interpretation is audible to all those in court. *Chuchotage* is used only when there is an interaction between counsel and the judge and/or the jury, to keep the Cantonese-speaking defendant informed of the verbal exchange between the parties" (Ng, E., 2020, pp. 26-27).

...[during] arguments between counsel, statements of the court and counsel to the jury, summing-up, delivery of judgement, and so forth, simultaneous interpretation, known as dock-side interpretation, is conducted. The interpreter whispers the oral translation to enable the defendant to understand what is going on. (Hui and Djung, 1994, p. 140)

There are no facilities for simultaneous interpreting at the High Court (or any other local court for that matter): some barristers have mentioned old plans for an interpreting booth set up on a side room with a window into each courtroom, but apparently those plans never came to fruition and the side rooms are used to store documents instead (personal communication, 2019).<sup>32</sup> Incidentally, the interpreter's desks at the Eastern Court are also used to store bundle upon bundle of old case documents. Therefore, the interpreter is forced to sit next to the defendant's cage, facing the judge and the lawyers' backs, and perform *chuchotage* to the defendant's ear. All microphones in the courtroom are for recording purposes only, and not for amplifying the speaker's voice. Thus, oftentimes the interpreter must make an enormous effort to discern each speaker's utterances when dealing with the cacophony of voices that arises while the judge and the lawyers interact and cut each other off in a heated debate.

One concession is made to the interpreter: each courtroom at the High Court is equipped with a radio transmitter that collects the input from the microphones and transmits it to a receiver hanging around the interpreter's neck and connected to earphones, so as to allow him/her to hear whatever is said into the microphones and thus mitigate the effects of what Adelo (2008) calls one of the best kept secrets in the courtroom: the fact that interpreters frequently cannot hear what is said there. However, personal experience has demonstrated that there needs to be a clear line of sight between the transmitter and the receiver, and even a human head sticking out can interrupt or cause interference to the transmission. The transmitter cannot be moved around because of its short cable, and due to the layout of the court, very frequently the solicitors sitting next to or behind the

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<sup>32</sup> "A Judiciary's information paper prepared in January 1997 reveals that because simultaenous [sic] interpretation was regarded as an unacceptable mode of interpretation in court proceedings, plans for introducing simultaneous interpretation services and facilities were abandoned" (Tse, 2020, p. 5).

barristers will block the transmission with their bodies or limbs, which will create interruptions or disconcerting interference sounds in the feed the interpreter is receiving. Confusion ensues when the interpreter needs to raise the receiver and keep it up in the air to get a clear line between it and the transmitter, with the judge believing the interpreter is raising his/her hand to ask a question. In a worst-case scenario, the receiver will malfunction (or merely be out of batteries, and spares will not be available) and the interpreter will be forced to perform *chuchotage* from whatever he/she can glean of the barristers' and judge's interactions.<sup>33</sup>

Other courts suffer from similar problems to a varying degree: in certain older courts like the Eastern Magistrates', Shatin Magistrates', Kowloon City Magistrates' and even the District Court, the dock will be located on the side of the room, between the judge and the barristers, and it will be relatively easier to interpret what is said in *chuchotage* to the defendant. However, in newer courts such as West Kowloon Magistrates', built around the Mainland Chinese model of gigantic courtrooms, the dock is once again placed at the far back of the room, but this time within an acrylic glass cage with a very narrow opening through which the interpreter is expected to perform *chuchotage* to the defendant. It is word by word as put by Adelo (2008, p. 15): "the interpreter's voice overlaps the speaker's voice, making it even more difficult to hear what is being said," and since the distance between the judge and the dock in this court is at least 20 meters, again with the barristers, solicitors and other legal fauna in between, the quality of interpreting is thus severely impacted.

A further factor to take into consideration (which plagues the Magistrates' and District Courts but not the High Court) is the usually heterogeneous audience found inside the courtroom. Interpreters are expected to perform their specialized duty<sup>34</sup> against the

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<sup>33</sup> "When the Interpreter 'confirmed' that very poor reception due to the amplifier did not prevent her from being able to interpret verbatim the summing-up, this is an opinion rather than fact. The objective fact is that the Interpreter failed to raise the problem of very poor reception until after 23 minutes. No matter how competent an interpreter is, clear reception of the source language is crucial to avoid misunderstanding (or missing part) of the original speech and hence misinterpretation" (HKSAR v Chan Hon Wing, 2021).

<sup>34</sup> "Remember, the court interpreter does a very unnatural thing not usually done in civilized society—speak while someone else is speaking. [...] The interpreter has to process what was said in the source language

backdrop of a chattering audience composed of members of the public, defendants awaiting their turn, security guards and police officers which produce a din that for most part-time interpreters in Hong Kong is usually completely incomprehensible, as most of them do not have Cantonese in their linguistic combinations. This usually does not happen at the High Court for cases with Spanish-speaking defendants, as at this court audiences are usually much more reduced, or even non-existent (some foreign defendants accused of drug-trafficking may have some friends or family or Father Wotherspoon<sup>35</sup> present, but most will have no-one). From personal experience, it could be said that the Part-Time Interpreters Unit does try to assign the same interpreter to the different hearings and courts a case may go through, and for trials at the High Court and the District Court the same interpreter is booked for the expected duration of the proceedings. Of course, if the defendant decides to plead guilty on the second day of a seven-day trial, mitigation and sentencing ensue and then it will be something along the lines of thank you very much, Mr. Interpreter, you're relieved of duty and you'll only be paid for these two days, even though we booked you for a full week months in advance and have just upended your schedule. In 2016, the hourly rate for part-time interpreters was 287 HKD (Panel on Administration of Justice and Legal Services, 2016). By 2020, it had increased to 320 HKD. It could be said that this paltry fee is a major hurdle for the professional development of part-time court interpreters in Hong Kong:

Although in appearance there is tighter control over the entry requirement of court interpreters given the civil service recruitment procedures, in reality the poor pay of the

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through 19 cognitive steps before he or she can translate into the target language” (Adelo, 2006, p. 9). See also Horváth (2012).

<sup>35</sup> John Wotherspoon is an Australian priest who has been working for almost four decades to improve the conditions of foreign prisoners and defendants in the Hong Kong courts (aside from social work aimed at the homeless and foreign domestic helpers in the city). Participation by convicted prisoners in his letter-writing campaigns to deter more drug mules from going to Hong Kong has occasionally been taken into account by the courts when assessing a possible discount to their prison terms. See the links below:

<https://www.v2catholic.com/>, <https://www.omiusa.org/index.php/2018/11/12/19913/>,  
<https://www.rage.com.my/drugtrade/chapter2.html>, <https://www.scmp.com/news/hong-kong/education-community/article/2094665/prison-chaplain-who-has-stopped-150-drug-mules>; HKSAR v Reznikova Anastasiia, 2020; HKSAR v Gomes da Costa Fabricia, 2020.



part-time court interpreters in Hong Kong is unable to attract highly-qualified professional interpreters in the free market. (Ng, D., 2018, p. 504)

Aside from the little pay, a further issue faced by part-timers is that, to the best of my knowledge, they are almost never given any information about the case to be heard, no matter how complex, in a flagrant violation of Adelo's tenets (2008). Interpreters are thus forced to try to interpret whatever will reach their ears to the best of their skill, ability and understanding, as per the Court Interpreter's Declaration they make at the start of each case or trial.<sup>36</sup> A complex drug trafficking case involving accessories and defendants from other cases, recondite addresses and apartment layouts, locations of defendants thereon, and any and all assorted information that could help the interpreter have a basic idea about what they may have to interpret during the trial is denied to them. This may be due to a perception of the interpreter as being unreliable and a potential way for information to escape the barristers' control (Ng, E., 2018). Only on rare occasions will the court clerk or one of the counsels remember to provide the interpreter with the case bundle, and that only while the court awaits the arrival of the judge or the defendant, expecting the interpreter to read through more than a hundred pages in less than 10 minutes: the standard practice is for court documents not to be entrusted to the interpreter outside of the courtroom. Counsel does not usually take the initiative and offer oral information about the case in question to the interpreter, and if the latter does ask, then only very general, non-detailed information

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<sup>36</sup> Which reads in full: "I [full name of the interpreter], solemnly, sincerely and truly declare and affirm that I am well acquainted with the [ ] dialect of the [ ] and [ ] languages and that I will well and truly interpret and make explanations to the court of all such matters and things as shall be required of me to the best of my skill, ability and understanding." If the interpreter is a Catholic or Protestant, appropriate oaths are to be read by them. These verbose and slightly awkward declarations stand in contrast to the situation in other jurisdictions like Japan: "An officially appointed court interpreter, who is to be appointed case by case, takes an oath at the opening of every court case by declaring that: 'I swear, according to my conscience, to interpret sincerely.' No more, no less. In reading this oath, the interpreter is asked to hold a prepared sheet and reads only the Japanese language before signing the document. When this author acts as an interpreter, he always has to insist, even argue, that this oath is read aloud in both the Japanese language and whatever language the defendant understands, because this procedure is intended to establish an environment of trust and confidence to all parties involved. Currently, there is no standard procedure for checking the competence of court interpreters. The tape-recording of the hearings which require interpreting is at the discretion of the presiding judge" (Tsuda, 2002, p. 10). In a Hong Kong courtroom, the declaration/oath is read only in English (or in Cantonese/Punti if the trial is to be conducted in that language), and not in the defendant's language. However, if the defendant is to testify in their own language, the interpreter will sight-translate the declaration out loud in that language and ask the defendant to repeat after them.

is given. Talking to witnesses or defendants is out of the question in the criminal cases tried at the High Court, as they are brought into the courtroom under correctional personnel custody from an adjoining room. It is nevertheless unclear if either the judge or the counsel would take issue with Edwards' recommendations to speak to the witnesses to obtain preparatory information about the case:

If you're called to work a case at trial and have not previously interpreted for the witness at an earlier stage of the proceedings, you might ask the attorney involved if you may chat with the witness for a while, out of the hearing of the other side of the case. Some attorneys suggest this, and it is an offer that should be accepted. Naturally, whatever you hear you keep secret. (Edwards, 1995, p. 86)

A further issue that is frequently found at the Eastern Court, due to the high number of cases that are heard there in first instance, arises from cases with defendants from different nationalities, and who each need an interpreter. Let us assume that a hypothetical drug trafficking case is being heard, involving six defendants (three Mexicans, a Hongkonger, a Filipino and a Thai). They will all be held inside the barred dock, one next to the other, and the four interpreters needed will stand right outside the bars and try to perform *chuchotage* for their respective defendants, all while trying to keep their voices down so as to not drown the counsel's and judge's voices, and dealing with the noise of their colleagues performing their duty at the same time. Headsets as those used at the High Court would be useful in this case, and if every defendant could also be supplied with a receiver (Edwards, 1995) then the interpreters could remain seated away from each other and interpret simultaneously for their assigned defendant.

This procedure would be suitable for application at the High Court as well, for cases when there is more than one defendant on trial, as due to the layout of the court only the defendant sitting next to the interpreter may be able to hear what they are interpreting, with the defendants sitting further away not being able to hear the interpreting. It could then be said that this is a violation of the right of the defendants to understand their legal

proceedings through the assistance of an interpreter<sup>37</sup> as outlined in article 11 of the Hong Kong Bill of Rights. If no extra interpreters are hired for this kind of cases, then supplying each defendant with a headset and receiver would make plenty of sense, as it would guarantee that all defendants understand the proceedings upon which their freedom or incarceration may depend.

The second major issue faced by part-time interpreters in the Hong Kong courts is that there is no oversight into their performance in the courtroom, unless it is patently evident they do not have the ability to interpret legal proceedings. The Law Society has identified that “there is no protocol or mechanism in place to ensure the quality of interpretation or to oversee and help address any problems arising in engaging outside interpreters” for court interpretation (The Law Society of Hong Kong, 2020, p. 2), even though the Panel on Administration of Justice and Legal Services of the Legislative Council (2004) has established that

19. The full-time Court Interpreters of the Part-time Interpreters Unit will make four visits a month to courts where interpretation services are provided by part-time Court Interpreters to observe the general performance and behavior of the part-time interpreters. Any problems identified will be related to the part-time interpreter concerned and recorded in his/her personal file.

20. Judges, court clerks and full-time Court Interpreters on duty in court help to monitor the performance of part-time interpreters by giving feedback to the Part-time Interpreters Unit.

This means that in practice an interpreter may alter, twist, modify and adulterate at will any message transmitted in the courtroom and none will be the wiser, unless there is another

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<sup>37</sup> “...Interpretation is an essential component in the case of a non-English speaking person who comes before our legal system. In reaching a decision about that person’s guilt or innocence, the services of a court interpreter or legal translator are relied upon at various stages of the legal process. When the interpretation or translation carried out in that person’s case is flawed, can we say that justice has been served? It stands to reason, then, that if innocent individuals could be unjustly punished as a result of inaccurate translations or interpretations, guilty persons could go unpunished. Thus, accurate interpretations are fundamental in avoiding miscarriages of justice” (De Jongh, 1992, p. 114).

bilingual in place able to follow both the court's and the interpreter's output. Part-time interpreters are given no real training for the role they will fulfill either before or after being sent to a courtroom for the first time, and there is no accreditation or certification system (The Law Society of Hong Kong, 2020, p. 2). To compound this issue, "unlike the court interpreters, there is no association of freelance legal interpreters which provides guidelines on code of conduct and practice, and it remains with each interpreter's discretion and integrity to maintain neutrality and impartiality" (Ng, D., 2018, p. 506). Years ago, new interpreters were subject to a three-year probation period, after which they would be placed on a list of registered part-timers for the Judiciary, and would be issued a confirmation letter with a reference number that granted them a kind of 'certified interpreter' status (Levaire Romain Pierre and The Judiciary Administrator, 2020), which allowed them to work directly with the Police, the Department of Immigration, the Customs and Excise Department, etc., without having to go through the Part-Time Interpreters Unit. The system was supposed to undergo an overhaul, and it was said that such a status would be eliminated completely, and only those part-timers that already held it would keep it, while each government department would have to hire its own part-time interpreters as needed and deal with their qualifications of lack thereof (personal communication, 2019). However, the political upheaval of 2019-2020 put these plans on hold, and the unfortunate part-timers that finished their three-year probation period in late 2019 were neither given their 'certification' nor any certainty about when the situation would be resolved.

## **7. Interview with a former English-Spanish part-time Hong Kong court interpreter**

In order to find out whether the views I express across this thesis are shared by other colleagues working in the same setting as that described above, an interview was conducted with a former part-time Spanish-speaking court interpreter that I met in the course of our work for the private market in Hong Kong, and with whom I have kept in touch since then. Attempts were made to interview currently active court interpreters in the SAR, but meeting them in person was not possible due to the physical impossibility of travelling there, and when contacted by email the Part-Time Interpreters Unit refused any assistance to provide the contact details of part-timers, even in the framework of this academic

research. However, the interviewee performed her tasks under the same conditions I did, which makes her suitable to either confirm or deny through her answers the statements made herein.

The interview was conducted as a structured interview, as the questions to be asked to the interpreter were prepared in advance, and I did not deviate from them or asked new questions during the course of the interview. In order to reduce as much as possible any influence I may have had on the interviewee and obtain her candid, unadulterated opinion, I decided to not follow up on her answers; I asked her instead, before we began the interview, to reply in extenso to questions that warranted something more than a yes/no answer, and to be as clear as possible when answering so as to not leave room for equivocal interpretations later when analyzing her answers. Using a semistructured approach would have entailed the risk of guiding the interviewee or eliciting answers that may not have been exclusively hers, and an unstructured approach may have entailed not covering the necessary points I wanted to get her opinion on.

The interview was conducted in person in Geneva, as my former colleague resides there. The interview took place along the following model: I would read aloud the questions to the interviewee, who would then reply orally while I would type down her answers. It could be argued that I had no impact as an interviewer on the interviewee, as I made sure I did not prompt her to say anything more than what she wished to reply to the questions. It could be argued that the only influence I exerted upon her was the friendly and collegial relationship we have had since working together in Hong Kong as conference interpreters for the private market.

The interviewee was asked the following questions:

- Is/was interpreting your main professional activity? If not, please explain what may your other profession(s) be.
- Did you receive formal academic education/training as an interpreter? If so, when and where?

- When did you start working as an interpreter?
- Why/how did you start working as a part-timer for the HK courts? Is/was it your main source of income/activity? And if applicable, why did you stop?
- Please tell us what you think about the entrance requirements.
- Did you receive any training from the Judiciary/Part-Time Interpreters Unit before you started interpreting at the courts as a part-timer? If so, please describe the training and its duration.
- What do you think about the training given to part-time interpreters?
- In your opinion, what interpreting modality(ies) do you employ when interpreting at the HK courts? Does the modality change according to the type of hearing?
- In your opinion, what is the perception of part-time interpreters by court users?
- Do you believe the hourly fees paid to part-timers are commensurate to the demands of the job?
- Do you believe court officials and/or counsel have an effect on your performance as a part-timer? Please elaborate.
- Do you believe the physical layout of the courts has an effect on your performance as a part-timer?
- Do you believe part-timers should be given detailed information about the case beforehand so as to better prepare and interpret the proceedings?
- What do you think about part-timers' working conditions?
- Do you believe there is/should be any kind of oversight on the performance of part-timers? If there isn't any, under what format should it be?

The answers to these questions were written down in shorthand as they were uttered, and were later developed into the narrative below. There was no need to categorize or further organize them as the structured interview format lent the answers its rigidity (as it were), and since there was a single interviewee there was no need to collate or compare answers between different respondents. The interviewee was clear and coherent enough in her answers that no major effort to extract the important points of her discourse was needed.

The interviewee is a Colombian national who is currently working in Human Resources, and who left Hong Kong in 2017. She did not have any formal qualifications in interpreting, and affirmed that she began working as a part-time court interpreter when a teacher of hers at the University of Hong Kong told her the Judiciary was looking for English-Spanish court interpreters. She submitted her CV and had to sit a simple translation test and a short sight-translation test before being put in the court interpreters list. She did mention undergoing a kind of training before being allowed to interpret for the first time: being given a document with guidelines and explanations about standard judicial proceeding, and having to attend an interpreter-mediated hearing for two hours (however, that interpreter did not have the English-Spanish linguistic combination, according to the interviewee, who could not recall the exact combination but suspected it involved English and an Asian language).

The interviewee did not believe the selection process for prospective court interpreters was selective or demanding enough, and neither did she believe the training she received was adequate. The selection process should be, in her own words, stricter in order to test the competence and skills of prospective interpreters. Regarding the training, she deemed it as disorganized, without a logical structure and almost useless as preparation for the tasks she was later asked to perform in court. She affirmed that she would not have been able to survive from the paltry fees paid per hearing, and had to supplement her income with teaching Spanish classes and with other freelance interpreting assignments in the private market. She mentioned the fees issue could be ambiguous, as it could be said the fees were fair for a large majority of non-professional court interpreters without academic or professional qualifications, but far from enough for a few professional colleagues with years of experience under their belt. In her words, the fees paid at Hong Kong courts to part-time interpreters would be unacceptable in any other working environment where skilled specialists are engaged.

As for the tasks the interpreters were asked to perform, the interviewee said that she performed simultaneous, consecutive and chuchotage interpreting. When asked to elaborate, she explained that she would stand or sit next to the defendant in the courtroom (depending on the expected length of the hearing) and perform a kind of simultaneous chuchotage, leaning into the defendant's ear to interpret the judge and barristers' interactions as they took place. When the judge would address the defendant directly, and for the latter's replies, she would switch to the consecutive mode, as the judge would make pauses every two or three sentences and wait for the interpreter to render them into the defendant's language. Upon reflection, she then considered that she performed consecutive interpreting for judge-defendant interactions and simultaneous interpreting for everything else: she now believed she performed simultaneous interpreting throughout, rather than chuchotage. Her rationale for this was that in 'normal' chuchotage the interpreter does whisper in the listener's ear, but that in a Hong Kong courtroom an interpreter needs to speak out loud in order to be heard by the defendant above the voices of the other court actors. She believed that the length of the interactions and the speed at which they took place went beyond what 'normal' chuchotage is, and became something more akin to simultaneous interpreting, albeit without a microphone or a headset.

As for the perception of part-time interpreters by court users, in the interviewee's opinion it can be either positive or negative, depending on the user: barristers would tend to appreciate the interpreter's services, except in cases where they would believe their questions were not being accurately conveyed to the defendant, based on the replies elicited from them. Defendants who did not have a sufficient command of the English language to follow the proceedings appreciated the interpreters the most, but those conversant in English would find the interpreter's output disconcerting and a source of discomfort as they tried to block it out from the interactions between the judge and the barristers taking place in front of them. Furthermore, the interviewee did mention that defendants were actually the first ones to realize an interpreter may not be performing well or interpreting faithfully, as they would usually be the only other Spanish speaker in the courtroom. Therefore, a given user may well have a changing perception of the interpreter depending on the



different factors at play in a hearing. In the words of the interviewee, court users aside from the defendant would spend the entire proceedings unaware of the capabilities or lack thereof of the interpreter, trusting that the Judiciary would have engaged competent interpreters for the task at hand.

The interviewee believed court officials and/or counsel could and did have an effect on her performance in the courtroom, especially at the High Court: it being a naturally stressful situation for all parties involved, counsel would seem to react with mild annoyance at times when a technical malfunction that prevented correct interpreting arose, and if the malfunction persisted and proceedings would have to be paused, annoyance could give way to irritation from counsel towards the interpreter. This in turn could affect the latter's confidence and performance, although as remarked by the interviewee, whenever the judge would remember to thank the interpreter after a long session, the interpreter's confidence would be boosted. On a more practical aspect, the mere fact that court officials at the High Court need to remember to supply the interpreter with functioning earphones and charged batteries for them (the lack of which may force an interpreter to make do with their ears alone) indicates that a court interpreter's performance in a Hong Kong courtroom depends on factors beyond their control.

On a related note, the layout of the court was also commented upon by the interviewee, mainly regarding the physical distance between the defendant's box and the judge and counsel, which oftentimes prevented her from clearly hearing what was uttered during the proceedings. She disliked working at certain venues like the West Kowloon Magistrates' Court, where this feature of the courtroom made discharging her task more difficult, and wished working conditions more akin to those at the High Court (i.e. the use of portable receivers and earphones) would be enabled.

The interviewee wholeheartedly affirmed that, in the same way as lawyers prepare their case, part-time interpreters should be given as much background information about the case as possible. The interviewee affirmed that there may be obscure terms of art

germane to the case that the assigned interpreter may not be familiar with (like duress, non-refoulement, etc.), and the quality of interpreting will suffer upon their popping up during the hearing. She even affirmed that an interpreter that does not interpret correctly is ‘participating in the violation of the defendant’s rights,’ referring to the right of the defendant to understand the proceedings against him (as mentioned in chapters 4 and 6 above). A nervous attitude due to an ignorance of the circumstances of the case will probably have a negative effect on the interpreter’s performance, but an interpreter prepared with the case’s background information will have a greater possibility of performing their task well.

Finally, regarding oversight or supervision of the performance of part-time English-Spanish interpreters at the Hong Kong courts, the interviewee confirmed she never witnessed any, at least during the period she was active as interpreter, and she deemed it as a salient, unaddressed failure of the legal system in Hong Kong. She recalled having had knowledge of oversight mechanisms such as supervision by more senior interpreters, but suspected this only applied to full-time Cantonese and Mandarin interpreters within an established seniority and qualifications framework; she never heard of any part-time interpreter being referred to as more senior than others. He recalled once having the veracity of her performance formally questioned by a defendant, which caused a considerable delay in the proceedings and provoked further hearings, but no other Spanish-English interpreter was called upon to give an opinion or supervise her performance. The interviewee affirmed a probation period would be useful for newly-hired part-timers, especially for minority languages for which there are less speakers that could confirm whether the new hires are doing a good job. She confirmed part-timers are recruited from all walks of life, without the necessary qualifications, and this causes a vicious cycle in which qualified or talented interpreters stop working for the courts due to the low fees offered and work being spread out among too many interpreters, which then increases the pressure on the system, and attempts at alleviating it are made by hiring even more unqualified interpreters.

## 8. Conclusions

As far as I know, while there have been books written and studies conducted about full-time/permanent court interpreters in Hong Kong, this is the first study ever conducted on the activities of part-time court interpreters of any language combination in that jurisdiction. Of necessity, a master's thesis written at a distance and without carrying out fieldwork will not cover everything that could be said and researched about those interpreters' backgrounds, activities and performance, but it may establish the bases upon which further academic enquiry may be undertaken. A scholar living in the SAR and associated to a local university may be able to convince the Part-Time Interpreters Unit to allow access to its database of part-timers to interview them for academic purposes; as seen in chapter 7, persons outside the Unit are not given that information, and it is doubtful whether an active part-timer would also be given it. Another area of further enquiry would be the opinions of barristers, court personnel and judges on their interactions with and the performance of part-time court interpreters: again, a fully accredited scholar could eventually obtain access to that information. Likewise, although it is relatively early to appreciate the full effects the National Security Law will have on the territory (see chapter 2 above), some research could be carried out down the line on what effect, if any, it will have on the activities of part-time court interpreters without 'Chinese' in their linguistic combinations. The status of part-timers regarding the 'certification' mentioned at the end of chapter 6 as Hong Kong reopens to the world after the Covid pandemic would also be worthy of further study.

A preliminary conclusion that may be drawn from this master's thesis is that full ethnographic studies of part-time interpreters and their different linguistic combinations in the courts of Hong Kong would be interesting additions to court interpreting scholarship. For example, with the number of Bahasa Indonesia and Tagalog speakers (with a large majority being domestic servants without formal education) that reside in the SAR and may find themselves before a court of law there, it is to be expected that court interpreters in those languages would have many things to say to the interested researcher. Even after

several such studies were written, there would still be room to comparatively analyze their findings and detect possible macro-patterns at the local level, which could then be compared to other areas of interest in the field of world court interpreting studies.

The reader may recall that the conditions under which part-time court interpreters with the English-Spanish linguistic combination work in a Hong Kong courtroom were the main focus of this thesis. After having described and analyzed them, the main conclusion reached would be that said conditions are far from ideal for the discharging of an interpreter's duty.

Despite the special features of a Hong Kong court that set it apart from those in other jurisdictions, the treatment of part-time court interpreters there still unfortunately conforms to the pattern observable in the literature of interpreters not being universally regarded as equals by other court officials, even though as vital-yet-temporary employees of the court they are supposed to be accorded the same respect as that accorded to an expert witness or a court secretary, without whom court proceedings cannot take place. Their work is performed under conditions that could be described almost as informal and unregulated, which it could be said demonstrates a general lack of appreciation for the interpreters' work.

As discussed, the ball to improve part-timers' working conditions is in the court of the Judiciary of Hong Kong, as the authority overseeing the way justice is served, hearings are conducted and court proceedings are held. Hiring requirements could be made more stringent, standards could be established and a framework for assessing performances could be drawn up. In the same way that senior Cantonese-English interpreters supervise newcomers to the profession, in their official capacity as permanent court interpreters, experienced interpreters hired by the Judiciary on a permanent basis for the most commonly spoken languages in the Hong Kong courts other than Cantonese and Mandarin (Hindi, Urdu, Bahasa Indonesia, Tagalog, Spanish, etc.) could form the core of a standardization effort for part-time court interpreters: such an effort would eventually

attract qualified professionals able to demand wages commensurate to their skills and performance. In time, as part-time court interpreters would become more respected, awareness about their working conditions would increase and likely improve. It goes without saying that this would be a benefit for the defendants in interpreter-mediated trials. Justice would be better served by such a professionalization effort if it were but decisively carried out by the Judiciary.

On a personal note, writing this master's thesis will have been more satisfactory should it help draw attention to the working conditions of part-time court interpreters in Hong Kong, the challenges they face and the possible improvements that could be made to the system within which they work. However, since other voices in Hong Kong more authoritative than mine (such as politicians and barristers) have already tried unsuccessfully to address this issue, and hundreds of part-time interpreters have come and gone from the profession without the necessary changes taking place, I believe this aspiration of mine will probably go unfulfilled.

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## Annexes

### Annex 1. Extracts of High Court judgments on foreign drug trafficker cases

1. HKSAR v BAGUMA GEORGE, CRIMINAL APPEAL NO 65 OF 2020 (ON APPEAL FROM HCCC NO 189 OF 2018)

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=133406&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=133406&currpage=T).

*“The applicant was sentenced ... to 14 years and 2 months’ imprisonment on 27 February 2019, following his guilty plea to a single count of trafficking in a dangerous drug, namely 1.12 kilogrammes of a solid containing 864 grammes of cocaine and 5.01 grammes of cannabis, in herbal form.” This defendant will have been given a discount of a third of his original sentence of twenty-something years thanks to his guilty plea. See HKSAR and Ramos Jr Fredjewell A below.*

2. HKSAR v INZA MADUENO ANDREW ANTHONY, CRIMINAL APPEAL NO 6 OF 2020 (ON APPEAL FROM HCCC NO 337 OF 2016)

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=130442&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=130442&currpage=T).

*“The applicant was charged with trafficking in a dangerous drug, namely 700 millilitres of a liquid containing 455 grammes of cocaine ... The estimated retail value of the cocaine at the time of the offence was [HK]\$488,215.”*

3. HKSAR and RAMAN KAPUSAMY, CRIMINAL APPEAL NO 32 OF 2020 (ON APPEAL FROM HCCC NO 126 OF 2019)

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=133385&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=133385&currpage=T).

*“...the applicant had unlawfully trafficked in 2,970 grammes of a crystalline solid containing 2,956 grammes of methamphetamine hydrochloride (commonly known as “Ice”). ... The retail value of the Ice in question was HK\$1,577,070.”*

4. HKSAR and Ramos Jr Fredjewell A (藍天真), CRIMINAL APPEAL NO 88 OF 2021 (ON APPEAL FROM DCCC NO 795 OF 2020)

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=137092&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=137092&currpage=T):

*“[The judge] adopted an initial starting point of 27 months’ imprisonment and enhanced it by 3 months for the aggravating factor of repeated commission. The sentence was then reduced by one-third for the applicant’s timely plea, resulting in an overall sentence of 20 months’ imprisonment.”*

5. HKSAR v REZNIKOVA ANASTASIIA, CRIMINAL APPEAL NO 132 OF 2020 (ON APPEAL FROM HCCC NO 51 OF 2016)

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=136374&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=136374&currpage=T).

*“A total of 10 packets, consisting of a total of 9,811 grammes of a powder containing 7,543 grammes of cocaine, were recovered from her suitcase. At the time, the estimated value of the cocaine seized from the applicant was HK\$10,360,416. ... Applying the sentencing guideline for trafficking in cocaine in HKSAR v Abdallah Anwar Abbas, the judge adopted an initial starting point of 27 years and 3 months’ imprisonment for the 7,543 grammes of cocaine narcotic. The judge then enhanced the initial starting point by 2 years for international element [sic] to 29 years and 3 months’ imprisonment. Owing to the applicant’s ill-health and possible loss of sight, the judge reduced the initial starting point by 2 years to 27 years and 3 months’ imprisonment. A further 3 months’ reduction was given in recognition of the applicant’s effort in identifying and publicizing Felix **[another drug trafficker]** and stopping others from offending for this type of crime. ... Although not entitled to a full one third discount, the judge nevertheless gave her that discount as well as a further discount for her assistance in taking part in the controlled delivery which led to the arrest of a person. The final sentence imposed by the judge was 16 years and 9 months’ imprisonment.”*

6. HKSAR v ROJAS MONTOYA JUAN PABLO, CRIMINAL APPEAL NO 78 OF 2021 (ON APPEAL FROM HCCC NO 276 OF 2019)

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=142013&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=142013&currpage=T).

*“The applicant was convicted after trial before Alex Lee J (the judge) and a jury of a single count of trafficking in a dangerous drug, namely 1,607.7 grammes of cocaine narcotic and sentenced to 23 years and 6 months’ imprisonment. ... The street value of the drugs was about [HK]\$1.87 million.”*