

Raj Anand: Language Rights are Human Rights

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This is the man you want on your side when human rights are at stake. At Critical Link 7, Raj Anand will be speaking on language access issues in legal and medical settings. A well-recognized advocate of language rights, his broad scope of practise includes human rights, constitutional and administrative law, and labour relations.

Raj is a former Chief Commissioner of the Ontario Human Rights Commission and presently acts for complainants and respondents in internal investigations and Ontario and federal applications. In addition to his many awards, including the Law Society Medal, Raj was appointed by the Province of Ontario as the Founding Chair of its Human Rights Legal Support Centre in 2008.

Raj's 2005 article, "[Lifeline: Language Access as a Human Rights Issue](#)" should be required reading for both Ministers of health and healthcare providers working with language minority groups: immigrants, refugees, Deaf consumers, Aboriginals and Francophones.

Deaf consumers have an advantage in Canada. The "[Eldridge Decision](#)" (1997), a Supreme Court ruling in favour of the plaintiffs against the province of British Columbia, for failing to provide an American Sign Language interpreter, placed an obligation on the part of the healthcare provider to ensure a sign language

interpreter was provided "where it is necessary for effective communication."

While compliance among Canadian healthcare providers is inconsistent, there have been improvements. In the last several Ministries of Health or Regional Health Authorities have established and funded centralized medical interpretation services to ensure safe and high quality healthcare for language minorities.

Yet the vast majority of limited English (and French) speakers living in Canada do not have access to professional interpreters when seeking healthcare. When families of an injured or deceased patient are approached by community advocates to file a claim against the hospital or through the Human Rights Commission, the families refuse, fearing deportation or other repercussions.

I had the opportunity to sit down with Raj and discuss strategies to advance language rights for spoken language minorities.

In the Eldridge Decision, defense counsel had responded that this decision would have implications for all patients with language barriers, including immigrants and refugees, and Justice LaForest's response cautioned that the decision didn't necessarily apply to spoken language in the as it does to disability.

But spoken language access was not the case before the court. According to Raj, the remark made by Justice LaForest in response to the defense counsel "*doesn't mean anything in law about immigrant language communities and their access to healthcare.*" It is considered an *obiter dictum*, a statement made in passing. In any

case, Raj adds, *“I don’t accept that there’s any distinction between [Deaf and spoken language barriers], but I can’t say that there’s a case that has borne that out thereafter.*

“The cases that have followed, and there have been many, have not been favourable to the promotion of minority language rights on the basis that human rights codes don’t cover language per se.” Furthermore, *“Minority rights are not at the top of the list when budgets are cut.”*

When asked what needs to happen in order for limited English speakers to have the same rights as Deaf consumers, Raj suggests that systemic change (i.e., legislative reform and operational assistance/funding for interpretation services) to improve language access rights, is the more effective than winning a single case, where the implications may apply only to a fraction of the affected population.

There are a number of tools to be deployed to address language barriers and improve access for limited English speakers. Examples are systemic change: through advocacy, political pressure, community pressure and media.

Court proceedings are another option. For example, a patient who is severely injured or dies in a hospital, and language was likely a contributing factor, the patient or the family may fears repercussions if they file a claim. In this case, an advocacy group may act as an Intervener. The Intervener must show an interest in the case and have the ability to contribute to the argument before the court.

Raj has represented Interveners many times before the Supreme Court of Canada.

Can you put an Intervener forward as a Party? There are all sorts of consequences, including costs. As Raj explains, *“It’s not an*

easy answer. You have to look carefully at the circumstances of each case.

“Sometimes I’ve put Organization X and Individual A together as a party, so they are allied and jointly represented, and then the individual can withdraw into the background.”

Other factors to consider are *“staying power, the ability to be in the limelight, walk out of the courtroom with TV cameras in your face. And then there are emotional and financial implications. It’s importance to have some backing.”* In such cases, the limit for filing a claim is two years.

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The Canadian Coalition on Community Interpreting is working on systemic change: standardization, professionalization, regulation of practitioners and legislative reform.

Those of us working in the field of language access have another challenge: find cases, find an advocacy group, inform the parties of their rights, and find a lawyer to take on one of the cases. With a dedicated team, and some luck, one day we may have our equivalent of the Eldridge Decision for spoken language minorities.