



**Guidelines for Justice Professionals
Working with
Accused Persons who have
Speech and Language Disabilities**

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CDAC is a Registered Charity: 87160 1712 RR0001

Communication Disabilities Access Canada (CDAC) provides:

- Research on a range of social justice issues for people who have speech and language disabilities, not caused by hearing loss
- Education programs for people with communication disabilities and community sectors
- Resources on communication accessibility to goods, services and opportunities
- Consultation to government, policy makers and legislators

For police, legal and justice sectors, CDAC provides

- Communication intermediary training for Speech-Language Pathologists
- A national roster of communication intermediaries
- Information on communication access for police, legal and justice professionals

These guidelines are intended to be used as a component of our online resources.

www.access-to-justice.org

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Guidelines for Justice Professionals working with an Accused Person who has a Speech and Language Disability

Introduction

People who have speech and language disabilities (SLDs) can encounter significant barriers when they become involved in the justice system. This involvement could come about because they are a victim/witness in a criminal case or because they have been charged with a criminal offence. People with SLDs may also be involved in family court or immigration/refugee proceedings as well as in civil law suits or administrative law (housing, ODSP or EI issue, human rights case, etc.)

Communication Intermediaries (CIs) are professionals who facilitate two-way communication between a person with a SLD and other participants within the justice system.

Whatever your role in the criminal process, if you are working with someone with a SLD your job will be made easier if you involve a Communication Intermediary at the first possible opportunity. As well, access to justice for people with SLDs will be greatly enhanced when they can communicate effectively during the process.

These Guidelines are intended to support you whether you are working with a person with a speech and language disability who is an accused in a criminal proceeding.

These Good Practice Guidelines will provide you with information about:

- Communication disabilities
- Barriers for people with SLDs who are involved in a legal system
- Communication intermediaries, what they do, how you can find one and how you can work effectively with one
- How you can identify someone who may have a SLD
- Your responsibilities when working with someone with a SLD

Who Should Read and Use These Guidelines

- Police Officers
- Court Accessibility Coordinators
- Duty Counsel
- Defense Lawyers
- Judicial Officers

Guiding Principles

- Everyone has an equal right to access justice

- Many people who have speech and language disabilities (SLDs) can provide credible and reliable evidence if they are given appropriate communication accessibility accommodations and supports
- People with SLDs have the right to the accessibility accommodations and supports they require to communicate effectively within the justice system

Speech and Language Disabilities

Speech and language disabilities (SLDs) can affect one or more of the following areas:

- A person's ability to understand what others are saying
- A person's ability to speak or use a communication display or device to express information, ideas, opinions and ask questions

Some people who have SLDs have difficulty reading and writing.

Disabilities that can affect communication include cerebral palsy, autism, cognitive disability, traumatic brain injury, aphasia after a stroke, dementia, Amyotrophic Lateral Sclerosis, Parkinson's disease, Multiple Sclerosis, or other conditions.

While some SLDs are obvious (e.g. person who cannot speak and uses a device to communicate) other disabilities may not be very obvious. For example, a minor stroke or a learning disability can have a profound impact on a person's ability to comprehend spoken language or express their messages.

Having a SLD does not necessarily mean that a person has an intellectual disability or that he or she has difficulty understanding what is being said.

Read more about speech and language disabilities by going to <http://www.communication-access.org/communication-access/people-with-communication-disabilities/>.

Communication Methods

People who have speech and language disabilities (SLDs) may communicate in one or more of the following ways:

- Speech (speech may be unclear)
- Body language and facial expressions
- Gestures (e.g. wave to signal goodbye)
- Pointing or looking at objects and people
- Sign Languages (e.g. American Sign Language, Signed Exact English, and Adapted Sign Language)
- Writing, typing or drawing
- Spelling on a letter board, which is usually custom made for an individual

- Pointing to pictures symbols and/or written words on a communication display, which is custom-made for an individual
- Using a communication device, which is usually obtained through a clinical service
- A familiar person who assists them communicating

Watch a video on ways people communicate by going to <http://www.communication-access.org/communication-access/videos/>.

Communication Barriers

People who have speech and language disabilities (SLDs) may experience one or more of the following barriers when using the justice system. For example, they may not:

- Have their messages understood
- Have ways to communicate
- Have the vocabulary they need to communicate
- Be able to understand what is said
- Be able to express or understand complex or abstract information
- Have opportunities to communicate their messages
- Have the communication supports they require

In addition, police, legal and justice professionals may:

- Not know how the person communicates
- Not know how to ask questions in ways the person can understand and answer
- Not understand the difference between cognitive capacity, language and communication skills
- Not know how and when to engage a trained communication intermediary
- Rely on untrained communication assistants in situations that require an arms-length, qualified communication intermediary

Read more about communication barriers by going to <http://www.communication-access.org/make-your-service-accessible/legal-services/>.

Communication Access

Within a justice situation, communication access for someone with a speech and language disability (SLD) means:

- Understanding other people's questions and what is being said
- Having people understand their messages
- Being able to use their preferred method(s) of communication
- Getting the vocabulary they need to communicate what they want to say in ways that do not compromise their testimony
- Having appropriate communication supports to ensure that their messages accurately convey what they intended to communicate

- Being the author of their own messages
- Being given the time and opportunity to communicate what they want to say
- Getting the supports they may require to read and understand written documents
- Getting the supports they require to sign documents, complete forms, and take notes

Read more about communication access by going to <http://www.communication-access.org/communication-access/communication-access/>.

Communication Intermediaries

Communication Intermediaries (CIs):

- Are qualified, regulated Speech-Language Pathologists
- Have a minimum of a Master's degree
- Attended trainings from CDAC on working as CIs in criminal justice system
- Have at least two years of clinical speech-language pathology experience
- May have experience with specific disabilities or fields of practice such as augmentative and alternative communication (AAC)
- Are not accredited by or accountable to CDAC for their work
- Negotiate their own professional fee and expenses when working as a CI

Role of a CI

A CI's role is to:

- Inform you about the person's communication abilities and needs
- Tell you what you can do when communicating with the person
- Provide direct communication assistance at each stage of the criminal process.

Depending on the person's communication needs, a CI may:

- Rephrase questions in ways the person can understand
- Repeat what the person has said or speak out loud items that they point to on a communication board containing pictures, symbols, written words or letters.
- Assist the person to communicate their intended meaning of a message by reformulating and validating what they want to communicate
- Provide vocabulary in ways the person can understand and use to convey their messages

A CI:

- Conducts a communication assessment and writes a report
- Maintains impartiality and neutrality
- Functions as an officer of the court

- Works for the end-user (police, Crown, etc.)
- Always works in the presence of the end-user, except during the communication assessment stage

A CI does not:

- Provide opinions on testimony
- Function as a second interviewer, an advocate, personal support worker or counsellor
- Provide testimony as an expert witness
- Assess or address issues such as capacity to consent or credibility
- Coach the person in how to answer questions

Screening for a SLD

The person may require a Communication Intermediary (CI) if they:

- Speak in a way that is hard for you to understand
- Communicate using a letter, picture, symbol board or device
- Have difficulty finding the words they want to say
- Show you a card, tell you or have another person tell you that they have a disability that affects their communication
- Have difficulty understanding questions and instructions
- Respond inappropriately or inconsistently to questions
- Identify themselves or have someone else identify that they have a disability that affects their communication skills

Screening for a CI

If the person has a speech and language disability (SLD), you may want to engage a Communication Intermediary to:

- Find out whether the person requires communication supports within the justice system
- Assist you to understand what the person is communicating
- Determine how well the person understands what you are saying
- Provide a qualified professional who can assist the person communicating, and who is neutral and impartial

Finding a CI

If you suspect that the person has a speech and language disability, you should:

- Ask the person if they want someone to assist with communication or explain why you want someone to provide this assistance
- Ask if the person knows someone they trust who could provide communication assistance
- Determine whether that person has the qualifications and requirements to provide assistance
- If the person does not have someone to assist or if the person they identified is not impartial or does not assist the person in ways that would be admissible in a justice situation, then you may need to engage a qualified CI
- Obtain consent from the person to engage a CI
- Find out the type of SLD the person has and their preferred language as this will assist you in sourcing an appropriate CI
- Use the online CI roster to find a CI with the necessary work experience in the type of disability the person has, language preference and service location
- Ask the CI for their resume and evidence of their membership in a regulatory body
- Negotiate engagement of CI in terms of time schedule, location and payment. CIs will charge their own rates.
- Payment for CI services might be allocated to an accessibility budget line similar to other accessibility accommodations supports such as sign language interpreting
- Arrange the first meeting
- After the first meeting, ensure that the person with SLD approves the CI to assist them communicating

CI Assessment

- The CI should not receive any information about or discuss the case, allegations, or any statement that has already been made during the assessment.
- Establish terms of engagement with the CI (common understanding of the process and role of the CI among all parties). The CI will provide you and the person with the SLD with a description of their role and any necessary consent forms.
- Depending on the situation, you may or may not want to observe the CI conducting the communication assessment.
- Make arrangements for how and when the CI will deliver their report.
- Discuss outcomes from the CI assessment report and the types of communication supports the person may require.

Working with a CI

- You should be present for all interactions between the person with the SLD and the CI after the assessment stage.
- If the CI is to provide direct communication assistance, ask them to explain the support techniques they will be using. They should also give you a written description of the techniques they will be using.

- Be prepared to give the CI sufficient time with the person, especially if the person cannot speak and require vocabulary to communicate their story/provide evidence.

The CI will provide you with information, protocols and procedures about:

- The person's communication abilities and needs
- Communication techniques they will use to support the person's communication
- Communication methods and / or devices and how they will be used
- Techniques they will use to select vocabulary that the person needs to communicate about the case (e.g. pictures, written words or symbols)
- Techniques they will use to introduce new vocabulary to the person without impacting the integrity of their testimony
- Signals the person will use to take a break
- Types of questions you can ask so that the person can answer
- Optimal seating arrangements for communication
- Recording techniques for non-verbal communication, as well as communications from the person and the CI

Role of a Police Officer

- Identify whether the person has a speech or language disability (SLD). If you determine the person has a SLD, determine whether the person requires a Communication Intermediary
- If the person requires a CI, proceed to finding a CI
- Make arrangements for the CI to conduct an assessment
- Follow guidelines on how to work with a CI
- If a CI is required, you should not continue taking a statement from the person until the assessment is completed and you know what supports the person requires
- The CI can assist the person give their statement(s) or add to or amend their original statement, if that was given without the assistance of the CI
- The CI can provide you with an oath / promise they can take to promise to perform to the best of their ability and to be honest in their dealings with the justice system.

Police services should ensure:

- All officers are trained in how to communicate with people who have SLDs
- All officers know how and when to engage a CI

Court Accessibility Coordinators

If the person has not already been identified as having a SLD, you may need to do this.

- Identify whether the person has a speech or language disability (SLD)
- If you determine the person has a SLD, determine whether the person requires a Communication Intermediary
- If the person requires a CI, proceed to finding a CI
- Make arrangements for the CI to conduct an assessment
- Follow guidelines on how to work with a CI
- Obtain the CI's curriculum vitae so it can be introduced into court if needed

Your role may also include:

- Arranging a meeting with other justice system parties, the person with the SLD and the CI to clarify roles, expectations and working protocols
- Providing a tour of the courtroom for both the person with the SLD and the CI to establish the seating arrangements
- Ensuring the other accessibility needs of the person are met (e.g. mobility issues, accommodating a personal support worker, transportation, a rest area, etc.)
- Ensuring the CI is aware of all court-related appointments as well as court dates (bail hearing, preliminary hearing, voir dire, trial, sentencing hearing, etc.) for which their services will be required

Duty Counsel

If the person has not already been identified as having a SLD, you may need to do this:

- Identify whether the person has a speech or language disability (SLD)
- If you determine the person has a SLD, determine whether the person requires a Communication Intermediary
- If the person requires a CI, proceed to finding a CI
- Make arrangements for the CI to conduct an assessment
- Follow guidelines on how to work with a CI
- Present the CI to the court with their qualifications

The defense and the judge should have agreed upon the CI role, communication techniques and devices before the court appearances begin in order to facilitate smooth progress of the case.

Where appropriate, the CI can participate to:

- Present their qualifications
- Report on the person's communication needs and why they require assistance
- Explain and demonstrate techniques and/or devices that the person requires to communicate
- Discuss any vocabulary that may be introduced and how it will be presented to the person

Defense Lawyers

If the person has not already been identified as having a SLD, you may need to do this:

- Identify whether the person has a speech or language disability (SLD)
- If you determine the person has a SLD, determine whether the person requires a Communication Intermediary
- If the person requires a CI, proceed to finding a CI
- Make arrangements for the CI to conduct an assessment
- Follow guidelines on how to work with a CI
- Present the CI to the court with their qualifications

Your role may also include:

- Arranging a meeting with the Court Accessibility Coordinator, your client, and the CI to clarify roles, expectations and working protocols
- Arranging a tour of the courtroom for your client and the CI to establish the seating arrangements
- Ensuring the CI is aware of all court-related appointments as well as court dates (bail hearing, preliminary hearing, voir dire, trial, sentencing hearing, etc.) for which their services will be required

The judge, defense, and Crown should have agreed upon the role of the CI, the communication techniques, methods and devices that will be used in order to minimize disruptions in court.

When appropriate, the CI can participate in a voir-dire to:

- Present their qualifications
- Report on person's communication needs
- Explain and demonstrate communication techniques they are using
- Discuss the vocabulary that may be introduced and how it will be presented

Judicial Officers

If the person has not already been identified as having a SLD, you may need to do this.

- Identify whether the person has a speech or language disability (SLD)
- If you determine the person has a SLD, determine whether the person requires a Communication Intermediary
- If the person requires a CI, proceed to finding a CI
- Make arrangements for the CI to conduct an assessment
- Follow guidelines on how to work with a CI
- The CI can provide you with an oath / promise they can take to promise to perform to the best of their ability and to be honest in their dealings with the justice system.

The voir dire is an opportunity for you to satisfy yourself about the CI’s professional qualifications as well as the SLD of the party and the communication techniques they are proposing to use.