



Webinar 1: Handout 1

Communication Access to Legal and Justice Services in Canada

CDAC Report, 2012

Summary of Findings

Background

Communication Disabilities Access Canada (formerly Augmentative Communication Community Partnerships Canada) is a national, not-for-profit, charitable organization that promotes accessibility, inclusion and human rights for people who have significant speech and language disabilities (SLDs), not caused primarily by hearing impairment. Communication Disabilities Access Canada (CDAC) conducts social innovation projects and research, provides education and develops resources for all community sectors to increase accessibility to goods and services for people with different types of speech and language disabilities. CDAC engages people with SLDs, speech language pathologists, consultants in augmentative communication, legal professionals, accessibility consultants and other disciplines within its projects.

Since 2006, CDAC has worked on a number of projects relating to communication access to legal and justice services for this population. In 2010, we established a portal to our main website on access to justice (<http://www.access-to-justice.org>). This site contains information, fact sheets, and e-learning modules about the communication barriers and accessibility requirements of people with speech and language disabilities when accessing legal / justice services. In 2012, with funding from the Department of Justice Canada, Victim Fund, we conducted a national feasibility study on the implementation of communication intermediary services for this population. At this time, we have limited funds from Justice Canada to begin to explore provincial partnerships to implement these services.

The Context

Full and equal access to police, legal and justice services can be severely compromised when a person cannot communicate effectively within these situations. The importance of effective communication is recognized and accommodated for people who are Deaf or hard of hearing through the provision of sign language interpreters; for people who are Deafblind through services from Deafblind interveners; and people who do not speak English / French through language interpreting services. However, Canadians with speech and language disabilities (SLDs) currently do not have any formal communication assistance when accessing police, legal or justice services.

There are 440,000 people in Canada who have SLDs that significantly interfere with their ability to speak and / or understand what others are saying. Disabilities that affect speech and language can be caused by a number of underlying conditions such as cerebral palsy, stroke,

autism, intellectual disabilities, amyotrophic lateral sclerosis and other conditions. Depending on the nature of the disability, a person's speech may be difficult to understand, or they may have little or no speech and use ways other than speech to communicate. Other people may require assistance to understand spoken language. People who have SLDs may have additional disabilities but they do not necessarily have a hearing loss or an intellectual disability.

The ability to effectively communicate is central to the legal and justice system. It is the foundation upon which disclosures of violations and crimes are made to police. It is the grounds upon which one's legal capacity is assessed and the means by which victims and witnesses seek justice by communicating their testimony and evidence in court. Research shows that people with SLDs are at high risk for all types of abuse, crimes and having their rights violated due to the perception that they may not be able to tell someone what happened. The issue of capacity assessment is also a critical one for people with SLDs as incorrect assumptions can be made about an individual's intellectual capacity when the real issue is a lack of appropriate communication tools and supports to communicate effectively with the assessor and/or other people.

There is ample evidence in the research that demonstrates that people with SLDs can face major barriers communicating within legal and justice services and these barriers can lead to devastating consequences. There is also extensive research in the field of communication disorders that demonstrates that many people with SLDs can be effective communicators when they are provided with appropriate communication methods, strategies and assistance. Yet, the concept of communication access and accessibility accommodations for this population is not well understood in legal settings and formal communication support is currently not available for people with SLDs when communicating with police, legal, healthcare and justice services across Canada. This results in significant inequity for people with SLDs when accessing these services.

Depending on the context, lack of appropriate communication supports for people with SLDs may result in serious consequences. These may include:

- Miscarriages of justice;
- Increased vulnerability for ongoing abuse, crimes and violation of rights;
- Increased vulnerability of others where offenses occur within services, healthcare or residential settings; reduced autonomy in important life decisions;
- Little or no control in decisions with a legal consequence relating to personal care, finances and property;
- Limited access to and awareness of legal rights;
- Entering into or agreeing to legal outcomes that do not reflect the person's legal or best interests.

Key Findings from CDAC Study

In 2012, we completed a national feasibility study for Justice Canada on the implementation of communication intermediary services for people with SLDs. (A communication intermediary is a speech language pathologist with specialized training to assist a person with SLD in two-way communication in the legal context.)

Approximately 50 key organizations across Canada (legal and disability sectors) as well as a number of individuals provided input to this study. In addition, the authors explored the communication intermediary services in the UK as well as existing communication support service models in a number of targeted areas in Canada for people who are Deaf, DeafBlind and people in need of language translation services.

The CDAC study highlighted that:

- People with SLDs are vulnerable and at high risk for all types of abuse and crime, often because they are perceived to be unable to communicate to the authorities what has happened.
- There is a lack of knowledge, skills and protocol at all stages of the criminal process – from making a complaint to the police, through accessing victim services, through the court process.
- While effective communication is essential in all legal and justice situations, people with SLDs face significant challenges when communicating with police; in criminal, family and civil courts; at tribunals and hearings; when discussing consent and capacity issues; and at private legal meetings.
- Communication barriers may include but are not limited to (a) not being able to communicate an intended message; (b) not being understood; (c) not understanding what others are saying; (d) not being believed or (e) having the accuracy and authorship of their messages questioned.
- There are no consistent, standardized communication protocols and supports for people with SLDs when communicating within legal and justice settings. Communication support is provided on an ad hoc basis and is essentially up to the good judgment and discretion of the service provider (e.g. lawyer, police or judge). Such supports include (a) having someone speak on behalf of the person with SLD; (b) having a family member who may not be arms-length assist with communication; (c) engaging services from a speech language pathologist, teacher and disability service provider with no formal training in communication interpreting within legal settings and (d) providing no communication support to the individual.
- Unlike other communities, including the Deaf, who have sign language interpreters, the Deafblind, who have intervenors, and those who do not speak English, who have access to language interpretation services, people with SLDs have no standardized communication policies, practices and supports for people with SLDs.
- Canada is not alone in failing to have formal communication support services for this population. However, since 1999, the United Kingdom has operated a communication

support service that assists vulnerable victims and witnesses to communicate in criminal services.

Key Recommendations:

- The statutory framework exists in Canada to implement accessibility supports for people with SLDs to communicate effectively with police, lawyers, justice professionals, victim services and in the courtroom.
- Based on findings from the feasibility study, CDAC recommends the following components in a communication intermediary service for Canada:
 - Communication intermediary services should operate at a regional level. However, a national entity is required to start-up, oversee, develop resources, and quality assurance procedures to ensure consistent, high quality services across Canada.
 - Speech Language Pathologists (SLPs) can become certified communication intermediaries with additional core training, tools and resources about the role of a communication intermediary; rules and ethics; communication intermediary assessment, reporting, and practices in different contexts; police, legal, health law and courts.
 - Continuing and specialized education for communication intermediaries is required to maintain and expand skills (e.g. criminal law, capacity, consent, civil committal, supported and substitute decision making; accused people; legal matters relating to social assistance, wills, power of attorney etc).
 - End-user education for police, legal professionals, healthcare professionals, judges, victim witness services, court accessibility coordinators and others is required if CI services are to be effectively used.
 - Education for people with SLDs and the disability community is required to inform people that CI services are available.
 - Regional procedures for a match-up database and service are required to connect appropriate communication intermediary with end-user.
 - Regional procedures for engagement and payment of communication intermediaries must be in place.
- CDAC proposes a two-pronged, integrated model with national and regional components based on best practices gleaned from evidence based speech and language pathology and augmentative and alternative communication practice; the Witness Intermediary Scheme in the UK and existing communication support services for people with sensory disabilities and language translation services.

For more information visit our website:

<http://www.access-to-justice.org>
www.cdacanada.com

Webinar 1: Handout 2

Communication Access to Legal and Justice Services in Canada

Legislation

Although there are few specific regulations that address communication, there are many laws that protect the rights of people with disabilities to equal access to services.

CDAC works to define the accommodations required by people with communication disabilities when accessing goods and services.

Effective communication for people with communication disabilities is embedded in provincial statutory human rights laws such as the *Accessibility for Ontarians with Disabilities Act* as well as:

- *The Canadian Charter of Rights and Freedoms*
- *Convention on the Rights of Persons with Disabilities*
- *Eldridge v British Columbia (1997) 3 S.C.R. 624*

For more information:

<http://www.efc.ca/pages/law/charter/charter.text.html>

<http://www.un.org/disabilities/convention/conventionfull.shtml>

<http://www.accpc.ca/pdfs/Eldridge.pdf>

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Communication Access to Legal and Justice Services in Canada

Role of a Communication Intermediary

A communication intermediary is a Speech Language Pathologist who has successfully completed additional training with CDAC and has agreed to a code of practice and ethics to assist people with speech and language disabilities within legal and justice situations.

A communication intermediary can assist a person to

- communicate their messages
- use their preferred methods of communication, including speech generating devices, communication displays, gestures, impaired speech
- express their experiences, intentions and desires
- understand questions
- read and understand written documents

A communication intermediary can also

- give advice on ways to ask questions that the person can answer
- provide guidelines for recording and transcribing non-verbal testimony / evidence
- validate and advise on communication assistance techniques use of untrained, familiar person in situations where this is considered the best option for the individual

A communication intermediary

- is impartial and neutral
- works within his / her professional boundaries of experience
- ensures appropriate consents at all times
- keeps records and notes that may be disclosed to the defense
- informs the end-user if there is any conflict of interest or reason that they should not function as a CI in a specific case
- does not express an opinion on truth or reliability of a v/w's testimony
- must not be left alone with the v/w

A communication intermediary is not

- an expert witness
- an advocate
- a counselor
- a mediator
- a personal attendant

The role of a communication intermediary is not to discuss, assess or comment on a V/W's competence to give evidence.

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These are SAMPLES only. All forms should be put on the CI's letterhead

Sample Consent to Act as a Communication Intermediary

I, _____ agree to
have

(Printed Name)

(Name of Communication Intermediary)

as my communication intermediary. I understand that the communication intermediary is
hired

by _____ to support me to communicate.
(Name of Individual / Organization hiring the CI)

This may involve:

- Explaining my communication abilities and needs
- Assisting police, legal and justice professionals in understanding my messages
- If necessary, assisting me to understand what others is saying

I understand that the communication intermediary will:

- Work with me to determine my communication needs so that I can get the communication assistance I need. This may involve speaking with people who know me well and reading my healthcare reports
- Share findings about my communication needs with police, legal and justice professionals
- Assist me to best of his/her ability to communicate as effectively as possible with police, legal and justice professionals

I know that the communication intermediary is not to advise me, counsel me, tutor me, or advocate on my behalf.

I have spent some time communicating with this communication intermediary and I am satisfied that he/she can assist me to the best of their abilities.

I am aware that I have a right:

- To request another communication intermediary at any time. If this happens, I will discuss it with _____

Name:

(Print)

Signature: _____ Date: _____

Witness Name:

Signature: _____ Date: _____

Webinar 1: Handout 4 (b)

Sample Consent to Communication Intermediary Evaluation

I, _____

give permission to

(Name of Communication Intermediary)

to work with me to determine my communication assistance needs and to give a report
of my communication needs to:

Name:

(Print)

Signature: _____ Date: _____

Witness Name:

Signature: _____ Date: _____

Webinar 1: Handout 4 (c)

Sample Release of Information

I, _____ authorize _____
(Print your name) (Name of Organization / Individual)

to release information to _____
(Name of Communication Intermediary)

The following reports are requested:

Name (printed): _____

Signature: _____

Witness: _____

Date: _____

Webinar 1: Handout 4 (d)

Sample Confidentiality

I,

(Name of Communication Intermediary)

will keep confidential all information relating to my work in supporting you to communicate.

This includes anything you communicate as well as what someone else communicates to you.

Signed:

Name:

(Communication intermediary)

Signature: _____ Date: _____

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Communication Intermediary Report Topics

- Summary of CI contact information, qualifications and experience
- Summary of conclusions and recommendations

Brief notes for end-users identifying specific issues to be considered:

- General observations
- Attention and listening skills
- Auditory comprehension of spoken language
- Spoken expression
- Speech intelligibility
- Use of augmentative and alternative communication methods
- Reading and writing ability
- Other relevant information (social, health, medical background, hearing, vision, level of education, emotional state, stamina etc.

Recommendations relating to

- Ability to communicate in legal / justice context with / without supports
- Generic communication access
- Direct Communication Intermediary support
- Third party validation and / or assistance

Estimated time for preparation (if required)

- Familiarization with communication methods
- Vocabulary preparation

Conclusion



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Communication Access to Police, Legal and Justice Services

Generic Communication Access Guidelines

Everyone is different and will want you to do different things when communicating with them. Here are some general tips to get you started when negotiating communication access with a person who has a communication disability. There are links to online learning modules and videotape segments for each of these items.

A communication intermediary can assist you in customizing these guidelines with an individual.

Respect

- Talk directly to the person in a normal tone and volume.

Learn more about being respectful at <http://www.communication-access.org/ep/episode1>

Communicating

- Ask if there is anything you can do to make communication go smoothly
- If it is not obvious, ask how he/she communicates “Yes” and “No”
- Read any communication instructions the person gives to you
- Give extra time for person to compose messages
- Tell the person if you don’t understand their message. They might want you to:
 - Guess what they mean
 - Move to a quiet place
 - Write down what they are spelling
 - Tell them what you understand so far
 - Wait for them to tell you another way

Learn more about how to communicate at <http://www.communication-access.org/ep/episode3>

Understanding

- Assume the person understands unless they tell you otherwise
- If they have difficulty understanding, use everyday language, speak clearly, and show them what you are talking about
- Avoid using jargon and terminology

Learn more about supporting a person to understand what you are saying at <http://www.communication-access.org/ep/episode4>

Communication Assistance

- In situations where communication is critical, the person may require a communication intermediary to assist with communication.

Learn more about communication intermediaries at http://www.access-to-justice.org/p/comm_intermediaries-1#a1

Reading

- Find out if the person needs alternate formats or assistance to read or understand written materials

Learn more about making reading materials accessible at <http://www.communication-access.org/ep/episode7>

Writing

- Ask if the person needs assistance to complete your forms, take notes or sign documents.

Learn more about signing documents and making forms accessible at <http://www.communication-access.org/ep/episode8>

Telephone

- Ask how the person wants to communicate over the telephone. They may prefer to text or email.

Learn more about telephone access at <http://www.communication-access.org/ep/episode6>

Learn more

<http://www.communication-access.org/p/education>



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CDAC Resources

Communication Access to Justice

- Information for end-users at http://www.access-to-justice.org/p/comm_intermediaries-1#a1
- Videos at <http://www.access-to-justice.org/p/videos>
- Information for People with Communication Disabilities at http://www.access-to-justice.org/p/comm_access_rights
- Updates on communication access to justice at <http://www.access-to-justice.org/p/news>
- Brochure download at <http://www.access-to-justice.org/mediabin/ACCPC-Access-to-Justice-Brochure.pdf>

Communication Access Project

- Communication access e-learning modules at <http://www.communication-access.org/p/education>
- Communication access rights <http://www.communication-access.org/p/rights>
- Connecting to Communities at <http://www.accpc.ca/connectingtocommunities.htm>
- Pointing it Out at <http://www.accpc.ca/pointingitout.htm>