

Summary of CCAT Guide to Literacy and Access To Administrative Justice In Canada

Full report at: <http://www.ccat-ctac.org/en/publications/>

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Tribunals were set up to be more accessible and less costly than courts. Hundreds of thousands of Canadians come to administrative tribunals each year.

Clients who appear before administrative tribunals are less likely to be represented by counsel than if they were in court. These people are faced with an unfamiliar environment, probably unknown administrative processes, and difficult legal language. Add low literacy skills and we have to question how well justice is served.

Almost 50 per cent of Canadians aged 16 and over have difficulty understanding and using information in documents.

The Right Honourable Beverley McLachlin summed up the situation very well:

“If we cannot understand our rights, we have no rights.”

Our main purpose here is to improve access to justice for people with low literacy skills by

- making administrative tribunals more aware of the literacy problems faced by many of their clients,
- describing how tribunals can set up a literacy program,
- providing information on revising written and visual materials so they are clear and easy to understand,
- providing suggestions on training staff to recognize and work with clients who have low literacy skills.

Rights of clients and participants

People have a right to understand the legal processes they are involved in. Case law in Canada states that fair justice is received only when a person can understand what is going on in a court or tribunal and can represent himself or herself adequately.

Administrative tribunals, like other courts, have to meet the standards set in case law and make sure their clients know what is going on. If this is not done, case law states that individuals are not truly informed and cannot truly exercise their rights. The result may be denial of justice.

In March 2004, the Canadian Judicial Council announced that plain language should be used for instructions in the courtroom. The Chief Justice of Canada made the following comments when these instructions were released:

The instructions will help judges explain legal technicalities in plain language that ordinary people can understand and apply... They will benefit judges, lawyers and jurors, and strengthen the administration of justice in this country.

Responsibilities of administrative tribunals

Tribunal staff, members, and lawyers cannot solve the literacy problems of clients, witnesses, interveners, and others. But we are responsible for making sure that people with literacy problems have access to justice.

Procedural fairness

Administrative tribunals, along with the courts, have the mandate to make decisions about rights. Tribunals' decisions have legal consequences—just like those of the courts—so we have to observe procedural fairness in all our deliberations.

Clear and understandable communications

Tribunals have many opportunities to tell clients about the process they will go through and to explain everything simply and clearly. We must make tribunal processes and materials as understandable as possible to all those with low literacy skills. The ways we communicate include the following:

- written material
- brochures and pamphlets
- videos
- posters
- signage
- forms
- web sites
- pre-hearing explanations or instructions
- language and explanations used during the hearing

Accessible justice

We need to look at three areas to make sure justice is accessible to all:

1. literacy skills that individuals need to make their case,
2. user-friendliness of the written and visual material that is a part of the tribunal process,
3. training of our tribunal staff and members to recognize clients with literacy problems and to work with them appropriately.

Literacy in Canada

What is literacy?

Literacy is the ability to read but it is also being able to understand the meaning behind the words.

The *International Adult Literacy Survey* defines literacy as:

- the ability to understand and employ
- printed information in daily activities,
- at home, at work and in the community,
- to achieve one's goals, and
- to develop one's knowledge and potential.

How is it measured?

A school grade level is often used to measure functional literacy. Grade 8 is the level generally accepted as the benchmark by most national and international organizations—organizations such as the Organization for Economic Cooperation and Development, the United Nations, and the Canadian federal and provincial governments.

How literate are Canadians?

The Statistics Canada study contains sobering numbers:

- 48 per cent of Canadians aged 16+
have difficulty understanding and using information contained in instructions (for machinery, equipment, medicine).
- 47 per cent of Canadians aged 16+
have difficulty extracting and using information presented in forms, job applications, transportation schedules, maps, tables, graphs.
- 48 per cent of Canadians aged 16+
do not have the necessary knowledge to perform simple math based on printed documents such as calculating a tip, or interest on a loan.

Compounding the problem is that the mother tongue of many Canadians is neither English nor French. And if these Canadians have low literacy skills in their mother tongue, they will also have them in French or English.

Another survey by **Statistics Canada** looked at the reading levels of Canadians and the day-to-day practical tasks we all do. Then the **Canadian Bar Association** “translated” the everyday tasks into basic legal tasks. The levels of reading and understanding are the same as those used in the Statistics Canada survey.

These examples show clearly how challenging life is for Canadians without literacy skills.

- Level 1: 7 per cent read at this level;
They would have difficulty
 - signing a simplified lease in the space designated for the tenant’s signature if there were several places for signatures,
 - finding the appointment time in a simply written letter from a lawyer,
 - finding out when to reply or to appear after receiving a court notice or summons.

- Level 2: 9 per cent read at this level;

They would have difficulty

- consulting the Yellow Pages to find a local legal aid office in a list of several offices,
- finding the two mornings a week when their counsellor is available in a schedule of office hours of three family court counselors,
- looking at a catalogue of brochures about legal subjects and filling in an order form with publication numbers and prices.

- Level 3: 22 per cent read at this level:

They would have difficulty

- reading a standard rental agreement or lease and finding the section that deals with a particular issue, such as who is responsible for repairs,
- finding and using information in documents or letters if the information is not stated clearly and explicitly or if it is written in “traditional” legal language,
- preparing a financial statement for an application for child support.

- Level 4: 62 per cent read at this level;

They

- can read most everyday material,
- can integrate information from several parts of a document,
- would have some problems with a news account of a legal decision.

What is legal literacy?

Legal literacy is the ability to understand the words used in the legal context and to access rights in the justice system. Most people, literate or not, don't understand even the simplest legal expressions.

Legal language is very structured with very specific meanings and concepts.

Even if people with low literacy have found a way to cope with their daily routine, they find it very difficult to read, understand, and use material related to legal problems.

They do not understand the concepts contained in the words, even if they understand the words themselves.

They cannot understand what is expected of them and often the implications of what is being said. The courts' lack of understanding about low literacy can

- result in miscarriages of justice
- reduce court efficiency and effectiveness
- be a barrier to reducing crime and recidivism
- contribute to a culture of systemic discrimination based on ability to read and write.

In their report, the Canadian Bar Association said it “was struck by the simple but profound awareness that the legal system is based entirely on the written word. If you have trouble with the act of reading, it may not be possible to work through the system.”

What can be done?

Administrative tribunals, like other courts, have to follow the standards set in case law. We can

- make sure that our clients understand all the proceedings,
- examine how we deal with low literacy clients and how this can affect fair administration of justice,
- use “plain language” in all our communications, written, visual, and spoken.

Plain Language

What is plain language?

Plain language is a way of writing and presenting information so it is clear and concise and so the reader knows how to act on the information. We have to think about the needs of the client in every piece of information we produce.

Here are some plain language techniques to give you an idea of what we mean:

- Use plain words and simple expressions.
- Use short sentences.
- Use the active voice.
- Use verbs rather than nouns made from verbs.
- Cut out unnecessary words.
- Use personal pronouns.
- Be positive in tone.
- Use white space effectively in the layout.

Why use it?

There are many reasons, all of them good.

- 48 per cent of the population has difficulty reading printed materials and can deal only with simple and clearly laid out materials.
- More people, whether they have reading problems or not, will understand documents, how to fill out forms, and what is expected of them.
- Low literacy and other vulnerable people will be better served.
- Staff save time as they also understand the policies and other documents better and can answer questions more quickly and easily.
- Governments are more accessible to the public and save staff time.
- It saves money.
- It is the most helpful technique for ensuring that everyone understands court proceedings.

Where should it be used?

Plain language goes beyond written communications. We have to look at all the ways we communicate with clients and change them if necessary:

- written material such as forms, brochures, pamphlets, posters
- spoken communication
- signs in the tribunal offices
- videos
- web sites

Developing and Implementing a Literacy Program

Getting started

How do you turn your organization into one that answers the needs of people with low literacy skills? You need:

- the support and commitment of the people at the top,
- a clear understanding of how the tribunal operates,
- knowledge of your clients,
- a strong plan,
- communications that are as clear as possible,
- trained tribunal staff and members who make the process easier for clients,

- ways to evaluate the program and monitor it on an on-going basis.

Six steps

These steps will start you off on developing a literacy program. You will have to adapt what follows to your particular tribunal and to the needs of your clients.

Step 1. Organization audit

- What is your mandate?
- Who do you serve?

Step 2. Client/participant literacy audit

- Who are your clients/participants?
- What are their literacy needs?

Step 3. Planning the literacy program

- Is there senior management commitment?
- Is there an action plan?

Step 4. Communications

- Is there a plan to review and revise communications?
- Who is responsible?

Step 5. Training

- How will staff become aware of literacy needs?
- Is there a training plan?

Step 6. Evaluation and maintenance of the program

- Do you have an evaluation plan?
- Who will have ongoing responsibility for the program?

Goals for the program

- improved access to justice,
- well-trained staff who are sensitive to clients' literacy problems,
- adjudicators who are sensitive to the literacy issue,
- a well-understood way of dealing with vulnerable Canadians,
- providing timely, relevant, understandable information,
- meeting the needs of the clients,
- fulfilling the mandate of the tribunal.

Training

Changing the way we deal with clients and participants means changing the way we perceive and deal with the issues. It means understanding that respect for clients and participants is of the highest importance.

Staff can learn to use many simple measures to help those with low literacy levels. Speaking plainly, looking for ways to help people understand, and then making sure they do understand, must become normal tribunal procedure.

Types of training needed

The following types of training should be considered for both adjudicators and staff:

- literacy awareness
- recognizing literacy problems in clients/participants
- plain language, written and spoken
- listening skills
- document and form design
- web site design
- new office procedures to make communication easier for low literacy clients

Client/participant literacy audit

Who are your clients and other participants?

Knowing who your clients are can help you design communications that they can read.

First language other than French or English?

If a client's mother tongue is not English or French, and if there are also literacy problems, the situation becomes more difficult. The tribunal then has to be inventive in its ways to solve this double problem.

What are their needs?

Clients' needs are, of course, directly related to the reason they are coming to the tribunal. These will vary tremendously due to the great variety of tribunals. However, legal literacy will usually be an issue for unrepresented clients.

Clients with literacy problems will also have legal literacy problems.

In general, they will need help from tribunal staff and members even if they have a lawyer.

We are concentrating here on their literacy needs and how we can identify those with problems reading.

Who are your clients and other participants?

What are their needs?

Do they have a first language other than English or French?

What are the markers for literacy?

How do you recognize literacy problems

- before a hearing?
- during a hearing?
- after a hearing?

Markers or indicators for literacy

A Statistics Canada study provides a startling picture of where we might expect to find people with low literacy skills. The following chart shows how widespread literacy problems are. It also indicates which of a tribunal's clients might, at first glance, be suspected of having reading problems. The chart shows what we have already learned—that 98 per cent of those with less than a grade 8 education have low reading skills.

But we cannot assume that clients with grade 10 or their high school diploma or a university degree for that matter can read easily. Here are some statistics showing the percentage of adult Canadians who have low reading skills:

- 11 per cent of those with a university diploma
- 30 per cent of those with a college diploma
- 43 per cent of high school graduates
- 51 per cent of those who have some high school
- 88 per cent of those with Grade 8
- 98 per cent of those with less than Grade 8

Conducting the hearing

1. Remember to speak plainly so you can be understood by all people present. It is possible to simplify the level of your language so the proceedings can be understood by those with low literacy skills.
2. Explain the documents being used, the process, the implications of each step, and the results. Use simple language.
3. Explain as often as necessary, rewording anything complex.
4. Reassure clients and ask them to repeat back what they understood you to say.

5. Repeat important information to increase understanding. Often people with low literacy skills rely on memory.
6. Have other tribunal officials explain the complexities of the process.
7. Take the time at each step to rephrase and simplify.
8. If necessary, recess the hearing. Then speak to counsel and staff and have them assist the client.
9. When the client is not present and low literacy is suspected, rely on the markers to review the file for hints or ask counsel or staff to provide more information.

The Difficult Conclusion

The courts have stated it plainly: if individuals do not understand the legal process in which they are involved, then justice has been denied.

There is an extensive body of case law on this topic and the most relevant cases are included in the full text. The cases are divided into six major topics:

- The need to understand signed documents
- Literacy and informed consent
- Literacy and immigration law
- Literacy and criminal law—understanding one’s rights in the standard police charge
- Literacy and accessibility to law
- Unrepresented clients and clients with low literacy skills

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Checklist to identify client literacy before the hearing begins

Factor	Yes	No	Comments
Fails to show up for appointments			
Loses documents or fails to bring in information			
Is embarrassed or nervous during interview			
Acts confused; asks unrelated questions			
Does not ask for clarification			
Cannot tell a coherent story			
Does not answer the questions			
Reads too fast or too slowly for the length of the document			
Has difficulty following instructions			
Acts frustrated and leaves in a hurry			
Levels of written and spoken words do not match			
Becomes angry and storms out			
Initiates a physical confrontation			
Handwriting doesn't match signature			
Portrays issues in terms of conspiracy or personal victimization			
Is compliant or agrees, but not to what you expect			
Uses excuses: "I forgot my glasses"			
Says, "I don't have time to read this now. Can I take it home?"			
Says, "I hurt my hand; I can't fill these out"			
Brings along a friend or relative (to help with reading and forms)			
Says things clearly inconsistent with written information in their possession			