



Literacy and the Courts

Protecting the Right to Understand

Produced by
**THE JOHN HOWARD
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[en français](#)

Foreword

*by Gordon Proudfoot, Q. C.
President, Canadian Bar Association
June 1996*

The Canadian Bar Association commends the John Howard Society of Canada for its efforts in raising the issue of limited literacy and the court system. Limited literacy hampers people in their efforts to recognize and solve legal problems and to gain access to justice. This booklet will help raise awareness that the written and spoken exchanges among lawyers, judges, and those with whom they work are often inaccessible to those not familiar with those forms of expression. This booklet points out in practical ways how to address this serious situation. In doing so, barriers will be broken down for people who lack literacy skills, and as a result they will be able to more fully exercise their social and legal rights.

Preface

*by James MacLatchie
Executive Director,
John Howard Society of Canada*

Background to this manual

This manual, which is part of a 'package' of a video, a manual and support documents, is the latest contribution of the John Howard Society of Canada to the promotion of literacy awareness.

In 1987, a Southam Survey found that seven out of ten Canadians could not find the amount owing on a tax table. One in two people could not find a store in the Yellow Pages ads. Twenty nine percent could not identify the amount owing on a telephone bill. Thirteen percent could not find the traffic sign they had been asked to circle on a page.

In the spring of 1989, the John Howard Society of Canada set itself the task of asking how such literacy handicaps were affecting the clientele of programs which the society operates from its (approximately) seventy-five branches across Canada.

John Howard Society workers were alarmed to have to conclude that John Howard Society and other community workers are so busy doing our 'real' work, that we do not have an appreciation of how discriminatory we can be towards people with limited literacy skills. We began to recognize as well, that this issue can not be addressed by merely setting up another service program because the problem is that we do not 'see' this handicap, and neither do most of the other institutions in our community. The primary barrier then, turned out to be awareness. Consequently, we produced booklets for community agencies (health, recreation and social welfare to name a few) entitled *Taking Down the Wall of Words*.

In view of the fact that John Howard Societies work in the area of community justice, it was a logical step for John Howard Society workers to ask the same question of our justice system, and in particular of our criminal courts. To what extent does the criminal justice system impact upon people with limited literacy skills? Our research was completed in the form of a report *Presumed to Understand: Do You Understand? - An Analysis of Literacy, the Accused and the Justice Sector*.

This study revealed a similar systemic discrimination regarding people with limited literacy skills in our courts.

Not only that, but the study raised questions about whether or not this very lack of awareness by the court and its officials might constitute, or at least contribute to, a breach of fundamental justice. Once again, John Howard Society workers concluded that the solution does not lie in creating another program. Rather, it requires awareness of how this particular handicap can impact upon evidence through statements, through the ability of a client to instruct counsel, in a client's ability to understand legal documents and directives, in the quality of witness evidence, in a jury's capacity to understand, and so forth.

Quite apart from the notion of process, there is even reason to believe that people with limited literacy skills simply perceive things differently than most of us, and that they actually 'problem-solve' in ways that are different from us. Awareness of this, consequently, might contribute to a better understanding of the accused and the circumstances of the case.

These documents bring together the experience and wisdom of a thorough range of contributors including learners themselves, the community agencies involved in this work and, most particularly, of police, defence lawyers, Crown attorneys, probation officers and Judges. Furthermore, these contributions have come from across Canada, and thus reflect the experiences of many courts in many communities. It is our hope that these instruments will be used widely as a first step towards conveying, to those who operate our courts (and other areas in the justice system), familiarity and insight into the nature of literacy handicaps.

**Our thanks to those
who contributed to
this manual**

We are grateful to Linda MacLeod, our Project Director, for stepping in and helping us bring this project to conclusion with enthusiasm, integrity, and great skill. I wish also to acknowledge the work of Susan McDougall-Gagnon-Gingras who prepared the research paper which formed the basis of this project, and who was the project's first coordinator. These people have made an important contribution to The John Howard Society of Canada and to the community we choose to serve.

We wish to acknowledge, with great appreciation, the assistance and support we have received from the National Judicial Institute, and the Canadian Bar Association. In particular, we wish to recognize the role of the Literacy Secretariat of Human Resources Development Canada, for its financial support, and encouragement throughout this project.

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Dedicated to:

Jim MacLatchie, a visionary, a leader and a friend. Throughout his life, Jim worked to create a world where everyone would have a fair chance, where everyone would be treated decently. He worked at a national and international level, but his focus was always on the individual men and women who are forgotten in our society or who are not treated justly. For Jim, literacy was an important key to help make individual lives more decent, just and fair. We thank him for his work and his vision.

We will miss him.

I Introduction

The majority of people who are charged, act as witnesses, or sit on juries in the criminal justice system may not be able to use written legal documents or materials effectively. They may not read and write well enough to cope with unfamiliar or complex information, such as reading and acting on a notice to appear. Others may have limited information about legal procedures and terminology, making understanding the context and meaning of legal materials difficult.

The purpose of this publication is to assist lawyers, judges, police, court staff and others working in the criminal justice system:

- to improve their awareness and understanding of the needs of justice system users, particularly those with limited literacy skills; and
- to improve the effectiveness of justice system communications with users.

This booklet explains how literacy awareness and links with literacy organizations can help criminal justice system officials:

- to save time and money;
 - to avoid unnecessary public and media criticism;
 - to reduce miscarriages of justice; and
 - to strengthen public and client confidence in the criminal justice system.¹
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Challenges Faced by Criminal Courts in Canada Today

The criminal justice system faces significant challenges, from growing demands for its services to reduced availability of resources to do the work. The system requires both increased public confidence and innovative ways of reducing costs in order more effectively to address these challenges.

For many members of the public, some court procedures and decisions do not make sense. For some people, their lack of understanding has led them to conclude that the courts are unfair. Some feel the courts aren't doing their job of upholding justice and protecting the public. The inability of members of the public to understand the court system and decisions made by the courts has undermined confidence in the criminal justice system as a whole. Reduced public confidence has added to the pressures on the courts to ensure both that justice is done and that justice is seen to be done by members of the general public.

Some lawyers and judges fear that the effectiveness, efficiency and fairness as well as public confidence in our criminal courts will be challenged increasingly:

- by the growing diversity of our communities in terms of values, cultures and languages;
 - by the unmanageable caseloads with which many courts are now burdened;
 - by cost cutting measures which limit the resources available to the courts;
 - by selective media reporting of criminal cases, and
 - by the increasing numbers of people appearing in court without representation, largely as a result of cuts to the legal aid system.
-

Literacy Awareness is One Effective Response to these Pressures

Literacy awareness by judges and lawyers as well as a collaboration between literacy organizations and the legal profession can provide some innovative solutions. This booklet offers practical, simple and low cost suggestions for enhancing public confidence in our criminal courts:

- by increasing the public's understanding of the procedures and decisions made in courts;
- by reducing some of the unnecessary delays in the court process;
- by strengthening client respect for their lawyers through improved communication between lawyers and their clients;
- by preventing any miscarriage of justice which can result when accused, witnesses or jurors do not understand the procedures, documents or statements which make up the court process, and
- by responding more effectively to the increasing numbers of accused who are appearing in court without legal representation.

The John Howard Society of Canada and many of the judges, lawyers, police, and community workers consulted in the preparation of this manual also believe that these suggestions will reduce court costs by promoting more expeditious processing of cases.

II Literacy and *Legal Literacy*

Definitions

Literacy is the ability to use *"printed and written information to function in society, to achieve one's goals, and to develop one's knowledge and potential"*². In recent years, the focus of literacy has changed from an emphasis on levels of schooling to a focus on functional skills.

Therefore, in the courtroom, literacy is the ability to use printed and written information to function in the courts and to achieve one's goals related to the justice system. Even if a person is literate enough to deal with daily routines, he or she may not be literate enough to understand the language and procedures in court.

Laird Hunter, in *Reading the Legal World* suggests the following ideal operational definition of legal literacy.

"People using the legal system must be able to guide themselves through a process that they understand [...] and, at appropriate places along the way,

- recognize they have a legal right or responsibility, in order to exercise or assume it;***
 - recognize when a problem or conflict is a legal conflict and when a legal solution is available;***
-

- *know how to take the necessary action to avoid problems and where this is not possible, how to help themselves appropriately;*
- *know how and where to find information on the law, and be able to find information that is accessible to them,*
- *know when and how to obtain suitable legal assistance;*
- *have confidence that the legal system will provide a remedy, and*
- *understand the process clearly enough to perceive that justice has been done...*

*Translating the information and meanings of the legal system to learners and people with limited literacy skills requires that lawyers and others clearly understand the dual nature of legal literacy: the ability to read and familiarity with the legal context."*³

Canadian Literacy Levels

In the general public only about 60% of Canadian adults have the skills to cope with the everyday reading and writing demands of our society. This means that at least 2 out of every 5 of the people in any courtroom may have literacy problems that interfere with their access to justice and their communications with you. Their difficulties with reading and writing could mean that they have trouble:

- locating the appointment time in a simply worded letter from a lawyer or other official;
 - finding when to respond or appear in a notice or summons from court;
 - identifying the office number of their lawyer or of a Legal Aid office in a building lobby directory of offices;
 - reading or writing a statement taken by police;
 - rereading a document to deepen or correct an understanding
-

The legal system demands an even higher level of literacy skills than does daily work and life. Therefore it is likely that an even higher proportion of people will have trouble with legal terminology and concepts. Researchers who worked on a 1995 International Adult Literacy Survey estimated that less than 25% of Canadians would have sufficient skills to read legal documents and comprehend legal language and processes.⁵

Literacy Levels of Offenders

Statistics on offenders reveal that they are even more likely to have a low literacy level. According to the Correctional Service of Canada, the average education level of newly admitted offenders is grade 7. In 1994/95, 70% of newly admitted offenders tested below a grade 8 level in language and math. 86% tested below grade 10.⁶

While grade levels are not an accurate measure of literacy levels, research done by John Howard Societies in different parts of Canada estimates that about 68% of offenders have limited literacy skills.⁷

III Judges and Lawyers are Aware of the Impact of Literacy Barriers on the Courts

In 1990, the Canadian Bar Association established the Task Force on Legal Literacy, to understand more about the relationship between law and literacy. As part of its work, the Task Force undertook a survey of lawyers. This survey revealed that while *"more than seven lawyers in ten [...] have had experience with a client or witness with limited literacy [...] lawyers are not yet aware of the extent to which people with limited literacy skills have serious problems undertaking the 'search' that is a central part of using legal information and the legal system. Lawyers are not aware of the nature of the difficulties that these problems create for the lawyer-client relationship."*⁸

The words of the legal professionals quoted in the next seven pages⁹ highlight the fact that awareness of the relationship between literacy and access to justice has grown since the release of this report in 1992. An increasing number of judges and lawyers are aware of the impact of literacy barriers on the courts and on those who come into contact with the justice system.

**Judge Gilles
Renaud, Ontario
Court (Provincial
Division)**



"When judges address individuals in the court, whether they are defendants, victims, witnesses, jurors or simply the people of the community who are present, we have a responsibility to do so in a fashion that is in keeping with their ability to understand.

I think the judge presiding at the court has the ultimate responsibility to ensure that not only is the result just and the procedure just but it is manifestly so in terms of its appearance. If it appears to someone [...] that everything is said in such a way that it excludes the public [...] the appearance that justice has been served is lost. While it is the duty of the lawyers to explain to their clients what has taken place and what will take place, it is still the responsibility of the court, especially in a criminal court where a person's liberty is at stake, to ensure that the person understands fully.

We often have a situation where an interpreter is required because a person's first language is not French or English. In such a case, we will go down the hall and find an interpreter, and that person will interrupt the proceedings when the individual who does not speak English or French doesn't understand what is going on. Yet we have many people who are low literate who also have trouble understanding and we are not dealing systematically with their problems.

We should be systematic in our approach. We evaluate individuals who come before us accused of a crime [...] as to alcohol abuse or substance abuse. Now, we should just go to the next level to identify and be mindful of the fact that literacy is an obstacle to their full employment and may be contributing to their criminal behaviour."

**Michael Edelson,
Defence Lawyer**



"Understanding has for some time been a factor with respect to accused persons who are functionally illiterate, witnesses who have problems with literacy and in a different vein, witnesses with language problems. We have an increasing number of people in the courts as complainants, witnesses and accused who have a functional problem with the English language. It is my view that we have to pay more attention to this problem.

In the system now, as a result of some drastic cuts in the legal aid system, we are seeing unrepresented accused who are going to be appearing before judges in ever increasing numbers. The courts are going to have to be screening these people to make sure they have a functional understanding of the proceedings and the court jargon quite apart from the basics of the English language.

Our attention to detail and adherence to real principles have been very drastically eroded because of budgetary constraints. Today, everything in the system is budget driven. Very little is driven by principle any more. This emphasis on cost is mitering down to those least able to help themselves in the system, including the functionally illiterate.

If we don't start paying more attention to this problem, we will see increasing miscarriages of justice involving people who should not be found guilty, but have been because they can't articulate their position and the position they have articulated is not protected.

Low literacy ripples all through the society, but when it hits the criminal justice system it is more serious because it has such profound implications for those who come in contact with the system."

**Phil Knight,
a B.C. Lawyer who
specializes in
Legislative Drafting
and Legal Language**



"Low literacy is critical before a person even enters the criminal justice system. It is critical in everything we do in our society. We are a literate society. We depend on the written word for record keeping, for applying for such opportunities as jobs, insurance, universities, welfare, for making statements, for telling people what we are doing. We have a social assumption that ordinary people in the society read and write fluently.

Unwittingly, the criminal justice system can cause injustice because it does not recognize that low literacy is a kind of disadvantage. Some kinds of disadvantage are easy to see and once people are made aware of them as a problem, they can be addressed. Twenty years ago, we began to rectify the wrong we had always done towards people with mobility disadvantages and we put ramps up in our courts where we used to have stairs. We recognized that some people had a disadvantage in accessing justice. It was easy to see and we did something about it when we were motivated. It's not easy to see whether or not someone can read. In fact it's extremely difficult. And as with all forms of social disadvantage, it's embarrassing to the people who suffer from it, so they don't advertise it and don't admit it to strangers and particularly not to strangers in authority.

There's no such thing as a document being objectively clear. It doesn't do for a lawyer to say that a brief is clear. It is only clear if it is clear to the judge who is reading it. It doesn't do to hand a piece of written evidence to all the jurors if one of them cannot read and no one bothered to ask. We cannot afford to assume that every person who appears in court is fully and competently literate.

As the person whose job it is to administer justice in the courtroom, the judge in a criminal court is in a position of tremendous responsibility and opportunity to address this issue and to make sure that justice is being properly served."

**Judge Dianne
Nicholas,
Ontario Court
(Provincial
Division)**



"Low level literacy is an issue that deserves more attention than it has received in the past. I think there are more people who appear before us who have low literacy than we realize. All courts can make an effort to speak more slowly, to use simple language because the whole purpose of the courts is to send a message.

Judges must be paying attention to identify this problem. Often a person appearing before the court won't have the confidence to raise his or her hand and say they don't understand what's going on. I like to have fairly consistent eye contact with people who appear in my court. I watch very carefully for physical signs that would indicate that the witness or accused is not understanding. If I sense in any person in the courtroom a blank expression or a hesitant or embarrassed expression. I will often rephrase a question asked by a lawyer or ask the lawyer to rephrase it.

If defence counsel are well prepared, they will usually inform the judge if literacy or education is a problem in the background of an offender. I believe probation is to assist the accused to rehabilitate him or herself by giving them the support in the community that they need but don't have the resources to approach on their own. Literacy training can become part of that support."

IV Judges and Lawyers are Finding Ways to Protect the Rights of People with Low Literacy Skills

In this section of the manual, judges and lawyers share some methods they use to ensure that low literacy does not jeopardize the right to understand and the overall administration of justice. Most judges and lawyers are not comfortable with screening every accused, witness or juror for literacy problems. As

Judge Renaud points out:

"If you screen everyone, there can be an invasion of their personal rights and I think their personal dignity [...]. It's always difficult to have an absolute rule."

However, it is generally agreed that a *systematic* approach to identifying and dealing with low literacy is essential. Some ideas are summarized below.

Identifying Literacy Problems and Barriers

Knowing the warning signals

As Judge Nicholas points out, judges and lawyers must be paying close attention to identify the problem. Clients and witnesses may try to hide their inability to read and write in various ways. Some of the most common include:

- saying they have forgotten their glasses;
 - glancing at a written sheet and then changing the subject;
 - becoming aggressive, surly or disruptive;
-

- becoming tongue-tied, quiet or uncommunicative.

People with low literacy skills may not relate to questions about particular times, dates and places.

The possibility of literacy problems may also be indicated in written statements when:

- the writing style and the way the person speaks do not correspond;
- the handwriting in the document is clear and well formed, yet the signature looks like a scribble or an X.

Asking directly about literacy problems

"When I see a statement that is written in a very lovely cursive style and then I see a signature that looks like a scribble, my warning antennae go up. I ask myself if this is really the person's words, or if the police have crafted this and then had the suspect sign it. To assure myself I may ask my client outright 'can you read and write?', or I may hand them the statement and ask them to read the first paragraph back to me." - Michael Edelson, Defence Lawyer

While some judges and lawyers express concern about asking someone if he or she can read or write, others point out that we have no compunction about asking the most probing questions about someone's personal life, use of drugs or alcohol, etc. Most agree that if there is a reason to suspect that the person has literacy problems, the direct approach is best. Just ask: 'Do you have trouble with reading or writing?'

Judges can encourage defence lawyers and Crown attorneys to routinely ask accused and witnesses as well as jurors whether or not they have trouble reading or writing. A literacy assessment can be requested as part of the Pre-Sentence or Pre-Disposition Report. To reduce the risk of embarrassing the individual, accused and witnesses should be asked about their literacy problems privately, before their appearance in court.

Understanding literacy barriers in the court system

These barriers and their impacts are discussed in Sections VI and VII.

Reducing the Barriers

Taking more time

"Sometimes it's just a matter of slowing things down. For the person appearing before us as a witness, accused or victim, it's their life. I think we have a duty to make sure they understand each and every step of the process."

Using plain language

The use of clear, simple language without legal jargon, is the single most helpful technique for making sure that everyone involved understands court proceedings. Judges and lawyers can help by using clear language as much as possible and by rewording necessary 'legalese'. For example, after the legal version of a charge, a claim, or an 'option to elect', is read, they can paraphrase the information using ordinary language.

There are a number of guides, some of them created by the legal profession, for using plain language in written and spoken communication.¹⁰

Repeating important information

Most people who cannot use printed material must rely on memory. Repeating important information can help increase and/or reinforce knowledge and understanding.

Checking to make sure people understand

It is often not enough to ask someone whether they understand as many people are too embarrassed to say openly that they do not. If there is doubt, people can be asked to explain the information in their own words.

Arranging for Support Services

Local literacy organizations and groups such as the John Howard and Elizabeth Fry Societies may be willing and able to act as 'translators' for people with low literacy skills. In addition, they may be able to suggest other warning signals and strategies which will work better for you and your colleagues.

Recommending Literacy Training as Part of a Rehabilitative Sentence

Those consulted were unanimous in their advice that it is inappropriate to sentence someone to literacy training since training cannot and should not be seen in anyway to fulfill the punitive aspect of a sentence. Nonetheless, there was agreement that nothing under the law prohibits the recommendation or encouragement of literacy training as one component of a rehabilitative course of action in a sentence involving probation or a community service order. Some judges said that in their statement to the accused they include, from time to time, suggestions that the person pursue further education to better him or herself and to earn the means to create a life free of crime.

V The Importance of the Right to Understand in Case Law

In 1987, the Canadian Sentencing Commission acknowledged the importance of "*addressing the lack of clarity and predictability in the process and in constructing a framework to encourage the exchange of information between all those involved in and affected by the sentencing process*"¹¹. It linked the need to understand to public confidence in the justice system.

Case law, particularly since 1991 has strongly supported this emphasis throughout the criminal justice process, and has emphasized the links between understanding and *Charter* rights. The sections of the *Charter*¹² referred to most frequently in these cases to uphold the right to understand include:

s.10 (a) and (b):

Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right;

s.14:

A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter; and

s. 24(2):

Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this *Charter*, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

A Landmark Case: *R. v. Evans*

In *R. v. Evans*¹³ a decision of the Supreme Court of Canada in 1991, Madam Justice Beverley McLachlin emphasized that, with reference to s.10 (a) and (b) of the *Charter*, a person is not informed unless they have understood the information conveyed. In her words:

*"A person who does not understand his or her right cannot be expected to assert it. The purpose of s.10 (b) is to require the police to communicate the right to counsel to the detainee. In most cases one can infer from the circumstances that the accused understands what he has been told. In such cases, the police are required to go no further (unless the detainee indicates a desire to retain counsel, in which case they must comply with the second and third duties set out above). But where, as here, there is a positive indication that the accused does not understand his right to counsel, the police cannot rely on their mechanical recitation of the right to the accused: they must take steps to facilitate that understanding."*¹⁴

The appeal to the Supreme Court came after a youth with lower than normal mental capacity was convicted of first degree murder in the brutal killings of two women. When the youth had originally been arrested, he was told he had the right to counsel. When the police asked him if he understood this right, he said he did not understand what the right to counsel entailed, but the police failed to explain the right to him, and he declined counsel. In addition, the youth was originally arrested on a marijuana charge since the police believed that his brother had committed the murders. When the youth became the prime suspect in the two murders, the police did not formally advise him that he was then being held for murder nor did they reiterate his right to counsel.

This case clearly connected the right to understand to the right to a fair trial. It established the principle that a message has not been communicated unless the person receiving the message understands it.

Subsequent Cases which Uphold the Right to Understand

Since the *R. v. Evans* decision, many cases have been built on this precedent. While most uphold the right to understand of people in Canada who suffer from mental or developmental disabilities or whose first language is not English or French, the principles enshrined in these cases potentially are applicable to people with low literacy as well.

A few case examples are cited below.

Case 1

R. v. Sawchuk

*R. v. Sawchuk*¹⁵ Court of Queen's Bench, involved an accused who, according to expert medical evidence, suffered from mental retardation and an attention deficit disorder which affected his memory. Even though the police officer said that he knew the accused was of low intelligence, he did not simplify the language he used in delivering the standard police caution and advising the accused of the right to counsel. He did not ensure that the accused understood what he was told. The evidence of an expert was that the accused would not understand the concept of the police caution or the meaning of the word 'arson' contained in the charge. The judge ruled that, accordingly, his statements were not voluntary and not admissible in evidence.

*How Can This Case
Inform the Way
Courts Treat People
Who Have Literacy
Problems?*

While many people with literacy problems are of high intelligence, the majority, (like the accused in this case) would not understand the concept of the police caution or the meaning of the word 'arson', since the spoken language of the criminal law in fact mirrors written legal language. It does not resemble everyday spoken language.

Case 2
R. v. Kharsekin

This 1992 case from Newfoundland involved a homicide on a Russian trawler¹⁶. About 18 hours after the homicide, two police officers came on board to meet with the accused. The ship captain acted as interpreter. When the police read the caution and the right to counsel, there was some indication that the captain had difficulties translating these statements.

In fact, the accused's statement was ruled inadmissible because "To attempt to explain the abstract notions of legal rights to someone who had no frame of reference for such rights [...] through the strained translation of his superiors was inadequate."¹⁷

*How Can This Case
Inform the Way
Courts Treat People
Who Have Literacy
Problems?*

Literacy barriers can become a kind of prison shutting out aspects of life which require reading and writing, particularly those aspects that are not necessary in the individual's daily life. Many people with literacy problems, as well as people from different cultures, and people who speak neither English nor French (like the accused in this case), would have no frame of reference for such rights.

Further, it is common for people with low literacy skills to have low self-esteem and to be especially intimidated by people in authority. The tension and discomfort that the accused in this case probably felt as his captain, someone in authority over him, translated for him, would be felt by many people with low literacy if someone in authority were questioning them or giving them information. These factors can increase the barriers to understanding that people with low literacy skills may experience.

Case 3
R. v. Hollis

This 1992 case from the British Columbia Court of Appeal involved an impaired driving charge¹⁸. The Court ruled that if there is something in the circumstances which suggests that the detainee does not understand his right to counsel, a duty to make further explanation or to facilitate the understanding will arise. While the decision not to exercise the right to counsel must be an informed one, *"in the absence of any evidence to suggest the contrary, a constitutionally sufficient understanding of the right will necessarily be inferred from a positive response to the question 'do you understand?'"*¹⁹

*How Can This Case
Inform the Way
Courts Treat People
Who Have Literacy
Problems*

The judge in this case placed on the accused himself the responsibility for communicating his lack of understanding. If a person is low literate, he or she has likely spent much of life attempting to hide lack of understanding. Therefore, it is doubtful that people with low literacy skills will willingly admit that they cannot read or write well. It is important that the police officer, the defence lawyer and other court officials try to determine whether people accused of crimes, and witnesses or jurors do in fact understand.

Two Cases Which Cite Low Literacy as a Factor Relevant to the Right to Understand

Reference to low literacy in case law is rare, but it has been considered in recent cases to be a barrier to the exercise of the *Charter* rights of the accused.

For example, in *R. v. Roberts*²⁰, a 1991 Newfoundland case related to search and seizure under the *Income Tax Act*, the reasons for judgement acknowledge that *"the accused was unsophisticated and illiterate [...]. In the circumstances the court was satisfied that the accused had not absorbed what was said to him by the tax authorities [...]. The investigative techniques employed here were seriously flawed and in particular the mere recitation of the accused's rights in the circumstances was purely pro forma [...]. A tax auditor present at the time knew that the accused was unsophisticated and unlearned, requiring that special care be taken during the interview process [...]. In the circumstances ss. 7 and 10(b) were infringed."*²¹

Another case, *R. v. Lim*²², heard in 1993 in the Ontario Court (Provincial Division), involved a person whose first language was Chinese and who understood little English. At the time of arrest when the accused was advised of his right to counsel, he indicated he did not understand. The accused was taken to the police station and shown a sign written in Chinese. The officer thought that the sign communicated the accused's right to counsel. The judge made the point that "*There was no evidence as to whether the accused was literate in Chinese*"²³. This was one of the factors which led the judge to conclude that the accused's right to counsel had been infringed.

*How Can These
Cases Inform the
Way Courts Treat
People Who Have
Literacy Problems?*

While generally the courts have tended to require the accused or counsel to prove lack of understanding, in these two cases, the judge felt that lack of literacy might have interfered with the accused's ability to fully understand his or her rights. While they contain no definitive statement increasing the requirement to establish lack of understanding, the judgements imply that police and court officers should be aware that low literacy can create barriers for the accused.

VI Barriers in the Criminal Justice System to the Right to Understand

Literacy workers, court advocates, lawyers and judges consulted in the preparation of this manual have identified literacy-related barriers in the criminal justice system and the court process.

Barriers for the Accused

Legal language, lack of legal awareness, and documentation

While limited literacy often includes limited vocabulary and/or limited understanding, people with low literacy skills have usually developed strategies for obtaining and remembering information. These strategies are not adequate for navigating the legal world. "Legalese" might as well be a foreign language for most people who come before the courts, even if they can read and write. The John Howard and Elizabeth Fry Societies, as well as other social agencies consulted, have found that most of their clients ask for help with legal paperwork and for explanations of documentation or procedures at all levels of court. Many decisions must be made throughout the process; a great deal of information must be communicated, understood, remembered and acted upon.

"It's not that anyone is wrong or misguided, but we're all human and we respond in very human ways in the institutes of justice. Those of us behind the counter assume that everyone can read and write as well as we can and those of us who approach the counter from the citizen's side aren't going to easily say 'I'm sorry sir that I don't read and so I don't understand this notice that you sent me, a subpoena, or whatever the document is, requiring me to do something. It's not that I ignored it. It's simply that I didn't know what it said.'"

- Phil Knight, Legal Language Specialist

Low literacy and the special needs related to it are seldom identified

Many professionals in the criminal justice sector are not aware that people they encounter in their work have literacy problems. Even if they suspect a problem, there are no mechanisms or tools in place to verify it.

*"While the accused may see the arresting officer for 10 minutes, he may see the investigating officer for hours. He may see his lawyer briefly or they may see each other many times as the case may require. Crown may see the accused briefly in court on first appearance and then at sentencing, or the accused counsel, Crown and Judge may sit together at the trial for months. However, whether it is for minutes, hours, or days, unless the accused speaks up, or is asked to read aloud, the issue of his literacy skills is not addressed. Meanwhile, several professionals have interviewed, questioned, cross-examined, filled out forms, asked for information, and listened to the accused. It may not be until he is asked to read the oath in court, that they discover that he is functionally illiterate."*²⁴

Many judges, lawyers, and police officers consider it insulting to ask an accused if he has trouble with reading.

*"We will ask people all the details leading up to the crime and an the details about the crime. We will ask them about their family life, relations with friends and partners. We will ask them about their drug, alcohol and sexual habits. We will ask them about their employment record. But we cannot ask them about whether they can read or write because it would be 'too embarrassing' for them. [...] The accused is in a position where all the facts of his life are being exposed. Limited literacy is one of them and it affects all other aspects of his life."*²⁵

In addition to not reading and writing very well, people appearing before the courts may have other problems more pressing than literacy. They may not see themselves as having a literacy problem, or they may not understand how it has affected their choices and their situation. They almost never bring up their literacy problems or admit that they don't understand.

Literacy workers and counsellors say it is common for people with limited literacy to lack the self esteem and confidence to challenge the system. They feel intimidated in the face of public authorities. Police, lawyers, and judges consulted by John Howard Society of Canada agreed that "people will say yes to almost anything just to get it over with". The person just wants to get out of there, whether it's the squad car, the lawyer's office, or the courtroom.

Accused can go right through the court process without anyone picking up on their problem. Counsellors who work with women offenders told us that they know that most of their clients have low literacy skills, yet not one has ever brought this up. They say it is common for the women to have about a grade 8 education but about grade 4 skills. One counsellor told of a woman who had skipped out on bail. Later at the halfway house, workers found that her literacy skills were limited to signing her name and that she had not understood the Bail Undertaking she had signed.

Even if the problem is identified, it may not be understood or addressed

There is a general lack of awareness of the implications of low literacy among everyone from the accused to the justice system professionals. If justice system professionals do become aware of the accused's low literacy, they may think they are dealing with it by giving information orally and asking people if they understand. They often take over the process, with the result that the accused is deprived of the chance to learn and to be in some kind of control.

People are often blamed for their inability to read and write. It may be assumed they have had a choice, and are unwilling to improve themselves. It may be generally assumed that we have a 'level playing field' and that therefore the system is fair. Illiteracy may be confused with inability to understand, to learn and to make decisions. These prejudices are very likely to affect the outcome of court proceedings.

"I think that what happens is that because they have a literacy problem what many of us in the criminal justice system will do is to ignore them as if they are not part of it. Someone will give them a bit of information but they do not engage them and that makes them feel even more stupid. They are treated like children instead of adults with a particular problem around reading or comprehension or call it literacy and they are treated as if they cannot understand and people do not spend the time with them to help them understand verbally and they do not challenge the system, why would they..."²⁶

In fairness, individual professionals should not be blamed for systemic problems. The system is over-taxed, and everyone's workload is heavy. There is pressure to be fast and efficient. Probably due to these pressures, communication and collaboration across the literacy and social service sectors and the justice sector is inadequate.

Barriers at Each Stage of the Process

Literacy and criminal charges

Low literacy may play a role in charges laid. The person may not have intentionally committed a crime, but may not have understood his or her responsibilities or how things work. For example, a lawyer at a legal aid clinic mentioned a woman who could not read, who usually shopped in a store that had pictures of a cash register hanging over the cashiers. Searching for the cashier in a new store, she carried her purchases out among the sale racks outside the store, and was charged with shoplifting.

On the other hand social or economic problems associated with low literacy may have motivated the crime. While low literacy is not a direct cause of criminal behaviour, it does correlate with someone's past and present disadvantage and lack of opportunities. People with low literacy skills often have a sense of alienation which can in turn lead to a lack of loyalty to the community. They often don't go for help until the problems are compounded.

Some charges are directly linked to not being able to read. Defence lawyers say their clients often arrive without the papers they were given, or with the papers looking like they have been in the accused's back pocket for a month. But if an accused does not obey a summons to appear in court, a warrant is issued for his arrest. One lawyer told of a client who had one substantive charge against him and 20 warrants for breach of conditions.²⁷

Lack of legal understanding comes into play from the moment someone is picked up by the police. The person is unlikely to have a full understanding of his or her rights. The wording of the 'caution' is technical and confusing. One officer told us "I used to wonder why anyone would give a statement after hearing it - it went on and on and it was tough to read, let alone understand."

"We have come more and more to focus on Charter rights to ensure that the accused is aware of what the Charter rights are. Unfortunately this has often turned into a very simple recitation of a card and the police officer rarely goes beyond this to make sure the person really understands."

- Michael Edelson, Defence Lawyer

If the accused cannot write his own statement, it will be written by someone else, and will usually be structured around questions asked by the police officer. It may contain only a selection of what the accused has said, or the accused may not have thought to include details that could be relevant to his defence. The officer, in writing out the statement or in feeding it back may paraphrase the oral statement. The accused may not understand the potential significance of the changed wording, and may be afraid to ask. The accused may not understand his or her rights, or may not have the confidence to ask that the statement be changed. The credibility of the accused may suffer if he or she amends or adds to the original statement later in court. In any case the accused cannot read the written statement to see if it says what he or she meant it to.

"There was a recent murder case in Toronto where the accused was alleged to have made a confession. After meeting with his client on a number of occasions, his lawyer suspected that the confession wasn't his. It did not jive with his speech patterns, his grammar, his way of expressing himself. The lawyer had a specialist who met with the fellow for about eight hours and studied his speech patterns. It was found that the police had crafted his confession and had him sign it. The fellow was functionally illiterate and the structure of the narrative and its content was found to be false."

- Michael Edelson, Defence Lawyer

The police are in a key position to identify literacy problems and if they are identified at this early stage it can make a big difference both in the fairness of the trial and in the possibility of constructive outcomes. Pre-charge Diversion Programs provide opportunities where literacy needs can be addressed.

Getting and using a lawyer

People are having increasing difficulties obtaining legal there have been cuts across the country. More and more accused persons will be appearing in court without representation. Some may not have the skills, or anyone to help them find a lawyer or a legal aid office.

People who work with offenders and disadvantaged clients say that they are often asked to read and explain documents to people. When they ask what has happened so far they find that their clients have already signed other papers without understanding what they were signing. One defence lawyer said that at the beginning of each case he reads everything to his clients "but that doesn't last more than a week."

As noted above, some lawyers feel that people don't need to be able to read or understand the documentation or the process. They may see themselves as a buffer between their client and the system. They may explain verbally or they may just tell the client not to worry about it. If they do explain, they may not use language the client understands. Lawyers are busy and may feel that the client only needs to know the minimum. Some, however, are concerned that not all consent is 'informed consent'.

"I'm sure half of them do not know what they are agreeing to; it's not informed consent and I see that as a really serious problem - almost an ethical problem..."²⁸

The pre-sentence report

The Pre-Sentence Report or Pre-Disposition Report often has a significant influence on sentencing. It is usually a general account of background information such as family, education and employment. None of the judges, lawyers, police or community workers consulted in the preparation of this manual had ever seen a request for a literacy assessment, nor had they ever recommended to the court that literacy assessment or upgrading was needed.

An Elizabeth Fry Society court advocate said that the initial Pre-Sentence Report form was so confusing that she had trouble understanding the questions herself.

The probation officer or the lawyer may not have time to go over the report with the accused. If the accused cannot read or only hears a quick paraphrasing of the report, there may be inaccuracies or omissions that could injure the case.

Consequences on trial and sentencing

The accused may not understand the consequences of what is happening, while the lawyers and the judge may not understand how limited literacy has affected the offence and the trial process. The defendant's answer to the question 'do you understand?' (which is usually 'yes.')

is generally accepted at face value. However, people with limited literacy will consistently say they understand to avoid revealing their difficulties. According to an Alberta judge consulted for this study, lawyers should concentrate more on 'preparing to speak to sentence'. Identifying problem areas is often left to the accused, which takes great courage and usually doesn't happen.

As already noted, the language and customs of court are unfamiliar and intimidating. If the accused is not very literate or articulate, he or she may not have the confidence to speak up, the language to communicate in a way that people will understand, or the background to speak to the values of the people he is addressing. People with low literacy skills may be handed a harsher sentence because they don't appear cooperative, which is often a sign of their lack of confidence.

Most treatment programs, such as anger management or addiction programs, are reading- and writing-based. Therefore low literacy affects peoples' ability to participate in various programs they may need or may be required to attend. The accused could be put on probation conditional on receiving such treatment, but then not be able to access the program because of low literacy skills.

If put on probation, people with literacy problems often have trouble finding the conditions in their Probation Orders, which can result in breaches and further charges.

Barriers for Victims and Witnesses

Many of the same barriers to understanding for the accused exist for victims and witnesses as well. However, two points in the process are particularly challenging for victims and witnesses.

Receipt of the subpoena or summons

"A young teenager of 13 living at home suffered from someone peeping through the window [...] a Peeping Tom. She made a statement to the police and some time later received a Subpoena saying 'You are commanded in the name of her Majesty to appear in court at a certain time to give evidence against the accused. She could read and could recognize that this was an important document, but still she was concerned and came to me to ask what is a Subpoena?"

I read it and wondered 'Whose side do they think she's on?' It read as if she were the criminal. But what if she could not read? Then she could become a criminal, someone who can be arrested for not coming to court at the required time, and she was the victim in this case."

- Phil Knight, Legal Language Specialist

The formal wording of the Subpoena or Summons, and even the name 'Subpoena' is difficult for most people, not only for people with low literacy skills to understand. It is difficult for most people, but particularly for people with low literacy skills to understand that this document is really just a request to be at a particular court at a certain date and time.

Examination and cross examination

Many witnesses find the examination by the Crown and cross examination by the defence lawyer confusing. They do not comprehend why the Crown would seem to challenge them, when they believed the Crown was 'their' lawyer. The adversarial nature of our criminal justice system is intimidating for most witnesses. Once again, because most people with low literacy skills have low self esteem and tend to be particularly fearful of authority figures, they may have serious problems understanding even questions that they could comprehend in daily life. Further, it is not uncommon for witnesses to be asked to look at pieces of written evidence. The assumption is made by the court that the witness can read the document in evidence and therefore can reliably identify it. Most court officials simply assume that witnesses can read. The witness who is low literate will make every attempt to hide the fact that they cannot read or cannot read well. This charade of understanding can seriously undermine the administration of justice.

Lawyers also point out that a person with low literacy skills may appear to be less credible. While many people with low literacy skills are highly intelligent, their lack of access to the literate culture can mean that their reasoning and memory patterns are different from people who are highly literate. Therefore, their answers may appear illogical. Some witnesses who are low literate may become silent, sullen or belligerent as a reaction to their embarrassment or as a conscious ploy to cover up their inability to understand the question or the process.

Before threat turns to crime

Elizabeth Fry workers say that literacy or information barriers cause some of their clients to abandon the process of obtaining a peace bond against a violent partner. The Justice of the Peace expects them to write out the bond themselves. They may not have fully understood what is involved, in particular the fact that they'll have to go to court if the other party refuses to sign the bond.

Barriers for Jurors

The jury selection process

Lawyers agreed that they could not recall a jury selection process in which potential jurors were questioned regarding their literacy skills or even their ability to understand the spoken language that would be used in the court, usually English or French.²⁹ In fact, it is most common for the prospective juror to simply answer 'yes' or 'no' to questions posed by court officials.

Observation of pieces of written evidence

Jurors are often handed written pieces of evidence to inspect. A juror who cannot read is unlikely to raise this point with his or her fellow jurors and is even less likely to inform the judge. In this case not all members of the jury will have received the same information.

Advising the jury

Although the judge advises the jury orally, he or she may do so in words that are not commonly used. Reference may be made to written pieces of evidence, to laws or to *Charter* rights which the person with low literacy skills could find confusing or incomprehensible. While the judge may ask the jury as a whole, 'Do you understand?', the formal and intimidating nature of the court process and the emphasis put on the seriousness of jury duties, make it likely that all jurors and particularly those with low literacy skills will feel uncomfortable admitting that they do not understand.

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make it likely that all jurors and particularly those with low literacy skills will feel uncomfortable admitting that they do not understand.

VII Some Impacts of Literacy Problems on the Courts

Literacy Problems can Limit Access to Justice

The Canadian Bar Association, British Columbia branch, has published a kit for lawyers called *Communicating Clearly* to help lawyers make their legal practices more 'user friendly' to people with limited literacy skills. One of the booklets in this kit reports that:

"The 1992 Canadian Task Force Report on Legal Literacy found that the legal system can be intimidating to adults who cannot use written legal materials. As a result, they avoid initiating legal actions. Written legal material can create a formidable obstacle to use of the justice system. Poor communication between you and your client can interfere with your client's ability to give you proper instructions and with your ability to obtain the appropriate remedy for your client."³⁰

A client's limited literacy interferes with access to justice in other ways as well. People with low literacy skills are unlikely to make full use of the opportunities available to them. For example, in the time between the verdict and sentencing, the offender may have access to a Community Service Officer. Those who have worked with offenders who have low literacy skills say that these people, along with other disadvantaged people, do not know how to benefit from this opportunity.

The Courts can be Accused of Systemic Discrimination Against People with Low Literacy Skills

Judge John Maher suggests that there is 'systemic discrimination' in the administration of criminal justice against those who are functionally illiterate.

*"It is largely invisible. It cuts across lines of race, gender and culture, although many of its victims suffer from those other forms of 'systemic discrimination'. Because of the social stigma attached to it (largely by its own victims), its invisibility is frequently encouraged by its victims, who attempt to hide their condition."*³¹

Judge Maher goes on to say,

*"'systemic discrimination' means no more and no less than it is the 'system' which by its nature, treats a category of people differently because they belong to that category [...]. The 'systemic discrimination' in the administration of justice against the illiterate arises from two sources. Firstly, the everyday demands of the justice system, like those of society in general, require an ability to read and write, and to process and understand written communication. Secondly, it is by and large taken for granted by many court personnel, that those who appear in court, as witnesses or parties (alleged victims or accused) have that ability."*³²

Failure to Respond Appropriately to Someone with Low Literacy Skills can Reduce Court Efficiency and Effectiveness

If a witness cannot read well, and is not able to understand a letter or summons requiring them to be at court on a certain date and at a certain time, their failure to appear will cause unnecessary delays and unnecessary costs. Similarly, the cost of appeals for cases related to the accused's right to understand is considerable, judging from the numerous cases which have been based on failure to understand just since 1991.³³

Problems for Justice can Result When Literacy Difficulties Are Not Taken Into Account

The case law examples cited earlier in this booklet attest to the possibility of miscarriages of justice when literacy problems are not acknowledged and responded to by those working in the justice system.

People may come into contact with the justice system purely because of confusion or an inappropriate action caused by low literacy skills. Literacy and court workers report that people with low literacy skills are unlikely to contest procedures. They plead guilty more often because they don't understand the adversarial system. They find it hard to represent themselves or to instruct their lawyers properly.

When People Do Not Understand the Court System, They Lose Faith in the Process

Anecdotal evidence from lawyers and people working at law societies across Canada suggests that the majority of complaints filed against lawyers are related to failure to communicate. While many of these complaints may indicate failures to answer phone calls or reply to letters, many lawyers agree that in a significant number of cases, literacy problems may be at the root of the complaints.

- A court advocate told about going to court with a victim of attempted murder. The woman was terrified and didn't want to go at all. They had reviewed what to expect, but the woman became even more frightened when she felt the Crown was questioning her as if he was not on her side. She fled from the courtroom and the case was thrown out.
-

- One lawyer said that the majority of women she has interviewed at the Prison for Women in Kingston said their lawyers did not talk to them about what to expect in court and that they did not understand what happened at court.
- A comment made by another court advocate suggests that the cynicism many people have towards lawyers is increased when their lawyers don't help them understand the case or the court process. He said that people who are accused feel that their lawyers almost prefer them not to understand because the lawyer then has total control of the case. As he put it: "Too often the idea is if you don't understand, it's O.K. Trust me, because I do understand."

Literacy Awareness by Court Officials can Contribute to Crime Prevention and Potentially to Reduced Court Caseloads

Literacy barriers are often a primary factor in criminal activity and when they are present, the rest of the person's needs (socioeconomic, employment, health) are not easy to address. Simply punishing people without helping with these issues makes it difficult for offenders to live free from crime when released.

VIII Making Connections with Literacy Organizations

The Yellow Pages of every telephone book in the country now have a Learn Page which tells people where to phone locally for literacy help. As well, literacy coalitions across Canada can provide information about literacy and local literacy resources.

National Literacy Coalitions

Movement for Canadian Literacy

180 Metcalfe Street, Suite 300
Ottawa, Ont. K2P 1P5
Phone: 613-563-2464
Fax: 613-563-2504
email: mcl@literacy.ca
website: www.literacy.ca

Fédération canadienne pour l'alphabétisation en français

235, chemin de Montréal, pièce 205
Vanier, ON K1L 6C7
Phone: (613) 749-5333
Fax: (613) 749-2252

Provincial/Territorial Literacy Coalitions

Yukon Learn

308-A Hanson St.
Whitehorse, YT Y1A 1Y6
Phone: (403) 668-6280
Fax: (403) 633-4576

NWT Literacy Council

Box 761
Yellowknife, NWT X1A 2N6
Phone: (403) 873-9262
Fax: (403) 873-0423

Association franco-yukonnaise

Box 5205
Whitehorse, YT Y1A 4Z1
Phone: (403) 668-2663
Fax: (403) 668-3511

Fédération franco-téNOise

Box 1325
Yellowknife, NWT X1A 2N9
Phone: (403) 920-2919
Fax: (403) 873-2158

Literacy BC

Suite 622
510 West Hastings Street
Vancouver, BC V6B 1L8
Phone: (604) 684-0624
Fax: (604) 684-8520
1-800-663-1293

Alberta Association for Adult Literacy

c/o AVC, 332, 6 Ave. S.E., #211 RMP
Calgary, AB T2G 4S6
Phone: (403) 297-4994
Fax: (403) 297-4849
Literacy Helpline: 1-800-767-3231

Centre éducatif communautaire de l'Alberta

8406, 91st Street
Edmonton, AB T6C 4G9
Phone: (403) 468-1582
Fax: (403) 465-8760

Saskatchewan Literacy Network

PO Box 1520
Saskatoon, SK S7K 3R5
Phone: (306) 653-7368
Fax: (306) 933-6490

Service francsaskois d'éducation aux adultes

Corporation du Collège Mathieu
Gravelbourg, SK S0H 1X0
Phone: (306) 648-3129
Fax: (306) 648-2295

Literacy Partners of Manitoba

998-167 Lombard Ave.
Winnipeg, MB R3B 0V3
Phone: (204) 947-5757
Fax: (204) 944-9918

Pluri-Elles, Centre Alpha

674 Langevin Street
Saint-Boniface, MB R2H 2W4
Phone: (204) 233-1735
Fax: (204) 233-0277

Ontario Literacy Coalition

365 Bloor Street East, Suite 1003
Toronto, ON M4W 3L4
Phone: (416) 963-5787
Fax: (416) 963-8102

Regroupement des groupes francophones d'alphabétisation populaire de l'Ontario

777 Bay Street, Suite 2005
Toronto, ON M5G 2C8
Phone: 1-800-420-4065
Fax: (416) 591-7443

Literacy Partners of Quebec (L.P.Q.)

3040 Sherbrooke Street West
Room 4B.1
Montréal, QC H3Z 1A4
Phone: (514) 931-8731 ext. 1413
Fax: (514) 931-5181

Équipe interrégionale en alphabétisation

3575, boul. St-Laurent, bureau 535
Montréal, QC H2X 2T7
Phone: (514) 287-9004
Fax: (514) 287-9108

Nova Scotia Provincial Literacy Coalition

PO Box 1516
Truro, NS B2N 5V2
Phone: (902) 897-2444
Fax: (902) 897-4020

Fédération acadienne de la Nouvelle-Ecosse

1106, South Park
Halifax, NS B3H 2W7
Phone: (902) 421-1772
Fax: (902) 422-3942

New Brunswick Committee on Literacy

88 Prospect Street West
Fredericton, NB E3B 2T8
Phone: (506) 457-1227
Fax: (506) 458-1352

Fédération d'alphabétisation du Nouveau-Brunswick

PO Box 189
Richibucto, NB E0A 2M0
Phone: (506) 523-7374
Fax: (506) 523-7715

PEI Literacy Alliance

PO Box 400
Charlottetown, PEI C1A 7K7
Phone: (902) 368-3620
Fax: (902) 368-3620

Société éducative de l'Île-du-Prince-Éduard

48, Chemin Mill, PO Box 159
Wellington, PEI C0B 2E0
Phone: (902) 854-3010
Fax: (902) 854-3011

Literacy Development Council Newfoundland & Labrador

238 Blackmarsh Road,
St. John's, NF A1E 1T2
Phone: 1-800-563-1111 or (709) 738-7323

Fax: (709) 738-7353

Fédération des francophones de Terre-Neuve et du Labrador

265 Duckworth Street
St. John's, NF A1C 1G9
Phone: (709) 722-0627
Fax: (709) 722-9904

IX Making Connections with Public Legal Education and Information Organizations

There are Public Legal Education and Information (PLEI) Organizations in every province and territory in Canada. These organizations produce plain language print documents as well as audio tapes and video tapes which can help people with low literacy skills better understand the court process and their rights under the law. The contacts listed below will help you connect with PLEI organizations near you.

Newfoundland

Heidi Wells, Executive Director
Public Legal Information of NF,
P.O. Box 1064, Station 'C',
5th Floor, Atlantic Building,
215 Water Street,
St. John's, NF A1C 5M5
Phone: (709) 722-2643
Fax: (709) 722-8902

Prince Edward Island

Ms. Ann Sherman, Executive Director,
Community Legal Information Association
of Prince Edward Island Inc.,
P.O. Box 1207,
Charlottetown, PEI C1A 7M8
Phone: (902) 892-0853
Fax: (902) 368-4096

Nova Scotia

Ms. Maria Franks, Executive Director,
Public Legal Education Society of NS,
6080 Young Street, Suite 911
Halifax, NS B3K 5L2
Phone: (902) 454-2198
Fax: (902) 455-3105

New Brunswick

Ms. Deborah Doherty,
Executive Director,
Public Legal Education and Information
Service of New Brunswick,
P.O. Box 6000
Fredericton, NB E3B 5H1
Phone: (506) 453-5369
Fax: (506) 457-7899

Québec

Mme Manon Vaillant
Adjointe à la direction générale Société
québécoise d'information juridique
715, square Victoria, bureau 800
Montréal, QC H2Y 2H7
Phone: (514) 842-8741
Fax: (514) 844-8984

Ontario

Ms. Mary Marrone
Executive Director, Community Legal
Education Ontario,
119 Spadina Ave., Suite 600,
Toronto, ON M5V 2L1
Phone: (416) 408-4420
Fax: (416) 408-4424

Manitoba

Mr. Alan Diduck, Executive Director,
Community Legal Education Association
(Manitoba) Inc.
294 Portage Avenue, Suite 501
Winnipeg, MB R3C 0B9
Phone: (204) 943-2382
Fax: (204) 943-3600

Saskatchewan

Mr. Doug Surtees and Mr. Joel Janow,
Co-directors,
Public Legal Education Association of
Saskatchewan,
115-701 Cynthia Street,
Saskatoon, SK S7L 6B7
Phone: (306) 653-1868
Fax: (306) 653-1869

Alberta

Ms. Lois Gander, Professor & Director,
Legal Studies Program
University Extension Centre
8303-112 Street
Edmonton, AB T6G 2T4
Phone: (403) 492-5735
Fax: (403) 492-1857

British Columbia

Mr. Gordon Hardy, Executive Director,
People's Law School,
The Public Legal Education Society,
150-900 Howe Street,
Vancouver, BC V6Z 2M4
Phone: (604) 331-5400
Fax: (604) 331-5401

Northwest Territories

Presently, there is no PLEI Society in the
Northwest Territories.

Yukon

Ms. Susan Dennehy, Program Manager,
Yukon Public Legal Education
Association,
c/o: Yukon College,
P.O. Box 2799,
Whitehorse, YT Y1A 5K4
Phone: (403) 667-4305
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X Additional Tools and Resources

The resources which are identified immediately below, are only some of the many print and audio-visual resources which could be of use to people working in the courts. If you are interested in a more comprehensive list of available resources, we would suggest that you contact the John Howard Society nearest you or the Literacy Organizations and the Public Legal Education and Information Organizations listed in Sections VIII and IX of this manual.

1. *Communicating Clearly*, a kit produced by Lawyers for Literacy, in 1996, is a project of the Canadian Bar Association, B.C. Branch. This kit contains four main publications including:

- *Communicating Clearly: How Client Literacy Affects your Law Practice and What You Can Do*";
 - *Communicating Clearly: How to Recognize When Your Client Doesn't Understand and How You Can Help*";
 - "The Law Firm Literacy Audit"; and
 - "What's Available: A Resource Guide for Communicating Clearly". This last resource provides:
 - suggested resources for use with clients when you cannot use print; and
 - suggested resources for use by lawyers, including publications on:
 - i. how to recognize if your client has literacy problems;
 - ii. adapting to meet client needs by writing and speaking clearly;
 - iii. taking action to promote literacy awareness and training;
 - iv. what's available on-line concerning plain language and literacy;
 - v. dictionaries; and
 - vi. services available in B.C. for native and multicultural groups.
-

2. The John Howard Society of Canada has produced three previous publications on literacy.

- *"Taking Down the Wall of Words: Community Agencies and Literacy"* published in 1990;
- *"Taking Down the Wall of Words: A Handbook for Community Agencies"*. This is a companion document to the one referred to directly above.
- *"Presumed to Understand: 'Do You Understand'"*, published in 1993 and authored by Susan McDougall-Gagnon-Gingras. An abridged version of this publication is also available.

3. John Howard Society workers in local societies across Canada have been actively promoting literacy awareness and teaching literacy skills to their clients for several years. John Howard Society workers in or near your community can help you identify local literacy services and resources which will meet your needs. At the time this publication was written, the John Howard Societies of: Vancouver, Edmonton, Calgary, Regina, Manitoba, Ajax-Pickering, Durham Region (Ontario), Ottawa, Toronto and Fredericton provided literacy training for John Howard Society clients and for inmates in correctional institutions.

4. The Canadian Bar Association Task Force on Legal Literacy, in 1992, produced a report: *"Reading the Legal World: Literacy and Justice in Canada"*, Canadian Bar Association, Ottawa, Ontario.

XI End Notes

1

While this booklet focuses mainly on criminal cases and procedures, many of the insights and action suggestions included are equally applicable to the civil court system.

2

Organization for Economic Cooperation and Development (OECD)/Statistics Canada, *"Literacy, Economy and Society: Results of the First Adult Literacy Survey"*, OECD, Paris, France and Ministry of Industry, Ottawa, Canada, 1995.

3

The Canadian Bar Association Task Force Report, *"Reading the Legal World: Literacy and Justice in Canada"*, The Canadian Bar Association, Ottawa, Ontario, August, 1992, p.52-53.

4

According to the 1990 Statistics Canada study on literacy, 38% of Canadians have some degree of difficulty with everyday reading and writing. The more recent International Adult Literacy Survey, released in Paris in December, 1995, shows that an even higher proportion of people in Canada (about 42%) do not have sufficient skills to cope with the everyday literacy demands of our society.

5

This estimate from a key researcher for International Adult Literacy Survey (cited in endnote 2), is based on the assumption that legal documents and legal procedures with their complex language, would only be understood by people at the two highest levels of literacy. The International Adult Literacy Survey divided the population into five levels of literacy in terms of Prose Literacy (the ability to understand and use information from printed texts); Document Literacy (the ability to locate and use information in various formats such as forms, schedules, maps, tables and graphics), and Quantitative Literacy (the ability to perform various math operations).

6

Correctional Service of Canada, "*Correctional Education Year-end Report*", Ottawa, Canada, 1995, p.8

7

For further information about research done by John Howard Societies on this topic, please write to:
The John Howard Society of Canada
383 Parkdale, 4th Floor
Ottawa, Ontario, K1Y 4R4
Tel: 613-761-7678
Fax: 613-729-7715
or E-mail a request to; jhsc@web.apc.org

8

The Canadian Bar Association Task Force Report, 1992, op cit. p.12.

9

The quotations cited in this section were taken from interviews with two judges and two lawyers who participated in a video produced by the John Howard Society of Canada to accompany this manual.

10

For example, see the Canadian Bar Association Task Force on Legal Literacy report entitled, "The Decline and Fall of Gobbledygook: Report on Plain Language Documentation", Ottawa, Ontario, 1990.

11

Canadian Sentencing Commission, "Sentencing Reform: A Canadian Approach" (Summary Version), Minister of Supply and Services Canada, Ottawa, Ontario, 1987, p.3.1

12

Canadian Charter of Rights and Freedoms, being Part I of the Constitution Act, 1982 (Schedule B of the Canada Act, 1982, 1982 U.K., c.11).

13

R. v. Evans, [1991] 1 S.C.R. 869 4 C.R.(4th) 144, 63 C.C.C. (3d) 289, 124 N.R. 278, 3 C.R.R. (2d) 315.

14

supra, footnote 13, 891 (S.C.R.), 162 (C.R.(4th)), 291 (C.C.C.(3d)), 299(N.R.), 329(C.R.R.(2d)).

15

R. v. Sawchuk (1995), 25 W.C.B.(2d) 311.

16

R. v. Kharsekin (sub nom. *R. v. Kharsekin* (No.2) (1992), 99 Nfld. & P.E.I.R. 77, 315 A.P.R.77 (Nfld. S.C.T.D.).

17

supra, footnote 16, 83 (Nfld. & P.E.I.R.), 83 (A.P.R.).

18

R. v. Hollis (1992), 17 C.R. (4th) 211, 41 M.V.R. (2d) 110, 76 C.C.C. (3d) 421, 18 B.C.A.C. 260, 31 W.A.C. 260.

19

supra, footnote 18, 227-228 (C.R.(4th)), 124 (M.V.R.(2d)), 422 (C.C.C.(3d)), 271 (B.C.A.C.), 271 (W.A.C.).

20

R. v. Roberts (1992), 14 W.C.B. (2d) 74.

21

R. v. Roberts (1992) Full decision unreported.

22

R. v. Lim (1994), 22 W.C.B.(2d) 214.

23

R. v. Lim (1994) Full decision unreported.

24

John Howard Society of Canada, *Presumed to Understand: "Do You Understand? An Analysis of Literacy, the Accused and the Justice Sector*. Abridged Edition, Ottawa, Ontario, 1993, p.4.

25

Ibid. p.20.

26

Ibid. p.21.

27

Ibid. p.6.

28

Ibid. p.14.

29

In the NWT, this question is even more crucial, since there are eight official languages.

30

Canadian Bar Association, B.C. Branch, *"Communicating Clearly: How to Recognize When Your Client Doesn't Understand and How You Can Help"*, in *Communicating Clearly* (a kit), Vancouver, B.C., 1996, p.1.

31

Judge John Maher, "Literacy in the Courtroom", in *The Role of the Judge in the New Canadian Reality*, Western Provincial and Northern Territorial Judges' Conference, 1993, p.1.

32

Ibid. p.2.

33

This conclusion is based on a Quicklaw Search which

uncovered more than 200 cases since 1991 in response to keywords 'Literacy' and 'understanding'.
