



The Law

Both federal and provincial statutes set out the right of all people to equality before and under the law and to equal protection and equal benefit of the law (*Canadian Charter of Rights and Freedoms*), as well as the right to equal treatment with respect to services, goods and facilities (*Ontario Human Rights Code*). Human rights legislation demands a high standard of accommodation to

ensure these rights are achieved. Equality before and under the law and equal protection and benefit of the law are empty rights unless they are supported by equal access to legal representation, advocacy, information and services.

All people, regardless of their communication skills or needs, have the right to:

- appropriate and adequate legal representation and services.
- fair, informed and positive treatment by any one they encounter in the legal process in which they are involved.
- full communication with their legal representative and any other people they may encounter in the legal system (police officers, court support staff, Crown Attorneys, judges, etc.).
- use their preferred methods of communication.
- have the communication supports they require regardless of their ability to pay for such services themselves.
- physical access, including accessible buildings and appropriate transportation.

Legal representation can include:

- a lawyer hired to represent someone in a family law proceeding.
- a lawyer hired to represent someone who is an accused in a criminal court proceeding.
- a lawyer hired to represent someone in a civil proceeding.

- a lawyer hired to represent someone with respect to quasi-legal matters such as human rights, landlord/tenant, social assistance and similar cases.
- a lawyer hired to handle non-court matters, which includes such things as preparing a will or power of attorney, setting up systems for managing a trust fund, preparing a human rights discrimination, accessibility or service complaint etc.

Legal services include:

- criminal-court-based services such as duty counsel and Victim Witness Assistance Program.
- family-court-based services such as duty counsel, mediation, Family Law Information Centre.
- police services.
- community legal clinics.

Legal service providers (lawyers and others) have the responsibility to:

- treat clients who use AAC like other clients, with the necessary accommodations to en-

sure clear, effective communication and professional representation and advocacy.

- treat clients who use AAC with courtesy, compassion and respect for their personal dignity and privacy. As detailed below, respect for privacy can be a particular challenge.
- provide clients who use AAC with accessible information about their legal rights, the pros and cons of all legal options open to them and the professional responsibilities of lawyers, including options available to them should they be unhappy with the lawyer's representation.
- make a serious commitment to develop and use appropriate practice policies or guidelines.
- become knowledgeable about issues relating to people who use AAC in order to offer services with integrity.
- become familiar with local community resources and services that can support people who use AAC in terms of communication, disability related issues, counseling etc.
- get appropriate services if necessary, in assessing and supporting the client's level of capacity in terms of his/her ability to accurately communicate messages, comprehend what is said, understand consequences and implications, make decisions, and engage in problem solving etc.
- ask all clients about their possible communication support needs and provide supports in ways that respect the dignity of the person being accommodated and ensures meaningful communication and comprehension of the situation, the lawyer's advice and the reasons for it.
- understand the potential complexities relating to privacy for a client who uses AAC and who relies on the support of a communication facilitator. The role of and relationship with this person is critical and delicate. Concerns can arise especially in situations

where there could be an issue of confidentiality or conflict of interest.

- pay particular attention to rules 1.02 (The Client) and Rules 2.03 (Confidentiality) and 2.04 (Conflict of Interest) of the Rules of Professional Conduct.

Practice Guidelines:

A lawyer working with a client who use AAC should:

1. ensure that the client has access to his / her preferred methods of communication (i.e. a speech generating device, communication display etc.).
2. ensure that he/she knows how the client who uses AAC communicates (i.e. communicating Yes / No; speech; vocalization; facial expressions; body language; signals for interruptions or initiations; use of display or device and what he / she does when not understood etc.).
3. if required, ensure that the client who uses AAC has access to a communication facilitator of his / her choice or with his / her approval.
4. if the client who uses AAC is unfamiliar with the communication facilitator, ensure that they have sufficient time to become comfortable with each other's communication.
5. define the role of the communication facilitator and ensure that the facilitator has signed a confidentiality contract.
6. if required, engage appropriate communication services if the client requires access to vocabulary and/or strategies to enhance comprehension of spoken language within the legal context.
7. recognize and accommodate the client's needs and skills in term of expressive and receptive communication, language, cognition, autonomy, problem solving, and life experiences and how these impact on

the legal context and the specific role of the communication facilitator.

8. provide appropriate methods of communication via telephone, email, fax etc.
9. ensure accommodations for physical access, attendant services, client fatigue, transportation etc.
10. lawyers need to apply special caution when using family members or caregivers as the communication facilitator or support person with respect to confidentiality, conflict of interest, possible abuse/power issues. For example, if the client who uses AAC is preparing a will and the communication facilitator could benefit from that will or where the lawyer has reason to suspect the client may be in an abusive situation involving the facilitator either directly or indirectly, the lawyer may need to suggest that another facilitator be used.
11. lawyers working with clients who use AAC must be prepared to dedicate adequate time to the client, who will require more time than other clients for communication. There may also be other time-related issues such as limited availability of accessible transit or a need for longer or more frequent breaks.
12. while the use of plain language is important with all clients, it is especially so for clients with communication disabilities. The lawyer should make a special effort to use plain language at all times, and to encourage the client to ask questions.

* Augmentative and Alternative Communication (AAC) refers to communication systems that people use to communicate. AAC includes picture, word and / or letter boards and voice output devices. People use AAC systems in different ways.

Resources:

www.accpc.ca - Equal Justice Project¹

This document is part of series of resources.

¹ Resources for Legal Professionals