

“WHEN THEY SAY IT FAST AND I DON’T UNDERSTAND AND THEN I JUST... GOES BLANK AND THEN BOOM”:

Helping legal contexts make sense to complainants and defendants in New Zealand.

Abstract

The use of Communication Assistants in Court and other legal settings is growing in NZ. Speech-language therapists (SLT) provide communication expertise to ensure that people can participate in legal processes, whether they need to answer questions in cross-examination, or understand legal discussions when they face charges.

The quote in the title came from an adult who was required by the Court to participate in a assessment with a Communication Assistant (CA) and he was describing his previous experiences of trying to make sense of what was being said in court. He is not alone in finding this a challenging communication context. Many legal situations can be described as ‘talkfests’ – a wide range of language skills are needed to follow what is going on and to take part. Participating in court proceedings requires a set of skills that are challenging for many people, particularly those with an intellectual disability. One young person said this about communicating in a legal context, “I’m like ‘yep yep’ when in my head I’m like ‘what’s he saying?’”

However, profound consequences can result if people just say ‘yep yep’ when questions are not fully understood. It is in all our interests to ensure that victims, perpetrators and witnesses can fully participate in justice settings, and that miscarriages of justice are avoided.

Unfortunately, it is not always easy to tell whether someone is understanding what they are being told or being asked. Saying ‘yep’ without really meaning it is a frequently used strategy that many of us use when we want to avoid feeling incompetent and are not fully comprehending the conversation. As CAs, our team has met both defendants and complainants with intellectual disabilities who have a tendency to agree without fully understanding, which results in masking their language and communication difficulties. We have met many legal professionals who have been surprised and horrified when they have realised their client had totally misunderstood important information.

Legal situations require an ability to listen carefully, understand a wide range of information (which is often very detailed), explain, clarify, describe and often use these communication skills for long periods of time on topics that are frequently stressful and highly personal. So many of the words involved are long and complicated. They often refer to complex, abstract concepts or have a meaning in legal settings that is different from other situations e.g. just think about the word ‘hearing’ – are we talking about something we do with our ears or an appearance in court? Actually ‘appearance’ is another one – does it

refer to turning up at court or what someone looks like?

When you know these words and are familiar with the context, and you're used to listening to long stretches of talk without any visual clues to help work out the meaning and talking is the tool of your trade (I'm thinking of the legal professionals), it can be difficult to spot when someone might not be following the conversation. Yet many non-legal professionals find it hard to follow what is being said in court.

Complications of attending court

- Communication in court and other legal settings is often complicated.
- Language and communication problems are often undetected.
- When communication problems are not addressed, the implications can be serious.
- Speech-language and communication expertise can create accessible legal contexts.

But does it have to be like this? Can we change the communication so people can understand, have their say and have access to justice?

We are having a good try! New Zealand legislation allows the appointment of Communication Assistants (CAs) whose job it is to ensure all involved are aware of a person's profile of speech, language and communication skills, and to provide advice and 'in the moment' assistance about how to modify interactions so the person can fully understand and participate. There are similar roles in other parts of the world, and sometimes this role is referred to as an 'intermediary' (see Plotnikoff and Woolfson's (2015) book which reviews the use of Registered Intermediaries in England and Wales).

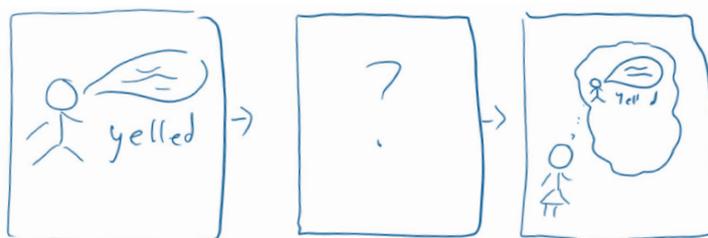
In the last few years the use of CAs in NZ has increased considerably. In NZ CAs work with both those facing charges (defendants) and those who are witnesses or complainants. Our team of specialist speech-language therapists at Talking Trouble Aotearoa NZ have been appointed to assist with the communication with children, youth and adults across High, District, Youth Courts and in Family Group Conferences and very occasionally in Police interviews, Restorative Justice meetings and Tribunals. CAs have assisted people who face communication challenges for a wide range of reasons, and often a combination of several: e.g. intellectual disability, hearing impairment, traumatic brain injury, stroke, Autism Spectrum Disorder, Fetal Alcohol Spectrum Disorder, and sometimes the people we assist also speak more than one language and also have interpreters.

CAs are not on anyone's side. They are court officers whose role is to ensure everyone understands how best to enable someone to listen, understand and express their own information completely, coherently and with specificity and detail. CAs assess a person's communication skills using tasks designed to see how they are likely to manage the communication demands of the legal situation, and aim to establish what they may be able to tweak to make communication easier. CAs ask the person concerned for their opinions, and they often have great insight:

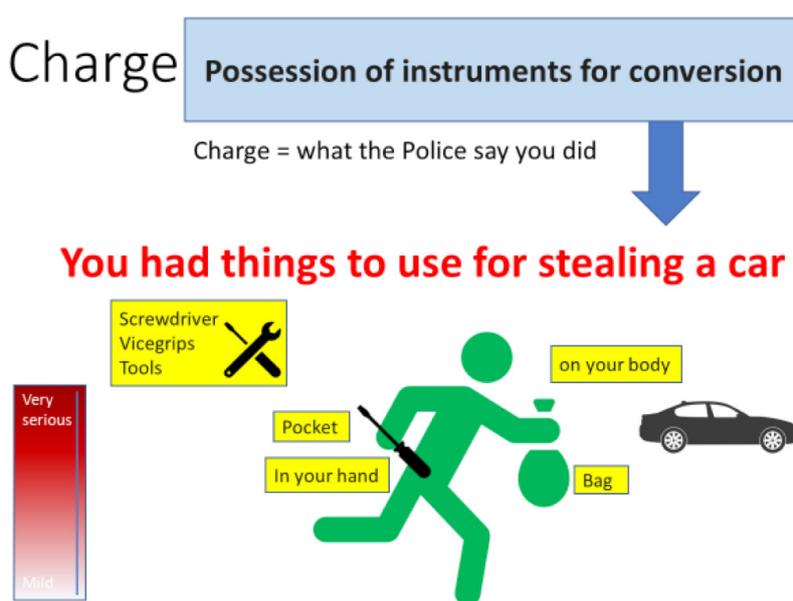
"Every time you say a word it's just like you're saying it invisible ... like it's just going straight [gestured over his head] ... I'm not good at listening, sorry"

CAs use a range of strategies including lots of breaks, writing simple words down to keep them listening and following, drawing, simplifying long complicated words, allowing the person to fiddle with something in their hands while they are listening. The CA assessment aims to generate creative ways to enable the person to fully participate. The CA develops practical and detailed recommendations for the judges and lawyers to consider. Generally the legal professionals are willing to work with the CAs on the challenge of adapting their talk-rich contexts. This is not always easy – try considering how to explain ‘intent’, or ‘with reckless regard’ or consider how to word questions that explore whether a person knew a specific piece of information before or after they have picked up the phone.

When CAs assist a defendant, they are often present when the lawyer takes instruction which requires the person to give a well-sequenced, detailed and consistent narrative about what they say happened: not always easy for people who find time concepts and being specific and detailed straightforward. CAs often ‘comic strip’ the narrative by drawing it out with the person on post-it notes to get the events in order and to give the person a visual to help them keep track about the part of the story they are asked about.



Defendants need to understand what they are charged with, the evidence on both sides and their options for pleas. They also need to understand how a trial works if that is what they are facing, and later what the outcome was and what conditions they have to comply with. Much of the CA role involves translating complex information into a simple visual form. CAs take the complicated legal language and simplify it to a level the person can understand e.g. ‘you are charged with possession of instruments for conversion’ – we ensure that someone knows that ‘charged with’ means the ‘Police said you did something’ and ‘possession of instruments for conversion’ has nothing to do with musical instruments or possession of drugs, but means ‘they say you have the things for stealing a car’.



CAs frequently create visual versions of bail conditions and plans, and coach others in the sector to do this for those people who have not had a CA appointed by the Court.

Bail conditions = the **rules** the Court has given you

❌ if you **break the rules** you are in **trouble** the Police will tell Court

✅ **keep the rules** and **finish your plan**

You have to live at
22 Ward Street
Nan's

You can hang out with
Nate
Tama
AJ

You can **NOT** see them
You can **NOT** phone them
You can **NOT** email them
You can **NOT** speak to them

You have to go to
Course - M, T, W, Th, F
Counselling
Rangi's sessions
Court

You are **NOT** allowed to have alcohol

You are **NOT** allowed to go in any place that sells alcohol

You can go in supermarkets

You are **NOT** allowed to take any drugs

- **NO** smoking drugs
- **NO** eating drugs
- **NO** injecting drugs

You can take medicine from the **doctor** or the **pharmacy**

NO violence
NO threats
NO fighting

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Stay home							
Go out	7-9	7-9	7-9	7-9	7-9	7-9	7-9
Stay home							

Be home by Shortland St

The CA role with witnesses ensures the lawyers on both sides understand the question forms that will allow the witnesses to understand and provide coherent, complete and detailed reliable evidence. If the CA has been able to work with the lawyers on both sides before cross-examination so their questions are at the right level for the person concerned, the CA role will be simply to sit next to the person and monitor the communication during cross-examination. If the CA anticipates that a person is unlikely to understand a question posed, they alert the judge and if required, can assist with the rewording of questions, or to clarify what a witness is trying to convey.

In addition to the appointment of CAs for individuals, Talking Trouble Aotearoa NZ's speech-language therapists have delivered projects at ten sites around NZ (with more to come in 2019) within the Youth Justice sector to train and coach youth justice practitioners (mainly Social Workers and Family Group Conference Coordinators, but also Youth Aid Police, mentors and health and education staff in some areas) so they can more easily spot when language and learning might be challenges for the young people they work with. They have been developing strategies and resources to modify the communication in similar ways to when we are appointed as CAs. Similar projects are planned for those in the adult District Court and many lawyers, judges, Police, mentors and others have undertaken training.

Communication is a human right, and legislation requires communication to take place in a manner and language that is accessible, so I am hoping to see more developments in this area. Awareness of the communication needs of those coming before the courts is raising in NZ as this quote from HH Judge Fitzgerald shows: “It was not until CAs became involved in cases that I started to understand how language difficulties impact on young people who come before the Youth Court. That has led me to re-think how I communicate with all young people I meet in court and to see an urgent need to change the language, forms and processes we use to make them capable of being properly understood. This must go beyond simply removing the anachronisms and institutional language; New, fresh and meaningful approaches are required.” The importance of developing new, fresh and meaningful approaches and providing communication supports in a timely manner is not only necessary for the youth court but needs to be applied across the whole justice sector.



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References

Plotnikoff, Joyce and Robert Woolfson. (2015). Intermediaries in the Criminal Justice System: Improving Communication for Vulnerable Witnesses and Defendants. Policy Press: Bristol.