

Session O4.05

Enabling communication rights in high stakes contexts with children, youth and adults

Sally Kedge

Talking Trouble Aotearoa NZ, New Zealand & The University of Auckland, New Zealand.

Alayne McKee

Talking Trouble Aotearoa NZ, New Zealand

Tracy Karanui-Golf

Talking Trouble Aotearoa NZ, New Zealand & Massey University, New Zealand

1

Acknowledgements

- Ngāti Whātua Ōrākei
- The participants in legal processes and their whānau/families we have learnt so much from
- The legal stakeholders we partner with in this work
- The Talking Trouble team, particularly those who filled in the survey discussed in this talk

2

What is this about today?

What people have said to Communication Assistants in our team about their work in Aotearoa about effective participation in justice settings

- Communication Assistants – similar to Intermediaries in other jurisdictions
- In NZ – defendants, complainants, witnesses in criminal court + other justice settings
- <https://justiceintermediary.org/> (international)
- https://www.lawyerseducation.co.nz/Course_Resources/23SVLF2.html

3

Legal contexts – the communication has **high stakes**

'The law is all about 'words' - and these words are SO important both in terms of a person's outcomes but also in terms of their contribution - so in a very 'nuts and bolts' way we as SLTs and CAs are uniquely placed to help people navigate this environment and 'say what they need to say'.

Survey respondent



'There were some very important concepts and decisions that the defendant was required to understand such as the resolution offered, what the likely sentence would be if plead guilty now or went to trial and that the defence case was very weak. The defendant was prone to just nodding and agreeing despite not understanding.'

Survey respondent

4



'We need not trouble your Honour further with that issue'

'His Honour would be seeking to satisfy himself that there is no risk of prejudice should...'

'I am resisting the application made by my learned friend'

'With respect I fail to see fundamentally any good or proper reason for...'

'For the avoidance of doubt and to assist...'

'It is not contested that, there is no contention, it is not in dispute that...'

'At the morning adjournment you had taken us to you coming back to the house...'

'Just to orientate ourselves again, and I'm sure everyone is across this, we're at the top of...'

5



International
Association of
Communication
Sciences and
Disorders



High stakes contexts requires participants to

Understand

- The relevant processes and where they fit in
- The options they have
- Questions they are asked



Also, if defendants:


- The charge(s), evidence (for and against them), legal arguments, possible defences, oral evidence given by others, the outcome

Express

- Their views/evidence as fully and coherently to others



6



Recreated questions from a real trial using actors

7




Communication rights, not a 'nice to have'

- United Nations Sustainable Development Goal 16
- United Nations Convention on the Rights of the Child
 - Article 12
- United Nations Convention of the Rights of Person's with Disabilities
 - Articles 13 and 19
- NZ Oranga Tamariki Act
 - Section 10 and 11 of the Act – Duties of Court and Counsel
 - *'In a manner and a language...'*

16 PEACE, JUSTICE AND STRONG INSTITUTIONS



Kearns et al. (2023). Intermediaries in the justice system for people with communication disability: Enacting Sustainable Development Goal 16 in Ireland, Northern Ireland, and New Zealand
DOI: [10.1080/17549507.2022.2134457](https://doi.org/10.1080/17549507.2022.2134457)

McLeod, S. (2018). Special edition
<https://www.tandfonline.com/doi/full/10.1080/17549507.2018.1428687>

NZ research from lawyers:

- Emily Bruce (2021). Understanding and being heard: exploring the right to participate in the New Zealand Youth Court.
- Jennifer Braithwaite (2023) reports: [Access to Justice for Children and Young People in Aotearoa New Zealand](#)

8

Who may have a CA appointed?

- **Children** participating in formal legal contexts
- **Youth and adults** experiencing a wide range of communication barriers in legal settings
 - NZ Ministry of Justice document on Subjective and Objective Grounds for Communication Assistance
 - <https://www.justice.govt.nz/assets/Documents/Publications/Communication-Assistance-objective-and-subjective-grounds.pdf>

- Randell et al. May 2022 report: Young Witnesses in New Zealand's Sexual Violence Pilot Courts
<http://www.nzlii.org/nz/journals/NZLFRRp/2020/2.pdf>
- NZ current's Royal Commission of Inquiry: Abuse in Care <https://www.abuseincare.org.nz/>
- Sowerbutts et al (2021) Supporting Young Offenders to Communicate in the Youth Justice System: A Scoping Review.
<https://doi.org/10.1080/2050571X.2021.1899571>

9

MOJ Communication Assistant Quality Framework



<https://www.justice.govt.nz/about/lawyers-and-service-providers/service-providers/communication-assistance/>

Published July 2021

2006 NZ Evidence Act

section 80/section 81

<https://www.legislation.govt.nz/act/public/2006/0069/latest/DLM393463.html>

Communication Assistants

- Neutral, impartial role to assist ALL to communicate with the participant
- Highly functional, not diagnostic
- Experienced communication specialists (in NZ SLTs)
- With additional training (suite of ongoing online and in-person learning alongside casework, professional supervision and support)

10

10



NZ context – Te Ao Mārama Framework

CAs are part of a new strategic judicially-led framework in NZ District Courts to deliver access to justice

<https://www.justice.govt.nz/justice-sector-policy/key-initiatives/te-ao-marama/>

11

11

Survey for Communication Assistants

Responding to a request from MOJ about how our CA roles contribute to effective participation

Multiple voices need to be heard – people who have experienced CA, whānau, stakeholders and the CAs

CA responses from 20 team members

What participants/stakeholders have said about how my role or actions improved access to justice

My own thoughts about how my role or actions improved access to justice

- Dr Kelly Howard (NZ CAs in Youth Court) - <https://kellyhoward2.wixsite.com/youthjustice>
- Dr John Taggart (England/Wales/Northern Ireland Intermediaries) <https://pure.qub.ac.uk/en/persons/john-taggart>

12

The legal communication context is confusing but CA input can enable effective participation

'Can you come back next time to **make everything easy**'.
A young person had said this to a survey respondent

'The lawyer for this participant also commented multiple times during the trial about how she was relieved we were present as she could be confident **he really did comprehend rather than just say he did** as she was concerned the defendant was someone who didn't want to be rude or hold up the process and so probably wouldn't say if he needed clarification.'

'The defendant reflected after legal meeting in lead up to trial, "I really needed those pictures to help me understand"'

13

Agency and self-determination in decision making/Tino Rangatatira

'Having a CA present enabled the young man to participate fully in the justice process. Prior to CA involvement it was not clear how much of an impact his hearing loss had on him. During assessment this was clearly established and **we were able to give him control over the types of communication that worked for him in Court**. Having a CA present meant that his comprehension was monitored and words clarified sometimes over and over again until he had a full understanding of the terminology used in the charges against him. **This enabled him to make choices about future effectively rather than basing his choices on misunderstandings.**'

'At the end of the hearing the rangitahi said to me "miss you're really good at your job, I understood that today" and then "**you should ask X (his lawyer) if you can come to court with me next time**"'

14

Participants centrally involved, not a 'mere bystander' (Nonu v R)

'I think being able to understand in real time impacted on this person's sense of rangatiratanga so this isn't something being done to them or going on around them but **they're centered in the process** and can **have a voice** and **a way of checking** they've understood or seeking clarification and knowing they can **pause proceedings** and make **a space to speak up** if they want to. It helps deescalate any potential confusion and stress before it becomes an outburst, and on the other side stops zoning out and not participating at all too.'

'The participant was able to take part in his court matters **rather than being an observer** of something that was happening to him, giving him more **awareness of** and **control** over the outcomes.'

15

Whānau/family views

'I often see whānau who want to support their rangatahi but there are so many barriers to this happening. I find that timing for youth advocates is really difficult, when trying to co-ordinate meetings they seem to only invite the young person, or if whānau are invited there's no acknowledgement of their other commitments, often they don't know what the meetings are about or how long they will take.'

'.this whānau felt more knowledgeable, engaged and included in the process so then they could have more say, they could participate more as if they were working alongside the youth justice process rather than just having it "done to them".'

'CA was able to put a complicated court process (fitness / involvement hearing) in a simple manner that could be understood by the defendant and his whānau.'

'Also whānau provided with easy read visuals post court hearing so also assisted them in understanding process and what was happening next.'

16

Impact on other professionals

‘Feedback from the lawyer was that my assistance had been very helpful in the whole process. He said he **wasn't sure how they would have managed** without the assistance.’

He (*Police Officer In Charge*) reported that he felt the assistance of CA enabled the complainant to give her best evidence.

(*The lawyer had told the CA*): ‘the CA presence assisted not only the defendant but those legal actors with which he was engaged.’

17

Impact on other professionals

‘..by bringing these issues to the attention of **all participants** including lawyers, Judges, court staff such as security etc, specialist report writers etc - often even to the defendants and witnesses/claimants themselves.’

‘The lawyer was able to see the impact of CA strategies used in the assessment and in meetings. **They followed the CA strategies** by slowing the pace of discussions, simplifying their language. The CA helped to simplify verbal and written language even further when needed. CA being present in meetings encouraged Counsel to use these strategies. CA checking understanding in an effective way ensured the lawyers knew the participant understood their options and could progress to next step. In court, following CA recommendations ensured participant was able to hear, listen and understand. Having CA monitoring emotional regulation helped participant to remain calm and participate.’

18

Judges' views

“He'd be lost with you”.

A judge had said this to a survey respondent

‘Judge reported the defendant has fair access to justice through the use of CA and was sure the trial **would not have been able to proceed** if the communication recommendations had not been provided to the Court for consideration and subsequent actioning.’



‘Use of communication assistance needed to be used very creatively. The Judge and lawyers were **very responsive** to all recommendations.’

19

Not just court interactions

‘The ability to have **continuity of CA involvement through a range of legal processes**, especially post-Court has improved this person's access to justice. Engaging with the defendant in the Courts and with Counsel, and then also being involved with Corrections [including assisting a prison psychologist] while the defendant has been a sentenced prisoner and then with the Parole Board [at several hearings] including having the Parole Chair asking specific questions about the CA role and the communicative challenges of a Parole Hearing - has been a unique and powerful opportunity. Assisting the defendant/prisoner AND being asked by different legal agents to assist beyond the end of the Court process has been of immense benefit to the individual, professionally satisfying [**after all, communication issues don't stop at the end of Court!**] and provided opportunity to demonstrate the impact of having a CA in legal contexts that are outside the 'usual spaces' we operate in.’

20

'Thinking about the bigger picture, I think we are all still learning from each other in terms of how CAs can most effectively assist in court and legal processes, and **how we can be most effective**. The conversations and experiences we are having with colleagues and professionals - as well as the defendants and claimants we work alongside are, I believe, building bridges and **expanding people's understanding of what participation even means**. What I personally love about this work is that it is so functional and bespoke'



'The whānau have often commented on a **lack of support**, and having to fight for services.'

JUSTICE INVOLVEMENT

'They need holistic help and support in all areas'

Before → After

21

Culturally responsive, particularly in our colonised country
Indigenous solutions

Ongoing learning about speech, language and communication needs + functional assessment + interventions relevant in justice communication contexts (constraints)

- Trauma (individual and intergenerational trauma)
- Racism and white fragility
- Mental health and wellbeing
- Abuse, neglect, family violence, addictions, poverty, housing
- Voice and power – co-production with rights-holders
- Capacity and fitness to plead/stand trial

Early supports
Safety, belonging, identity
Education, health, social work, police

JUSTICE INVOLVEMENT

Support families
Prisons, probation, NGOs, addiction services, mental health services

Before → After

22



EXPOSURE, TRAINING, RESOURCES: Remove the 'blah'

Working with you CAs is like a slap in the face reminder of how complex all the language is that we use!

Helps me when thinking about how to talk to the jury too!



BLAHOMETER

Defence counsel – comment to CA

LAW processes depend on WORDS

the person needs the communication at the **right level for them**



Communication environment and those in it need to know **how to adapt and provide appropriate accommodations.**



sallykedge@talkingtroublenz.org
twitter.com/TalkTroubleNZ
facebook.com/talkingtroubleaotearoanz/
www.talkingtroublenz.org

Communication Assistants



ALL the workforce