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Court Communication Assistant Information Sheet

This document describes the current processes used by speech-language therapists from Talking Trouble Aotearoa NZ (TTANZ) to provide court-appointed Communication Assistance professional services in New Zealand courts. Specific New Zealand processes, protocols, codes of ethics/conduct are currently being developed but do not yet exist. Our work draws heavily on international practice, primarily developed in England and Wales through the work of 'intermediaries' there who work with witnesses and defendants.

Court-appointed Communication Assistants (CA) are communication specialists who are neutral, impartial Officers of the Court for vulnerable witnesses or defendants, whether children, youth or adults. The CA role is to assist **all** involved in legal proceedings to communicate with the person involved. All our team are experienced and qualified speech-language therapists.

CAs are not expert witnesses and they are not part of the Defence or Crown teams. They do not give an opinion about fitness to plea or whether the person is likely to be telling the truth. Their duty is to the Court.

Referring to TTANZ

Before we accept a referral for a Communication Assistant, we need to ensure our availability and suitability for the role. We need to know:

- 1) When the assessment and recommendations report is required by
- 2) When/where is the hearing or trial likely to take place, and for how many days
- 3) Basic information about the person that will allow us to know whether we have the expertise required e.g. child/youth/adult, information relating to their communication or other needs e.g. if they use sign language, speak different languages, require expertise in particular areas e.g. physical disability, mental health, intellectual disability. We will turn down referrals if we do not have the appropriate expertise. We will aim to direct the referral to a more appropriate service.
- 4) Who the trial involves. If the CA has previously known any of the people (witnesses or defendants) involved in a different role e.g. as their speech-language therapist, or knows them in some other capacity, that specific professional cannot be appointed as a CA in the trial. An alternative CA would need to be sought. TTANZ will advise if they have someone else available, or will direct the referrer to an alternative service.
- 5) How many people require a CA. A separate CA is usually needed for each person e.g. if there are several defendants requiring a CA, they will all need a separate CA. If there are multiple witnesses requiring a CA, it may be possible for one CA across the trial to assist e.g. with children who are siblings.

Other professionals' reports are helpful to access and we explain the sources of information consulted in our report. However, we DO NOT require substantive information about the charges. We only need to know very basic information about the type of charge involved so we can assess

any specific language knowledge that may be required e.g. body part names used by the person if there are sexual charges involved.

We provide a referral form that requests the information we need.

We then provide a proposal to the Court detailing our services and costs for the assessment phase and for any subsequent assistance required in court proceedings. In nearly all cases, our involvement is funded by the Court. When we receive written confirmation that our proposal has been accepted, we arrange the assessment.

After referral

We make contact with the person to arrange an assessment (either directly or via the most appropriate professional e.g. Social Worker, Lawyer, Police Officer etc.). We send information about what the assessment is going to involve to the person in 'Easy Read' language.

Assessment phase

Detailed assessment of speech, language and communication skills is carried out by the CA as early as possible prior to any legal proceedings. The assessment explores how the person is likely to manage the communication demands of a legal setting e.g. listening to, understanding and giving evidence, instructing Counsel, answering questions in cross-examination and dealing with exhibits. A range of tasks are used to elicit this information. The CA also explores strategies that may support the person to communicate and how effective these are for achieving reliable communication.

At the start of the assessment, we explain to the person being assessed that we will *not* be discussing the legal charges involved in the forthcoming trial with them during the assessment. We will only be exploring their speech, language and communication skills and any strategies and special measures that might assist them to communicate in a legal context. We request their permission to audio-record the session to allow us to transcribe and analyse the language involved later for report writing.

During the assessment phase we cannot assist Counsel to discuss aspects of the charges with the person e.g. obtain a brief of evidence, explain the possible direction that the trial make take etc. However, after our assessment report has been submitted to the Court, we have sometimes been directed by the Court to assist in interaction between Counsel and their client.

The time required to gather the information can vary, but generally we have found that a two-hour assessment (sometimes across two visits depending on concentration levels) plus time to write the report (approximately 6 - 8 hours) and liaise with professionals is required. Usually no more than 10 hours of professional time is required for the assessment phase.

The assessment is carried out in the presence of the person's lawyer if they are a defendant, or in the presence of a police officer if they are a witness. Sometimes other relevant professionals have observed the assessment e.g. social worker, lay advocate, mentor, if the lawyer (defendant) or police officer (witness) is unavailable.

Report and recommendations

After the assessment phase a report is then written summarising the communication skills of the person, and the recommendations that may assist the person to communicate in legal proceedings. This report is submitted to the Court who then distributes it as appropriate. Our report is not released to others without direction from the Judge.

Appointment to assist within the courtroom

After our recommendations report has been received, we may be directed by the Court to assist during pre-trial and courtroom proceedings to assist a witness or defendant to communicate with all involved. The Court keeps us informed about when we are required to attend proceedings and what the nature of our role may involve. Direction from the Judge may be sought to ensure all are clear about how the CA can assist any professional involved with the trial to communicate with the person for particular purposes pre-trial e.g. to assist all Counsel to prepare questions at a linguistic level that is most likely to be understood by the person, as well as in the courtroom e.g. to assist when the person is instructing their lawyers, assist Counsel to explain charges, bail conditions etc. to the person, or post-hearing e.g. victim impact statement, assistance with probation appointments, Restorative Justice hui etc.

If required to assist in Court, after submitting initial recommendations, the CA is likely to need to watch any relevant EVIs conducted with the person in order to understand how the person communicated their evidence (e.g. the vocabulary they used, the way they pronounced words, how they organised information sequentially). The information gained by the CA from watching the EVI will assist in the preparation of any visual tools or props that may assist the person to give evidence and be cross-examined and these tools or props would then be presented to both Counsel and the Judge pre-trial to discuss whether and how they might be used.

If a CA is appointed to assist in a trial or hearing, the CA needs to be present at all times when the person is present. The same CA who undertook the assessment needs to assist throughout the process. There are very few experienced speech-language therapists available currently in NZ who can undertake this work and it is important to book their time for dates when required with as much notice as possible.

A pre-trial meeting/ground rules hearing or special measures meeting needs to take place with the Judge and all Counsel prior to a trial to agree how recommendations will be implemented in practice e.g. where exactly the CA will sit, how the CA may indicate difficulties with comprehension to the Judge and resolve these, agree how the CA will assist if required if the person gives evidence or is cross-examined, how visual aids or equipment e.g. hearing aid receivers etc. will be used in practice, whether any modification to modes of evidence will be required etc. The Ground Rules Hearing Checklist from the toolkits available on the The Advocates' Gateway website can provide a useful agenda for such a meeting.

<http://www.theadvocatesgateway.org/>

Further review meetings to monitor how communication assistance is operating may be required during a trial. The CA will raise any issues that arise during proceedings with the Judge and Counsel.

The CA may also be required to attend any court familiarisation visits with the person. This is particularly important if any equipment is involved e.g. CCTV, special communication aids, or hearing aid/speaker/microphone equipment.

Young people involved with the Youth Court who have a CA appointed to assist with their communication in Court may also be required to participate in a Family Group Conference (FGC). In some cases, communication assistance at the FGC may be helpful. Any assistance with communication required in the FGC needs to be arranged by and funded by Oranga Tamariki. Direction from the Judge needs to be given about whether the same professional can assist in an FGC *and* act in a CA role in Court for the same young person, and whether the Court CA report can be released to Oranga Tamariki. Recommendations provided for communication in the Court context are likely to also be useful for the Family Group Conference.

In all matters, the CA takes a neutral, impartial role and does not express any opinion or give advice on any legal matter. Their only role is to assist all to ensure that the person can understand what others are saying and can express their thoughts and ideas themselves in court-related communication.

The CA role does not involve a therapeutic speech-language therapy role for the person assisted. If speech-language therapy clinical services are required during or post-legal proceedings, alternative services would need to be sourced and funded. The CA role ends at the end of a trial. No further contact between the person assisted and the CA usually takes place. If on-going speech-language therapy is required and the professional services of the same SLT who acted in a CA role are requested from TTANZ, extremely careful consideration and consultation with the Judge and other relevant agencies would be needed to ensure that this was an appropriate way forward.

NZ protocols and practice

These are very new roles for NZ speech-language therapists so the processes and protocols are still under development. The boundaries around what court communication assistants can and can't do within the role are still being worked out. TTANZ is involved with a working party which includes judges to provide this information as quickly as possible for the NZ context.

Who are our speech-language therapists?

Our speech-language therapists are all highly experienced and have worked with adults and children across a range of settings. We have staff with particular expertise e.g. with adolescents, pre-schoolers or with adults with brain injury/acquired communication e.g. post-stroke, and who are involved in research, process/practice development and training. We are actively developing a culturally diverse team and have team members who speak Te Reo Māori and Samoan. All team members have a special interest in justice related communication. They are all members of the New Zealand Speech-Language Therapists' Association and other relevant professional bodies. Sally Kedge is also a member of Intermediaries For Justice, a UK organisation for 'Intermediaries' – the term used in the UK for a similar role to the NZ Court Communication Assistant. The TTANZ team is in touch with international speech-language therapists and others involved in similar work, and also with the very small number of others undertaking Communication Assistant roles within NZ.

We often share a role between two of us to enable us to cover availability in court when required, and also because we are developing a pool of expert clinicians to take on these new roles. In these cases, we appoint a lead worker who is the point of contact for the role and the main author of the report. Continuity across all phases of involvement is important in these roles. The same CA needs to be involved at both the assessment and in court phases.

For further information

Please contact us to discuss any aspect of this work or to discuss a specific referral. Most of our team are based in the Auckland region but we do have team members around NZ. We also provide other speech-language therapy services such as professional training, clinical assessments and interventions, projects, research and consultancy. Our focus is the speech, language and communication needs of children, youth and adults involved with justice, care and protection, behaviour or mental health services.

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Link to referral form: <http://talkingtroublenz.org/specialised-communication-assistance-in-justice-contexts/>

The Benchmark Website is a NZ resource for legal professionals which has a range of practical guidelines, including one about Communication Assistants and another on questioning children. <https://www.benchmark.org.nz/>

The Advocates Gateway website provides practical advice for legal professionals e.g. toolkits to assist with the preparation of questions and <http://www.theadvocatesgateway.org/>

Links to other relevant resources can be found on our website: <http://talkingtroublenz.org/links-and-resources/>

Example of an Easy Read explanation of the CA assessment process, usually sent to a person before assessment

Example of a bail conditions template prepared for a person with literacy and language difficulties

Example of a timeline prepared to help a complainant understand when events happened so they could follow questions asked in cross-examination