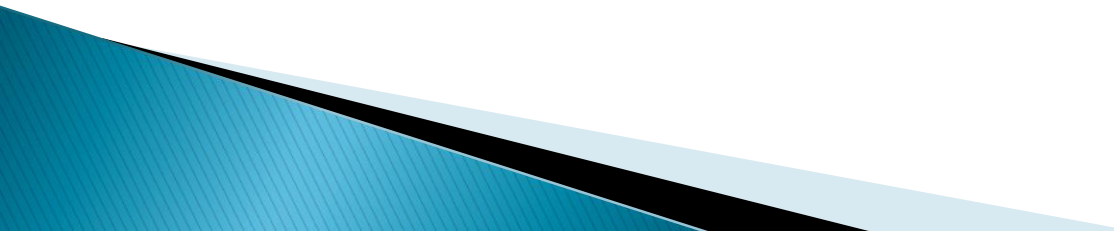


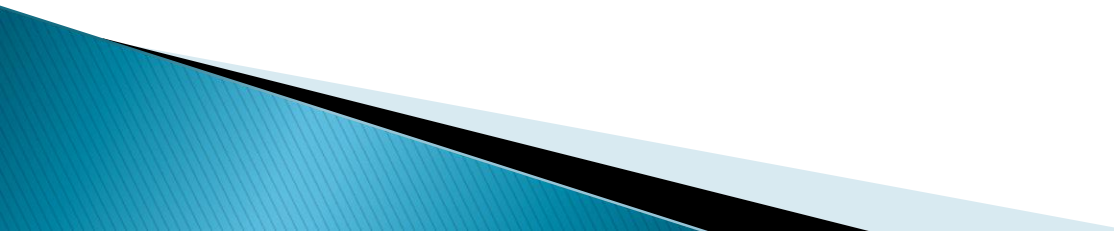
ACCESS TO JUSTICE

Addressing Roadblocks

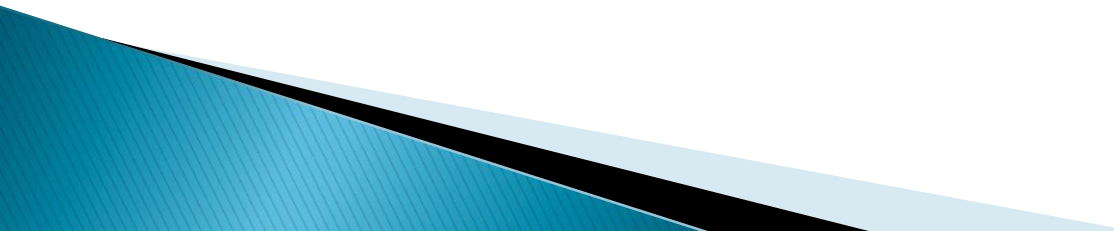
Presenters

- ▶ Terry Sargeant, Clean Environment Commission
 - ▶ Dale Paterson, Manitoba Labour Board
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OVERVIEW

1. What is Access to Justice all about?
 2. How does it relate to Administrative Tribunals?
 3. Quiz – Factors that limit Access
 4. Why do they limit Access?
 5. Expand on some of these factors
 6. What can we do to address these?
- 

A Definition

- ▶ While not easily defined, access to justice refers broadly to the access that citizens have to dispute resolution tools of justice including but not limited to courts. Effective access to justice does not only refer to reductions in costs, access to lawyers and access to courts; but rather, it is a broad term that refers more generally to the efficaciousness of a justice system in meeting the dispute resolution needs of its citizens.
- 

What is Access to Justice all about?

- ▶ There is a serious access to justice problem in Canada. The “civil and family” justice system is too complex, too slow and too expensive. It is too often incapable of producing just outcomes that are proportional to the problems brought to it or reflective of the needs of the people it is meant to serve.

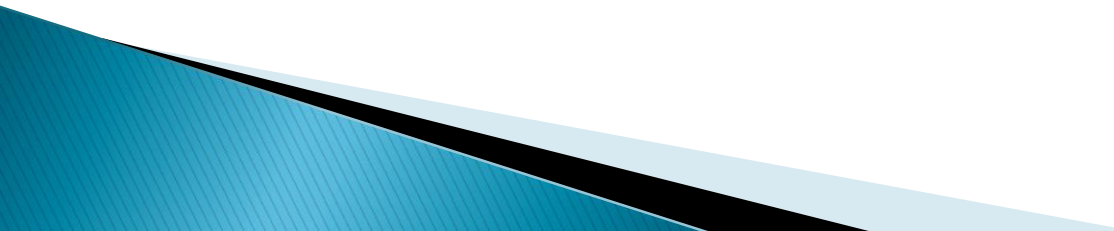
- ▶ Report of the Action Committee on Access to Justice in Civil and Family Matters
- 

- ▶ “... the problem of access to justice is not a new one. As long as justice has existed, there have been those who struggled to access it.”
- ▶ “Reports told us that cost, delays, long trials, complex procedures and other barriers were making it impossible for more and more Canadians to exercise their legal rights.”
- ▶ “If we cannot understand our rights, we have no rights.”

▶ Hon. Beverley McLachlin, Chief Justice of Canada



Some Statistics

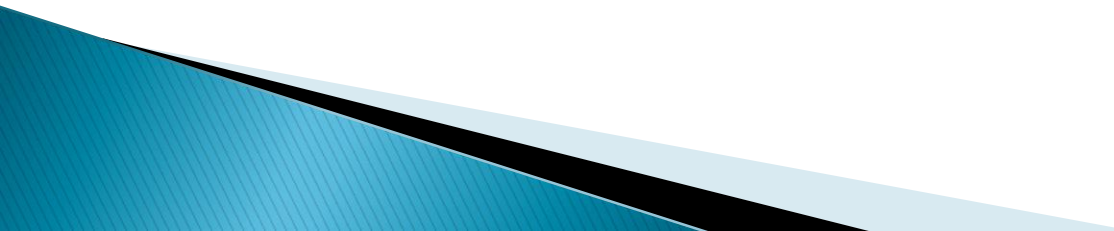
- ❖ Nearly 12 million Canadians will experience at least 1 legal problem in a given 3-year period. Few will have the resources to solve them.
 - ❖ Members of poor and vulnerable groups are particularly prone to legal problems. They experience more legal problems than higher income earners and more secure groups.
 - ❖ People's problems multiply: having one legal problem can often lead to other legal, social and health related problems.
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More

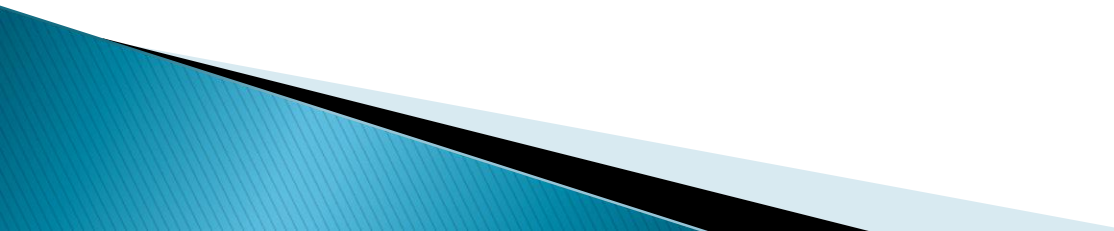
- ❖ Legal problems have social and economic costs. Unresolved legal problems adversely affect people's lives, as well as the public purse.

- ❖ Report of the Action Committee
- 

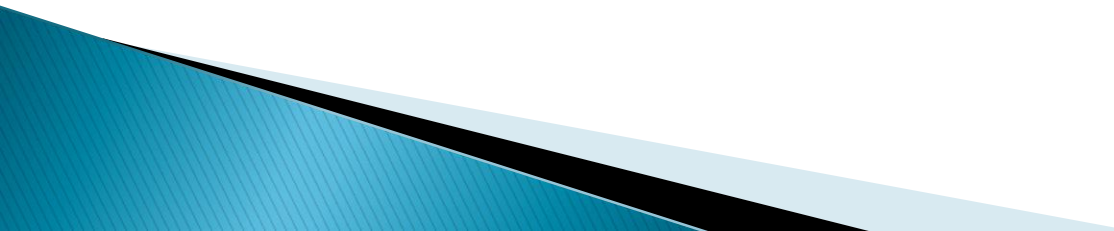
What is required?

- ▶ We must take a collaborative, cooperative and systemic approach.
 - ▶ We must act in a sustained and focused way.
 - ▶ The goal should be nothing less than to make our system of justice the most just and accessible in the world.
- 

Vision

- ▶ We need a system that provides the necessary institutions, knowledge, resources and services to avoid, manage and resolve legal problems and disputes.
 - ▶ That system must be able to do so in ways that are as timely, efficient, effective, proportional and just as possible.
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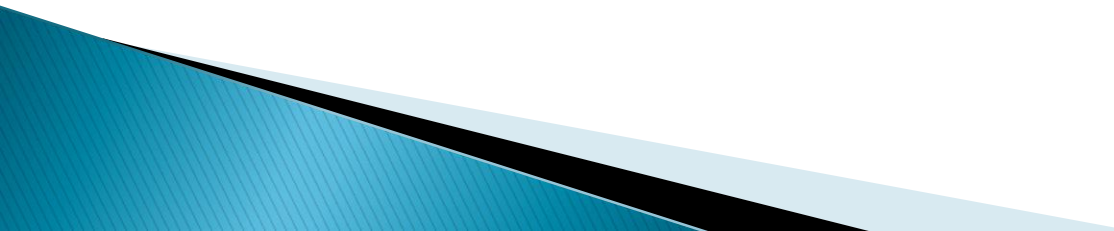
Important elements of this vision include:

- ▶ Public awareness of rights, entitlements, obligations and responsibilities
 - ▶ Ability to participate effectively in the process to achieve a just outcome
 - ▶ Ability to effectively utilize dispute resolution procedures
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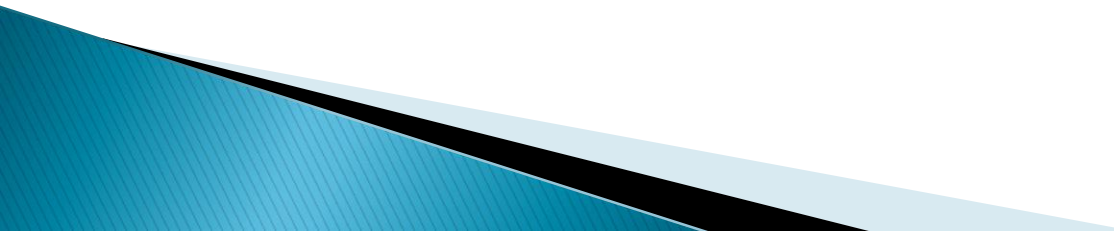
Recent Reviews

- ▶ Chief Justice Beverley McLachlin
 - ▶ Department of Justice Canada, 2000
 - ▶ Council of Canadian Administrative Tribunals, 2004 ongoing
 - ▶ Canadian Judicial Council, 2013
 - ▶ Canadian Bar Association, 2013
 - ▶ Law Society of Manitoba/Manitoba Bar Association/UofM Faculty of law, 2014
- 

Why is this relevant to Administrative Tribunals?

- ▶ The rule of law is no less significant in an administrative hearing room or decision-making process than in a courtroom.
 - ▶ For a majority of Canadians who have a legal problem, it will involve the administrative justice system.
- 

U of T Law Professor Lorne Sossin

- ▶ “For the community at large and for vulnerable communities specifically, it is far more likely that a person’s rights and important interests will be at stake in an administrative proceeding than a judicial one.”
- 

Chief Justice McLachlin

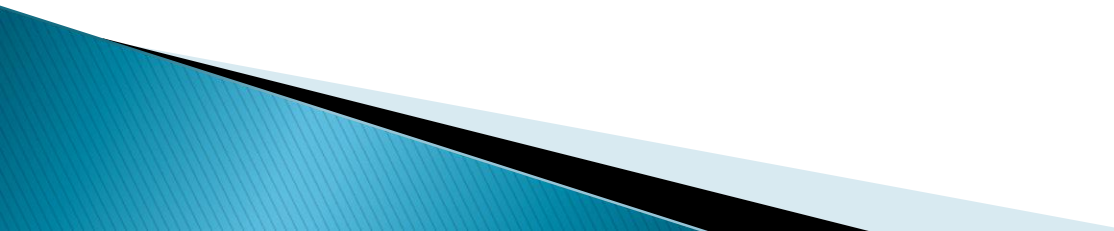
- ▶ “Many more citizens have their rights determined by tribunals than by the courts.”

Relevance to ATs

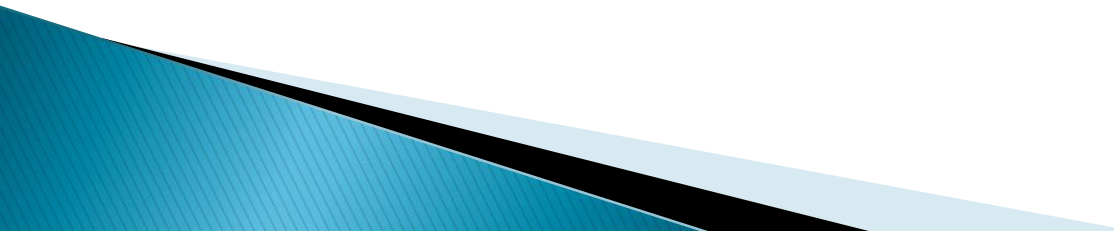
- ▶ In many ways, tribunals are as inaccessible as the courts – as described above.
- ▶ A major reason for establishing tribunals is to address the deficiencies in the court system.

A quick refresher – Administrative Justice

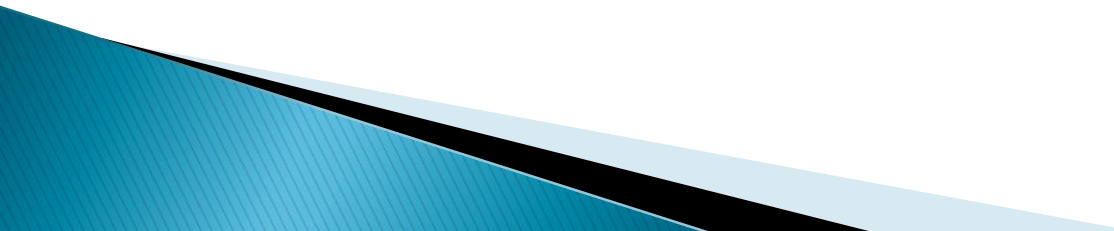
▶ Several components

- **Administrative decision-makers** – who decide how government laws and programs will be administered in daily life.
 - **Tribunals** – that perform a variety of functions – such as, hearing appeals about administrative decisions – and adjudicating certain disputes that arise between citizens, corporations and others.
 - **Courts** – which retain ultimate authority.
- 

The administrative justice system has a major impact on daily life:

- ▶ Determines whether a strike or lockout is legal
 - ▶ Determines how much we pay for electricity
 - ▶ Whether or not we are entitled to workers compensation
 - ▶ Whether our rent increase is fair
 - ▶ Production quotas for dairy or egg farmers
 - ▶ Etc.....
- 

At the Federal level:

- ▶ Determines whether or not you may remain in Canada as a refugee
 - ▶ Determines whether or not you are entitled to employment insurance
 - ▶ Etc.
- 

Types of Tribunals

- ▶ Those that ensure that government treats citizens, corporations and other parties fairly
 - Workers Compensation Appeal Commission
 - Automobile Injury Compensation Appeal Commission
 - Licence Suspension Appeal Board

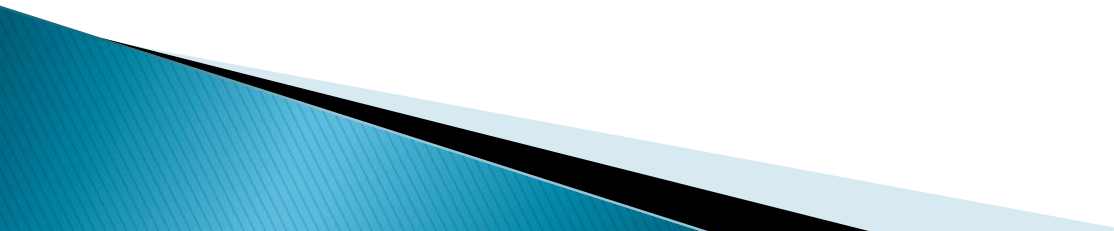
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- ▶ Those that ensure that citizens, corporations and other parties treat each other fairly
 - Human Rights Commission
 - Manitoba Labour Board
 - Residential Tenancies Commission

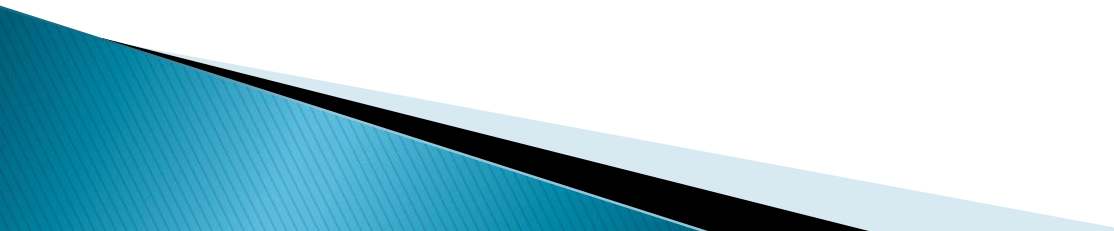
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- ▶ Those that bring expertise to complex and specialized policy areas
 - Public Utilities Board
 - Securities Commission
 - Clean Environment Commission

Deficiencies in the court system

- ▶ Costs and delays
 - ▶ Complex process
 - ▶ Inflexibility and formality
 - ▶ Backlogs and lengths of trials
 - ▶ Inability to match procedures to disputes
- 

Advantages of tribunals

- ▶ Authority given to specialist tribunals to provide expeditious and fair decisions
 - ▶ Less formality than courts
 - ▶ Not obliged to follow strict court procedures
 - ▶ Flexibility of procedures can accommodate different needs
 - ▶ Adherence to the principles of natural justice and a general duty of fairness
- 

Quiz – Factors that limit Access

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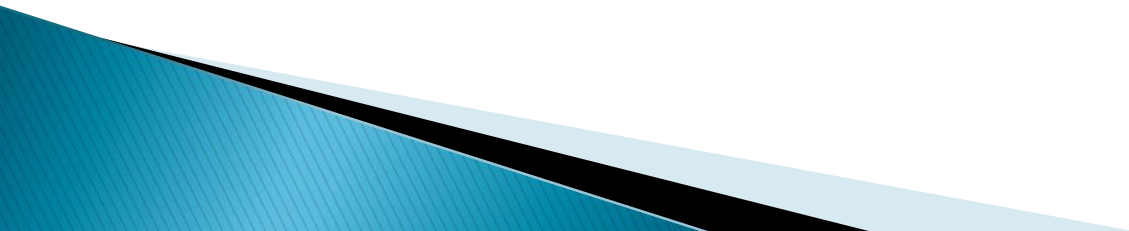
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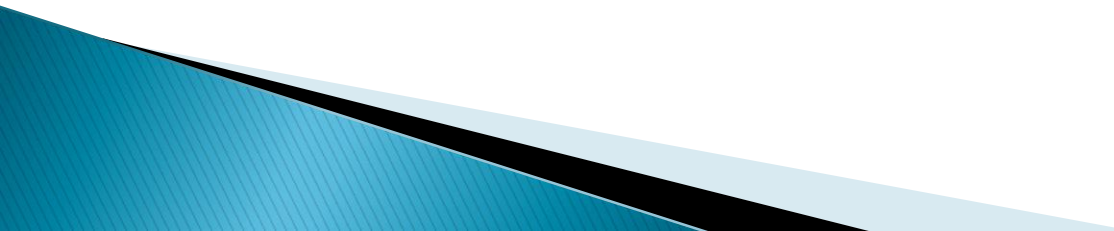
Quiz – Why do they limit Access?



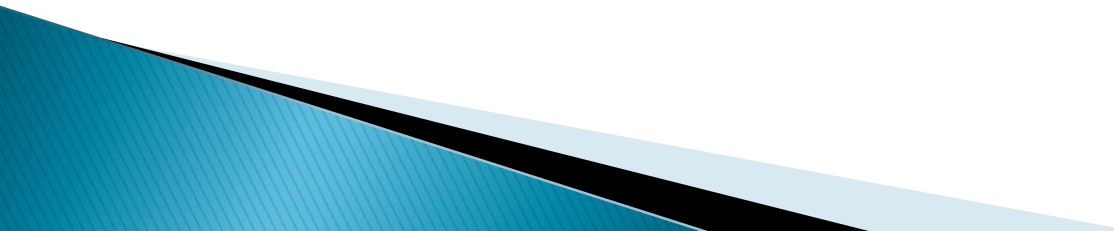
What is literacy?

- ▶ The International Adult Literacy Survey defines literacy as:
 - the ability to understand and employ printed information in daily activities, at home, at work and in the community, to achieve one's goals and to develop one's knowledge and potential.
- ▶ The Canada Information Office (CIO) further refined the notion of literacy as:
 - the ability to use printed and written information to function in society.... [to use] visual information ...based on written texts...[that] calls upon the logic of the written word.

Who is Jacques Demers?

- ▶ Independent member of the Canadian Senate
 - ▶ And
 - ▶ And
- 

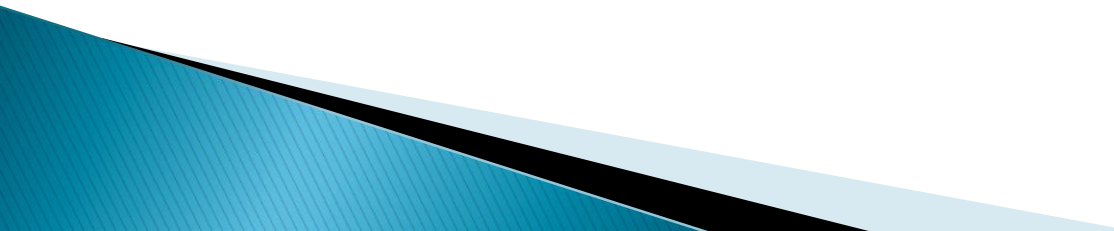
How literate are Canadians?

- ▶ 48 per cent of Canadians aged 16+ have difficulty understanding and using information contained in editorials and articles, as well as instructions (for machinery, equipment, medicine, etc.).
 - ▶ 47 per cent of Canadians aged 16+ have difficulty extracting and using information presented in forms, job applications, transportation schedules, maps, tables, graphs.
 - ▶ 48 per cent of Canadians aged 16+ do not have the necessary knowledge to perform simple math based on printed documents such as calculating a tip, or interest on a loan.
- 


Basic Legal Tasks

- ▶ **Level 1: 7 per cent read at this level; they would have difficulty**
 - signing a simplified lease in the space designated for the tenant's signature if there were several places for signatures;
 - finding the appointment time in a simply written letter from a lawyer;
 - finding out when to reply or to appear after receiving a court notice or summons.

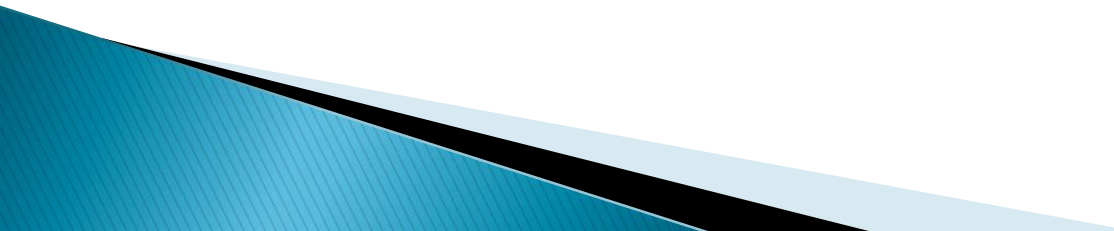
Basic Tasks cont'd

- ▶ **Level 2: 9 per cent read at this level; they would have difficulty**
 - consulting the Yellow Pages to find a local legal aid office in a list of several offices;
 - finding the two mornings a week when their counsellor is available in a schedule of office hours of three family court counsellors;
 - looking at a catalogue of brochures about legal subjects and filling in an order form with publication numbers and prices.
- 

Basic Tasks cont'd

- ▶ **Level 3: 22 per cent read at this level: they would have difficulty**
 - reading a standard rental agreement or lease and finding the section that deals with a particular issue, such as who is responsible for repairs;
 - finding and using information in documents or letters if the information is not stated clearly and explicitly or if it is written in “traditional” legal language;
 - preparing a financial statement for an application for child support.
- 

Basic Tasks cont'd

- ▶ **Level 4: 62 per cent read at this level and**
 - can read most everyday material;
 - can integrate information from several parts of a document;
 - would have some problems rewording a news account of a legal decision.
- 

What are the costs of low literacy?

To society

Low literacy costs all of us money— in the many billions.

There is the time lost, information not understood, errors made, work having to be redone, appointments missed, and underemployment. Our own economy and our ability to compete in the expanding global economy are affected by low literacy skills of many of the population.


Employment problems for low literacy Canadians are growing.



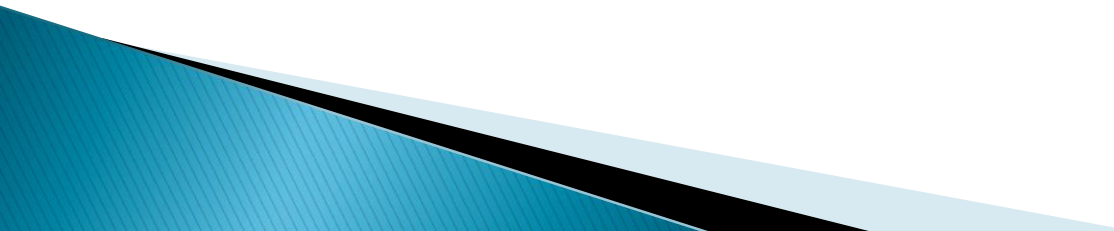
Costs, cont'd

To the individual

Our daily lives include many essential activities, some simple, others more complicated:

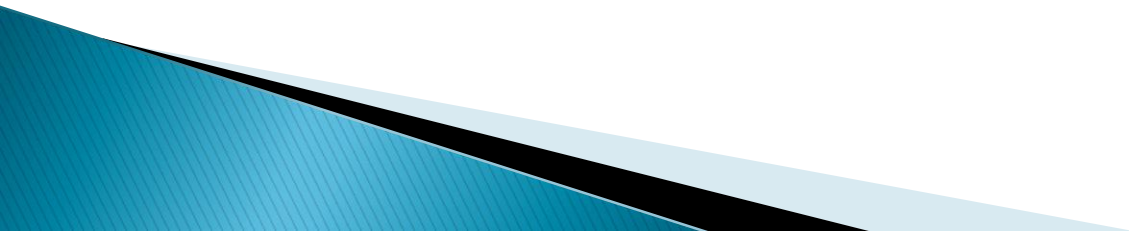
- reading and understanding voting instructions;
 - doing homework with our children;
 - reading notes and instructions from their school;
 - dealing with banking information;
 - reading the instructions on a bottle of medicine;
 - reading instructions at work on how to operate machinery, understanding manuals, reading and employing safety and emergency procedures;
- 

Costs, cont'd

- finding or applying for a job;
 - reading forms and filling them in to apply for birth certificates, passports;
 - reading a lease or a car rental agreement;
 - studying for a written exam for a driver's licence;
 - reading the newspaper to find out about job opportunities, the weather, sports, health issues, political issues.
- 

Costs, cont'd

Inadequate literacy skills put a stop to further education, make it harder to get a job, make it difficult to participate fully in the community, and sometimes block access to justice.

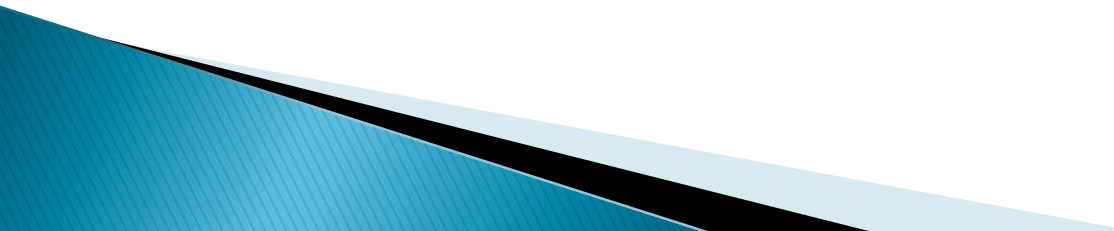


What is legal literacy?

Legal literacy is the ability to understand the words used in the legal context and to access rights in the justice system. Most people, literate or not, don't understand even the simplest legal expressions.

Legal language is very structured with very specific meanings and concepts. Even if people with low literacy have found a way to cope with their daily routine, they find it very difficult to read, understand, and use material related to legal problems. They do not understand the concepts contained in the words, even if they understand the words themselves.

Therefore, they cannot understand what is expected of them and often the implications of what is being said.

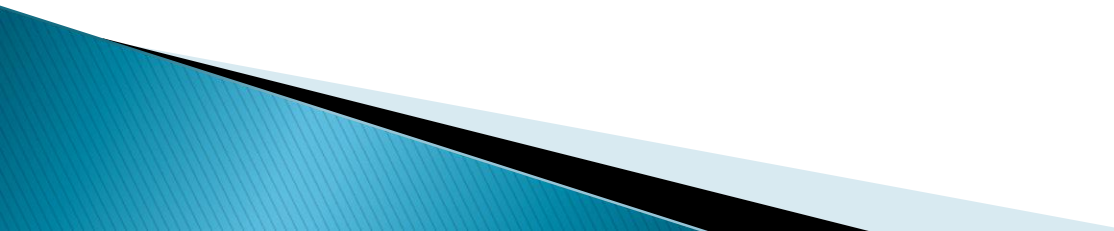


Legal Literacy cont'd

The John Howard Society of Canada did a thorough study of inmates' literacy levels:

- 70 per cent had literacy levels below grade 8
- 88 per cent fell below the grade 10 level.

The justice system's' lack of understanding about low literacy can:

- result in miscarriages of justice
 - reduce court efficiency and effectiveness
 - be a barrier to reducing crime and recidivism
 - contribute to a culture of systemic discrimination based on ability to read and write.
- 

What can be done?

Administrative tribunals, like other courts, have to follow similar standards:

- Make sure, as much as is possible, that our clients understand all the proceedings;
- Simple brochures, short videos, online information, face-to-face meetings, etc.



What can be done?

- Examine how we deal with low literacy clients and how this can affect fair administration of justice;
- Train members and staff in how to recognize literacy issues, and
- In how to deal with them sensitively.

What can be done?

Follow the lead of many organizations and use “plain language” in all our communications, written, visual, and spoken.

- Plain language goes beyond just re-writing written communications. We have to look at all the ways we use to communicate with clients and change them if necessary:
 - written material such as forms, brochures, pamphlets, posters
 - spoken communication
 - signs in the tribunal offices
 - videos
 - web sites

Developing and Implementing a Literacy Program

Step 1. Organization audit

- What is your mandate?
- Who do you serve?

Step 2. Client/participant literacy audit

- Who are your clients/participants?
- What are their literacy needs?

Step 3. Planning the literacy program

- Is there senior management commitment?
 - Is there an action plan?
- 

Developing and Implementing a Literacy Program

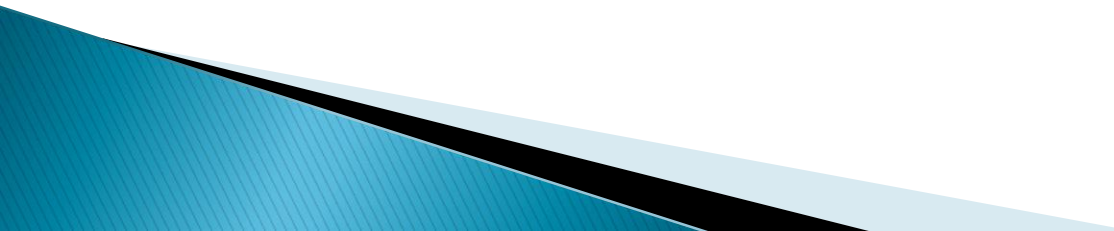
Step 4. Communications

- Is there a plan to review and revise communications?
- Who is responsible?

Step 5. Training

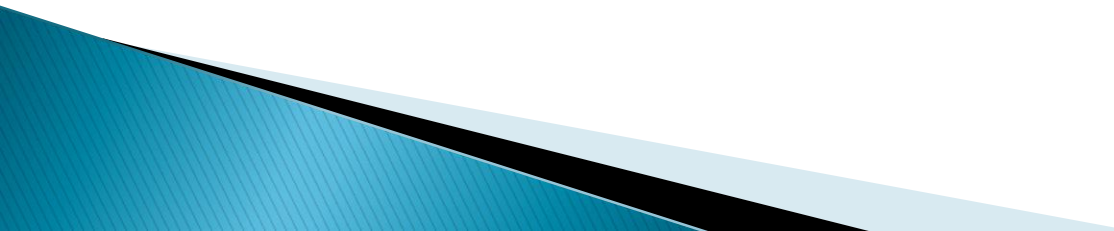
- How will staff become aware of literacy needs?
- Is there a training plan?

Step 6. Evaluation and maintenance of the program

- Do you have an evaluation plan?
 - Who will have ongoing responsibility for the program?
- 

Goals for the program

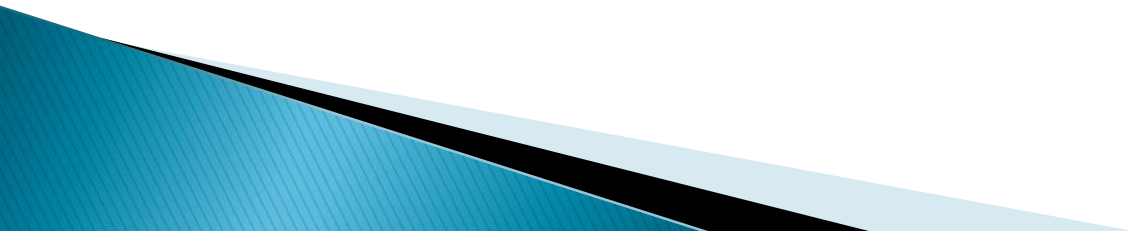
The goals for the program are:

- improved access to justice;
 - well-trained staff who are sensitive to clients' literacy problems;
 - adjudicators who are sensitive to the literacy issue;
 - a well-understood way of dealing with vulnerable Canadians;
 - providing timely, relevant, understandable information;
 - meeting the needs of the clients;
 - fulfilling the mandate of the tribunal.
- 

Manitoba Labour Board

- ▶ Interpreter Guidelines

What can we do to address access issues?



Resources

- ▶ Self-Represented Parties – An Informal Checklist
 - CCAT website www.ccat-ctac.org – under “Resources”
- ▶ Literacy and Access to Administrative Justice in Canada: A Guide for the Promotion of Plain Language, CCAT 2005
- ▶ Introduction to Administrative Justice and Plain Language, CCAT 2007
 - CCAT website, under “Media Room, Publications”

Further Information

- ▶ Manitoba Labour Board Interpreter Guidelines
- ▶ Consumer Protection Division: Accessibility Survey
 - Will post on MCAT website – mcatmanitoba.ca
- ▶ Other resources:
 - www.Accessibilitymb.ca
- ▶ Google:
 - Lorne Sossin, “Access to Administrative Justice and Other Worries”
 - General search: Access to justice; Access to Administrative Justice