



# TARGET CRIME WITH LITERACY

## CHAPTER 3 - FACT SHEET 1

### Police Communications with Accused with Low Literacy Skills

#### The idea of being “legally informed”

Canadian courts can consider the accused person’s literacy skills when they decide whether to admit or exclude evidence. The law does not consider a person informed of their rights unless the person fully understands the information given to them.

If a person with low literacy skills does not understand their rights, they cannot make informed decisions based on those rights, and so they are not *legally informed*. This means

- A person must be told of their rights in a way that they can understand.
- An accused must understand the results to expect from those decisions they make related to that right.

For example: It appears that accused person Jim Doe does not understand his right to a lawyer. It is not enough to repeat the standard legal language telling Doe of his right, because it seems he does not understand the formal language used. Doe can only make an informed decision about whether he wants a lawyer if he fully understands the effects of whatever decision he makes. So the police must make reasonable efforts to make sure Doe truly understands his right to a lawyer.

#### The duties of the police

The police have both legal and ethical duties to make sure that a person fully understands the oral and written information that police give to them. Ignoring these obligations may result in clearance rates dropping and

- cases getting bogged down in court
- cases being thrown out
- evidence being rejected
- police departments being sued

It is important to assess the accused person's literacy as soon as possible, and especially at the beginning of an interview. If you believe the person has low literacy, take practical steps, and make reasonable efforts so the person understands the information you give and the questions you ask.

At the same time, you are not expected to be clairvoyant or to go beyond reasonable efforts.

## **Examples from Canadian cases**

In several Canadian cases, judges have ruled that the police should have done more to make sure that a person with low literacy skills truly understood their situation and their rights. Here are some examples:

- It was clear to the officer that English was not the accused's first language, and the accused said he did not understand the demand for a breath sample.
- The accused did not answer questions dealing with the right to have a lawyer, and said, "I don't speak the best English."
- An accused said he spoke English only "a little bit."
- The accused said "no" when asked if he understood his right to have a lawyer.
- Police officers ignored an accused's request for an interpreter, officer, or lawyer who spoke her first language.

## **What police officers need to know**

- 42 out of 100 Canadian adults have low literacy skills.
- Most Canadians do not understand legalese.
- It is your responsibility to recognize the signs that a person has low literacy or has not fully understood.
- You need to make sure that an accused person understands the oral and written information that you give them.