

The Importance of Communication in the Legal Field



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Learning Outcomes

After reading this introduction, you should be able to:

- Explain the roles of various legal professionals.
- Explain effective communication in the legal field.
- Understand the communication process and the barriers to it.
- Describe the importance of communicating with people of diverse cultures.
- Describe the importance of communicating with people with disabilities.
- Understand the importance of communicating as a member of a group.

Introduction

The legal profession relies heavily on written and oral communication. Communication refers to the exchange of information between people. There are different forms, such as **verbal**, **non-verbal**, **written**, and **visual communication**. Law clerks, legal assistants, lawyers, and paralegals all need effective communication skills to serve their clients and provide effective legal service. This chapter introduces various types of legal professionals and discusses the communication process and barriers to effective communication.

verbal communication

The expression of ideas and information by spoken words.

non-verbal communication

The expression of ideas and information using gestures or mannerisms.

written communication

The expression of ideas and information through writing.

visual communication

The expression of ideas and information using symbols and imagery.

What Is a Law Clerk?

In Ontario, a law clerk is a person qualified through education, training, or work experience to perform tasks for lawyers, paralegals, law offices, government agencies, and other entities. Under the direction of a licensed lawyer or paralegal, law clerks can perform administrative or managerial duties and undertake, when delegated to do so, substantive legal work that, in the absence of a law clerk, the lawyer or paralegal would perform.

What Is a Legal Assistant?

Legal administrative assistants gather information and assemble legal documents and correspondence using their knowledge, initiative, and creativity. They communicate directly with clients, lawyers, paralegals, law office personnel, judicial and government offices, and other professionals in the community as part of their daily activities.

What Is a Lawyer?

Law Society of Ontario (LSO)

A self-governing body that is authorized to educate, license, and regulate paralegals and lawyers in Ontario in accordance with the *Law Society Act*, RSO 1990, c L.8, and the society's regulations, by-laws, and rules of conduct.

The **Law Society of Ontario (LSO)** regulates the legal profession in Ontario. It is responsible for licensing, regulating, and disciplining lawyers and paralegals in Ontario pursuant to the *Law Society Act*¹ and its rules and regulations. Each province and territory has its own law society that governs the legal professionals of that particular province or territory.

A lawyer is someone who is authorized by his or her respective law society to practise law. Once licensed, a lawyer can practise in any area of the law (subject to any limitations placed on the individual by the law society), including:

- civil litigation
- family law
- real estate law
- estate planning
- corporate/business law
- criminal law
- entertainment law

¹ RSO 1990, c L.8.

- intellectual property
- immigration law
- labour and employment law
- international law.

A licensed lawyer can act as a **barrister, solicitor, commissioner of oaths**, and a **notary public**.

What Is a Paralegal?

Paralegals provide legal representation to clients within limited areas of law. In Ontario, paralegals, like lawyers, are regulated by the LSO, meaning that they must meet the education and licensing requirements set by the LSO to practise law. Ontario is the only province where paralegals are licensed and regulated. The scope of practice for licensed paralegals is limited by the LSO. Paralegals are only permitted to represent someone before specific courts and tribunals:

- Small Claims Court
- Ontario Court of Justice for proceedings under the *Provincial Offences Act*²
- Ontario Court of Justice for summary offences under the *Criminal Code*³
- administrative tribunals such as the Landlord and Tenant Board, the Human Rights Tribunal of Ontario, the Social Benefits Tribunal, and the Licence Appeal Tribunal.

Licensed paralegals can also represent clients in a limited area of immigration and refugee law, such as in a hearing before the Immigration and Refugee Board.

Paralegals cannot represent clients in the areas of real estate law, corporate law, wills and estates, or family law. Only lawyers can provide legal services in these areas. This means that paralegals cannot appear in the Ontario Superior Court of Justice (other than the Small Claims Court), nor can they represent a client in a family law proceeding, including a case in the Ontario Court of Justice.

In 2017, the LSO's governing body approved an action plan to create a special licence to permit paralegals and others to assist the public with certain family legal services. This means that paralegals will be permitted to practise some aspects of family law. The LSO is currently in the process of developing this licence to finalize the scope of practice, as well as education and licensing requirements.

Working Environments

Law clerks and legal assistants usually work in law firms, but they can also work in:

- corporate legal departments
- accounting firms
- government departments
- banks
- associations.

² RSO 1990, c P.33.

³ RSC 1985, c C-46.

barrister

The term commonly used to refer to lawyers who appear in court to argue cases through oral advocacy. In Ontario, all lawyers are barristers and solicitors.

solicitor

Historically, a term used to refer to a lawyer who did not appear in court. In Ontario, all lawyers are barristers and solicitors.

commissioner of oaths

Also known as commissioners for taking affidavits, a person authorized by the Province of Ontario to give an oath to a person who is swearing or affirming the truth of the contents of a document. The commissioner asks the declarant to swear or affirm that what is written in a document is true.

notary public

A person who witnesses oaths, signs affidavits, and certifies documents to be true copies of the original document.

What Is Effective Communication?

Communication takes many forms, such as writing a letter or an email to a client or speaking with a client face to face or on the telephone. It also includes drafting other kinds of documents that communicate information to clients, courts, judges, and opposing parties and their legal representatives. This chapter introduces you to oral and written communication.

Effective Oral Communication

Oral communication refers to the expression of ideas and information verbally. Strong interpersonal and oral communication skills are essential to managing relationships and providing high-quality customer service. Law clerks and legal assistants interact with colleagues, lawyers, paralegals, clients, and other third parties on a daily basis. In their roles, they collect and provide information to clients and other third parties. As such, they require effective oral communication skills.

Effective spoken communication is clear, concise, complete, and respectful. It also requires an ability to adjust mannerisms and communication techniques depending on the particular receiver of the information. Being aware of who you are communicating with is essential to employing an effective approach to communicating with a particular individual. For example, how a law clerk or legal assistant explains information to a client who has recently experienced hardship or trauma may be different from how he or she explains that information to someone who has not. Effective oral communication also calls for awareness of and sensitivity to cultural differences, which is further explained below. Chapter 11 also deals with how to speak effectively.

Effective Written Communication

Effective legal writing is necessary for competent client representation in the legal industry. Legal professionals who are effective legal writers convey meaning to their audience in a clear and concise manner. To do so, legal professionals need to follow the conventional rules of grammar and syntax. However, good grammar and syntax are not enough to make writing effective.

Proper style is also necessary to ensure that a document is clear and concise. Style refers to how a writer expresses meaning through the use and arrangement of words, sentences, and numbers. It also refers to the tone and organization of the document. In general, a legal professional can develop a good writing style by (1) simplifying his or her writing; (2) organizing his or her writing in an effective manner; and (3) ensuring that the tone of the text is courteous and appropriate for the intended audience. Chapters 3 and 4 will teach you the tools necessary to achieve proper grammar and a good writing style.

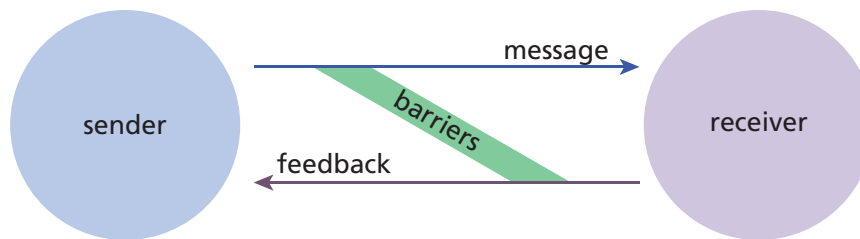
The Communication Process

Everyone communicates. You speak, write, read, and make gestures, all of which can be considered methods of communication. Even when you are not speaking, writing, reading, or gesturing to someone, communication takes place.

The majority of our conscious day is spent communicating. Communication involves more than one person. Even as this material is being read, for instance, it becomes a form of communication between the authors who wrote the material and the student who is reading it.

Even when your attempt to communicate feels unsuccessful, the person you are addressing does *receive* your message. But perhaps he or she is not listening, is not responding in a manner that you feel is appropriate, or is not responding at all. This means that your message is not getting through to the listener for some reason. No response, or an inappropriate response, is still a form of feedback to your message. A traditional diagram used to illustrate this theory is set out in Figure 1.1.

FIGURE 1.1 Communication Barriers



The person communicating (the sender) sends a message to another person (the receiver). The receiver gives feedback to show that the message has been received and how it has been received.

When someone does not appear to respond to your message or responds inappropriately, there are reasons for this breakdown; they are called *barriers to communication*. Possibly, the receiver cannot hear your message clearly; possibly, the receiver does not agree with what you said and does not want to tell you so; possibly, the receiver is not responding for some other reason.

Barriers to Communication

There are a number of possible barriers to communication:

1. *Difficult physical environment.* The room is hot, stuffy, too large, or too small.
2. *Technical problems.* Static on telephone lines or computer crashes can hinder communication.
3. *Lack of attention or interest.* The listener may lack interest in what is being said or may disagree with the speaker.
4. *Cultural differences.* The speaker's age, gender, or ethnicity may be different from the listener's.
5. *Stereotyping.* The receiver may have a fixed set of ideas about the speaker or the speaker's message. These ideas are often based on rumour or assumption and may be incorrect.
6. *Inappropriate body language.* The speaker's body language may not match the message.

7. *Emotional barriers.* The receiver may have feelings of distrust, suspicion, or fear about the situation and information. This can occur, for example, when a client has no experience with the law, the legal system, legal professionals, or law firms. Also, the client may have had a negative experience with the law or a law firm in the past.
8. *Wrong time of day.* The speaker or listener may not be alert during part of the day. For example, a night person may have trouble listening during an early class.
9. *Noise.* Aural distractions may impede listening.
10. *Inappropriate audience.* The audience may not be the right one for the particular message.
11. *Language barriers.* The speaker's language may be vague or confusing. For example, non-native English speakers may not be familiar with common English expressions, slang, and vocabulary.

EXERCISE 1.1

Identifying Barriers to Communication

Take a moment to look around your classroom and at your timetable. What are some of the possible barriers to communication that you see? Do the following barriers, for example, apply to you?

1. Books for the course are expensive. You resent having to pay that much money for one book that you feel you probably will not use entirely.
2. You have three classes in a row; this is the third. You are tired and just want to finish and get home.

Whether or not these examples apply to you, try to identify other barriers to communication in the classroom.

These barriers can seriously affect the communication process. For example, think of how difficult it might be, in the case of a bitter divorce suit, to communicate with a client reacting to what is perceived as a measly settlement offer from a spouse. Emotions are running high, and a desire for vengeance is in the air. In these circumstances, you might find it difficult to communicate with someone who is too emotional to listen. These factors, and many others that will be discussed in this book, make the communication process difficult.

Communicating in a Multicultural Society

Law clerks and legal assistants must sometimes communicate with people whose first language is not English. This occurs in the corporate world and is even more likely to occur in the areas of law that involve individuals, such as family law, real estate law, employment law, and insurance law. You must be able to obtain the information you need to assist these clients, and to convey the appropriate information to them,

without making them feel awkward or uncomfortable. Make every attempt to pronounce names properly, be a good listener, be compassionate, and be aware of cultural differences. For example, in some cultures, direct eye contact is a sign of respect, whereas in other cultures, it is a sign of disrespect.

Be aware of problems that may arise from differences in vocabulary and intonation. Similar words can have different meanings in different cultures and languages, and the way something is said is often more important than the words used. In addition, lawyers, law clerks, and legal personnel are viewed differently from culture to culture and in some cases may be seen as threatening.

Some general guidelines for communicating in a multicultural society are as follows:

1. Use words that are commonly known.
2. Avoid slang or colloquial expressions.
3. Use simple sentences that contain a subject, a verb, and an object.
4. Do not use acronyms, contractions, or abbreviations.
5. Be aware of signs of confusion on the part of the listener.
6. Be an active listener yourself. Active listening skills are discussed in Chapter 10.
7. Be aware that an imperfect understanding of what you are saying does not indicate a lack of intelligence.
8. Use gestures and facial expressions whenever possible to clarify your meaning and to make the listener feel comfortable.

Communicating with People with Disabilities

It is important to communicate with people with disabilities in a way that respects their independence and dignity. A person with a disability has an impairment that limits him or her in some way. There are different kinds of disabilities, which may include:

- physical limitations
- vision loss
- hearing loss
- learning disabilities
- speech or language impairments
- mental health disabilities
- intellectual/developmental disabilities.

Here are a few broad guidelines for communicating with people with disabilities:

1. Acknowledge the existence of a disability, particularly if the person you are communicating with draws attention to it. People with disabilities sometimes use gestures to draw the speaker's attention to their condition; they would prefer that it not be ignored.
2. Understand the nature of the disability.
3. Be resourceful in attempting to establish communication. For example, written notes are usually the best way to communicate with a hearing- or speech-impaired person. Being resourceful also includes being able to offer written communication in different formats, such as electronic format using

Microsoft Word and/or PDF or hard copy in different text types and sizes. Also, allowing assistive devices and supports such as technology/software, service animals, or support persons will allow for effective communication.

The *Accessibility for Ontarians with Disabilities Act*⁴ sets standards for accessibility that Ontario businesses and organizations must follow. One of those standards is to provide customer service that is accessible to people with disabilities.

Law firms provide legal services to the public, and the customer service they provide to their clients must be accessible to people with disabilities. Law clerks and legal assistants should be mindful of the AODA, as well as any policies that a firm created that outline how the firm will provide legal services to people with disabilities. Chapter 11 provides more tips for effectively communicating with people with disabilities.

Working Together

Communicating is often a one-on-one situation. As seen in Figure 1.1, a sender sends a message, a receiver receives the message, and the feedback indicates how much of the message was received, understood, and accepted.

There are many situations, however, when you will be dealing with more than one person. After all, dealing with the process of law is a group effort; for example, you do not complete all of the work on a large real estate transaction by yourself. You need the assistance of land titles agents, gas or electricity department personnel, local government officials, other law firms, and more—an entire range of people to whom you must communicate vital information and from whom you must receive information in return. These people are members of your group. When mixed messages are sent between members of the group, or when various members interpret a message differently and fail to assist one another in the communication process, confusion usually ensues—another communication barrier.

EXERCISE 1.2

Foreseeing Barriers

Imagine that you are a legal assistant involved in the large real estate transaction mentioned in the paragraph above. List some of the potential barriers to communication that might be encountered with the following:

1. the buyer of the property
2. the seller of the property
3. the other law firm that you are dealing with
4. the land titles agents
5. the local government.

⁴ SO 2005, c 11 [AODA].

SUMMARY

Everyone communicates, but the effectiveness of the communication process varies. Effectiveness is reflected in the types of feedback given and depends on how well the barriers to communication between sender and receiver are overcome. Law clerks and legal assistants

must be effective communicators. They must understand that certain barriers to communication, such as language difference or disabilities, present special challenges.

KEY TERMS

barrister, 3

commissioner of oath, 3

Law Society of Ontario (LSO), 2

non-verbal communication, 2

notary public, 3

solicitor, 3

verbal communication, 2

visual communication, 2

written communication, 2

REVIEW QUESTIONS

1. What is a law clerk?
2. Explain the similarities and differences between a lawyer and a paralegal in Ontario.
3. What is the Law Society of Ontario?
4. What is effective written communication?
5. Identify four barriers to communication.
6. Identify three things a law clerk or legal assistant should do when communicating in a multicultural society to increase the effectiveness of the communication.
7. What is the *Accessibility for Ontarians with Disabilities Act*?

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