

Literacy and Safety: Understanding Is Key



By Jamie Jurczak and Peter Mueller, [Taylor McCaffrey LLP](#)

In the case of *R. v. Kenora Forest Products Ltd.* (Ontario Provincial Court, unreported), the employer faced OHS charges due to an incident at its saw mill. The incident involved a worker who, while clearing a jam on a conveyor, suffered a serious injury when his right hand and arm were pulled into the conveyor. At trial, the judge determined that the employer had failed to ensure that a machine's energy source was disabled or locked out before receiving maintenance. The employer's only hope of being acquitted of the charge was to establish due diligence—that is, prove that it had done all that was reasonable in the circumstances to ensure that the

injured worker knew of and *understood* the reason for locking out any machines before performing maintenance on them.

The employer had given the injured worker written procedures detailing the lockout process. However, he claimed that the written procedures, which he described as a 'blizzard of material,' were 'meaningless' to him because he didn't 'understand any of it at all' after having read it for a couple of hours. The judge didn't believe the worker, who'd previously worked as a legal researcher and writer for 17 years. The judge said that the lockout procedures didn't require a post-secondary education to read and comprehend, before concluding that the employer had established due diligence.

Kenora raises a question: What if a worker, who's handed any kind of written material from an employer, is illiterate? Saying that a post-secondary education isn't required to understand a document doesn't clarify what *minimum* education or reading level is necessary to understand written safety materials. In *Kenora*, although the safety materials were voluminous, the worker did, in fact, have a university degree and a previous legal career. Suggestions that he couldn't read and understand the material just weren't believable. But what if he didn't have a university degree? Would the employer still have been able to prove due diligence?

In *KVP Co. v. Lumber & Sawmill Workers' Union, Local 2537 (Veronneau Grievance)*, [1965] O.L.A.A. No. 2, an employer justified its decision to terminate a worker's employment based on a written policy that it had posted at the workplace, which threatened termination if a worker's wages were garnished more than once. This case is very well known because it sets out the requirements that an employer must meet to justify imposing a policy on its own. One of those requirements is that the policy must be brought to the attention of an employer's workers.

The worker in *KVP* could neither read nor write. Unlike the 'blizzard of material' in *KFP*, this policy was one sentence. Yet the worker could have looked at it for 12 hours and still not understood it. However, the arbitrator determined that the policy *had* been brought to the worker's attention because he'd been told what it said by his co-workers.

The worker in *KVP* had found a method of coping with his illiteracy to keep up to speed in the workplace: relying on his co-workers to translate the information. It's hard to believe that every worker who struggles with literacy will necessarily be upfront and open with his or her employer, let alone co-workers, about his or her circumstances, so as to ensure that information is translated for them.

Today, very few Canadians can't read or write (Chris Harwood, "[State of the Literacy and Essential Skills Field](#)," *Canadian Literacy and Learning Network* (2012)). Literacy is understood as being on a continuum, rather than a simple dichotomy of literate/illiterate. In 2003, the International Adult Literacy and Skills Survey surveyed Canadians' literacy based on different levels of proficiency, ranging from Level 1 (low) to Level 5 (strong), with Level 3 representing the skill-level required for most literacy tasks (see Statistics Canada, "[Building on our Competencies: Canadian Results of the International Adult Literacy and Skills Survey](#)," (2003)). In 2012, 44.7% of Canadians aged 16 to 65 had literacy scores of either Level 1 (12.7%) or Level 2 (32%) (Statistics Canada, "[Skills in Canada: First Results from the Programme for the International Assessment of Adult Competencies](#)," (2013)). While *illiteracy* isn't pervasive in Canada today, the fact that nearly half of Canadians of working age are considered to have *low literacy* levels raises numerous concerns, including how employers can maintain a safe and healthy workplace through an informed workforce.

The risks that low-literacy levels in the workplace pose to employers and the safety of their workers aren't hard to

grasp. The stigma associated with low-literacy encourages workers who struggle with reading to hide or not disclose their situation. And many who struggle with literacy have likely developed coping mechanisms to function in a 'reading' world. These coping mechanisms may mean that it's very difficult to tell if someone has a low level of literacy (see, State of the Literacy and Essential Skills Field).

The ease with which a worker can hide his or her circumstances obviously depends on the workplace. For example, suppose it's an employer's practice to have each worker sit and read a new safety policy, and then sign off to confirm that the worker 'understood' it. In this scenario, a worker could easily avoid having to disclose that he or she doesn't understand the policy by pretending to have read the material and then simply signing it.

Compare that scenario to a workplace that tests workers' knowledge of safety policies as part of its safety training program. The testing process has a greater chance of identifying workers who didn't understand the information they read—whether due to a low literacy level, language barriers or some other reason. So where testing is involved, it provides the employer with an opportunity to follow up with workers to ensure their understanding of the safety material.

Workplaces that convey safety information in different ways, such as providing oral seminars or hands-on training and providing safety information in a visual format (such as diagrams or pictures), in addition to requiring workers to read safety materials, have the best chance of ensuring that, at the end of the day, all workers understand the safety policies and procedures, regardless of their level of literacy. In the unfortunate event that an incident does occur involving a worker with literacy problems, the employer who has taken steps to thoroughly determine that worker's understanding of safety rules and made alternate arrangements to convey safety information is more likely to have done its

due diligence in ensuring a safer workplace.

Finally, recognizing the statistics regarding literacy levels, employers should consider the safety policies and procedures they currently have in place. What level of literacy is required to understand them? If you would need a university degree to make heads or tails of what the policies say, they should be redrafted to ensure that they can be read by those who have lower levels of literacy.

Bottom line: The statistics confirm there's a real risk that a worker may not truly understand the written safety information you provide. Although workers may try to make up for their literacy struggles, their coping mechanisms may not necessarily reduce the risks to workplace safety. Employers must be sensitive to this reality and ought to re-evaluate how safety information is conveyed and how workers' understanding of it is measured and confirmed. Ensuring that a workforce is actually informed on safety matters is not only a best practice for defending a workplace safety and health prosecution, but also for reducing the chances of incidents occurring in the first place.

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