

ABORIGINAL PEOPLES AND ACCESS TO LEGAL INFORMATION

**Executive Summary
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Community Legal Education Ontario (CLEO) is a community legal clinic with a mandate to provide legal education and information in plain language to low-income and disadvantaged people in Ontario. CLEO recently undertook a project to examine how it might better serve low-income non-French and non-English linguistic communities. The recommendations from that project were released in a document entitled “Linguistic Access Report”.

Recognizing the unique status of Aboriginal peoples as founding nations, CLEO initiated a parallel process to examine the need for PLEI (public legal education and information) materials in Aboriginal languages. But as the project progressed, it became apparent that linguistic access was not the most appropriate lens through which to examine the legal information needs of Aboriginal audiences. Thus, the project was extended and the research reframed to explore relevant facets, in addition to language, of access to legal information by Aboriginal communities. The objective of this report is to suggest what role CLEO might play and what steps CLEO could take to increase such access.

The discussion is structured as follows:

- Part I** **Context:** Summary of relevant information regarding Aboriginal communities in Ontario and discussion of the appropriate role for CLEO as a non-Aboriginal agency.
- Part II** **Priority topics:** Discussion of the legal issues identified based on the feedback from the respondents.
- Part III** **Delivery formats:** Discussion of the most effective PLEI formats for Aboriginal audiences.
- Part IV** **Aboriginal languages:** Discussion of the role of Aboriginal languages in access to legal information.
- Part V** **Recommendations:** Based on the findings from Parts I through IV.

Due to the evolving nature of the project, three sets of interviews were conducted, each with a different interview schedule. Firstly, as part of CLEO’s linguistic access research, interviews were conducted with service providers with relevant expertise in providing information. Some respondents in this group provide information exclusively for Aboriginal audiences. Others seek to work with Aboriginal and non-Aboriginal linguistic and cultural communities. The objective of this set of interviews was to identify the most effective strategies for reaching non-English and non-French linguistic and cultural communities with information.

Secondly, also during CLEO’s linguistic access research, interviews and one focus group were held with agencies working in Aboriginal communities asking about

communication methods and legal issues focusing on language and access to PLEI. At this point, additional information was also obtained from responses to an optional online survey.

Based on what we learned from these initial consultations, new interview questions were developed. Using these new questions, a third set of interviews and an additional focus group were conducted. These interviews provided particularly rich information. The information from the last set of interviews, supported by what we learned in the earlier consultations, was instrumental in developing the recommendations.

Part I: Context

There is huge diversity among Aboriginal communities, and much has been written on the many issues these communities face. Aboriginal peoples not only face the highest rates of poverty, but also are over-represented in the justice system and the child welfare system. As well, there are specific legal issues that are unique to Aboriginal peoples due to their legal status, and the sovereignty of First Nations. The law in this area is evolving, and Aboriginal audiences will require information on changes that impact them.

CLEO's mandate is to help meet the pressing needs of low-income and disadvantaged communities for legal information. The legal information needs of Aboriginal communities are exceptionally pressing. Nonetheless, there are unique considerations involved when non-Aboriginal agencies provide service and develop materials for Aboriginal communities. CLEO recognizes that Aboriginal agencies are best placed to take the lead in this area and that it is not appropriate for CLEO to work directly in this area without the support of, and in partnership with, one or more Aboriginal agencies. Based on the feedback, there is a potential role for CLEO, albeit a very different role from the one CLEO typically plays in PLEI provision for non-Aboriginal communities.

The majority of respondents indicated that CLEO should undertake projects with and for Aboriginal communities. But there was significant concern about Aboriginal agencies playing a purely advisory role. New progressive research principles require that Aboriginal communities have "ownership, access, control and possession" (OCAP) over projects in their communities; these principles apply also to the production of information, such as legal information.

While the consultations conducted for this report may provide a basis for moving forward, consultation can only be the beginning of the process. Many Aboriginal agencies believe that CLEO should produce materials with and for their communities; at the same time, the OCAP principles require that Aboriginal agencies maintain primary control over the production of PLEI materials for Aboriginal audiences. This is both a new and challenging endeavour for CLEO, and the process and the outcome are not certain at this point. However, several points are clear. Firstly, CLEO has a responsibility to initiate discussions toward partnership with one or more Aboriginal agencies. Secondly, at the outset, it is important for CLEO and potential partners to invest time in discussing and ensuring mutual agreement on what form the relationship will take, and

spelling out the rights and responsibilities of all partners at each stage of PLEI materials development projects.

Part II: Priority topics

Several respondents stated that they could not identify which legal issues should be addressed first because so many are critical to the Aboriginal community. Nonetheless, several priority topic areas for legal information emerged from the interviews. These were delineated most clearly by the final set of interview respondents, who were asked which legal issues should be addressed first, and also to specify as much as possible within topic areas.

There was consensus from agencies representing both rural and urban clientele that materials are needed on Indian status. The Indian Act confers certain rights or benefits upon registered or status Indians. Registration can also affect band membership. The need for materials on Indian status was linked to the problem of unstated paternity on status applications, leading to denial of registration and declining numbers of status Indians. While some respondents indicated that there are existing government materials on Indian status, they commented that these materials are too lengthy and inaccessible for most readers.

Family law issues were among those most frequently cited by the respondents. Of all of these, child welfare was the most frequent area of concern. Respondents indicated that information on child welfare is important not only for parents, but for all family members, who may find themselves in or wish to engage in caregiver relationships. Respondents indicated that Aboriginal parents often are unaware that they are in an adversarial situation when dealing with child protection workers, and they comply with the workers' requests against their best interests.

Matrimonial property on reserve was another area of concern. Due to the significant migration between reserves and urban areas, respondents indicated that Aboriginal women living in urban centres and other non-reserve areas would also use information about matrimonial property on reserve. There also appears to be a need for materials dealing with custody and support, particularly the role of the Family Responsibility Office.

Many respondents indicated criminal law materials as the priority for PLEI projects. The case of *R. v. Gladue* [1999] 1 S.C.R. 688 requires that the court consider an offender's Aboriginal heritage and alternatives to imprisonment in devising an appropriate sentence, whenever an accused self-identifies as Aboriginal. The principles of *Gladue* have not been promoted outside of major centres, and thus not only clients, but also judges and lawyers may be unaware of its application. In many parts of Ontario, individuals may not self-identify because they are unaware that their Aboriginal heritage has any relevance to the proceedings. The need for materials on *Gladue* is linked directly to the over-incarceration rate for Aboriginal people.

There is a need for information on the criminal process more generally: there was consensus that clients require more information about their rights at every stage of the criminal process, including pre-charge, post-charge, and on different forms of release. Other areas of concern include information on the Youth Criminal Justice Act, elder abuse, criminal injuries compensation and interaction with law enforcement, including the OPP and band constables. Respondents were also concerned by the limited access to counsel, court and legal aid in rural and remote areas.

Interview respondents indicated that Aboriginal peoples need more information on their rights to hunt and fish. These rights protect traditional activities associated with Aboriginal culture and heritage. As well, the exercise of these rights may be a significant source of support for low-income individuals in remote and rural areas. Through recent jurisprudence, these rights continue to evolve.

Residential schools claims are another area on which materials are needed. Low-income Aboriginal claimants, previously traumatized by their experience at residential schools, are frequently re-victimized by unscrupulous counsel. Although there are materials for lawyers on the residential school process, there is a lack of information for claimants on how the process works and how to work with a lawyer in making a claim. Due to the current process for resolution of claims, this issue is very timely.

In addition to the topic areas described above, respondents cited many other subjects on which they would like to see legal information materials for Aboriginal audiences. Several existing CLEO publications are of use to Aboriginal peoples, but additions or modifications could improve their usefulness. Throughout the interviews it became clear that Aboriginal audiences would benefit if PLEI materials included information on Aboriginal-appropriate services.

Part III: Delivery formats

Printed text materials are considered to be very effective. While many respondents believe that alternative methods of information delivery should be pursued, they consider print the priority among the various options. With respect to print, short materials were generally preferred. Some respondents recommended that short publications be supplemented with access to more detailed information in a booklet form. However respondents suggested that the appropriate length for print material depends to some extent on its placement. Audio could be a helpful supplement to print for particular issues and particular communities, mainly in more remote northern communities in Ontario.

Due to the remoteness and isolation of many Aboriginal communities, there is great diversity between communities in terms of available media. Many respondents indicated that their agency could print enough copies from an online text version to suit their distribution needs. However agencies serving Aboriginal peoples in more remote locations would need hard copies of materials. Based on this feedback, it would appear that CLEO could create print-friendly online materials which would meet the needs of

many Aboriginal agencies, but any funding requests should include a budget line to provide hard copies to communities that require this assistance.

Graphics are an essential component of any PLEI materials for Aboriginal audiences. Respondents suggested Aboriginal individuals are more likely to pick up materials with an identifiable symbol. Similarly, in certain circumstances, video materials would make the information more accessible, because of the visual aspect.

Part IV: Aboriginal languages

The use of Aboriginal languages varies throughout the province. Respondents recognize the importance of preserving Aboriginal languages, but are less certain that Aboriginal people would use PLEI materials in those languages. Use of Aboriginal languages is less prevalent in cities. However, respondents in remote locations believe there is a need for translation, because in their experience many people in their community, particularly elderly people, only understand their Aboriginal language. Translated materials could be limited to specific topics relevant in remote communities.

Part V: Recommendations

The recommendations are divided into two parts. Firstly, several recommended guidelines have been distilled from the findings to guide CLEO in the area of Aboriginal access to PLEI. Secondly, specific items are suggested for future action. These action items are based upon the recommended guidelines, in combination with recognition of CLEO's mandate and expertise.

(a) Recommended guidelines

- (1) The unique status of Aboriginal peoples and the nature of poverty, discrimination and disadvantage that they experience, particularly with respect to the justice system, requires that CLEO seek to work with Aboriginal communities to try to address the particular needs of Aboriginal peoples for PLEI.
- (2) In order to participate in PLEI for Aboriginal audiences, CLEO needs guidance and the involvement of one or more Aboriginal partner organizations. Thus, CLEO should initiate discussions with one or more Aboriginal organizations for the purpose of partnership development. The success of any initiatives turns on the mutuality of this relationship and the interest and commitment of both partners. It is important for CLEO and potential partners to discuss what form the relationship will take, and spell out the rights and responsibilities of all partners at each stage of PLEI materials development projects.
- (3) There are several Aboriginal-specific legal topics on which respondents believe new materials should be produced. Based on the interview feedback, the priority medium for these materials should be text materials. As stated earlier, CLEO will need to partner with one or more Aboriginal agencies in order to engage in this work.

(4) The capacity of Aboriginal agencies to access online resources varies across the province. To the extent possible, new materials should be available as online print-friendly documents, as many agencies indicated that this would be sufficient. However, the partners should include in any funding proposals a budget line to provide hard copies to communities that require this assistance.

(5) Graphics are important to engage Aboriginal audiences. Audio and video materials may be helpful for particular topics and in particular locations.

(6) While respondents recognize the importance of preserving Aboriginal languages, they were less certain that Aboriginal people would use PLEI materials in those languages. However, there was strong suggestion that for certain topics, materials in Aboriginal languages could be useful in remote communities, particularly if available orally. Thus, after culturally appropriate English text materials have been developed, translation and adaptation into Aboriginal languages, and particularly audio adaptation in those languages, should be considered.

(7) Respondents who were familiar with CLEO materials indicated that they are pleased with the level of English and design of these publications. Several existing publications are of use to the Aboriginal population, but additions or modifications could improve their relevance and accessibility to Aboriginal audiences.

(b) Action items

Item 1: CLEO should approach one or more Aboriginal agencies to develop a partnership to create new text materials on issues specific to Aboriginal communities. The partners will need to seek funding for this work.

Possible partners: The Ontario Federation of Indian Friendship Centres (OFIFC) is in some ways a parallel organization to CLEO, due to their province-wide mandate, and their ability to deliver information through Friendship Centre members and Native Courtworkers throughout the province. Nishnawbe-Aski Legal Services Corporation (NAN) has a staff position allocated to PLEI, is mandated to provide services to many of the most remote northern communities, and has legal expertise in issues on reserve. Both NAN and OFIFC are members of the CLEONet Advisory Group. Aboriginal Legal Services of Toronto is a sister community legal clinic, and has legal expertise in areas impacting urban Aboriginal peoples. One or more of these agencies should be approached about a possible partnership. Several other Aboriginal organizations might also be willing and able to partner.

Partnership development: A partnership agreement will need to be developed to ensure agreement on key issues such as the roles of each partner, especially regarding responsibilities. Issues such as which partner will have primary responsibility for preparing and submitting funding applications, administering funds, decision-making on particular components, and coordinating should be covered in the agreement.

Coordination: If funding permits, an individual with experience working with Aboriginal agencies might be retained to coordinate this work. Alternatively, an academic institution with Aboriginal affiliations such as Negahneewin College of Indigenous Studies, Confederation College or the Community Economic and Social Development Program at Algoma University might be willing to serve as a coordinating body. Involvement of such an institution may have added benefits, in terms of allowing for participation of Aboriginal students, and academic expertise in project evaluation.

Possible topics: The partners should confer with the Legal Aid Ontario Aboriginal Issues Advisory Committee and other bodies as appropriate prior to undertaking materials on a specific topic, to prevent duplication of existing resources. Based on the feedback from the interviews, the following topics are recommended as priority areas for new Aboriginal-specific text publications:

- Application of Gladue
- Indian status
- Harvesting rights
- Residential schools claims

Child welfare and matrimonial property on reserve were also identified as high priority. Possibly, these issues could be addressed through CLEO's current collection (see Items 2 and 3, below). If that is not possible, then these topics should be added to the above list.

Design and distribution: The partnership should consider the appropriate design and length of the new materials, including graphics. An immediately recognizable symbol or logo of the Aboriginal partner agency on the materials will assist with distribution to Aboriginal audiences. Once materials have been prepared on the selected topics, the partnership can consider whether the topics should also be adapted for audio or video distribution and into Aboriginal languages. Should CLEONet succeed in obtaining funding for a multilingual portal, the portal can provide another vehicle for distribution of materials in Aboriginal languages.

Item 2: CLEO should look for ways, including funding, to develop new CLEO materials on topics relevant to both the Aboriginal community and other low-income communities.

Child welfare: There is strong anecdotal evidence to suggest that additional child welfare information is necessary for both Aboriginal communities as well as members of other low-income communities. As a first step, CLEO should look for ways to expand its family law series by developing a booklet on child welfare and child protection.

CLEO's booklet could have a specific section on issues regarding children of Aboriginal heritage. CLEO should seek the guidance of an Aboriginal agency with which it is

developing a partnership as in Item 1, above, to explore the content of this section. If the Aboriginal-specific information cannot be covered in sufficient detail in the booklet, then an Aboriginal-specific booklet on child welfare may be required instead, and child welfare could be added as a topic for Item 1, above.

There was some suggestion that child welfare materials are also needed for children. The possibility of developing separate materials for a young audience should be considered during the exploration.

Criminal process: CLEO should explore developing new materials on the general criminal process. Based on the interview feedback, a poster series may be the most immediate way to provide information on criminal procedure. If an active partnership is developed and funding is secured, a video for screening in courthouses would also be helpful.

Item 3: CLEO should initiate an audit of selected CLEO materials to ensure that they are as useful as possible to Aboriginal peoples.

CLEO should audit its current materials to determine whether Aboriginal-specific content, referral information or graphics are required to make selected publications more inclusive of Aboriginal peoples. There are several possibilities as to when and how this audit might be conducted.

CLEO should seek the guidance of an Aboriginal agency with which it is developing a partnership as in Item 1, above, with respect to the audit. Some examples of CLEO publications that may benefit from this audit include:

- Family law: it may be useful to add a section addressing matrimonial property on reserve
- Family and criminal law: it may be useful to indicate that persons of Aboriginal heritage involved in family or criminal court proceedings can obtain support and information from Aboriginal courtworkers
- Selected housing pamphlets: it may be useful to add a section indicating the lack of application of provincial housing legislation on reserve
- Disability benefits: it may be useful to include information on disability issues that have a disproportionate impact on the Aboriginal community