

**ABORIGINAL PEOPLES AND ACCESS TO LEGAL  
INFORMATION**

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## Contents

<b>Introduction</b>		<b>5</b>
<b>Part I: Context</b>		<b>7</b>
(a) Income levels in Aboriginal communities		8
(b) Over-representation in the justice system		10
(c) Is there a role for CLEO?		12
(i) Non-Aboriginal initiatives in Aboriginal communities		12
(ii) Aboriginal perspectives on outside initiatives and on CLEO's role		13
(iii) Possible role for CLEO		15
<b>Part II: Priority topics</b>		<b>16</b>
(a) Indian status		17
(b) Family law		18
(c) Criminal law		20
(d) Harvesting rights		22
(e) Residential schools		23
(f) Other topics		23
<b>Part III: Delivery formats</b>		<b>24</b>
(a) Printed text		25
(b) Online text materials		26
(c) Graphics		26
(d) Audio		27

	(e) Video . . . . .	29
	(f) Other methods . . . . .	29
<b>Part IV:</b>	<b>Aboriginal languages.</b> . . . . .	<b>30</b>
<b>Part V:</b>	<b>Recommendations</b> . . . . .	<b>32</b>
	(a) Recommended guidelines . . . . .	33
	(b) Action items . . . . .	34
<b>Appendices</b>	. . . . .	<b>37</b>
	A. List of respondents . . . . .	37
	B. First interview schedule . . . . .	39
	C. Second interview schedule . . . . .	41
	D. Online survey questionnaire . . . . .	44
	E. Third interview schedule . . . . .	46
<b>References</b>	. . . . .	<b>49</b>

## **Introduction**

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. As an integral part of the community legal clinic system, CLEO has traditionally relied on its clinic partners to identify legal information needs by low-income communities, and provide a direct link to the target audience. Over the years, although the clinics have remained steadfast partners, the demand for CLEO publications by community agencies has grown substantially, and now greatly exceeds the number of publications ordered by legal clinics. Feedback from these agencies, as well as from legal clinics, led CLEO to undertake a project to examine how it might better serve low-income non-French and non-English linguistic communities. The recommendations from that project were recently released in a document entitled “Linguistic Access Report”.

Recognizing the unique status of Aboriginal peoples<sup>1</sup> 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.

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<sup>1</sup> Throughout this report, “Aboriginal peoples” is used to recognize the diversity of Aboriginal origins, cultures and identities. “Aboriginal people” is used where the intent is to refer to more than one Aboriginal person. Different forms may appear when the report quotes directly from another source.

In total, 56 individuals from over 40 agencies provided feedback either through an individual interview or focus group. Participating agencies included five community legal clinics and one Legal Aid Ontario (LAO) office serving largely Aboriginal clientele. Most of the individual interviews were conducted by telephone. In addition, 17 individuals responded to an optional online survey.

A list of interview respondents and focus group participants is provided in Appendix A. Respondents agreed to be identified in this list, on the understanding that the final report would be drafted so that responses cannot be attributed to any individual or agency. Feedback from the respondents will be referred to throughout this report, as appropriate.

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. Sixteen of those interviews included questions about Aboriginal access to information<sup>2</sup>. Some respondents in this group of sixteen 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. That interview schedule is attached as Appendix B.

Secondly, also as part of CLEO's linguistic access research, interviews were held with approximately 15 agencies working in Aboriginal communities asking about communication methods and legal issues focusing on language and access to PLEI. That interview schedule is attached as Appendix C. One focus group was held using this interview schedule.

The optional online survey referred to above was conducted at this stage of the linguistic access research. The online survey was designed to allow for feedback from individuals and agencies that did not participate in an interview or focus group. Of the online responses received, 17 were from individuals<sup>3</sup> serving primarily Aboriginal clientele. That survey is included as Appendix D.

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<sup>4</sup>. 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 at the end of this report. That final interview schedule is attached as Appendix E.

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<sup>2</sup> Thus those 16 agencies are included on the respondent list for both the Linguistic Access Report and this report.

<sup>3</sup> The number of survey responses submitted from staff serving primarily Aboriginal clientele was 22, but five of those provided only non-substantive information.

<sup>4</sup> Using the final interview schedule, additional feedback was sought from three of the agencies that had been interviewed using the interview schedule that focused on linguistic access to legal information. An additional 17 individuals were interviewed using the final interview schedule.

## **Part I: Context**

There is huge diversity among Aboriginal communities, and much has been written on the many issues these communities face. It has often been commented that Aboriginal communities have been the frequent source of data for outside researchers, with limited positive outcome for the communities themselves. This section of the report does not aim to provide a comprehensive discussion of Aboriginal communities and the issues that they face. Rather, it seeks to highlight those aspects that are most relevant for CLEO's mandate: to meet the most pressing needs of low-income and disadvantaged communities in Ontario for legal education and information. Hopefully this will provide greater context for the interview feedback and contribute to increased relevance and accessibility of CLEO materials for Aboriginal peoples.

While this section includes statistical references, it should be noted that statistical data for the Aboriginal population is unreliable. During the 2001 Census, Statistics Canada was unable to completely enumerate 17 Ontario reserves, including some large reserves. It is unlikely that the urban Aboriginal homeless population has been reliably enumerated (Rudin, 1997). This is significant as Aboriginal people are over-represented in the homeless population (Canadian Council on Social Development, 2006). As well, much of the statistical data available is Canada-wide, as opposed to Ontario-specific. Given the mobility of Aboriginal people, discussed below, Canada-wide statistics may be useful and some of these are also included.

Aboriginal peoples live in the greatest concentration in the North and on the Prairies, however Ontario is the province with the greatest number of Aboriginal people (Abele, 2004). In Ontario, 188,315 people identified as Aboriginal<sup>5</sup> during the 2001 Census; 976,305 people identified as Aboriginal Canada-wide<sup>6</sup>. Statistics Canada estimates the census count for incompletely enumerated Indian reserves and Indian settlements in Ontario as 14,345<sup>7</sup>. An Indian and Northern Affairs Canada (INAC) document from 2000 states: "*Ontario has 127 First Nations, a sizeable urban population, and many Aboriginal settlement areas (communities without reserve lands or First Nation status)*" (INAC, 2000, Ontario Treaties).

While many First Nations in Ontario are affiliated with four Political Treaty Organizations (Grand Council Treaty No.3, Nishnawbe-Aski Nation, Anishinabek Nation, and the Association of Iroquois and Allied Indians), others are independent. In addition, tribal councils comprise groupings of First Nations with common interests that voluntarily work together to provide advisory and/or program services to their members.

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<sup>5</sup> According to the 2001 Census Dictionary, "Aboriginal Identity": "[r]efers to those persons who reported identifying with at least one Aboriginal group, i.e. North American Indian, Métis or Inuit (Eskimo), and/or those who reported being a Treaty Indian or a Registered Indian as defined by the Indian Act of Canada and/or who were members of an Indian Band or First Nation".

<sup>6</sup> Source: Statistics Canada's Internet Site, Aboriginal Identity Population, 2001 Counts, for Canada, Provinces and Territories – 20% Sample Data. Ottawa: Statistics Canada, 2001 Census of Population.

<sup>7</sup> Source: Statistics Canada's Internet Site, Appendices to Topic-based Tabulations, Aboriginal Peoples of Canada, 2001 Census. Ottawa: Statistics Canada. 2001 Census of Canada.

Many First Nations have chosen to affiliate with tribal councils (INAC, Ontario Treaties, 2000).

According to Statistics Canada's Aboriginal Peoples Survey, in 2001 Ontario was the province with the largest number of Aboriginal people living in non-reserve areas at 148,000 people (Statistics Canada Housing Family and Social Statistics Division, 2003)<sup>8</sup>. These individuals may access culturally appropriate services from a variety of agencies, depending on availability.

In particular, the Friendship Centres provide and identify resources to respond to the needs of the Aboriginal urban population. The Friendship Centre movement began in the mid-1950s, as increased numbers of Aboriginal people began moving to urban areas. In Ontario, the Ontario Federation of Indian Friendship Centres (OFIFC) acts as a coordinating body, providing training and administrative support for 28 member centres across the province (OFIFC, undated). OFIFC administers an Aboriginal courtworker program which provides legal information and support, but not legal advice, to Aboriginal people involved in criminal and family law processes (OFIFC, The Ontario Aboriginal Courtwork Programme, undated).

Aboriginal people are highly mobile:

*“Aboriginal people are more mobile than other Canadians. Their high level of mobility creates challenges for planning and implementing programs in education, social services, housing and health care, especially in urban areas.*

*Overall, in the 12 months before the May 15, 2001 Census, 22 percent of Aboriginal people moved, compared with only 14 percent of their non-Aboriginal counterparts. About two thirds of those who moved, did so within the same community, while about one third of movers changed communities” (Statistics Canada, 2003).*

Interview respondents also made reference to this mobility. Students may leave remote communities to attend high schools in larger centres; often their families accompany them. Respondents also commented that many clients migrate between provinces. Within cities, many Aboriginal people are homeless or under-housed; thus they have no fixed address, and are difficult to contact. This was cited as a challenge in service delivery of any kind.

**(a) Income levels in Aboriginal communities**

The high incidence of poverty among Aboriginal people is beyond dispute. As discussed earlier, Census data is unreliable. Nonetheless, even that data indicates the high rate of

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<sup>8</sup> Note that this number appears high when compared with the total number of people in Ontario who identified as Aboriginal during the 2001 Census, referred to earlier. The Aboriginal identity population for the Aboriginal Peoples Survey was larger than the 2001 Census Aboriginal identity population. For an explanation of the factors that may have led to this discrepancy, please see Statistics Canada Housing Family and Social Statistics Division, 2003, pp. 35-36.



poverty among Aboriginal peoples. In Ontario, at the time of the 2001 Census, the incidence of low-income<sup>9</sup> among Aboriginal economic family persons<sup>10</sup> was 24.3 percent; that number rises to 50.0 percent for unattached individuals 15 years and over<sup>11</sup>. This figure does not even include Indian reserves, as the 2001 Canada Census did not calculate the incidence of low income for economic families<sup>12</sup> and unattached individuals living in the Yukon, the Northwest Territories, Nunavut, and on Indian reserves<sup>13</sup>. Canada-wide, in 2001, the poverty rate for Aboriginal children under age 15 was 41 percent compared to 18 percent for the non-Aboriginal population; Aboriginal youth ages 15 to 24 had a poverty rate of 37 percent compared to 19 percent for non-Aboriginal youth (Canadian Council on Social Development, 2006).

Reports repeatedly show that Aboriginal Canadians must endure worse living conditions than non-Aboriginal Canadians, whether or not they live on reserve: conditions are more crowded, homes are more likely to require major repair, and access to adequate water and sewage processes is more limited. More than 10,000 on-reserve homes lack indoor plumbing and approximately one in four reserves has an inadequate water or sewage system; toxic mould, leakage, and improper insulation and heating are also frequently reported (Commission on Human Rights, 2004). Contaminated water is a recurring problem, impacting health on many reserves (National Aboriginal Health Organization 2002 and 2005).

The situation is equally grave in urban settings. In 1995, on average 55.6 percent of Aboriginal urban residents in Canada lived in poverty compared to 24 percent of non-

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<sup>9</sup> “Measures of low income known as low income cut-offs (LICOs) were first introduced in Canada in 1968 based on 1961 Census income data and 1959 family expenditure patterns. At that time, expenditure patterns indicated that Canadian families spent about 50 percent of their total income on food, shelter and clothing. It was arbitrarily estimated that families spending 70 percent or more of their income (20 percentage points more than the average) on these basic necessities would be in “straitened” circumstances. With this assumption, low-income cut-off points were set for five different sizes of families. “Subsequent to these initial cut-offs, revised low-income cut-offs were established based on national family expenditure data from 1969, 1978, 1986 and 1992. These data indicated that Canadian families spent on average, 42 percent in 1969, 38.5 percent in 1978, 36.2 percent in 1986 and 34.7 percent in 1992 of their total income on basic necessities. Since 1992, data from the expenditure survey have indicated that this proportion has remained fairly stable. By adding the original difference of 20 percentage points to the basic level of expenditure on necessities, new low-income cut-offs were set at income levels differentiated by family size and degree of urbanization. Since 1992, these cut-offs have been updated yearly by changes in the consumer price index” (2001 Census Dictionary).

<sup>10</sup> “Economic family persons refer to two or more household members who are related to each other by blood, marriage, common-law or adoption, and thereby constitute an economic family” (2001 Census Dictionary).

<sup>11</sup> Source: Statistics Canada’s Internet Site, Selected Income Characteristics (35), Aboriginal Identity (8), Age Groups (6) and Sex (3) for Population, for Canada, Provinces, Territories and Census Metropolitan Areas, 2001 Census – 20 percent Sample Data. Ottawa: Statistics Canada, December 10, 2003. 2001 Census of Canada. Catalogue number 97F0011XCB2001047.

<sup>12</sup> Economic family “refers to a group of two or more persons who live in the same dwelling and are related to each other by blood, marriage, common-law or adoption” (2001 Census Dictionary).

<sup>13</sup> Source: Statistics Canada’s Internet Site, Product Notes, Selected Income Characteristics (35), Aboriginal Identity (8), Age Groups (6) and Sex (3) for Population, for Canada, Provinces, Territories and Census Metropolitan Areas, 2001 Census-20 percent Sample Data. Ottawa: Statistics Canada, December 10, 2003. 2001 Census of Canada. Catalogue number 97F0011XCB2001047.

Aboriginal urban dwellers. In Thunder Bay and London, the poverty rate for Aboriginal people was more than triple the rate for non-Aboriginal people (Abele, 2004). Data for the Toronto Census Metropolitan Area (CMA) indicates that in 2001:

*“Of persons in the Toronto CMA whose ancestry was entirely Aboriginal, 31.1 percent were below the low income cutoff in 2000, more than twice the population average of 15.0 percent. Poverty among children up to the age of 17 was even higher, 42 percent, compared to the population average of 16.9 percent. Persons with Aboriginal and non-Aboriginal ancestry experienced slightly more poverty than average, 16.3 percent for Aboriginal persons with British and/or French ancestry, and 20.0 percent for those with Aboriginal and any other ancestry”* (Ornstein, 2006).

In a 2003 survey of parents at Friendship Centres across Ontario, 47 percent of the sample reported personal income as less than \$15,000 per year. An additional 19 percent earned less than \$10,000 per year and 79 percent indicated that they worry about running out of food or money to buy food (OFIFC, 2003). This problem is exacerbated in remote and northern communities where costs are higher (OFIFC, 2000):

*“The only ethnic group that was significantly associated with hunger were persons of aboriginal descent (North American Indian, Inuit, Métis). Compared with the prevalence of 3.9 percent in the total survey population, Aboriginal people were four times (16.0 percent) more likely to report ever experiencing hunger than did households representing other ethnic groups . . . The glaring exception in the demographics of hungry families is the overrepresentation of the aboriginal population who suffer from extremes of poverty in Canada [sic]”* (OFIFC 2000, Urban Aboriginal Child Poverty, quoting a Human Resources and Development Canada study)<sup>14</sup>.

Based on the 2001 Canada Census<sup>15</sup>, in Ontario in homes where Ojibway is most often spoken, the incidence of poverty is 62.50 percent; in homes where Cree is most often spoken, the incidence is 39.29 percent. This data likely masks the true extent of poverty among Aboriginal peoples for several reasons. As explained earlier, many reserves were not enumerated and the Aboriginal homeless population was not adequately enumerated. In addition, as will be discussed later in this report, many Aboriginal people do not speak an Aboriginal language.

#### **(b) Over-representation in the justice system**

The over-representation of Aboriginal people in the justice system is well documented. In the words of one of the interview respondents, *“the law usually happens to Aboriginal*

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<sup>14</sup> That report indicates that this data does not even include on-reserve populations.

<sup>15</sup> The most detailed statistical information on language groups and low-income is available through data that Legal Aid Ontario (LAO) commissioned from Statistics Canada based on samples from the 2001 Canada Census. That data provided a breakdown of languages most often spoken at home in private households and low-income status for Ontario legal clinic catchment areas. The data does not indicate whether people are able to speak or read English and/or French in addition to home language or if there is ability to read in home language, as well as to speak it.

people”. Aboriginal people have the highest rate of policing, conviction and incarceration of any identifiable group in Canada. (OFIFC, 2004, Undue Trials). In *R. v. Gladue*, [1999] 1 S.C.R. 688, after reviewing the statistics and studies conducted on incarceration rates for Aboriginal people, the court stated:

*“ These findings cry out for recognition of the magnitude and gravity of the problem, and for responses to alleviate it. The figures are stark and reflect what may fairly be termed a crisis in the Canadian criminal justice system. The drastic over-representation of aboriginal peoples within both the Canadian prison population and the criminal justice system reveals a sad and pressing social problem.”*

Similarly, Aboriginal children are over-represented in the child welfare system: they comprise 5 percent of the general population under 14 and 40 percent of all children in care in Canada (OFIFC, 2004, Undue Trials, quoting Child Welfare League of Canada).

There have been numerous high-profile cases of racism, discrimination and injustice concerning Aboriginal people. In 1997, Associate Chief Judge Murray Sinclair stated:

*“The great flaw of our justice system is that the justice system somehow assumes by orienting things the way we do, we are able to correct everything and can do it infallibly. The reality however, is the system is fallible at virtually every step in the process, and the challenge of the process is to make it as little fallible as possible.*

*The unfortunate thing is what our inquiry and every other inquiry in Canada has found, concerning Aboriginal people in the justice system. That is, when the justice system can be fallible where Aboriginal people are concerned, it is fallible. It fails at virtually every point in the system in the process.*

*This is understandable because quite frankly, Aboriginal people and the Euro-Canadian justice system they come into contact with are inherently in conflict. So it is understandable that where a system orients people to do things a certain way vs. Aboriginal people who come from a system that orients them to do things differently, will naturally do things at odds with the system”* (Nishnawbe-Aski Legal Services Corporation, 2004).

The court in *R. v. Gladue* [1999] 1 S.C.R. 688 summarized:

*“The unbalanced ratio of imprisonment for aboriginal offenders flows from a number of sources, including poverty, substance abuse, lack of education, and the lack of employment opportunities for aboriginal people. It arises also from bias against aboriginal people and from an unfortunate institutional approach that is more inclined to refuse bail and to impose more and longer prison terms for aboriginal offenders. There are many aspects of this sad situation which cannot be addressed in these reasons.”*

Lack of understanding of the dominant legal culture by Aboriginal people involved in the justice system is another significant factor leading to over-incarceration. It is also of particular relevance to CLEO's mandate to provide public legal information. Aboriginal accused may enter guilty pleas unnecessarily, due to differing concepts of justice, and an absence of the concept of "guilt" and "innocence" in many Aboriginal cultures (Dumont, 1996; Mannette, 1992). Dumont states:

*"A study of these core values, with their ensuing behaviours, comparing them with that of the Euro-Canadian culture, shows that continuing difficulties for Aboriginal people in conflict with the law and in relating to the justice system can be directly traced to the unsuccessful meeting of two distinctive cultures and traditions".*

**(c) Is there a role for CLEO?**

Aboriginal communities represent the original occupants and founders of Canada. In addition to many other forms of oppression, Aboriginal peoples have been displaced from their traditional lands, in most cases through treachery. Their children were subsequently displaced from their homes via enforced enrolment in the residential school system and the Sixties Scoop removal of Aboriginal children for adoption outside their communities (Imai, 2000). This history of betrayal, of injustice upon injustice over centuries, cries out for action from anyone with a conscience.

As described above, Aboriginal peoples not only face the highest rates of poverty, but also are over-represented in the justice 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 most 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 services and develop materials for Aboriginal communities. Some of these considerations are discussed below, through the experience of non-Aboriginal initiatives in Aboriginal communities and the views of Aboriginal agencies with respect to such initiatives, as well as their perspectives on CLEO's role. Based on this discussion, some suggestions are made regarding an appropriate role for CLEO.

**(i) Non-Aboriginal initiatives in Aboriginal communities**

Many studies argue the importance of trust relationships in provision of information, leading to the popularity of intermediaries and peer programs. This is pivotal in Aboriginal communities, where the residential school system has created a legacy of trauma around educational initiatives (Royal Commission, 1996). Teachers and social workers were frequently and quite recently servants in Canada's betrayal of the First

Nations. This history is a barrier to work in these communities, as initiatives by non-Aboriginal agencies carry suspicion.

Interview respondents from non-Aboriginal agencies indicated varying degrees of success in their outreach to Aboriginal communities. For some of these respondent agencies, the work of creating relationships with Aboriginal communities is just beginning. At least four non-Aboriginal interview respondents who have worked extensively in Aboriginal communities, advised that the key is to be patient, and invest time in building and nurturing partnerships. One of these respondents stated that success requires “*longevity and continuity*”, adding that an Aboriginal audience is “*judging the person providing material, not the material itself*”.

Consideration of health promotion projects in Aboriginal communities supports the importance of partnership and patience. In the area of diabetes prevention alone there has been extensive work with the Aboriginal population (examples include Daniel, 1999; Gittlesohn et al, 1996; Gray-Donald et al, 2000; McCabe et al, 2003; Potvin, 2003; Roubideaux et al, 2000). Projects reviewed suggest that the Aboriginal community must be integrated into development and delivery of these projects<sup>16</sup>. Thus significant time needs to be invested in developing relationships with Aboriginal communities and agencies. Osborne states

*“ . . . developing roles and relationships with aboriginal communities need to be based on reaching out, listening, learning, and asking “how should we go about doing this together”. Soliciting direction and involvement of aboriginal leaders is essential. Time to build trust needs to be planned into any strategy”* (Osborne 2001).

**(ii) Aboriginal perspectives on outside initiatives and on CLEO’s role**

CLEO appears to be relatively unknown in the Aboriginal community, outside of the legal clinic system. It is difficult to quantify how many of the interview respondents had previously used CLEO materials, because this question was not specifically asked in the interview schedules. But at least five respondents working at Aboriginal agencies

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<sup>16</sup> Daniel et al (1999) describes a 24-month diabetes prevention project with an Aboriginal population in British Columbia. There was a single intervention community, and two comparison communities. During a seven-month pre-intervention phase, interviews with community members were used to determine appropriate strategies, followed by a 16-month intervention phase, which included aerobics, gentle exercise, cooking demonstrations, supermarket tours and monthly flyer distribution. Unfortunately, there was no difference in quantifiable outcomes between the intervention and comparison communities at the end of the project. The researchers speculated that the project theory was not sufficiently integrated with Aboriginal culture, and the intervention phase was too short.

Similarly, an intervention to modify dietary intake, weight gain and plasma glucose levels among pregnant Cree women (Gray-Donald et al, 2000) did not succeed in changing outcomes<sup>16</sup>. In this project two nutritionists were provided for four communities. The intervention included local radio broadcasts, pamphlets, supermarket tours, cooking demonstrations, exercise groups and individual counseling. The time frame for this study was also limited: there was a control group of 107 subjects during the period of July 1995 to March 1996, and another 112 women received the intervention from April 1996 through January 1997.

indicated that they were unaware of CLEO materials prior to the interview. As one of these respondents who works in the legal field, stated:

*“. . . this is the first time I've heard of CLEO and it shouldn't be like that. How do we ensure that all areas know of CLEO and CLEO's mandate, and who its partners are? It's more an information campaign on CLEO itself and then everything else would fall into place . . . It's a great idea and I'm glad to hear that there is such an organization in existence because it's needed, not only in Native communities”.*

There are many Aboriginal agencies that do order CLEO publications, but CLEO does not have close working relationships with these agencies. While with the exception of two agencies, the vast majority of respondents indicated that CLEO should undertake projects with and for Aboriginal communities, there was significant concern about Aboriginal agencies playing a purely advisory role. One respondent who indicated that she “*hope[s] that we do get something out of this because it is needed*” also commented that:

*“for the issue that CLEO is not a Native agency the only way to overcome that is to take a partnership approach. There always will be people not happy about that, but our organization would welcome that approach”.*

Similarly, another respondent provided the following written comments:

*“Overrepresentation of Aboriginal People involved in the justice system has been well documented over the years. Causes of this representation have been suggested by a number of interested parties without actual results that work to reduce this imbalance. [Name of agency] has a particular interest in addressing this problem. One potential opportunity to address this issue would be through developing a meaningful and inclusive partnership between [name of agency] and CLEO to develop law related education learning materials that reflect the local need which work to improve Aboriginal Peoples' access to justice and social related services”.*

Key to this comment is the requirement that the partnership be meaningful and inclusive. Frequently, external agencies compete for funding to conduct projects for Aboriginal communities. This issue was raised by the respondents and has been discussed specifically with respect to research in these communities. In recent years, Aboriginal communities have developed new and progressive principles for such research:

*“Ownership, control, access, and possession, or OCAP, is self-determination applied to research. It is a political response to tenacious colonial approaches to research and information management. OCAP has become a rallying cry to many First Nations and should be a wake up call for researchers. It offers a way out of the muddle of contemporary Aboriginal research and the ethical dilemmas that characterize it” (Schnarch, 2004).*

Although CLEO is not a research office, the idea of ownership and control is equally important for PLEI:

*“The principles of OCAP apply to research, monitoring and surveillance, surveys, statistics, cultural knowledge and so on. OCAP is broadly concerned with all aspects of information, including its creation and management”*  
(Schnarch, 2004).

These principles were echoed by interview respondents, one of whom commented with respect to legal information materials:

*“we need to develop them, we know what they want to hear, and what involvement you could have in terms of producing would be to assist with proper legalese, check that things are properly explained, otherwise we’d be driving what it is”.*

In the words of a respondent from a different agency:

*“I believe that we would like to see [CLEO develop] information that’s specific to Aboriginal people, but only if it’s developed not in consultation but in partnership with an Aboriginal organization. We need more involvement than just collaboration . . . in collaboration they [non-Aboriginal agencies] develop everything and send it to us and may not take our feedback or even offer credit . . . in partnerships, we are part of the writing and reviewing team, we have some ownership of documents, we can distribute them, both names are credited, this goes back to ownership, access, control . . .”*

In addition, for Aboriginal communities, materials are unlikely to be effective if they are not developed with an Aboriginal partner. In the words of another respondent, *“for the Aboriginal community, if you are not working with an Aboriginal group the pamphlet won’t be used”.*

### **(iii) Possible role for CLEO**

CLEO recognizes that Aboriginal agencies are best placed to take the lead in development of PLEI materials for Aboriginal audiences, 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, this report does identify a potential role for CLEO, albeit a very different role from the one CLEO typically plays in PLEI provision for non-Aboriginal communities. Although CLEO has traditionally partnered with legal clinics and agencies providing direct service to the target audience for a particular publication, successful initiatives for Aboriginal communities will require a more intense partnership.

While the consultations conducted for this report may provide a basis for moving forward, consultation can only be the beginning of the process. Even “consultation” has a murky history in Aboriginal communities. One respondent stated:

*“often people say they consult with us, [agency name] often provides a lot of input, but nothing happens. We tell people what we need, they acknowledge it, but no one takes responsibility . . .”*

Many Aboriginal agencies believe that CLEO should produce materials with and for Aboriginal communities; at the same time, the OCAP principles require that Aboriginal agencies have primary control over the production of PLEI materials for Aboriginal audiences. There may be an inherent tension in, and possibly, an operational challenge with, CLEO having responsibility without control; this will be a primary issue in partnership development. As well, Aboriginal agencies’ views as to CLEO’s most appropriate role may be at odds with the experience and assistance that CLEO is able to offer.

Developing materials with and for Aboriginal communities will present new challenges for CLEO, and the process and the outcome are not certain at this point. However, several points are clear with respect to CLEO’s role. 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 the process of discussing and ensuring mutual agreement on what form the relationship will take. This includes spelling out the rights and responsibilities of all partners at each stage of PLEI materials development projects. Zuni Cruz explains with regard to Aboriginal communities in the United States:

*“Process is critical because for native peoples, community lawyering is about self-determination, both for the community and the individual, about recognizing traditional norms and practices, and about valuing relationships” (Zuni Cruz, 1999).*

This is echoed by Associate Chief Judge Murray Sinclair who states *“process is just as important as results. We must never forget that”* (Nishnawbe Aski Legal Services Corporation, 2004). Thus the essential component for any PLEI projects for Aboriginal audiences will be investing sufficient time in partnership development.

## **Part II: Priority topics**

As stated earlier, many legal issues impact Aboriginal peoples. In fact, several respondents stated that they could not identify which 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 (e.g. for family law specify divorce, child support, etc.). This set of respondents was also asked why they chose particular issues to be addressed first. In contrast, during the earlier interviews, respondents were asked for the most pressing legal issues facing their community, a question leaving greater room for generality.



An overview of laws affecting Aboriginal peoples is not possible in this paper. However, with respect to some of CLEO's core materials – family and housing law – it should be noted that provincial property legislation does not apply on reserve lands (O'Donnell, 2005; Imai, 1999).

The following are areas in which respondents believe that materials could have a tangible impact (not listed in order of importance). As one individual replied when asked how she had selected the priority topics:

*“because these situations don't need to end in the outcomes they are ending in”.*

**(a) Indian status**

There was consensus from agencies representing both rural and urban clientele that materials are needed on Indian status<sup>17</sup>. One respondent recommended that these materials include information on using privacy legislation to access personal documents needed to apply for status. While some respondents noted that there are existing government materials on Indian status, they commented that these materials are too lengthy and inaccessible for most readers.

Status Indians are those persons of North American Indian origin who have been registered under the Indian Act. The Indian Act has constructed four main groupings of Aboriginal peoples for legal purposes. These are status Indians, non-status Indians, Inuit and Métis. The Indian Act confers certain rights or benefits upon registered or status persons. Registration can also affect band membership. Other potential payments, educational support and reserve residency rights are often attached to band membership (Eberts, undated; Mann, 2005).

In 1985, the Indian Act was amended by Bill C-31, ostensibly to remedy earlier discriminatory provisions that denied registered Indian status to Indian women married to non-Indian men, as well to as children of these unions. The amended provisions (now over twenty years old), are themselves problematic. Under section 6(1) of the Indian Act, an individual with two parents both of whom are or were entitled to be registered is eligible for registration. Section 6(2) allows for registration of individuals with only one parent entitled to registration. But under the “second generation cut-off”, individuals with one non-status parent, and one parent entitled to registration under section 6(2) will be ineligible for registration (Blair, 2005; Eberts, undated; Furi, 2003; Mann, 2005).

The need for materials on Indian status was linked to the problem of unstated paternity<sup>18</sup> on status applications, leading to denial of registration and declining numbers of status Indians. Children of mothers registered under section 6(2) of the Indian Act are refused

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<sup>17</sup> Perhaps information on Métis citizenship could also be included in such materials.

<sup>18</sup>“*Under the current rules, failure to report a registered Indian father results in either inappropriate registration of the child (i.e. under Section 6(2) as opposed to Section 6(1)), or denial of registration and loss of associated entitlements, benefits and privileges*”. In fact, 15.5 percent of fathers in Ontario, for children born to mothers registered under Section 6(1), were unstated in the years 1985-1999 (Clatworthy, 2003).

registration if their mother cannot or chooses not to name their father. The impact of section 6 is far-reaching. As Eberts (undated) states:

*“Its operation will result in the shrinking of Indian Act communities, as the grandchildren's generation loses status. As the federal government's current policy is to accept legal and fiscal responsibility for only Indian Act communities, it will be able to shed its fiduciary duties through the operation of Bill C-31”.*

Similarly, one of the interview respondents stated:

*“if we don't have members then we don't have a nation. The Indian Act tries to deny as many applications as possible, it makes a negative inference about paternity so if the father is not mentioned they deny status. Far too many families are shut out of property distribution and rights. Children are affected, and that affects our future”.*

Another respondent echoed this comment:

*“a lot of communities won't have any legally registered Indians that are full status, a lot of people are not aware of how much this impacts the future, so we need a plain text document on the effects of Bill C-31 on Aboriginal people and the legal effects of not registering children”.*

Aboriginal women participating in focus groups held by the Special Representative on the Protection of First Nations Women's Rights also called for initiatives to educate women about the implications of unstated paternity. The recommendation was that government funding be provided to Aboriginal women's organizations for this purpose (Mann, 2005). As well, in a recent survey of First Nations registration administrators:

*“over 40 percent of survey respondents indicated that printed material (e.g. pamphlets and handouts) concerning birth, Indian registration and unstated paternity were needed. About 29 percent of respondents also felt that print materials needed to be augmented by other awareness and educational initiatives such as group workshops or information sessions and through personal contact with expectant parents. The need for additional resources to support increased awareness and educational initiatives was echoed by a majority of the INAC regional managers interviewed for this study”(Clatworthy, 2003).*

#### **(b) Family law**

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, described by one respondent as a “*crisis situation*”. The frequent interaction of Aboriginal families with the child welfare system was illustrated by three respondents who identified Children's Aid Offices as one of the major vehicles through which Aboriginal individuals obtain legal information.

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<sup>19</sup>. Respondents indicated that Aboriginal parents often are unaware that they are in an adversarial situation when dealing with child protection workers, and so they may comply with the workers' requests against their best interests. There was also some suggestion that specific materials on child welfare should be developed for use by children.

Matrimonial property on reserve was another area of concern cited by respondents both on and off-reserve in different parts of the province<sup>20</sup>. In general, respondents believe these materials are most important for women, who need to know "*what to expect, who to talk to, how the Indian Act works*". Due to the significant migration between reserves and urban areas, respondents indicated that information about matrimonial property on reserve will be used by Aboriginal women living in urban centres and other non-reserve areas.

There appears to be a need for materials dealing with custody and support, particularly the role of the Family Responsibility Office. Possibly respondents were not aware of the existing CLEO materials on custody and support. However, one respondent explained that she would like existing CLEO materials to more specifically address Aboriginal issues, for example, by referring to customary adoption<sup>21</sup>.

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<sup>19</sup> In Ontario, for Aboriginal children, the Child and Family Services Act requires that a judge consider the importance of Aboriginal culture, heritage and traditions, and of preserving the child's cultural identity when making a determination as to the best interests of the child. An Aboriginal child must be placed with its extended family, community or another Aboriginal family unless there is a substantial reason to do otherwise. As well, a representative of the First Nation has a right to attend and participate in any hearing that seeks to make a child of that First Nation a ward of the Children's Aid Society. Ontario also has several Aboriginal-run Children's Aid Societies whose board members are representatives of local Aboriginal communities (Imai, 1999; O'Donnell, 2005).

<sup>20</sup> Where a First Nation has provided a certificate of possession of reserve land to one spouse only, the court lacks jurisdiction to transfer that possession to the other spouse, although the court may order cash compensation. As well, no court can make an order of exclusive possession of Indian reserve land unless pursuant to the Indian Act (Imai, 1999; O'Donnell, 2005). This removes one possible remedy in situations of domestic violence. O'Donnell states:

*"It is often argued that Indian women are in a worse position than non-Indian women in respect of the division of the matrimonial home. The reason being that in most cases where a certificate of possession has been issued to just one spouse, it is issued to the husband. The Supreme Court of Canada has made it clear that the provincial laws relating to the division of family assets does not apply to interests in reserve lands[sic]. Since Parliament has not addressed the issue of the division of interests in reserve lands upon the dissolution of marriage in the Indian Act and the Courts have no jurisdiction to apply the equitable principles in the provincial legislation to the division of interests in reserve lands, the formal equality that exists in the provincial legislation cannot be accessed by Indian women"*.

<sup>21</sup> The Courts have recognized Aboriginal customary adoptions using four criteria: there must be evidence that the custom extended back in time as far as living memory; the custom must be reasonable; the custom "*must be certain in respect of its nature generally, as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect*"; the custom must have continued without interruption until the present. It should be noted that adoption does not impact a child's Indian status (Imai, 1999; O'Donnell, 2005).

**(c) Criminal law**

Criminal law is a high demand area for materials. Some respondents indicated criminal law materials as the priority for PLEI projects. Other respondents chose different issues as priorities, but still indicated a need for criminal materials. In the words of one of this latter group of respondents, criminal law materials are “*not pressing but if they [CLEO] produced it we would use it*”.

While few respondents specified the need for materials on the application of Gladue<sup>22</sup>, this may actually be an indication of the need for materials in this area. Those respondents who referred to Gladue work in urban settings: one of them indicated that the principles of Gladue have not been promoted outside of major centres, and that not only clients, but also judges and lawyers are unaware of its application. Gladue requires that judges consider an offender’s Aboriginal heritage in devising an appropriate sentence, whenever an accused self-identifies as Aboriginal. In Toronto, a specialized Gladue court is available for Aboriginal offenders. As a result, Aboriginal accused in Toronto are more likely to identify their heritage. In other parts of Ontario, many individuals may not

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<sup>22</sup> In *R. v. Gladue*, [1999] 1 S.C.R. 688, the Court considers the provisions of s. 718.2. (e) of the Criminal Code of Canada which states:

*718.2 A court that imposes a sentence shall also take into consideration the following principles:  
(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.*

In determining the appropriate application of this section, the Court takes judicial notice of historic and continuing direct and systemic discrimination against Aboriginal peoples. The Court determines that the section applies equally to all Aboriginal offenders, whether they are a status or non-status Indian, Métis or Inuit person, and whether or not they live in an Aboriginal community or are estranged from their Aboriginal heritage. The section must be applied whenever an offender self-identifies as Aboriginal. In such cases, the possibility of restorative justice approaches must be considered in any sanctions. Rudin states:

*“Talk of restorative justice approaches to sentencing usually suggests activities such as sentencing circles or specific community run alternative justice programs. The Court is careful to point out that while these types of initiatives certainly fall within the restorative justice concept, sentences can be crafted by a judge alone that meet these goals as well.  
The importance of this point is that there are few alternative justice programs actually functioning in Canada - particularly in urban areas - and sentencing circles have not become common fixtures in the courtrooms of Canada. If the application of s. 718.2 (e) was restricted to only those types of initiatives, then the promise of the section would ring hollow for the vast majority of Aboriginal offenders. Keeping this fact in mind, the Court provides a broader view of how restorative justice concepts could be accommodated in sentencing . . .  
In this sense, a community-based sanction is one that addresses the needs of the offender, and perhaps the victim and broader community as well. It does not require formalized acceptance by the local Aboriginal community however it is defined - it might not even involve the Aboriginal community at all. For example, a sentence might require attendance at a treatment program or participation in counselling. These programs might be delivered by Aboriginal agencies and in general it would be preferable if they were; however, this should not be a requirement for a s. 718.2 (e) sentence. Since the provisions of the section apply to all Aboriginal offenders, it would not be right to deny an offender access to the section because there is no Aboriginal community of any size where he or she is being sentenced or because the Aboriginal community does not possess the services the offender needs” (Rudin, undated).*

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, described as a “*crisis in Canada*”. One respondent stated that:

*“Gladue is in response to how we are keeping people in jail. Legal Aid and the Law Society are trying to address the lawyer issues, but it’s far better if information is in the hands of the client. Aboriginal offenders need to know they have the right and how to apply so they can question their lawyer about it, that’s number one”*[in terms of legal issues to be addressed].

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. In the words of one respondent: “*people are more likely to know that you are not supposed to chew gum and wear your hat than on what day you should return to court*”. More than five interview respondents and at least three online survey respondents consider breaches of bail and probation orders as highly pressing legal issues. One of the survey respondents and at least one of the interview respondents linked the breach to substance abuse. In fact, five online survey respondents listed substance abuse as a pressing legal issue on which information is needed.

There was reference to a need for more information on the Youth Criminal Justice Act. Information on diversion options was linked to youth issues. One respondent commented that there is a:

*“need to talk about diversion programs, and what they mean for people charged in the city, in particular young people. Programs are there to help the young person reconcile the past and get on with the future. The option of ADR is critical. There are Aboriginal justice initiatives, some Aboriginal agencies are engaged in delivery of these and the community may not be aware”*<sup>23</sup>.

Elder abuse was also mentioned as a pressing legal issue.

Interaction with law enforcement was another area of concern. This includes information on police complaints generally, as well as the specific process for complaints against the Ontario Provincial Police (OPP), and information on band by-laws and the powers of band constables. One respondent described these as “*things that our people are facing on a daily basis right now*”. It is not only accused individuals who need this information. One respondent noted that Aboriginal victims of crime encounter great difficulty with

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<sup>23</sup> Subsection 38(2)(e) of the *Youth Criminal Justice Act*, S.C. 2002, c.1 states:

*“all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons”*.

police, and described victims' issues as an emerging area for PLEI. Similarly, another respondent cited criminal injury compensation as a pressing legal issue.

Respondents discussed the lack of services and limited access to counsel for Aboriginal clients. They indicated that frequently individuals are unrepresented because they are denied legal aid coverage, or there are no lawyers who practice in rural or remote areas. Delay due to lack of court services in remote communities was also described as a pressing legal issue by at least three respondents. In the words of one respondent, the pressing legal issues are, *“underlying issues, systemic issues, leaving people in jail for unreasonable periods for small crimes, and they can’t get proper representation or qualify for legal aid because they never submitted a T4 in their life because they are status”*. Another respondent described the pressing legal issues as, *“socio-economic issues unique to isolated northern communities: poverty, unemployment, lack of opportunity and various social ills that flow from that”*.

#### **(d) Harvesting rights**

There was consensus that Aboriginal peoples need more information on their rights to hunt and fish<sup>24</sup>. One respondent also commented on lack of representation in connection with hunting and fishing rights. He described this as a *“big problem because people are getting charged but it’s not a criminal offence so there is little legal aid support and people don’t have money to defend themselves so they plead guilty for a lesser charge”*. Another respondent stated that,

*“we have people handcuffed and dragged away by MNR [Ministry of Natural Resources] . . . There is a harassment factor, they are in the bush, MNR officials approach them, ask them ‘do you have an outdoors card?’. They say ‘no, I have a section 35<sup>25</sup> right that is paramount.’ But MNR apprehends them and takes their game but then drops the charge. It’s a traumatic situation to go through”*.

The exercise of these rights may be a significant source of support for low-income individuals in remote and rural areas. In addition, these rights protect traditional activities associated with Aboriginal culture and heritage. Two additional respondents also indicated a need for information on hunting and fishing rights and incidental cabins that allow for these activities. One respondent stated that clients need information on firearm legislation, which can be viewed as a corollary of harvesting rights.

Through recent jurisprudence, these rights continue to evolve. In addition to updating, certain legal complexities may arise in developing materials. For example, both treaty and Aboriginal rights for food and ceremonial purposes may be accessed. As well, there

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<sup>24</sup> With some infringements, registered Indians and Inuit hold harvesting rights, such as hunting, fishing or trapping, usually by virtue of treaties or of Aboriginal rights. The Natural Resources Transfer Agreement affects these rights in the prairie provinces (Imai, 1999). Métis rights to hunt and fish for food have recently gained recognition from the Supreme Court of Canada in *R. v. Powley*, [2003] 2 S.C.R. 207, in which the Court set out the test for establishing these rights.

<sup>25</sup> Section 35(1) of the *Constitution Act, 1982*, states:

*“The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed”*.

is a limited developing recognition of commercial rights to hunt and fish. However, the federal government can in some circumstances infringe on Aboriginal and treaty rights for reasons such as conservation, and Aboriginal people are impacted by gun control regulations (Imai, 2000).

**(e) Residential schools**

Although only two individuals stated that materials are needed on residential schools claims, both of the individuals that did so selected this as the highest priority of issues to be addressed. Low-income Aboriginal claimants, previously traumatized by their experience at these schools, are frequently re-victimized by unscrupulous counsel. One respondent stated,

*“people are currently being severely impacted by lack of knowledge of the legal system . . . some lawyers are getting 60-70 percent of settlements because people don’t understand what they signed. Others signed up and then don’t hear from the lawyer for three to four years”.*

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 through the process. Due to the current process for resolution of claims, this issue is very timely. The Canadian Bar Association<sup>26</sup> and the Law Societies of various provinces, including the Law Society of Upper Canada<sup>27</sup>, have recently released guidelines for lawyers acting for survivors of Aboriginal residential schools that reflect calls for safeguards for Aboriginal claimants engaged in legal processes. Indian Residential Schools Resolution Canada, an initiative of the Federal government, will administer a dispute resolution model for Indian Residential School Abuse Claims.

**(f) Other topics**

The following additional topics were each raised by at least two respondents: materials on wills and estates on reserve<sup>28</sup> and on powers of attorney for property and personal care. Two respondents indicated a need for information on advocacy for children within the educational system. Two respondents indicated a need for housing rights information, and two for employment information. One respondent linked the need for information on housing and employment to systemic discrimination faced by Aboriginal peoples. She referred to discrimination in services more broadly; systemic discrimination against Aboriginal peoples was raised as an issue by several other interview and online survey respondents. One of these respondents indicated that more information is needed on both provincial and federal human rights legislation.

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<sup>26</sup> See [http://www.cba.org/cba/sections/abor/00\\_04\\_a.aspx](http://www.cba.org/cba/sections/abor/00_04_a.aspx) for Canadian Bar Association Guidelines For Lawyers Acting For Survivors of Aboriginal Residential Schools.

<sup>27</sup> See [http://www.lsuc.on.ca/services/resource\\_centre.jsp](http://www.lsuc.on.ca/services/resource_centre.jsp) for The Law Society of Upper Guidelines For Lawyers Acting In Cases Involving Claims Of Aboriginal Residential School Abuse.

<sup>28</sup> The Indian Act provides a code for the administration of estates of Indians. But the testamentary provisions only apply to Indians ordinarily resident on reserve, unless the Minister of Indian Affairs and Northern Development orders otherwise. Note that reserve land cannot be left in a will to a person who is not a Band member (Imai, 1999; Yao and Nahwegahbow, 2005).

Although only two respondents described it as a “pressing legal issue”, there was discussion of the huge impact of disabilities on the Aboriginal community in response to other interview questions. Respondents indicated that Aboriginal clients need information on how these conditions impact their eligibility for social assistance and other benefits. For example, Fetal Alcohol Syndrome can lead both to increased contact with the criminal justice system, and is a barrier to communication with some clients. A recent study indicates that the rate of accidents is much higher in the Aboriginal population than in the rest of the Canadian population<sup>29</sup>. In First Nations communities, the rate of disabilities among children is almost twice that of all Canadian children (Canadian Council on Social Development, 2006). This suggests that further investigation of disability with respect to possible PLEI topics for Aboriginal communities, would be worthwhile.

There was some suggestion that existing CLEO pamphlets could be adapted for Aboriginal needs, or some Aboriginal-specific information could be incorporated. In the words of one of these respondents, there are

*“lots [of CLEO pamphlets] on ODSP [Ontario Disability Support Program], but there could be some pamphlets that deal with ODSP on certain disability issues that certain communities have. For example, alcoholism, depression, FASD, and the different case law around that, rather than back problems . . . you have pamphlets in areas that are important but don’t focus on issues important to us”.*

### **Part III: Delivery formats**

Due to the remoteness and isolation of many Aboriginal communities, there is great diversity between communities in terms of available media. Anonymity is another factor in small communities. One respondent stated that individuals are hesitant to go to an office to get information because other community members might see them. This suggests that PLEI projects in these communities must take care to use methods that preserve privacy.

Respondents noted that elders must be involved for any new initiative to have credibility. They indicated that the most popular outreach methods in Aboriginal communities included community feasts, and the “*moccasin telegraph*”<sup>30</sup>. Legal issues arise as an offshoot of other issues when clients seek services relating to health and healthy lifestyle. A holistic approach, allowing for provision of legal information while clients access non-legal services, is therefore most effective.

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<sup>29</sup> CBC Health and Science News 12 Apr 2005 quoted a study in the Canadian Medical Association Journal which found that treaty status Aboriginal Canadians were nearly four times more likely than other Canadians to suffer a serious traumatic injury. “*Car crashes caused a large majority of the injuries, but the study’s authors said it would be unfair to attribute the higher risk primarily to alcohol use, as other studies have done. The article speculated that other contributing factors could include poor road conditions on reserves, lower seatbelt use, a higher number of passengers in cars, poorer vehicle maintenance, and lifestyles that involve more highway travel*”.

<sup>30</sup> Informal exchange of information.



**(a) Printed text**

Almost unanimously, respondents indicated that printed text materials (print) are very effective. While many believe that alternative methods of information delivery should be pursued, they consider print the priority among the various options. Respondents made emphatic statements such as *“if the question requires that I choose between them [the various media] then I choose print. But if you can do more by all means do audio, but if you can only do one, do print”*.

In general, respondents believe that print materials have a wider reach, as fewer individuals will attend workshops or listen to other media. Those few respondents who did not consider print the clear priority did not choose another medium in preference to print. Rather they indicated that it *“depends on the topic of materials”*.

With respect to print, short materials were generally preferred. The idea of wallet size cards was popular, especially for homeless clients. Other comments included: *“typically short and sweet, we try to keep community flyers down to about a page if we can”*, and *“something easy to carry with you, portable, you don’t want it to stick out of your pant’s pocket”*. Some respondents suggested fridge magnets and little bookmarks as useful formats for PLEI messages.

Respondents recommended these short publications should be supplemented with access to more detailed information in a booklet form. However, one respondent commented that a booklet might be *“overwhelming”*. This respondent explained that a *“short brochure is a happy medium, one page isn’t sufficient because of the complexity of situations”*. Another respondent stated, *“I don’t know that pamphlets must be in extremely great detail because people would still seek out assistance to do an appeal, but at least if they knew they had a right”*.

Similarly another respondent thought it would be helpful, *“if they had pamphlets available even if it’s just something brief that got them into the office like ‘Did this happen to you, it’s not right, see a lawyer’”*.

Other respondents thought the length of print material depends to some extent on its placement. The comment *“somewhat discreet . . . so you can pick it up without identifying your issue to other people”* was followed by *“but it depends where it sits, if you are already in jail then you want it bigger than life”*. Respondents commented that jails and waiting areas in courthouses could be effective spaces for materials such as posters, as well as messages on flat screen monitors.

Community newspapers may also be a vehicle for print information. Respondents in the final set of interviews were not specifically asked for feedback on the effectiveness of newspapers. However, a very large majority (about 70 percent) of respondents to the earlier set of interviews indicated that members of their community read community newspapers, and one respondent referred to this as the *“best way”* to reach people. A clear majority of survey respondents (13/17) who serve an Aboriginal audience selected newspapers as an effective means to reach their communities.

Wawatay, a newspaper published in Cree, Ojibway and English, was referred to by interview respondents working in a variety of communities throughout the province, indicating that Wawatay has readership in many areas, including remote communities. Wawatay News is part of Wawatay Native Communications Society, which has branches in Sioux Lookout, Moose Factory and Thunder Bay. Wawatay also offers online news as well as broadcasting in Cree, Ojibway and English on both radio and television.

**(b) Online text materials**

Most of the respondents indicated that their agency could print enough copies from an online text version to suit their distribution needs. But many of these same individuals explained that agencies serving Aboriginal peoples in more remote locations would need hard copies of materials. Respondents in some of those communities echoed this comment. Some remote communities operate their own internet service: these communities are highly wired and can access online resources. Unfortunately, respondents from other isolated communities reported internet and dial-up connections that are frequently out of service or frustratingly slow: one respondent described his internet access as “lousy”, indicating that he prefers to be sent hard copies to give to community members, as it is difficult to access online materials.

Nonetheless, a clear majority of the earlier interview respondents (about 70 percent) stated that online materials that could be printed, photocopied and distributed would likely be helpful. A similar proportion of the survey respondents (12/17) thought that online materials that they could print, photocopy and distribute to clients could be used to effectively deliver legal education to their communities.

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 may also need to provide hard copies for those agencies without effective online access. One respondent stated a preference for, “*the pamphlets because in our waiting room people mull over them, and people may not know what they want until they see it, so reducing or eliminating that to put them online would be a step back*”. This suggests that online versions created for printing and distribution by community agencies should take a form that allows for easy display in pamphlet racks.

There was some indication that online materials might be the best way to reach youth, who may use the internet on their own. However, remote communities lack libraries, so there is little or no public internet access. Thus other means are needed to reach youth in those communities with legal information.

**(c) Graphics**

Based on the feedback, graphics would be an essential component of any PLEI materials for Aboriginal communities<sup>31</sup>. One respondent explained that graphics “*give[s] people more sense of ownership, connection*” with the materials. Another respondent elaborated:

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<sup>31</sup> These findings are echoed by focus groups with Tribal Leaders, Indian Health Professionals and American Indian community members in the United States, regarding diabetes education materials. Those

*“We have found the most successful material has graphics in it and typically relates to something relevant to people’s lives. For example, linking a constitution to the building of a canoe as many people are needed to do it and the purpose is for everyone to be in it, that linkage is most effective”.*

Another individual, in responding to a question as to whether CLEO should create materials specifically for Aboriginal communities, indicated that CLEO materials ought to “*incorporate Aboriginal arts*”. This respondent continued: “*a lot of my clients are intimidated by reading to begin with, so pictures mean a lot, a lot are illiterate, that makes it problematic*”.

The emphasis on the importance of graphics was almost unanimous among the final set of interview respondents (earlier interview schedules did not ask about graphics specifically). Some of the feedback included:

- *“what I find most effective personally is a combination of graphics and written materials”*
- *“short brochure, with graphics and Aboriginal aesthetic, a design that appeals to Aboriginal people”*
- *“I would like to see something specific for Aboriginal people. The laws are pretty much the same, but something or a picture that identifies an Aboriginal component such as the eagle feather, something to relate to that makes it more likely that they will use the material. Any material going out to the Aboriginal community should have the symbol, it should not just be set aside for certain publications”*
- *“graphics are the best way for First Nations to understand: a flowchart would help, noting steps, pictures that they can connect to”.*

#### **(d) Audio**

Interview respondents indicated that audio could be a helpful supplement to print for particular issues and particular communities, mainly in more remote northern communities in Ontario<sup>32</sup>. In the words of one respondent, “*in the north Aboriginal radio*

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focus group participants expressed a strong preference for culturally relevant materials using colorful visuals, including American Indian graphics (Roubideaux et al, 2000).

<sup>32</sup> The “Health is a Community Affair Campaign/The Door to Door Project” faced the challenges of diverse languages and great distances (Crown et al, 1993). This health promotion project in NWT involved community members in the full spectrum of delivery of AIDS education. The project started in January 1989. The campaign ran from the third week of March through to June 1, 1990, after which the community went to the land for the summer. The campaign was completed when community members returned in the fall.

The project sought involvement from chiefs and elders as an initial step. Community canvassers were trained to provide supplementary information, while distributing pamphlets and tapes door to door. Five pamphlets were produced in six languages. English text was translated into Dene on an oral cassette, since Dene languages are oral. The voice in these recordings was that of a community member, in order to ensure

*is a main form of communication for more remote reserves, audio will be key particularly for matrimonial property issues*". Respondents differed on the appropriate number of speakers and whether music would provide an attraction or a distraction. For matrimonial property or domestic violence information, respondents indicated that the speaker should be an Aboriginal woman. One respondent stated that, *"you need a local community member speaking, that voice would capture the audience"*. This echoes the experience of the HIV education project in the NWT referred to above.

Respondents would like to see alternatives for individuals with literacy challenges. One survey respondent serving an Aboriginal audience indicated that brochures are not helpful because so many clients face literacy challenges. Nonetheless, there was some doubt as to whether audio would provide a solution:

*"some people can speak English but can't read. Some of the moms are illiterate, but they don't say that they can't read English, but they really need help, it's that significant. For example, figuring out who is the applicant and who is the respondent is difficult, but that can make or break the case for custody. . . If a client is illiterate and can't read, if they are embarrassed or there is some sort of shame, you can't just hand them an audio tape and tell them to go listen to it at home."*

In communities where radio is popular, this might provide an appropriate vehicle for audio PLEI<sup>33</sup>. Almost all (over 90 percent) of the earlier interview respondents indicated that their clients listen to community radio channels. However, in many cases respondents qualified their answers, indicating that a portion of their community listens to radio channels. At least three of those respondents indicated that community members in outlying areas would not receive radio transmission, and one respondent indicated that there is no access to radio in their community. However many survey respondents (12 /17) indicated that community radio channels are a good way to reach their community. Perhaps since survey respondents have online access, they are less likely to reflect the situation in more isolated communities.

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credibility. Inuit communities, for whom written materials had been prepared, subsequently requested the oral version also. This project noted the importance not only of an accurate translation, but also of a credible voice, as in small communities individual voices are often recognized.

Unlike the diabetes projects referred to earlier, heightened awareness rather than scientific criteria of improved health measured success. Evaluation was based on reports from the canvassers, as surveys were not considered an appropriate method in an oral culture. Canvassers reported that the campaign was well received, and there was also positive feedback from nurses, tribal councils and women's associations. Other indicators of success were capacity audiences at meetings arranged for the project, and significant caller inquiries to local radio shows on the topic. In addition, as a result of the campaign, several communities on their own initiative subsequently arranged for speaking engagements by People Living with AIDS.

<sup>33</sup> In the legal field, an Aboriginal women's association in Quebec has collaborated with a provincial PLEI agency to broadcast audio legal information materials on community radio channels. The materials, available in English, French and Aboriginal languages, are also accessible on the agency's website in both print-friendly text form as well as an audio version. The text materials take the form of a two-page script. There has not yet been any formal evaluation of the project. However, the Inuit community requested translation of the materials into Inuktitut, suggesting that the project has been positively received.

**(e) Video**

Based on the interview feedback, video could be an effective way to reach Aboriginal individuals with legal information in certain circumstances. As with graphics, respondents suggested the visual aspect of video would make the material more accessible, and there was some indication that this could be especially effective for harvesting rights, family law and criminal law topics.

One Aboriginal agency interviewed uses video extensively for topics on legal rights and responsibilities. The videos can be used to stimulate discussion in workshops to which community members are invited. The agency can track workshop attendance. In addition, discussion at the workshops allows the agency to monitor how the information is received and whether it is understood. Another Aboriginal agency has produced videos with voice-overs in Aboriginal languages. The agency has used video to provide legal information, and also plans to produce a culturally sensitive evaluation of its program, using video to obtain oral opinion.

Television is a possible medium for video PLEI. Respondents in the earlier interviews indicated that in some communities, only satellite television is available, so there is no opportunity for community channels. Only about half of the interview respondents considered television a good means to reach people. However, many survey respondents believe television is an effective way to reach their communities (12 /17), and several interview respondents believed it would be worthwhile to approach Aboriginal Peoples Television Network (APTN) about possible PLEI broadcasts.

Respondents in a variety of settings throughout the province suggested that video PLEI might lead to more effective use of court resources:

*“in the courthouses we have video monitors, flat screen TV sets around the courtrooms saying what is in which courtroom . . . for the time people are sitting around courthouses, they could be running legal education blurbs, explaining what’s a bail order.”*

Respondents in different parts of the province echoed this sentiment.

**(f) Other methods**

Several respondents indicated that they would like more support for frontline workers providing legal information to Aboriginal communities<sup>34</sup>. There was interest in receiving training to deliver legal information to clients, through workshops or via CD-ROM. Another respondent thought workers could benefit from some kind of update on legal developments and court cases relevant to Aboriginal issues.

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<sup>34</sup> Many Aboriginal communities use Community Health Representatives (CHRs). An evaluation of CHRs working in prevention and education among Cree communities in northern Quebec used both quantitative analysis of the daily tasks of the CHRs and a qualitative component. The qualitative analysis involved documentary research, observation, and semi-structured interviews (Lavelle et al, 1991). Interviews were conducted with nurses, doctors and band council members, who indicated that the presence of the CHRs had improved communication between health services and the community. However the CHRs themselves reported a lack of administrative, professional and community support, inadequate training and supervision.

Throughout the interviews it became clear that Aboriginal audiences would benefit if PLEI materials included information on Aboriginal-appropriate services. In addition, because Aboriginal peoples are highly mobile, one worker suggested that it would be useful to develop a community legal resource guide for the entire province: *“a small book for people that tend to move around.”*

Other ideas included making legal information more accessible by putting it on condom wrappers, and on recorded messages that people would hear when they use long distance telephone cards.

#### **Part IV: Aboriginal languages**

The use of Aboriginal languages varies throughout the province. English is not the first language on many reserves. In Northern Ontario, there are approximately 50 to 60 dialects of Ojibway, Cree and Oji-Cree (Auger, 1997).

Use of Aboriginal languages is less prevalent in cities. Canada-wide at the time of the 1996 Census, close to one in five persons who reported an Aboriginal mother tongue resided in a major urban center. But mother tongue is not the same indicator of usage as home language and only three percent of Aboriginal city residents reported that an Aboriginal language was used most often at home, as opposed to 31 percent of the population outside of cities (Norris and Jantzen, 2003)<sup>35</sup>. In Toronto, data from the 2001 Census indicates that

*“almost all members of the Aboriginal . . . groups grew up in English. For persons whose ancestry is only Aboriginal, 5.5 percent have an Aboriginal first language and 1.8 percent speak an Aboriginal language most often at home”*(Ornstein, 2006).

The First Nations and Northern Statistics Section, Indian and Northern Affairs Canada (INAC), has provided a 2001 Census Core Table of Official Language Data crossed by Aboriginal Home Language Data. That table ranks Cree, Ojibway and Oji-Cree as the largest Aboriginal language groups in Ontario, both for total speakers, and number of speakers who speak neither official language. As discussed earlier, Census data is unreliable, as many reserves were not enumerated. Nonetheless, Cree, Ojibway and Oji-

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<sup>35</sup> The Report of the Royal Commission on Aboriginal Peoples notes:

*“a small difference between those who speak an Aboriginal language and those who do not, with the latter having a slightly higher probability of participating in the labour market. This difference becomes more pronounced as one moves from the north and on-reserve locations (where Aboriginal language speakers are more likely to be in the majority) to off-reserve and southern locations (where Aboriginal language speakers are more likely to be in the minority). Both Aboriginal and non-Aboriginal speakers are less likely to participate in the labour force if they live on reserves”*(Royal Commission, 1996).

Cree were also the three most frequently mentioned Aboriginal languages by both interview and survey respondents<sup>36</sup>.

The population speaking only an Aboriginal language is highest in the age range of 45 and above<sup>37</sup>. This corresponds with anecdotal information from the interview respondents who indicated that residents over age 45 in remote communities may speak no English at all.

According to the table referred to above, all of the individuals reporting Inuktitut as their home language also speak an official language. But this information gives no indication of the Inuit population's actual facility in English or French. One Ontario service provider in an urban setting indicated that Inuit individuals have particularly low education levels; another stated that most Inuit people understand English and read at a grade six level. Rudin (1997) reports an Inuit community of around 500 persons in Ottawa, with an Inuit-specific friendship centre to accommodate its unique language and culture. According to Rudin, this is an above-average size for an Inuit community, and therefore must be considered in providing legal services to Aboriginal persons in Ottawa. The Tungasuvvingat Inuit website states that according to the most recent census, Ontario has the largest number of Inuit living outside of the Inuit land claim areas, and over 900 Inuit now reside in Ottawa-Gatineau.

One respondent stated sadly that the *“reality is there has been such a critical loss of Aboriginal languages that it [legal information] wouldn't be so accessible in print.”* Others indicated that, *“north of Thunder Bay there is more reliance on Aboriginal languages.”* One Aboriginal agency in Northern Ontario has produced a glossary of legal concepts explained in Aboriginal languages.

Over half of the earlier interview respondents indicated that there is a need for translation, because in their experience many people in their community only understand their Aboriginal language. However the form of translation varied: some respondents referred to syllabics, while others were clearly referring to oral translations. From the online survey, a significant number of respondents (10/17) indicated that translation is an effective way to deliver information to their community, but it was not possible to determine whether these respondents were referring to print or oral material. Respondents indicated that audio versions should be in Cree, Oji-Cree and Ojibway in order to reach audiences in remote communities. There was limited need expressed for French.

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<sup>36</sup> Source: INAC's 2001 Census Core Table 2C prepared by Statistics Canada for the First Nations and Northern Statistics Section. Numbers are based on self-reporting by individuals both on and off reserve, using the Aboriginal Identity Definition (please see footnote 5). Table 2C crossed by Official Language data against Home Language data for the Aboriginal population of Ontario indicates a total of 1,525 people who speak only an Aboriginal language, with no knowledge of English or French. Data commissioned by Legal Aid Ontario from Statistics Canada based on the 2001 census indicates that 360 people in Ontario speak Ojibway at home, 265 of which are below Statistics Canada's low-income cut-offs (LICO). Another 560 speak Cree at home, of which 220 are below LICO. As discussed earlier, 17 reserves and settlements in Ontario were incompletely enumerated. Thus these numbers are likely too low.

<sup>37</sup> Source: INAC's 2001 Census Core Table 2C Official Language Data Crossed by Aboriginal Home Language Data, with Age Breakdowns.

Nonetheless the few respondents who do think French PLEI is necessary for Aboriginal communities, indicated that this could be crucial as some of their clients are unilingual in French.

One respondent stated when discussing translation that, *“it would help, but you need that visual contact, you need a body first to introduce these things”*. Another respondent stated that in order to be useful, translations should be, *“concise”* and, *“not too complicated”*.

At least two respondents voiced concern that due to variations between dialects in Aboriginal languages, it would be difficult to develop translations into those languages that would be clear and accessible to a majority of readers or listeners<sup>38</sup>.

In general, interview respondents believe that elderly people can read syllabics, and that the elderly in remote communities may need materials in Aboriginal languages on certain topics. One interview respondent estimated that 80 percent of his community can read a newspaper in Cree syllabics; another interview respondent put that number at 60 percent. A different respondent was unable to give a number, but indicated that a high percentage of elders can read Cree syllabics. One interview respondent estimated that, of the middle-aged population, only 25 percent can read syllabics, but 80 percent can speak Cree. Respondents in Ojibway communities were not as precise, although one interview respondent estimated that 25 percent of her community can read a newspaper in Ojibway. Others indicated that as with graphics, syllabics *“gives a sense of familiarity, then they can recognize materials.”*

Translated materials could be limited to specific topics relevant in remote communities. For example, one respondent stated: *“English is probably sufficient for [the Indian] status issue. Folks in the north are primarily on reserve and know about status.”*

## **Part V: Recommendations**

These recommendations are divided into two parts. Firstly, several recommended guidelines have been distilled from the findings to guide CLEO in the area of Aboriginal

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<sup>38</sup> Some examples from a project that translated diabetes terminology into Navajo may be instructive: *“The most common translation for blood glucose was the literal translation as “table” sugar in the blood, but this translation caused confusion as to how table sugar could be in the blood if people did not eat it. Another common translation conveyed the physical description of sugar as a fine white dust or mist. Neither translation was adequate. The final version translated “blood glucose” by explaining how food is broken down into a sweetened watery substance that builds up throughout the body. Because the Navajo language is very descriptive and specific, translating blood glucose by describing how “a sweetened watery substance” came to be in the blood was more relevant than using the word for table sugar . . .*  
*The translators were originally from different regions of the Navajo Nation and encountered differences in the way terms were translated. In one area of the reservation, the translation for peanut butter is simply the equivalent of peanuts, i.e., “light-gray nuts.” In another part of the reservation, the translation is “ground light-gray nuts” ”(McCabe, 2003).*



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 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<sup>39</sup>.**

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<sup>40</sup>. 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

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<sup>39</sup>CLEO has already identified possible funding sources for PLEI initiatives that involve cultural adaptation. Because there are many demands on a limited number of sources, it may be necessary to look to specific sources of funding for initiatives in Aboriginal communities. A list of some of these sources can be found at [http://www.ahf.ca/assets/pdf/english/funding\\_sources\\_may\\_2003.pdf](http://www.ahf.ca/assets/pdf/english/funding_sources_may_2003.pdf)

<sup>40</sup> In September 2004, CLEO began developing CLEONet, an online easily searchable collection of community legal education resources and news items, on a wide range of legal topics. CLEONet is also a network of organizations sharing resources and working together online on community legal education.

- 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<sup>41</sup>.

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

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<sup>41</sup> An existing publication by the Ministry of the Attorney General is entitled "What You Should Know About Child Protection Court Cases". But that publication does not cover some critical aspects of child protection. For example, that publication could explain more clearly the adversarial nature of the process and the possible consequences from involvement with the CAS. Interview respondents were concerned by clients' lack of understanding of the adversarial nature of CAS matters. The same issue was also raised by individuals serving non-Aboriginal communities during CLEO's research into linguistic access to legal information.

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

## Appendix A

### Interview respondents

Lisa Abbott, Native Women's Association of Canada  
Claudia Belda and Celina Reitberger, Nishnawbe-Aski Legal Services Corporation  
Fred Bellefeuille, Anishinabek Nation  
Gayle Broad, Algoma University  
Margaret Capes, Community Law School (Sarnia-Lambton)  
Sheldon Cardinal, Assembly of First Nations  
Jennifer Carten and Nan Normand, Kenora Community Legal Clinic  
Shawn Chirrey, Heart and Stroke Foundation of Ontario  
Rick Craig, Law Courts Education Society of British Columbia  
Pamela Cross, Metropolitan Action Committee on Violence Against Women & Children  
Ab Currie, Research and Statistics Directorate, Department of Justice  
Brian David, Mohawk Council of Akwesasne  
Deborah Doherty, Public Legal Education and Information Service of New Brunswick  
Rolanda Elijah, Association of Iroquois and Allied Indians  
John Fraser, Centre for Equality Rights in Accommodation  
Gordon Hardy, People's Law School  
Jeffrey Hewitt, Chippewas of Mnjikaning  
Delbert Horton, Seven Generations Education Institute  
Debra Huston, North Bay Indian Friendship Center  
Rhonda Kelly, Grand Council Treaty #3  
Tracy Kirby and Cathy Vautour, Kinna-aweya Legal Clinic  
Patti LaBoucane Benson and Crystal Cardinal, Native Counseling Services of Alberta  
Paul Lantz and Mary Blueboy, Keewaytinok Native Legal Services  
Josephine Mandamin, Ontario Native Women's Association  
Mary Marrone, Ontario Justice Education Network  
Carol McEown, Legal Services Society of British Columbia  
Paul Melvin, Legal Aid Ontario, formerly Sioux Lookout Community Legal Clinic  
Kim Murray, Aboriginal Legal Services of Toronto  
John Paul Nakochee, Fort Albany Health Services  
Margaret Pitawanakwat, Courtworker Wikwemikong First Nation  
Marisha Roman, Rudy Ticzon and Heather MacDonnell, Law Society of Upper Canada  
Nathalie Roy and Aisha Topsakal, Educaloi  
Liora Salter, plainspeak cultural awareness  
Michael Shain, Manitoulin Legal Clinic  
Brenda Small, Negahneewin College of Indigenous Studies, Confederation College  
Pam Stellick, Tungasuvvingat Inuit  
Angela Sutherland, Moosonee Native Friendship Centre  
Denise Toulouse, Anishnawbe Health Toronto  
Beryl Tsang, Education Wife Assault  
Hugh Tye, Hamilton Tenant Education Project

Bobbi-Jo Virtue, Doris Warner, Scott Sunday, Steve Turner and Jaynane Burning Fields,  
Ontario Federation of Indian Friendship Centres  
Angela Wassegijig and Lisa Pigeau, Métis Nation of Ontario  
Dorothy Wynne, Community Member Moosonee and Kapuskasing

## **Appendix B**

CLEO wants to explore how to better respond to the legal education and information needs of low-income non-English and non-French linguistic communities in Ontario. We are also referring to Aboriginal communities, although the project will be conducted with an understanding of the unique status of those communities and the need for a different stream of research and response for those communities.

**Confidentiality:** Only persons working on the project will have access to interview notes. The report will be drafted so that responses cannot be attributed to you. We would like to thank persons/agencies who assisted us in the final report. May we include your name/agency on that list?

My questions will cover four areas: (1) Connecting with Communities, (2) Print Material, (3) Translations, (4) Producing Materials

### **Connecting with Communities**

- how do your materials reach people/are there existing pathways
- how do you establish partnerships with other organizations serving non-English and non-French linguistic communities
- are any of these partnerships outside of Toronto
- how do you identify the education and information needs of non-English and non-French linguistic communities
- do you monitor those needs on an ongoing basis and if so how
- what methods/materials have you used to provide information to non-English and non-French linguistic communities

### **Print Materials**

- how have you used print materials and when do you think they are useful
- what experience do you have with print materials in cultures with oral traditions
- do members of non-English and non-French linguistic communities and community service providers in non-English and non-French linguistic communities receive information provided online and if so how this information is used (e.g., read online, printed off and read, printed off and distributed)

**Translations**

- do you have any information about what portion of your client base is literate in their first language (e.g., numbers, qualitative description)
- how do you ensure accuracy as well as plain language in translated materials
- how do you determine whether translation of existing materials is appropriate / effective for a given community
- what is your experience in developing culturally-sensitive adaptations (e.g., when is it appropriate to modify content, how can costs be balanced)

**Producing Materials**

- what challenges do you face in accessing resources such as qualified translators, bearing in mind the nature of the materials (plain language legal information), legal reviewers, culturally sensitive editors and designers, necessary technology
- how do you address these challenges
- how do you maintain accurate materials given the time-sensitive nature of legal information

**Concluding Questions**

- has there been any formal evaluation of the effectiveness of the techniques you have used to provide education/information to non-English and non-French linguistic communities
- what do you consider the most effective methods of reaching non-English and non-French linguistic communities with information, in particular legal information
- any other comments/suggestions
- could we contact you again



## **Appendix C**

Community Legal Education Ontario (CLEO) produces plain language legal information for low-income people. CLEO wants to explore how to better respond to the legal education and information needs of low-income non-English and non-French linguistic communities in Ontario.

In relation to Aboriginal communities, this project is intended to help CLEO develop a strategy that would enable us to support legal education work done in Aboriginal communities.

**Confidentiality:** Only persons working on the project will have access to interview notes. The report will be drafted so that responses cannot be attributed to you. We would like to thank persons/agencies who assisted us in the final report. May we include your name/agency on that list?

### **PHASE 2 INTERVIEW SCHEDULE AGENCY BACKGROUND**

What kinds of services do you provide?

What is your role at the agency?

Which community or communities do you serve?

Which language groups do you serve?

Which of these languages do your staff members speak? How do you serve clients who speak languages other than those spoken by your staff?

### **LANGUAGE AND LITERACY**

What percentage of your community can read in their first language, where that language is not English or French? Can they read a few words, a few sentences, a community newspaper

What percentage can read English? For example can they read a few words, a few sentences, an article in the Toronto Sun [grade 6 level], an article in the Toronto Star [grade 8 level]

What percentage of your community understands English when it is spoken? For example can they understand a few words, a few sentences, radio news blurbs

What percentage can read French? For example can they read a few words, a few sentences, French equivalent of an article in the Toronto Sun, French equivalent of an article in the Toronto Star

What percentage understands French when it is spoken? For example can they understand a few words, a few sentences, a radio news clip

Other than English, French, or their first language, please tell me about any other languages which many people in your community can usually read or understand . . . at what levels can the read, at what levels can they understand

We are also interested in how age, gender and cultural issues affect these questions. . . . how do these issues affect the ability of people in your community to read in their first language, or to understand English or French when it is written or spoken? For example do abilities differ between men and women, between age groups, between people from different places in their country of origin?

For the issues that we just discussed, what are your sources of information, for example do you keep intake stats, or do you know this from day to day experience?

### **COMMUNICATION STRATEGIES**

Other than information about your services, what kind of information does your agency provide to community members?

What methods have you used to get this information into the community/communities you serve?

In terms of providing information, what formats are most useful to your clients? (Print based, brochures/flyers, web-based, audio/video, workshops, peer programs)

Why do you consider these most effective? Have you tried other methods that you found less successful?

How do community members learn from or use information once they receive it?

What opportunity has your agency had to study or evaluate any of these methods or to study how community members use the information? What were the results of the evaluation? Would you be willing to share a copy with CLEO?

Within the community/communities you serve, which groups are more difficult to reach with information? Why?

Of the methods you talked about before, which ones are you using currently? Why?

To what degree has your agency worked to provide information electronically to community members, for example, through CD-ROM, websites or email?

Are there any specific barriers that your clients face with respect to accessing information electronically? What strategies have you used to help overcome these challenges?

## **ASSET MAPPING**

Please tell me about the ways people in your community/communities get legal information

What areas of law are covered by these materials/programs?

What are the most pressing legal issues facing your community?

What access do community members have to information on these issues [other than material/program from your agency that we have already discussed]?

What other ways could be used to deliver legal education to your community throughout the province, for example

- Do people listen to community radio channels
- Watch community television
- Read community newspapers
- Identifying and translating existing legal information on topics useful to your community
- Online materials that your agency could print, photocopy and distribute to clients
- Other ways

What use do community members make of CLEO materials?[probes: which groups within your community use them, for what do they use them, why don't they use them]

For what agencies or groups in your community would improving access to legal information be a priority? Why?

## **CONCLUDING QUESTIONS**

Any other comments

May we contact you again

**Appendix D**

**Linguistic Access Project Questionnaire**

**Part 1**

Please provide the following information:

(1) Your name/position \_\_\_\_\_

(2) Your agency \_\_\_\_\_

(3) Contact Information \_\_\_\_\_

(4) Language groups you work with \_\_\_\_\_

**Part 2**

In the following questions, the term “information ” does not include information on agency services or referrals to other agencies.

Please answer any or all of the following questions:

(1) Other than individual client appointments, what methods are most effective for providing information to community members who do not understand English or French?[For example, brochures/flyers, web-based, audio/video, workshops, peer programs.]

\_\_\_\_\_  
\_\_\_\_\_

(2) Why do you consider these most effective?[For example, have other methods been less successful, have you had any opportunity to evaluate these methods, other feedback, etc.]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) What are the most pressing legal issues facing your community?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) What access do community members have to information on these issues?

\_\_\_\_\_  
\_\_\_\_\_

(5) What other ways could be used to effectively deliver legal education to your community? Choose as many as apply.

- community radio
- community television
- community newspapers
- ESL teachers and ESL classes
- identifying legal topics important to your community and translating existing legal information on these topics
- online materials that your agency could print, photocopy and distribute to clients
- other ways (please specify)

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(6) Any other comments?

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Thank you! We appreciate your input and the time you took to answer our questions.

## Appendix E

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 people in Ontario. CLEO does not give legal advice or represent people in cases. CLEO's materials give people information about their legal rights and how to exercise them.

CLEO recognizes that Aboriginal communities have unique legal information needs. We also recognize that Aboriginal agencies are best placed to identify those needs. CLEO wants to know whether you would like us to work with Aboriginal agencies to produce more legal information materials for your communities. Before discussing this in more detail with you, I want to explain more about what CLEO does, give you some examples of things CLEO might be able to do, and also explain what CLEO cannot do.

In order to do this work, CLEO would need to collaborate with Aboriginal agencies. Generally, CLEO collaborates with another agency that works directly with the audience of the material. In the case of Aboriginal communities, the other agency would identify legal issues that face their community and would work with CLEO in identifying the format options and delivery channels for the material. Things that CLEO could do:

- CLEO could work with Aboriginal agencies to produce pamphlets in plain language.
- CLEO could investigate developing materials in Aboriginal languages if that would be useful.
- An Aboriginal Women's Association in Quebec worked with Educaloj, the public legal education organization in that province, to produce short audio spots in several Aboriginal languages, as well as in English and French. These audio spots were broadcast on Aboriginal community radio channels. CLEO could investigate producing legal information audio spots for the Aboriginal community in Ontario. Audio is a new area for CLEO.

Things CLEO might be able to do:

- CLEO does not generally conduct workshops for the public. It usually provides materials to support workshops conducted by other agencies. However CLEO could explore conducting a workshop for your agency on topics related to the production of plain language legal information materials.
- CLEO recognizes that video can be an effective tool for providing information. Due to the resources and expenses involved, CLEO would need to conduct extensive research and consultation before considering a video project.

Things that CLEO cannot do:

- CLEO is not a funding agency for legal information materials.
- CLEO cannot provide an editing service for materials written by another agency or publish materials produced by another agency.

**Confidentiality and circulation**

Only persons working on the project will have access to the interview notes. The report will be drafted so that responses cannot be attributed to you. We will forward the final report to all the interview respondents, such as yourself. If we decide we want to distribute the report further, such as to potential funders, we will seek your permission first. We would like to list persons/agencies who assisted us in the final report. May we include your name/agency on that list?

**Before asking you what involvement CLEO could have, I need some background information:**

What is your role at the agency?

Which Aboriginal community or communities do you serve? (on-reserve/off-reserve, urban/rural, youth/women/elderly, etc.)

What kinds of services do you provide? (health, legal, etc.)

What are the most useful ways to provide information to your clients, and why are these most useful? (brochures/flyers, internet, audio/video, workshops, peer programs, etc.)

Which languages do you use to provide services and information? What kinds of services and for which language groups?

**Based on my earlier explanation of how CLEO works with other agencies, please indicate whether:**

- CLEO should produce new materials on legal issues of particular concern to Aboriginal people. (see next set of questions)
- CLEO should continue to make its material available to Aboriginal agencies. CLEO should not develop new material on legal issues of particular concern to Aboriginal people. Why not?

**If you would like CLEO to work with Aboriginal agencies to produce material:**

We recognize that there are many legal issues that affect Aboriginal communities. In your opinion, which issues should be addressed first? Please be as specific as possible, for example, for family law specify divorce, child support, etc.

Why do you think those issues should be addressed first?

Who would be the end users of material for each issue that you mentioned?

In what languages is the material most needed? Please specify for each issue you mentioned

Would the material be most useful in print, in audio, or in both? Please specify for each issue and language.

If you indicated a need for print material, could the material be available only online, rather than in hard copies? Could your agency print enough copies from the internet for your distribution

needs, if the materials were designed so that they were easy to print and did not need to be stapled or bound?

If you indicated a need for print material, what presentation is most useful (one page, short brochure, booklet, graphics, etc.)

If you indicated a need for audio material, what presentation is most useful (music, number of speakers, etc.)

**Concluding questions**

Do you have any other ideas on projects on which you would like to work with CLEO? If so, please explain further.

Any other comments?

May we contact you again?



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