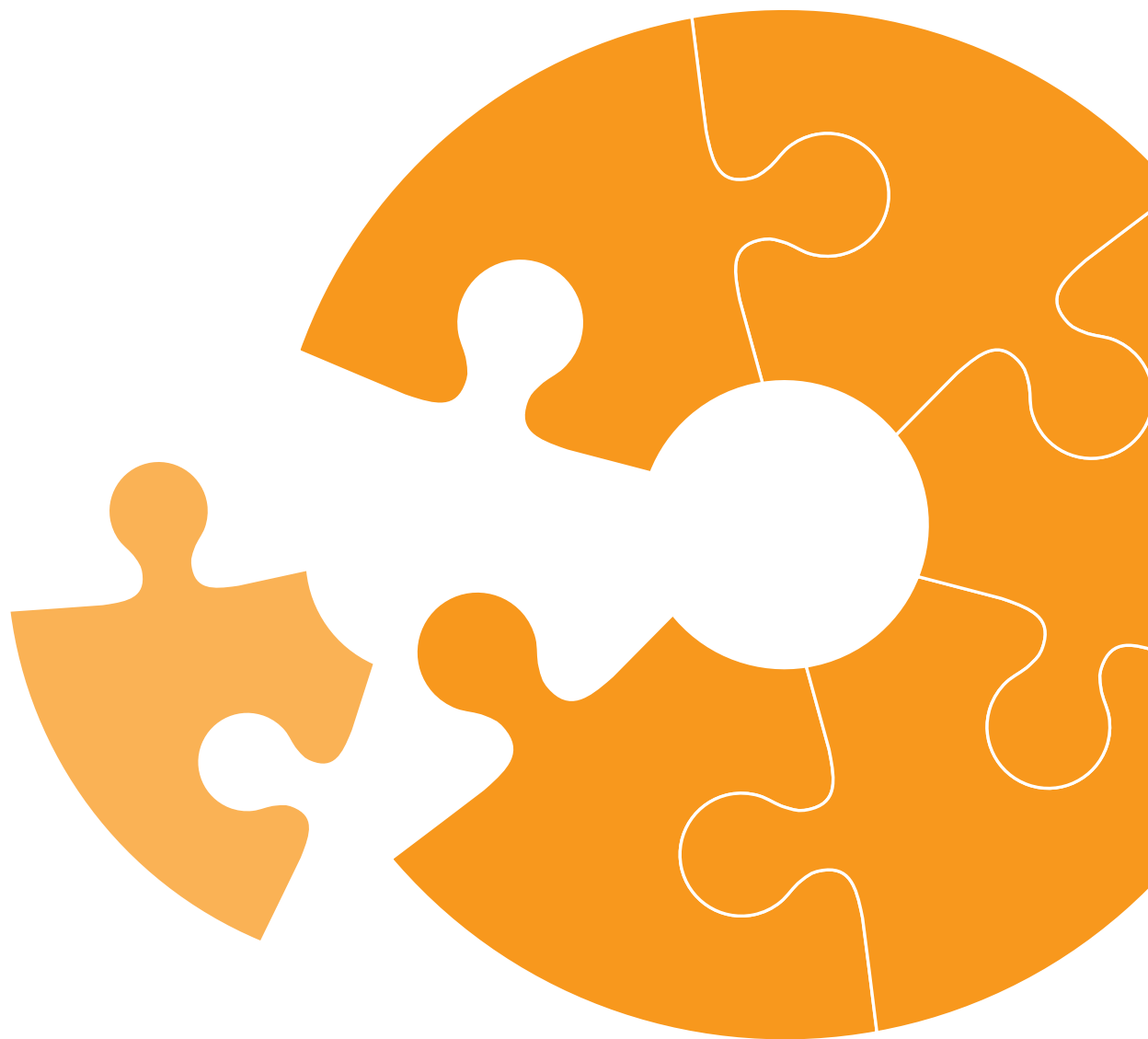


A framework for Ontario: Introducing a working legal capability matrix



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A NOTE TO READERS:

The links (URL's) to the websites referenced in this book were correct as at September 1, 2016. However, as information on the internet changes frequently, we cannot guarantee that the links or the content of the websites will remain accurate.





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Introduction

Community Legal Education Ontario (CLEO) is a public legal education and information (PLEI) organization that helps provide marginalized people in Ontario with essential legal rights information and builds the community sector’s capacity to provide effective legal information to their clients. CLEO, in consultation with the Ontario Justice Education Network, has developed a working legal capability framework for people in Ontario.

This working framework was originally prepared in early 2016 by CLEO, as part of our wider research exploring how legal capability content might best be incorporated into community-based life skills training programs. It was informed in part by an online scan of research on legal capability that CLEO is publishing as a companion to this report.¹ The research and work detailed in the online scan and working framework lays a foundation for developing and implementing practical, integrated legal life skills training in community-based settings. At the time of publishing these reports, CLEO is engaged in “Phase 2” of the legal capability and life skills training project — developing “legal life skills” content to be piloted at two job-readiness training programs starting in autumn 2016.

¹ See generally CLEO, *Building an understanding*.



Background

Health literacy research² and, more recently, research on legal capability³, has shown that social determinants or personal capabilities have a dramatic impact on people’s ability to get, retain, and use information.

In a 2015 report comparing health literacy and legal capability, CLEO notes some gaps in the then-existing legal capability theory models (Don’t smoke 48-50). In CLEO’s assessment, that gap could be addressed, at least in part, by acknowledging the impact of social determinants on people’s ability to acquire and use information. The importance of social determinants has long been understood in the health literacy sphere.

CLEO concludes: “In the health sector... it has long been recognized that many groups of people face systemic (and often intersecting) barriers to accessing health information and education. A similar recognition should be embraced by the justice sector to ensure a definition of “legal capability” that is meaningful to all Ontarians – especially the most marginalized.” (CLEO *Don’t smoke* 49)⁴

Other research conducted by The Law and Justice Foundation of New South Wales suggests that many marginalized people, depending on the nature of the marginalization, need direct legal help (or social supports) to deal effectively with legal problems in a system set up for experts – for many people, being armed with information will not be enough (Forell 6-7).

Law for Life, an organization based in the United Kingdom, developed a legal capability framework or “matrix” in 2009.⁵ This foundational framework has been much discussed and referenced in subsequent Commonwealth literature about legal capability. However, this framework does not specifically reflect the heightened needs of marginalized people to deal with legal problems and navigate the legal system.⁶ Nor does it address explicitly the importance of literacy skills or language skills in English.

2 See CLEO, *Don’t smoke, don’t be poor*, 9-11.

3 See Pleasance et al. 121-163.

4 See Appendix 2 for a list of “social determinants of civil justice” compiled by CLEO.

5 See generally Jones; Collard et al.

6 Note that while CLEO was in the process of finalizing its working legal capability framework, Law for Life issued a comprehensive report on legal capability and PLEI which does address many of these gaps: see generally Wintersteiger. Law for Life, to CLEO’s knowledge, has not published an updated version of their legal capability matrix.



CLEO's proposed framework for legal capability in Ontario

CLEO's proposed framework for legal capability is built upon the legal capability matrix developed by Law for Life in 2009. CLEO defines "legal capability" as "the knowledge, skills, and personal characteristics and circumstances that affect what people can do to resolve legal problems."⁷

In order to prepare a framework for legal capability in Canada, CLEO explored separately each of the three prongs of legal capability – knowledge, skills, and personal characteristics and circumstances – as they relate to dealing with a legal problem at various stages:

STAGE 1: figuring out that the problem is a legal problem and getting information about the problem

STAGE 2: getting help with the problem, figuring out what to do about the problem, and identifying next steps

STAGE 3: taking next steps to deal with the problem, and taking formal steps in a legal process if needed

CLEO has prepared three tables that illustrate the core knowledge, skills, and personal characteristics and circumstances needed at each stage in the legal journey continuum, with examples of each. At pages 13 to 16 of this report, we consolidate these tables into a shorter working framework for legal capability, which includes examples of barriers to legal capability faced by marginalized people in Ontario.

Understanding the steps needed to recognize and deal with legal problems, and the barriers that might impede marginalized people from engaging in self-help measures, is crucial to developing PLEI interventions.

It should be noted that the working framework is intended as a starting point. CLEO looks forward to engaging with other justice stakeholders, community legal clinics, and community agencies on how best to reflect the legal information and help needs of all Canadians.

CLEO looks forward to engaging with other justice stakeholders, community legal clinics, and community agencies on how best to reflect the legal information and help needs of all Canadians.

⁷ Legal capability can be seen as a "subset of broader 'personal capability'": see Pleasance et al. 130. This, in turn, is heavily affected by social determinants (see CLEO *Don't smoke 5*).



Table 1: Knowledge

CLEO suggests that “knowledge”, for the purposes of the working framework, should be seen as reflecting the level of knowledge of legal rights, responsibilities, systems and processes needed to deal with legal problems and navigate the legal system.

It’s important to note that how little or how much knowledge is required will depend upon the broader context. For example, the knowledge needed to represent oneself in legal proceedings will clearly be substantially higher than the knowledge needed to find sources for legal information and help. If the person is marginalized, or disproportionately affected by one or more social determinants, it may be extremely difficult for them to gain the knowledge needed to represent themselves.

See CLEO’s table about knowledge below and on the following page.

Table 1: **Knowledge needed to build legal capability**

Place on legal journey continuum	Core knowledge needed	Examples
STAGE 1 Figuring out that the problem is a legal one	<ul style="list-style-type: none">• core concepts in Canadian justice system (general knowledge of key legal rights and responsibilities)	<ul style="list-style-type: none">• knowing that when you sign something, you’ve agreed to a contract and might not be able to get out of it without costs• knowing that legal problems are not just criminal in nature — there are many types of civil legal problems (including you vs. government, you vs. boss, you vs. landlord, you vs. another individual)• knowing that you have the right not to be discriminated against because of your personal characteristics
STAGE 1 Getting information about the problem	<ul style="list-style-type: none">• common sources of information• people and places in the community that can give you legal information	<ul style="list-style-type: none">• knowing how to do an internet search for places that might be able to help• knowing that you can call 211 to ask them to refer you somewhere for help• knowing that you can call your city councillor or politician

Table 1: **Knowledge needed to build legal capability** (continued)

Place on legal journey continuum	Core knowledge needed	Examples
<p>STAGE 2 Getting help with the problem</p>	<ul style="list-style-type: none"> • sources for free or affordable legal help 	<ul style="list-style-type: none"> • being aware that there might be resources available in your community • knowing about the resources available in your community to help you deal with the problem
<p>STAGE 2 Figuring out or understanding options and next steps</p>	<ul style="list-style-type: none"> • core practical and legal concepts relating to your problem (and how they intersect) • the rights and responsibilities that you have in the situation 	<ul style="list-style-type: none"> • knowing that there might be deadlines or limitation periods within which you need to act to deal with the problem • having some understanding of the nature of the problem – jurisdiction, who the other parties are, whether it is a matter for courts (civil or criminal) or tribunals • knowing alternatives to get support or money if needed to deal with the problem
<p>STAGE 3 Taking steps to deal with the problem</p>	<ul style="list-style-type: none"> • options that are open to you • your rights and responsibilities under the law that governs your legal problem • understanding of the legal processes you have to follow 	<ul style="list-style-type: none"> • knowing that if you have a problem with repair work in your apartment, you can call the City and ask them to send a property inspector • knowing that there is a rent bank that lends money to people in arrears • knowing that you might have to fill in forms and go to a tribunal or court to deal with your landlord
<p>STAGE 3 Taking formal steps in a legal process</p>	<ul style="list-style-type: none"> • options that are open to you • your rights and responsibilities under the law that governs your legal problem • alternative dispute resolution • hearing procedures 	<ul style="list-style-type: none"> • knowing specifics about the legislation that applies to your problem • knowing the practice guidelines of the legal forum you are dealing with



Table 2: Skills

CLEO suggests that “skills” are acquired talents or abilities.

The importance of literacy and proficiency in one of Canada’s official languages as core skills to building legal capability cannot be underestimated. This is in large part because the legal language that one encounters when trying to deal with civil legal problems is often highly technical. In light of the technical nature of the legal process, and given the language-intensive nature of legal problems, it would be especially difficult for a person with poor literacy skills, or one not fluent in either English or French, to get information about a legal problem – let alone represent themselves in legal proceedings.

CLEO’s table lists core skills needed to deal with legal problems, depending upon the person’s stage in the legal journey continuum. Some of the core skills listed in our table about skills require a fuller explanation:

- literacy (ability to read and write in English or French)
- numeracy (ability to recognize numbers and to add, subtract, multiply and divide)
- digital literacy (ability to use a computer to conduct searches, find information and send emails)
 - or phone literacy (ability to navigate a voice mail tree to get to the person you need to talk to)
- oral or written communication skills (ability to speak or write clearly to people about your problem and understand what they say to you)
- skills to communicate events, assess the situation as objectively as possible, and hear competing versions of events
- analytical thinking, including the ability to evaluate options, recognize bias, assess credible sources of information, identify interests, and recognize that there might be alternative solutions to the problem)

See the next page of this report for CLEO’s table about skills.

Table 2: **Skills needed to build legal capability**

Place on legal journey continuum	Core skills needed	Examples
STAGE 1 Figuring out that the problem is a legal one	<ul style="list-style-type: none"> • literacy • digital literacy and/ or phone literacy 	<ul style="list-style-type: none"> • reading a letter or notice that a government department or agency sent you • reading a letter or notice from your landlord
STAGE 1 Figuring out that the problem is a legal one	All of the above plus: <ul style="list-style-type: none"> • numeracy (depending on the legal problem) 	<ul style="list-style-type: none"> • realizing that the problem needs attention • phoning a government department to follow up on a letter • looking for information about the problem online
STAGE 2 Getting help with the problem	All of the above plus: <ul style="list-style-type: none"> • oral or written communication 	<ul style="list-style-type: none"> • looking for and finding places to call for help • communicating effectively about the problem • taking in and retaining information about the problem
STAGE 2 Figuring out or understanding options and next steps	All of the above plus: <ul style="list-style-type: none"> • analytical thinking 	<ul style="list-style-type: none"> • critically assessing the situation, information, and available options • making decisions about next steps • recognizing that there may be alternative solutions to the problem, and considering alternatives
STAGE 3 Dealing with the problem	All of the above plus: <ul style="list-style-type: none"> • interpersonal skills (examples are: verbal communication skills and listening skills) 	<ul style="list-style-type: none"> • filling in legal forms • keeping records of steps taken • keeping on top of any limitation dates • understanding role of lawyer, if one has been retained
STAGE 3 Taking formal steps in a legal process	All of the above plus: <ul style="list-style-type: none"> • note-taking, record-keeping, and calendaring skills • oral and written advocacy 	<ul style="list-style-type: none"> • preparing and filing legal documents • meeting deadlines • preparing and making oral or written submissions



Table 3: **Personal characteristics and circumstances**

CLEO suggests replacing the notion of “confidence/ competence/ attitudes” relied on in the 2009 Law for Life matrix with the concept of “personal capabilities” which has emerged in more recent research on legal capability.⁸ “Personal capabilities” have been described as including:

“access to financial resources (including those provided by families), educational qualifications, physical and mental health, social networks and intangible characteristics such as life goals, aspirations, self-motivation, confidence and behaviour. Capabilities are what equip people to take advantage of opportunities (and deal with challenges) presented during life.” (*McLachlan, Gilfillan, and Gordon 95*)

In an attempt at clarity and to avoid language which might seem pejorative, CLEO refers to “personal capabilities” as “**personal characteristics and circumstances**”. This, in our view, better reflects the fact that personal capabilities are not static — they are related to one’s environment and opportunities.⁹

The 2009 Law for Life matrix identified the essential “attitudes” needed to gain legal capability as confidence, determination, belief in the process and detachment (Jones 4). In its definition of “personal characteristics and circumstances”, CLEO uses the term “perceptions of the justice system” to get at some of these concepts. For a person to participate in exercising their legal rights, they would need to believe that taking action through the justice system could help them — in other words, they would need to have a fairly positive perception of the justice system.

When considering perceptions about the justice system, it’s important to note that many marginalized people might lack a positive perception because of culture, race, Aboriginal status, social class, sexual or gender orientation, or other factors. That is, their perception of the justice system may be negative, based on past or present family or community experience. This might leave them with little confidence that taking action matters, or can help their situation.

Acknowledging and addressing the reasons for and impacts of these held perceptions — through systemic change as well as through individual education to build legal capability — is crucial to developing individual and community legal capability.

⁸ See McLachlan et al 95.

⁹ As the Law and Justice Foundation of New South Wales notes, legal capability can decrease or increase when one experiences new life events and problems (for example, relationship breakdown, intimate partner violence, or illness), or acquires new knowledge and skills (Pleasant et al. 125).

CLEO suggests that there are personal characteristics and circumstances needed for someone to deal effectively with legal problems – excepting rare, straightforward problems¹⁰, as reflected in the table below. Many are probably not realistic for many Canadians facing legal problems, especially those from some marginalized groups.

See below and the following page of this report for CLEO’s table about personal characteristics and circumstances. Following this table, see also pages 12-13 of this report for a complete draft working framework for legal capability in Ontario, including some of the barriers that marginalized people might face when trying to gain legal capability.

Table 3: **Personal characteristics and circumstances needed to build legal capability**

Place on legal journey continuum	Core personal characteristics and circumstances needed	Examples
STAGE 1 Figuring out that the problem is a legal one	<ul style="list-style-type: none"> • ability and support to cope with stressful life events • ability to avoid putting off stressful things until the last minute 	<ul style="list-style-type: none"> • opening mail that you have reason to believe contains bad news • answering correspondence or phone calls about the problem
STAGE 1 Getting information about the problem	All of the above plus: <ul style="list-style-type: none"> • self-confidence or self-esteem • ability to make human connections • understanding that some common legal problems can be resolved 	<ul style="list-style-type: none"> • feeling able to reach out for support and help

¹⁰ It should be noted that the Law and Justice Foundation of New South Wales identifies literacy as a “vital personal capability, without which awareness of opportunities and rights and pursuing one’s rights and entitlements may be undermined”: see Pleasance et al. 128. While CLEO has chosen to identify literacy as a “skill” for the purpose of this framework, CLEO recognizes that literacy can also be seen as a personal capability, albeit one that is acquired rather than innate.

Table 3: **Personal characteristics and circumstances needed to build legal capability**
(continued)

Place on legal journey continuum	Core personal characteristics and circumstances needed	Examples
<p>STAGE 2 Getting help with the problem</p>	<p>All of the above plus:</p> <ul style="list-style-type: none"> • ability to ask for time off work to deal with the problem ¹¹ • ability to deal with internal and external stressors 	<ul style="list-style-type: none"> • reaching out for help despite possible discomfort and stigma • being able to take time off work to deal with the problem • understanding that legal advice is private and confidential
<p>STAGE 2 Figuring out or understanding options and next steps</p>	<p>All of the above plus:</p> <ul style="list-style-type: none"> • access to financial resources (if the legal problem involves money) 	<ul style="list-style-type: none"> • finding time and money needed to deal with the problem
<p>STAGE 3 Dealing with the problem</p>	<p>All of the above plus:</p> <ul style="list-style-type: none"> • fortitude • access to technology • positive perceptions of the justice system 	<ul style="list-style-type: none"> • keeping appointments • following through on steps needed to address the problem, such as phone calls or emails to authorities • asking for further help as needed, if available • feeling as though taking steps through the justice system will actually make a difference in your case
<p>STAGE 3 Taking formal steps in a legal process</p>	<p>All of the above plus:</p> <ul style="list-style-type: none"> • the ability to remain calm and focused under pressure 	<ul style="list-style-type: none"> • if someone upsets you, wait to speak to or email the person until you're calmer • refrain from name calling when you disagree with something someone has said in a tribunal or court

¹¹ Many marginalized people in precarious or marginal employment, or sole parents with childcare obligations, might not realistically be able to carve out the time needed to make telephone calls or appointments for help during regular office hours. They also may face difficulties taking time from work or other responsibilities to attend tribunals or courts.



A working framework for legal capability in Ontario

The table on the next two pages represents a starting point to identify the knowledge, skills, and personal characteristics and circumstances a person would need to deal with a legal problem in Ontario. By incorporating examples of barriers that might be faced by marginalized Ontarians, CLEO hopes to illustrate the very real problem that many people in Ontario are not well placed to deal with legal problems on their own.

CLEO's working framework for legal capability in Ontario

Stage in legal journey continuum	Knowledge needed	Skills needed	Personal characteristics and circumstances needed	Barriers
STAGE 1 Figuring out that the problem is a legal one	<ul style="list-style-type: none"> core concepts in Canadian justice system (general knowledge of key legal rights and responsibilities) 	<ul style="list-style-type: none"> literacy digital literacy and/or phone literacy 	<ul style="list-style-type: none"> ability and support to cope with stressful life events ability to avoid putting off stressful things until the last minute 	<ul style="list-style-type: none"> impact of social determinants often low literacy in English or French stigma — creates difficulties for people to reach out if embarrassed by their personal circumstances or lack of money
STAGE 1 Getting information about the problem	<ul style="list-style-type: none"> common sources of information people and places in the community that can give you legal information 	<p>All of the above plus:</p> <ul style="list-style-type: none"> numeracy (depending on the legal problem) 	<p>All of the above plus:</p> <ul style="list-style-type: none"> self-confidence or self-esteem ability to make human connections understanding that some common legal problems can be resolved 	<ul style="list-style-type: none"> lack of understanding that some legal problems are common and that there are ways to prevent them from escalating
STAGE 2 Getting help with the problem	<ul style="list-style-type: none"> sources for free or affordable legal help 	<p>All of the above plus:</p> <ul style="list-style-type: none"> oral or written communication 	<p>All of the above plus:</p> <ul style="list-style-type: none"> available time during regular business hours¹² ability to deal with internal and external stressors 	<ul style="list-style-type: none"> cognitive challenges, especially when compounded by experiencing multiple problems at once lack of money to get legal advice where no free options exist (many marginalized people will need legal help in person to deal with legal problems)
STAGE 2 Figuring out the problem and identifying next steps	<ul style="list-style-type: none"> core practical and legal concepts relating to your problem (and how they intersect) rights and responsibilities in the situation 	<p>All of the above plus:</p> <ul style="list-style-type: none"> analytical thinking 	<p>All of the above plus:</p> <ul style="list-style-type: none"> access to financial resources (if the legal problem involves money) 	<ul style="list-style-type: none"> power imbalances when having to deal with “the system” (for example, OW or ODSP worker)

¹² Many marginalized people in precarious or marginal employment, or sole parents with childcare obligations, might not realistically be able to carve out the time needed to make telephone calls or appointments for help during regular office hours. They also may face difficulties taking time from work or other responsibilities to attend tribunals or courts.

CLEO’s working framework for legal capability in Ontario (continued)

Stage in legal journey continuum	Knowledge needed	Skills needed	Personal characteristics and circumstances needed	Barriers
<p>STAGE 3 Taking steps to deal with the problem</p>	<ul style="list-style-type: none"> options that are open to you the law that governs your situation understanding of the legal processes you have to follow 	<p>All of the above plus:</p> <ul style="list-style-type: none"> interpersonal skills (examples are: verbal communication skills and listening skills) 	<p>All of the above plus:</p> <ul style="list-style-type: none"> fortitude access to technology access to financial resources positive perceptions of the justice system 	<ul style="list-style-type: none"> for many people, especially those who are marginalized, this might be the first opportunity when they realize they need and can get legal information power imbalances (dealing with government or with represented parties on the other side)
<p>STAGE 3 Taking formal steps in a legal process</p>	<ul style="list-style-type: none"> options that are open to you the law that governs your situation alternative dispute resolution understanding of the legal processes you have to follow 	<p>All of the above plus:</p> <ul style="list-style-type: none"> note-taking, record-keeping, and calendaring skills oral and written advocacy 	<p>All of the above plus:</p> <ul style="list-style-type: none"> the ability to remain calm and focused under pressure 	<ul style="list-style-type: none"> depending on the type of issue, many people, especially those who are marginalized, might not have an alternative (for example, if facing eviction for non-payment of rent but having no money to pay arrears or to move into a new place) many racialized Canadians, Aboriginal people, or people from other historically marginalized groups (for example, the LGBTQ community) might not have confidence that taking action through the justice system works, given personal past treatment or experience of their community



In this draft list of suggested social determinants of civil justice, CLEO lists the social determinants of health identified by health professionals and researchers.¹³ CLEO includes additional determinants relating to the likelihood of experiencing legal problems or the ability to deal with legal issues.

- income and income distribution
- education
- unemployment and job security
- employment and working conditions
- early childhood development
- food insecurity
- housing
- social exclusion
- social safety network
- health services
- Aboriginal status
- gender
- race
- disability
- sexual orientation
- gender identity
- immigration to Canada (especially for women)
- interaction with the criminal justice system
- incarceration (previous or ongoing)
- credit rating status

¹³ See CLEO, *Don't smoke, don't be poor*, 9-11.



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¹⁴ All online resources were last accessed on August 22, 2016.