

# **Linguistic access and the legal profession: reflections from work in rights education<sup>1</sup>**

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This paper will discuss the needs of marginalized communities as seen through a “linguistic lens” and from the perspective of Community Legal Education Ontario (CLEO), a legal clinic that specializes in providing low-income and disadvantaged communities throughout Ontario with information about their legal rights.<sup>2</sup> This work may seem far removed from the litigation and law reform associated with advancing the rights of marginalized communities. But some form of rights awareness is a prerequisite to taking legal action and exercising legal rights.

CLEO materials are produced in English and French. But the need for materials in languages other than English and French has risen dramatically over the past decades. In Toronto alone, over 100 languages are spoken<sup>3</sup>. There are many challenges in meeting the legal information needs of these linguistic communities. This paper will attempt to

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<sup>1</sup> Thanks to Julie Mathews, Caroline Lindberg and Janna Promislow for comments on earlier drafts.

<sup>2</sup> CLEO produces a core set of materials on legal topics of pressing concern to these communities. But throughout Ontario, there are many community agencies that share CLEO’s social justice focus and offer legal information as part of their range of services. In addition to these community agencies, all of the community legal clinics in Ontario are expected to provide legal information to the communities that they serve. CLEO materials support the work of these agencies and legal clinics, and are ordered free of charge in huge numbers by these offices. These offices use the materials in many ways, including supporting one-on-one work with clients, as handouts in workshops, for display at community events and in reception areas. CLEO works with partners from these agencies to assess information needs and new directions for materials. CLEO also engages in a variety of activities to support these offices. A recent example of a major initiative is CLEONet, an online clearinghouse of legal information produced by agencies throughout Ontario.

<sup>3</sup> The Community Social Planning Council of Toronto, *Renewing Toronto’s ESL Programs . . . charting a course towards more effective ESL program delivery.* (Toronto: Author, 2005).

provide an overview of those challenges and their broader application, from the unique perspective of rights education.

In order to arrive at this overview, the introduction discusses rights awareness. Then the second section of this paper reviews some of the issues involved in connecting our audience with this information. The third section describes the process of making legal information accessible in English. Our materials must effectively communicate subject matter which even in English has its own specialized vocabulary, and which, as a discipline, is based on competing interpretations of written language. This is followed in the fourth section by a description of the concerns that arise when developing multilingual legal information. The fifth section considers cultural adaptation of legal information. Culture and language have a reciprocal relationship: this must be considered when developing clear language materials in a multicultural society. The conclusion comments on the legal profession's responsibility to non-official language communities, focusing on interpretation services.

## **I. Rights awareness**

Regardless of home language or mother tongue, many individuals, especially those in marginalized communities, are not aware of their legal rights. For example, there are many workers who do not have immigration status, and who may not know that they nevertheless can access some protection as workers under the law. The converse of this is also a problem. Individuals assume that they have protections that, in fact, do not exist.

Some tenants think that they cannot be evicted during the winter. This lack of information has the potential for devastating consequences.

Most people will not be motivated to seek legal information until they realize that they have a legal problem, but this can come too late. Many problems are not obviously legal in nature, in particular, issues related to poverty and low income. Administrative law regulates social assistance, health issues, school attendance; but many of us do not recognize these as problems with legal dimensions, unless and until we attend law school. Yet, for low-income people the law is pervasive, regulating many aspects of their lives<sup>4</sup>. Further, low-income advocates have been aware for many years that these problems tend to cluster: more recently this has been the subject of empirical study<sup>5</sup>.

Clustering signifies that people enter a spiral of legal problems; for example, marriage breakdown can lead to income problems, can lead to inability to pay the rent, can lead to eviction.<sup>6</sup> The downward spiral of legal problems makes it even more important to reach people with legal information early in the cycle, so that this information can play a preventative role. The new research on clustering may help us to make the case for more services – and services that intervene earlier: to inform people that they have legal rights at stake, and to refer them to culturally sensitive and appropriate legal services that assist in the exercise of rights so that they do not reach a crisis point like eviction<sup>7</sup>.

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<sup>4</sup> S. Wexler, “Practicing Law for Poor People (1970) 79 Yale L.J.1049.

<sup>5</sup> A. Currie, “The Civil Justice Problems Experienced by Low- and Moderate-Income Canadians: Incidence and Patterns” (2006) 13 International Journal of the Legal Profession No 3.

<sup>6</sup> *Ibid.*

<sup>7</sup> A multi-sectoral, holistic approach is necessary to prevent escalation of legal problems. For example, a referral service that is strictly legal is insufficient, because many issues with legal components may not

## **II. Connecting communities with information**

This section considers factors that affect information delivery. Part (a) discusses structural inequality and systemic racism, part (b) addresses the impact of isolation, and (c) looks at the effect of stress on information retention.

### **(a) Structural inequality**

Language communities overlap with racialized communities. Language is the lens through which we identify our target audience simply because CLEO's work involves developing written and oral materials. Our focus on poverty and language allows us to target two critical elements compounding the discrimination experienced by racialized communities. As demonstrated in recent studies and statistics<sup>8</sup>, there is a strong correspondence between poverty and ethno-racial inequality. Immigrants to Canada are more highly educated than in previous generations yet they have a much higher incidence of poverty: social policies and attitudes prevent equal opportunity for advancement<sup>9</sup>.

Both poverty and language discrimination frequently intersect with racial discrimination; poverty and language barriers make it even more difficult for an individual to combat racism. At the very minimum, all members of our target audience are likely to face barriers due to low income. The majority likely face discrimination because they are racialized, because English is not their first language, and possibly discrimination on the

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present as legal problems. Ultimately, improper or inadequate referrals lead to "referral fatigue". See L. Curran, "Making Connections: the Benefits of Working Holistically to Resolve People's Legal Problems"(2005) 12 Murdoch University Electronic Journal of Law.

<sup>8</sup> G-E. Galabuzi, *Canada's Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century*. (Canada: Canadian Scholars Press, 2005); M. Ornstein, *Ethno-Racial Groups in Toronto, 1971-2001: A Demographic and Socio-Economic Profile*. (York University: Institute for Social Research, 2006).

basis of their religion or their gender. One study which conducted interviews with immigrant women from several different countries of origin, found that “*some women experienced this type of discrimination [language discrimination] much more profoundly than discrimination based on race or ethnicity, while others described discrimination based on language as well as race/ethnicity . . . Women described becoming invisible to others because they couldn't speak English or French. They spoke of being taken advantage of, being dismissed as stupid, being misunderstood, being purposefully exploited.*”<sup>10</sup>.

Internalized discrimination leads people to feel that they are not entitled to rights: part of our work is to inform them that they are. But to provide accurate information, we must also address the limitations of the legal system. This is very difficult to do in the abstract, in a pamphlet, without appearing to discourage people from pursuing legal action.

One step we take to address this dilemma is to include information on how to access legal help in our materials. We are likely to avoid producing materials on a given topic, if there are no services available to assist individuals in pursuing their legal rights in that area. We know that this assistance is crucial, that legal information is only a means to an end: protecting one's rights or, ideally, preventing a legal problem from arising. Once individuals are embroiled in a legal problem, then legal information may be meaningless in the absence of appropriate legal advice, and, in many cases, representation. Ultimately,

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<sup>9</sup> Galabuzi, *supra*.

<sup>10</sup> L. MacLeod & M. Shin, 1994. *Like a Wingless Bird: A Tribute to the Survival and Courage of Women Who Are Abused and Who Speak Neither English nor French*. (Ottawa: National Clearinghouse on Family Violence: 1994).

in the face of a justiciable issue, it is important for a lawyer or legal worker who is knowledgeable in the subject matter to work with the individual in determining their legal options, and to explain the possible consequences of pursuing a particular course of action. An advocate with skill and experience at a particular tribunal or office plays an important role in leveling a playing field that is uneven for a variety of reasons: because the opposing party may be represented by legal counsel, because of stereotyping of recipients of social assistance, because of racial biases of an administrative decision-maker, etc.<sup>11</sup>

We are cognizant of systemic injustice when prioritizing languages for projects. There are many high need languages in Ontario, and CLEO cannot produce materials in all of them. As we move forward, we look at a variety of information to determine where to focus our efforts. A critically important factor is consideration of which linguistic groups experience racial or religious discrimination. We also look at statistical information on the size of linguistic populations living below the poverty line, immigration data on top source countries and languages, and information on high need groups such as refugees. Through consultations with community and settlement agencies, we find out which languages they identify as priorities.

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<sup>11</sup> R. Engler, Professor of Law and Director of Clinical Programs, New England School of Law, “Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed”(Draft, 2008, cited with permission).

**(b) Isolation**

Marginalization contributes to isolation. This statement may appear cliché, but in fact it has real significance for service delivery, including delivery of rights information. How can we connect isolated people with information about their legal rights? In practical terms, we must look at where they will go in the day, and how they might come across information. Perhaps they will get to the grocery store, or to a health clinic. Many may be in situations that are so oppressive that they are unable to leave their home or workplace at all, and might sporadically have access to radio or television.

Recently, based on our community consultations, CLEO has started exploring new formats and delivery channels. We have just released our first audio materials, through what we call our “ six languages project”, a pilot project in Arabic, Mandarin and Simplified Chinese, Somali, Spanish, Tamil and Urdu, in addition to English and French. The audio materials were created in two different formats: one format closely parallels the text materials. The audio pieces in this format are intended to provide similar information to the text materials, but increase accessibility to individuals who are less comfortable reading. Agency staff can access these materials online to play to their clients, community agencies can play the recordings in reception areas or put them on their telephone lines, and the recordings can be tools in English as a Second Language classes.

The other audio format is a 30-second public service announcement (PSA), which we selected based on information from community radio stations. Within each 30-second

time slot, we try to give one substantive message about legal rights. For instance, one PSA indicates that employment laws apply even to workers who do not have immigration status. The PSAs also publicize a toll-free multilingual referral number.

The same pilot project explores a new format for shorter text materials, intended to facilitate more versatile forms of delivery. These materials have the potential for use as articles in community newspapers or as flyers at ethnic grocery stores. As with the audio recordings, the text materials can be downloaded from the Internet. They are print-friendly and designed so that agencies can make copies as needed. The materials have a special section where agencies can insert their own contact information or local referral numbers, prior to making copies<sup>12</sup>. CLEO is introducing the materials to frontline staff via outreach and capacity-building workshops.

### **(c) Stress and information retention**

It is critical to remember that legal issues are stressful. The types of legal issues faced by marginalized communities are arguably among the most stressful of all. Eviction from one's home, deportation to another country, fear of retaliation in the workplace, fear that one's children may be apprehended, are among the most frightening experiences that

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<sup>12</sup> The Internet offers a tremendous opportunity for information delivery: when planning we need to assess the most effective ways to make use of this vehicle. Most community agencies have online access, and CLEO uses the Internet as a way to connect agency staff with resources and with each other. The capacity to print copies is important because agency staff repeatedly identify print as the most useful format for their clients. The focus on staff as our online audience is based upon feedback from community agencies as well as statistical reports which indicate that a large number of low-income and disadvantaged people do not have access to or make regular use of the internet. See J. Gordon, "Legal Services and the Digital Divide"(2001), Management Information Exchange Journal, Spring 46.

people can face. It is perhaps more accurate to describe these situations as traumatic, rather than describing them merely as “stressful”.

There has been some recognition of the impact of trauma on learning<sup>13</sup>. In consultations with staff at community agencies, CLEO frequently heard that clients are overwhelmed with paper. One agency that assists newcomers from every continent evaluated communication strategies using focus groups. The groups indicated that individuals under stress must receive the same type of information at least five times in order to retain it. Another worker from a refugee-receiving agency in a metropolitan area echoed this comment. He works with a linguistic group that is highly educated in their first language, and he provides service in that language. Despite the absence of a language barrier, most clients repeat the same questions over three or four encounters with the worker.

These experiences suggest that the impact of stress on information retention is significant, including for individuals with a high level of formal education. While both of the examples above refer primarily to refugees, this issue can be expected to arise in situations such as fear of eviction or domestic violence. A communication strategy that allows for repetition of the same information over time in a variety of ways is more likely to be effective. As McDonald states: *“Research with the impact of trauma on learning demonstrates that there needs to be a continuum of learning strategies to respond to individual and collective needs. For example, in times of crisis, there may be significant cognitive changes that affect the way one responds to information and support. One-on-*

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<sup>13</sup> For a summary of this literature, see S. McDonald, *The Right to Know: Women, Ethnicity, Violence and Learning about the Law*, Graduate Thesis. (Toronto: Ontario Institute for Studies In Education, 2000).

*one, individualized information sessions may be the most appropriate way to address legal issues at hand. As time goes on, there may be a greater need to feel less alone with the issues, the experience, and the legal process going on”<sup>14</sup>.*

In many situations, brief materials and messages repeated in a variety of ways will be most effective in creating awareness. However it may be that lengthier materials are required at other stages of the process. So, for example, while partners at settlement and community agencies often remind us not to overwhelm people with detail, there is feedback from some community legal clinics suggesting a need for longer materials.

The individual who is attending a workshop or has made it to a legal clinic likely already has more information than many of the people we are trying to reach. Once they are entering a legal process, they may be receptive to detailed information, allowing them to work more effectively with their lawyer. At this stage, it can be helpful to supplement print materials with information and support groups, or question and answer sessions, that allow groups to learn together. This group learning has a transformative potential: when individuals who face the same systemic problems have the opportunity to meet and share experiences, they can consider ways to work collectively to change the status quo<sup>15</sup>.

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<sup>14</sup> See discussion of Gorman’s framework of survival learning, struggle learning and resistance learning as applied to legal information in S. McDonald, “The Role of PLEI in Poverty Law Services” (2004) 19 Journal of Law and Social Policy 32.

<sup>15</sup> See S. McDonald with Pamela Cross, 2001. “Women’s Voices Being Heard: Responsive Lawyering”(2001) 16 Journal of Law and Social Policy 207; I. Eagly, “Creating a New Vision of Legal Services Practice” (1998) 4 Clinical Law Review 4, 443; S. Brustin, “Expanding Our Vision of Legal Services Representation: The Hermanas Unidas Project”(1993) 1 Am. U.J. of Gender & Law 39; J. Gordon, “We Make the Road by Walking: Immigrant Workers, The Workplace Project and the Struggle for

### **III. Accessible and accurate language**

We know that law is a specialized discourse, and legal meaning is often open to interpretation. Even where the meaning may be clear to someone who is legally trained, the law as written can be a barrier to access to justice: it acts as a gatekeeper, requiring even highly educated non-lawyers to depend on members of the legal profession. This is not intended to suggest that legal clarity could or should lead to self-representation. In fact, we suspect that the more an individual knows about the law, the more likely they are to recognize a need for specialized legal assistance. Probably most employment lawyers will retain a family lawyer if they are embroiled in a custody dispute. But the structure of our legal system serves to increase the power differential between the lawyer and his or her client, and there is a body of literature describing how this creates barriers to clients' active participation in the direction of their legal case.<sup>16</sup>

CLEO's English language print materials are intended to make the law accessible to people experiencing poverty and disadvantage, including people who face literacy challenges. CLEO's staff includes clear language editors who are literacy specialists: they work meticulously to develop materials that are easy to understand. This work not only assists people with reading difficulties; even lawyers find our materials helpful as an introduction to legal areas outside of their practice.

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Social Change (1995) 30 Harvard Civ. Rights-Civ. Liberties L.Rev. 407. Several organizations in Ontario, such as the Workers Action Centre in Toronto, provide examples of transformative action.

Clear language editors replace terms that few would understand with words that are more familiar. They break up text into individual ideas that are more coherent. This does not just involve making long sentences shorter, although that can be a technical part of the work. Rather it is about clarifying concepts and ideas, in specific sections and across the document as a whole. As the editors design publications, they select particular fonts and create careful margin spacing based upon their knowledge of reading patterns.

The expertise of clear language editors, or literacy specialists, cannot be over-emphasized: their skills are unique, specialized and grounded in professional experience and training. It is not an expertise that lawyers share. Lawyers who work in government and other legal information agencies may be attuned to or have received some training in issues of plain legal language; some perhaps consider themselves experts in plain language. But they are unlikely to create clear language materials accessible to a wide range of readers without the benefit of literacy specialists. The fourth and fifth sections of this paper also emphasize the importance of recognizing and collaborating with non-legal expertise.

As the clear language editors revise text, they work in collaboration with CLEO lawyers, who ensure that this editorial process does not compromise legal accuracy<sup>17</sup>. The

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<sup>16</sup> See for example, A. Alfieri, “Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative”(1991) 100 Yale L.J.2107 and Wexler, *supra*, note 4.

<sup>17</sup> All CLEO English language materials are reviewed by lawyers who practice in the area of law covered by the publication. The work of the CLEO lawyer includes incorporating feedback from this review into the materials. This is in keeping with our rights education mandate: “Reading the laws, policies, and court decisions in a particular area of law may tell you how the law *should* work. It will not tell you how the law really *does* work, which is what people need to know”, C. Lindberg, “Public Legal Education: Helping people understand and exercise their legal rights” (Speech for delivery in Beijing, 2005) 11.

responsibility of the lawyer in this legal accuracy check can be challenging. The lawyer does not have the opportunity to meet with a client and discuss the specific facts of that client's case. Rather, the CLEO lawyer must consider the needs of an audience of people who may be at very different points of a potential legal process. The lawyer must consider the possible prejudicial effect of the wording chosen in the publications for all these different scenarios.

By way of example, courts and tribunals set deadlines for filing applications or appeals. But there may be remedies if the deadline has been missed, for example, a client may be able to seek an extension of time, or may be able to proceed in some other way. To a lawyer assessing a client's possible options, this involves checking whether a deadline has passed, and if so, advising the client on whether and how the situation might be rectified. Obviously this individual assessment is not possible when reaching people with rights information. The audience for information includes people who can still meet the deadline as well as those who have missed it<sup>18</sup>.

As a result, we are faced with a dilemma when developing these materials. We need to clearly state the importance of meeting deadlines, because there is no certain remedy when a deadline has passed. Yet we also want individuals who have missed the deadline to act quickly in getting legal help in case they are able to proceed in some other way. By emphasizing the deadline we do not want to dissuade them from finding out, as quickly as possible, what other remedies may still be available to them<sup>19</sup>.

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<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

For example, once a refugee claim is accepted, the claimant has 180 days to apply for permanent resident status. It is very important for the accepted refugee to apply within the 180 days, but if they do not, they may still be able to obtain permanent residence later, although they may require legal assistance to do so. We want to encourage successful claimants to apply within the time limit, but we do not want them to give up if they miss the deadline, especially since they must gather together from their limited funds the money to pay an application fee, and this could lead to the delay. Thus, in our recent piece, “Refugee claims in Canada”, after explaining that there is a 180 day window, we state: “You will have to pay a fee to apply. You may be able to get a loan. A community agency that works with refugees can tell you more about getting a loan. They can also help you find out what to do if you missed the 180-day time limit to apply for permanent resident status”. Through this last sentence, we intend to convey the possibility of remedial action without encouraging any reliance on that possibility.

#### **IV. Developing multilingual materials**

The previous section discussed the need to choose English words carefully and in collaboration between lawyers and literacy specialists. Of course, preparing information in languages other than English adds to these challenges. There are several crucial steps that need to be implemented in multilingual materials development: translation by qualified translators, community review, and an accuracy check comparing the source document with the translated text. CLEO has been monitoring and testing the use of these steps through the six languages project referred to earlier. Since that project is about to

enter the evaluation stage, please note that this discussion is in some ways premature. Our evaluation will assist us, and hopefully others, in determining further adjustments and modifications.

The Centre for Translation and Legal Documentation at the University of Ottawa translates CLEO's English materials into French. This centre has specialized expertise and understanding of the issues involved in legal translation. The Centre also has the capacity to recognize and address nuances involved in translating information that is grounded in the common law system into a language with both a civil law and a common law tradition. We have not yet found an institution or resource in Ontario with this same capacity in other languages.

Translation is a specific skill set<sup>20</sup>. It can be helpful if a translator has specific knowledge of and experience in the subject matter of the source text. But perhaps most importantly, the translator should be an excellent writer in the target language. Translation has two goals: an accurate reproduction of the meaning from the source text, and the creation of a text that reads naturally in the target language. Ideally it should not be obvious that the document is a translation. Achieving this goal is time-consuming: a first draft of a

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<sup>20</sup> Translation protocols generally involve using qualified professional translators. All too often, because of lack of funding, volunteers are used as translators and interpreters, and they may not have the sufficient skills. Similarly, not all translation services use individuals with the appropriate qualifications. Not only must a translator have sufficient command of both languages, even perfectly bilingual individuals are unlikely to have the specialized knowledge required to produce accurate translations. See J. Puebla Fortier, *Multicultural Health Best Practices Overview*. (California: The California Endowment Multicultural Health Investment Area, 1999). Technically competent translation requires careful treatment of grammatical and syntactical structures, vocabulary and usage, special characters, metaphor, graphics and expansion space as outlined in M. Coe, "Writing for Other Cultures" (1997) *Intercom*. Furthermore, S. Hernando, "Cultural Interpretation: An Issue of Power and Accessibility" (1994) 44/45 *Fireweed* 30, explains that sensitivity to and knowledge of both cultures is needed to produce material that is accurate and readily understood.

translation will be very literal, and the translator should go through a series of revisions to arrive at a natural sounding translation. Where resources allow, it may be prudent to involve two translators. The role of the second translator is not merely to proofread, but also to identify phrases that still read as direct translation, and adjust accordingly.

Additional issues arise in the translation of rights information. Translators should use clear language in their own language. They need to be aware of the target audience for the materials and write at an appropriate register for that audience, using everyday language rather than academic or professional vocabulary. This includes a careful balancing of a variety of concerns. For example, CLEO materials are intended to be gender neutral. But in some languages, gender neutrality leads to complicated sentence structures, and as a result, the information will be less accessible to our audience.

However, if we relinquish our adherence to gender neutrality, there is a risk that legal accuracy will be affected; that it will not be clear that the law in question applies to both genders.

Field-testing, to the extent possible, can improve accessibility and sensitivity to dialects and cultures within a language group<sup>21</sup>. A clear language editor and designer can choose appropriate font, spacing, and layout to enhance readability in Roman alphabets. But in non-Roman alphabets, this is more difficult to achieve. We have sought feedback on

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<sup>21</sup> See N. Edwards, “Translating Written Material for Community Health Research and Service Delivery: Guidelines to Enhance the Process.”(1994) *Canadian Journal of Public Health* 67, and People’s Law School, “Translations, Public Legal Education and Plain Language: Reaching Linguistic Groups in the Lower Mainland” (1992) British Columbia, unpublished panel discussions.

issues such as these through community review and field-testing. This field-testing included seeking feedback from focus groups, as well as revision of the translated text by our community advisors.

The focus groups provided another layer of cultural adaptation, in addition to cultural accessibility review of the English text by our community advisors, which will be discussed in section five. As well, the focus groups provided assistance to the community advisors in identifying vocabulary that was less familiar to their clients, and in substituting words that were more broadly recognized across the variety of regions, dialects and cultures that speak a given language<sup>22</sup>.

A critical step in our translation process was a translation accuracy check by a practicing lawyer fluent in both English and the target language. We asked these lawyers to compare the source text and the target text, and to make changes where necessary to ensure that the target text accurately reflected the legal meaning of the source text. For example, if the English text states “you may be able to” then it should not be translated as “you can” or “you will be able” when the law does not guarantee that ability. These lawyers made many changes to the translations and we considered this step to be our

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<sup>22</sup> This is dependent upon the individual characteristics of the focus group participants. Although we made efforts to recruit participants from a variety of regions where the language is spoken, we were unsure to what degree these efforts were successful. We also tried to avoid including professionals or academics that might dominate the groups and silence other participants. But this was not possible, and it is unclear to what degree this is desirable. Since the majority of new immigrants are highly educated, then perhaps they should be included in our field-testing.

“due diligence” on the legal accuracy of the translations. As a guarantee, this is far from perfect, but we have yet to find an ideal solution<sup>23</sup>.

## V. Cultural adaptation

In a world with unlimited resources, legal information projects would focus on only one particular linguistic or cultural community, allowing for material that is not translated from English, but is developed independently as a unique piece for each cultural and/or linguistic group. This is most effective for a single linguistic community since content and language developed with the point of view of the target audience in mind is more likely to respond directly to their needs<sup>24</sup>. But this is not a viable strategy for using resources to meet the many competing needs in an environment as linguistically diverse as Ontario. Rather, in CLEO’s work, a key first step involves cultural feedback on an English template that is then translated. Thus, the challenge in our work is to take into account cultural issues from a range of groups, in one document<sup>25</sup>.

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<sup>23</sup> Another option would have been to arrange for a back-translation of the target text into English by a third translator, or a read-back aloud of the target text by a translator to an English-speaking lawyer. But back-translation or read-backs have their own weaknesses. For example, one of the lawyers in our project revised the translation to clarify that the document was addressed to both men and women; that the “you” form was inclusive. We cannot be certain that an English-speaking lawyer reading a back-translation or listening to a read-back would have identified this ambiguity.

<sup>24</sup> Law Courts Education Society of British Columbia, Comparative Justice Systems Project Report: Research, Process, and Materials. (Vancouver: Author, 1994).

<sup>25</sup> As it is often not feasible to develop unique materials from scratch in each language, H. Osbourne, “In Other Words. . . It Takes More Than Just Words: Culturally and Linguistically Appropriate Materials” (2000) On Call, provides the following guidelines: (1) acknowledge culture as well as language; (2) collaborate with bicultural/bilingual people in the community; (3) test materials with the audience for whom they are intended; and (4) budget for multiple ways to disseminate information. Osbourne suggests treating print as the basis for other types of materials and interactions; thus budgets should include funds for alternatives to print materials, and for ongoing testing, to monitor achievement of intended outcomes. Puebla Fortier, *supra*, note 18, recommends: (1) supporting development of a centralized database of translated materials that include regular review and updating, ideally online; (2) supporting consensus development, adoption and dissemination of glossaries and dictionaries that attempt to standardize terminology, especially for small language groups; (3) supporting certificate training programs for community-based interpreters/translators, especially from small language groups; and (4) promoting adoption of translation protocols.

In the six language pilot project, CLEO works with a 10 member advisory group of settlement and community agency staff. These individuals provide services to their communities in the target languages and played a key role in topic and content selection; identifying high-need information for their communities. In that sense, this process is not very different from the way we normally work: relying on partners from legal clinics and other community networks to help tap into the needs of their clients. But, in our pilot project, the community advisors were involved in much more than needs identification. Among other critical roles, they also participated in the revision of the English text prior to translation.

The advisors assisted us in finding culturally sensitive and appropriate language for the English text, as well as explanations that are understandable to members of their communities. They also identified places in the text where language required revision to avoid potential harm. This was particularly challenging because often there was disagreement among our advisors about how best to avoid harm. For example, refugee claimants appearing before the Immigration and Refugee Board can be represented by a lawyer licensed to practice in Canada, or by a member of the Canadian Society of Immigration Consultants (CSIC). Any representative whom the refugee claimant brings must either be a member of CSIC or authorized to practice by the bar of a Canadian province. One community advisor thought it was important to include the website for

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CSIC in our piece on refugee claims. Yet another advisor argued strongly that if we included contact information for CSIC, newcomers would see it as an endorsement of immigration consultants. In the end, we included a sentence indicating that a non-lawyer representative must be a member of CSIC, but we did not include further detail or contact information. This is far from satisfactory, but it was the compromise we made when balancing competing concerns in a community-based project.

Once the materials had been translated, our community advisors were also intimately involved in field-testing, often recruiting and leading focus groups of individuals from each linguistic community. This field-testing led to further revision of the English text in order to make our meaning clear across cultures. For example, one of our pieces focused on the immigration consequences of criminal charges for non-Canadian citizens. By way of context, we had heard from our legal and community networks that many individuals plead guilty to avoid other harmful impacts, such as missing work and potential job loss, unaware that this can have serious consequences for their status. We have also heard that until quite recently, many criminal lawyers were not attuned to the immigration implications; our goal was to inform individuals in this situation that they need expert legal advice in both criminal and immigration law. The initial draft stated, by way of introduction: “If you are charged with a crime in Canada, you have a right to a trial in criminal court”. During field-testing, members from some language communities reacted strongly to this statement. By referring to a “right”, we had intended to make a positive statement, but the message sounded ominous to people coming from less democratic legal systems for whom a right to a trial sounded like a sure sentence. As a result, we

added context, including information about reasonable doubt, and its implications for a fair trial.

Another example comes from our piece for parents on children's aid. In the initial draft, we explained that parents have a legal responsibility to prevent their husband or wife from harming the children. Our advisory group wanted parents with abusive partners to be aware that children who are exposed to domestic abuse can be considered in need of protection. When we took the materials to field-testing, community members pointed out that this statement was too narrow since in many cultures members of the extended family may act as a parent. As a result, we changed the statement to indicate that parents have a responsibility to prevent their husband, wife or other family members from doing things that could harm the children.

Our community advisors also played a crucial role in giving credibility to the information in the materials. For example, advisory group members, coming from a variety of backgrounds, indicated that it was important to include information about same sex rights in our piece on sponsoring family members. In that piece, we indicate that you can sponsor your spouse or your partner to join you in Canada, and that spouses and partners can be the same sex or opposite sex. During field-testing, some community members had strong reactions to this information. Our community advisors were present, and were able to explain the need for this information, with great credibility and sensitivity. The message was received well by the participants, because it came from someone who understood their culture.

## **VI. Moving forward**

This paper has reviewed some of the issues involved in rights education, with a focus on linguistic diversity. Many of the ideas and principles that inform CLEO's work are applicable to the delivery of other types of legal services. Colleagues who provide legal advice and representation to linguistically diverse communities are best placed to discuss these applications. But our work also has a place in this discussion because its purpose is intimately tied to the provision of accessible services. Rights education work is undermined if language barriers prevent our audience from taking steps to exercise their rights.

In the absence of a lawyer or legal worker who speaks their language, individuals who do not speak English or French need interpretation services. Even if the advocate speaks the client's language, interpretation will be needed to appear at a court or tribunal. Not all tribunals provide interpretation as a matter of course. For example, the Landlord and Tenant Board, a tribunal that deals regularly with low-income people, does not provide interpretation.

As with translation, interpretation is a specialized skill-set: cultural interpretation is an important aspect of accessibility and accuracy<sup>26</sup>. If the interpreter in a case is not qualified, a miscarriage of justice can ensue. In fact, recent reports indicate that poor interpretation is jeopardizing our court process<sup>27</sup>. Professional standards and guidelines are needed to address competency, as well as issues such as confidentiality. In some

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<sup>26</sup> Hernando, *supra*, note 18.

offices, family members interpret for clients because there is no funding for adequate interpretation. But the use of family members has many potential ethical pitfalls.

Community legal clinics have clearly articulated the urgency of this issue for many years. The clinics are at the forefront in providing legal services to non-official language communities, but for the most part, they have done so without any dedicated resources. For example, four community legal clinics have shared a Spanish language interpreter for at least 15 years. Yet, this position has existed as a pilot project. It is time to look at how to make high quality legal interpretation accessible to those who need it, rather than seeking further evidence for a need that is already well documented.

This paper describes the many steps and resources required to develop multilingual materials. But materials are only a launching point toward the exercise of legal rights: in most cases, the next step is legal advice and possibly representation. It is integral to the impact of our work that there be adequate legal interpretation, and access to advice and representation. The question of access to legal advice and representation is another topic, not addressed in this paper, other than to note, in this context, its critical importance.

With respect to interpretation, the legal profession and its institutions, with their access to justice mandates, their expertise, and their resources, should play an important role in developing initiatives that can take the place of ad hoc solutions. And any such initiatives must be informed by the experience and expertise of community legal clinics and other

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<sup>27</sup> See for example, C. Blatchford, “Inept court translators called ‘Threat to Justice’ ”, *Globe & Mail*, 18/11/05.

frontline agencies<sup>28</sup>. As discussed in this paper, accessible services are built through collaboration.

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<sup>28</sup> For example, the Law Foundation of Ontario initiated a Linguistic and Rural Access to Justice Project “to engage in a broader dialogue to generate more systemic solutions” (Project Description at [www.lawfoundation.on.ca](http://www.lawfoundation.on.ca)).