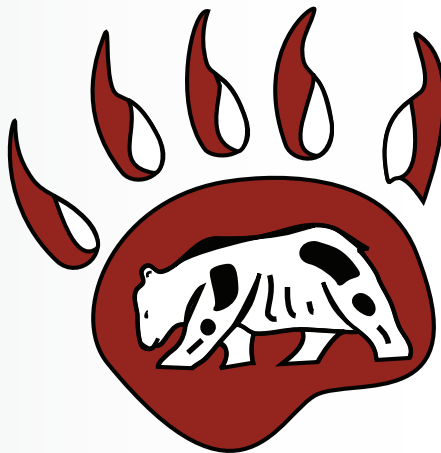


Aboriginal Legal Education Needs Survey 2006-2007

Native Counselling Services of Alberta
Patti LaBoucane-Benson, MSc
Nadine Callihoo, RSW
Racquel Fraser, BA
Kristin Raworth, BA

March 2007



Executive Summary

The purpose of this project was to determine the current legal education needs of Aboriginal people in Alberta. To achieve this goal, 38 interviews were conducted with Aboriginal Courtworkers (both rural and urban), as well as crown prosecutors, judges, city police officers and RCMP officers throughout Alberta. The findings of this project have added to the sparse, yet growing body, of research on public legal education in Canada.

The interviews highlight major barriers that Aboriginal people face when dealing with the criminal justice system. In criminal court, the most salient legal education needs and barriers were found to be: a general apprehension of the system; apathy towards the justice system; issues surrounding comprehension of legal terminology; lack of knowledge about specific, yet important aspects of the justice system; vehicle registration and owner's responsibilities; and a feeling of disconnect towards the criminal justice system and resource availability. The barriers and needs in family court were found to be a lack of understanding about the system and not knowing how to access resources.

In the discussion, issues relating to the dissemination of information are examined. The project demonstrates a clear need for a comprehensive model of Aboriginal legal education that encompasses the experiences of both rural and urban Aboriginal peoples, as well as incorporating Aboriginal language, culture and traditions into the method of delivery.

Aboriginal Legal Education Needs Survey 2006-2007

Introduction

A general definition of public legal education is “law-related education beyond what is taught in post-secondary institutions.”¹ More specific definitions are dependent upon the organization and the particular type of public legal education and information (PLEI) being provided. However, most organizations operating under the purview of legal education believe that giving the public the means and resources to understand the legal system is the ultimate goal. Public legal education began in the 1970’s with the publication of Paul Copeland and Clayton Ruby’s layperson guide to the law entitled *Law, Law, Law* in 1971.² This was followed soon after by the creation of the Vancouver People’s law school in 1972, and now every province has organizations dedicated to public legal education.

A literature review of public legal education reveals that the research on access to the legal system both for the general population and for those facing specific barriers is limited.³ There is research dealing with the experience of immigrants and the law. This research has identified four problem areas for that population that are also relevant for Aboriginal people. The first is the need for legal services in remote and rural locations, an issue that arose primarily with rural courtworkers throughout Alberta.

Another problem is the need for legal services that are accessible to people in an urban environment. This issue is especially relevant with the large numbers of urban Aboriginal people and the importance of accessing that population.

The third and fourth problem areas address the need to create specialized legal education that is tailored towards special groups, such as Aboriginal peoples, and the need to combine this education with counselling, community representation and preventative legal education.⁴ The research demonstrates that, to effect change,

1 Canada, Justice Canada, Evaluation of Public Legal Education and Information: An Annotated Bibliography (Ottawa: Lindey Calder, Research and Statistics Division, 2002) 1.

2 Susan McDonald, “Beyond case law: Public legal education in Ontario legal clinics,” Windsor yearbook of access to justice 18 (2000): 3-59.

3 Brian Burtch and Kerri Reid, Justice Canada Discovering barriers to legal education: first-generation immigrants in greater Vancouver (British Columbia: The People’s Law School Vancouver, 1994) 3.

4 Brian Burtch and Kerri Reid, Justice Canada Discovering barriers to legal education: first-generation immigrants in greater Vancouver (British Columbia: The People’s Law School Vancouver, 1994) 4.

Aboriginal Legal Education Needs Survey 2006-2007

providers of public legal education must be willing to adopt an approach that is tailored to fit the needs of each individual community.

The fifth issue relates to the actual naming of a public for Aboriginal people. The term ‘public’ has eluded any real definition for organizations carrying out PLEI activities,⁵ and it’s a difficulty that also exists for those gearing services toward Aboriginal people. ‘Public’ has many meanings in PLEI, encompassing both the general public and specific sectors of it, including “intermediaries” who in turn service their own publics.⁶ Aboriginal people are a diverse and multi-barriered group, and whether living in rural or urban communities, their legal education needs are complex.

A number of community organizations could serve as ‘intermediaries’ to access a broader range of the Aboriginal public. The term “PLEI intermediaries” refers to the network of community based organizations who are linked to direct service PLEI providers, and that use PLEI service or contribute to the dissemination of PLEI services.⁷ There are a multitude of intermediary agencies contributing to or providing PLEI. However, they are not organized nationally and only occasionally organized provincially.

Balancing the Scales is recent research on Aboriginal people’s experience with the law that focuses on understanding the Aboriginal perspective of the law. The methodology of the research is similar to that presented here, in terms of structured interviews with Aboriginal workers in the criminal and family justice fields. The structure of the research went beyond the purview of this report in examining the experiences of Aboriginal people throughout Canada. The drawback to the report is its primary focus on civil law - criminal law issues were not addressed. The report highlights the pertinent issues facing Aboriginal people with regard to the law: a call for greater awareness of the issue; the need to address systemic discrimination; and the necessity for dynamic partnerships and comprehensive collaboration on the part of government, researchers, services providers and the Aboriginal community.

The generalized information available concentrates on increasing legal literacy for

5 Bowal, Peter. A Study of Lay Knowledge of Law in Canada.

6 Gander, Lois. The Changing Face of Public Education in Canada in Canadian Forum on Civil Justice, (Summer 2003) 4.

7 Moliner, Mary. Public Education and Information Program Review 1997. Highlights of Consultations to Date. (Ottawa: Department of Justice Canada, June 1997) 19.

Aboriginal Legal Education Needs Survey 2006-2007

people who come into contact with the legal system. Legal literacy has been defined by Schuler and Rajasingham as “the process of acquiring critical awareness about rights and law, the ability to assert rights, and the capacity to mobilize for change.”⁸ Legal literacy, for the most part, is promoted through pamphlets and online material that answer common legal questions and translate documents into an array of other languages. An example of this is a document created by the Legal Services Society in British Columbia entitled “Aboriginal People and the Law in British Columbia”. This publication recognizes the special needs of Aboriginal peoples in the criminal justice system by providing specific and targeted information for them.

According to a Statistics Canada report released in 2006, “in 2003/2004, Aboriginal adults represented 21% of admissions to provincial/territorial sentenced custody and 18% of admissions to federal facilities.”⁹ In contrast, the 2001 census reported Aboriginal people make up only 4.4% of the total population; this difference in numbers emphasizes the overrepresentation of Aboriginal peoples in the criminal justice system. This overrepresentation suggests a great need for Aboriginal peoples to be given access to public legal education. However, very little material is available.

The lack of research and professional development in the area of public legal education in general, and public legal education for Aboriginal peoples in particular, makes it difficult to start a new legal education project.

“The absence of formal professional development opportunities means that knowledge in the field is scattered and that newcomers to PLE are often left to learn as they go, reinventing the knowledge and sometimes repeating the mistakes of those who have gone before them.” (Gander, 2003).

Due to the lack of knowledge about issues faced by Aboriginal peoples in the criminal justice system and the best practices needed to increase their legal knowledge, it becomes even more crucial to conduct research on the needs of the Aboriginal community in order to make evidence-based recommendations to address those needs.

8 M. Schuler and S. Kadirgamar-Rajasingham, eds., Legal Literacy: A Tool for Women’s Empowerment. (New York: UNIFEM, 1992) 2.

9 www.statscan.ca (accessed March 5th, 2007)

Methodology

In order to fully understand the issues and gaps that exist in public legal education as it applies to Aboriginal peoples, interviews were conducted with a range of justice personnel throughout Alberta. This included Native Counselling Services of Alberta (NCSA) courtworkers in both rural and urban settings, judges, police officers, RCMP officers and lawyers. This sample was chosen for the role that they play when Aboriginal people come into contact with the criminal justice system. The interviews took place in both rural and urban settings because of the differing experiences of Aboriginal clients in those geographic areas. The interviews were conducted by a courtworker who was selected on the basis of her ability to develop good working relationships with those involved with the administration of and access to the criminal justice system, as well as her familiarity with the challenges faced by Aboriginal clients.

The research team (interviewer and Director of BearPaw Research) developed a questionnaire that explored challenges and issues in both criminal and family court. The questionnaire consisted of open-ended questions that were meant to give a generalized impression of both a “typical”¹⁰ Aboriginal client as well as the common issues that they face both in their personal lives and once they come into contact with the criminal justice system.

The interviewer traveled to rural and urban locations throughout Alberta to conduct the interviews over a three month period. The interview sites included Calgary, Louis Bull Reserve, Edson, Wetaskiwin, Hobbema, High Level, Raymond, Fort McMurray, St. Paul, Lac La Biche, Peace River, Edmonton, Lethbridge, Grande Prairie, Hinton, Lloydminster, Bonnyville, Fort Chipewyan, Grande Cache, Calling Lake, Slave Lake, and Brocket. The researcher interviewed one city police officer, three judges, five crown prosecutors, nine RCMP officers, five urban courtworkers and 15 rural courtworkers. These interviews were recorded and stored on a Compact Disc. The interviews were then transcribed and analyzed. The data was analyzed by separating the interviews into the categories of police, judges, RCMP, crown prosecutors, rural courtworkers, and urban courtworkers. Within each category, common themes were identified and

¹⁰ The intent here is to provide an example of the most common characteristics of the Aboriginal clients that enter the justice system, for the purpose of research; and it is not the intention of the writers to stereotype Aboriginal, or to infer that all Aboriginal clients present in the same way.

Aboriginal Legal Education Needs Survey 2006-2007

labeled. These themes were then compared between all six categories in order to identify what the top issue is for Aboriginal people in the legal system.

Several differences were noted in the various communities in which interviews were conducted. Access to resources is a major issue in rural Alberta, because the majority of services - from Legal Aid to alcohol treatment programs - are not directly provided within rural communities, but tend to be brought in from the closest urban centre. For example, someone from Grande Cache has to either go to Grande Prairie to access resources or must receive resources from someone outside their home community.

This lack of access to resources has arisen as the foremost issue for rural courtworker clients, which is in sharp contrast to the experience of urban courtworkers. Another difference is the relationships that develop between courtworkers and their clients in rural communities. In rural communities, a closer, trusting relationship is established that results in clients choosing to make a courtworker their first point of contact when they encounter a problem with the law. In urban communities, first time clients are not as aware of the services courtworkers provide and are usually met in court for a few minutes due to large dockets and the high volume of clients needing assistance on any given day.

Description of clients

The data collected creates a profile of the typical Aboriginal client and the common issues faced. In both rural and urban settings, clients with significant addiction issues were mentioned most often. Alcohol and drug problems are perceived to be prevalent among clients and are seen as a significant factor in creating a barrier in their capacity to effectively deal with the criminal justice system.

In fact, in many of the interviews, addiction was mentioned as having a dramatic impact on Aboriginal peoples' experiences with crime. The courtworker respondents noted that many of their clients are intoxicated at the time of the offence, are living in poverty due to the impact of their addiction, or come from families with long histories of addiction issues.

The majority of clients are reported to be young (15-29) and male. In both rural and urban areas, the clients come from diverse backgrounds ranging from living traditional

Aboriginal Legal Education Needs Survey 2006-2007

lifestyles to having very little cultural connection. In rural areas, this population was identified as mainly transient, including a large population of oil patch and seasonal workers. The education level of the clients varies, ranging from grade nine to post-secondary; however, some rural communities are experiencing problems with high drop-out rates among Aboriginal youth. This trend could be attributed to the province's booming economy that has resulted from its oil and gas industry. One of the respondents explained the lack of education attainment in one community thusly:

“Youth are dropping out of school because they can make more money at 15 then you or I could with college degrees and it tears the fabric apart and that doesn't just happen with the Aboriginal community where they often have a poorer education system and youth just drop out anyways” (Rural RCMP)

Findings in criminal courts

The most prevalent issue for Aboriginal people in criminal court concluded by the data analysis is a general **apprehension of the system** itself. This apprehension commonly leads to a lack of understanding of the criminal justice system and hesitation in asserting one's rights under the law. An example of this apprehension is in the number of Aboriginal clients pleading guilty in court just to 'get it over with' and not being aware of the impact of that guilty plea.

“It's really hard to find that they don't have adequate knowledge of the court process but it's so difficult because I could explain everything to them today and they're going to turn around and they're going to forget because of their high anxiety rate. They're scared to death of the whole system, they're very intimidated by the whole system. That's even with their lawyers; they don't even ask their lawyer questions.” (Rural Courtworker)

Aboriginal peoples' apprehension of the justice system is often linked to issues of oppression and trepidation of authority due to the power structure that exists in the system itself. This apprehension creates a lack of understanding that extends beyond the court proceeding to the impact that a criminal record will have on the future of the client.

“The whole idea is that it will affect them but they don't understand the full ramifications. They know they'll have a record but they don't know what

Aboriginal Legal Education Needs Survey 2006-2007

that means. They don't know how much that is going to hurt them and that usually has to be explained to them..... that every aspect of their life is going to be affected." (Rural Courtworker)

The data does show however that this lack of understanding seems to decrease as Aboriginal peoples' experiences within the criminal justice system increase. The apprehension develops into a sense of **apathy** toward the system and its impact on them. An inference that can be made from the data collected is that once an Aboriginal person has incurred a criminal record, a dismissive attitude seems to develop towards further contact with the criminal justice system.

"When they first became exposed to the system I don't think they were very well informed. I don't think that they were taught in schools, I don't think that their families had a very good grasp of or understanding of the court system so certainly they have become more sophisticated with time." (Crown Prosecutor)

"They've been in the system for such a long time that they don't know any different, they don't feel any different, and for the most part people don't want to have a criminal record because they want to travel or they just don't want to have a criminal record. Where a lot of these Aboriginal clients they will get a criminal record when they're fourteen-fifteen years old. And for the rest of their life, it just doesn't matter to them. Oh, I've got a criminal record, big deal. Oh I have to spend a night in jail, oh big deal." (RCMP Officer)

Criminal courtworker statistics also demonstrate this disconnect from the system, as clients were charged with offences regarding administration of justice a total of 1,985 times. These charges include failing to comply with disposition, breach bail violations, failure to appear, escape custody, and parole violations. In a release from Statistics Canada, it was found that nearly one-third (31%) of all cases before adult courts involved at least one offence against the administration of justice.¹¹

With regard to youth, offences against the administration of justice are the most common. The Daily. Wednesday, January 11, 2006. available at www.statcan.ca/Daily/English/060111/d060111a.htm

Aboriginal Legal Education Needs Survey 2006-2007

mon charges that NCSA youth court clients are facing. Out of the 1,186 youth clients served, 587 faced this type of charge in youth court. Moreover, *The Daily* reported that for the 2003/04, 40.3%¹² of all youth court cases involved at least one offence against the administration of justice. From these sources, it can be adequately concluded that this detachedness leads to further charges, which in effect continues to deter Aboriginal clients from complying with sanctions and their responsibilities in the judicial process.

A number of people interviewed identified a difficulty in dealing with clients who suffer from Fetal Alcohol Spectrum Disorder (FASD) and the struggles faced in explaining the law and legal procedure to this group of clients. This disorder inhibits cognitive development, hence the absence of ability to make the connection between cause and effect within the thought pattern. FASD is a growing problem among Aboriginal young offenders. Research statistics indicate that FASD rates across the provinces are estimated at anywhere from 2.6% to 23%.¹³ Furthermore, some reports indicate that Aboriginal people have 25 to 30 times the rate of FASD in comparison to the country's general population.¹⁴

With regard to criminal activity and repercussions, no correlation is made between *cause* – the act of committing the crime, and *effect* – incarceration for that crime. The overwhelming numbers of FASD in Aboriginal people is a contributing factor to conviction and recidivism rates within these groups if involved in criminal activity. It would seem that clients suffering from FASD develop an apprehension about the system due to the court and criminal justice personnel not being aware of how to effectively communicate with them.

“I would say there's a large number of youth, people in general in this community who are the result of alcohol related pregnancies. And what I haven't figured out yet is, if a lot of the behaviour we are seeing is a result of that, when they drink or just a result of a lack of family and a lack of parents, lack of parental guidance. Because I mean people discuss FASD all the time and the repercussions of it and you know when they drink they go ballistic, they just go crazy and there are so many people that we deal with on a regular basis that fall into that category. They have no control, they

12 Ibid.

13 “Risk Assessment of Aboriginal Offenders with Mental Health Issues”.

14 Canadian Pediatric Society, *Pediatric Child Health*, Volume 7, No 3, March 2002

Aboriginal Legal Education Needs Survey 2006-2007

don't want to drink, they don't want to do it ever again, they come in and they say I am never doing this again I am cleaning up my life, well you know I like to support them and say "good for you" but I know that in three weeks I am going to see him again doing something else, I know I will. So is it a matter of they don't have any ability to get the help or desire or motivation or is it some underlying issue, they can't help it? And my point is, is that I believe a lot of the regulars who come through our door have that problem. I don't think it's a matter, well it's a matter of family and history and all that, I think, I think a large portion of them have FASD and they're either undiagnosed or it's not a concern in the court system." (RCMP Officer)

Changes in services and the presentation of information are needed in order to more effectively deal with people with FASD. These range from the need to further educate criminal justice personnel to properly diagnosing clients. FASD cannot be diagnosed by the police based on generalizations; it must be addressed by health care professionals. If implemented, these changes will create an environment where the needs of the FASD client are taken into consideration and the police are educated on how to develop realistic needs assessments.

Another barrier to the criminal justice system for Aboriginal clients is the issue of **comprehension**. This issue may involve a difficulty in understanding legal jargon or a problem understanding English. The incompatibility that exists between the Aboriginal conception of justice and the Western model is also a major contributor to this lack of understanding. Legal jargon is difficult to understand on its own, but when translating and interpreting legal terms and rules into Aboriginal languages where those terms and laws are not commonly used, the difficulty is compounded.¹⁵ Certain concepts, such as promising to appear and explanations of release conditions, may seem to be conveyed in a clear and concise manner, but the full meaning still eludes many Aboriginal clients. As noted by a peace officer interviewed:

"You might be speaking in English and they understand, but the context of what you are saying or the inflection of the voice is totally different. So there is a misunderstanding. They might be understanding the words but

15 Civil Justice System and Public Project. (2006). *Balancing the Scales: Understanding the Aboriginal Perspective on Civil Justice*. Edmonton, Alberta: Compiled by Mary Stratton. Pg.9

Aboriginal Legal Education Needs Survey 2006-2007

misunderstanding the inflection of the words.” (RCMP officer)

Aboriginal clients whose first language is not English often feel uncomfortable requesting aid from an interpreter, and are therefore not provided with one. This can put the Aboriginal client at a significant disadvantage, because they are receiving no real support or information during court proceedings.

“I’ve yet to see someone stand in the court speaking Cree on behalf of our client, usually it’s a lawyer against a lawyer making some kind of deal telling him just telling his client “this is what happened, you’re going to jail for a day or you’ve got to pay a fine” and the guy seems content with that and walks out of the courthouse and I don’t think they even fully know what happened.” (RCMP Officer)

A fourth barrier identified for Aboriginal people in the criminal justice system is a **lack of knowledge about specific aspects of the system**. As has been mentioned, Aboriginal people can have difficulty comprehending legal language and this can lead to confusion regarding their responsibilities, rights, and obligations.

“I’ve found that they have this thinking that if they are status living on a reserve they aren’t subject to Canadian laws. If a person in Edmonton gets charged and convicted of a serious crime and then gets 10 year prohibition on firearms, well, big deal, I can still hunt and fish on my reserve, so they’re still (using firearms), same with the driving, I don’t need my insurance, I’m on the reserve, so that out there is still there, we’re separate from Canada, us and everybody else on the reserve.” (Urban Courtworker)

The statistics from the Aboriginal Courtworker program at NCSA support this lack of knowledge and understanding of traffic laws and the impacts of violation thereof, as 661 clients faced charges with regard to provincial statutes on traffic violations and hunting/wildlife violations. Moreover, 102 clients were seeking courtworker services for charges relating to federal statutes that included federal firearms related statute offences. Local reserve bylaws are also charges that courtworkers track in their client statistics. Of the clients served for the 2006-07 fiscal year, 292 have had charges relating to Indian Reserves and local bylaws.

Aboriginal Legal Education Needs Survey 2006-2007

This lack of knowledge creates a situation where Aboriginal clients are making choices in court based on false impressions of the system.

“They think it (a criminal record) goes away after seven years. I don’t know where they got it from but they think the record goes away after seven years. I hear that a lot from clients, “that won’t be on my record anyway, that happened ten years ago.” (Urban Courtworker)

Another issue identified in the interviews with courtworkers, both urban and rural, surrounding lack of knowledge about the system is **vehicles and owner’s responsibilities**.

“A course that would let them know what responsibilities they are accepting by exercising their rights to apply for a driver’s license and to get one. What they’re accepting when it comes to registering a vehicle, all the ramifications that they are accepting by registering a vehicle, many people, the most common one that comes to mind is people with photo radar tickets. I wasn’t driving so I shouldn’t have to pay. Registered owner stuff and a lot of people don’t realize is by allowing someone else to drive your vehicle is if that person causes injury to someone else or death that they can be held liable for that person’s actions because they allowed them to use their vehicle and a lot of people don’t understand that.” (Rural Courtworkers)

Criminal Courtworker statistics captured for the year 2006-07 also further support the need for information regarding vehicle and owner’s responsibilities. For that fiscal year, the courtworkers provided services to 8,912 clients, of which 3,901 faced charges relating to provincial statute offences regarding traffic.¹⁶ This number can further be broken down to adult and youth, as well as male and female clients. Youth comprised 163 of this number, while adults comprised 3,739 of the total traffic offences.

To understand the disconnect from the system in this way and the need for legal education in this particular area, it is important to understand the ambiguity of jurisdictions and laws as they apply to Aboriginal people in Canada. The *Constitution*

16 Native Counselling Services of Alberta annual criminal Courtworker statistics 2006-07 fiscal year. The charges in this particular category include: dangerous driving, fail to stop / remain, operating a vehicle while suspended, and unregistered vehicle.

Aboriginal Legal Education Needs Survey 2006-2007

Act, 1982 lists the enumerated powers under federal (section 91) and provincial (section 92) jurisdiction. Section 91(24) states that “Indians and lands reserved for Indians” are under federal jurisdiction. In Canada, given the unique status of Aboriginal people, there are sporadic conflicts of overlapping jurisdiction and legislation affecting Aboriginal people, and especially Aboriginal people on-reserve.

Most provincial offences apply to Aboriginal people, regardless of whether they reside on-reserve or off-reserve. The *Highway Traffic Act* is such a case in point. There are some provincial laws that do not apply however, such as those that infringe upon Aboriginal or Treaty rights, or those that conflict with the *Indian Act*. Section 88 of the *Indian Act* provides that provincial laws may affect Aboriginal people on and off-reserve if the legislation is a general law of provincial application which does not infringe upon the “Indianness” of the Aboriginal population. Although this has been subject to Charter challenge, the Supreme Court has found that when there is an overlap of jurisdiction, the law applies to everyone, regardless of location or Aboriginality.

For Aboriginal people, this ambiguity gets lost in translation at times. The disconnect occurs when it is thought that only federal laws apply to Aboriginal people living on reserve, which has paramouncy over provincial laws, as the *Indian Act* and section 91(24) fall within the federal jurisdiction. This can lead to a disregard for provincial legislation applying to Aboriginal people, as there is a lack of understanding as to how provincial laws do apply to individuals living on-reserve. Highways and roads are a part of a reserve, but the laws regarding them and the maintenance thereof reside with the province, making them laws that apply to all citizens and must be abided by all citizens.

A further apprehension of the system that leads to Aboriginal peoples’ lack of awareness is somewhat influenced by the **disconnection** that Aboriginal people feel from the system itself.

“I think that what seems to me to be typical is that there is an abstract awareness of rights but often there’s not any comprehension that they apply to them. To me, its part of a larger (issue) of a lack of confidence in the system generally and that most Aboriginal people that appear in court don’t find the process particularly relevant to them, can’t relate to them, it seems foreign to them. Foreign in the sense that it’s a system that is not designed

Aboriginal Legal Education Needs Survey 2006-2007

for them and therefore they don't really feel part of and so as an extension of what they see as a system that affords rights to individuals it just doesn't relate to them." (Urban Judge)

The barriers Aboriginal people face in the system could also be tied into another issue relating to **resource availability**. The data reveals that some clients are unaware of the resources that are provided, while others are unable to access the resources because they are not available in their particular community. When a resource is available and present within the community barriers still exist to reaching it, including not knowing how to access what is available to not wanting to access services due to personal issues with the resource provider.

"They're not really out there and visible enough for people to see. Or they lack the education to prepare themselves to even look for resources." (Rural Courtworker)

"There are hardly any resources here for anger management, parenting programs, treatment, AADAC, we don't have a person here. They come up from Grande Prairie, everybody is you know shot in from Hinton or Grande Prairie and they do a good job but it's too sporadic and not ongoing." (Rural courtworker)

"I think there probably is a reasonable level of awareness but again whether that means that, I think there is a fairly high level of distrust in any of those entities. And so I, in a lot of cases I don't think the awareness goes beyond their knowledge in an abstract way. I think some of them are being utilized but a lot aren't, if for example there's been a child welfare history or an institutional history or they are made aware of the resources through an institution or through a probation office things that they don't, things they come to be exposed to not of their choosing or their own desire I think the chances of them of having any trust or confidence in the agencies being explained to them are pretty low." (Urban Judge)

Findings in Family Court

The most pressing legal needs issues for Aboriginal clients in family court are a lack

Aboriginal Legal Education Needs Survey 2006-2007

of understanding about the system and not knowing where to go to access resources. According to *Balancing the Scales*, child welfare and guardianship has been identified by Aboriginal participants in the interviews as the most pressing legal concern in Aboriginal communities.¹⁷ The situation where these issues arise most often is in apprehension cases. The clients are often unaware of what actions they can take to get their child back in their care, and are either not aware of or cannot access court mandated resources such as parenting classes.

The statistics of the Family Courtworker program at NCSA has provided services to 6,638 clients for the 2005/06 fiscal year. Of these clients, nearly half of the matters related to apprehension and guardianship. The different orders regarding guardianship dealt with by family courtworkers accounted for 64%¹⁸ of the total family court orders.

The civil court process is one that is very difficult to navigate without proper understanding or representation. It is a system developed by and for professionals with very defined and often inflexible procedures, language, forms, roles, and processes. Yet there are very few services that aim to assist the Aboriginal population in understanding this process in a meaningful manner. Aboriginal clients who lack this knowledge of the system and are not able to access resources, are at increased risk of having their children put into permanent guardianship (PGO) by agreeing to terms in case-plans that are unattainable or not in their best interest. *Balancing the Scales* also found this to be an issue; here is a comment from one of their interviewees:

“What I find that children services often will do is they will say “Ok, you can get your kids back if you sign this 3-months TGO with us.” But its 14-pages long and you get people that’ll sit there going “I will do anything to get my kids home. I will do a parenting assessment, I will do a site assessment, I will get a home city then and I will do this and this and this.” When you look at it in the end, they can’t make it to their access, to the visit with their kids because they’ve got so many other things on their plate.”¹⁹

17 Civil Justice System and Public Project. (2006). *Balancing the Scales: Understanding the Aboriginal Perspective on Civil Justice*. Edmonton, Alberta: Compiled by Mary Stratton. Pg.12

18 Native Counselling Services of Alberta Family Courtworker 2005/06 Annual Report. (2006) Pg. 7.

19 Civil Justice System and Public Project. (2006). *Balancing the Scales: Understanding the Aboriginal Perspective on Civil Justice*. Edmonton, Alberta: Compiled by Mary Stratton. Pg.15

Aboriginal Legal Education Needs Survey 2006-2007

Another issue relating to apprehension is the conflict between the tradition in some Aboriginal communities of setting up child care arrangements informally among relatives and family members and the role played by Children's Services. This leads to misunderstandings when Aboriginal parents are signing permanent guardianship orders and not understanding the consequences.

“Participants, who as Aboriginal lawyers, courtworkers and child protection workers “stood between the two worlds” of law and Aboriginal culture, expressed frustration with the contradictory and unrealistic nature of legislation or court orders that resulted in children being unnecessarily removed from parents and their communities.” (Civil Justice System and the Public Project, pg.13)

This was expressed by the interviewees in this study as well; a rural courtworker explains the typical end result is of child and family services involvement with Aboriginal families.

“Most of them are pretty much going to permanent guardianship. People don't understand what they are signing when they sign the statement [given to them by Child and Family Services].

Do they have lawyers or courtworkers who are assisting them? (NCSA Interviewer)

No, they don't have anybody. A lot of those papers are given to families after 4:30 on Fridays and there court appearance is either Monday so they are either told the fine or you know, it takes longer for them if they don't fine, nothing is really explained to them.” (Rural Courtworker)

The availability of resources declines as the isolation increases for smaller communities.

“If they are flying in, in the morning to meet, let's say in my job I get lots of people and I am phoning for them saying “When is that AISH worker coming in” how can I , I am looking at their forms and thinking when is

Aboriginal Legal Education Needs Survey 2006-2007

the intake worker coming in? ...the planes fly in at 11:15 and they are out at 3:30. How can they do an adequate job? There just isn't enough time"
(Rural Courtworker)

It should be noted that resources are not only lacking in rural areas. Aboriginal clients in urban communities have experienced difficulties accessing specialized resources that are geared towards Aboriginal people. Sometimes services are not necessarily well established in a community. Even though there are Aboriginal-specific services that are dynamic and innovative, they may not be inaccessible due to a lack of visibility or established presence in a community.

"Child welfare has taken a section of their employees and the main offices around town and created an office called Aboriginal Initiative. Now two things: one it's very seldom you will see Aboriginal peoples in that unit; and two I've yet to get a call from one of those units about an Aboriginal family so I have no idea what their purpose is and what are they doing and how are they assisting anybody and that's a big issue with me." (Urban Courtworker)

Discussion

The Messenger

A comprehensive approach is needed to address the barriers facing Aboriginal peoples when dealing with the criminal justice system. Lack of knowledge must first be addressed in order to deal with the apprehension that Aboriginal peoples face. The research infers that the key element in addressing need is in choosing who will be presenting the material. A common theme throughout the interviews is the need for communities to trust the person providing the information, and the necessity of that person working in partnership with the community. An Elder or highly respected community member also must be engaged in the process.

"On a First Nation Reserve for instance...if we'd need to be in their community, we would need to have it facilitated by an Aboriginal person, or if not somebody who specializes in a given topic, then maybe have somebody who speaks Cree there to interpret for the really older generation who speak

Aboriginal Legal Education Needs Survey 2006-2007

Cree or prefer it. I guess it would be something that is easy to understand. I guess not someone who is high flutn' you know? Just because we were talking earlier with some of them and their level of education, not to be talked down to but you know to be respected." (Rural courtworker)

The separation between urban and rural Aboriginal people becomes an issue at this point. In rural populations, it is easier to identify Elders, an important community member, or the mutual acceptance of these individuals by the community. As a result, when delivering the information to urban people, the challenge becomes finding a community partner whose legal education message can be well-received in communities. The person providing the information in both rural and urban settings must address the issue from a place of experience, whether with the system itself or with the community being addressed. This might require training to increase the level of respect and awareness of Aboriginal culture and history.²⁰ The most important factor is that they have credibility in their own right, and respect for the people to whom they provide information. As mentioned by a frontline worker in the interviews:

"You'll have a brand new Child Welfare worker, she's gone to university, she has a degree from the university and she's dealing with a mom who has three kids and at best she has maybe grade three or four. This young woman with the university degree is going to tell this woman how to parent kids and she doesn't have any kids; something's not right. I don't think they have the ability to talk to them, to the clientele. You and I know that for somebody to go to university, they don't come from the wrong side of the track, one or two maybe but they've had to have worked hard and wanted to get into that university but for the most part, it's hard to talk to somebody about life and living when you've never missed a meal in your life and you've never been hungry. How can you tell somebody what hungry feels like when you've never felt it?"(Urban Courtworker)

Method of delivery

The issues of comprehension and disconnection from the system as identified in the interviews become an important factor in deciding how to present legal education to the

20 Civil Justice System and Public Project. (2006). *Balancing the Scales: Understanding the Aboriginal Perspective on Civil Justice*. Edmonton, Alberta: Compiled by Mary Stratton. Pg.17

Aboriginal Legal Education Needs Survey 2006-2007

community. Many of the clients that the interviewees dealt with had issues with literacy, either in comprehending English or legal jargon. This leads to a questioning of the efficacy of print material without videos, visual aids, or workshops to back it up.

“I would think videos because print material is not always that good. It’s very ah, the first big word they come to they get intimidated and they shut down, so I would think if we had some videos that are very straightforward or specific on maybe the whole court process, this is what happens, this is your rights as a human being, as an individual these are your rights. You have the right to request, to ask for a bail hearing between so many hours and you have the right to go talk to the crown prosecutor. Stuff like that and maybe if they saw that in video they would understand.” (Rural Courtworker)

In order to provide legal information and an explanation of legal concepts in a way that acknowledges the disconnect that many Aboriginal people feel towards the criminal justice system, the method of delivery should align with the cultural and immediate needs of the Aboriginal client: from this perspective, oral and experiential learning opportunities appear to be best. Creating audio-visual learning tools with an emphasis on creating not just an individual learning experience, but providing a community learning experience through a community event would be helpful. By moving from a Westernized model of the law to an approach that incorporates Indigenous knowledge and tools, the apathy and disconnect that is felt by Aboriginal people who have had multiple experiences with the criminal justice system will be better addressed. Demonstrating how the justice system can be relevant to them through the provision of legal education, a greater respect level for and awareness of their judicial rights and responsibilities will result.

The interviewees were divided on whether workshops, presentations, or videos would be the best method of delivering legal information. The respondents stated that a comprehensive approach would be most effective in meeting the different legal education needs and provide the information in ways that best fits the community.

“Workshops are still the best if they have the time to do it or videos. When you have a workshop and you’re with those people, you’re standing around knocking, talking, hands on is still the best because they’ll come out of there

Aboriginal Legal Education Needs Survey 2006-2007

remembering more than if they watched a movie.” (Urban Courtworker)

“Because of the range of individuals we’ve already discussed, in addition to assimilated mainstream, you have to have a very flexible response. A group of individuals who are very familiar with, with the mainstream, video conferencing material, people who are more traditional, face to face, one on one communication is your best form of conveying your message. Again, it’s a flexible response and it makes it more expensive, more difficult.” (RCMP)

Two issues that arose in the interviews were resource accessibility and the lack of understanding of the responsibilities of a vehicle owner. The issue of resources seems to require further education of not only Aboriginal peoples, but of service providers and criminal justice personnel in what is available to the community. This can be incorporated into the process for delivering legal information and can be helped by developing relationships with local agencies who have already established good client relationships. The separate issue of teaching vehicle owner’s responsibility seems to demand a targeted message to a targeted audience. The message will be more effective if delivered to youth before they get their license as well as incorporating vehicle responsibility into generalized presentations.

“...on the *Traffic Safety Act* and the responsibilities that they accept when they get their license or register a vehicle, a lot of people don’t understand the ramifications. You can end up getting sued for a million dollars if you lend your car to someone and they go somewhere and let somebody else drive and that person crashes the car... I have had clients come to me for charges regarding driving while suspended, they made the mistake of getting behind the wheel in a vehicle, which had an accident and they have a judgment against them for several thousands and they can’t get their license back until that is paid. People don’t understand the ramifications that they face simply by getting behind the wheel or by allowing someone else to drive your vehicle.” (Rural Courtworker)

The idea of targeting high school youth as a ‘public’, with the message of vehicle safety can lead to developing a presentation on legal responsibilities for this population. Concerns were raised by some interviewees that this kind of targeted message would lead to

Aboriginal Legal Education Needs Survey 2006-2007

self-fulfilling prophecies, that it would reinforce the idea that these children are headed for problems with the law. This can be dealt with by focusing on Aboriginal youth knowing their rights and responsibilities with vehicle ownership as the starting point, because teaching children their legal responsibilities when they are young should result in a trickle down effect to their friends, family and community.

“I think your target audience should be youth in school so you can present it verbally and in writing and by videos in the schools that’s going to be your most successful audience right there.”(Crown prosecutor)

An earlier study looking at the immigrant experience with the law made some recommendations on creating a better system of legal education.²¹ Many of their suggestions can be incorporated into a model of Aboriginal legal education. The report, written by the People’s Law School in Vancouver, focused on free law classes which were noted as a best practice for this particular targeted ‘public’. These classes dealt with an array of topics and were presented in multiple languages, the study examined the impact of these classes and found that it helped new immigrants better understand their rights and responsibilities as well as the legal process in Canada.

The recommendations they made that could be used in presenting legal information to Aboriginal people includes: (1) providing child care services at the workshops²², (2) free bus passes to participants , (3) building a greater awareness of the services provided, and take steps to build this presence in the community. These recommendations were mentioned by the interviewees in our study and could be incorporated into a comprehensive model for Aboriginal legal education.

“Just because in my experiences attending workshops myself on different things at the Native Friendship Center where, there’s not much attendance and I think a lot of it you know, these people are traveling from Onion lake which is 30 kilometers or 30 miles east of Lloyd, transportation, child care that type of thing all plays a part in attendance and just interest alone.”
(Rural Courtworker)

“Aboriginal people are more likely than the average Canadian to live in a

21 Brian Burtch and Kerri Reid, Justice Canada Discovering barriers to legal education: first-generation immigrants in greater Vancouver (British Columbia: The People’s Law School Vancouver, 1994) 93-94.

22 In the study, 100 out of 292 respondents said that child care was a major barrier in accessing legal education.

Aboriginal Legal Education Needs Survey 2006-2007

remote area, and wherever they live are more likely to live in poverty. In both cases they therefore have less access to transportation. Distance can make access to court services difficult to impossible, but even 20 kilometres can be an insurmountable distance without access to some form of transportation. Charges are laid and warrants for non-appearance are issued when court is simply inaccessible.” (Civil Justice System and the Public Project, pg.10)

Conclusion

The findings of this project have sought to demonstrate the pressing need for public legal education and information among Aboriginal people of Alberta. In order to meet this growing demand, it is imperative to create a comprehensive model for Aboriginal legal education, most notably a model that takes into account the differing experiences of both rural and urban Aboriginal peoples, along with barriers they face in accessing fair justice. A dynamic approach of this nature must endeavour to eliminate the barriers that exist between Aboriginal people and the justice system by creating meaningful relationships with the community and delivering legal education and information in a manner that is flexible and reaches every group. Meeting the legal education needs of Aboriginal people will assist Aboriginal people with gaining a more complete awareness of their rights and obligations. This will enable them to effectively participate in the legal system and judicial process.

Dissemination methods employed must be diverse and numerous, because Aboriginal people in contact with the justice system (as seen through this project) are multi-barriered, and are unable to access adequate resources in the community for a variety of reasons discussed in this paper. Examples of methods to address this gap in legal education utilized in other legal education programs include: targeted workshops for youth, providing presentation in both English and Aboriginal languages when appropriate, and comprehensive public legal awareness campaigns using public media sources. The development of such information must therefore involve extensive community input and consultation.

Finally, there is a need to improve and promote a better working relationship between the Aboriginal community, law enforcement agencies and child welfare. A major source of contention has been the hierarchical structure of these systems over Aboriginal people, given historical issues with these institutions, as well as the fact that the system is complex and often inflexible in nature. These methods can entail legal education infor-

Aboriginal Legal Education Needs Survey 2006-2007

mation sessions that involve the participation of peace officers, in order for the community to have positive interaction with the RCMP. A successful example of community-law enforcement relationship building was the “Let Only Good Spirits Guide You Tour”, which operated in 1987-1988. This initiative was a partnership between the Alberta Government, Police, NCSA and the community. This can assist in alleviating apprehension of peace officers, as well as the overall trepidation of the law itself.

Aboriginal Legal Education Needs Survey 2006-2007

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