

Don't smoke, don't be poor, read before signing:

Linking health literacy and legal capability

Summary report

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CLEO CENTRE FOR
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CLEO's full report can be found at <http://www.plelearningexchange.ca/linking-health-literacy-and-legal-capability>.

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A note to readers:

The links (URL's) to the websites referenced in this book were correct as at April 6, 2015. However, as information on the internet changes frequently, we cannot guarantee that the links or the content of the websites will remain accurate.

In this summary report, CLEO provides an overview of community health information and promotion practices in Ontario. We identify promising practices and ideas from the health sector, draw parallels to similar work by public legal education and information (PLE) providers in Ontario, and identify some opportunities and strategies for building upon or adapting learnings from the health sector into PLE thinking and practices.

Overview of the issues

Vulnerable communities face hurdles when it comes to getting information and help in both the health and justice sectors. However, systemic approaches used by the health information and promotion sector to address the literacy challenges and needs of vulnerable people have led to significant improvements in access to health information in Ontario over the past 30 years. In contrast, the justice sector has moved far more slowly in recognizing systemic barriers faced by vulnerable people who need access to legal information.

For this project, we conducted a review of literature about health literacy and health information practices. Our goal was to identify practices from the health information and promotion sector that could be incorporated into PLE work to expand the reach of PLE to vulnerable communities and improve their legal capability – or their ability to deal with legal problems.

Key themes

Part 1

In Part 1 of the paper, we discuss the role of social determinants in health literacy theory and practice overall. We also analyze the effects of two of the social determinants (education and social exclusion) on the ability to become health literate or legally capable.

One major observation flowing from our research is that in the health information and promotion sector there has been universal recognition that “social determinants of health”– the economic and social conditions that affect individuals and communities – influence a person’s ability to become health literate and, in turn, to access health information and other health care services.

This point is illustrated by two thought-provoking lists of tips for better health developed by Dennis Raphael.

Which tips for better health are consistent with research evidence?¹

The messages given to the public by governments, health associations, and health workers are heavily influenced by the ways in which health issues are understood. Contrast the two sets of messages provided below. The first set is individually-oriented and assumes individuals can control the factors that determine their health. The second set is societally-oriented and assumes the most important determinants of health are beyond the control of most individuals. Which set of tips is most consistent with the available evidence on the determinants of health?

The traditional 10 tips for better health

1. Don't smoke. If you can, stop. If you can't, cut down.
2. Follow a balanced diet with plenty of fruit and vegetables.
3. Keep physically active.
4. Manage stress by, for example, talking things through and making time to relax.
5. If you drink alcohol, do so in moderation.
6. Cover up in the sun, and protect children from sunburn.
7. Practice safer sex.
8. Take up cancer-screening opportunities.
9. Be safe on the roads: follow the Highway Code.
10. Learn the First Aid ABCs: airways, breathing, circulation.

The social determinants 10 tips for better health

1. Don't be poor. If you can, stop. If you can't, try not to be poor for long.
2. Don't have poor parents.
3. Own a car.
4. Don't work in a stressful, low-paid manual job.
5. Don't live in damp, low-quality housing.
6. Be able to afford to go on a foreign holiday and sunbathe.
7. Practice not losing your job and don't become unemployed.
8. Take up all benefits you are entitled to, if you are unemployed, retired or sick or disabled.
9. Don't live next to a busy major road or near a polluting factory.
10. Learn how to fill in the complex housing benefit/asylum application forms before you become homeless and destitute.

¹ The original version of this figure is at Raphael, Dennis. "Social Determinants of Health: An Overview of Key Issues and Themes." In Raphael, Dennis (ed.), *Social Determinants of Health – Canadian Perspectives, 2nd edition*. Toronto: Canadian Scholars' Press Inc, 2009: 2-19. The title of this paper was inspired by this list.

The following social determinants are overwhelmingly understood as explaining why some Canadians are healthier than others are²:

- income and income distribution
- education
- unemployment and job security
- employment and working conditions
- early childhood development
- food insecurity
- housing
- social exclusion
- social safety network
- health services
- Aboriginal status
- gender
- race
- disability

Acknowledgment of the role of social determinants has led to major improvements in the ground-level and systemic development and distribution of accessible health information materials in Ontario and elsewhere. It has also influenced the development of statistical measures to test health literacy and identify which communities were at risk of low health literacy.

In contrast, the emerging concept of legal capability is still primarily framed on a general level, in other words, reflecting the population at large. There has been little specific recognition of the social and economic barriers that may interfere with the ability of people in vulnerable communities to access and use legal information and other legal services. Moreover, there currently is no standard means for measuring legal capability in the Ontario or Canadian populations.

There are other notable differences between existing approaches to health literacy and legal capability that must be addressed, including the following:

- **Emphasis on general literacy skills:** In the health care sector, general literacy is recognized both explicitly and implicitly as the foundation and as a stepping stone to acquiring health information and to improving one's health. In contrast, although most current legal capability models do touch upon the need for general literacy, they do not incorporate it explicitly at the foundational level³.

² More recent research has also identified the following social determinants as important in the Canadian context: immigration to Canada (particularly for female immigrants), sexual orientation, and gender identity

³ We found this surprising. Given the language-intensive nature of legal problems, we feel it would be especially difficult for a person with poor literacy skills to develop a basic understanding of their rights. That

- **Importance of social determinants as barriers:** Legal capability models are only beginning to incorporate the impact of disadvantage on the ability of vulnerable people or communities to deal with legal issues at whatever stage they arise – or indeed, before they arise. In contrast, the leading models of health literacy were founded to respond to social determinants.

Our recommendation for trying to close these gaps: develop and move towards a common understanding of social and economic barriers to improve access to legal information. We think the following principles from the health literacy sector could aid in this work:

Importance of social determinants in shaping health literacy work

We found limited discussion in the Canadian literature on the impact of social determinants on one's ability to access legal information or help. In the health sector, by contrast, it has long been recognized that many groups of people face systemic (and often intersecting) barriers to accessing health information and education. A similar recognition should be embraced by the justice sector to ensure a definition of "legal capability" that is meaningful to all Ontarians – especially the most vulnerable.

Measuring health literacy levels

There have been significant efforts to test health literacy levels developed by Statistics Canada in conjunction with health researchers through a "health activity literacy scale" based on data derived from generic adult literacy surveys in past. In our research, we found no similar universal measure to test either legal literacy or legal capability in use.

We also learned of shorter "quick screening tests" used in the health context to help detect a patient's ability to read and understand medication labels or nutritional information on packaging. We feel that developing similar tools (based, for example, on a parking ticket, a legal notice for termination of a tenancy or a letter from a government agency) might be useful in helping legal caseworkers identify whether their clients have the basic ability to read and understand legal information.

Expanding upon current legal capability models

Current notions of legal capability do not explicitly recognize the link between literacy levels and the ability of individuals to build knowledge and develop skills to achieve competence within – or confidence in – the legal system. They seem to assume, in many ways, a more level playing field than is available to people who belong to vulnerable groups.

said, we note with interest that Australian literature on the topic of legal capability published within the last year has started to move in the direction of the need to incorporate literacy skills explicitly.

In the health sector, by contrast, it has long been recognized that many groups of people face systemic (and often intersecting) barriers to accessing health information and education. A similar recognition should be embraced by the justice sector to ensure a definition of “legal capability” that is meaningful to all Ontarians – especially the most vulnerable.

Part 2

Part 2 of the paper provides an overview of the ways in which the identification of social determinants of health and resulting health literacy principles have shaped and improved access to health information for vulnerable communities in Ontario and elsewhere. Specifically, consideration of the impact of social determinants has led to improved health information interventions by highlighting the importance of locating, targeting, and tailoring approaches to delivering information to specific vulnerable communities.

We also provide a high-level overview of the following:

- access points for health promotion activities
- approaches to health promotion activities in the community health sector
- working with intermediaries
- distinctions between health promotion activities and PLE

We draw parallels with similar PLE initiatives in Ontario and identify some opportunities for PLE providers to incorporate or build upon existing successful practices in the health information sector.

Part 3

Part 3 of the paper summarizes our findings about health information practices and fleshes out strategies and opportunities to incorporate these findings into both wider thinking about access to justice and front-line PLE work. The wide-spread acceptance in the health information and promotion sector that social determinants directly affect the ability of people to access health information has led to sweeping changes in the distribution of health information over the past three decades. Whether these strategies succeed in the justice sector will hinge, in our view, on highlighting and promoting the links between social determinants, access to legal information, and building personal and legal capability within vulnerable communities.

We also identify the following practices from the community-based approaches to health information and promotion that we feel could be built upon or adapted in Ontario’s justice sector. We offer these ideas as potential opportunities for improvement and action and hope to generate discussion about how to develop a broad array of holistic strategies to reach people in Ontario – especially those most vulnerable – with effective public legal education and information.

1. Compile a universal list of the social determinants of civil justice analogous to the social determinants of health.

In the legal context, we suggest explicitly adding the following determinants:

- immigration to Canada
- sexual orientation
- gender identity
- interaction with the criminal justice system
- incarceration (previous or ongoing)
- credit rating status

2. Develop a more detailed definition of “legal capability” in the Canadian context.

Recent civil justice reports in Canada and other jurisdictions have paid attention to the concept of legal capability and have started to build upon it. However, it may be time to focus more attention on defining what “legal capability” might look like in the Canadian context, particularly in the context of vulnerable communities.

3. Develop or recommend statistical methods to help measure legal capability or awareness.

We suggest that the PLE community work with Statistics Canada to add standard legal knowledge testing questions to future literacy surveys, or to develop a stand-alone statistical measurement for legal capability.

4. Design a “quick screening tool” to assess people’s legal capability.

In our view, quick screening tools could have several uses, including:

- helping intermediaries quickly detect whether their clients need additional help and support to deal with legal problems, and for informing referrals to legal services
- providing an educational piece to help vulnerable people recognize commonly encountered legal forms
- helping front-line legal workers by providing supporting “evidence” for requests to adjourn legal proceedings in order to give people who do not have basic literacy the time to find fuller legal information, advice, or representation

5. Build on existing life skills programs targeting vulnerable communities to incorporate legal capability components in those programs.

Much of the focus in the health literature has been on adapting health interventions for cultural or linguistic minority communities. Steps could be taken to incorporate legal

capability content into existing life skills programs offered to newcomers, seniors, unemployed people, Aboriginal communities, or other vulnerable groups. For example, a program offered by a newcomer employment centre to teach computer skills could include a short module or exercise on finding reliable legal information online.

6. Build the capacity of intermediaries to deliver legal information and referrals.

One educational approach that has worked in the public health sector is to provide training and programs to help intermediaries recognize health issues and risks at an early stage so that they can provide people with information and enhanced referrals in a timely matter.

As discussed, the role of intermediaries has begun to be recognized in the civil justice sector, and tools such as legal health checks have been developed to support them. It is critical to continue to develop and support the capacity of these community partners to deliver effective legal information and referrals to their clients and peers.

Questions for further discussion

We propose the following questions for further discussion:

1. Do you think that the development of "social determinants of civil justice" would help justice organizations design strategies to help people from vulnerable communities address their legal problems?
2. To what extent would the "social determinants of civil justice" mirror the social determinants of health?
3. What are your suggestions for how those interested in this work might collaborate to move it forward?
4. What recommendations are **you** most interested in discussing further or helping to pursue?
5. What other comments or ideas do you have?

We hope our research will help open and shape a wider dialogue about the effect of social determinants on the ability of vulnerable communities in Ontario and Canada to access and understand legal information⁴.

⁴ It should be noted that we are mindful that our comparison of health information and promotion and PLE in Canada is influenced by the fact that the publicly funded health system is far better resourced than the justice system. This difference in funding levels was not within the purview of our paper to address.