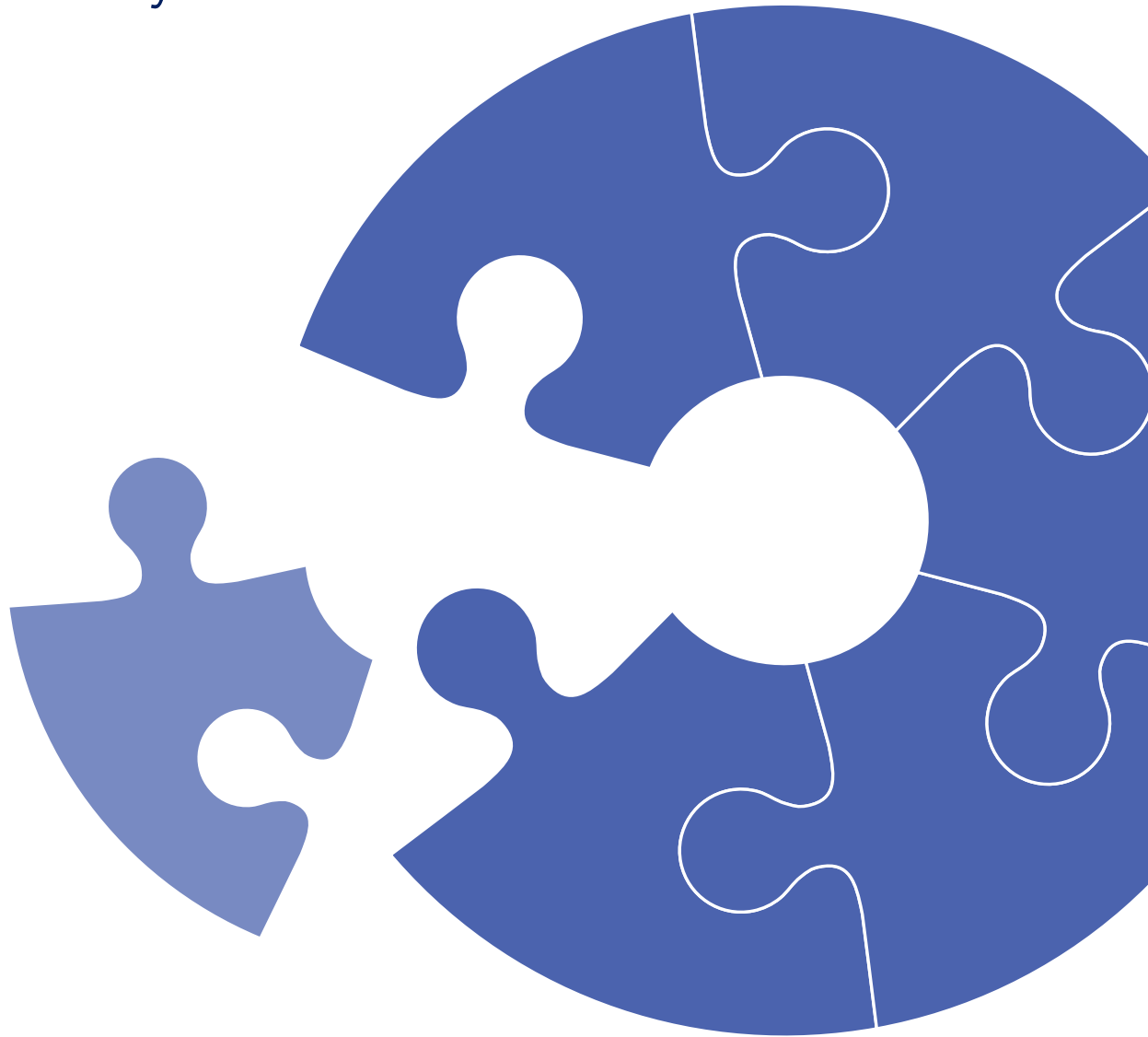


Building an understanding of legal capability:

An online scan of legal capability research



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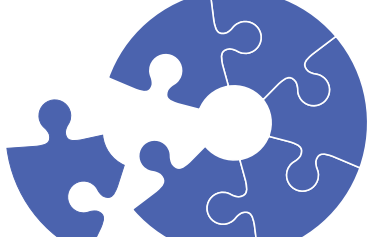
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A NOTE TO READERS:

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





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Introduction

New paradigms for access to justice in Canada increasingly include the concept of helping people develop legal capability or “legal life skills” to increase legal rights knowledge and build the skills and confidence to take steps before a legal problem escalates to the point of crisis. This is especially crucial for marginalized Canadians, who are more likely to experience problems in “clusters” and often less able to deal with problems proactively due to the societal and economic barriers they face.

Community Legal Education Ontario (CLEO) is a public legal education and information (PLEI) organization that helps provide marginalized people in Ontario with essential legal rights information and builds the community sector’s capacity to provide effective legal information to their clients. With this research project, CLEO looks at effective, practical ways to deliver legal life skills training through established life skills programs.

CLEO started its research by conducting an online scan of existing literature describing “legal capability” as the concept has developed in the United Kingdom (UK), Australia, and Canada over the past decade.¹ This is one of a series of papers originally prepared in early 2016 by CLEO, as part of our wider research exploring how legal capability content might best be incorporated into community-based life skills training programs.²

The information in this report served as background for our work developing a working legal capability “matrix” or framework for Ontario, that CLEO is publishing as a companion to this report.³

Part 1 of this report will canvass developments in legal capability theory in the UK and Australia.

Part 2 of this report will review developments in thinking about legal literacy and, more recently, legal capability, in Canada.

1 It should be noted that our online scan extended to United States jurisdictions as well. We did not find any significant discussion in American access to justice literature referencing “legal capability”.

2 For another report in the series, see generally CLEO, *A framework for legal capability*.

3 Overall, the research and work detailed in these papers represents the foundation or building block for developing and implementing practical, integrated legal life skills training in community-based settings. At the time of publishing these reports, CLEO is engaged in “Phase 2” of the legal capability and life skills training project - developing “legal life skills” content to be piloted at two job-readiness training programs starting in autumn 2016.



1. Approaches to legal capability in the UK and Australia

In recent years, the concept of “legal capability” has started to supplant earlier concepts about “legal literacy”.⁴ Legal capability theory, as a stand-alone theory, was first developed in the UK in 2009, and was also studied extensively in Australia before it started to be explored in Canada.

1.1 The origins of legal capability theory

Legal capability relates to the functional ability of people to understand when they have a legal problem, access legal information, and take appropriate steps or actions to resolve the legal problem. The concept of legal capability is rooted in the “capabilities” approach developed by economist Amartya Sen in the broader areas of human development and welfare⁵, and built upon by Bryan Maddox and Martha Nussbaum, both scholars in the field of international development.

Sen has been prominent in identifying a broader approach to understanding disadvantage. He defines poverty in terms of low “capabilities and functionings”. In his view, “functionings” represent what a person is effectively able to be or to do, while “capabilities” represent the freedoms or opportunities a given person has to achieve particular functionings (Robeyns 11).

He argues that poverty ensues when individuals lack certain minimum capabilities (Robeyns 11). Low capabilities can translate into outcomes such as inadequate income or education, poor health, low self-confidence, or a sense of powerlessness (Robeyns 18).

Maddox also references “numerous large-scale studies that observe a strong correlation between literacy and other determinants of well-being such as income, women’s labour force participation and health” (185-186).

In Sen’s model, general literacy is also seen as vital to the development of overall legal capability — without literacy, the ability to understand and invoke one’s legal rights can be limited (Sen 41).

⁴ See also part 2.1 of this review, page 15, for a brief description of past definitions of “legal literacy” in Canada.

⁵ See, generally, Sen. It should be noted that Sen’s work has a broader focus on all areas of human development and welfare on the global level. Sen has also collaborated extensively with Martha Nussbaum, who built upon much of Sen’s work in the justice context: see, generally, Nussbaum 17-47.

1.2 The first UK model — Law for Life’s legal capability evaluation matrix

The UK organization Law for Life (formerly PLENET) spearheaded attempts to define legal capability. A report by Martin Jones, then of Law for Life, introduces the “capabilities approach”, informed by the work of Amartya Sen, and looks at what people need to be able to do or be in order to make choices about their well-being vis-à-vis the law (Jones 1). Specifically:

Legal capability can be defined as the abilities that a person needs to deal effectively with law-related issues....[c]apability needs to go beyond knowledge of the law, to encompass skills like the ability to communicate plus attitudes like confidence and determination (5).

Jones describes legal capability as drawing on three areas of ability: knowledge, skills, and psychological readiness or “competence” (4).

The Law and Justice Foundation of New South Wales’ more recent framework for understanding legal capability describes the three components identified by Jones as follows (Coumarelos, Pleasance, and Wei 29-30):

Knowledge: “a basic awareness of the role of the law in everyday situations.” This includes the knowledge that:

- a right or entitlement has been violated or could be violated
- there are possible legal solutions
- further information or help might be needed to address the issue
- there are places to go to get help

Skills: “abilities needed to pursue legal resolution effectively.” These include:

- literacy, including “functional literacy” — information skills needed to locate, understand, and act on information or advice in a problem-solving fashion
- language and communication skills
- decision-making skills
- organizational skills to keep track of calls, timelines, and the information needed to manage claims

Foundational research by Law for Life, a UK organization, looks at what people need to be able to do or be in order to make choices about their well-being vis-à-vis the law.

Competence/Psychological readiness: “the ability to act and continue to act until resolution is achieved.” This might include:

- confidence
- determination
- emotional or psychic fortitude

Based on these ideas, Law for Life developed a broad, four-pronged continuum or matrix that suggests various stages of legal capability.⁶ CLEO reproduces the matrix on the following page.

⁶ The matrix was originally produced by Law for Life and Bristol University PFRC, and is reproduced with their permission.

Figure 1: **Legal capability: The four key domains for evaluation**

| | | | | | | | |
|--|---|---|---|---|---|---|---|
| Recognizing and framing the legal dimensions of issues and situations | Is aware of the concept of rights and obligations and can recognise where the law applies to a situation. | Is able to frame a situation in terms of the law and distinguish between civil and criminal legal issues. | Is aware of the basic legal principles that underpin the legal system and can apply them to issues. | Has the communications skills and confidence to explain a law-related issue and ask and answer questions about it. | | | |
| Finding out more about the legal dimensions of issues and situations | Able to find out what rights and obligations apply in a particular situation. | Able to find out about basic legal processes and procedures that apply to particular situations. | Able to find out about the steps involved in dealing with a law-related issue. | Able to assess the different sources of information about a law-related issue. | Able to assess risks and opportunities, and decide when they can deal with a law-related issue themselves and when they might need expert advice. | Able to find out about different sources of advice and to choose one which will meet their needs. | |
| Dealing with law-related issues | Able to apply relevant information or advice that has been obtained. | Able to decide what a satisfactory outcome to a law-related issue looks like for them. | Able to anticipate and plan ahead, to identify opportunities and obstacles. | Able to identify and assess different courses of action for dealing with a law-related issue (which may include doing nothing), then plan and follow through an appropriate course of action. | Has communication and interpersonal skills to manage relationships and deal with the other parties involved. | Has personal skills and attributes such as confidence, self-esteem, motivation, calmness to persevere throughout the process. | Able to keep a good record of events, information and correspondence, and keep track of evidence. |
| Engaging and influencing | Aware of the impact of the law and legal institutions on their lives and on the lives of others. | Aware of relevant processes, structures and institutions that can be used to influence and participate in decision-making in order to achieve change. | Able to critically assess situations in order to weigh up opportunities. | Has communication and interpersonal skills necessary to engage and influence. | Has personal skills and attributes such as confidence, self-belief and strength to effect change either individually or collectively. | | |

This matrix was developed in 2009 by Law for Life in conjunction with the University of Bristol Personal Finance Research Centre as an attempt to provide a mechanism to evaluate the effectiveness of public legal education and information (PLEI) programs. Their joint report on this project, written by Sharon Collard and colleagues, recognizes the limitations of trying to classify “domains” of legal capability for purposes of evaluation (5):

These legal capability domains are of course “artificial”, and in reality things are far less clear-cut and much more inter-related, so that different capabilities may arise in any order and overlap or occur concurrently. The domains are not therefore in a fixed chronological sequence. For example, someone may want to find out more about a law-related issue or situation at any point, and they may do so more than once over the course of dealing with any issue or any life situation.

Of note is that the Law for Life matrix does not specifically reference general literacy skills, despite Maddox and Sen’s notion that general literacy skills are vital to developing legal capability.⁷ Given the highly word-intensive nature of most legal documents and all legislation, literacy skills in an official language would be necessary to build legal capability on one’s own (CLEO 22). Digital literacy and access to a computer are also important to help search for legal information online.

Given the highly word-intensive nature of most legal documents and all legislation, literacy skills in an official language are needed to build legal capability on one’s own.

1.3 Evolution of legal capability models in the UK

Research and thinking about legal capability has continued to develop since Law for Life’s initial work.⁸ In the next section, CLEO addresses more recent developments on the legal capability front in the UK.

1.3.1 PLEI for adults

Since developing their pioneering evaluation matrix in 2009, Law for Life produced a report that discusses the PLEI needs of marginalized people and their ability to find and use PLEI. Their 2015 report, written by Lisa

⁷ See Maddox 186-190 and, generally, Sen.

⁸ In 2012, Law for Life developed and piloted two 8-week PLEI courses intended to train community intermediaries or “Advice Champions” to boost legal capability. For more information, see Mackie. Law for Life and their partner information service AdviceNow have also recently developed three modules intended to be used by PLEI providers to train community intermediaries on various legal issues, including finding out where to get information and help about the law, workers’ rights, and tenants’ rights: see <http://www.lawforlife.org.uk/blog/new-resource-for-ple-trainers/> for links to the modules. They have also started to conduct two-day workshops for community intermediaries on how to help people deal with debt or social assistance issues: see <http://www.lawforlife.org.uk/blog/new-workshop/> for more information.

Wintersteiger, was based on the findings of the UK Civil and Social Justice Panel from a comprehensive survey that researchers administered by interviewing more than 5,000 people in two stages.⁹

According to Wintersteiger, increased vulnerability to experiencing multiple legal problems is linked to social determinants such as low income, age, and poor physical or mental health (14). Specifically, she finds that “These personal and social determinants interrelate with levels of legal capability and have a significant bearing on the ways in which legal problems will be experienced” (14).

Wintersteiger’s recommendations for addressing the gaps faced by marginalized people in accessing justice include (32-33):

- integrating PLEI into wider services
- improving coordination between justice and community-based stakeholders
- improving the capacity of community intermediaries and non-legal service providers to help with PLEI interventions
- selecting more appropriate approaches to ways of delivering PLEI, such as embedding PLEI in adult learning and vocational training, and ensuring that PLEI teaching methods are dynamic and engaging

Legal capability was also discussed in a comprehensive report recently published by another UK organization, The Legal Education Foundation. The report summarizes the findings of the UK Civil and Social Justice Panel Survey Report.¹⁰ In the report, Pascoe Pleasance, Nigel Balmer, and Catrina Denvir, like Wintersteiger, conclude that legal capability levels are directly linked to social determinants such as education, unemployment, and health status (155).

Pleasance, Balmer, and Denvir also extensively address internet access to legal information. Although use of the internet to address legal problems is on the rise, they note the existence of two digital divides: those who cannot physically access the internet, and those who have physical access to the internet but lack the capacity to use it effectively to find information (134). The latter, or “second”, digital divide disproportionately affects seniors, youth, and people with low levels of education (135).

Moreover, Pleasance, Balmer, and Denvir find that “disadvantaged groups — those who tend to experience multiple, severe problems — remain poorly placed to benefit from the internet as a source of help” (156). This points to an “evident need for a diverse range of accessible and affordable legal services, to

Increased vulnerability to experiencing multiple legal problems is linked to social determinants such as low income, age, and poor physical or mental health.

⁹ For more information about the results of the UK Civil and Social Justice Panel survey, see the reports by Balmer and by Pleasance et al. referenced in the “Works reviewed but not cited” list at the end of this report.

¹⁰ See generally Pleasance et al. “How People Understand and Interact with the Law”.

ensure that justice can be achieved by people from all sections of society and across all areas of the law.” (158)

1.3.2 PLEI for youth

In the context of PLEI, marginalized young people are a unique group in society. According to the Centre for Public Legal Education Alberta, their legal problems are made more complex due to other problems such as (2):

- inadequate support systems
- problems with transportation
- lack of respect from professionals

Youth overall are also less likely to understand that they have a legal problem and to know where to go for help (Centre for Public Legal Education Alberta 2). Despite this, the legal capability of youth specifically appears to have been less studied than that of adults.

CLEO found one report by Lewis Parle written on behalf of PLENET (now Law for Life) dealing explicitly with young people’s legal capability. This report, drawing on both the existing literature on financial capability and data from interviews (11) and focus groups with young people from marginalized groups (18), finds that young people lack certain knowledge, skills, and attitudes, which results in lower legal capability as compared to the adult population (38).

This report, similar to the contemporaneous work described above, did not identify literacy as a skill needed to improve legal capability. However, Parle focuses on verbal communication skills as a key component of legal capability, and determines that young people need a great deal of help and support in developing adequate verbal communication skills to deal with legal problems productively (31). He states:

...it was found that a weakness in one area could have a negative impact on their [youth] overall legal capability. For instance, if a young person had knowledge of their rights and entitlements, they could be precluded from using them in practice if they did not have adequate communication skills (38).

James Kenrick, writing on behalf of Youth Access, has also written a report on young people’s access to advice on social welfare issues, including legal issues related to employment, housing, debt, and discrimination (20). The report explicitly flags low literacy in youth populations as a barrier to delivering print legal information to youth (37).

Young people need a great deal of help and support in developing the verbal communication skills they need to deal with legal problems.

Kenrick also notes some other barriers to youth legal capability, specifically (37):

- low awareness of legal rights and services
- lack of emotional and practical skills needed to resolve social welfare and legal problems
- psychological barriers to accessing advice, including a lack of trust in the legal system and in adult services, and a sense of powerlessness

Pascoe Pleasance, Nigel Balmer, and Ann Hagell have also recently addressed the effect of social determinants on youth legal capability, with a mental health focus. They find, based on data from the UK Civil and Social Justice Panel's survey¹¹, that legal problems related to "social welfare"¹² issues are linked with young people's mental health, and are key determinants of whether young people have good mental health (Pleasance, Balmer, and Hagell 4-5). Specifically, they conclude that:

- the experience of legal problems is a key predictor of mental health problems
- mental health problems are more common where multiple legal problems are reported
- mental health deteriorates as new legal problems emerge

Pleasance, Balmer, and Hagell recommend that, in order to reach marginalized young people most effectively, legal interventions should focus on providing in-person social welfare legal advice in tandem with mental health interventions in youth-friendly settings (16).

1.4 Developments in Australia – legal capability and disadvantage

Recent reports from Australia have also attempted to build upon the then-existing literature on legal capability, by introducing concepts intended to take into account the personal characteristics and circumstances of people from marginalized communities. These reports all draw upon data collected in a comprehensive nation-wide legal needs survey conducted in 2008 by the Law and Justice Foundation of New South Wales.¹³

The Law and Justice Foundation of New South Wales has released a series of short papers based on data from the legal needs survey. In this series, they canvass access to justice for various groups, including people with disabilities (Coumarelos, Pleasance, and Wei 1) and Aboriginal people (Wei and McDonald 1).

11 See note 9 above.

12 Examples of "social welfare issues", according to Pleasance, Balmer, and Hagell, are "housing, homelessness, welfare benefits, debt, employment, and education"

13 For more information about the results of the Legal Need in Australia survey, see the report by Coumarelos et al. referenced in the "Works reviewed but not cited" list at the end of this report.

Pascoe Pleasance and his colleagues, also writing on behalf of The Law and Justice Foundation of New South Wales, raise the idea that personal capabilities generally affect vulnerability and disadvantage, resulting in a “negative feedback loop” that further exacerbates disadvantage (126).

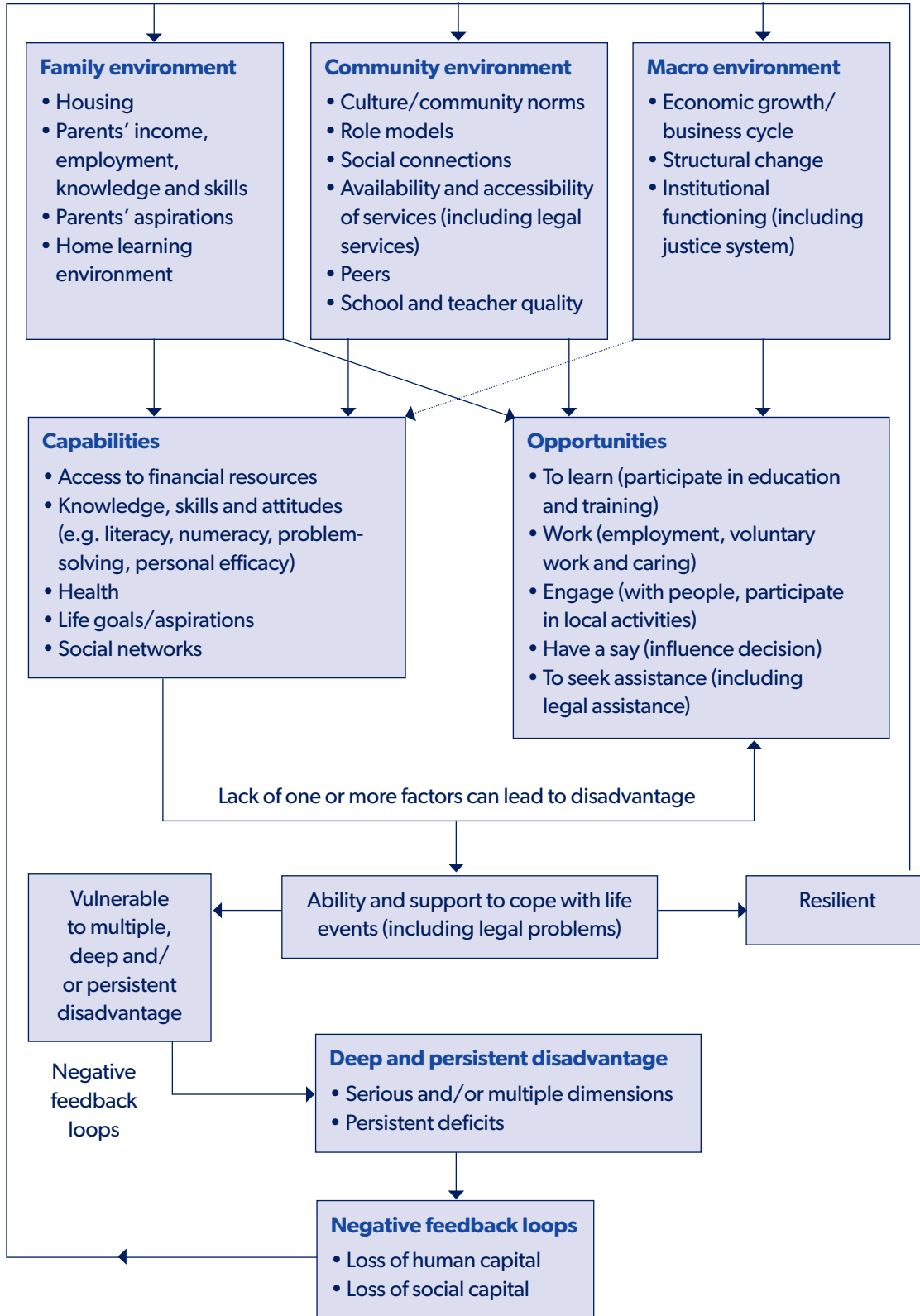
Their work draws upon a previous report written by Rosalie McLachlan, Geoff Gilfillan, and Jenny Gordon on behalf of the Productivity Commission of the Australian government, detailing the effects of “deep and persistent disadvantage” on one’s ability to participate in society generally. That report examines various theories on disadvantage, including the work of Amartya Sen (McLachlan et al 42-44) and theories about the impact of social inclusion and exclusion (46-51).

McLachlan, Gilfillan, and Gordon describe “personal capability” as including:

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

The diagram on the following page, reproduced from the report by Pleasance and his colleagues, provides a sample table of challenges and opportunities in developing personal capabilities and depicts the effect of disadvantage, including the ability to cope with legal problems (126).

Figure 2: **Personal capability and other factors influencing experience of disadvantage**



As the diagram shows, many societal factors have an impact on a person's ability to gain personal capabilities. Some of these relevant to the concept of developing legal capabilities include:

- quality of housing or financial ability to maintain housing
- employment status
- access to financial resources
- health status
- ability to fit in with mainstream cultural and community norms
- literacy

And, lacking something regarding one or more of these factors (for example, not having a job, being a differently abled person, or lacking literacy or a job), can lead to disadvantage which, in turn, affects a person's ability to handle related legal problems (Pleasant et al. 126).

Pleasant and his colleagues also find that marginalized people in Australia are less likely to seek legal information and help early in the legal problem cycle because:

- the "tipping point" at which marginalized groups decide to seek help is later than other groups (115)
- they are more likely to have intersecting and complex problems on many fronts at the same time, and they may not be able to access information to help with the right problems at the right time (89)
- in the context of legal information and help, it has also been noted that it is not only a matter of when people decide to seek help, but also when people are ready to act on the legal problem (115-116)¹⁴

Two more recent reports by The Law and Justice Foundation of New South Wales focus specifically on the impact of differing levels of legal capability on the ability to access and use PLEI¹⁵. Both of these reports stress that PLEI should not be seen as a "one-shot magic bullet which can, alone, replace the need for more intensive services, nor can it meet the needs of all clients" (Forell 9 and Forell and McDonald 2).

PLEI should not be seen as a "one-shot magic bullet which can, alone, replace the need for more intensive services, nor can it meet the needs of all clients".

¹⁴ This may mean that focusing primarily on early intervention in providing legal information carries a risk of missing people who do not seek legal information early due to disadvantage or other factors (Pleasant et al. 116).

¹⁵ See generally Forell, and Forell and McDonald.

Instead, as Suzie Forell notes, PLEI strategies should be:

- targeted to specific groups for specific purposes
- appropriate to the legal needs of the target group and their abilities
- timely, which includes a recognition that many people will not access legal information on a preventative basis (“just in case”), but rather closer to the point of crisis or formal resolution (“just in time”)
- integrated with other legal and non-legal services (9).

On the last point, Suzie Forell and Hugh McDonald suggest that justice stakeholders look at how PLEI dovetails with more intensive one-on-one help to make sure that different client groups are reached with the right level of information and help (2). Although PLEI by itself cannot help all people solve legal problems, it should be seen as “an integral part of a ‘kitbag’ of legal assistance tools” that can be used by clients and trusted intermediaries or “problem noticers” for various purposes (4).

Forell and McDonald also acknowledge the impact of digital divides on people’s ability to find and use PLEI (4). They state that it should not be assumed that those who are skilled with using technology will be able to identify their problems as legal or to use technology effectively to search for legal information (4).

The reports written by Forell and McDonald identify three broad types of PLEI, as summarized in a table on the following page¹⁶:

- PLEI for self-help (for use by clients with higher capability)
- PLEI to get help and reinforce help (for use by marginalized clients or other people with lower capability and by their legal advisers)
- PLEI to give help (for use by community intermediaries)

¹⁶ CLEO has adapted this table from one found at Forell and McDonald 9 to remove examples specific to the Australian context and to reflect Canadian spelling and usage.

Figure 3: **Identifying the purpose of PLEI: to whom, when, and to what end**

| Who | | Broader community | Core clients | Workers |
|-------------------|--------------|---|--|--|
| | | Higher capability | Lower capability | Community intermediaries (“problem noticers” in original) |
| To do | | Self-help | Get help (& reinforce help) | Give help |
| When | Just in time | Procedural – to outline steps to take with current problem and provide tools to do so *more scope for technology | To identify problems as legal, and introduce legal service for immediate help *less scope for technology due to importance of relationship building | To educate community intermediaries to recognize clients’ existing legal issues and know where to refer clients to legal help (including outreach) *mix of technology and face-to-face PLEI |
| | Just in case | To encourage steps to prevent problems arising and encourage action when they occur *more scope for technology | To identify problems as legal – to prevent problems and to encourage help seeking when problem arises To reinforce advice provided *less scope for technology due to importance of relationship building | To build capacity to recognize issues and refer, across a range of issues, to assist current and future clients *more scope for technology |
| Intent | | To provide alternative to legal assistance services | To connect isolated clients to legal assistance services | To provide a pathway to legal assistance services for clients |
| Types of outcomes | | Users able to resolve issues | Users seek assistance to resolve issues | Community intermediaries provide appropriate referrals |

In sum, recent Australian literature on legal capability, like Wintersteiger’s recent report, recognizes that certain types of disadvantage can result in a person’s not being able to deal with legal problems effectively. And, when thinking about designing PLEI, it is important to ensure that there is a range of different types of PLEI to meet different needs (Forell and McDonald 9).



2. Approaches to legal capability in Canada

2.1 Legal literacy

Laird Hunter, formerly of the Canadian Bar Association, defines legal literacy as “the ability to understand words used in a legal context, to draw conclusions from them, and then to use those conclusions to take action” (11). It has also been recognized that general literacy skills, in and of themselves, may well not allow participation in a legal process or system:

Even if people with low literacy have found a way to cope with their daily routine, they find it very difficult to read, understand and use materials related to legal problems. They do not understand the concepts contained in the words, even if they understand the words themselves. Therefore, they cannot understand what is expected of them and often the implications of what is being said (Council of Canadian Administrative Tribunals 11).

A common theme in discussions about legal literacy is the emphasis on the functional ability to take appropriate action in response to problems involving the law. For example, Hunter states that “people using the legal system must be able to guide themselves through a process that they understand” (12). According to Hunter, this entails the ability to:

- “recognize a legal right or responsibility
- recognize when a problem or conflict is a legal conflict and when a legal solution is available
- know how to take the necessary action to avoid problems
- where it is not possible to avoid problems, know how to help themselves
- know how and where to find information on the law
- know how to find information that is accessible to them
- know when and how to obtain suitable legal assistance
- have confidence that the legal system will provide a remedy, and
- understand the process clearly enough to perceive that justice has been done” (11)

Hunter’s approach to legal literacy is now reflected in the concept of legal capability. This concept appears to have supplanted and subsumed the notion of legal literacy in more recent Commonwealth literature on public legal education and information (PLEI), as discussed in part 1 of this report.

2.2 Background — recent reports about legal capability in Canada

Seminal reports on access to justice in Canada have referenced and adapted certain components of the legal capability evaluation matrix developed by the UK’s Law for Life in 2009.¹⁷ For example, the Action Committee on Civil and Family Justice (the Action Committee) summarizes legal capability as the ability to:

- “recognize that there are legal components or aspects to many activities and events of everyday life
- better anticipate and manage these components
- be able to sort legal from non-legal aspects of problems and address their interdependence
- avoid unnecessary escalation of conflicts into more serious problems or disputes that may require legal intervention
- assess options that are available and that foster reasonable solutions in situations of conflict
- be aware of when and how legal representation can assist with disputes and how to access legal representation” (12)

Moreover, the Action Committee finds that embedded in the concept of legal capability is the notion that it should be developed as a preventative set of skills to help people both avoid problems before they arise and solve problems as quickly as possible (13). This concept is illustrated in the table from the Action Committee’s report (13), reproduced below.

Figure 4: **Emphasis of legal capability at different stages in the legal continuum**

| To avoid problems | To solve problems | To solve disputes by alternative methods | To solve disputes in courts or tribunals |
|--|---|---|--|
| <ul style="list-style-type: none"> • Identifying what you need to know about law at specific periods, or transitions, in your life • Having communication skills • Managing conflict constructively • Being organized • Knowing where and how to get reliable information | <p>Same as for avoiding problems, plus:</p> <ul style="list-style-type: none"> • Knowing rights • Knowing what you want • Knowing type of help you need • Knowing who to speak to • Having problem resolution skills • Understanding different perspectives in a dispute | <p>Same as for avoiding and solving problems, plus:</p> <ul style="list-style-type: none"> • Understanding of costs of pursuing justice in courts • Understanding of, and openness to, alternative dispute resolution processes • Trusting the available processes to be fair | <p>Same as for other columns, plus:</p> <ul style="list-style-type: none"> • Knowing how to find reliable legal representation, legal aid and/or advocacy assistance • Being able to access and interpret resources to be seen as a self-represented litigant • Having confidence in an unbiased, transparent and fair situation |

¹⁷ See Part 1.2 of this report, pages 3-4, for a description of the 2009 Law for Life matrix.

The Canadian Bar Association expands upon this approach by stating that law should be seen as a “life skill, with opportunities for all to develop and improve legal capabilities at various stages in their lives, ideally well before a legal problem arises” (18).

In a 2015 report comparing health literacy and legal capability, CLEO posits that there were at least two major gaps in the then-existing legal capability theory as it had developed in Canada:

- the failure to recognize the need for general literacy specifically within the models
- the lack of relevance of the models to marginalized people (*Don’t smoke* 19)

CLEO concludes:

One way to start addressing this gap is to incorporate (or recognize explicitly) the need for general literacy within legal capability models in Canada. We find this a good starting point for reflecting on the present reality for vulnerable people trying to cope with the law. However, we also suggest that it is essential to incorporate social determinants into the existing concept of legal capability. That is, it is important to ensure that legal capability is grounded in a rights-based approach and founded on social determinants and either a core of general literacy or the ability of someone who does not have basic literacy skills to know where to go for help in deciphering legal problems (*Don’t smoke* 23).

CLEO also notes that significant advances in health literacy and promotion resulted from a systemic understanding of the effect of social determinants — or the economic and social conditions that affect individuals and communities — on the ability to become health literate (*Don’t smoke* 2).

2.3 Conclusion

In Canada, some of the recent literature on access to justice has started to reference the need to build people’s legal capability – or the knowledge, skills, and personal characteristics and circumstances needed to deal with legal problems on one’s own.

CLEO suggests that it is essential to incorporate social determinants into the existing concept of legal capability.



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