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**PUBLIC LEGAL EDUCATION  
IN ONTARIO LEGAL CLINICS**

**by**

**Susan Elizabeth McDonald**

**A thesis submitted in conformity with the requirements  
for the Degree of Master of Arts  
Department of Adult Education, Community Development  
and Counselling Psychology  
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## **Abstract**

### **Public Legal Education in Ontario Legal Clinics**

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This study was designed to examine the provision of public legal education in Ontario community legal clinics in order to identify the objectives, role and importance of education in the clinics' delivery of legal services. Using the qualitative research methods of semi-structured interviews and document analysis, the study examines the different perspectives of those who provide public legal education, the lawyers, community legal workers, and community board members working in the legal clinic system in Ontario. A theoretical overview and critique of the "liberal legal model" and "new poverty law scholarship" is provided. As well, the importance of pedagogically appropriate education in the provision of legal services for disadvantaged individuals and groups is established. Three different approaches or models for public legal education are described: Legal Literacy, Community Legal Education and Public Legal Education. The findings reveal that public legal education activities vary widely in the clinics across the province, not only in quantity, but with respect to the objectives and methodology. The activities fall into the Community Legal Education and the Public Legal Education approaches.

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## Chapter 1

### Introduction

#### Purpose and Background to the Study

The purpose of this study is to examine public legal education, its objectives and its role, in the provision of legal services to disadvantaged individuals and groups within the Ontario legal clinic system. The term “public legal education” will be used here to mean education about the law, its content, structure, and procedures for the general public. It has a number of different uses and the distinctions will be explored and clarified in this study.

The legal clinics of the Ontario Legal Aid Plan have a mandate “. . . to promote the legal welfare of a community, on a basis other than fee for service.” (s.5(2) of *Regulation 710*, Amended O.Reg.131/96) This mandate recognizes that traditional legal services, which resolve individual legal problems through legal means such as litigation, do not adequately address the needs of low-income communities. As such, the clinics engage in public legal education activities, along with community development, law reform, in addition to traditional direct services, specifically, casework and summary advice.

This research is timely and important given the impending reform of the Ontario Legal Aid Plan (the Plan, OLAP). The current Conservative government established an inquiry into the state of legal aid under Professor John McCamus. The Report of the Ontario Legal Aid Review, *A Blueprint for Publicly Funded Legal Services*, (hereinafter

the McCamus Report) was released in September of 1997. While there have been many reviews of legal aid in this province, this work is the most recent and comprehensive of its kind for the legal aid system.

As a result of this report, at the February 1998 meeting of Convocation, benchers voted to end the Law Society's 30-year administration of the Ontario Legal Aid Plan. It recommended to the government that an organization independent of both the Law Society and the Attorney General be established to govern legal aid.

The McCamus Report acknowledges the importance of public legal education and found that "...the demand for legal information is profound." (1997, 55) Despite this recognition, in the report as in most literature, the role of public legal education is negligible in comparison with the traditional legal strategies. It has long been recognized that traditional legal services do not adequately address the legal needs of disadvantaged individuals and groups. This study begins with the assumption that pedagogically appropriate education is a critical component of legal services for these clients.

### Research Problem

The specific questions this study asks are:

1. What public legal education projects and activities are being undertaken by the Ontario legal clinics?
2. How is public legal education defined by those in the legal clinics who are providing it?
3. What are the goals of public legal education according to those who provide it?

4. What role should public legal education play in the delivery of legal services to the clients of Ontario legal clinics from the perspective of those who provide public legal education?

### Rationale for the Study

This study is timely and significant in many ways. Firstly and importantly, it will attempt to help establish the importance of public legal education in the delivery of legal services to low income Ontarians. At this time of legal aid reform and shrinking funding, it is essential to stress that public legal education must play a significant role in the provision of legal services. While mentioned in the McCamus Report, there has been little research on public legal education in general, nor specifically to support or refute this position.

As such, a second and important rationale for this study is that it will contribute to the body of literature on public legal education, of which there is little at present. In particular, it will provide clarification on the use of terms, such as “public legal education” and “legal literacy,” which are at present vague and ambiguous.

Thirdly, this research will be useful in strengthening future endeavours in the area of public legal education. It will provide a framework for a variety of theoretical models and as such, provide reflective materials for practitioners.

Fourthly, it is hoped that this study will stimulate further research and debate on the issue of public legal education.

### Limitations of the Study

This study will not:

- Evaluate or assess the effectiveness of public legal education projects/activities in the Ontario legal clinics; or
- Provide a comprehensive description or catalogue of public legal education projects/activities in Ontario clinics; or
- Develop a theory for public legal education.

### A Note on Terminology

#### *Public Legal Education*

As noted in the opening paragraph, this study uses the term “public legal education” as a generic description of education about the law for the public, as opposed to legal education for lawyers or law students. The Literature Review will also present a model called “Public Legal Education.” When capitalized letters are used, I will be referring to the specific model.

#### *Legal Literacy*

Legal literacy has a general meaning of being literate in the law, which may be cited as a goal of public legal education. This study will refer to a specific model called “Legal Literacy” which is defined as “the process of acquiring critical awareness about rights and law, the ability to assert rights, and the capacity to mobilize for change.” (Schuler and Rajasingham 1992, 2) Capital letters will indicate this use of the term.

### *Goals/Objectives*

The words “goals” and “objectives” are used interchangeably in this study. While there are differences for planning purposes, the data indicated that the clinics use them interchangeably.

### *Education/Learning*

This study uses the terms “education” and “learning” in a general sense. It is recognized that these terms are not synonymous and both are important.

### Organization of the Study

This study is divided into 6 chapters. Chapter 1 serves to introduce the purpose, background, research problem, rationale and organization of the study. Chapter 2 will present a history of the development of the clinic system within Ontario’s legal aid framework. It will also describe the present day clinic system.

Chapter 3 is the Literature Review which begins with an overview of the rights discourse and the “liberal legal model.” I also present theoretical arguments for public legal education when working with disadvantaged groups, arguing that the lawyer in her/his traditional role may perpetuate the status quo as distinct from being instrumental in social change initiatives. In order to do this, I review the literature which examines the dynamics of the lawyer/client relationship.

Then, I present three models or approaches for public legal education: the Legal Literacy model used in Alternative Legal Services, the Community Legal Education model, and the Public Legal Education model. These models are placed on a spectrum to

provide a framework for public legal education. As well, corollary work such as the Plain Language Movement is briefly discussed.

Chapter 4 explains the methodology used in the study. Chapter 5 presents the data findings and Chapter 6 offers discussion and conclusions.

## Chapter 2

### The Ontario Legal Clinics

This chapter will provide a brief overview of the history of legal aid in Ontario and specifically, the development of the clinic system. Initially, the phrase “legal clinic movement” was used to describe the developing clinics and their work, but I have chosen to use the term “system” in this study. As Mosher (1997, 941) suggests, a system can be defined as “a collection of collected endeavours which are centrally supported, wherein information is shared widely amongst the constituent parts and where those parts often come together to work jointly on particular undertakings.” In this sense, the clinics do function as a system.

#### History of Legal Aid in Ontario

Prior to the 1950s, those who could not afford to pay for legal assistance were dependent upon the charity of lawyers to provide their services on a “pro bono” basis, or free of charge. At best, it was a patchwork approach with some assistance by the Attorney General’s office to individuals charged with capital offences. Reilly (1988) and Cormier (1990) trace the history of legal aid as a charity in Ontario.

Developments in legal aid in Ontario were prompted by those in Britain. In 1945, the Rushcliffe Committee issued *The Report of the Committee on Legal Aid and Advice in England and Wales* which served as the basis for the *Legal Aid and Advice Act, 1949*. In 1948, the Law Society of Upper Canada followed suit and established a committee to examine the issue of legal aid under R. M. Willes Chitty. The Chitty Committee

recommended a legal aid plan, similar to Britain's in that it would be administered by the Law Society. Thus, in 1951, legal aid was formally introduced by statute into this province with the *Law Society Amendment Act, 1951*. The result was the Ontario Legal Aid Plan.

The provision of legal aid in Ontario had two distinct stages of development. In the first stage, it was believed that the lower socio-economic classes should have the right to legal counsel equal to that of the client who could afford to pay. Two goals fuelled this thinking: one substantive and one procedural. Firstly, substantively, poverty was wrong and could be alleviated through legal advocacy. Secondly, procedurally, legal representation was a necessity, especially in situations where an individual was against the powers of the state. This line of thinking led to the development of judicare, also known as the certificate system. This model mirrors the private bar; those who qualify receive a certificate which entitles them to the services of a lawyer to resolve the particular issue. It was originally thought that giving everyone "access to justice" would create equality (see Abel 1982, 1985; Cappelletti 1981).

In the early days of the Ontario Legal Aid Plan, it covered some civil matters and criminal matters where the accused had been charged with an indictable offence. Membership was voluntary and during the fifties, there was an overwhelming lack of lawyers offering their services. The Plan was also limited by severe financial eligibility requirements and little government funding. In 1963, a new committee of the Ontario government and the Law Society was struck to study the problem and, significantly, it recommended that lawyers be paid by a tariff that would be administered by the Law Society and funded by the provincial government. The result was the *Legal Aid Act*,



1967, R.S.O. 1967, c.80, which transformed legal aid in Ontario from a system dependent upon charity to a publicly funded right.

The inadequacies of the judicare model administered by the Plan became apparent as the underlying assumptions inherent in this model were proven far from accurate. It had been assumed that the problems of disadvantaged groups and individuals were similar to those of the middle and upper classes. As such, the resolution of these problems would also be through similar means. The problems of disadvantaged groups and individuals, however, are the product of complex historical, political, economic, and social structures and rarely can they be resolved through these means (see Wexler 1970 at p. 23 of this study).

Recognizing this, judicare, or the certificate system, was clearly inappropriate. It allowed for formal equality, but the goal of substantive equality remained elusive. This development in theory led to the conception of a legal aid model that was intended to be sensitive to the needs of marginalized groups. Focus shifted from “equality of access” to “equality of outcome and benefit”; it would be necessary to deal with the legal problems of disadvantaged groups on a more structural basis.

This development in thinking led to the establishment of legal clinics, such as Injured Workers’ Consultants or Parkdale Community Legal Services. The Parkdale clinic was funded by grants from York University, the federal department of Health and Welfare and the Council for Legal Education for Professional Responsibility. In the beginning, these clinics were outside the auspices of the Ontario Legal Aid Plan. They were independent clinics offering a new kind of legal aid service based upon several underlying principles.

Firstly, it was recognized that to deliver high quality service in areas of “poverty law” specialization would be required (Blazer 1991, 54). Clinics provided representation in areas such as welfare and family benefits, landlord and tenant rights and responsibilities, workers’ compensation, immigration, unemployment insurance, employment rights, debtor/creditor problems, and juvenile and child welfare matters. Secondly, it was recognized that the individual case-by-case approach was inadequate; thus, it was crucial to engage in outreach and public education, as well as mobilization to change underlying structures which served to undermine or negate the interests of disadvantaged groups. Finally, it was recognized that to be responsive to the needs of the people being served, it would be necessary to break down the hierarchy implicit in the traditional lawyer/client relationship.

Blazer (1992, 54-57) highlights three other features of the early clinics. The first is the use of community legal workers (CLWs), individuals who had no formal legal training, but often had experience in grass roots organizing within their community. In the early days, the CLWs embodied those underlying principles which served to guide the clinics. Secondly, the clinics were independent from the Ontario Legal Aid Plan, administered by the Law Society of Upper Canada, and from the provincial government. Such independence was essential to ensure that clinics were able to “act faithfully in the interests of their clients free from conflicting loyalties, pressures or duties.” (Blazer 1991, 57) The work that clinics undertake does place the advocates in adversarial roles with the government, its agencies, and political parties. The third important characteristic was the clinics’ community based boards of directors which ensured that their mandate and delivery of services would be ultimately controlled by their client base.

In 1973, the Ontario government established a Task Force on Legal Aid, headed by Mr. Justice Osler. Recognizing the importance of the clinics, the Osler Report recommended that the Ontario Legal Aid Plan provide funding for clinics. In 1976, *Regulation 557*, s.148, enacted pursuant to the *Legal Aid Act*, R.S.O. 1970, c.239, became the first clinic funding regulation. It provided for the funding of “independent community based clinical delivery systems” which were defined as:

... any method for the delivery of legal or paralegal services to the public other than by way of fee for service, and includes preventative law programmes and educational and training programmes calculated to reduce the cost of delivering legal services.

In 1978, Mr. Justice Grange headed a further inquiry into the Ontario Legal Aid Plan. The Grange Report (1978, 1-3) importantly identified the following deficiencies in the Plan:

- a) The poor were not always aware of the assistance available under the Plan, or even of their legal rights, and if they were, they were not always willing to seek out that assistance and those rights.
- b) The coverage under the Plan was for reasons of economy and legal efficiency limited to serious problems. But the problems of the poor, though not serious in the traditional sense, have for them very serious consequences. For example, a tenant's dispute with his landlord might involve very little in terms of dollars, but for him might be a matter of survival.
- c) The problems of the poor too often by their very natures fall outside the traditional skills of the private Bar and have come to be known as poverty law. They include such matters as Unemployment Insurance, Welfare, Pensions, Immigration, Workmen's Compensation, where not only advice but advocacy is sorely needed and vital.
- d) The private Bar and its clients know that it is sometimes not sufficient merely to resolve the immediate problem. Often the client's welfare dictates much more. He must know the dangers in order to avoid them in the future and if they cannot be avoided, he may have to combine with others to attack the root of the problem which perhaps can only be done in the councils or legislatures of the land.
- e) The coverage provided by a Legal Aid certificate is limited to assistance in respect of a specific legal problem. But often the legal problems of the poor are associated with and cannot be divorced from their social, economic, and personal concerns.

Mr. Justice Grange's observations support and are consistent with much of the writing and commentaries on the legal needs of disadvantaged persons (Wexler 1970; Alfieri 1988; Tremblay 1992; Lopez 1989; White 1988). As a result of the findings, the Report recommended that the Ontario Legal Aid Plan adopt a mixed delivery model, that would include both the judicare and clinic systems.

Adopting the Grange Report's recommendations, a new clinic funding regulation was passed. Today *Regulation 710, Part IV*, enacted pursuant to the *Legal Aid Act*, R.S.O. 1990, C.L.9, s.5(1) defines a clinic as:

. . .an independent community organization providing legal services or paralegal services or both on a basis other than fee for service;

Further,

"community" includes a geographical community, persons who have a community of interest and the general public;

And section 5(2) clarifies that the payment of funds to a clinic is:

To enable the clinic to provide legal services or paralegal services, or both, including activities reasonably designed to encourage access to such services or to further such services and services designed solely to promote the legal welfare of a community, on a basis other than fee for service.

The *Act* and *Regulation 710* do not define in more precise terms what the functions of the clinics are.

In sum, the clinics, developed as an alternative to the certificate or judicare model and focused on the needs of the poor, the need to involve the community in decisions, and clinic independence. The clinic system was seen to be:

. . .an affirmative action program directed to achieving equal justice and capable of performing as a driving force on behalf of the poor.(Mossman 1983, 368)

### The Clinics Today

In Ontario today, there are 70 legal clinics under the Ontario Legal Aid Plan. With the satellite offices, there are 100 communities served. There remain large regions, however, where there are no clinics. Some are community based with their clients living within certain geographical boundaries and meeting the low income criteria, such as Parkdale Community Legal Services or Algoma Community Legal Clinic. Others cater to the specific needs of certain communities, such as the Advocacy Resource Centre for the Handicapped, the Advocacy Centre for the Elderly, or the Centre for Spanish Speaking Peoples. The goals and objectives of the clinic system as set out in the *Community Legal Clinics: Annual Report 1992/93* (1993,1):

- to promote the legal welfare of the communities they share;
- to enhance access to the justice system by low-income citizens;
- to provide summary advice and legal representation to low-income clients in poverty law areas, including income maintenance, landlord and tenant, workers' compensation, immigration and human rights;
- to undertake law reform initiatives to advance the interests of low-income citizens;
- to assist clients and others to organize and form self-help groups with the aim of pursuing their legal rights; and,
- to engage in "preventive law" by offering public legal education activities.

The chart below, prepared by the Clinic Funding Committee, provides a quantitative summary of the services provided by the clinics from 1992-1996.

**Table 1**  
**Clinic Statistics 1992-1996**

Year	Files	Summary Advice	Referrals				Public Legal Education		Briefs
			Private Bar	OLAP	Social	Other	Sessions	Material	
1992	36,974	166,066	13,767	17,501	4,582	41,374	2,484	451	199
1993	38,132	164,133	12,769	13,085	4,044	20,992	1,962	370	1,056
1994	36,036	170,494	13,230	10,256	4,983	50,166	2,530	353	878
1995	35,607	159,237	11,932	7,583	4,145	44,749	2,394	457	945
1996	37,097	147,636	12,267	6,060	5,335	45,825	2,055	638	792

Source: Clinic Funding Committee, as cited in Mosher 1997, 931

The Clinic Funding Committee (CFC), a subcommittee of the Law Society of Upper Canada, has responsibility for the administration of the clinic system. It establishes the policies and guidelines to ensure that the legal services provided are within the regulatory mandate and that public monies are used responsibly. It is responsible for annual funding requests to the Attorney General, which provides the majority of funding. Powers and responsibilities are set out in section 7 of *Regulation 710*. The CFC is comprised of five individuals, three appointed by the Law Society and two appointed by the Attorney General, with one from each being associated with a clinic. The daily management is the responsibility of Clinic Funding Staff.

There is also some funding from the federal Department of Justice. Clinics apply directly to Clinic Funding Staff for these monies which are designated for special outreach projects. With this exception, funding for the clinics is fixed, in that there is no additional funding when caseloads increase. Funding has been frozen since 1993. In 1995-96, the clinic budget was \$32.5 million, out of a total legal aid budget of \$315.6 million.

The clinics are non-profit corporations with elected boards of directors which as the employers, are responsible for the administration and management of personnel, finance, the areas of law and types of services offered, and the evaluation of services (see Clinic Funding Operations Manual). The daily management of each clinic is the responsibility of the Executive Director or equivalent. A typical clinic is staffed by two lawyers, one CLW, and support staff, although this can vary. Overall, staff is 60% lawyers and 40% CLWs. Board members are volunteers recruited from the community served by the particular clinic.

The clinics are distinct from the certificate model or duty counsel model of legal aid in that they use a number of different strategies to address the needs of their clients recognizing that these needs are integrally connected to social, political and economic structures of oppression. They are intended to address the causes, not just the symptoms of these problems. Clinics are located in the community as a community service. This is in contrast to the certificate model which is a service the community can use. The vast majority of work by the clinics falls under the category of direct services, that is summary advice and casework in the traditional “liberal legal model,” usually representing individuals with legal problems, but also representing groups. Clinics also engage in what is generally called outreach, which is further categorized as public legal education (also referred to as community legal education), community development, and law reform. As will be discussed in the chapters on findings and conclusions, the divisions between these strategies are often not clear and different clinics will define their work in different ways.

One specialty clinic is particularly relevant to this study. Community Legal Education Ontario (known as CLEO) is a clinic located in Toronto which may be

distinguished from others in that it acts as a support service to the other clinics through its public legal education work. Its

. . . primary activity is the development, production and distribution of public legal education materials for the clinic client community and the 'potential' clinic client community. Materials are aimed at the legal needs of low-income people, though their distribution is not restricted to this community. CLEO distributes materials to a wide variety of service providers and individuals throughout Ontario." (CLEO submission to the Ontario Legal Aid Review, as cited in Mosher 1997, 942).

In 1997, CLEO distributed 916,233 publications. There were 180 new or revised materials in 1996, and 218 in 1997. Similarly, there were 59 reprints in 1996 and only 34 in 1997, illustrating the vast changes in legislation in the province (1998 funding application).

In conclusion, legal aid in Ontario has in this century evolved from a charity to a publicly funded right. The clinic system has evolved in the past thirty years in response to the inadequacies of the traditional delivery model to address the needs of disadvantaged groups and individuals. This is the structure in which this study took place.

Legal aid reform in Ontario is yet again impending and while there has been some recognition of the importance of public legal education, it remains to be seen what role it will play as legal aid reforms occur. The next chapter will outline the rights discourse and "liberal legal model" and the problems of this model when it is used to address complex social justice issues. It will also present different models of public legal education.



### **Chapter 3**

#### **Literature Review**

This study examines public legal education in the Ontario legal clinics. The term, “public legal education,” is used in a variety of ways in Canada and internationally by different practitioners, and as such, as a term, it is both vague and confusing. It is the term generally used in the clinic system and consequently, was the term selected for the title of this study. This chapter will clarify some of the confusion around its use and different meanings. Chapter 6 will offer discussion around the use of this term and others.

The clients of the Ontario clinic system are generally, although not exclusively, low-income or otherwise disadvantaged individuals and groups. Accordingly, my discussion will focus on the provision of public legal education for this client group. These clients are not, however, the only beneficiaries of the public legal education activities/projects that the clinics undertake; social service providers and other professionals also benefit and consequently, these client groups will also be considered.

To begin, this chapter will outline some of the limitations that are inherent in the rights based approach of the “liberal legal model” to the resolution of issues facing disadvantaged groups and individuals, focusing in particular on the poverty law critiques of the lawyer/client relationship. As such, I will argue that a traditional, rights based model of services for disadvantaged individuals and groups is not adequate and that pedagogically appropriate education should be a critical component of any strategy addressing social justice issues.

After presenting arguments for pedagogically appropriate education in the delivery of legal services, I will then outline several different approaches to or models of public legal education. I will begin by describing a movement from Latin America, called Alternative Legal Services. I will then present the Legal Literacy model, which is an educational process used by Alternative Legal Services organizations. Finally, I will describe the Community Legal Education and the Public Legal Education models which are most commonly used in Ontario. These models cannot be seen as distinct, but rather overlapping on a continuum.

#### The Rights Discourse and the “Liberal Legal Model”

Modern Western law is based upon the principles of classic liberalism: justice, fairness, and individual rights (Rawls 1971). Each individual has the freedom and the right to pursue his/her own interests. As these interests might clash, principles of justice will mediate any competing claims, the pre-eminent one being justice as fairness, which will ensure that competing claims are settled in such a manner as to respect everyone's capacity for choice (Rawls 1971,11). For liberals then, justice is paramount, as is our capacity as individuals to choose. As well, liberalism is based on a clear separation between reason and emotion.

For Rawls, the ideal society would include the “difference principle” (Rawls 1971, 76-90) where equality, beyond a simplistic meritocracy, is a primary goal and does acknowledge that those who cannot adequately advocate their rights claims for whatever reasons should be compensated accordingly. Dworkin, another well known contemporary

liberal, articulates a view of redistributive justice that would make up for any disadvantage created by fate (Dworkin 1977).

Underlying the classic liberal paradigm lies the individual as self, independent of the community and wholeness (Alfieri 1988, 685). The self is decontextualized and as such, differences between individuals within groups and differences between groups are not acknowledged. The concept of power is one-dimensional and individualized, being limited to something one uses to press his/her claim over another's.

The assertion of rights is, in many ways, a mischaracterization of the social experience. Life experiences of women, minorities, and other historically disadvantaged groups do not always fit into the neat categories of definitions, criteria, and tests that inform the rights' discourse. The individualism, inherent in the assertion that one's rights have been infringed, does not take into consideration the relational basis of life, and as a consequence, limits the possibilities for a complete redress of the injustice claimed (Charlesworth 1994). Further, any discussion of rights fosters the illusion that there is a place in the legal structure where those rights can be obtained and enforced (Wilson 1991).

One response to the "liberal legal model" has been the group rights approach whereby we import the context and conditions of an individual's makeup into the rights discourse. For example, feminists have introduced an "ethic of care" into their rights discourse (see Karst 1984; Schneider 1986).

Scheingold (1974, 7) states that:

The direct linking of rights, remedies and change that characterizes the myth of rights must . . . be exchanged for a more complex framework, the politics of rights, which take into account the contingent nature of rights.

Even when the rights discourse is adjusted to include context, however, it is still limited. These responses do not address the definition of self and the concept of difference. We are faced with the competing claims of groups, and individuals and groups with few guidelines for comparing and measuring experiences and disadvantage. For example, in hiring two equally qualified candidates, would race or disability deserve greater consideration?

A postmodern/poststructuralist response to the rights discourse (Weedon 1987; Jardine 1985) offers language and the notion of discourse, where meaning is produced as the mediator between power and knowledge. In the rights discourse, reason is used to discover the rules that will govern rights. When we introduce the notion of discourse, we see that it is incompatible with the beliefs of the enlightenment and hence, the rights discourse. While a postmodern/poststructuralist approach does not provide all the answers, it does identify several problems in the rights paradigm, specifically in the analysis of responses to problems facing disadvantaged individuals.

Many important conflicts cannot be resolved through the application of legal rules in the classic “liberal legal model” (Handler 1988, 1034). The law can and does work to reinforce existing oppression through unjust laws, the unjust enforcement of laws, and ignorance of the law.

Most would argue, however, that the law is not static, that it can be used for and against social change, and that it should be viewed as a tool, one instrument, that is normally in the hands of those with power. For example, Nancy Fraser (1989, 312-313) asserts that rights discourse is not “inherently individualistic, bourgeois-liberal, and androcentric. That is only the case where societies establish the *wrong* rights. . .”.

Using the rights discourse has many important benefits for disadvantaged individuals and groups in that it is the predominant language. As well, rights language can be empowering for those individuals and groups who have never believed they have had a claim to justice. As we have yet to develop a realistic alternative to the rights discourse, it would be best not to discard it completely, but rather to recognize its inherent limitations and the dangers of a narrow focus on rights in the resolution of complex problems.

Moving from the theoretical to the practical limitations, a rights approach assumes there are individuals with knowledge of their rights who are prepared to seek redress when they believe their rights have been infringed. The roles of the players are well defined and distinct; there must be a complaining client, an individual with a problem who will seek out a lawyer, and the lawyer who will resolve the problem within the legal framework. As such, the system is not proactive. The system assumes that the client will be able to articulate the problem, seek advice on the best solution, and instruct the lawyer to act according to a set of abstract, formalistic legal rules that have little to do with the client's experience. This is often referred to as the "naming, blaming, claiming" (Felstiner, Abel and Sarat 1981) which is essential in the "liberal legal model."

As noted in the previous chapter, poverty law emerged in the United States during the turbulent sixties and the civil rights movement in the United States and in the early seventies in Canada. Focus was on "access to justice" (see Cappelletti 1981). This access was guaranteed through the public defender or duty counsel, civil legal services for low-income individuals, and public interest litigation.

The exportable “liberal legal model” emerged in the United States during the law and development movement of the seventies. With significant funding, American legal scholars and politicians attempted to export the ideal, American legal system (both legal education and practice) to developing countries. The model assumes that the law and the legal profession can fundamentally change the structures of the state, which are valued as sources of justice and have the explicit goal of dispensing justice (Wilson 1991, 53). Those institutions themselves are valued as sources of justice. Yet as Wilson notes, justice is experienced where “life is lived” – in the home, family, street (53).

This very general introduction to the rights discourse and the “liberal legal model” serves to present the inherent limitations of a rights based approach when working with social justice issues. I have presented a few of the theoretical and practical critiques of the discourse. These critiques can also be classified according to their movements. For example, the critique of the “liberal legal model” has paralleled the Critical Legal Studies Movement. The central premise of Critical Legal Studies is that the law is not a body of neutral principles devoid of intrinsic values, but is inherently political (see Kairys 1982; Kelman 1987).

The next section will review some of the critiques of poverty law that have emerged. These critiques are poststructuralist/postmodernist in that they focus on the lawyer and client relationship and the role of the client narrative and voice that are part of the “liberal legal model.” They form the “new poverty law scholarship” (Blasi 1994).

## The “New Poverty Law Scholarship”

### *The Clients*

As legal aid has developed, there has been an increasing awareness and understanding of the needs of this client group which differ fundamentally from those of the traditional, middle and upper class, client group. Poverty law focuses on the areas of law which affect low-income and otherwise disadvantaged people, such as social assistance, employment, housing, discrimination, immigration and family issues. In 1970, a now well-known article appeared in the *Yale Law Journal*, entitled “Practicing Law for Poor People.” The author, Stephen Wexler, wrote (1970, 1049):

Unfortunately, the traditional model of legal practice for private clients is not what poor people need; in many ways, it is exactly what they do not need. . . .

Poor people are not just like rich people without money. . . .

Poor people are not poor by chance; they are not poor through lack of personal merit; they are not poor because it is inevitable that someone be poor. Poor people are poor because some people who are not poor believe that it is a good thing to have some poor people around.

Wexler describes poor people in everyday language and challenges many of society’s stereotypes. The Ontario clinics provide legal assistance to low income individuals. Specialty clinics provide legal assistance to individuals and groups who have special needs. I will use the term disadvantaged to describe these individuals and groups. Complex structures, involving social, political, historical and economic factors, foster or support the oppression in our society of many individuals and groups: racial minorities, gays and lesbians, poor people; abused women, people with disabilities.

These disadvantaged groups and their individual members have been subjected to tactics of control by various actors, representing the dominant belief systems in society.

In the past, many methods of control have been sanctioned by society and by the state and today remain implicitly condoned through the inconsistent application of policies or adverse impact discrimination. This implicit acceptance renders the tactics of control difficult to challenge, but the effects of this power imbalance upon the disadvantaged group member, renders the ability to challenge even more difficult.

This domination and resulting marginalization has many consequences. Paulo Freire, the Brazilian educator, notes (1970, 45) that:

Self-depreciation is another characteristic of the oppressed which derives from their internalization of the opinion the oppressors hold of them. So often do they hear that they are good for nothing, know nothing and are incapable of learning anything - that they are sick, lazy and unproductive - that in the end they become convinced of their own unfitness.

Not only are disadvantaged people often self-deprecating, but they also may be isolated and intimidated. Guilt and shame may rule their actions which may centre around basic survival skills. They may feel out of control, disempowered, damaged.

Disadvantaged people also have incredible strength which is rarely acknowledged. I have described them as mere subjects of tactics of power and control and in doing so have treated them as is characteristic of their treatment by professional services. They develop incredible skills of survival, whether in physically violent relationships or in situations of homelessness. I have used generalizations to characterize disadvantaged people as victims. Such generalizations comprise one more example of tactics of power and control, unintentional or not. The danger in the power of a dominant class is discussed by Foucault (1979; as cited in Alfieri 1988, 669). Recognition of this power has largely been absent in the provision of legal services.



### *The Lawyer/Client Relationship*

It is to the provision of legal services that I now turn. In the lawyer/client relationship, many of these dynamics of power and control are reproduced, albeit on a much more subtle level. Gerald Lopez, for example, has sought to characterize different types of lawyering. The first he describes is “regnant lawyering” which is the activity of liberal lawyers who work for social justice, but are entrenched in the traditional legal system and not aware of its shortcomings (1989, 1610). These lawyers believe in and support the principles of “access to justice”; they are doing their part by accepting legal aid clients, being sympathetic to their plight and accommodating them. They play a familiar role, learned in law school and in practice: to translate grievances into legal claims and a judicial remedy will remove or ameliorate those grievances. The lawyer assumes that clients perceive their sufferings as injuries that can be redressed and the lawyer does not question the legal structure. These lawyers utilize the existing legal framework for the most part, whether it is filing papers for a divorce or social assistance appeal; this framework of action provides a familiar legal response to the problem and to what is perceived to be the client’s needs. The danger with these regnant lawyers lies in the benign aspect of their work; the subordination occurs in a benign and supportive context and hence, both clients and lawyers are misled as well (Tremblay 1992, 955).

A number of subtle techniques of power and control are used in regnant lawyering: the use of knowledge and language, normalizing judgement and dependent individualization, as well as the professional hegemony inherent in the traditional legal system.

### *The Use of Knowledge and Language*

Foucault asserts that, “detailed knowledge breeds a ‘political awareness’ of techniques and methods of control.” (1979, 200, 195-228) The possession of knowledge perpetuates a relationship of inequality and can be manipulated to exercise power. The lawyer possesses a seemingly vast body of knowledge about a world that is powerful, male dominated and out of reach for most people, especially those marginalized from mainstream society because of poverty, race or sex. The legal world seems, and often is, inaccessible because of the inequality of knowledge that is ever present.

In examining the use of knowledge and power in the welfare system, Professor Anthony Alfieri incorporates Foucault’s analysis when he argues that, “The attorney/client and welfare system/recipient relations are arrangements established by a knowledge and technology of power.” (1988, 669)

The language of traditional legal services reinforces the inequality of knowledge to maintain the domination in the lawyer/ client relationship and the hegemony of the profession. The language of the legal world is foreign. In Canada, English or French is used, but legalese with Latin maxims serve to heighten the mystification. The issues, the legislation, the institutions, and the processes are all foreign, complex and have potentially drastic results. The body language of lawyers or what is known as “professional bearing” is also important and the messages that are sent can intimidate. Other examples abound to illustrate the hierarchical structure that is immediately established: a large, imposing desk between the client and the lawyer acts as a barrier; the lawyer’s suit or robes can highlight class differences; and the general ambience in the office - the opulence of the decor, or even if the office is plain, the books or the degrees

that often adorn the walls can set up cultural and social barriers that will be not be removed.

Gary Bellow (1977, 55) describes the normative lawyer language:

The lawyers dominate interaction with clients. In most discussions with clients, the lawyer does almost all of the talking, gives little opportunity for the client to express his or her feelings or concerns, and consistently controls the length, topic, and character of the conversation. Facts are obtained by a series of pointed, standard questions rather than by any process that resembles a dialogue. The lawyer then restates the client's problems in legal terms and suggests the best available solutions based upon his or her view of the situation and its possibilities.

Possibilities is a deceiving word, for the possibilities presented are chosen from a closed set of legal responses. Not only is the language that lawyers speak foreign, but they control the discourse (who speaks and when) and rapidly place the client's experience into the framework of legal responses.

### *Interpretative Violence*

During this interviewing process, many clients experience what Alfieri (1991, 2125) describes as traditional interpretative violence. The lawyer, in framing clients' stories, engages in an act of interpretation. While clients may wish to play an active role in their legal battles, as independent individuals, "the interpretative impulse of preunderstanding prevail[s]." (2125) The violence of interpretative practices is the silencing of the empowering narratives of the clients' stories. By using the powerful and evocative term "violence," Alfieri conveys the serious damage that is inflicted by the silencing during the interviewing process.

Alfieri (1991, 2125) argues that interpretative violence occurs due to marginalization, subordination and discipline. The act of marginalization, which occurs in society at large and in the lawyer's office, places the client in an inferior position. The

subordination further entrenches this inferiority through the lawyer/client hierarchy of subject/object relations. Discipline then acts to enforce the hierarchy by excluding the client voice. This interpretative violence is crucial to the maintenance of the dominant/dependent order of the lawyer/client relation (2126). Without this violence, all rational order, that of discourse and that of relations (who actually stands where in decision making) can be questioned by the client. The lawyer must maintain control.

In order to do this, the lawyer will exclude from her/his version of the client story the meanings hidden within the client narrative. This version is part of the lawyer-designed strategy. The lawyer expects acquiescence to the story telling, but also assumes that any strategies are “freely and properly chosen by the client.” (Alfieri 1991, 2129)

### *Normalizing Judgement*

Lawyers expect and inadvertently demand client obedience and thus, any alternative strategies are precluded. This is particularly harmful where a standard legal response cannot adequately respond to the client’s situation. In this respect, the lawyer exercises control, whether consciously or not, over her/his client through “normalizing judgement.” This concept was introduced by Foucault in *Discipline and Punish: The Birth of the Prison* and Alfieri defines it as a “value giving judgement establishing both the power and the penalty of the norm.” (1991, 2129) The control is exercised as a disciplinary power, a function of the hierarchical relationship that has been established and results in a disciplinary coercion. (Foucault 1979, 176)

The client’s ambit of choice is restricted as normalizing judgement sets the parameters of action that is allowed and that which is not. Handler comments that space

must be created within the legal frameworks that will permit more flexible, creative resolution of conflicts. (1988, 1033) If the client seeks an alternative response, one outside the parameters established by the prevailing legal structures, the lawyer may coerce or withdraw.

The normalizing judgement creates a false reality for the lawyer, one in which the client exercises his/her choice and decision making power. Given this, I suggest that many lawyers do not question their practices. Lawyers who represent disadvantaged people, while aware of and sensitive to their powerless position, will assume that as their clients have acted upon their own volition to arrive at the lawyers' offices, they will also act to maximize their own interest while there. I also believe that there is a general paternalistic attitude towards these clients and the lawyers genuinely believe that they know best as so much ego is invested in their skills. The lawyers are not explicitly aware of the dominance, nor the dependency created in the lawyer/client relationship, or else if they do recognize the damage it inflicts, they have come to accept it as a necessary evil that is part of doing their job.

### *Professional Hegemony*

Law students and young lawyers learn to work hard and honestly in the best interests of the client. They learn that their role is to advise their clients and act according to their clients' directions. The nature of this role is suggested in the Law Society of Upper Canada's Code of Professional Conduct where Rule 3 states, "The lawyer must be both honest and candid when advising clients." (1995) It is further noted in the Commentary:

2. Whenever it becomes apparent that the client has misunderstood or misconceived what is really involved, the lawyer should explain as well as advise, so that the client is informed of the true position and fairly advised about the real issues or questions involved.

Whether this explaining actually occurs is doubtful, or whether the clients actually acknowledge their not understanding is similarly doubtful.

Despite claims that the lawyer is only carrying out his/her client's wishes, I suggest that a dependency upon the lawyer is established very early in the relationship which is maintained throughout the dealings and reduces the ability of the clients to participate in any meaningful way. Freire rejects "pseudo-participation" and calls for "committed involvement" (1970, 51). Similarly, Handler (1988, 1000) argues that before one can begin to discuss the quality of participation in a relationship, the issue of power must be addressed; dependent people have to regain their autonomy in order to participate effectively. Because of the dominance and dependence inherent in the traditional lawyer/client relationship, the possibility of clients' being able to participate is unlikely.

### *Dependent Individualization*

In the direct services model of lawyering, the issues are dealt with as distinct, unrelated disputes, without reference to the larger contexts, whether gender or class or race. Alfieri (1988, 683) calls this "dependent individualization"; learned in law school and reinforced in the profession, it causes two distinct, but related problems.

First of all, the lawyer/client relationship is one that is self-contained. It is devoid of the political, social, economic forces that encompass and contribute to the legal problem. No dialogue ensues to explore this background and the experiential context has

been abstracted away through the application of formalistic rules. As such, devoid of political and social meaning, the only response available is a legal response and there exists little possibility of challenging those other forces.

Individualization treats problems only in a legalistic manner, devoid of social and political meaning, but a second problem ensues in that the cases are treated as unrelated problems. Bellow observes (1977, 55) that:

[t]he lawyers treat clients and problems individually. No efforts are made to encourage clients with related problems to meet and talk with each other or to explore the possibilities of concerted challenges to an institution's practices.

Thus, the clients see their problems as only their problems, in a vacuum, which reinforces the alienation, isolation and shame that they may already feel. They are denied the opportunity for, and the potential empowerment that lies within the collective force of the community. There is power in numbers; there is support that can alleviate the feelings of isolation and helplessness that are part of their reality. Thus, we see how the direct services of the "liberal legal model" perpetuate the power imbalance within the lawyer/client relationship.

Alfieri (1988, 668) identifies the political objective of poverty law as empowering the poor. While the term, "empowerment," has acquired numerous meanings, I believe that it signifies the process of neutralizing the power imbalances that exist at so many different levels within our society. It also means allowing people to take control of their lives, which in turn will allow them to take their place in society as whole individuals with a sense of self-worth.

In conclusion, it is clear that there exist numerous concerns with traditional legal services for disadvantaged people. The use of lawyers' knowledge and their language

contribute to the maintenance of dependent/dominant relationships. I have specifically discussed the phenomena of interpretative violence, normalizing judgement and dependent individualization as illustrations of the many concerns within the traditional lawyer/client relationship. As such, this traditional relationship cannot respond in an adequate way to the needs of low income and otherwise disadvantaged individuals.

### *Challenges*

This postmodern critique of the lawyer/client relationship, known as the “new poverty scholarship,” has brought insights and change to the way individual progressive lawyers work, influencing their communication and practice with low income clients. These changes have occurred at an individual level without the need for a mass movement. Importantly, Professor Alfieri’s work (1988, 1991) has legitimized postmodern thinking in poverty law scholarship.

Yet “new poverty scholarship” is inherently limited in its narrow focus on the individual lawyer/client relationship. Professor Blasi argues that the focus must move beyond the local narrative and the local experience because the liberation of client from lawyer, “. . . or both from their objectifying roles, is a limited liberation indeed.” (1994, 1090) The scholarship has neglected to examine the larger legal structure, within which all players, the lawyer, the client, and others, must function.

Blasi also argues that the scholarship is too often critical of others, the oppressive, unreflective lawyers; he notes that critical messages, however, are substantively and critically threatening especially when they attack professional identities and come from the haughty heights of law schools in the near unintelligible discourse of postmodernism (1088). Professor White has similar concerns and cautions that this scholarship risks “. . .



repeating within our own theories the very ‘interpretive violence’ that our theories seek to move us beyond.” (1992, 856)

Professor Lopez argues that the ideal we seek is “rebellious lawyering” (1989, 1608), in contrast to the “regnant lawyering” discussed earlier, and it is lawyering that strives to empower subordinated clients. Professor White (1988, 754) comments that moving to this ideal third dimension of lawyering requires the use of methods that can alter the processes of subordination, rather than merely attempt to address the problems that the processes generate.

I suggest that the term “lawyering” itself should not be used as we strive to develop alternative strategies for social change, for it is imbued with ideas of dependency, subordination, and limited legal responses from within our legal systems. Indeed, Professor Wilson admits (1991, 49) that he is not confident that there is an appropriate role for lawyers where they are attempting to change fundamental and historic relationships of oppression. He believes that the law is a weak tool for social and political change. Or as Mosher suggests in a paper discussing Latin American legal services (1992, 3),

... the possibility that our legal strategies have failed precisely because we have made incorrect assumptions about who are the primary actors of social change, and of how social change works; a possibility that largely escapes the critics of the North.

Given these criticisms, one may wonder what are the solutions. We are left with the rights discourse and the “liberal legal model” with all its inherent limitations. Postmodern theory has responded with “new poverty law scholarship,” but this too has its inherent limitations and fails to move beyond the lawyer/client relationship to address the larger legal structures. This study examines one tool to address these limitations - public legal education.

I suggest that the use of pedagogically appropriate education does assist in the enactment of social change. Specifically, Paulo Freire's (1970) "pedagogy for the oppressed," as well as feminist consciousness raising, can be instrumental in the process. I would argue that if lawyers find themselves working, or independently choose to work, with disadvantaged individuals and groups, then to truly work in the best interests of the client, an alternative approach that deviates from the "liberal legal model" must be employed. Education is one manner by which the power imbalance that is inherent in the lawyer/client relationship, and aggravated by the degree of marginalization of this client group, can be redressed. Education is one manner by which people can learn the analytical capabilities and problem solving and action skills that are critical for enacting concrete and long-lasting change.

Interestingly, in the review of poverty law literature, education, in any form, occupies little space. Perhaps one reason for this is that education in North America is viewed as mainstream, stagnant, and state sanctioned. Or perhaps it is because education is not considered intellectually equal to the discipline of law. Or perhaps it is because if disadvantaged groups and individuals were able to analyze and think critically, lawyers would no longer be needed as the primary actors of social change. As Blasi (1994) notes, the "new poverty law scholarship" focuses too narrowly on the lawyer/client relationship and the role of narrative. Education can be used not only to address the concerns raised in the scholarship about the lawyer/client relationship, but also to address concerns surrounding the larger legal system.

One response to the limitations of the "liberal legal model" and its own critics, has been the development of theory which challenges the underlying structure that

maintain the “liberal legal model.” I will first describe Alternative Legal Services and then the Legal Literacy model which is used by these organizations.

### Alternative Legal Services

Alternative Legal Services began appearing in Latin America around 1975 and the term refers to the practices of individuals and groups who use law as one of many tools in social movements which seek to bring about social change (Ardila and Clark 1992, 107). The underlying goals of these groups have been stated by Rojas (1988, 209):

These groups seek to either promote or directly introduce social change. As pursued by ‘new’ legal services, social changes means imposing a new concept of justice. Although it is not yet precisely defined, justice is not understood in liberal/individualistic terms: the new idea of justice usually means replacing all or part of the liberal legal system by a different one. This new idea of justice is based on solidarity more than competition. It seeks to substitute real equality for formal equality. The emergent idea of justice is closely tied to current struggles for a new democracy in the subcontinent. Although the concept of new democracy has not yet been fully spelled out, it is based on a combination of collective and individual (as opposed to merely individual) freedom.

Rojas (1988, 211) identifies common denominators which may have facilitated the development of these organizations: the shared history of imposed colonial power among Latin American countries, the peripheral position of these countries in the world of capitalism and the consequent common features of dependency and characteristics of underdevelopment. Yet despite these common factors, there are also specific conditions that helped to foster the development of each of these groups.

These Alternative Legal Services originated within a different social context than that which exists in North America (Rojas 1988). First of all, in many Latin American countries, the levels of poverty and inequality of income distribution accentuate the difficulties of access to justice. Secondly, cultural factors increase the need for new legal services: ignorance, lack of confidence, low literacy levels, *machismo*. Thirdly, the social

stratification of the lawyer is even greater than in North America. There are also more rigid social, economic, and psychological barriers to accessing legal services. Finally, the political character of these countries has played a significant role.

Along with this specific social context, divergent ideological forces have helped to shape Alternative Legal Services (Rojas 1988). These forces include: a restatement of political theory and professional practices or the “crisis of the left”; the commitment of some of the Catholic Church to serving the poor and strengthening grass root power; foreign ideological and financial support; and transformations of the subordinate class.

Alternative Legal Services use traditional instruments, as well as educational and political tools, in the attempt to create parallel political and social power in the hands of minority or oppressed groups. They seek to stimulate self-confidence, self-awareness, and active participation. Lawyers and beneficiaries work at the same level to eliminate the hierarchical position of law and lawyers, and at the same time to demystify the law.

The general goals of organizations which provide alternative legal services can be summarized as follows (Rojas 1988): to increase grassroots power and challenge the existent social structure; to increase participation and strengthen gender and economic equality; to promote the creation of an alternative legal system; to protect low income groups; to create the necessary conditions for equal access to justice; and to discover the political nature of law such that they are more concerned with development than with law reform.

One key factor which must be stressed is the relative autonomy of these alternative legal services. Many were formed during military regimes which restricted citizens’ fundamental rights and were in direct conflict with the state. These

organizations received funding from non-governmental sources and as such, their autonomy to pursue their objectives could not be compromised. They have not been created within the state apparatus as the Latin American welfare state has never achieved the extent or quality of goods and services as in North America. These groups work in direct opposition to the state. It is important to also note that the various groups continue to struggle to define themselves and their role in Latin America, especially as the political context has changed dramatically in all of the countries.

Jacques (1988, 19), a Chilean lawyer, presents a theoretical framework based on two premises: the incapacity of the capitalist system to satisfy basic human needs such as housing, health and education, and that capitalist development is fundamentally exclusive and tends towards concentration.

The author (1988) proposes a system of necessities and the legal system should be seen as a means to achieve or satisfy basic human needs. The popular sector must play a critical role, while the power and privileges of the professional sectors should be transformed into establishing the legitimacy of the alternative. There exist two alternatives. One is to affirm and develop autonomy outside of the state; the other is to participate within the state. Jacques (and Alternative Legal Services in general) believes in the importance of developing the power of civil society and redefining the role of the state. This is what makes Alternative Legal Services fundamentally different from the other approaches that will be described. They seek to work outside of the state and the “liberal legal model,” which upholds the state.

As their goal is to challenge the capitalist legal system and introduce a new social order, education is used as a tool to achieve that end. These organizations place an

emphasis on popular education, paralegal training, sociological research, and organizational activities.

In sum, I have described the goals and general characteristics of Alternative Legal Services organizations in order to identify other responses to social justice issues. Examples of their work come from developing countries typically (see White 1988; McDonald 1998; Thome 1984). I will now present the Legal Literacy model, which Alternative Legal Services organizations use to achieve their goals.

### The Legal Literacy Model

Literature using the term, legal literacy, is scarce and when it is used, it has a variety of meanings. For example, a Canadian Bar Association Task Force Report, *Reading the Legal World* (1992), examines the relationship between literacy and the law. Michael Manley-Casimir, Wanda Cassidy and Suzanne de Castell examined the concept in a 1986 report entitled, "Legal Literacy: towards a working definition." The study used a survey and other submitted documents to review the then current conceptions of legal literacy. It also examines alternative approaches to the study of literacy in general and proposes a working definition for legal literacy.

Legal literacy is used in these works to connote the state of being literate in the law, its content, procedures and institutions. In contrast to this, this study will use the term to connote an educational process.

Exactly when and why the term "legal literacy" was coined is unclear, but it appears to be most widely used in international development projects. At the 1985 United

Nations Women's Conference in Nairobi, a "Know Your Legal Rights" campaign was initiated to work towards:

[E]mpowering women throughout the Third World. Such a campaign should include popularizing the language of the law by using mass media and other strategies to demystify the law, and make it more accessible. . . and working toward an 'alternative law' which maximizes women's rights and is drawn from the language, reality and experiences of the vast majority of Third World peoples. (Schuler 1986, 428)

This initiative was followed up by a collection of papers in a book devoted to the theory and the application of the concept of legal literacy entitled, *Legal Literacy: A Tool for Women's Empowerment* (1992), edited by Margaret Schuler and Sakuntala Kadirgamar-Rajasingham. The book leaves the reader with the impression that Legal Literacy is a new and radically different form of adult legal education particular to women, law, and development. While this premise is debatable, by adopting a term specifically used in women's projects, the proponents are fostering a sense of ownership and membership for the women involved in the programs. As well, the book's focus on Third World experiences appropriately recognizes work from developing countries and as such, sends a strong message of the importance of these countries' contributions.

Schuler and Rajasingham's work is important in that it seeks to clarify many terms and consolidate a framework for Legal Literacy. They define legal literacy as, "the process of acquiring critical awareness about rights and law, the ability to assert rights, and the capacity to mobilize for change." (Schuler and Rajasingham 1992, 2) The goals of this process are to change the classical liberal paradigm of law and to generate alternative approaches to law. This includes retraining lawyers to relate to the community in new ways and develop skills as educators.

The definition of Legal Literacy reveals its multidisciplinary nature for it draws upon theories and practices of law, learning, and political and social change. This provides an exciting dynamic, but also presents tensions and challenges.

There are two myths about Legal Literacy. The first is that being aware of one's rights and responsibilities will ensure the enjoyment of those rights. This myth promises an outcome that is impossible to deliver. The second myth is that legal remedies, whether litigation and a declaration from the court or law reform and the passing of a new law, will lead to social change. A naive faith in these myths hides the complexity of the problems and distracts from alternative and critical approaches.

For Legal Literacy must be examined within a theory of power relations. These power relations are rooted in the political, economic, social, and legal fabric of any society. If one does not challenge these relations, then one implicitly supports the status quo. As such, implicit in the definition of Legal Literacy is the need to challenge unequal power relations. In order to attempt this, individuals must develop critical and political capacities. There is a need to know not just what the law says, but also to develop skills to participate fully to define rights, not just to assert them (Schuler and Rajasingham 1992, 56).

### *Theories of Adult Learning*

Critical to legal literacy are theories of adult learning. Freire and Macedo (1987) and Giroux (1983) advocate a critical theory of literacy education. They suggest an emancipatory practice would give students the opportunity to recognize the power relations inherent within our society, and act upon that knowledge. A critical theory



would focus on the “cultural capital” of individuals and their social construction. Cultural capital (Bourdieu and Passeron 1977) refers to the life experience of the individual, their truths and the expression of these truths.

Giroux (1987, 6) argues that the learning process:

...not only empowers people through a combination of pedagogical skills and critical analysis, it also becomes a vehicle for examining how cultural definitions of gender, race, class, and subjectivity are constituted as both historical and social constructs.

Building on this work in literacy, Schuler and Rajasingham argue that critical legal literacy is “also a form of cultural politics concerned with reading, understanding and transforming the cultural values and social norms embodied in the law.”(1992, 23)

Freirean and feminist pedagogical theories are essential as both have social change as a goal. Freire worked in Brazil on a national literacy campaign and his theory and methodology have their own vocabulary. He argues (1970) that the “person as object,” as the object in a sentence, is acted upon by others, unable to make his/her own choices. The “person as subject” exists at the other end of the continuum and is an active, reflective participant, a maker of history and culture. Freire calls the process of moving from one end of the continuum to the other “conscientization.” Conscientization involves transformative action and critical reflection, which implies the capacity to critically analyze the implications of power relations. The “culture of silence” refers to those who remain subordinated and passive. Tools such as tradition, religion, culture, and law are used to maintain the legitimacy of unequal power relations.

Freire advocates a form of learning in which the educator and the students share equally in a learning process that involves a common search for truth about issues facing them. This is in sharp contrast to “banking” education where passive learners receive

deposits of pre-selected, ready-made knowledge. The learner's mind is an empty vault into which the riches of approved knowledge are deposited. This approach is also called "digestive" or "narrational" education.

But for Freire, while the educator learns from the participants, the educator must also "penetrate the significance of the thematic content with which they are confronted" without telling them what they already or should know (Freire 1974, 48). Codifications, which are representations of the learner's daily situations are used (Freire 1970) to provoke responses and dialogue analyzing reality and the "people's knowledge" would be used for the basis of the curriculum.

Freire (1970) bases his work on collegiality, the equal participation of all members. Collective work could also eliminate dependent individualization, described earlier in the paper. The structure of the learning environment must break away from the hierarchical and controlling structure often implicit in professional/client relationships, whether that is teacher/student, lawyer/client, or any other. The professional, who does possess more knowledge, has an important role to play as facilitator, supporter, and educator, as well as lawyer. A lawyer would generally have greater specific knowledge of the law than the participants and hence, there certainly would not be an equal relationship between the educator and the participants. Yet by using Freire's methodology, the power imbalance that is generally present between lawyer and client could be significantly reduced.

Freire suggests three stages in moving toward critical consciousness. The first stage is called "semi-intransitive consciousness" (1973, 17). To develop a critical relationship with the world, one must be conscious of and act upon reality. Thus,

consciousness, which does not challenge the world, is uncritical and intransitive as it does not act upon the world as an object.

In this stage, the sphere of perception is limited. Interests centre around matters of survival. As the learners begin to increase their dialogue with others and their own world, and when they begin to respond to questions and suggestions arising out of their own world, then their consciousness becomes “transitive.”

The second stage of consciousness is “naive transitivity.” Freire characterizes this stage by an over-simplification of problems, nostalgia for the past, and with fanciful explanations of reality (1973, 18). This remains a life long learning process. The third stage is “critical transitivity” and this stage is characterized by an in-depth interpretation of problems. The participants should reject their passivity and practice dialogue. Critical consciousness is characterized by the ability to interpret problems, being open to new ideas without rejecting the old, analyze preconceived notions.

Critical consciousness is a learning process, not just for the participants, but also for the professionals who must learn to identify the difficulties in their traditional delivery of legal services and their manner of viewing the poor, the disabled, women, minorities. The learning must further take into consideration economic, political and social perceptions to understand the contradictions inherent in any conflict. We need to continuously think about how power is used. The lawyer and other professionals must challenge their views of the client, firstly, as an individual and secondly, as being responsible for her/his situation. The recognition of the marginalized group as a historical class (Alfieri 1988, 666) may lead to different responses and solutions.

As Weiler (1991) notes, feminist ideas are similar to those of Freire’s in many

ways and Freire is seen as the one educational theorist who best approximates the approach and goals of feminist pedagogy. The similarities include (1991, 450): goals of social change, common assumptions regarding oppression, consciousness and historical change, the existence of oppression in people's material condition of existence and in consciousness, a view of consciousness as containing a critical capacity, human beings as subjects and actors in history, and a commitment to justice, a better world, and potential for liberation. Weiler also challenges Freire on a number of grounds (1991, 453-454): the use of a male referent, the abstract quality of terms, such as humanization, the failure to address particular meanings, the possibility of simultaneous oppression, and the implicit assumption of a uniform perception of oppression.

While a definition of feminist pedagogy is elusive, particular methods may be employed. Information giving is a critical aspect in legal literacy, as in other approaches, for without this information, one cannot even begin to challenge those in positions of power. This legal information must be placed in context in order to enable us to understand its inherent limitations and potential. In dealing with this legal information, feminist methods would include asking the "women questions," such as, how does this law affect us as women? Who wrote this law? How does it reflect our day to day lives or does it work to disadvantage us? These questions are important because they highlight the gender bias inherent in the law and practices whose objectivity has never been questioned before (Bartlett 1990, 837). Similar questions can be used to reflect the class, race or other biases (heterosexism, ableism, etc.) inherent in the law. There is a belief that there are many community norms and as the law reflects only one dominant community, this requires a questioning of the acceptance of this community (MacKinnon 1981, 716).

In asking such questions, feminist practical reasoning would be employed that focuses on the identification and consideration of the perspectives of those excluded. Any problem will have many perspectives, as well as contradictions and inconsistencies that call for creative responses (Bartlett 1990, 851). While not rejecting legal rules, the rules hopefully will allow new ideas.

Critical consciousness raising is a crucial element in working with disadvantaged individuals and groups and in all empowerment struggles (Bartlett 1990, 864). Bartlett suggests, however, that individual rights and needs must also be acknowledged and thus, traditional individual casework might continue to play a role in a Legal Literacy strategy.

By using Freirean and feminist methods, it is possible to challenge many of the problems inherent within the traditional liberal legal system. Yet it is also crucial to move beyond the private, collective domain and into political action.

Mobilization for change is a key element and can occur both to define and to defend rights. Mobilization is a transformation of consciousness and behaviours which occurs at two levels (Piven and Cloward 1977). The first level is a challenge to the dominant ideology, where the system loses its legitimacy and it is possible to see that the group can change the system. On the second level, the group acting collectively changes the traditional sources of authority. To reach the next level, the people must be able to challenge any relationship based upon power and control.

### *Empowerment*

According to the definition cited earlier (at p.39), Legal Literacy is a process. It is a process of self and social empowerment. As noted, while the term empowerment itself

has been appropriated and used in a variety of ways, empowerment can be seen as both the means and outcome of liberatory education. Schuler and Rajasingham (1992, 36-40) provide a helpful review of different approaches to the concept and its implications for legal literacy. I also draw on the work by Walters and Manicom (1996). The literature on empowerment is diverse; it comes from women's studies, popular education, development studies. Earlier in this chapter, empowerment was presented as the goal of poverty law (Alfieri 1988, 668; at 28).

Bookman and Morgen (1988) draw on Gramsci (1971) and Foucault (1980) and their work of "power as social relations" to focus specifically on women's empowerment:

Power is not only understood as something groups or individuals have; rather it is a social relationship between groups that determines access to, use of, and control over the basic material and ideological resources in society.

They view empowerment as,

. . . a process aimed at consolidating, maintaining, or changing the nature and distribution of power in a particular cultural context.

These observations are important because they recognize the political character of empowerment.

Stromquist (1988) argues that empowerment is comprised of three components: cognitive, psychological, and economic. The first relates to one's understanding of the conditions and causes of subordination. The second refers to the development of self-esteem and confidence which are critical requisites in order to take action for change. Finally, the economic component relates to the necessity of economic independence. She also argues that empowerment moves beyond consciousness raising ("developing a critical mind of the micro and macro reality of an individual") and participation (political involvement with the vote).

Schuler and Rajasingham offer a definition wherein " . . . empowerment could be

viewed as a process for acquiring the psychological and social capacities needed to effect changes in [social] relations." (1992, 40) Within this definition, they distinguish the empowerment process as having two distinct facets: one being the actions needed to challenge unequal power relations and the other being acquiring the capacity required for those actions. They also acknowledge both the individual and collective dimensions of empowerment and suggest that empowerment does lead to results.

In sum, Legal Literacy is "the process of acquiring critical awareness about rights and law, the ability to assert rights, and the capacity to mobilize for change." Pedagogically appropriate education is essential in the process of acquiring critical awareness about rights and law, as well as in the other components of legal literacy. Underlying the education, is the goal of social change, a focus on self-reliance, and the development of comprehensive legal strategies. Most importantly, Legal Literacy is not limited to disseminating information about the law, but it is about "developing capacities to use law and rights as a political resource and to gain skill and power needed to effect positive change." (Schuler and Rajasingham 1992, 49)

I now turn to the two remaining models, Community Legal Education and Public Legal Education.

### Public Legal Education

#### *General*

While public legal education has existed for many decades, it was only in the seventies that the activities formed a cohesive movement in Canada. In 1971, Paul Copeland and Clayton Ruby published, *Law, Law, Law*, a layperson's guide to the law,

and in 1972, the Vancouver Peoples Law School was established as the first organization whose primary purpose was to provide public legal education activities. Throughout this decade, public legal education activities expanded through legal aid societies, government, law schools, and private organizations (see Gander 1984). Almost three decades later, while a great amount of materials have been produced, there remains very little literature on the theoretical premises of public legal education.

Public Legal Education and Community Legal Education are the terms most frequently used in Ontario and Canada. The Access to Justice Network ([www.acjnet.org](http://www.acjnet.org)) provides a directory of 22 Canadian public legal education organizations, including Community Legal Education Ontario, which is the only Ontario organization listed. It also provides an online catalogue of six public legal education resource centres across the country. For example, the National Public Legal Education and Information Resource Centre in Edmonton has some 6500 titles in its collection, making it the largest in the country. The majority of these titles are guides, manuals, or brochures on all legal topics written in plain language for various audiences. There are also some project reports. A search for theoretical works, however, produced few titles.

Brickey and Bracken (1982, 1) noted this problem:

... there is no substantial body of information available on the current state of knowledge and utilization of law by Canadians. In developing a set of conceptual categories of legal needs, the authors have been forced to rely on anecdotal information, opinions, and speculation when discussing types of legal needs.

Gander (1984, 4) echoes this sentiment in her report entitled, "Towards a Taxonomy of Public Legal Education." It is one of the few theoretical efforts in this area. The three sections in her report explain why a taxonomy should be of assistance, the methodology used in the study, and the results. She presents classifications schemes



(1984, 11-17) for public legal education activities and develops a scheme wherein these activities can be classified according to their purposes, audiences, subject-matter, approaches, outcomes, and structures. While acknowledging the limitations of such a taxonomy, Gander's work does bring some order to a much practiced, but little discussed area.

As noted in the above section on Legal Literacy, the study by Manley-Casimir, Cassidy and de Castell (1986) provides an overview of the literature on public legal education. A Department of Justice report entitled, *Access to Justice* (1986), provides an international review of public legal education in developed countries. It found that programs could be categorized into two general movements: the Plain Language Movement (see 1986, 37-54) and the Public Education Movement (see 1986, 55-82). These have been distinguished as the Plain Language Movement focuses solely on the use of language to make the law accessible. In this chapter, I have chosen to look at the Plain Language Movement as one aspect of public legal education in general. The Department of Justice is currently undertaking consultations on the issue again and is seeking to clarify the concepts.

Overall then, there is very little written from a theoretical perspective on public legal education. These studies, as does this one, all examine the issues from the perspective of the providers of public legal education and as such, do not address the legal needs of their various audiences.

This section will provide a brief description of the Plain Language Movement and the two approaches or models, Community Legal Education and Public Legal Education.

### *The Plain Language Movement*

Law is generally considered to be very technical and difficult to read, whether it is the principles, legislation, court decisions or documents. The Plain Language Movement (*Access to Justice*, 1986, 38) developed out of the consumer protection movement and has the goal of presenting to the citizen all the necessary legal documents in common, everyday language so that they can be easily read and understood. It represents the first effective effort to change the language of legal documents from the traditional legal prose to a language that the average lay person could comprehend.

The Plain Language Movement has different approaches with different results (1986, 38):

1. A one tiered system whereby the law is enacted in plain language;
2. A two tiered system whereby the law is enacted in legalese, but the relevant portions are translated into plain language and made available to the general public (through government or private companies); and
3. A system whereby the law is stated in technical terms, but the operational documents such as contracts, are written in plain language.

In general, plain language is part of all public legal education activities/projects, especially in the written materials.

### Community Legal Education

The Community Legal Education model is based upon the goal of community development as defined by the needs of the community. A body of literature does exist for community education (Clapp 1939; Olsen 1945; Irwin and Russell 1971; Minzey and LeTarte 1979), yet there is an absence of literature explicitly on Community Legal Education. Warden (1975, 28) hoped that community-based study and action could

provide active opportunities to develop solutions to local problems and also to assist the learner to grapple with the “deeper meaning of life.” These local problems would deal with legal issues, but within the social, political, and economic context of the local community.

Community Legal Education is the term used in Australia. The *Access to Justice* Report (1986, 89) cites the Australian Director of Legal Aid, Legal Aid Commission:

Much has been said about providing persons with the intellectual equipment to challenge and question the law, but however admirable an objective that might be, it is too rich a fare for most people who are neither lawyers nor academics. In fact, I am too often left with the impression that persons who discuss community legal education in Australia have no idea what the needs of ordinary persons or indeed disadvantaged persons are.

Certainly this perspective exists, yet I believe this opinion too quickly dismisses the importance of critical learning skills.

Keon-Cohen (1978) saw Community Legal Education as important to meet future legal needs of Australian society. The author summarized the broad objectives as:

1. *Social/legal* (conceptual level)
  - a) To increase public knowledge and understanding of, and inculcate desirable attitudes to law, lawyers and the legal system.
  - b) To encourage participation in the legal and political process.
2. *Educational* (practical level)
  - a) To develop analytical ability (through the study of law at any educational/institutional level).
  - b) To develop specific legal skills.
    - i) Recognize a legal problem when it arises.
    - ii) Gain access to legal advice or the legal system.
    - iii) Satisfactorily resolve for him/herself his/her own legal problems.

The *Access to Justice* Report classifies the community approach (1986, 87): “. . . the particular needs of a particular community at a particular time dictate the nature of the educational program to be prepared for them.” The needs of the community are taken into consideration when planning and designing programs. Participatory research may be

employed in order to assess these needs (see for example Zalik 1998). Paralegals, educators, social workers and the community would work together during these projects. Importantly, the audience for these initiatives is the community, as opposed to the general public and community development is a goal.

Community Legal Education projects seek to improve the existing legal system and make it work better and more effectively for the community. The law is seen as a powerful tool and often a rights based approach, with a focus on litigation and law reform, are predominant components of the work. Yet the community is the agent of social change, with lawyers playing less of a leadership role.

There is also a focus on education and learning. In the Community Legal Education model, there would be an understanding of the principles of adult learning which would be incorporated into projects. For example, Brundage and Mackeracher (1980) list these basic learning principles:

1. Adults enter learning activities with an organized set of descriptions and feelings about themselves which influence the learning process. The description is the self-concept; the feelings are the self-esteem.
2. A teacher working with adults needs to know how s/he personally conceptualizes adult learners as well as how the individual adult learners conceptualize themselves. In cases where the two conceptualizations are incongruent, the teacher should pay more attention to the learner's description of her/himself.
3. Adults with positive self-concept and high self-esteem are more responsive to learning and less threatened by learning environments. Adults with negative self-concept and low self-esteem are less likely to enter learning activities willingly and are often threatened by such environments.
4. Adults are more concerned with whether they are changing in the direction of their own idealized self-concept than whether they are meeting standards and objectives set for them by others.
5. Adults react to learning experiences or information as they perceive it, not as the teacher presents it.
6. Adults learn best when there are activities which allow them to organize and integrate new learnings into their self-concept.
7. The teacher of adults should be able to model behaviour which is relevant to the role of learner. This includes: valuing the role of learner as an integral part of living and as important as work; social and family roles; using learning-how-to-learn strategies; valuing and using one's own past experience as a resource for current learning; and valuing the role of learner as a responsible status within society.

8. Adults learn best in environments which provide trusting relationships, opportunities for interpersonal interactions with both the teacher and other learners, and support and safety for testing new behaviours.

There would also be an understanding of different pedagogies and their goals.

One recent example of Community Legal Education is the Law Courts Education Society of British Columbia and their Comparative Justice Systems Project (1994). Seven cultural communities engaged in participatory research to design the content and format of legal information appropriate for each community and “cultural sensitization training to service providers within the court system” (*Project Report* 1994, 5). Underlying the project is the assumption that, “[l]egal education within these communities needs to start from the experiences and knowledge base of these communities.” (5) As a result, the members of each targeted community were involved at every stage of the project.

Hence, the important aspects of Community Legal Education include: the community involvement in the projects - defining needs, planning, designing and executing, and evaluating the work; participatory research; being part of a larger development plan; taking into consideration principles of adult learning; innovative approaches to learning.

### Public Legal Education and Information

The most used term in Canada is Public Legal Education, with “and Information” often added. The *Access to Justice* Report (1986, 87) identifies the main objective of Public Legal Education programs to be: the provision of information to the public 1) as to their rights and obligations, and 2) as to the manner in which they could go about to ensure that these rights remain inviolate and these obligations are fulfilled. Thus, Public Legal Education fulfils the public’s need for legal information.

Gail Dykstra (1983, 31) argues that the market for Public Legal Education is not the disadvantaged, but rather any individual who may need legal information. She presents an ideal citizen model and argues that there is an inherent consumer component. Public Legal Education is a means to an end and as such, the desired outcome is important for it will have implications for the methods used (29).

Dykstra (1983, 29) uses the term legal literacy to connote “access to information on the law, both a knowledge of the broad principles as well as the specific rights and responsibilities” so that “people [can] avoid some of the more common legal problems.” She argues that there are three assumptions underlying legal literacy:

1. An individual needs an understanding of the law and the legal process in order to function effectively on a day-to-day basis and in order to carry out his or her responsibilities toward the legal system.
2. The legal process itself requires an informed and involved citizenry if it is to function democratically, and if it is to continue to ensure a legal system that is responsive to the needs, concerns and priorities of the nation.
3. The people, collectively and individually, do want and will use information on the law and legal process.

This author has chosen to use the term legal literacy in this context to connote the desired outcome, whereas I have used the term to connote a process. While acknowledging her usage, I will continue to use the term as described in the section above.

Absent in this approach, is any power relations analysis, community development, or questioning of the law. It cannot be classified as the neutral dissemination of information, for in not challenging, it is inadvertently supporting the status quo. Yet it certainly does not present or acknowledge a perspective or a point of view.

Gander (1984, 16-17) identifies three classes of needs/services in her report:

- *Remedial services* – information and advice; services dealing with a specific, immediate, isolated problem; often crisis needs.
- *Rehabilitative services* – the problem and solution lies within the individual; services are directed toward improving an individual’s ability to cope with a problem; and to

develop skills, knowledge, and confidence to become actively involved in the legal process.

- *Services to address systemic problems* – the problems and the solutions lie within the legal system; the impact of services is directed toward removing the source of the problem.

Ianni (1979) provided an overview of Public Legal Education activities/projects in Canada and identified the provision of information as one of their main goals. As “information would assist the individual in recognizing potential legal pitfalls and the gravity of a problem once it has arisen” (6), activities/projects should cater to specific audiences.

Gagnon’s working paper (1985) for a legal education conference called for public education in the law and the demystification of the legal system. While he looked at the legal needs of two groups, the individual public and the collective public, there was little discussion about the legal needs of groups falling between those two, such as low income and otherwise disadvantaged individuals and groups (8). He introduces the concept of ignorance (3):

Our legal system presumes an informed public. Citizens are expected to participate in the making of laws and in their implementation. Citizens are further expected to understand and act upon their legal rights and obligations. Ignorance of the law is not a defence or excuse for the commission of an offence. The effective operation of our legal system presumes knowledge of solutions. The law must be understood in order to be viewed positively and to be supported by the public.

Rivard (1980, 34) suggests “that school programs should function as a primary source of public legal education, ” but also contends that schools cannot meet the needs of every individual. Bain (1981) examined the public’s need for legal information and education programs from both the needs of the legal system and the needs of the individual.

*Access to Justice* classified the different public legal education projects/activities in terms of their approaches (1986, 86-87). Public Legal Education projects adopt the,

didactic approach, when the program is mainly information giving and designed to reach as many as possible in one sweep. In these cases, it is decided that a need for a certain type of information exists - and such a need may exist in the group - but no consideration is given to the needs of the individual at that particular moment.

The report categorized the Public Legal Education activities into the following (1986, 86):

1. preparation and distribution of pamphlets, booklets and the like, providing information on one or more topics;
2. organization of information-giving radio and television programs as well as newspaper and magazine columns;
3. organization of lectures, meetings, seminars and conferences discussing one or more legal topics for the purpose of information giving;
4. organization of adult education courses through continuing education systems;
5. organization of a telephone hotline which citizens could contract to either receive information available on a pre-recorded tape or obtain advice on a specific program;
6. preparation and distribution of do-it-yourself literature kits;
7. organization of do-it-yourself courses; and
8. incorporation of law related education material into the curricular of high schools.

Many of these activities may also be employed in Community Legal Education and Legal Literacy with different objectives and methodology.

The *Access to Justice* report identifies two possible outcomes of Public Legal Education: service expansion and prevention. In the first case, Public Legal Education may be designed to promote the business of the legal profession. In the private sector, this can be seen as a marketing tool.

In the public sector, Public Legal Education can be used to advertise services, raise the profile of the clinic/office. Where service expansion is desired, then there may be less focus on appropriate pedagogy, as the goal is that the client seeks out the services offered and very little information will need to be retained.



Where the second goal of prevention is predominant, then there should be more of a focus on appropriate pedagogy. Those designing the Public Legal Education projects/activities will want to ensure that adult learning and retention is maximized.

The *Access to Justice* report concludes that overall Public Legal Education is only “a means to the achievement of a goal” which is “. . . ensuring the people the quiet enjoyment of their lives.” (1986, 88)

### Public Legal Education and the Ontario Legal Clinics

In the literature which focuses on the Ontario clinic system (Mosher 1997; Blazer 1990; Mossman 1983), there are descriptions of the multiservice delivery model of the clinics. While public legal education projects/activities are described, there is no discussion of the theoretical paradigms used. Mosher (1997, 933), in her paper on poverty law for the McCamus Report describes the use of public legal education in the clinics. She defines it as:

. . . initiatives undertaken to help educate members of communities to attain their rights and entitlements. As such, it includes the preparation and distribution of pamphlets, brochures, videos, and other media for the communication of information about the law. Other activities include presentations by staff to various communities – the community served by the clinic, service providers, members of the bar -

She then defines community development as (934):

. . . the activities designed to develop additional ‘poverty law’ resources within, and for, communities. Often these efforts are directed towards enhancing the ability of potential legal service providers (front-line staff at community-based agencies, clients themselves), to understand and convey basic legal inform. Often these efforts are directed towards enhancing the ability of potential legal service providers (front-line staff at community-based agencies, clients themselves), to understand and convey basic legal information or to provide representation in particular matters.

In the McCamus Report, a number of articles do mention the issue of public legal education. There is a general recognition that there is a need for information about the law and about rights, for the general public, but specifically for disadvantaged

individuals. For example, Cossman and Rogerson, in their submission on family law and legal aid, call for a “. . . greater emphasis on and availability of educational materials” (1997, 910). Overall, the McCamus Report notes that, “. . . the demand for legal information is profound.” (1997: 55)

There is also a general consensus that there is little knowledge about legal needs. For example, Bogart, Meredith, and Chandler (1997), in their paper on legal needs in the McCamus Report, review the literature on legal services. There are several studies by the American Bar Association and of particular interest, a study by the National Association for Women and the Law is currently being conducted that focuses on women and legal services. These authors note a general lack of evaluation, both quantitative and qualitative, and knowledge of legal needs and services. In the chapter of the report entitled, “The Legal Needs of Low Income Ontarians,” the Commission notes that different constituencies will posit different or differently prioritized needs (1997, 54).

As well, various authors comment on the role of public legal education. Bogart, Meredith and Chandler argue (1997, 370) that public legal education in the form of self – help becomes essential as legal aid funding shrinks. They also suggest that public legal education initiatives be co-ordinated with other services provided by the Ontario Legal Aid Plan.

In Charendoff, Leach and Levy’s article, “Legal Aid Delivery Models,” the authors (1997, 555) comment on the growing problem of unrepresented or under-represented individuals as a result of legal aid and welfare cuts and other social and economic problems. They argue that, “A passive approach to legal education and

information is less and less acceptable” (555) and call for a proactive and creative attitude to the design and delivery of legal education.

Finally, the role of the clinics as being uniquely situated to deliver Public Legal Education is recognized. For example, Bogart, Meredith and Chandler cite Chapter 20 of the *Civil Justice Review –First Report* (1995) entitled, “Access to Information and Plain Language,” which calls for greater public legal education about legal rights, the courts, how to assert rights and defences in litigation. The *Civil Justice Review* recommended that, “. . . community based information services be developed through a partnership between the bar, the ministry and the legal clinics. . .” (1995, 387)

Further, in the descriptions of delivery models, the McCamus Report notes that (1997, 116):

. . . part of the mandate of community legal clinics is to engage in public legal education through community outreach work. Educating people about their rights often provides them with the confidence to exercise those rights. The ability of clinics to do this work increases clients’ access to legal services because it makes them more aware of when those services might be required and useful.

Thus, it is evident that the importance of public legal education has been recognized in the provision of legal services to low-income Ontarians and that the Ontario clinics can and do play a pivotal role. A further understanding, however, of the public legal education initiatives is not part of the literature.

### Summary

This review of the literature has briefly introduced the rights discourse and the “liberal legal model.” The “new poverty law scholarship” has highlighted many of the problems inherent within the lawyer/client relationship, although it is limited in this

narrow focus. Pedagogically appropriate education is one tool that may assist in responding to these problems.

I then outlined three different approaches or models that have appeared in the literature. The Alternative Legal Services of Latin America and other developing countries employ the Legal Literacy model. In Canada, the more common approaches are Community Legal Education and Public Legal Education.

A critical consideration must be for whose benefit do these programs exist (*Access to Justice* 1986, 93). In the first models described (Alternative Legal Services/ Legal Literacy and Community Legal Education), it would appear that the educational initiatives are designed to meet the needs of the beneficiaries of the program. In the Public Legal Education model, it would appear that they are designed to reinforce the illusion of legitimacy, of infallibility and of necessity of the law, of the justice system and of the legal profession as they exist (Marks 1971, as cited in *Access* 1986, 93). While either is possible, it is important to acknowledge the bias.

Secondly, the power and privileges of the economically dominant class have a role to play. Where an institutional approach to public legal education is taken, it assumes the problem to be one of ignorance and the resulting social dysfunction and its attendant problems. The response is to eliminate the deficiencies in knowledge. Where a structural approach is taken, ignorance is also the problem, but “. . . ignorance of the basic conditions that necessitates participation in the judicial system.” (*Access* 1986, 94) The response is to modify the law to bring it in line with public opinion, which in a democracy, is considered the primary source of legitimacy. Thus, public legal education is concerned with the underlying issues so as to change public attitudes about the law and

the justice system. The goal is that the law will be seen as an instrument capable of changing social structures.

Thus, those that engage in public legal education must be aware of whether their work is designed to promote and support the existing legal system or to develop a better legal system. In the case of Public Legal Education, it would appear to be the first goal. In the case of Community Legal Education and, it would appear to be the second goal. In the case of Alternative Legal Services using the Legal Literacy model, their goal is a different system altogether.

## **Chapter 4**

### **Methodology**

“The function of research is not necessarily to map and conquer the world, but to sophisticate the beholding of it.” (Stake 1995, 43)

#### Mode of Inquiry

This study examines the provision of public legal education in the Ontario legal clinics. It involves a description of the public legal education initiatives being undertaken by the clinics, as well as an analysis of the perspectives on the definition, goals and role of public legal education in general. Data has been collected from both primary and secondary sources.

The topic of this study, public legal education, is a hybrid of disciplines, particularly law and education. As it falls within the realm of legal services, there has been little emphasis on the educational dimension of this service. As Borg and Gall state (1989, 4) “. . . research is essential to the continued development of educational practice.”

Theory will always guide research, whether the specific orientation is stated or not. In general, this study is grounded in theories of power relations.

#### Qualitative Research

As a researcher, I have used the qualitative research techniques of document analysis and semi-structured interviews as they met my objectives for the study. While quantitative and qualitative research can both be used in a study, the underlying assumptions of these paradigms are different (Smith and Heshusus 1986 cited in Bogdan and Biklen 1992, 43). The goals of quantitative research are to: test theory, establish the

facts, describe statistics, show relationships between variables and predict. The goals of qualitative research are to: develop sensitizing concepts, describe multiple realities, develop grounded theory and understanding (Bogdan and Biklen 1992, 50).

This study has sought to interpret and understand the perspectives of those who provide public legal education in the Ontario legal clinics (Glesne and Peskin 1992, 7).

Glesne and Peskin (7) offer another reason for using qualitative research:

The openness of qualitative inquiry allows the researcher to approach the inherent complexity of social interaction and to do justice to that complexity, to respect it in its own right. . . To do justice to complexity, qualitative researchers immerse themselves in the setting or lives of others, and they use multiple means to gather data. . .

Bogden and Biklen describe the characteristics of qualitative research (1992, 29-32):

1. Qualitative research has the natural setting as the direct source of data and the researcher is the key instrument.
2. . . . [It] is descriptive. The data collected are in the form of words or pictures rather than numbers.
3. . . . Qualitative researchers are concerned with process rather than simply with outcomes or products.
4. . . . Qualitative researchers tend to analyze their data inductively.
5. . . . Meaning is of essential concern to the qualitative approach. Researchers who use this approach are interested in the ways different people make sense out of their lives.

As well, the qualitative researcher must be flexible in construing problems and questions.

### Conceptualizing the Interviews

Interviewing is a common method used to collect qualitative data. The main purpose of an interview is “. . . to obtain a special kind of information.” (Merriam 1990, 72) Interviews allow the researcher to enter into the other person’s perspective. There are several different types of interviews that can be used and this will be decided by the amount of structure desired. The highly structured, questionnaire interviews are at one end of the continuum with the open ended, conversational interviews at the other.

In the middle of this continuum is the semi-structured interview, which this study has used. Here, certain information is “desired from all the respondents.” (Merriam 1990, 74) An interview guide with a list of questions is prepared ahead of time, but the wording and the order of the questions is flexible. Thus, the researcher can respond to new ideas and viewpoints that emerge during the course of the interview.

Merriam (1990, 74) cites Dexter (1970) who lists three variable that determine the nature of the interaction in an interview situation:

1. the personality and skill of the interviewer;
2. the attitudes and orientation of the respondent; and
3. the definition of both the respondent and the interviewer of the situation.

These factors will also assist in determining the type of information obtained. While complexity and subjectivity are inherent in any interview situation, the interviewer should be neutral and nonjudgemental to minimize any distortion of the data.

### Conceptualizing Document Analysis

Document analysis is one technique of qualitative research. It is often used in conjunction with other techniques and documents can enable the researcher to uncover meaning, develop understanding and discover insights (see Merriam 1990). Importantly, unlike other data, documents are not created for research. Rather they are created independent of research and provide a ready made and hopefully accessible source of data for the researcher.

Hitchcock and Hughes (1995, 212) classify documents as “mainly written texts which relate to some aspect of the social world.” This can include novels, newspapers, love songs, diaries, etc. According to Yin’s classification (1984, 85), the documents that



have been analyzed in this study, the funding applications, are administrative documents. To determine whether the documents are of value to the study, two questions should be posed. Is the information relevant to the research? Can the documents be accessed in a reasonably practical, yet systematic manner? (Merriam 1990,105). In this case, the documents analyzed, the funding applications for the 1998-99 fiscal year, provided an affirmative answer to both questions.

Hitchcock and Hughes identify three phases in document analysis (1995, 223-226). The first is the location of the documents. The second is the classification and evaluation of them. The researcher must ensure their authenticity, credibility, and representativeness. Finally, the researcher must interpret and find meaning in the documents. There is the surface or literal meaning which includes the genre, the definitions, terminology, form used for the particular document. Secondly, there is the underlying meaning for as a text, it can never be understood away from the circumstances of its production.

### Objectives of the Study

The main objectives of this study were the following:

1. To describe what public legal education activities/projects are being undertaken by the Ontario legal clinics.
2. To describe how public legal education is defined by the respondents.
3. To identify the objectives of public legal education in the Ontario legal clinics as perceived by those who provide public legal education activities/projects.

4. To examine the perspectives of lawyers, community legal workers and community board members about the role public legal education should play in the delivery of legal services to clients of the Ontario legal clinics.
5. To determine whether the public legal education initiatives Ontario legal clinics fit into any of the models presented in the Literature Review.

### Selection of Participants

Participants for this study were recommended by Community Legal Education Ontario. All participants have worked in the Ontario legal clinic system either as lawyers, community legal workers, and/or community board member. I selected participants from specialty clinics and community clinics to ensure a range of perspectives on different constituent groups and their needs. I also selected participants from all over Ontario – the north, smaller communities, and the Toronto area, again to reflect diverse needs and realities of both the clients and the workers. I was also able to select a representation of male and female participants from different backgrounds (class, race, education), as well as amount of experience each had in the clinic system.

### Ethics

As human subjects were involved in the data collection process, an Ethical Review Protocol was completed before research began. I contacted potential participants initially by telephone to explain the objectives of the research and request their participation. Upon agreement, a time was set up for a formal interview, either in person or over the phone. Prior to the interview, a letter outlining the nature of the research and a

consent form were either faxed or presented to the participant. I explained the methodology, objectives, risks and benefits of participation in the study. Each participant completed two consent forms, one for her/himself and one for me. A total of thirteen individuals were contacted and nine interviews were conducted. Tapes and transcriptions were stored in a filing cabinet. Each participant received a summary of the final report.

### Interviews

Each participant was interviewed once to respond to questions which had been previously developed to form an interview guide. The interviews were tape recorded. Five interviews were conducted in person in the work place of the participant. Four interviews were conducted by telephone due to the distance involved. During the telephone interviews, the participant was in her/his workplace and I was at home. The interviews lasted thirty to sixty minutes. The interviews were then transcribed. The following questions were included in the interview:

1. Tell me about your background and work experience that led you to working in the clinic system.
2. How would you define “public legal education”? Examples.
3. What do you see as the goals of public legal education?
4. What role should public legal education play in the delivery of legal services to your community?

## Document Analysis

In the initial design of this study, I wanted to produce a comprehensive catalogue of all public legal education activities in the clinic system. While permanent materials are retained at the Clinic Funding Staff office and with Community Legal Education Ontario, materials do not exist that would assist in a comprehensive compilation of such a catalogue without an in-depth study of the initiatives of each clinic in the province. Such a study was not feasible and thus, after consultations with staff at Clinic Funding, I decided to review the annual funding applications which are submitted by the end of January each year to Clinic Funding Staff. The staff review these applications, seek clarifications where necessary and ensure that amendments are made. The Clinic Funding Committee then submits an overall budget for the clinics as part of the Ontario Legal Aid Plan to the Attorney General for each fiscal year.

During this process of design revision, the importance of the emergent nature of design in the qualitative research became apparent. The funding applications were valuable sources of data and indicators of the role and perspective each clinic has regarding public legal education.

In terms of logistics, access was more difficult than had been initially supposed, due to scheduling, timing, etc. and two months after first contacting the Clinic Funding Staff office, I was able to access the funding applications. I reviewed a total of 67 applications. Three had been returned to the clinics for amendments and were not available. I specifically asked the following questions:

1. How much time (in percentages) do the staff spend on public legal education?

2. What were the stated objectives for public legal education in 1997? How did the clinics achieve or not achieve those objectives?
3. What were the stated objectives for public legal education in 1998?
4. What public legal education activities/projects, if any, were noted in the Section entitled, "Significant Activities"?
5. What Special Outreach Projects were proposed in 1996/97?

### Data Analysis and Interpretation

The interviews were transcribed and analyzed. Initial coding to identify major themes was completed immediately after the interviews were conducted. A more formal analysis was left until all the interviews had been completed and the first chapters of the study had been compiled. The document analysis was conducted near the end of the research process, so coding and analysis was done immediately and incorporated into the main work.

### Researcher Bias

I am a lawyer and worked throughout law school in different Ontario legal clinics. I was also a board member for a legal clinic and worked in Chile with an Alternative Legal Services organization where popular education techniques were used in their public legal education projects (see McDonald 1998). At the time of this study, I was not working, nor had been working for some time, in the legal clinic system.

The proposal and interview questions were reviewed and redefined with the assistance of colleagues who were working on public legal education initiatives in the

clinic system at the time. The input was extremely valuable for defining research focus, participant selection and interview questions.

I identified some potential sources of bias, including asking leading questions and making personal inferences based on my own experience in interpreting the data (Borg and Gall 1989, 188-189). Having recognized these potential sources of bias, the interview and document analysis guides were designed to provide a neutral structure from which to work. At the beginning of my interactions with each participant, I explained my own background. Throughout the interviews, I was careful not to interject with my own comments or opinions.

### Limitations

There is very limited literature on public legal education in general. While there is a great deal of public legal education work being done in the clinic system and elsewhere, there has been little effort to understand what works and what does not and why.

As well, the terminology used has different meanings for different people.

There were time and financial constraints. A larger, more comprehensive study would be beneficial and specific areas for further research are identified in the final chapter.

## Chapter 5

### Data Findings

This chapter will present the analysis and results of the research gathered. In the first section, I will present the results of the document analysis and in the second section, I will present the results of the semi-structured interviews. Discussion and conclusions are presented in Chapter 6.

The main objectives of this study were the following:

1. *To describe what public legal education activities/projects are being undertaken by the Ontario legal clinics.* This data was collected primarily from the document analysis, but also from the interviews. It will be presented in the first section of this chapter.
2. *To describe how public legal education is defined by the respondents.* This data will be presented in the second section of this chapter.
3. *To identify the goals of public legal education in the Ontario legal clinics as perceived by those who provide public legal education activities/projects.* This data was collected from both the document analysis and the interviews and will be presented in both sections and summarized in the following chapter.
4. *To examine the perspectives of lawyers, community legal workers and community board members about the role public legal education should play in the delivery of legal services to clients of the Ontario legal clinics.* This data was collected directly from the respondents as it was a question posed to all, but also from the document

analysis in reviewing the various responses in the funding applications. Findings will be presented in both sections.

5. *To determine whether Public Legal Education in Ontario legal clinics fit into any of the models presented in the Literature Review.* This discussion will be presented in Chapter 6.

### Document Analysis

The following guide was developed prior to the document analysis.

1. How much time do the staff spend on public legal education?
2. What were the stated objectives for public legal education in 1997? How did the clinics achieve or not achieve those objectives?
3. What were the stated objectives for public legal education in 1998?
4. What public legal education activities/projects, if any, were noted in the Section entitled, "Significant Activities"?

### *Description of the Documents*

A total of 67 funding applications were reviewed in part. Submissions to Clinic Funding Staff include statistical reports on clinic activities. I noted only one statistic. Clinics are required to report how their time is spent in percentages whether in direct services (casework, summary advice) or outreach (public legal education, community development, law reform). This statistic was found on a covering page for the statistics sections.



The focus of my review was Section C of the funding applications. Section C asks the clinics a number of questions regarding their Boards, policies and procedures, assessments of 1997 objectives, 1998 objectives and significant activities for the past year. The length of Section C varied enormously. One application was in three, large bound volumes, tabbed and indexed. Others were very short; one was only six pages long. On average, this section was about 15 pages long. Three funding applications were not in their appropriate files. I was given two possible explanations for their particular absence: the first was that if there was not enough information, the section would be returned to the clinic for amendment, and the second was that staff at Clinic Funding do take the files out to work on.

There is a cover page with instructions and questions regarding hours of operation. The next pages ask questions about the Board of Directors, Board meetings, committees, policies. In most cases, copies of policies or motions passed were annexed to the section. The clinics are then asked to assess their 1997 objectives in a number of areas: board management, casework, public legal education, community development, law reform, and administration.

There was a great deal of variation in the presentation of this part of Section C. Some were written in point form, some in longer style, some provided charts. Some further divided each area of work into areas of law. Thus, the subheadings of Landlord and Tenant/Housing, Income Maintenance, Employment, Immigration etc. were added on. Some clinics used these divisions by area of law and then discussed the legal strategies. For example, under Housing, they would have described their casework, public legal education, community development, and law reform strategies which were

employed to address the issue of housing for their community. The assessment of the work also varied. Some clinics simply reported, “Success” or “Failure,” with a brief explanation of their reasons for why a particular objective had not been achieved. Others provided greater details.

The following section required the clinics to articulate their objectives for 1998. This section was considerably shorter and overall, objectives were listed, with no description of how they were going to be achieved. There was also a great deal of repetition from 1997, where objectives were long term for example, or where they had not been achieved in 1997 they would be carried over to 1998. Clinics used the words “goals” and “objectives” interchangeably and thus, they are used that way in this study.

The last section required clinics to outline their “Significant Activities,” including any media reports where they existed. This section was descriptive and depending upon detail provided would be divided into Casework or Outreach or other suitable headings.

### *Time Spent in Percentages*

The first question asked was, How much time (in percentages) do the staff spend on public legal education? The clinics are asked to report in a chart how much time each staff member spent in the 1996/97 fiscal year on the various outreach activities – public legal education, community development and law reform. Each clinic has a different staff composition, but the general categories were CLW, Lawyer and Executive Director, who is generally, but not always a lawyer. Where there was more than one lawyer or CLW, or no CLW this would be noted.

There are several qualifications on the use of these figures. The first is that time is rarely docketed for outreach activities, whereas it is for casework, so these percentages are always estimates. Secondly, as Mosher has noted, “. . . the Clinic Funding staff have identified, [that] there are many problems in the processes used to gather the information reported by these statistics.” (1997, 930) One of these problems is that there is little consistency among the clinics in what is public legal education and what is law reform and what is community development. Indeed, during an interview, one lawyer commented that the division is quite “arbitrary” and in reporting, the clinic staff would record time spent according to where their statistics were low for that quarter. For example, an information session at a community centre would be recorded as community development if little time had been spent in that area for that quarter, although it could also be recorded as public legal education. This lack of consistency is also apparent in Section C.

While I generally reviewed all the percentages recorded in the outreach section, I chose only to specifically note the figures recorded for public legal education.

Overall, two general observations may be made. The first striking observation was the division of time spent. Direct services (casework and summary advice) on average took 60-70% of staff time, while outreach activities took 30-40%. Within this, lawyers tended to spend more time on direct services (up to 100%) and CLWs somewhat less (60%).

In the particular category of public legal education, clinics recorded extremely low percentages. These figures averaged 15% for the CLWs and often 5% or less for

lawyers. In general, the CLWs devoted more time (up to 40% ) and the lawyers less to public legal education.

The second striking observation was that the specialty clinics spent more time on outreach in general and on public legal education in particular. The community clinics spent more time on direct services.

### *Assessment of 1997 Objectives*

The second set of questions asked was, What were the stated objectives for public legal education in 1997? How did the clinics achieve or not achieve those objectives?

There was great variation in how this section was presented. Overall, there were three different presentations. By far, the most common presentation was a listing of concrete activities/projects followed by a commentary on whether the specific activity/project had been fulfilled. For example, one clinic listed the publishing its own newsletter, the writing legal advice columns for a local newspaper, the publication of four pamphlets on HIV/AIDS, the preparation of a self-help kit, the conducting of “cultural sensitivity” workshops for social services agencies, the writing of an article for a legal journal, and general educational sessions to groups as requested. Out of these stated projects, three were not completed and were present in the list of objectives for 1998.

Some clinics (13) presented their objectives/goals in general terms and then articulated how they would achieve those objectives/goals through particular Public Legal Education activities/projects. For example, one clinic cited the goal of “Respond to community’s demands for legal information and education” and then recorded how this was achieved: by 14 educational sessions (including 4 in high schools and participating in

Law Day), by producing and distributing a clinic newsletter, by having articles about relevant legal issues published in the local newspaper, and by distributing CLEO brochures. This clinic also had the objectives of enhancing the community's skills to act as advocates; enhancing self-representation skills of low income individuals in landlord and tenant issues; and educating the community about the Board's position that it will not participate in Workfare.

This format suggested an understanding that public legal education is a tool, or a means to achieving an end. Each activity/project, whether completed or not, was connected to fulfilling a larger, albeit fairly specific, goal. Some clinics also indicated whether these goals were short, middle or long term.

In two cases, where work was divided by area of law (Housing, Income Maintenance), the general goal would be stated and then a description of the casework, public legal education, community development, and law reform activities and assessment. This format suggested a comprehensive approach to addressing the issues that affected their communities. It suggested an understanding that in addressing, for example, Housing, individual casework is not enough and that outreach strategies must also be employed. It also illustrated how the different strategies are intertwined and cannot be easily subdivided. A public legal education speaking engagement about changes in legislation can turn into a community development initiative as members may seek to organize, which may turn into law reform efforts.

There were commonalities between the clinics' public legal education initiatives regardless of how their work in 1997 was presented. Almost every clinic identified the need to keep their communities informed about the changes to landlord and Tenant and

Social Assistance legislation. This was to be achieved through presentations to both social services agencies and client groups, newsletters, and articles in local papers. When the legislation was not passed as expected, many of their plans regarding these changes were not completed, but were carried over into the 1998 objectives. With some exceptions, the clinics appeared to be waiting for the legislation to be passed before embarking on informational campaigns.

There was a fair amount of self-help material being prepared on a number of topics, as well as corresponding workshops for training people to use it. Self-help is an issue which was discussed in the literature, as well as in the interviews.

As noted, some clinics specifically identified issues they sought to address in their public legal education initiatives. A few clinics identified particular ethnic communities within their catchment that they sought to reach. The activities included translation of materials, newsletters, and providing educational sessions in other languages. A few clinics identified women's particular needs, mostly in the context of domestic violence or in one case, in the context of workers' compensation. Overall, the data revealed the importance of accessibility of materials. They are produced in several languages, large print and tape format.

With respect to priorities and planning, only a few clinics had committees dedicated to public legal education or outreach activities. In these cases, there were plans in place with short, middle and long term objectives identified. Several boards had identified public legal education as a priority. One board identified public legal education as the second priority to casework. In these cases, the objectives reflected this priority.

In general, the clinics' objectives regarding public legal education can be summarized as follows:

- Providing legal information to the community to ensure that it knows its rights and responsibilities in different areas of importance.
- Ensuring that the community is aware of changes and the impact of the changes of legislation (particularly landlord/tenant and social assistance).
- Ensuring the community is aware of the clinic and the services available.
- Training the community in lay advocacy to increase knowledge and skills base.
- Reviewing the effectiveness of Public Legal Education and needs of community.

In general, the majority of clinics engaged in the following activities/projects to fulfil these objectives:

- The preparation and distribution of pamphlets/booklets which provide easy to read information on one or more topics - These are produced by or in collaboration with CLEO. Often, specialty clinics combined their expertise in an area of law with the publishing and communications expertise of CLEO.
- The preparation and distribution of newsletters and articles published in local newspapers - Some clinics already had newsletters, while others sought to establish them. The publishing of articles was identified as quite useful. One clinic was unsuccessful noting that the local paper sought more commercial use of its space. A few clinics were able to have their newsletters and articles translated into other language to increase their readership.

- The use of radio and television programs - Clinics worked in conjunction with community stations to produce special series on topics affecting the community such as sexual assault. Interviews were given to radio stations on current topics such as the changes and the impact of the changes in legislation.
- Public Legal Education sessions – These are part of every clinic's activities/projects. A few clinics, which had very limited Public Legal Education programs, identified these sessions as their only work and sought to present a certain number, for example 4 landlord and tenant sessions, in the 1998 year. These sessions are presented to social services agencies, the community, other professionals working in the area, and in a few cases, the private bar. For the most part, these sessions are well attended although a few clinics did note low attendance. Schools, both elementary, but mostly secondary, were also being targetted for sessions by a few clinics.
- The participation in Law Day - The Canadian Bar Association sponsors a Law Day each year in April with activities such as a poster contest in schools. Several clinics participated in this event by working with the schools.
- The preparation of self-help kits and workshops – These were prepared by clinics, often with the support of CLEO. Workshops were used for training in self-representation. The topics addressed were: landlord and tenant, CPP, uncontested divorce, etc. These training sessions were called lay advocacy and peer advocacy. Peer advocates, for example the elderly, are trained to assist their peers, whereas it appears that lay advocacy is a more generic term, for example tenants groups.



- The use of the Internet and the World Wide Web – Only a few clinics had Internet capacities, but for those that had developed a site, it appeared to be extremely successful for the dissemination of information. Several clinics identified the establishment of a Web site as an objective for 1998.
- Information booths at fairs, local malls – A few clinics reported that this had been attempted, some with success, some with less success due to the lack of willingness from mall owners.
- The writing and publication of articles in legal journals or participation in consultations – Two clinics had written articles for journals. Several clinics had participated in consultations for the McCamus Report or with the Department of Justice.
- Resource libraries – Two specialty clinics maintain libraries which are used by students, advocates, and the general public.

A few clinics have developed innovative approaches to public legal education. One clinic particularly highlighted this as a priority objective for 1998. Some examples of innovative approaches included the use of games (bingo, Wheel of Justice), theatre (Road Shows), art (the building of snow people to represent children in the community who had been sexually abused, the publication of a multicultural cookbook, the CBAO Law Day poster contest), and technology (Internet and World Wide Web).

A few clinics reported that in order to assess the community's needs, questionnaires had been prepared and distributed. Overall, these initiatives were not highly successful. In general, clinics responded to requests from different groups for

Public Legal Education sessions. One clinic has instituted a screening policy because there are so many requests. Fewer clinics were proactive, but several identified this as something to improve on and included plans for proactive public legal education activities/projects in the community by establishing connections with different groups.

Only a few clinics indicated activities/projects focusing on globalization or international issues. These clinics were generally specialty clinics. They were/are involved in joint projects with organizations in other countries or focused on globalization issues through the Internet.

Only one clinic discussed its pedagogy in that it used popular education methods in its work. Evidence from the interview data indicates that overall, clinics use a traditional approach or “banking method” (Freire 1970, see Chapter 3, p.35). Public legal education sessions. The sessions involve the clinic worker (lawyer, CLW) addressing the group in lecture style. Materials may be provided, aids such as overheads used, and questions encouraged, but the program is didactic and primarily involves information giving.

Some clinics were descriptive in their praise of their work. Phrases such as “highly successful” and “phenomenal” were used. Clinics also provided some analysis of why activities/projects were not successful such as, events were not well advertised. They also articulated reasons why certain activities/ projects were not attempted or completed: staff shortages due to illness, “too much casework,” funding from external sources was not granted, or the anticipated new legislation did not arrive.

### *1998 Objectives*

The third question asked was, What were the stated objectives for public legal education in 1998?

The clinics were required to articulate their objectives for the 1998 fiscal year. Again, as with the 1997 objectives and assessment section, presentation varied in the applications. For the most part, however, clinics listed their objectives in terms of concrete activities/projects they hoped to complete in the coming year. These projects tended to be a continuation of those in 1997, either because they were long term projects or because they had not been completed in that year.

As noted, a few clinics did identify the need to improve their public legal education initiatives. They articulated the means to achieving this: setting up a committee dedicated to outreach, putting together a plan, setting up a docketing system for public legal education, or committing to do a certain number of educational sessions.

### *Significant Activities*

The fourth question asked was, What public legal education activities/projects, if any, were noted in the section entitled, "Significant Activities"? The funding application did not specify the type of activity it was seeking. It requested any press coverage to be included with this section.

In reviewing this section, I was interested in whether the clinics themselves considered public legal education activities/projects to be significant. For the most part, individual cases are reported in this section with decisions. Almost half of the clinics reported no public legal education activities/projects in their Significant Activities

section. Of the slightly more than half that did, there was great variation in what was considered significant. In many cases, the clinics highlighted a major project such as campaigns around the new landlord and tenant legislation or a video series produced for television. Some clinics highlighted single speaking sessions or the publication of the first issue of a newsletter. One clinic highlighted only public legal education activities/projects in this section.

Of the clinics that did not report any public legal education activities as significant, almost all had engaged in public legal education during 1997. But for many, these activities were standard educational sessions or staff training or the publication of pamphlets. Some clinics, as noted in the above paragraph did report such activities as significant. While it is not entirely clear, one reason for not reporting these activities is that they are viewed as routine, an accepted part of their daily work (just as direct services are) and hence not exceptional.

In other cases, however, there were new initiatives, such as the publication of a multicultural cookbook with legal tips or the publication of an information kit for doctors, which were not reported in the section. There was no indication as to why these initiatives were not highlighted in the section.

There were only four clinics where there was negligible activity in this area. One of these boards identified the need to improve in the area for 1998. Another clinic noted, "too much casework" as the reason for the lack of public legal education activities; another had unforeseen staffing shortages.

### *Special Outreach Projects*

One final area that was reviewed was the Special Outreach Projects. As noted in the description of the present day clinics, the federal Department of Justice provides annual funding through Clinic Funding for special projects. The funding applications were not accessible, but I was provided with a summary of Special Outreach Proposals for 1996/97. A total of 24 proposals were received, requesting funding between \$500 and \$31,000. The average amount was \$6,000-8,000.

These projects included: self-help kits, workshops and corresponding manuals or brochures, clinic newsletters, videos, information cards, computer equipment, and a workfare monitoring project. Projects were designed for both disadvantaged client groups and social services agencies working with these individuals and groups.

These projects were all described in the clinics' individual funding applications. The Department of Justice funding permits the production of materials beyond the clinics' annual budgets. The projects (with the exception of the purchase of computer equipment) all fit the descriptions of the 1997 public legal education activities/projects.

### Interviews

The following questions formed the interview guide for the semi-structured interviews:

1. Tell me about your background and work experience that led you to working in the clinic system.
2. How would you define "public legal education" ? Examples.
3. What do you see as the goals of public legal education?

4. What role should public legal education play in the delivery of legal services to your community?

The first question allowed the respondent to provide information about him/herself. In general, all the lawyers had some work experience in private practice. Some had been introduced to the clinics in law school; some just “fell into” the job. In general, the community legal workers had all been working in the community in social services prior to working for the clinics.

### *Defining Public Legal Education*

Respondents were then asked to define public legal education, using examples if they wished. Several qualified their answers giving their own definition, as well as how they felt it was defined by the general public.

For example, one respondent stated:

I think that public legal education is any activity in which you try to educate people in a general way about what the law is and how it applies to them. I don't just see it as going out and giving presentations, delivery pamphlet material or doing workshops, although I do think that is a really, really important part of it and that's generally how I think we define it in the clinic system.

Another respondent provided two descriptions

Most people think of it as neutral, available publicly and indiscriminately, what's in a law and how that law might be applied and affect people and directive the “sage on the stage” where is an expert who is providing values neutral, accurate information on the law to that group.

I think public legal education should be more popular based, working more from the experience of the people who are in your audience. I believe it should be contextualized. To a certain degree. Depending on who is funding the public legal education can place restraints on how you present.

Another respondent defined public legal education as:

. . . a way of getting a message out to people to make them aware of certain situations or changes in the legislation and empowering them to be able to recognize that they

have a problem and that they need to seek some remedy themselves or some help to get it remedied.

Or in the words of another respondent,

In its essence, it's about helping people to understand what their rights are and how to assert them because there is nothing that the state does expressly to fulfil that mandate.

Overall, the respondents did define public legal education as the provision of information about the law, about people's rights: "Information – to help people understand the rules."

Several, however, saw the provision of information as only one aspect of public legal education.

If you remove any part of the work, if you just inform the public what the law is, and don't do it in the context of community development and organizing for change, then you have something that is useful to a few people but it is not a catalyst for change.

One individual defined it as having three components – educate, organize, mobilize. This respondent added that this has not been the case in the clinics: "I think, so far, that public legal education in Ontario has been limited to giving people information about their rights, sometimes how they will be affected."

Accessibility was a primary concern for all those interviewed. They focused on the importance of plain language, translations, alternative formats such as cassette or video tapes. For one respondent, the low literacy level of her community was the primary influence in her presentation of materials.

As well, several people noted that their public varied. It could be disadvantaged groups, or service providers, or the media and the mainstream public. Several respondents acknowledged that public legal education is a broad term and noted that the diversity across the country is extreme, which makes the clinics appear very focused. One respondent clarified and said, "I try to use community legal education" to distinguish the legal education for the community and low income client groups whereas public legal

education is the term for the general public, including service providers and other professionals.

Thus, all respondents defined public legal education as activities or projects – a pamphlet, a speaking engagement, or a clinic newsletter for example, rather than an educational process or a strategy. They seemed to associate it with the concrete manifestation of their efforts. This view was evident in the document analysis and review of funding applications whereby goals for 1997 and 1998 were often stated in terms of concrete projects, e.g. publish two issues of a newsletter.

Further, these activities/projects must provide legal information to their clients and this would supposedly be information that the communities need or have an interest in. The legal information must be accessible in terms of using plain language or translations into other languages and other formats. The information will tell the communities of their rights, entitlements, responsibilities, and the legal processes if any of those rights are infringed or entitlements denied. This is how public legal education is defined by those interviewed.

### *The Goals of Public Legal Education*

The third question asked was, What do you see as the goals of public legal education? Given that public legal education was defined as the activity/project to achieve a goal, then this question followed appropriately.

Most of the respondents identified empowerment for people as the primary goal of public legal education. For example, one person stated:

. . . the goal isn't so much to influence individual behaviour . . . it's about educating and empowering communities that don't have access to the information they need, to the legal process, to the law reform process



One respondent identified knowledge and information as power. One saw the goal of public legal education as the dissemination of information. Another respondent linked these two ideas when she stated, “. . . low income people have less power anyway, so if you can give them some knowledge that might help them a little bit.”

In a further comment, this respondent stated that,

If you want to really improve legislation, have a legal system that reflects the needs that people have and more relevant to people's needs, then that change has to come from people, that doesn't come from the legal system.

Another supported this view: “I think improving the system is one of the goals, making it work better for the people who require legal solutions to problems.”

Another respondent saw public legal education as one of the goals of civil society. In this sense, it is important to have “. . . people knowing what their rights are and can enforce them, and the enforcement mechanisms work.”

While no one believed that the knowledge of rights and responsibilities ensured the enjoyment of those rights and responsibilities, all emphatically believed that such knowledge was a critical first step and could be seen as an entry point. One respondent described it as “one of the steps to integration” for her community, comprised of immigrants.

Another stated that the goal of public legal education is “. . . to help protect people – not just to inform them of what the laws are, but also tell them how to use those laws in their life, and how to survive the process of the law when it happens to them.”

A few of those interviewed divided their comments into long and short term goals. One respondent stated that the “. . . long term [goal] would be to have a very well educated public out there that knows what rights they have, what they're entitled to and

what their responsibilities are . . . short term, as a legal clinic we just basically react to the new legislation.” This reactive approach was evident in the funding applications where several clinics indicated that their public legal education projects had not been completed in 1997 because the new legislation had not been introduced.

Thus, there were a range of opinions expressed about the goals of public legal education. In its simplest, the goal is the dissemination or provision of information about the law, rights and entitlements, and legal processes. There were several participants who saw the larger goal of public legal education as the empowerment of their clients through the dissemination of information. As noted in the previous section on defining public legal education, there was clearly a focus on the provision of information to fill a void of knowledge in their clients, as well as in the general public, be it the media, service providers and other professionals. There was no mention of the value of learning in general, or developing awareness and critical thinking skills as part of this process.

#### *Methodology, Format, Views on Education*

While there were not specific questions on methodology, format or views on education, as respondents described their projects, comments were made regarding these areas. The common style appeared to be lecture formats, with handouts and some interaction or group work. This was referred to in the interviews and in the funding applications as an “educational session” and appears to be a standard activity. As one respondent commented, “We get so many demands that it’s rare we’re organizing on our own, so sometimes I’m stuck with a format that they’ve requested – usually a lecture format.” In such instances, the clinic is responding to the needs of the client. Several also

noted that because of time, money and other constraints, this format is also used for other client groups.

The limitations of this traditional, “banking” method (see p.42) were also identified:

If you just come in and say this is the way the law is, blah, blah, blah, here are 5 things about this piece of legislation, then it may in fact disempower people because they may know what the law is, but they may feel there’s not a hope of me being successful in this appeal or being able to fight City Hall. . .

One respondent commented on the learning for both client and clinic staff:

. . . but people who work in clinics need to see that they have so much to learn from the people that they are servicing. And that people don’t come as a blank slate that we can impress upon and mould. I think any kind of learning, any kind of education is a two way street.

Another respondent noted that, “the real art, I think, in doing effective public legal education is finding the balance between the rights, what the law is supposed to be, against what actually happens.”

Or as another respondent commented, “I also look at education as helping people reach their own conclusions. Giving them a framework from which to understand law. . . Helping give them the tools so that they feel that they can change things is another major piece of it.” Information is one of those tools.

The materials from CLEO were identified as an aid in the community development process. One project described included artists, musicians, food, as a celebration of a community event to develop awareness.

One respondent was rather sceptical about public legal education and believes that most clinics are doing their own part and parcel thing, with very little co- ordination. She further commented that:

... for public legal education to be effective, you have to have a political will to actually educate or engage in the process of knowing what their rights are. I don't think the will has ever been there. There is sort of lip service to the idea that yes, you have to know your rights, but the truth is that we're using nineteenth century methods for twenty-first century communities.

### *The Role of Public Legal Education in the Delivery of Legal Services*

The final question was, What role should public legal education play in the delivery of legal services to your community? One immediate response was, "In the more optimistic days when we thought we could change the world, I think it was part of that process. "

All those interviewed saw public legal education as playing an integral role in the delivery of legal services to their clients and believe it is a fundamental component of what legal clinics should be about. A couple of participants talked about the importance of public legal education for the general public (not only the clinics' client groups) and felt that the private bar could learn a lot.

One respondent stated, "I feel that legal clinics through public legal education have a great responsibility to bring awareness to their people about issues." Yet, there was also a recognition that public legal education is only one strategy that must be used in conjunction with community development, law reform, or casework. "[I]t's not enough to go out in the community and do public legal education, although it's a good way to advertise our services. If you do a good job of public legal education, it will create more casework."

Despite the recognition that public legal education should play an integral role and be part of a comprehensive approach to tackling issues, one respondent felt that this is rarely the case and stated,

“[W]e don’t do any reflection within the clinic system. We have no strategic plan. . . . With the system we have, we’re the experts, the clients are dependent upon us and people can be real resources and advocates for others if the approach was different.”

Another respondent summed up her view of the role education should play:

Part of education is trying to make it more dynamic, and creating trust and then fostering the relationship between the clinic and the community by the gratuitous gift of the education, by the sharing of the knowledge.

Thus, the participants believe that public legal education should play an integral role in the delivery of legal services to their communities. It should be part of a larger strategy for addressing the issues that their communities face. This is not, however, always the case. When public legal education is used on its own, without being part of a larger community development plan, an adjunct, it may provide useful information, but it will not assist in enacting positive change.

### *Self-Help*

Several of those interviewed expressed concerns about the use of self-help kits in public legal education. For example,

It used to be that when clinics got busy [with casework], they stopped doing community development and public legal education and just concentrated on the cases. When you get to the point when you can’t actually meet the needs of the casework requirements - whether there’s a shift back to summary advice, or rather to more education and organizing because you can’t do all the casework. If at that point it becomes a substitute and you start getting into self-help, I think it’s really dangerous. It is seen by some as a dichotomy – public legal education or representation, as if they’re two opposing concepts and PLE fills the void where it shouldn’t.

Thus there is a concern that public legal education, in the form of self-help, is seen by government and some in the clinic system as a replacement for legal representation. While no one would deny that lay or peer advocacy can play a very important empowering role for disadvantaged groups, when it is used as a replacement for

representation, then two undesirable results can occur. The first is that the lack of funding for representation (for certain offences or uncontested divorces for example) becomes acceptable and is unchallenged. Secondly, education cannot nor should it replace representation where representation is the appropriate strategy.

One respondent strongly supported the underlying philosophy of clinic system which allows flexibility to provide the most appropriate strategy to address the issue – whether that is individual casework or collective education leading to organizing. The individual added, “We don’t want competing models of delivery. Each strategy should be complementary.”

These are the findings from the document analysis and the semi-structured interviews. The following chapter provides further discussion on these issues and others.

## **Chapter 6**

### **Discussion and Concluding Remarks**

This study has examined public legal education in the Ontario legal clinics. In reviewing the literature, I presented critiques of the “liberal legal model” and three models or approaches where legal education is used. The qualitative research methods of document analysis and semi-structured interviews were used to collect data. The data findings were reported in Chapter 5 and in this chapter, I will discuss those findings and offer some concluding remarks.

#### The Data

The use of both document analysis and semi-structured interviews suited this study well. The review of the funding applications for 1998 afforded a broad overview of the clinic system and illustrated the breadth of projects, the different approaches and indeed, the role public legal education plays in each clinic. The interviews complemented this overview with an in-depth examination of perspectives on public legal education. From the data findings, several themes emerged. In particular, I will discuss whether the public legal education undertaken in Ontario legal clinics fit into any of the models presented in the Literature Review.

#### The Different Approaches/Models

In Chapter 3, the Literature Review, I identified three models or approaches to public legal education. From the data, it is possible to determine whether the public legal

education initiatives that are being undertaken in Ontario clinics fall into any of these models.

As noted, there is variation within the clinics as to their approaches to and emphasis on public legal education. While the purpose of qualitative research is not to make sweeping generalizations, it is possible to categorize some of the work being done. The importance of this categorization is that it will provide a framework for further discussion and research. It will also assist the clinics in understanding their work and for their own planning and setting of priorities.

Alternative Legal Services using the Legal Literacy model seeks to change fundamental political relations and impose a new concept of justice other than the “liberal legal model.” As such, it is located outside of the rights discourse. The data revealed no examples of this work with this clear goal in the Ontario legal clinics. This is not to imply that the methods used in these models are not employed by the Ontario clinics. There was some, albeit limited, evidence of this.

For the most part, the educational projects/activities of the clinic fall within the parameters of the Community Legal Education and Public Legal Education models. I will first discuss Public Legal Education, looking at client groups, methods, goals and role of public legal education.

First of all, it was clear from both the interview and document data that the clinics serve a number of different client groups. Many clinics provide public legal education to service providers (governmental or non-governmental social services agencies, police), professionals (the private bar, the medical profession), and others (such as students in relevant university or college programs). What these groups all have in common is that



they all come into contact with the low income, or otherwise disadvantaged, clients of the clinics. Thus, the immediate goal is to provide information, but in the context of improving services and assistance for the low- income community.

In many cases, the clinics respond to requests from these groups. Clinics also do a great deal of outreach with these groups, where they perceive a need for certain training or information. For example, one clinic persistently contacted a university in order to be included in their curriculum for a specific summer program. Due to these efforts, the clinic now participates every year in the preparation and delivery of the legal aspects of the curriculum.

The activities/projects directed at these groups are training sessions, both in substance and procedure (e.g. changes to social assistance and tenant legislation for workers at a women's shelter), as well as general training in areas such as cultural sensitivity (e.g. welfare workers when dealing with First Nations clients). The clinics also prepare and publish informational pamphlets and manuals for groups (e.g. doctors who have patients with workers' compensation claims).

In sum, the data indicated that the methods used are traditional for dissemination of information. These information or educational sessions tend to be lecture format, with handouts and some interaction through questions or group work. As noted by one respondent, at times the group requests a certain format and the clinic accordingly complies. Other limitations on the methods used also apply – available time, numbers in the audience, and location.

With these groups, public legal education plays an adjunct role in their work in the sense that the clinics may meet with these groups only once or a few times a year and they are not their retained clients.

For these audiences, the Public Legal Education approach, as described in the Literature Review, is used. In these cases, the goal is to support the existing legal system, by helping all the players to understand their roles and the rules better. The Public Legal Education activities help the legal system, as it is, function more smoothly.

The clinics also engage in what they have always called public legal education for their low-income or otherwise disadvantaged clients or potential clients in the community. With these groups, there is more variation and it is difficult to fit the clinics' work into one distinct model. Indeed, rigid categorization may not be desirable as the clinics are designed to be flexible in their delivery of services. The data revealed that there are some projects/activities for the community which follow the Public Legal Education model.

Here, clinics are responding to demand or to what they perceive as the communities' needs, for example through repetition of problems in casework or changes in legislation that will impact individuals in the community. The immediate goal is the dissemination of information to prevent problems with the secondary goal of generating awareness about their services. This is achieved through a variety of means.

In some cases, the clinic staff use traditional methods of lecture style educational sessions in ESL classes, community centres or libraries. These are supplemented with informational pamphlets, focusing on accessibility of information by using plain language, translations, and other formats. In the interviews, there was an

acknowledgement that these methods were traditional and that “ . . . we don’t really know what we’re doing.” The only differences between these activities/projects and those described as falling into the Public Legal Education model above, is the audience and at times, the level of sophistication of the information presented. In both cases, there is little evidence of attention being paid to theories of adult learning.

In other cases, the clinics have put considerable time, effort, and resources into developing legal education activities/projects which form part of a larger strategy to address the social, political, economic and legal aspects of issues facing their constituents. While the immediate goal might remain the dissemination of information to prevent problems, there is also emphasis on the contextual nature of the issue and on providing a framework for thinking and learning. Many respondents articulated the long term goal of empowerment. In these situations, the work could be categorized as Community Legal Education.

Here, the activities/projects are much more popular based with the community’s input. Consultations with all those concerned (e.g. members of First Nations communities) often begin the planning process. Methods are less traditional with a move away from the standard lecture format and written pamphlets. The message is delivered through the creative use of games, theatre, art and other media. A few of the clinics are using computer technology. While the use of technology such as the Internet may increase accessibility and the development of networks, especially international, it might also create a barrier for some who do not own a computer, have limited access to one or are not computer literate.

In these cases, where there was evidence in the data of innovative methods being used, there was also some evidence of an understanding of theories of adult learning or different pedagogies. For example, one respondent believes that “. . . any kind of education is a two way street.” Another commented that, “Part of education is . . . creating trust and then fostering the relationship between the clinic and the community by the gratuitous gift of the education, by the sharing of the knowledge.”

The limitations of the traditional, banking method were also recognized (see p. 91). One clinic is incorporating popular education into their work. While Freire’s pedagogy has some limitations in a North American context, his methods, could be employed in the clinics’ work, as could feminist methods. These two pedagogies, with their shared goal of social change, could greatly enhance the initiatives of the clinics.

While in some instances, the respondents demonstrated a strong understanding of adult learning principles, overall there was little emphasis on the theories of adult education and learning. The reasons for this situation are many. First of all, the legal training that law students receive in law school and as young lawyers in private or public practice approaches problems in exclusively legal terms, using legal tools. Problems are analyzed based on legal criteria. Hence, it is not difficult to see why lawyers take such a legal emphasis or why lawyers have such faith in the law as a social change strategy. As a result, law students and lawyers perpetuate the legal literacy myth, assuming that law and rights, *a priori*, will resolve people’s problems. Lawyers, law schools, professional associations, and the public place a heavy, if not complete, reliance upon the traditional legal system.

While many, if not all, issues that affect disadvantaged people (housing, racism, poverty, abuse) may be addressed in part by the enforcement of rights, or changes in the law, they are the result of a multitude of forces - political, historical, social and economic. A purely legal response as such, will be inadequate or ineffective as these other forces remain untouched. As Schuler and Rajasingham (1992) argue, the problem should be the starting point, rather than the solution. If this were the approach, then the assertion of rights through traditional legal mechanisms would become only one part of a larger strategy in which education would play a primary role.

Secondly, lawyers are taught and trained to take an active, omniscient, leadership role. As Wexler notes (1970, 1055), lawyers have an interest in not sharing knowledge. They

... are taught to believe, and have a three-year investment in believing, that what they have learned in law school was hard to learn and that they are somehow special for having learned it.

Thirdly and very simply, lawyers are not trained to be educators. Lawyers are trained in the law in traditional educational institutions, this is what they know. Attempts at legal education by lawyers have a tendency to be content and information focused and as a result, the first legal literacy myth is perpetuated: They assume that if people are given information about the law, then people will exercise their rights.

Lawyers have university training so when working with people who may not speak English as a first language or who have very little formal education, there is an immediate disparity in the knowledge base as discussed earlier. A Canadian Bar Association Task Force report noted that a majority of efforts to improve client understanding of the law make use of materials that require competence with written material (1992, 12). As well, it found that lawyers generally were unaware of the extent

to which different literacy levels lead to problems in the lawyer client relationship (11-12). Lawyers will use methods that generally replicate patterns of earlier schooling such as lecture format and written materials, with a top down model of instruction which fosters respect for authority, experts, discipline and good work habits.

These days, there appears to be some understanding that “group dynamics” or interaction works well, so games or time for questions may be incorporated into an educational session. This was clear from the interview data. Overall though, there is little recognition that there is a pedagogical methodology to the process of developing these skills of analysis and problem solving.

Finally, within the profession there is a general reticence to embrace other disciplines. One such attitude has been summarized by George Finlayson as Law Society of Upper Canada Treasurer (and now judge) when he admonished the lawyers who, “believe that it is a proper function of counsel to espouse a cause to attempt to bring about political or social reforms through their representation of such cause.” (1980, 229) Justice Finlayson further notes, “You are lawyers, first and last.” Because of legal training, public image and the profession’s investment in the law, the law is accordingly predominant in lawyers’ initiatives for social justice.

Overall, in most legal aid programs which are designed by lawyers, the lawyer retains a proactive role to defend individual rights. When education is combined, this may serve to augment the traditionally passive role of the clients. The lawyer has an inflated belief in his/her own role and sees the law as his/her specialized domain. Schuler and Rajasingham (1992, 57) conclude that at best, lawyers provide ineffective

educational strategies and at worst, their educational efforts reinforce the status quo whereby the lawyer is the only keeper and defender of rights.

All this does not mean that lawyers should not engage in educational initiatives. Legal training, however, should incorporate training in alternative strategies to the rights based approach. Further, lawyers should work with educators and others in the field and not in isolation. A multifaceted approach to complex issues will require a number of different skills.

The community legal workers have always been and continue to be an integral and critical part of the clinics and often provide an alternative perspective to that of lawyers. From the statistics provided in the funding applications, it appears that many of them spend as much as half their time in casework or summary advice. While overall, CLWs tend to do more outreach work than the lawyers, casework is still viewed as the priority. Only a few clinics had the luxury of a position that was dedicated exclusively to outreach work. Unfortunately, it was beyond the scope of this study to pose the question of whether and how this luxury assisted the clinics in achieving their own goals. As one respondent commented, when the casework burden increases, public legal education activities/projects tend to disappear.

It is also critical to remember that there are limitations of time and resources (funding and other) for clinic staff and board members. As well, having grown up with a non-participatory and non-emancipatory education system, we have come to expect one form of education. Often we want the information and the answers from the experts; we do not trust our own knowledge because it has never been validated in society. Thus, those who attempt to use emancipatory and participatory methods should be aware that

there might be resistance and a lack of understanding on the part of the learners. With such a response, and limited time to convey the information, it is no wonder that those who engage in educational activities, tend to use the methods that are known best.

Thus, overall the data reveals that there is both Public Legal Education and Community Legal Education in the clinics. The Public Legal Education approach is used for both low-income or otherwise disadvantaged clients and for the general public, while the Community Legal Education approach is used in some cases with the low-income community.

With this latter approach there was evidence that the clinics are working to improve the legal system, not just supporting the current system by helping it to run more smoothly. This is evidenced by the following comment: “If you want to really improve legislation, have a legal system that reflects the needs that people have and more relevant to people’s needs, then that change has to come from people, that doesn’t come from the legal system.”

Given the critiques of the “liberal legal model” and the discussion of the role education can play to alleviate some of the problems inherent in the model presented in the Literature Review, the Community Legal Education approach, or indeed the Legal Literacy model, would be appropriate for these client groups. There is evidence of some components of the other models in the clinics’ work, for example popular education, but overall it is negligible.



### The “Liberal Legal Model”

Regardless of the methods chosen or specific goals cited, the public legal education initiatives of the legal clinics fall within the rights discourse. Consistently, the information provided is about individuals’ rights and entitlements and how to seek redress when those rights infringed or entitlements denied. Public legal education is viewed as the entry point into the “liberal legal model” whereby the clients will learn to name, blame and claim. There was some evidence of group rights and increasing the role of the popular sector, for example where the community response to the issue of sexual abuse was predominant.

It is not surprising that the Legal Literacy model employed by Alternative Legal Services organizations is not evident in the clinics’ approaches to public legal education. This may be explained by a number of factors such as the different social, political, and economic contexts in which the Alternative Legal Services organizations were born. As well, these organizations are independent of state funding and work primarily in opposition to the state and the “liberal legal model.”

### Funding

In contrast to Alternative Legal Services organizations, s.5(2) of *Regulation 710* stipulates that the payment of funds is,

To enable the clinic to provide legal services or paralegal services, or both, including activities reasonably designed to encourage access to such services or to further such services and services designed solely to promote the legal welfare of a community, on a basis other than fee for service.

The clinics work within the rights discourse and the “liberal legal model” that we have in Canada, as indeed, there is no other. Funding for the clinics is primarily from the

provincial government, the Ministry of the Attorney General, with some funding from the Law Society of Upper Canada and some from the federal government for the Outreach Projects. Some clinics also engage in limited fund raising and collect membership dues.

The issue of funding for public legal education arose on several occasions during the interviews. Clinics themselves were established as an alternative to the “liberal legal model” that is represented by the private bar and the judicare or certificate system. The data revealed that casework (the enforcement of individuals’ rights) is a priority for almost every clinic. In a few cases, public legal education is non-existent. In the majority of cases, it plays a role, sometimes integral, sometimes adjunct to the priority casework and summary advice.

Blazer (1990) argues that the legal clinics today have changed from the original clinics. The profession has a much larger role than in the original clinics; their presence on the Board is a *de facto* requirement. Collective internal structures are less common. The casework and summary advice suffer from the many concerns raised by the “new poverty law scholarship” discussed in the Literature Review. Blazer (1990, 65) suggests that the goals of the funders have not necessarily been those of the community, and decisions about service priorities have had to be made.

The Ontario Legal Aid Plan can be viewed as an extension of the welfare state.<sup>1</sup> The system was established to fill a void and provide legal services for the indigent. In Canada, the welfare state came into existence in the mid-thirties, during the Depression when there was an increased need for government intervention. The government of Canada became committed to guaranteeing minimal conditions of reproduction of the

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<sup>1</sup> I use the term “welfare state” as a synonym of the interventionist Keynesian state. This is the use adopted by Palacio 1992.

wage labour power (Palacio 1992, 94). Public expenditure was increased to fulfil this task of providing minimum wages, pensions, health care, housing, and education. We are experiencing backlashes as these minimal conditions have become accepted and expected in our society.

Legal aid in Ontario is an example of a guaranteed minimum, although it is slowly being eroded. First came the certificate system. In 1974, the Osler Task Force on Legal Aid recommended that the clinic system be incorporated into the Plan. For the early clinics, the Plan promised a relatively secure funding source, but in return they would have to compromise their independence. Blazer suggests (1990, 62-64) that as funding is controlled by the Clinic Funding Committee, a dependency has been created and this dependency on state funding is perpetuating traditional legal services. The Ontario Legal Aid Plan is organically and functionally linked to the policies of the government and the court system and the solutions are in accordance with the “liberal legal model.”

Thus Blazer argues (1990, 67) that state supported legal aid will serve to reinforce the status quo in two principal ways. First of all, the immediate problems of low income and otherwise disadvantaged individuals and groups are solved and it will appear that the state is providing substantive equality. As long as the individuals involved believe this, or as long as they are able to reap the immediate benefits, they will not feel the need to mobilize for change. The tie to the state, through funding, effectively renders the system accomplice to a system that hampers the possibilities for effective change from those who would most benefit from it.

Secondly, state support for legal aid works to legitimize the existing social arrangements with a “symbol of equality” (Blazer 1990, 67). If the government gives disadvantaged individuals and groups access to legal institutions, then the results reached by the system can be legitimized as being free from any systemic bias that would occur if those disadvantaged had no access at all. When cases are won and problems are solved, the legitimacy is confirmed. Thus through the theory of “access to justice,” the legal system and the administration of justice of the capitalist, patriarchal state are legitimized and never challenged.

Blazer’s argument suggests that the clinics must work within the “liberal legal model” because of their dependency upon state funding. Mossman (1983) presents arguments that the clinics are able to maintain their independence. What is important here is that the clinics are limited in the services they can provide because of limited funding, resources, and their own position working within the “liberal legal model.”

While it cannot be denied that clinics are uniquely positioned to provide public legal education to their communities, are they the best providers given their priority on casework, their rights based approach to social justice issues, and their dependency on state funding? This study did not attempt to answer this question, but it must be posed.

It is possible to envision an independently funded, multidisciplinary approach that employs a Legal Literacy model to provide comprehensive public legal education to communities based upon a participatory approach to defining the needs of those communities. Clearly, further research awaits.

Several other themes emerged in the course of the analysis and deserve mention at this juncture.

### Assessing Community Needs

This study and the studies reviewed in the Literature Review all examine public legal education from the perspective of the service providers. Zalik (1998), in her study with street youth and their legal needs, argues for participatory research to be used in assessing community needs.

The data in this study indicated that public legal education projects/activities are, for the most part, demand driven. Generally, the clinics respond to direct requests for educational sessions from client groups, social service agencies or professional. At times, clinics respond with public legal education when a problem is repeatedly seen in their offices, or when there are changes in legislation that will impact their clients.

One person noted that the information has to be immediately relevant in the clients' lives. "They don't want information just for the sake of information. If you're not going to use it, you don't want it then. You won't retain it." This statement illustrates a strong understanding of adult learning principles. This clinic worker responded to requests, but also responded to what she, having a specific understanding of changes in legislation, perceived to be the clients' needs. For example, if a large number of people were coming into the clinic with the same questions or the same problem on Employment Insurance, then the clinic would respond with public legal education, usually going out to where the people gathered, in this instance, the bingo hall.

Thus it appears that the clinics respond or react to specific problems as they arise. The data revealed that there are few resources available to assess community needs, until they become starkly evident. There were, however, a few excellent examples of the

clinics being very proactive – work with the deaf community or a video series on sexual abuse in the community. Again some excellent work is being done in this area from which the clinics could benefit (see Zalik 1998, Comparative Justice Systems Project 1994).

Several clinics with less developed public legal education programs identified improvement in this area as a goal for 1998 in their funding applications. One clinic had surveyed the community to get a sense of their needs. Response to the survey was low. Several other clinics identified as goals the need to review and evaluate their public legal education projects. Where this is the case, assistance should be made available to the clinics regarding materials and expertise for needs assessment.

There are some materials available that would assist the clinics in such a task (see the Access to Justice Network catalogue, [www.acjnet.org](http://www.acjnet.org)), whether to determine their community's needs or to evaluate projects. For evaluating projects, the 1986 Department of Justice report, *Access to Justice*, does include in Volume 4, an evaluation methodology. It was beyond the scope of this study, however, to do a thorough review of the materials that are available.

Bogart, Meredith and Chandler (1997, 319-326) review different approaches to assessing legal needs and summarize that “we have little systematic knowledge of legal needs and in particular, of unmet legal needs.” Accordingly, this study strongly recommends further research in this area of community needs for public legal education.

### The Role of Information and Knowledge

Throughout the document analysis and the interviews, the data revealed consistently that the dissemination of information was a primary goal. Many respondents saw the provision of legal information as a starting or entry point. As noted in the Literature Review, Foucault (1979, 200) argues that, “detailed knowledge breeds a ‘political awareness’ of techniques and methods of control.” This possession of knowledge perpetuates a relationship of inequality and can be manipulated to exercise power. Clearly, legal information must be a part of any public legal education initiative. What role it plays is another issue, as is the issue of whether it should be presented without acknowledging a perspective on the law and processes. Where the recipients of the information lack skills of critical analysis, and where these skills are not part of the public legal education, should the information be presented with a critical perspective? For example, where enforcement mechanisms are weak, as in the case of human rights legislation, should these realities form part of the information given? As one respondent stated,

. . . one thing we try to be careful about is not put[ting] in abstract rights that don't have any kind of enforcement mechanisms. The last thing you want to do is tell people they have all these rights and then they go try to exercise them and absolutely nothing happens and people just hit one brick wall after another. That's not a very empowering experience.

The data revealed that much of the clinics' public legal education activities/projects focus on acquiring information, the facts and details and the “how-to-do-it.” Such an approach does fulfil immediate needs. Gander characterizes these services as remedial or rehabilitative (1984, 16-17; at p.55). Yet only the pieces are presented in this approach. These pieces are often incomplete, fragmented and quickly out-of-date. During one interview, a respondent described her ideal delivery model and spoke of a comprehensive

approach to learning about the law and its underlying principles. She felt that the public legal education activities/projects being undertaken were “piecemeal” and “band aid solutions” and the clients had no understanding of the “whole picture.”

The Legal Literacy model would advocate such a comprehensive learning process. Whether the clinics could adopt such a model is open to discussion. These are all issues that must be addressed by the board, representing the community, and the staff of the clinics.

### International Links

Very few of the clinics have developed an international or global perspective of their work. The few that have are specialty clinics which have forged partnerships with other countries on specific projects. One clinic is using the Internet to explore globalization.

As evidenced by the literature review and description of Alternative Legal Services and Legal Literacy, there are a great many projects that have been or are being developed in other countries. While context is critical and not all work is immediately transferable to an Ontario community, there are important ideas that are fuelling this international work.

As globalization diminishes borders, international solidarity is becoming increasingly critical for all social justice issues – whether labour or human rights, the environment, housing or violence against women. The exchange of ideas can foster lasting and valuable partnerships for all parties. For example, the Institute for Latin American Alternative Legal Services, based in Bogota, Colombia, serves as an umbrella



organization for Alternative Legal Services organizations in Latin America (see Rojas 1988). For many years, it has hosted Canadian students and several Colombian lawyers have travelled to Canada to work with organizations here. One of their publications, *Beyond Law*, is a source of ideas and inspiration.

While most clinics contextualize their legal work within the social, economic, and political climate of Ontario, there is also a need to recognize globalization and the impact it has on all issues from labour to immigration.

### Innovative Formats

From the funding applications, there was evidence that some innovative approaches were being used. Certainly there was a recognition of the role computer technology can play in the dissemination of information and the building of networks.

Some respondents expressed the opinion that the clinics in general are using very stagnant methods to deliver their message. It was also expressed that lip service is paid to the importance of public legal education, but public legal education is not supported by the funding of staff positions or projects. There were some frustrations expressed about the lack of computer technology. The Special Outreach Projects fund does provide one source of funding for these initiatives.

In some cases, different approaches met with little success: a local newspaper chose not to run the clinic's legal column; a mall would not agree to having a kiosk from the clinic set up. While these initiatives require only the will and the time of clinic staff, funding remains an issue for staff time is in great demand. Direct services, e.g. casework

and summary advice, remain priorities for every clinic with the exception of a few specialty clinics, such as CLEO, which have other mandates.

Yet there were also stories of successful and creative endeavours. For example, one respondent described her “bingo break show” where, using two hats and a flip chart, she filled a five minute break between bingo games with information on changes to Employment Insurance legislation that would greatly impact her community members. Another day long event, “Surviving the Cuts,” was so successful that the organizer has received requests for similar programs. A television show which featured a “Tenant’s Survival Test” resulted in a dramatic increase in individuals seeking advice from the clinic on their housing situations.

While videos, radio and television are being used or are planned, there is certainly an emphasis on printed material - pamphlets, brochures, manuals, and self-help kits. The Canadian Bar Association Report, *Reading the Legal World*, (1992, 55-57) recommended a range of responses (especially oral and visual methods) to meet the information needs of those with limited literacy skills. This report also found that “. . . its findings and recommendations need to be examined for their broader implications for society as a whole as part of the continuing task of improving the quality of our law and our system of justice.” (57)

Networks, whether regional, national or international, certainly facilitate the sharing of ideas and successful endeavours. Several inter-clinic groups exist (the Workers’ Compensation Network, the Inter-Clinic Immigration Working Group) and meet for training and to share expertise, including one for public legal education in the north. Mosher (1997, 944) advocates the creation of stronger support frameworks for

creative problem solving. Certainly, the area of public legal education could benefit from such a co-ordinated approach.

### Self - Help

There are a great many self-help projects that have been developed or are being planned by the clinics. As legal aid funding for representation diminishes, reality dictates that self-help can assist in filling that void. The respondents expressed a great deal of concern over the replacement of representation with self-help. The utilization of self-help materials requires a certain level of client sophistication. What might work for some clients in some situations, might not work for other clients in other situations. As Charendoff, Leach and Levy argue (1997, 570) in their paper in the McCamus Report, "True access means that services will meet the varying needs of different legal aid clients."

Thus, it was firmly expressed that if self-help is to be used, it must be accompanied by appropriate training, mentoring and support. Further, it should not be seen as a substitute for representation, but rather as a complement to a full range of legal services that must remain accessible to those who are in need of representation.

### Terminology

The Literature Review attempted to provide some clarification around the use of the term "public legal education." Both the interview and document data clearly indicated that while there is some consensus on general characteristics and goals of public legal education, there is little overall understanding about methodology and different pedagogies. Indeed, there is confusion around the distinctions between the outreach

activities of public legal education, community development, and law reform, particularly when reporting requirements must be met.

This study has sought to introduce some structure to the public legal education projects/activities that the clinics undertake, with the proviso that categories should be flexible and open to revision at any time they become constraining. There are several advantages to the introduction of a more clearly defined framework for public legal education. First of all, differentiating between Community Legal Education and Public Legal Education may assist the clinics and their constituents to better understand, define, and achieve the goals that they hope to achieve in the short and long term. Secondly, eliminating the subdivisions of outreach activities for statistical purposes might relieve the clinics of an additional reporting requirement which utilizes vague divisions. This would also promote the idea that public legal education, as in the Community Legal Education model, should be part of a larger, comprehensive community development plan. Finally, an understanding of different models such as the Legal Literacy model may provide insight and ideas for further discussion and work.

### Final Remarks

This study has examined the definition, goals, and role of public legal education in the Ontario legal clinics from the perspective of those who are providing it. This has been achieved through data collected from interviews with clinic lawyers, community legal workers, and board members, as well as from the clinics' 1998 funding applications. While there were differing perspectives on all issues, there was also consensus. These views have been presented and summarized in Chapters 5 and 6 of the study.

During the data analysis, other issues arose such as international links, self-help, innovative formats, assessing community needs, the role of information, funding, the “liberal legal model,” and terminology. What was evident was the need for further research and co-ordination to promote the use of public legal education in its different models, most importantly in assessing the needs of their clients and potential clients.

The enthusiasm for and dedication of the clinic lawyers, community legal workers and board members were evident throughout the data collection process. While they expressed frustrations and different perspectives as to the importance of public legal education, all believed in their work and supported this study through their participation.

There is much to learn from initiatives elsewhere in Canada and in other countries, but the clinics have the advantage of their structure, stable if limited funding, and flexibility in their delivery of legal services. Pedagogically appropriate education, such as the Community Legal Education or the Legal Literacy approach, is a critical legal service and should be recognized as such for low-income and otherwise disadvantaged groups and individuals. Public legal education should also become part of the general public’s knowledge base.

The clinics have been recognized by the McCamus Report (1997, 116) and the *Civil Justice Review* (1995, 387) as being uniquely situated to deliver public legal education. While limitations do exist, such as state funding, stretched resources, their rights based approach and priority on casework, and limited understanding of adult learning principles, the clinics do excellent work in the area of public legal education.

## References

- Abel, R. A. 1982. The underdevelopment of legal professions: a review article on Third World Lawyers. *American Bar Foundation Research Journal* Summer 82: 871-93.
- Abel, R. A. 1985. Law without politics: legal aid under advanced capitalism. *U.C.L.A. Law Review* 32:474-642.
- Alfieri, A. 1991. Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative. *Yale Law Journal* 100: 2107-47.
- Alfieri, A. 1988. The Antinomies of Poverty Law and A Theory of Dialogic Empowerment. *New York University Review of Law and Social Change* 16:659-712.
- Ardila, E. and J. Clark. 1992. Notes on Alternative Legal Practice in Latin America. *Beyond Law* 4: 107-113.
- Auerbach, E. R. 1992. *Making Meaning Making Change: Participatory Curriculum Development for Adult ESL Literacy*. McHenry, Illinois: ERIC/Center for Applied Linguistics.
- Bain, P. 1981. Presentation to the Canadian Bar Association on Public Legal Information and Education Programs (as cited in Manley-Casimir, Cassidy and de Castell).
- Bellow, G. 1977. The Legal Aid Puzzle: Turning Solutions into Problems. *Working Papers for a New Society* 5: 52.
- Blasi, G. 1994. What's A Theory For?: Notes on Reconstructing Poverty Law Scholarship. *University of Miami Law Review* 48:1063-1097.
- Blazer, M. 1990. The Community Legal Clinic Movement in Ontario: Practice and Theory, Means and Ends. *Journal of Law and Social Policy* 7:49-72.
- Bogart, W. A., Meredith, C. and D. Chandler. 1997. Current Utilization Patterns And Unmet Legal Needs. In *A Blueprint for Publicly Funded Legal Services*, 313-372. Toronto: Ministry of the Attorney General.
- Bogdan, R.R., and S.K. Biklen. 1992. *Qualitative Research for Education: An Introduction to Theory and Methods*. 2<sup>nd</sup> edition. Boston: Allyn and Bacon, Inc.
- Borg, Walter R. and M.D. Gall. 1989. *Educational Research: An Introduction*. 5<sup>th</sup> edition. Toronto: Copp Clark Pitman.

- Bourdieu, P. and J. Passeron. 1977. *Reproduction in Education, Society and Culture*. London: Sage.
- Brundage, D. H. and D. Mackeracher. 1980. *Adult learning Principles and their Application to Program Planning*. Toronto: Ministry of Education.
- Canadian Bar Association. 1992. *Reading the Legal World: Literacy and Justice in Canada*. Ottawa: Canadian Bar Association.
- Cappelletti, M. (ed) 1981. *Access to Justice and the Welfare State*. Frieuze: Le Movier.
- Chambers, J. et al (eds.)1992. *Public Interest Law Around the World*. New York: Columbia Human Rights Law Review.
- Charendoff, S., M. Leach, M., and T. Levy. 1997. Legal Aid Delivery Models. In *A Blueprint for Publicly Funded Legal Services*, 543-584. Toronto: Ministry of the Attorney General.
- Charlesworth, H. 1994. What are 'Women's International Human Rights'? In *Human Rights of Women*. ed. R. Cook, 58-84. Philadelphia: University of Pennsylvania Press.
- Clapp, E.R.1939. *Community Schools in Action*. New York: The Viking Press.
- Cormier, M. 1990. Legal Aid in Ontario – The Function of Charity. *Journal of Law and Social Policy* 6:102-32.
- Cossman, B. and C. Rogerson. 1997. Case Study in the Provision of Legal Aid: Family Law. In *A Blueprint for Publicly Funded Legal Services*, 773-912. Toronto: Ministry of the Attorney General.
- Dworkin, R.1977. *Taking Rights Seriously*. Cambridge: Harvard University Press.
- Dykstra, G. 1983. Public Legal Education: The Canadian Approach. In *Understanding the Law*, ed. R.S. Peck and C.J. White, 29-38. Chicago: American Bar Association.
- Felstiner, W. , R. Abel and A. Sarat. 1981. The Emergence and Transformation of Disputes: Naming, Blaming, Claiming. *Law and Society*. 15, 3-4: 631-654.
- Finlayson, G. 1980. The Lawyer as Professional. *Law Society Gazette* 14:229-35.
- Foucault, M. 1979. *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books.
- Foucault, M. 1980. Two Lectures. In *Power/Knowledge*, ed. C. Gordon. New York:

Pantheon Books.

Fraser, N. 1989. Talking about Needs: Interpretive Contests as Political Conflicts in Welfare- State Societies. *Ethics*. January 1989: 291-313.

Freire, P. 1970. *Pedagogy of the Oppressed*. New York: Continuum.

Freire, P. 1973. *Education for Critical Consciousness*. New York: Continuum.

Freire, P. and D. Macedo. 1987. *Literacy - Reading the Word and the World*. London: Routledge and Kega.

Gabel, P. and P. Harris. 1982-3. Building Power and Breaking Images: Critical Legal Theory and the Practice of Law. *New York University Review of Law & Social Change* 11:369-411.

Gagnon, P. 1985. Public Legal education. The point of view of a lawyer in private practice. Working paper submitted in preparation for the conference on legal education, Winnipeg (as cited in Manley-Casimir, Cassidy and de Castell).

Gander, L. 1984. *Towards a taxonomy of public legal education*. Report to the Department of Justice.

Garth, B. 1980. *Neighbourhood Law Firms for the Poor: A Comparative Study of Recent Developments*. Alphen: Sijthoff.

Gee, J. 1990. *Social Linguistics and Literacies: Ideology in Discussion*. London: Falmer Press.

Giroux, H. 1983. *Theory and Resistance in Education: A Pedagogy for the Opposition*. South Hadley, Mass.: Bergin and Garvey.

Glesne, C. and A. Peshkin. 1992. *Becoming Qualitative Researchers: An Introduction*. New York: Longman.

Grange, J. 1978. *Report of the Commission on Clinical Funding*. Toronto: Ministry of the Attorney General.

Handler, J. 1988. Dependent People, The State and the Modern/Postmodern Search for the Dialogic Community. *U.C.L.A. Law Review* 35: 999-1113.

Handler, J., E.J. Hollingsworth, and Erlanger. 1978. *Lawyers and the Pursuit of Legal Rights*. New York: Academic Press.

Hart, M. 1991. Liberation Through Consciousness Raising. In Mezirow, J. and Associates, *Fostering Critical Reflection in Adults: A Guide to Transformative and Emancipatory Learning*. San Francisco: Jossey Bass.



- Hitchcock, G. and D. Hughes. 1995. *Research and Teachers*. 2<sup>nd</sup> ed. New York: Routledge.
- Hull, G., ed. 1977. *Changing Work, Changing Workers, Critical perspectives on Language, Literacy and Skills*. New York: State University of New York Press.
- Ianni, R. W. 1979. Reflections on the state of public legal education in Canada. *Canadian Community Law Journal*. 3:3-11.
- Irwin, M. and W. Russell. 1971. *The Community is the Classroom*. Midland, MI: Pendell Publishing Company.
- Jacques, M. 1988. Una concepción metodológica del uso alternative del derecho *El Otro Derecho* 1:19-42.
- Jardine, A. 1985. *Gynesis Configurations on Woman and Modernity*. Ithaca: Cornell University Press.
- Jayewardene, C. H. and T. Pelpola. 1986. *Access to Justice: International Review of Public Legal Education and Information*. Ottawa: Minister of Justice and Attorney General of Canada.
- Kairys, D., ed. 1982. *The Politics of Law: A Progressive Critique*. New York: Pantheon Books.
- Karst, K. 1984. Woman's Constitution. *Duke Law Journal* 3:447-508.
- Kelman, M. 1987. *A Guide to Critical Legal Studies*. Cambridge: Harvard University Press.
- Keon-Cohen, B.A. 1978. Community legal education in Australia. *Monash University Law Review* 4:292-318.
- Law Courts Education Society of British Columbia. 1994. *Comparative Justice Systems Project Report: Research, Process, and Materials*. Vancouver, British Columbia: Author.
- Lopez, G. 1989. Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration. *Georgia Law Review* 77:1603-717.
- Lynch, D. O. 1978. Lawyers in Colombia: perspectives on the organization and allocation of legal services. *Texas International Law Journal* 13, 2:198-241.
- Lynch, D. O. 1983. *Legal Roles in Colombia*. New York: International Centre for

# Law and Development.

- Manley-Casimir, M., W. Cassidy and S. de Castell. 1986. *Legal Literacy: Towards a Working Definition*. A Report Submitted to the Canadian Law Information Council.
- McCamus, J. 1997. *Report on Legal Aid in Ontario: A Blueprint for Publicly Funded Legal Services*. Toronto: Ministry of the Attorney General of Ontario.
- McDonald, S. 1998. Popular Legal Education in Downtown Santiago. *Convergence* 31: 147-155.
- McGivney, V. et al. 1991. *Adult Education and Development: Methods and Approaches from Changing Societies*. England: National Institute of Continuing Education.
- Merriam, S.B. 1990. *Case Study Research in Education: A Qualitative Approach*. San Francisco: Jossey- Bass.
- Minzey, J.D. and C.E. LeTarte. 1979. *Community Education: From program to process to practice, the schools' role in a new educational society*, 2<sup>nd</sup> ed. Midland, MI: Pendell Publishing Company.
- Mosher, J. 1997. Poverty Law – A Case Study. In *Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services*, 913-968. Toronto: Ministry of the Attorney General.
- Mosher, Janet. 1992. The Role of Law in Social Transformation. Lessons from Latin America. Unpublished paper.
- Mossman, M. J. 1983. Community Legal Clinics in Ontario. *Windsor Yearbook of Access to Justice* 3: 375-402.
- National Association of Women and The Law. 1996. *Research Proposal – Women, Legal Aid, and Access to Justice*, submission to the Status of Women Canada.
- Olsen, E.G. 1950. *School and community, the philosophy, procedures and problems of community study and service through schools and colleges* (Orig. 1645). New York: Prentice-Hall, Inc.
- Ontario Civil Justice Review. 1995. *Civil Justice Review – First Report*. Toronto: Ministry of the Attorney General.
- Ontario Legal Aid Plan. 1993. *Community Legal Clinics: Annual Report (1992/93)*. Toronto: Law Society of Upper Canada.
- Palacio, G.A. 1992. The Crisis of the Welfare State and Capitalist Restructuring. *Beyond*

*Law* 4:89-97.

Piven, F. and R. Cloward. 1977. *Poor People's Movements: Why they Succeed, How they Fail*. New York: Vintage Books.

Rawls, J. 1971. *A Theory of Justice*. Cambridge: Harvard University Press.

Reilly, M. P. 1988. The Origins and Development of Legal Aid in Ontario. *Windsor Yearbook of Access to Justice* 8:81-104.

Rivard, G. 1980. The "public" in public legal education. *Canadian Community Law Journal* 4: 34-39.

Rojas, F. 1988. A Comparison of Change-Oriented Legal Services. *International Journal of Sociology and the Law* 16:203-256.

Scheingold, S. 1974. *The Politics of Rights*. New Haven: Yale University Press.

Schneider, E. 1986. The Dialectics of Rights and Politics: Perspectives from the Women's Movement. *New York University Law Review* 61: 589-652.

Schuler, M., ed. 1986. *Empowerment and the Law: Strategies of Third World Women*. Washington, D.C.: OEF International.

Schuler, M. and S. Kadirgamar-Rajasingham, eds. 1992. *Legal Literacy: A Tool for Women's Empowerment*. New York: UNIFEM.

Stake, E. R. 1995. *The Art of Case Study Research*. California: Sage Publications, Inc.

Stromquist, N. 1988. Women's Education in Development: From Welfare to Empowerment. *Convergence* 21,4: 5-17.

Stromquist, N., ed. 1992. *Women and Education in Latin America: Knowledge, Power and Change*. Boulder: Lynne Reiner Publishers.

Thomas, A. 1993. The new world of continuing education. In Barer-Stein, T. and J. Draper, eds. *The Craft of Teaching Adults*. Toronto: Culture Concepts.

Thome, J. 1984. New Models for Legal Services in Latin America. *Human Rights Quarterly* 6:521-37.

Tremblay, P. 1992. Rebellious Lawyering, Regnant Lawyering and Street-Level Bureaucracy. *Hastings Law Journal* 43: 947-70.

Walters, S. and L. Manicom, eds. 1996. *Gender in Popular Education: Methods for*

*Empowerment*. London: Zed Books.

- Warden, J. 1975. The curriculum of community education. *Community Education Journal* 3:28-31.
- Weedon, C. 1987. *Feminist Practice and Poststructuralist Theory*. Cambridge, Mass: Basil Blackwell.
- Weiler, K. 1991. Freire and a Feminist Pedagogy of Difference. *Harvard Educational Review* 61:449-74.
- Wexler, S. 1970. Practicing Law for Poor People. *Yale Law Journal* 79:1049-67.
- White, L. 1992. Paradox, Piece-Work and Patience. *Hastings Law Journal*. 43: 853-9.
- White, L. 1988. To Learn and Teach: Lessons from Driefontein on Lawyering and Power. *Wisconsin Law Review* 88:699-769.
- Wilson, R. J. 1991. Human Rights and Empowerment of the Poor. *Beyond Law* 1:49-64.
- Zalik, Y. 1998. Where there is no lawyer: Developing Legal Services for Street Youth. unpublished University of Toronto Masters of Social Work/Bachelor of Laws extended paper, cited with permission of author.