Lorna Fadden, PhD

COMMUNICATING EFFECTIVELY WITH INDIGENOUS CLIENTS

An Aboriginal Legal Services Publication

Grave, Marble Island, "Dead Man's Island," Nunavut, 2014

Marble Island is sacred for Inuit. Visitors are expected to crawl ashore or, according to legend, will die exactly one year later. In 1719 the Knight Expedition set sail to look for the Northwest Passage and never returned - their remains were discovered on this island in 1767. Why an experienced explorer would perish with forty men in sight of land, four days away from a trading post, remains a mystery.

Aboriginal Legal Services

ALS (formerly Aboriginal Legal Services of Toronto) was formed in 1990. As of 2017, ALS has approximately 60 staff and offices in 11 cities in Ontario. ALS's initiatives in criminal law include establishing the Community Council, the first urban Aboriginal alternative justice program in Canada in 1992, and helping with the creation of the first Gladue (Aboriginal Persons) Court in Ontario in 2001. ALS also wrote the first Gladue Reports in Canada and we continue to be leaders in this important work. ALS has also been involved in test case litigation, appearing as intervener at the Supreme Court of Canada in Williams (1998), Gladue (1999), Wells (2000) and Ipeelee (2012), among many others.

Gaa kina gwii waabamaa debwewin
All those who seek the truth
Aboriginal Legal Services

About the Author: Dr. Lorna Fadden

The author, Dr. Lorna Fadden, is a Métis person living in British Columbia. She earned her PhD in linguistics from Simon Fraser University in 2008, where for several years she taught linguistics for teachers and learners of Indigenous languages. Her research is in the area of forensic discourse analysis and she has assisted legal counsel on criminal and civil matters involving language evidence since 2007. She will complete her law degree at Thompson Rivers University in 2018. She can be contacted at fadden@sfu.ca

Author's Dedication

This guide would not have been possible without those who shared with me their experiences with the criminal justice system in Canada. I dedicate this guide to them.

Editors:

Jonathan Rudin

Jonathan Rudin received his LL.B. and LL.M. from Osgoode Hall Law School. In 1990 he was hired to establish Aboriginal Legal Services and has been with ALS ever since. Currently he is the Program Director. Mr. Rudin has appeared before all levels of court, including the Supreme Court of Canada, and has represented ALS before the Supreme Court in R v Ipeelee (among other cases). At ALS he helped establish the Community Council – the first urban Aboriginal justice program in Canada - in 1992, and in 2001 helped establish the Gladue (Aboriginal Persons) Court at the Old City Hall courts in Toronto.

Mr. Rudin has written and spoken widely on issues of Aboriginal justice. He co-wrote the Royal Commission on Aboriginal Peoples' report on justice, *Bridging the Cultural Divide*, and was a member of the Research Advisory Committee of the Ipperwash Inquiry. Mr. Rudin also teaches on a part-time basis in the Department of Liberal Arts and Professional Studies and at Osgoode Hall Law School at York University and also at Ryerson University. Last but not least, he plays the mandolin and sings with Gordon's Acoustic Living Room, a group that plays regularly in Toronto and has a number of videos on YouTube.

Amanda Carling

Amanda Carling is a Métis lawyer who traces her ancestry to the Red River Métis. Ms. Carling grew up in Winnipeg and earned her bachelor's degree at the University of Manitoba. She earned her JD at the University of Toronto, Faculty of Law.

Ms. Carling has worked as Legal Education Counsel with Innocence Canada (formerly the Association in Defence of the Wrongly Convicted or AIDWYC), was a member of the Debwewin Jury Implementation Committee and is currently the Manager, Indigenous Initiatives at the University of Toronto, Faculty of Law. Ms. Carling has been a board member at Aboriginal Legal Services since 2010 and is currently the Board President.

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This guide represents legal information, not legal advice. Please consult the author or editors for more information.

About the Photographer

Johan Hallberg-Campbell was born in the Highlands of Scotland and has been living and working in Canada since 2007. He holds a BA (Hons) from The Glasgow School of Art, and specializes in both photography and film. His diverse projects have been published, exhibited and screened internationally. Mr. Hallberg-Campbell is the recipient of a Canada Council for the Arts award for his ongoing project Coastal, from which many of the photos in this handbook were drawn. He is currently developing Coastal as a photobook.

Mr. Hallberg-Campbell is an award-winning freelance photographer and has been commissioned by numerous publications and institutions around the world. His clients include National Geographic, The Globe and Mail, The New York Times, the Canadian Red Cross, The Walrus, Die Zeit and The Guardian. Mr. Hallberg-Campbell is also a photo editor for Raw View magazine and an independent curator. In venues including VII Gallery (New York) and Pikto Gallery (Toronto), he has curated 45 photographic exhibitions showcasing the work of Canadian and international photographers.

To see more of Mr. Hallberg-Campbell's art visit **http://johanhcampbell.com**

Coastal Road, Newfoundland, 2011

Gulf of Saint Lawrence, 2013

An iceberg in the distance.

Haida Gwaii, British Columbia, 2014

This war canoe sits unfinished in the forest where it fell in the 1860s. The canoe was never completed, likely because the Haida people who were working on it died of smallpox.

Ninety percent of the Haida population died during the 1800s. The population fell to about 600 due to diseases including measles, typhoid and smallpox introduced by Europeans.

INTRODUCTION

"…there may be something about a person's demeanor in the witness box which will lead a juror to conclude that the witness is not credible. It may be that the juror is unable to point to the precise aspect of the witness's demeanor which was found to be suspicious, and as a result cannot articulate to himself or others why the witness should not be believed." [1]

- Justice Peter Cory, in R v Lifchus, on the notion of reasonable doubt and the reality of jurors' instincts.

Framing the problem

In 2015, the Truth and Reconciliation Commission put forth a set of Calls to Action that urge all levels of government and all Canadian institutions to join in the effort toward the reconciliation between Indigenous people and Canada.[2]

The Calls to Action are broad, and address all areas in which state bodies and policies exert authority over the lives of Indigenous people living in Canada. They aim to improve access to health care, education, language and culture preservation, child welfare services, and justice. It is the last in that list, justice, with which we concern ourselves here. In particular our aim is to directly address Calls to Action 28 and 29 concerning the training of lawyers to better handle of cases relating to Indigenous people. We also aim to indirectly address Calls to Action 30 and 38 concerning efforts to reduce the disproportionate number of Indigenous adults and youth in custody, as well as 33 and 34 concerning Indigenous people suffering from fetal alcohol spectrum disorder (FASD).[3]

Among the many issues confronting Indigenous people is their overrepresentation in prisons across the country, which the Supreme Court of Canada in 1999 deemed a crisis and "a sad and pressing social problem." [4] Statistics Canada reports that 3% of the population in Canada is Indigenous; however, Indigenous people comprise 26% of provincial/territorial correctional services populations and in federal correctional facilities 28% of those incarcerated self-identify as Indigenous.[5]

A range of issues under the umbrella of colonialism contribute to this overrepresentation: racism, poverty, addiction and illness, the intergenerational trauma stemming from the residential school system, and cross-cultural miscommunication and misunderstanding between those working within the colonial legal system and the Indigenous people who move through it. It is this last element that we address in this guide.

What this guide includes

Our starting point in this guide is as follows:

Indigenous clients have:

- the right to be represented effectively and in a manner that is respectful of their[6] linguistic, cultural, and personal backgrounds;
- the right to be understood when they are speaking; and
- the right to understand what is being said about them and in relation to their case.

These are rights that few would dispute, and indeed, it is certain that everyone who works to represent Indigenous clients would agree that the system and all those who work within it must do their best to ensure that these rights are safeguarded.

Our aim in preparing this guide is twofold. In Part I, we report on the issues raised by Indigenous clients themselves, who have been or are currently engaged in criminal proceedings. They have generously shared their experiences with us, to help inform the legal community of the obstacles that confront them when building a relationship with their counsel and when appearing in court.

1. R v Lifchus, 1997 3 SCR 320, 118 CCC (3d) 1 [29]
2. Throughout this booklet we will use the terms Indigenous and Aboriginal interchangeably.
3. Truth and Reconciliation Commission: Calls to Action, 2015. http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf
4. R v Gladue, 1999 1 SCR 688, 133 CCC (3d) 385 [64]
5. Adult Correctional Statistics in Canada, 2015/2016 http://www.statcan.gc.ca/pub/85-002-x/2017001/article/14700-eng.htm
6. "They", "their" and "them" will be used as gender neutral singular and plural pronouns throughout.

In Part II, we introduce the features of Aboriginal varieties of English and alert the reader to how linguistic prejudice can disadvantage their clients.

What sets this guide apart from other instructional materials about working with Indigenous clients is that we address the problem from a linguistic point of view, from a client point of view, and from an Indigenous point of view.

Tofino, British Columbia, 2014

Tofino is located in Clayoquot Sound, inhabited by the Nuu-chah-nulth people for at least 5,000 years. In 1792, Tofino Inlet was named after Spanish hydrographer Vincent Tofino during a European exploration of Vancouver Island. Tofino was a fur traders' post and took shape as a town by the late 1880s as more settlers arrived, mostly from Norway, Scotland and England.

PART I:
Indigenous Clients, in their own words

Moose Cree First Nation, Ontario, 2012

Houses sit close to the Weeneebayko General Hospital.

Existing pamphlets, guides, and articles advise lawyers well on what is necessary when representing an Indigenous client. Some of that advice is called upon here:

- Take the time to learn about the Indigenous communities in your area. There may be community resources available to your client.
- Explain your client's charge and their options in the plainest possible language. Understand that they may not immediately trust you or those you are working with.
- Take the time to ask whether they understand something that has been explained to them.

These are very useful recommendations and we echo them, but we also think it worthwhile for lawyers to hear from Indigenous clients, in their own words, on what it's like to be a client receiving legal services. To this end, and from an Indigenous perspective, we carried out a survey of several people at various stages of the criminal justice process: Some newly charged and released with conditions, some facing trial, some awaiting sentencing, some incarcerated, and some with years since their last interactions with the justice system. We heard rural and urban voices, men and women, young and old, people who had been involved in crimes ranging from minor to very serious. Despite their varied backgrounds, a handful of issues were common to all.

IN THE LAWYER'S OFFICE

A range of issues were raised by our participants. Among the most common was a feeling that their side of the story was not heard, and that the process was confusing which added to their and their families' distress. Many were upset to have no active role in their case, despite the severity of outcomes they were facing.

YOUR CLIENT'S SIDE OF THE STORY

Several of our participants felt that their stories were largely unheard, and we surmise this is for two reasons. First, some clients are reluctant to volunteer information; this may stem from a general distrust of those involved in the criminal justice system, even those whose job it is to represent them, or it may come from the client's own assumption or past experience that because they are Indigenous, and they are in trouble, they aren't going to be believed.

> ***"No one asked me what happened. I never got to say my side."***
>
> ***"And when it came to your own side of the story, what did you tell your lawyer?"***
> ***"Nothing. She didn't ask."***
>
> ***"Did you tell your lawyer those things weren't true?"***
> ***"No. They wouldn't believe me anyway."***
>
> ***One guy [lawyer] said 'I've done fifty cases like this, this shouldn't be a problem.' They just, they assume a lot, and every case is not the same. There's peoples' backgrounds and peoples' conditions."***

Second, some feel that their case is built from police information or the file(s) that the crown has prepared. Even when time and resources are limited, no defense is mounted without having taken note of the client's version of events, and clients need to know that their case is built taking into account their information. (We revisit the issue of resource and time limitations in a later section.)

> ***"At what point did you tell your lawyer what happened?"***
> ***"I didn't. He said the crown told him."***
>
> ***"What did your lawyer say to you or ask?"***
> ***"She said she didn't have to because she read the police report."***
>
> ***"So you told your lawyer what happened, then what happened?"***
> ***"Nothing! He just said what the crown said. He didn't say anything I said."***
>
> ***"Were you able to tell your lawyer, "Hey, here's what happened?"***
> ***"I done that before, but I didn't get nowhere. Whatever she wants it to be is the way it goes."***

ROLES OF PARTICIPANTS IN THE JUSTICE SYSTEM

Anyone who finds themselves responding to a charge and appearing in court will likely find the process intimidating, impersonal, and confusing. Compounding this problem is a lack of understanding of who does what along the way. Many of those who we consulted were unclear about what their lawyer was supposed to do for them, unclear about their charges and conditions, and unclear about how to access an Aboriginal courtworker and what that assistance could do for them. It is worth noting that even those who have been through the system on previous charges may still have difficulty understanding this complex process.

> ***"I don't know how any of this works."***
>
> ***"I sort of knew what my lawyer was supposed to do, but not totally."***
>
> ***"I got sent from court to some clerk, then to someone in another office but I don't know why. Just, I had to sign my conditions. I had a question about my conditions but they just read them to me again. I didn't know who I could ask."***
>
> ***"Lot of people I know up at the jail just don't understand what they're up there for."***
>
> ***"Like when people get charged around here, they don't know what's going on, they just get railroaded."***
>
> ***"I was so naïve. And no one told me what was happening. I wasn't prepared and I put all my faith in them."***

A few moments' explanation would go a very long way in terms of clarifying some of the mystery that your client faces in a complicated process. It may also help to uncover facts relevant to your client's case.

YOUR CLIENT'S HEALTH CONCERNS

A person's health is a sensitive matter, and not one that should be asked about immediately or bluntly. Rather, inform your client that in order to best represent them, it would be useful to know whether they have any health concerns that might affect their case more generally. The subject can be broached delicately, asking whether there is a household history of substance abuse, FASD, diabetes, etc., before asking more directly about the client's own conditions.

- Is your client diabetic?
- Is your client experiencing drug withdrawal? Alcohol withdrawal?
- Does your client have epilepsy? Seizures?
- Does your client have mental health issues for which they are being treated? Issues for which they have not yet been treated?
- Is your client injured?
- Does your client have FASD?
- Is your client pregnant? Are they a new/nursing mother?

These are all issues that can affect your client's behaviour and attention to their case and hence have some bearing on it. At the very least, many of these conditions will have to be tended to and monitored while the client is in custody.

Moose Cree First Nation, Ontario, 2013

This ice road is constructed annually to connect the coastal communities of Attawapiskat, Fort Albany, and Kashechewan to Moosonee in the winter. From Moosonee there is a rail link to the main Ontario provincial highway system at Cochrane.

"It took four days in jail before I could get my medication. I take anti-psychotics and it's bad news if I go off."

"My wife got locked up and she has seizures. I told her lawyer she has seizures. Said he'll tell them but he didn't."

"Probably needed stitches but I wrapped it myself with my shirt. I had surgery later because the doctor said it was pretty bad." (Referring to a deep stab wound that later affected the function of the speaker's hand.)

IN COURT

Preparation for court, whether it is a first appearance, a bail hearing, a trial, or sentencing, should include consideration for the client's circumstances, including the linguistic issues we discuss in Part II if your client is going to speak at all.

"TRANSLATE" THE LANGUAGE OF THE COURT

Many clients find that they have no idea what is being said when they first appear in court; crown and defense each take their position and speak in rapid, apparently coded language. Take a moment before your client's appearance to tell them that what they're about to hear may not make a lot of sense, but that you'll explain it to them. And then ask whether they understand.

"Deals were made without no one consulting me."

"I always get denied bail. But one time a lawyer did a bail plan but didn't ask me anything. Then I had thirty-three conditions. I couldn't do nothing without violating my conditions. It said I have to go to work, but I'm not allowed at my job. So I violated things."

"One lawyer represented me good. And always asked like if I didn't understand like the words and stuff, like habeas corpus and those kind of things."

PREPARING YOUR CLIENT FOR TRIAL

Bearing in mind the importance of informing the court if your client speaks Aboriginal English (discussed in Part II) , you can also help your client to meet the court partway. Explain, for example, why eye contact with the judge or jury might help their case. We do not suggest that you urge your client to change their behaviour such that they fully adopt the customs of the colonial system in which they are forced to participate; rather a small gesture, such as occasional eye contact, could help to improve your client's credibility with small actions with which other participants in court are already comfortable.

Should your client testify, let them know that the questioning will feel long and repetitive, and not to become frustrated. Above all, do not let them be surprised by the aggressive nature of the cross-examination.

"All I remember is that he told me to look at the jury, which I found unnatural. He didn't tell me much. I wasn't sure what I was supposed to do. I thought I made enough eye contact, but I don't know. Anyway, I see now maybe why the jury didn't believe me. It was horrible."

"Jesus the crown was awful and asked questions like I was stupid! I know it's his job to ask me questions but why be like that?"

"It just went on and on. And I didn't want to answer anything anymore."

GLADUE SUBMISSIONS AND GLADUE REPORTS

Gladue considerations are intended to ameliorate the over-representation of Indigenous people in the prison system by taking into account life circumstances that led to clients' involvement in the criminal justice system. Gladue reports can be prepared by trained writers who provide information on a person's circumstances to the court. A number of our participants, sadly, had either never heard of a Gladue report, to which they are legally entitled, or knew of it, but had been unable to have a report prepared in support of their case.

"I never heard of a Gladue report. I didn't know about psychological assessments. I didn't know that with Fetal Alcohol Syndrome that things can be done. I've had fifteen years of dealing with the justice system and in fifteen years I never had no one ask me 'why are you the way you are?'"

"I get the shit end of the stick! I'm supposed to just plead guilty. Nevermind I'm a residential school survivor and that fucked me up. No one wanted to hear about that. No one wanted to hear about the drugs and alcohol. They just wanna get a deal and get me prosecuted."

Some clients don't understand the purpose of a Gladue report, and because the report sheds light on past negative experiences, including some very difficult family and community circumstances, they feel that the information in a report is only going to prejudice their case, or have no mitigating or justificatory effect.

"(They) put in it I have anger management issues. Said I got bipolar and anger. First, I don't. Why tell the judge that?"

"I think lawyers are kinda numbed out about the bad stuff that happens to us, so we can say all these bad things happened, and residential schools and alcoholic parents, but I don't think it's gonna make a difference."

Your client needs to be informed of this avenue very early in the process because if they decide to pursue it, it can take considerable time before a report can be prepared. There are often lengthy wait times owing to a lack of qualified writers.

"Have you heard of a Gladue report?"
"Oh yeah, I asked for that five times. There's like one guy in the whole territory that can do it."

Gladue reports are not universally available across Canada. Where such reports are available they are a valuable source of information about your client and their circumstances. The unavailability of Gladue reports does not relieve the lawyer of providing information to the court. Absent an informed waiver from your client, the court will expect Gladue information and submissions from counsel.

When reviewing a Gladue report with the court or making Gladue submissions, keep in mind that although a client may have revealed information to the Gladue writer or to you in private, that does not mean the client is ready to hear the same information repeated in open court. It is important to ask your client what they do not want discussed in open court. If that information is in a Gladue report you can just refer the court to the relevant pages.

If there is no Gladue report, raise the issue with the crown before submissions to see what arrangements can be established. If you cannot reach an accommodation with the crown you may have to raise the issue with the judge.

PRISON, PAROLE, AND PROBATION CONDITIONS

The need for in- and out-of-custody programs, whether for education or employment purposes, or mental health or addiction counseling, cannot be overstated. The legal problems clients have are often directly related to a lack of education and employment opportunities, and/or addiction and mental health crises. In-custody programs are intended to ameliorate some of those factors so that such problems won't follow the client after their release.

While the matter of in-custody programs might seem more in the domain of prisoners' rights and social work, a client's program participation can be a significant factor in his or her release. A lawyer working on a client's release should be aware of the appropriateness or usefulness of these programs in order to help their client most effectively.

Some of our participants were satisfied with the programs they attended; some were not. Generally speaking, if they were unhappy with the programming offered to them, it was because they felt that some other help or training would have better addressed the problems confronting them, or they were unclear on why they were placed in a particular program in the first place.

"Tell me what it is before you put me in it."

"Do I get a choice?"

"Sometimes you're all in there together [group therapy] and it can be someone there whose ex-boyfriend you're seeing now and you don't wanna talk."

Some programs have a cultural element attached to them, or the program is fully rooted in cultural practice, and many clients are pleased with a healing approach designed and carried out by Indigenous leaders. However, we point out two potential pitfalls associated with culturally-based programs. First, while it is not financially possible to represent the Indigenous background of every inmate, a one-size-fits-all approach to First Nations programs is not desirable. If a client isn't reaching intended goals, it may be in part due to their feeling culturally out of place.

> ***"Everyone there's Tsilhqot'in (BC) but I'm not. I liked their stuff, and we all do sweats but it's different. The Elders were all nice though." (Participant from Québec.)***

Second, the spiritual or religious background of such programs may be inappropriate for the client who is neither spiritual nor religious. The assumption that all Indigenous people subscribe to a traditional belief system is erroneous. Participation would be inappropriate for the Indigenous atheist, and alternatives should be sought. Further, some people may have adopted Christianity and may take solace in those traditions rather than Indigenous programs. While the inclusion of traditional Indigenous faith programs is a positive innovation, it may not serve everyone's spiritual needs.

> ***"I'm not religious, even though I guess I should. But anyway our Creator stories aren't the same."***

When reviewing the reports on your client's participation in various programs, be mindful of whether a given program was well-suited to their needs, or whether there are any shortcomings regarding the program on file. For programs to be their most effective, they must be well run, and specifically target the issues the client is confronting.

> ***"I put in the box [where inmates' official complaint forms are collected and given to prison directors] 'Hey, we're just jumping through their fuckin hoops. No one likes these things [parenting courses]. The counselor sure didn't. She was skipping pages in the book and said we didn't need this and we didn't need that.'"***

If your client's programs did not address their needs, it may be the case that their performance in that program will have suffered, and that can affect their eligibility for parole or conditions upon release.

TIME SPENT WITH CLIENTS

The vast majority of Indigenous clients are represented by provincially or territorially funded legal counsel which, of course, means tight caps on the amount of compensated time spent in preparation for a case, either because counsel is on salary for legal aid and has a large caseload, or because compensable hours are tightly constrained by legal aid budgets, and lawyers might find themselves working many hours unpaid.

While these problems are endemic to legal aid systems in all of the provinces and territories, it is worth illustrating what that lack of time means for the clients who may not be aware of the limitations under which their lawyers are working, and for the

lawyers who are frustrated by systemic constraints.

> ***"How long were your visits?"***
> ***"Usually about uh, lucky if I get fifteen minutes for fuck sake. I had a really good lawyer one time, she spent an hour with me."***
>
> ***"Did you visit with your lawyer before you saw the judge?"***
> ***"Just one time right before I went into the courtroom. That's the only time I saw her."***
>
> ***"In eighteen months, I seen him three times. And not for long. The first time I met him, he threw a plea deal at me and I was with him for maybe two minutes?"***
>
> ***"They didn't dig into any facts. They gotta dig into the facts. They didn't listen. They should listen. Why did they just hit the surface then give up?***
>
> ***"What would you do differently?"***
> ***"I would sit down and talk to them. I would tell them how important an alibi is. I didn't even know what an alibi was."***

WHAT CAN YOU DO ABOUT THIS?

We acknowledge the limitations of building a case on legal aid, and we hope that you will join the chorus of voices calling for improvements to funding for legal aid work, so that the time it takes to prepare a case and to prepare your client are adequately funded.

Given the difficult nature of Indigenous peoples' relationship with the justice system, and given the constraints on legal aid, we would urge counsel not to take on Indigenous clients if they cannot or will not provide the extra resources needed. No one is obliged to take on a client they cannot fully and appropriately represent.

Moose Cree First Nation, Ontario, 2012

Trees line the entrance to Moose Cree First Nation. Water taxis dock here in summer and the winter ice road connects at this point, continuing north to Attawapiskat on the west side of James Bay. In 1673 in this region the Hudson's Bay Company established a fur trading post where Cree people gathered and were exposed to European customs. Moose Factory became Ontario's first English-speaking settlement.

PART II:
Language and Law

Moose Cree First Nation, Ontario, 2013

The Bible was published in Western Cree in 1862 by the British and Foreign Bible Society. It was translated by William Mason, a missionary, and his wife Sophia Thomas Mason, whose mother was Cree. This was the second Bible printed in an Indigenous North American language. The Bible has remained in use in Cree communities to the present day. It has been out of print for many years.

Language plays a role in everything we do and in all our interactions. Nowhere, however, is language more powerful than it is in the legal system. Evidence is collected in the form of statements that are submitted to courts; questions are asked and answered that steer the course of trials - determining, in effect, what witnesses and defendants can and cannot say; a short utterance from a judge can result in a conditional discharge or a prison term. The centrality of language to legal proceedings cannot be overstated, and for that reason, it is important that we have a full understanding of the assumptions and biases that we work with as we carry out our functions in the legal system.

LANGUAGE, CULTURE, AND THE LAW

Lawyer: *Try not to talk like that.*
Client: *Like what?*
Lawyer: *That way you talk, don't do that in front of the judge.*

This exchange was relayed by one of the Indigenous people who were consulted when creating this guide. In preparing his client for trial, this lawyer drew attention to the fact that his client, a 40-year-old man in the Whitehorse area, should not speak the way he ordinarily does because it would likely not be received well in court.

WHAT WAS THIS LAWYER TALKING ABOUT?

Everyone reading this guide speaks a variety of English. For most, it's a variety of "Standard English"[8], typical of a formally educated person, born and raised in Canada, and likely not a member of a minority community. Speakers of Standard English (SE) are often described as having no accent at all. There are regional variations, and ordinarily you can tell the difference between someone from British Columbia, and someone from Ontario, and someone from Nova Scotia. But SE generally garners no attention when it is heard, because it is tacitly regarded as the default.

When someone does not speak SE, listeners notice within a few words, and in moments, have consciously or unconsciously made a quick assessment of some or all of the following characteristics of the speaker:

- the region from which they come;
- their general level of education;
- whether English is their first language or whether they have an accent;
- sometimes their age.

This assessment can be favourable or at least neutral if someone's speaking SE. When they are not, however, unfortunate assumptions can be made. Think about the authority conveyed by an older male voice, often with a British accent, or someone who sounds like Peter Mansbridge. Contrast that with an exaggerated Southern US drawl, often used to portray a person as rural, poor, and uneducated. Both are mutually intelligible varieties of English, but the former comes with social prestige and the latter with stigma. This is linguistic prejudice.

8. We fully recognize the value-laden nature of the use of the terms "standard English'" or "dominant variety"; however, these are the terms used in the linguistic and sociological literature to represent the language of the majority used by government, media, in education, in law, and other institutions. The terms *standard* and *dominant* are by no means an indication of superiority, rather, they reflect the language's pervasive, widespread use across society.

In Canada, Indigenous peoples, particularly those living outside of urban areas, speak varieties of English that sound "accented" to many urban dwelling, non-Indigenous Canadians. Some recognize that accent as one of the many varieties of English spoken in Canada, but to many it signals an outsider, someone on the fringes. Sadly, it's been caricatured in movies and television for decades: think of the Lone Ranger's sidekick Tonto speaking a broken, flatly intoned version of English.

The prejudice that arises from speaking with that accent can harm its speakers tremendously, as the quote that opens this section illustrates.

LINGUISTIC PREJUDICE

The outcome of linguistic prejudice is very real: all too often Indigenous people report being locked up for being drunk because of police mistaking pronunciation differences for slurred speech; Elders have been denied medical care because emergency room triage staff assume intoxication rather than stroke or seizure; children are over-diagnosed with pathological speech disorders and prescribed time-consuming and unnecessary speech therapy, when in fact they speak the language of their community. All of these are examples of the on-going institutionalization of Indigenous people in Canada, in part because of linguistic prejudice.

WHAT IS ABORIGINAL ENGLISH?

Aboriginal English (AE) is not a single variety of English. Rather, it's a catch-all phrase for a range of dialects spoken by many in Indigenous communities, rural and urban alike. Across First Nations in Canada and across North America, many Indigenous people use similar varieties of English to construct an Indigenous identity.[9] Sometimes called Indian English or a Rez accent, these varieties share many features, some of which we will highlight. AE is characterized by different pronunciations, slightly different grammar, and most importantly for our purposes, some markedly different discourse behaviour. But first, we'll give a brief background of its origins.

9. See Newmark, K., Walker, N, Stanford, J. (2016). "The rez accent knows no borders: Native American ethnic identity expressed through English prosody." Language in Society 45. 633-664.

WHERE DID ABORIGINAL ENGLISH COME FROM?

At the time of contact between Indigenous people and the new arrivals who spoke English,[10] contact languages arose to facilitate the immediate communication needs between peoples. These contact languages, also called pidgins, were grammatically simple, with limited vocabularies drawing on elements from both contact languages.

10. We recognize French as a colonial language as well, though our focus is on English.

As time moved on, some contact languages took on a life of their own, and became languages in a fuller sense, with a complete grammar, large vocabulary, and standardized, consistent pronunciation. This is (very generally) what happened with Michif, the language of the Métis, one variety of which draws its nouns from French, its verbs from Cree, and elements of its sentence structure from both.

Other contact languages, however, moved more toward English or French in terms of their grammars and pronunciation. The shift away from the Indigenous languages in favour of the colonizers' language is due to very strong economic, social, and political factors. Most, if not all, residential schools strictly prohibited the use of Indigenous languages, which meant quick erosion. As they became less prominent over time, a range of Aboriginal varieties of English arose.[11]

11. This is a simplified account of how Indigenous varieties of English came about, and at this time there is no single source on Aboriginal English. For an overview, see Ball & Bernhardt (2008) among other resources at the end of this guide.

Haida Gwaii, British Columbia, 2014

A loggers' cabin, from around 1900, sits in the forest partially preserved and hidden by the tree canopy. The resident who brought me here had not previously shown it to anyone. He is interested in Haida history, but also in the history of the European settlers, his ancestors. He feels guilty about their invasion of Haida Gwaii's resources, people, and culture.

Nonstandard dialects, then, are not inadequate languages waiting to be fixed. They have grammatical and cultural integrity, and this is why they have persisted despite considerable bias against them. (Ball et al. 2006)

ABORIGINAL ENGLISH: PRONUNCIATION, GRAMMAR, DISCOURSE STYLE

A language is essentially a collection of dialects. There is no "true" English; rather, it's a collection of dialects spoken across Canada, the US, the UK, Jamaica, Singapore, South Africa, Zimbabwe, and more - and they're all very different. There is no prototypical Cree or Salish either; rather, they're also a collection of dialects: Plains Cree, Woods Cree, Oji-Cree, etc. Similarly, the Coast Salish territories are home to Sḵwx̱wú7mesh , Halq'eméylem, Xacuabš, to name only a few.

All languages, and all dialects of them, are composed of: a sound system, also known as the phonetics, which is the dialect's unique set of consonants and vowels; a grammar consisting of the words, their meaning, and the sentence structure that arranges them; and the discourse styles, which include the intonation (the ups and downs of the voice), the rate of speech, use of pauses, bodily and facial gestures, eye contact, and all the other behaviours that help to give meaning to speech.

DOES YOUR CLIENT SPEAK ABORIGINAL ENGLISH?

Below you'll find a dialect sketch comparing some of the features of Standard English (SE) and Aboriginal English (AE).

PHONETICS

As we said above, there is no single Aboriginal English. What this means in terms of pronunciation is that a range of phonetic characteristics exist across the country because of the earlier influence of various Indigenous languages. Bear in mind that accents can be strong, meaning they sound quite different from the standard, or weak, meaning there are few detectable differences from the standard.

Common to many of the AE dialects though, particularly from Ontario west to British Columbia, are the following:[12]

12. See the resources section at the end of this guide for work on Aboriginal English in Canada

ABORIGINAL ENGLISH		STANDARD ENGLISH	
d	dere, dese	**th**	there, these
t	tanks, trow	**th**	thanks, throw
r	more retroflex [13]	**r**	less retroflex
o (boat)	lips more round	**o**	lips less round
a (father)	jaw positioned lower	**a**	jaw positioned higher

13. Retroflex means that the tongue tip is turned slightly back in the mouth, pointed more toward the roof of the mouth, than toward the back of the front teeth. While the comparison isn't exact, think of the [r] as sounding more like that which we hear in Nova Scotia or Newfoundland.

In much of coastal British Columbia, it is not uncommon to hear [s] instead of [sh]:

ABORIGINAL ENGLISH		STANDARD ENGLISH	
s	fis, seet	**sh**	fish, sheet

In the prairie provinces you might hear consonants [p] and [c/k] become [b] and [g] respectively when in the middle of word. Also, [s] can be pronounced [z], and [ch] as [j]:

ABORIGINAL ENGLISH		STANDARD ENGLISH	
b	abble	**p**	apple
g	agorn	**k/c**	acorn
z	grizzle	**s**	gristle
j	jip	**ch**	chip

In words ending in more than one consonant, often the final consonant is deleted.

ABORIGINAL ENGLISH	STANDARD ENGLISH
burs	burst
tole	told

GRAMMAR

VERB ENDINGS

Verb endings in Aboriginal English can differ from Standard English in a few ways. In Standard English, the present tense verb is marked by nothing, or -es or -s for the third person. Many varieties of AE have only a single form for all pronouns in the present tense.

ABORIGINAL ENGLISH	STANDARD ENGLISH
I go, you go, he go, she go, we go, they go *OR* I goes, you goes, he goes, she goes, we goes, they goes	I go, you go, he goes, she goes, we go, they go

There may also be instances where the past participle is used where SE would use a past tense.

ABORIGINAL ENGLISH	STANDARD ENGLISH
(He) seen the guy leave.	He saw the guy leave.
My sister been there.	My sister was there.

PRONOUNS

It's not uncommon throughout Canada (and parts of the US) for speakers of AE to omit a subject pronoun. Pronouns are the small words that stand in for the names of people and things: I, you, she, he, it, we, they.

You know Jim? Works at the co-op. (Rather than, "He works at the co-op.")

DOUBLE AND TRIPLE NEGATIVES

Double negatives are fairly common in many varieties of AE, just as they are in many other languages (such as French: Je ne sais rien = I do not know nothing = I don't know anything). The listener can expect double negatives and interpret them as they would a negated sentence in SE.

I don't never ask for bail cause I know I won't get it.

Couldn't do **nothing** that morning.

DISCOURSE STYLE

How we say things carries as much meaning as the words we use. When two speakers belong to the same speech community, nothing is amiss. They read each other's intonation (the ups and downs of the voice), they know how much or how little of a pause to leave between one speaker's turn and another's, and they understand what gestures and facial expressions contribute to the message, because they use the same ones themselves. It's in our discourse styles that cultural norms play out, and it's in our discourse styles that a message can be misunderstood.

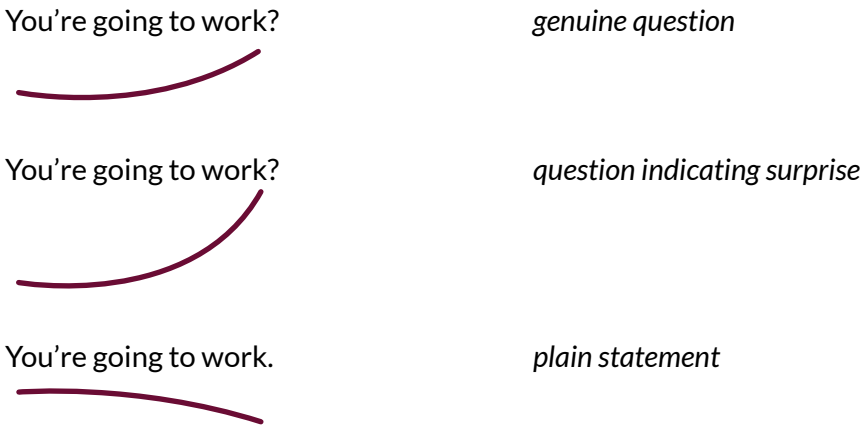
Have you ever heard someone speak in a staccato, brusque manner, and thought, "wow that sounds rude"? To the SE speaker, someone who is speaking rapidly, with a downward intonation, will sound pushy and unpleasant. Similarly, have you spoken with someone who won't make eye contact? Or someone who takes a long time before answering you? What is your assessment? Are they being deceptive? Are they hiding something? At the very least, their behaviour departs from what a Canadian Standard English speaker expects.

When we do not share a discourse style with another person, it's possible to misinterpret the other person's communicative intent. The discourse practices common among many Indigenous communities differ from those of other speech communities, and as a result, some unfortunate assumptions can occur.

> *Existing pamphlets and articles on representing Indigenous clients always encourage the lawyer to slow down, talk less, listen more, and take their time, often citing reasons such as nervousness or mistrust on the part of clients. This is sound advice, but rarely is it discussed why those suggestions will help. Following this advice will help you and your client build rapport by reducing some of the differences in your speaking styles.*

INTONATION

Intonation is at the intersection of phonetics and grammar, in that the highs and lows of the voice can indicate the function of the words. Think of the difference in meaning of the following in SE, where the maroon lines indicate the rise or drop in the voice.



Most varieties of AE across Canada are marked by intonation patterns that are similar, but compressed. Whereas SE speakers' highs are higher and their lows lower, the range is narrower in AE. This difference might mean a misinterpretation of a question; did the speaker just ask a genuine question, or is it a question indicating surprise?

STRESS

In SE the placement of stress in the sentence affects the emphasis attached to the words, more stress means stronger emphasis. Contrast the following, where the bold word indicates the primary stress of the sentence, and hence the emphasis.

No, I **like** Maggie. OR
No, I like **Maggie.** (as opposed to someone else)

In some varieties of AE this is not always the case, because the natural placement of the stress is later in the sentence regardless of emphasis, that simply being the "melody" of the language. The stress - that is, the most prominently spoken word in the sentence - that comes later in most varieties of AE than it does in SE.

No I like **Maggie**.

To the SE ear, an emphasis may be heard where one is not intended.

Differences in intonation ranges and contours, and the placement of stress all affect meaning. While the differences might not seem significant, they are exactly the kind of "under the radar" language features that lead to incorrect assumptions and miscommunication, and could ultimately lead to devastating miscarriages of justice.

LONGER PAUSES BETWEEN TURNS

Among the more salient features of AE varieties is a higher tolerance for long pauses between speakers' turns. In many Indigenous communities, leaving a longer pause before taking the floor is a politeness strategy, leaving enough of a gap to ensure the first person speaking is finished before the next speaker begins his or her turn. Short pauses and turn overlap are uncommon and considered rude.

SPEECH RATE

A notable difference between SE and AE is the speech rate: Standard English is generally spoken more rapidly than Aboriginal English; that is, the SE speaker will produce more syllables per second on average than the AE speaker. As a point of contrast, English is generally spoken at a slower rate than European Spanish and Japanese. Expect a slower rate of speech with many Indigenous speakers, particularly those middle-aged and older. There is no particular reason for variation in speech rates from language to language, other than what has evolved over time as customary.

EYE CONTACT

Eye contact is another culturally-bound conversational behaviour. Speakers of SE learn that eye contact is necessary to convey sincerity and attentiveness, and if someone averts their gaze too much, or doesn't look you in the eye at all, then you might assume they are being untruthful. This is not the same in other speech communities, including many Indigenous communities. Too much eye contact is considered to be, at the very least, awkward, and in the worst case, rude and confrontational. Further, in some speech communities, it is not customary to maintain much eye contact with authority figures. It is easy to see how too much or too little eye contact can be misinterpreted by people who are operating under different rules.

HOW MUCH OR HOW LITTLE IS SAID

Asking about the obvious, or asking about the same thing repeatedly, has an important function in witness interviews where every detail is potentially relevant and there is no room for ambiguity. However, discussing the obvious and repeating oneself is not something some AE speakers are accustomed to, and what might seem like "small talk" is not customary, particularly if they are older.

How much or how little is said in response to a question can depend on culture, as well as the relationship between the speakers. It is quite common for some members of Indigenous communities to say less in response to a question posed by someone they are not in a close relationship with. This can impede a conversation in which a lawyer is trying to elicit details about a case. It might also affect the way a lawyer gets instructions from an Indigenous client.

> **Different discourse styles can lead to cross-cultural miscommunication**
>
> *A shared speaking style between two people means less chance of miscommunication. When people speak the same language but with different accents and different discourse styles, they can make erroneous assumptions of one another.*

Numerous studies in the psychology and linguistic literature have shown that

- slower speech,
- less eye contact,
- longer pauses, and
- brevity or topic avoidance

are all associated with speakers who are being uncooperative and/or deceptive![14] And hearing an accent can result in linguistic prejudice. The combined effect of an AE accent and discourse style can be interpreted unfavourably by the uninformed listener, and in a legal context, this can have disastrous consequences.

14. See the list of resources at the back of this guide for more information.

The lawyer who told our consultant not to "talk that way in front of the judge" was on to something, and that something was exactly what Justice Cory wrote in R v Lifchus: that sometimes a trier of fact just can't put their finger on it, but something is amiss.

But rather than having witnesses change how they speak, the legal community needs to accommodate and appreciate linguistic differences stemming from cultural affiliation. So if you are speaking with an Indigenous client, and you feel like they are not being forthcoming or cooperative, or that they aren't going to present well in court according to expected modes of speaking, the court needs to know that your client may very well be operating within a set of conversational behaviours typical of their speech community.

WHAT SHOULD YOU DO?

If you are working with an Indigenous client, first determine whether they

- speak with the accent we have described
- speak a little more slowly than you do
- make less eye contact
- linger before answering your questions
- show a reluctance to volunteer details or elaboration

If some or all of these features are present, your client likely speaks a variety of Aboriginal English.

- Don't assume that any of the described discourse features indicate uncooperativeness, deception, or anything else that hampers communication.
- Don't assume that his or her accent indicates a lack of education or sophistication.
- Explain why you're asking in great detail and repetitively about the events that they were involved in.

WHEN WORKING WITH YOUR CLIENT

Be prepared to spend a little longer with your client than you might otherwise spend. Given the longer pauses between conversational turns, and a general reluctance to produce facts that are not explicitly asked for, an interview that elicits a richer picture of what your client may have been involved in will take more time.

IN PREPARING YOUR CLIENT, PREPARE THE COURT

Instruct the court on the nature of your client's accent. As part of your submissions, include a few words on the nature of your client's variety of English. It will help to avoid potentially devastating assumptions. Sources you might cite include this guide, and the literature cited in the references. You can also instruct the court that the varieties of English spoken by Indigenous people in Australia have been recognized by Australian courts and their legislatures, and that the differences in pronunciation and meaning between Standard Australian English and that which is spoken by the numerous Indigenous groups have been accommodated in police interviews and in the courtroom. While Indigenous peoples in Canada and Australia speak very different varieties of Aboriginal English, the effect has been the same when Indigenous populations interact with the dominant society's criminal justice system. You can also inform the court that there are other public domains in which Aboriginal English is recognized and practitioners accommodate the communicative differences – domains such as education and speech therapy, and nursing and medicine. If warranted, an expert can be consulted from the field of sociolinguistics.

When you are working with crown counsel, help them to understand that the accused is not necessarily being uncooperative or evasive. What sounds like an uncooperative speaker can in fact be a polite and deferential one, working under difficult circumstances.

For legal counsel who work in rural areas, it is possible that a new Indigenous client has had little interaction with non-Indigenous institutions. This might bring about even greater apprehension when it comes to active participation in your client's defense. Similarly, if your client's interactions with non-Indigenous institutions have been largely negative – i.e., they or their parents are residential school survivors, or have spent a great deal of time in the foster system – you might also expect apprehension toward you and anyone working with you. Justice Murray Sinclair, reminds Canadians that there is not an Indigenous person in Canada who has not been personally affected by the residential school system.

Churchill, Manitoba, 2014

Indigenous people in the North have had working relationships with dogs for at least 4,000 years. They used dogs as a means of transportation, for hunting and survival. Indigenous people taught European settlers how to use dogs for hunting and trapping. From the 1870s the Canadian Mounted Police used sled dogs for patrol and transportation.

In recent times the use of dog teams as a form of transportation has diminished with the introduction of the snowmobile and similar vehicles. Some trappers today still prefer to use sled dogs, as they do not break down.

A NOTE ON FETAL ALCOHOL SPECTRUM DISORDER AND LANGUAGE

It is a sad fact that a relatively large number of those who come in contact with the criminal justice system are affected to varying degrees by fetal alcohol spectrum disorder (FASD) and in many of those cases, the cognitive impairment that results can be realized in both in terms of their perception and expression of language. FASD is caused by a mother's alcohol consumption while pregnant. The effects on the child can range from mild to severe, encompassing cognitive and linguistic deficiencies, difficulties with impulse control, and tendencies for drug and alcohol abuse. It is a lifelong condition.

As you learn about your client, and you inquire of any medical issues that may inform your approach to their case, the possibility of FASD should be raised. If your client has FASD, it is imperative that you simplify your language in specific ways as you interview them and as you are questioning them in court. It is imperative as well that, should someone presenting with FASD be cross-examined, the cross-examining lawyer should also be aware of the impairment and adjust their language accordingly.

Diagnosing FASD requires medical expertise. Sometimes, the outward effects are visible, e.g., certain facial characteristics, such as a thinner, flatter upper lip, and narrower eyes may be apparent in more severe cases. Very often, however, no obvious characteristics are present. When interviewing your client, do not ask outright whether FASD is in their medical history, rather ask whether there are lifelong issues that might have effects on their behaviour or understanding. This might point you to a possible avenue to explore.

The most important thing you can do when directing questions and assertions at a witness with FASD is to use sentences with a very simple syntax. Simple sentences have a basic subject, verb, and object, with minimal elaboration on those elements. A very brief grammar refresher illustrates:

The witness	saw	two men.
subject	*verb*	*object*

Contrast this with the same subject, verb and object, but with much elaboration:

The witness for the crown	saw	two men running from the store with a stereo.
Subject	*verb*	*object*

For someone with FASD, tracking the basic elements of the sentence (witness + see + men) becomes quite difficult as words and phrases are added.

Instead, you can break the sentence into three simple sentences:

The crown's witness saw two men.
The two men were running from the store.
They were carrying a stereo.

It is also important to eliminate sentences with embedded elements. These are relative clauses and subordinate clauses.

Relative clause: This is [the book [that my gran gave me]]
The relative clause - that my gran gave me - contains all the elements of another sentence, and it describes something about the noun (book) that precedes it.

Subordinate clause: I really don't know [if James was in the car with her.]
Again, the subordinate clause has a relationship with the word that precedes it. In this case, what is known, or, the object of know, is a full clause, containing the elements of a full sentence in and of itself: if James was in the car with her.

The relationship of the clauses to the elements that they describe is not easily grasped by someone with the cognitive limitations, even if the vocabulary is simple and straightforward.

Do not ask:

*Is the **man** with the scar you saw at Jimmy's house party that night the same one who **came to your house** the next morning?*

The key elements (bolded) have too much information between them.

Instead ask:

Were you Jimmy's party that night?
Did you see a man with a scar?
And did the man with the scar also come to your house?
And when did he come?

Breaking the elements apart in this manner allows the client to track the important elements across a series of sentences in a manner that reduces the chances of confusion. Another example:

Do not ask:

Can you say for certain that James used your sister's car to crash through the window?

Instead ask:

Whose car crashed through the window?
Are you sure?
And was James driving it?
Are you sure?

Again, the latter half of the sentence – whether James used your sister's car to crash through the window – could present problems for the witness with FASD owing to the complexity of the sentence and the question that the witness's certainty could pertain either to the ownership of the car or the fact that James was driving it. Breaking down the elements will allow the witness to confirm or refute the facts individually.

If you do not break down the elements, there can be a tendency for the client to respond only to the last element in the chain, without addressing important information elsewhere in the sentence.

Many people with FASD will not present obvious symptoms, and many have learned strategies to cope with the difficulties they may have in conversation. They may take their turn as expected in a conversation, but rather than providing any new information, they might repeat back some or all of what they have just heard. This is not proof that they have understood what has been said to them.

In order to confirm whether your client genuinely understands your questions and your clarifications of their answers, and to confirm that they are not merely repeating information back to you, you may ask that they recap what they've told you, or what you've told them. You might wish to frame your request as a weakness in your own understanding, and ask that they repeat back what you've been speaking about in their own words. Tell them that it's normal for lawyers and others in the courtroom to talk too fast and in very technical language, and that you're committed to ensuring they understand it all.

For more information on Indigenous clients with FASD please see visit the FASD & Justice website at http://fasdjustice.ca/

WHAT YOU CAN DO FOR YOUR CLIENT

When working for an Indigenous client, be aware of the relevant cultural and legal considerations.

Identify whether your client is an Indigenous person, and determine whether linguistic features of their speech indicate that they speak a variety of Aboriginal English. If they do, be prepared to:

- Adjust your own expectations of how a conversation occurs. Be on the lookout for areas where miscommunication can occur.
- Inform the court of linguistic differences so that linguistic prejudice does not occur. Discourse behaviour that is different is not necessarily uncooperative or evasive.
- If police interviews are used as evidence, look for the possibility of cross-linguistic miscommunication.[15]
- Be aware of the issues raised by the Indigenous clients quoted in this guide.
- Be aware of the time it might take to earn your client's trust and cooperation.
- Be prepared to assure your client that their side of the story has been heard.
- Inform your client who does what inside and outside the court, including Aboriginal courtworkers.
- Take the time to explain what will unfold in the days and weeks ahead, and "translate" what's been said in hearings so that they (and their families) know how the process works and where they are at in it.
- Address their health concerns, particularly if they will be held in custody.

15. See Fadden (2007) in resources at the end of this guide.

This guide is intended to brief you on the culturally based linguistic characteristics that you might encounter with an Indigenous client, and how you might spot and avoid potential pitfalls to communication. We hope in revealing some of the issues confronting Indigenous clients as they reported them to us, the legal community can become sensitive toward them and work toward alleviating the negative outcomes that arise.

REFERENCES AND RESOURCES

ABORIGINAL ENGLISH

Ball, J. and Bernhardt, B. M. (2008) First Nations English dialects in Canada: Implications for speech-language pathology. *Clinical Linguistics & Phonetics*, 22(8): 570–588

Ball, J., Bernhardt, B., and Deby, J. (2006) First Nations English dialects: Exploratory project proceedings. Unpublished monograph, First Nations English Dialect Project.

Campbell, M. (1995) *Stories of the Road Allowance People*. Theytus Books.

Fadden, L., and LaFrance, J. (2010) Advancing Aboriginal English. *Canadian Journal of Native Education*, 32: 143.

Newmark, K., Walker, N., and Stanford, J. (2016) 'The rez accent knows no borders': Native American ethnic identity expressed through English prosody. 45: 633–664.

AUSTRALIA

Eades, D. (2013) *Aboriginal ways of using English*. Aboriginal Studies Press.

Eades, D. (2016) Judicial understandings of Aboriginality and language use. In *Judicial Review: Selected Conference Papers: Journal of the Judicial Commission of New South Wales, The*, (Vol. 12, No. 4): 471–490.

LANGUAGE IN LEGAL SETTINGS AND DECEPTION

O'Mahony, B.M., Marchant, R. and Fadden, L. (2015) Vulnerable Individuals, Intermediaries, and Justice in Oxburgh, G., Myklebust, T., Grant, T. and Milne, R. (Eds.) *Communication in Investigative and Legal Contexts: Integrated Approaches from Forensic Psychology, Linguistics and Law Enforcement*, John Wiley & Sons: 287–313.

Fadden, L. (2007) Quantitative and qualitative analyses of police interviews with Canadian Aboriginal and non-Aboriginal suspects. In Kredens, K. and Goźdź-Roszkowski, S. (Eds.) *Language and the Law: International Outlooks*, Peter Lang GmbH: 305–322.

Porter, S. and ten Brinke, L. (2010) The truth about lies: What works in detecting high-stakes deception? *Legal and Criminological Psychology*, 15: 57–75.

Vrij, A., Edward, K. and Bull, R. (2001) Police officers' ability to detect deceit: The benefit of indirect deception detection measures. *Legal and Criminological Psychology*, 6: 185–196

Vrij, A., Mann, S., Leal, S. and Fisher, R. (2010) 'Look into my eyes': Can an instruction to maintain eye contact facilitate lie detection? *Psychology, Crime & Law*, 16.4: 327-348

Vrij, A. (2014) Detecting lies and deceit: Pitfalls and opportunities in nonverbal and verbal lie detection. *Interpersonal Communication*, 6: 321.

Vrij, A. (2008) *Detecting lies and deceit: Pitfalls and opportunities*. John Wiley & Sons.

Cover Photo:

Moose Cree First Nation, Ontario, 2013

Moose Factory is located 850 kilometres north of Toronto, and 250 kilometres north of the nearest main highway. There is no road access to Moose Factory. In summer, water taxis transport passengers from Moosonee across the river to Moose Factory.

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