

Cultural Competence 101 for Lawyers: Meeting Professional and Ethical Standards

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The Facilitators

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Some Considerations as We Begin

- These topics can be loaded. Let us create an open space so all can be heard and acknowledged respectfully
- Presenters bring expertise and valuable perspectives that may be novel. Adopt an open and learning disposition. Resist the “lawyer impulse” to cross-examine what is shared.

The Day

11:00am	Emma provides introductions and context
11:15am	Introduction to Cultural Competence
12:00pm	Lunch Break
12:30pm	Cultural Competence Continued
1:00pm	Exploring Differences . . . An Exercise
1:15pm	Table Dialogue
2:30pm	Scenarios

Culturally Competent Lawyers: Why?

- As Racialized, Aboriginal, and Immigrant Canadians gain increasing space in society, lawyers need skill to represent competently their clients' interests in a context that is increasingly diverse and complex and in which racism is acknowledged to be present.
- Consider . . .

Culturally Competent Lawyers: Why?

- Royal Commission on the Donald Marshall, Jr., Prosecution found that “racism played a part” in Marshall's wrongful conviction and imprisonment (1989). 82 recommendations including:
 - 13. Programs for law students, lawyers, judges: We recommend that the Dalhousie Law School, the **Nova Scotia Banisters’ Society** and the Judicial Councils support courses and programs dealing with legal issues facing visible minorities, and encourage sensitivity to minority concerns for law students, lawyers and judges. (Though the language is dated, the promotion of cultural competence is clear)

Culturally Competent Lawyers: Why?

- The Truth and Reconciliation Commission made comments and recommendations on the need for cultural competence:
 - “. . . many lawyers did not have adequate cultural, historical, or psychological knowledge “lawyers often demonstrated . . . lack of sensitivity”
 - 27) We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples , Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Culturally Competent Lawyers: Why?

- Cultural competence is being “read into standards of professionalism”: Voyvodic, 2006 – “Lawyers Meet The Social Context: Understanding Cultural Competence”.
 - This article recognizes that the development of cultural competence needs to go beyond the development and promotion of Rules of Professional Conduct. This is in keeping with the NSBS new approach to governing legal practice settings.

Culturally Competent Lawyers: Why?

- Several recent cases poignantly demonstrate how cultural competence plays out in the courtroom:
 - “The reasonable person is cognizant of the racial dynamics in the local community, and, as a member of the Canadian community, is supportive of the principles of equality” (R.D.S)
 - Lack of CC calls competence into question: Judges are finding lack of CC as grounds R. v. FRASER
 - Systemic racism and racial background determined relevant in the sentencing of an African Nova Scotian youth (R.v.”X.”)

Cultural Competence: Definition

- Cultural competence refers to an ability to interact effectively with people of different cultures. Cultural competence comprises five essential capacities. We must:
 - A. understand our own cultural positions and how they differ from and are similar to others
 - B. understand the social and cultural reality in which we live and work and in which our clients live and work
 - C. cultivate appropriate attitudes towards cultural difference
 - D. be able to generate and interpret a wide variety of verbal and non-verbal responses
 - E. understand structural oppression and demonstrate awareness and commitment to social justice

A) Nichols' Model for Understanding Cultural Difference

Philosophical Perspective on Cultural Difference. Edwin Nichols (cf. work of Jung)

Different world cultures developed out of differing physical environments.

These world views have differing constructs:

- Axiology (values)
- Epistemology (way of knowing)
- Logic (principles of reason)
- Process (practice of reason)

THE PHILOSOPHICAL ASPECTS OF CULTURAL DIFFERENCE

DEVELOPED BY EDWIN J. NICHOLS, PH.D.

ETHNIC GROUPS ETHNIC WORLDVIEW	AXIOLOGY	EPISTEMOLOGY			LOGIC	PROCESS
		APPLIED	PEDAGOGY	METHODOLOGY		
EUROPEAN EURO-AMERICAN	Member-Object The highest value lies in the object or the acquisition of the object	One knows through Counting and Measuring	Parts to Whole	Linear and Sequential <i>-Assembly line-</i>	Dichotomous <i>Either/Or</i> <i>-Newtonian theory-</i>	All sets are repeatable and reproducible <i>-Technology-</i>
AFRICAN AFRICAN AMERICAN LATINO/A ARAB	Member-Member The highest value lies in the relationships between persons	One knows through Symbolic Imagery and Rhythm (function) <i>-Gladwell <u>Blink</u>-</i>	Whole Holistic Thinking <i>-The BIG picture-</i>	Critical Path analysis <i>-Cut to the chase-</i>	Diunital <i>Union of opposites</i> Difrasismo <i>-Aztec thought-</i> The In Between <i>Ibn 'Arabi</i> <i>-Quantum theory-</i>	All sets are interrelated through human and spiritual networks <i>-Black church-</i>
ASIAN ASIAN AMERICAN POLYNESIAN	Member-Group The highest value lies in the cohesiveness of the group	One knows through Transcendental Striving <i>-Tree the forest-</i>	Whole and parts are seen simultaneously <i>-To read a Chinese word-</i>	Cyclical and Repetitive <i>-Stroke order in writing a Chinese word-</i>	Nyaya <i>-The objective world is conceived independent of thought and mind-</i> <i>-Chaos theory-</i>	All sets are independently interrelated in the harmony of the universe <i>-Keiretsu-</i>
NATIVE AMERICAN	Member-Great Spirit The highest value lies in oneness with the Great Spirit	One knows through Reflection and Spiritual Receptivity <i>-Purification rites-</i>	Whole is seen in cyclic movement <i>-Seasons-</i> <i>-Medicine Wheel-</i>	Environmentally experiential reflection <i>-Rites of Passage-</i>	Great Mystery <i>-A set of 4 and a set of 3 form the whole-</i> <i>-Super string theory-</i>	All sets are interrelated through the elements, plant, animal, and spiritual networks <i>-White Buffalo-</i>

B) Social, Cultural and Historical Context

North American Diversity is fraught with complicated and tragic history

- **Enslavement of Africans, Genocide of First Nations, Global strife resulting in trans-global immigration etc.**

A local knowledge of how our racist history is a living legacy is necessary: Africville, Cornwallis.

(Aylward talks of the need for this knowledge to aid in our ability to “spot issues” of race)

C) Appropriate Attitudes

Cultural competence requires that practitioners actually *value* diversity, not just tolerate it. In a nation that acknowledges multiple founding peoples, that was built up on the foundation of ethnic/immigrant labour and whose future depends on immigration any other attitude should reasonably be seen as unacceptable. (cf. “reasonable person” RvS)

D) Communicating Across Cultures

Cross cultural communication is a complex study in cultural hermeneutics. In sociology: the context of a person's world view is necessary for the proper understanding and interpretation of behaviour and rhetoric (c.f. Voyvodic, pp. 16, 17)

Before meaningless, unnatural, non-human or immature behaviour and corresponding values are attributed to people of another culture, it is better to begin by doubting the adequacy of one's own judgment and knowledge

- **Elmar Holenstein**

E) Understand Structural Oppression

Serving as an advocate of Justice in the context of working in the justice system is complex and full of conflict.

What have you done/do you do in your practice that demonstrates generally that you understand structural oppression and are therefore accessible to and identified as an ally to racialized, Aboriginal, immigrant and otherwise marginalized individuals?

Cultural Competence: How?

- Pre service training/clinical law programmes
- Conduct organizational assessment and develop organizational plans to increase Cultural Competence
- Employ and support culturally competent practitioners as agents of change
- Make available systematic coaching/consulting
- Provide and support continuing education in Cultural Competence

NSBS Resource Portal an excellent resource for lawyers:

<http://nsbs.libguides.com/content.php?pid=679663&sid=5634670>

Cultural Competence: How Not

- Do not place the responsibility for cultural competence solely on the shoulders of “diverse” staff – particularly when these persons are among the most junior persons on staff.
- Do not confuse cultural celebrations for cultural competence training.

Exploring Differences – An Exercise

- Understanding value differences:
- Take a moment to list your 3 highest values
- Compare your list with your neighbors
 - Identify whose values most closely resemble yours
 - Identify whose values are most different than yours
- *Clarifying values

Table Talk

- How do people know that you are culturally competent (or not) when they encounter you at your legal workplace?
- What are the contemporary community and legal issues that are affecting our communities in Halifax today? How are those issues likely to be seen differently by different communities?

The Scenarios – Working Things Out

- Emma has prepared 2 scenarios for review and discussion as a means of

Final Q & A
