

# Aspiring to Cultural Competence: The Why, What and How for Lawyers (Remix for Orientation to Law)

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# Culturally Competent Lawyers: Why?

- As Racialized and Aboriginal Canadians gain increasing space in society, lawyers will need skill to represent competently their clients' interests in an increasing diversity of ways:  
(Voyvodic's example of representing survivors of residential schools, working with immigrants and refugees and racialized clients in cases of discrimination and harassment)

# Culturally Competent Lawyers: Why?

- Principles of cultural competence are being recognized legally as foundational knowledge and reasoning that persons bring to the project of Justice seeking.

Consider :

*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.v.S. (R.D.), [1997] 3 S.C.R. 484-1997-09-26, Supreme Court of Canada – Federal: Reasonable apprehension of bias – dealing with non-white groups – impartiality – evidence – credibility cited by 67 cases).

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# Culturally Competent Lawyers: Why?

- Cultural Competence has begun to be “read into” Canadian standards of competence for lawyers (Voyvodic)
- Frameworks for competence in Health, Education, Civil Service and other sectors increasingly include cultural competence

# Culturally Competent Lawyers: Why?

- Recognition of systemic racism in the justice system
- Race and cultural context of accused persons is regularly presented to courts in the form of Gladue Reports and Cultural Assessments

# Cultural Competence: Definition

- Cultural competence refers to an ability to interact effectively with people of different cultures. Cultural competence comprises five essential capacities:
  - A. We must understand our own cultural positions and how they differ from and are similar to others (critical cultural self-analysis)
  - B. We must understand the social and cultural reality in which we live and work and in which our clients live and work
  - C. We must cultivate appropriate attitudes towards cultural difference
  - D. We must be able to generate and interpret a wide variety of verbal and non-verbal responses (client centred interviewing)
  - E. We must 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		
<b>EUROPEAN</b> <b>EURO-AMERICAN</b>	<b>Member-Object</b> The highest value lies in the object or the acquisition of the object	<b>One knows through Counting and Measuring</b>	<b>Parts to Whole</b>	<b>Linear and Sequential</b> <i>-Assembly line-</i>	<b>Dichotomous</b> <i>Either/Or</i> <i>-Newtonian theory-</i>	All sets are repeatable and reproducible <i>-Technology-</i>
<b>AFRICAN</b> <b>AFRICAN AMERICAN</b> <b>LATINO/A</b> <b>ARAB</b>	<b>Member-Member</b> The highest value lies in the relationships between persons	<b>One knows through Symbolic Imagery and Rhythm (function)</b> <i>-Gladwell <u>Blink</u>-</i>	<b>Whole Holistic Thinking</b> <i>-The BIG picture-</i>	<b>Critical Path analysis</b> <i>-Cut to the chase-</i>	<b>Diunital</b> <i>Union of opposites</i> <b>Difrasismo</b> <i>-Aztec thought-</i> <b>The In Between</b> <i>Ibn 'Arabi</i> <i>-Quantum theory-</i>	All sets are interrelated through human and spiritual networks <i>-Black church-</i>
<b>ASIAN</b> <b>ASIAN AMERICAN</b> <b>POLYNESIAN</b>	<b>Member-Group</b> The highest value lies in the cohesiveness of the group	<b>One knows through Transcendental Striving</b> <i>-Tree the forest-</i>	<b>Whole and parts are seen simultaneously</b> <i>-To read a Chinese word-</i>	<b>Cyclical and Repetitive</b> <i>-Stroke order in writing a Chinese word-</i>	<b>Nyaya</b> <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>
<b>NATIVE AMERICAN</b>	<b>Member-Great Spirit</b> The highest value lies in oneness with the Great Spirit	<b>One knows through Reflection and Spiritual Receptivity</b> <i>-Purification rites-</i>	<b>Whole is seen in cyclic movement</b> <i>-Seasons-</i> <i>-Medicine Wheel-</i>	<b>Environmentally experiential reflection</b> <i>-Rites of Passage-</i>	<b>Great Mystery</b> <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>



# Traditional Ecological Knowledge

- Nichol's Model is consistent with a growing understanding and articulation of Aboriginal Traditional Ecological Knowledge: an Ancient and yet ever evolving body of knowledge, practice and belief which concerns itself with the inter relationship of all living things with and within their environment.

# Afrocentricity

There is also a growing global and local understanding of the fundamental elements of African thought, culture and philosophy. Somewhat controversial, certainly not standardized, nevertheless its growing legitimacy has been established. Its hallmark is the assertion of a worldview that places all people of African descent at its centre, asserts a common culture, philosophy and history and critiques and perhaps even rewrites global history from this perspective

# Bottom Line

People are different  
and we can not treat  
different peoples as if we  
were all the same

## 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”)

## 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.

# 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 (Voyvodic, pp. 16, 17)

# D) Communicating Across Cultures

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**

## D) Communicating Across Cultures

Before you conclude that I  
am crazy you should  
consider the possibility that  
you are stupid!

**Holenstein paraphrased**



# E) Social Justice Commitment

- We must demonstrate an awareness of how structural issues affect our sector, its members and clients
- We must demonstrate an active programme aimed at addressing systemic issues of exclusion and oppression

# Cultural Competence: How?

- Pre service training/clinical law programmes
- Conduct organizational assessment
- Develop organizational plan
- Employ and support culturally competent practitioners
- Systematic coaching/consulting to leaders/HR
- Continuing education in Cultural Competence

# Q&A



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