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## Teaching Cultural Competency in Legal Clinics

CYNTHIA PAY\*

I HAVE BEEN RESPONSIBLE for teaching a workshop on “Working with Cultural Interpreters” for the law students participating in the clinical program at Parkdale Community Legal Services in Toronto since 2002. This workshop takes place at the beginning of each academic term and the summer session, and is aimed at providing students with training on how to work with interpreters, as well as information on the need for this service, including information on language groups in the Parkdale community, and systemic problems in relation to accessing interpreter services. The workshop is co-presented with one of the clinic’s in-house interpreters.

Although the main focus of the workshop is on how to work with interpreters, cultural competency issues have been included in varying degrees over time. Some of the training videos we have used in the workshop directly address cultural competency, as they propose a model of interpretation called “cultural interpretation,” in which the interpreter provides explanations of cultural practices in addition to language interpretation. In one of the videos, *A Cultural Link*, interpreters provide explanations for cultural practices such as coining, a traditional Chinese medicine practice that can leave marks on the skin. The interpreter in the video provides vital information about this practice that prevents a teacher from making a mistaken conclusion about child abuse.

Similarly, we have also presented examples of “cultural differences” as a way of making the students consider their own cultural assumptions and how they can lead to misinterpretation and miscommunication. One example is a handout called “Vietnamese Gestures.”<sup>1</sup> This handout provides diagrams of various hand gestures that are described as communicating completely different messages in Vietnamese culture and mainstream Canadian culture. Other cultural “differences” discussed in the workshop have included direct eye contact and the cultural meaning assigned—that it can be assessed as a sign of credibility in some cultures, while viewed as a sign of aggression or rudeness in others. In a similar vein, one of the in-house interpreters, who was born in Argentina, has explained in the workshop that in her culture, kissing and hugging are more common forms of greeting than in Canada.

When discussing these examples, we have been very clear in stating that there is wide diversity within groups and that the provision of these examples is not meant to suggest that everyone from a certain cultural group will behave or interpret behaviour in the same way. Further, we have encouraged students to use their own instincts in determining if miscommunication or misunderstandings are taking place and we have suggested that if they approach interactions with clients from a basic starting point of courtesy and respect, the impact of any cross-cultural misunderstandings that occur can be minimized.

Despite these disclaimers, we had identified a number of problems with this approach, the first being that the subject of cross-cultural competency is one worthy of

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\* Cynthia Pay is a staff lawyer at Parkdale Community Legal Services. This project was enabled through a clinical instructor sabbatical in the fall of 2009 generously funded by the Law Foundation in Ontario.

<sup>1</sup> Behnam Behnia et al, *Vietnam – A Health Profile* (Ottawa: Fount Research Group, 1995).

focus in its own right and may not be dealt with adequately as a brief add-on to another one-hour workshop. As such, these issues are now also addressed elsewhere through supervisory sessions with lawyers and community legal workers, in the academic seminar, and in other orientation sessions. Secondly, while use of concrete examples is sometimes an effective teaching method, provision of specific examples of cultural practices can be dangerous because they may be inaccurate, reinforce stereotypes, or reduce cultures to an undifferentiated and misleading caricature (for example, during one of the workshops, a student expressed a wish for a “list” that could outline all of the cultural differences and practices she needed to know). In *Vietnam: A Health Profile*, the authors make observations such as “the Vietnamese keep their voices low and conduct the conversation quietly. They often speak with a smile, refrain from saying ‘no’ and behave modestly to avoid offending others.”<sup>2</sup> In my view, the use of language such as “the Vietnamese” subtly suggests that Vietnamese people are all the same—something that denies the dignity and individuality of members of this group.

As a result of my growing discomfort with this approach, I eventually decided to exclude the topic of cultural competency from the session that I do on working with cultural interpreters. This was not a completely satisfactory solution, however, because the topic is an important one and while addressed elsewhere in the program, it inevitably creeps into the discussion anyway. During a recent session, for example, the issue of handshaking came up, leading to a discussion of how it might be viewed differently by non-Western cultural groups.

In 2003, I also led a discussion on this subject at the Workshop for Clinical Instructors organized by Osgoode Hall Law School. Some of the other challenges I identified in doing this type of teaching included the fact that legal education often ignores issues of race and culture altogether, so that clinical educators feel that they lack the appropriate tools to do this work; that the subject itself can be controversial and make educators feel uncomfortable; and that students themselves are a diverse group who have various levels of cultural competency, leading some of our students to feel “insulted” by some of the anti-oppression workshops that we have provided as part of their skills training. Some students have felt the workshops did not push far enough, and some students have felt defensive or pushed too far. Others have identified barriers such as the “invisibility of culture,” “competing priorities with ‘culture as a side dish,’” and a “lack of clarity on who or how to address cultural issues.”<sup>3</sup>

As a result of these challenges, this paper aims to identify various models of cultural competency training, and to reflect on ways to appropriately and effectively address this subject in a clinical legal education setting.

## **I. INTENSIVE PROGRAM IN POVERTY LAW AT PARKDALE COMMUNITY LEGAL SERVICES**

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<sup>2</sup> *Ibid* at 16.

<sup>3</sup> Rani H Srivastava, *A Healthcare Professional’s Guide to Clinical Cultural Competence*, (Toronto: Elsevier Canada, 2007). Delivered at a workshop facilitated at the Centre for Mental Health and Addiction, Toronto, 2006.

Parkdale Community Legal Services is a community legal clinic in Toronto with approximately 20 staff and 20 students from Osgoode Hall Law School. Students work full-time at the clinic for four months for academic credit. In addition to their work on cases in the areas of landlord-tenant law, immigration, social assistance, violence against women, mental health, and workers' rights, they are involved in community work as well as public legal education. They are also required to participate in an academic seminar and to produce a research paper. Students are provided with extensive orientation and training as a part of the clinical program. This training involves skills such as interviewing clients or oral advocacy; training in the substantive areas of law that they will be working with; and information on the community, as well as community organizing projects.

## II. WHAT IS CULTURAL COMPETENCY?

“Cultural competency” is generally defined as a combination of attitudes and skills that promote clear and effective communication between individuals from different cultures, but has also been extended to include the provision of services that are appropriate and accessible to a diverse range of clients, as well as work that addresses issues of equality and access to justice. Culturally competent individuals are those who “value diversity and respect individual differences regardless of one’s race, religious beliefs, or ethnocultural background.”<sup>4</sup> Cultural competency is “a set of congruent behaviours, attitudes, and policies that come together in a system, agency, or profession that enables that system, agency, or profession to work effectively in cross-cultural situations.”<sup>5</sup>

Cultural competency goes beyond cultural awareness, which relates more to the “external signs of diversity, such as arts, music, dress, and physical characteristics,”<sup>6</sup> and also is different from cultural sensitivity, which involves personal attitudes and the avoidance of saying or doing things that may be offensive to someone from a different cultural or ethnic background.<sup>7</sup>

In situations involving diversity and cultural difference choices, decisions, and behaviours “that are based on a belief in the superiority of one group over another...are unjust and untenable.” The goal of a cross-cultural engagement should be “mutual communication,” which involves the “maintenance or restoration of personal integrity” and “a sense of wholeness and recognition of worthiness of respect.”<sup>8</sup> Culture is a filter “through which we each interpret reality. Culture, thus, precludes the possibility of truly neutral observation.”<sup>9</sup> Culturally congruent services must take into account the consumer’s worldview, value systems and norms and therefore must be “culture-

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<sup>4</sup> Larry Purnell, *Guide to Culturally Competent Health Care* (Philadelphia: FA Davis Company, 2005) at xv-xvi.

<sup>5</sup> D Chung, “Asian Cultural Commonalities” in SM Furuto et al, eds, *Social Work Practice with Asian Americans* (Newbury, CA: Sage, 1992) at 274-275.

<sup>6</sup> Purnell, *supra* note 4 at 4.

<sup>7</sup> Multicultural potlucks seem to be a popular way to approach this issue, but as noted above, are not going to build real cultural competency.

<sup>8</sup> Kathryn Kavanagh & Patricia H Kennedy, *Promoting Cultural Diversity* (Newbury Park, California: Sage Publications, 1992) at 12-13.

<sup>9</sup> *Ibid* at 23.

specific.”<sup>10</sup> Although cultural competence “is a construct that is difficult to define with conclusive precision,” a culturally competent professional can be described as one who has made substantial progress but continues to work toward a number of goals, including:

1. developing an awareness of personal, professional, and cultural biases that may adversely impact minority groups, immigrants and refugees;
2. developing an awareness of the definitions and dynamics of racism, discrimination, and cultural oppression...;
3. acquiring knowledge about the history..., culture, norms, and traditions of diverse groups...;
5. developing relevant interpersonal skills and effective methods for working with diverse groups. This includes gaining an understanding of how race, culture, and language affect interactions with professionals...; and
6. taking action in the service and advancement of equality and justice. Professionals working with marginalized and oppressed groups should contribute to addressing injustice and discrimination in the lives of their clients.<sup>11</sup>

Gaining cultural competence is an ongoing process, rather than an achievable end goal.<sup>12</sup>

In the legal context, cultural competence means that a service provider is able to clearly communicate with her client and understand her client’s needs and goals, to establish trust and a good rapport with the client, and, because she is aware of issues facing a diverse range of clients such as discrimination, to identify important issues that may not be initially apparent or explicitly raised by the client.<sup>13</sup> Miscommunication across cultures can be caused by benign cultural misunderstandings but also by bias or cultural stereotypes.<sup>14</sup> Language barriers and value conflicts also present further barriers to clear communication and establishment of rapport in the lawyer/client relationship.<sup>15</sup>

Some examples of possible cross-cultural misunderstandings that may take place in the legal clinic context include:

- a client who makes limited eye contact is unconsciously viewed as evasive or less credible by a law student;
- a client does not return because he feels a lack of trust, rapport or poor communication with a lawyer;
- a student assumes a client does not care about her own case because she is late for or misses a number of appointments;

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<sup>10</sup> *Ibid* at 22.

<sup>11</sup> Kimberly Holt Barrett & William H George, eds, *Race, Culture, Psychology & Law* (Thousand Oaks, California: Sage Publications, 2005) at xvi-xvii. Note as well the Canadian Bar Association’s Practice Link, Jatrine Bentsi-Enchill, “Client Communication: Measuring Your Cross-Cultural Competence,” <http://www.cba.org/cba/practicelink/cs/cultural.aspx>

<sup>12</sup> *Ibid* at xvi.

<sup>13</sup> See e.g. Michelle S Jacobs, “People from the Footnotes: The Missing Element in Client-Centred Counselling” (1997) 27:3 *Golden Gate UL Rev* 345 at 388.

<sup>14</sup> See e.g. the growing literature on implicit bias Jerry Kang, “Trojan Horses of Race” (2005) 118:5 *Harvard Law Review* 1489; Holt Barrett & George, *supra* note 11 at xv; and Earlene Baggett, “Cross-Cultural Legal Counselling” (1984-1985) 18:5 *Creighton L Rev* 1475 at 1478.

<sup>15</sup> Baggett, *supra* note 14 at 1475.

- a client claiming disability benefits is perceived by legal clinic staff to be “non-compliant” or without a serious mental health problem because she has refused her family doctor’s referral to a psychiatrist; the staff are not aware of the extreme stigma associated with mental health treatment in the client’s culture;
- a student closes the file of an immigrant client who declines to take legal action against his landlord. The student does not realize that the client mistakenly believes that any legal action would be recorded permanently in a central government file as would have taken place in her country of origin; and
- issues arising from a client’s case such as racial discrimination or racial profiling are not raised explicitly by the client and are missed by the interviewing student. As a result, no legal action is discussed or taken.<sup>16</sup>

These types of misunderstandings, at a minimum, will reduce the quality of service offered to clients and, at worst, could constitute discriminatory barriers that mean our services are not equally accessible to all members of the community and indeed, may be contrary to the Rules of Professional Conduct.<sup>17</sup>

## **A.WHY A NEED FOR CULTURAL COMPETENCY TRAINING?**

### **1. CHANGING DEMOGRAPHICS**

Because of changing demographics and immigration patterns, legal services providers are increasingly working in cross-cultural situations. Not only are the clients and their cultural frameworks and styles of communication different, but their needs are different as well.<sup>18</sup> Minority groups are often in more need of legal protection than majority populations, and also face unique issues such as racial profiling,<sup>19</sup> but because of cultural barriers may ironically have less access to services.

It has become almost trite to state that Canada has become increasingly multi-ethnic and multicultural.<sup>20</sup> The 2001 Census found that the proportion of Canada’s population born outside the country was 18.4%, the highest percentage in 70 years, and second only to Australia.<sup>21</sup> The countries of origin of immigrants have also changed. While in the past the majority of immigrants to Canada came from Europe, today they are increasingly from Asia, representing 58% of immigrants, in contrast to only 3% in

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<sup>16</sup> Jacobs, *supra* note 13 at 388.

<sup>17</sup> Law Society of Upper Canada (LSUC), *Rules of Professional Conduct*, r. 5.04 (2). The rule requires that a lawyer “ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule”, those grounds being articulated in Rule 5.04(1) and reflecting the statutory grounds contained in Ontario’s Human Rights Code.

<sup>18</sup> While the legal profession is also changing demographically, it lags behind changes in the broader community. See e.g. Michael Ornstein, “The Changing Face of the Ontario Legal Profession, 1971-2001,” online: <<http://rc.lsuc.on.ca/pdf/equity/ornsteinReport.pdf>>

<sup>19</sup> Kimberly Holt Barrett & William H George, “Psychology, Justice and Diversity: Five Challenges for Culturally Competent Professionals” in Kimberly Holt Barrett & William H George, eds, *Race, Culture, Psychology & Law* (Thousand Oaks, California: Sage Publications, 2005) 3 at 4-5.

<sup>20</sup> Statistics Canada, *Canada’s Ethnocultural Portrait: The changing mosaic* (Ottawa: Statistics Canada, 2003) at 1.

<sup>21</sup> *Ibid* at 5.

1961.<sup>22</sup> Almost 4 million people, or 13.4%, identified themselves as “visible minorities” (defined under the *Employment Equity Act*<sup>23</sup> as “persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour”) or racialized<sup>24</sup> in the 2001 Census, in contrast to only 4.7% of the population in 1981.<sup>25</sup> Three-quarters of all immigrants to Canada who came in the 1990s were members of racialized communities.<sup>26</sup>

## 2. THE “COLOUR OF POVERTY”

Unfortunately, these immigrants experience disproportionately high levels of poverty. According to data from the 1996 Census, the poverty rate among immigrants arriving after 1991 was at “an extraordinary high rate of 52.1%.” Similarly, 37.6% of racialized people living in Canadian cities were living in poverty, in contrast to only 20.9% of white Canadians.<sup>27</sup>

In Toronto, unemployment is highest among African Canadians, with an unemployment rate of almost twice the Toronto average.<sup>28</sup> Unemployment amongst South Asians is “considerably higher” than the Toronto average, and there is “serious difficulty” amongst the Vietnamese community as well as significant gaps in employment rates for other communities such as Arab and West Asian, and people of Latin American origin.<sup>29</sup> Poverty is,

strongly related to the ethno-racial contours of the population ... About 10 percent of the members of European ethno-racial groups are poor, about 20 percent of members of the Aboriginal, South Asian, East Asian, Caribbean and South and Central American groups, about 30 percent of members of Arab and West Asian groups ... and about 40 percent for the African groups ... The poverty and income statistics ... describe a community in which the experience of extreme disadvantage is highly racialized. Every one of the twenty poorest ethno-racial groups is non-European.<sup>30</sup>

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<sup>22</sup> *Ibid* at 6.

<sup>23</sup> SC 1995, c. 44.

<sup>24</sup> “Racialization” has been defined as the “process by which racial categories are constructed as different and unequal in ways that lead to social, economic and political impacts.” Grace Edward Galabuzi, *Canada’s Creeping Economic Apartheid* (Toronto: CSJ Foundation, 2001) at 10, online: <<http://www.socialjustice.org/pdfs/economicapartheid.pdf>>.

<sup>25</sup> *Ibid*.

<sup>26</sup> *Ibid*.

<sup>27</sup> Ekewa Smith & Andrew Jackson, *Does a Rising Tide Lift All Boats? The Labour Market Experiences and Incomes of Recent Immigrants, 1995 to 1998* (Ottawa: Canadian Council on Social Development, 2002) at 2, online: <<http://www.ccsd.ca/pubs/2002/risingtide/risingtide.pdf>>.

<sup>28</sup> Michael Ornstein, *Ethno-Racial Inequality in the City of Toronto: An Analysis of the 1996 Census* (Toronto: City of Toronto, 2000) at 53, online: <[http://tobiashouse.ca/passport/profiles/pdf/Ethno-Racial\\_Inequality.pdf](http://tobiashouse.ca/passport/profiles/pdf/Ethno-Racial_Inequality.pdf)>.

<sup>29</sup> *Ibid* at 59-61.

<sup>30</sup> Michael Ornstein, *Ethno-Racial Groups in Toronto, 1971 – 2001: A Demographic and Socio-Economic Profile* (Toronto: Institute for Social Research, York University, 2006) at 80-81 (emphasis added).

Further, between 1980 and 2000, the poverty rate for the non-racialized population fell by 28% while poverty among racialized families grew by 361%.<sup>31</sup> This gap has been described as a form of “economic apartheid”<sup>32</sup> and the “racialization of poverty.”<sup>33</sup>

Racialized Canadians, particularly women, are overrepresented in “low paid, low end occupations and low income sectors, and ... temporary work,” but the racialized income gap exists among both low and high income earners.<sup>34</sup> This “racialization of poverty” is particularly concentrated in urban areas. Because of “a growing racial underclass” and “an increasingly segregated housing market,” racialized groups will “soon form economically disadvantaged majorities in some of Canada’s major urban centres.”<sup>35</sup>

These income gaps have been linked to racial discrimination in hiring and promotion<sup>36</sup> and barriers to access to trades and professions for foreign-trained professionals.<sup>37</sup> Further, the large gaps in earnings cannot be explained by inferior levels of formal education; in fact, immigrants on average have a higher education level than Canadian-born people in the same working-age group.<sup>38</sup>

Because of this combination of higher levels of poverty and legal issues such as discrimination in employment, immigrant and racialized communities are by definition more likely than others to be in need of the services of legal aid clinics. However, it is not clear that the services provided by clinics are culturally competent, both in terms of how services are provided, and the types of services that are available.

While the legal profession is changing as well, it continues “to be predominantly comprised of individuals who are privileged in Canadian society, namely: white, male, able-bodied and from middle-class family backgrounds.”<sup>39</sup> Similarly, law schools “are populated predominantly by students, faculty members, and administrators from middle and upper class backgrounds.”<sup>40</sup> Canadian lawyers are not representative of Canadian society and, as a result, “may not share the life experiences of many of their clients;” in particular, direct experience of inequality.<sup>41</sup> Because of this difference, lawyer-client relationships will often be cross-cultural, especially in legal aid clinic settings. Of course, because of the diversity of law students and lawyers themselves, cross-cultural interactions will take place amongst students and staff working at legal clinics as well.

Social or cultural contexts cannot be reduced to “checklists of sets of practices, beliefs or meanings” but rather consist of a wide range of influences on “thinking,

<sup>31</sup> Colour of Poverty, *Fact Sheet #1, Understanding the Racialization of Poverty in Ontario*, online: <<http://www.colourofpoverty.ca>>.

<sup>32</sup> Grace Edward Galabuzi, *Canada’s Creeping Economic Apartheid* (Toronto: CSJ Foundation, 2001), online: <<http://www.socialjustice.org/pdfs/economicapartheid.pdf>>.

<sup>33</sup> See e.g. “Fact Sheet # 1: Understanding the Racialization of Poverty in Ontario”, online: <<http://www.learningandviolence.net/lrnteach/material/PovertyFactSheets-aug07.pdf>>.

<sup>34</sup> Galabuzi, *supra* note 32 at 6

<sup>35</sup> *Ibid* at 7.

<sup>36</sup> Smith & Jackson, *supra* note 27 at 3.

<sup>37</sup> Galabuzi, *supra* note 32 at 72.

<sup>38</sup> Smith & Jackson, *supra* note 27 at 3.

<sup>39</sup> Rose Voyvodic, “Advancing the Justice Ethic Through Cultural Competence” (2005) at 4, online: <<http://www.ojen.ca/sites/ojen.ca/files/sites/default/files/resources/Voyvodic.pdf>>.

<sup>40</sup> Baggett, *supra* note 14 at 1496.

<sup>41</sup> Voyvodic (2005), *supra* note 39 at 5.

communicating and interacting with others.”<sup>42</sup> As a result, when lawyers and clients come from different cultures, there may be challenges in and barriers to development of trust, relationships, and clear and accurate communication.<sup>43</sup>

Because it is key to ensuring that clients fully understand their options and that lawyers are able to obtain clear instructions and provide appropriate and effective legal services, cultural competency is therefore an essential component of providing high quality service to clients, especially in a legal clinic setting. Further, cultural competency may actually be an ethical requirement under relevant rules of professional conduct governing the legal profession.<sup>44</sup> Finally, under human rights legislation and principles of equality in general, cultural competency may be required as a means of ensuring that all clients have equal access to and benefit from publicly funded legal aid services.

### 3. GAPS IN SERVICES

Cultural competence in a legal clinic setting consists of “providing culturally responsive and appropriate services.”<sup>45</sup> This should include provision of services that are accessible to a diverse and demographically representative group of clients, services that are provided in a culturally sensitive or appropriate manner, and services that truly reflect the legal needs of the entire community. According to a study led by the Metro Toronto Chinese and Southeast Asian Legal Clinic (MTCSEALC) in 2007,<sup>46</sup> while legal clinics in the Toronto and Ottawa areas appeared to be aware of changing demographics, they felt unable to fully respond to the needs of the changing community due to a lack of resources and other constraints.<sup>47</sup>

Some of the cultural competency-related barriers to accessible services for immigrant and racialized communities identified by the study include:

- a general lack of cultural sensitivity and awareness on the part of legal workers;
- a lack of services in the area of immigration law, which was identified by community organizations as both the most often needed service and the least accessible within the legal clinic system; and
- language barriers caused by lack of adequate funding for interpreters.<sup>48</sup>

Another possible barrier caused by a lack of cultural competency skills could be an inability to identify relevant legal issues based on a failure to consider race, immigration status or other personal characteristics related to culture. In her article “People from the Footnotes: The Missing Element in Client-Centred Counselling,” Michelle S. Jacobs describes how a client’s narrative was “mistranslated” by his legal

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<sup>42</sup> Rose Voyvodic, “Lawyers Meet the Social Context: Understanding Cultural Competence” (2006) 84 Can Bar Rev 563 at 568.

<sup>43</sup> *Ibid* at 571.

<sup>44</sup> *Ibid* at 572-579.

<sup>45</sup> Voyvodic, *supra* note 39 at 13.

<sup>46</sup> MTCSEALC, *Access to Clinic Services by Racialized Communities* (2007), [unpublished]. I served on the advisory committee for this research project.

<sup>47</sup> *Ibid* at 2.

<sup>48</sup> *Ibid* at 3-5.

representatives in a clinical education program.<sup>49</sup> The client, DuJon Johnson, was a black man arrested and given a citation for disorderly conduct. He was represented by a white male law professor, Clark Cunningham, and two white male students. Although his citation was ultimately dismissed, Johnson was in the end as angry about the quality of his legal representation as he was about his treatment by the arresting officers.

Cunningham was surprised by Johnson's reaction, and after exploring the reasons for this, realized that he had mistakenly given race very little consideration in his formulation of the case. In fact, Johnson saw the incident as one of racial profiling, as a black person viewed by the police as "'out of place' in a white part of town in the middle of the night."<sup>50</sup> The legal representatives also missed other signals that race was an issue, including the judge's demeanour during the hearing, which was very negative and quite different from his "compassionate" approach to other non-racialized parties appearing in the same court, and his comment that the police had given Johnson "an attitude ticket."<sup>51</sup> This "mistranslation" of the incident was based on a lack of awareness of racial profiling, which "goes on every day in criminal courts across the country. It is the culture of this country. In fact, such stops are so pervasive that many black defendants take such treatment for granted."<sup>52</sup> Unfortunately, the legal representatives' incorrect evaluation of the legal relevance of the issues related to race led them to dismiss and ignore them in their development of their client's case, despite the fact that race issues were of central importance to their client.

These types of gaps highlight the need for cultural competency training. MTCSEALC includes this in its recommendations for Legal Aid Ontario coming out of its study on accessibility of legal clinic services to racialized communities:

... it is therefore recommended that training funds be established to enhance all legal and non-legal clinic workers' awareness of issues of racism and other forms of discrimination, and to translate such awareness into action and practice in their day-to-day work.<sup>53</sup>

## **B.WHAT CULTURAL COMPETENCY TRAINING IS NOW BEING DONE? WHAT ARE THE BARRIERS TO DOING THIS WORK?**

Unfortunately, historically it appears that there has been very little emphasis on learning cultural competency, both in law schools and in the broader profession. Despite its importance in the service of justice, until recently "minimal attention has been devoted to the importance of providing culturally competent services" in the field of law. Analogously, a review of major texts and articles in the area of forensic psychology "reveals a paucity of literature that addresses the importance of culture and race in forensic assessment."<sup>54</sup> In law schools, there has traditionally been an emphasis on "black-letter" law, with only limited focus on legal interviewing and counselling, and

<sup>49</sup> Jacobs, *supra* note 13 at 363-374.

<sup>50</sup> *Ibid* at 370.

<sup>51</sup> *Ibid* at 371-372.

<sup>52</sup> *Ibid* at 373.

<sup>53</sup> MTCSEALC, *supra* note 46 at 3.

<sup>54</sup> Holt Barrett & George, *supra* note 19 at 3.

even less emphasis on cross-cultural legal counselling.<sup>55</sup> There is also very little cross-cultural competency training for other participants in the legal system, including police officers and judges.<sup>56</sup> This is now changing, however, for example at Osgoode Hall Law School courses are now being offered that deal directly with cross-cultural competency such as “Ethical Lawyering in a Global Community” or “Culture, Diversity and Power in Dispute Resolution,” as well as a growing focus on experiential learning. Such changes are positive however there are still many barriers to carrying out this work.

## 1. DENIAL/MYTH OF “COLOURBLINDNESS”

There are a number of reasons for this gap. The lack of cultural competency training in the legal system has been linked to a general denial of the problem of racism.<sup>57</sup> Linked to this is the concept of “colourblindness” or race neutrality, which consists of,

an amalgam of erroneous but politically popular ideas that undermine one’s effectiveness in representing minority clients in the legal arena. These ideas include the following points: (a) The days of overt prejudice and discrimination are over and therefore racism is no longer a problem; (b) everyone is treated equally and objectively in the legal system, regardless of race or national origins; (c) there are no built-in system biases working methodically to disadvantage minority individuals; (d) race, culture, and ethnicity are not important identifying factors in the eyes of the law; [and] (e) justice cannot and will not be derailed because of racial or cultural discrimination.<sup>58</sup>

The myth of colourblindness is in direct opposition to the foundation of cultural competency training: i.e., the principle that there are significant cultural differences that impact our ability to communicate with and effectively serve our clients. It further functions to maintain and “justify an inequitable status quo.”<sup>59</sup> Race-neutral training of client-counselling skills “may actually lead to continued marginalization of clients of colour.”<sup>60</sup>

## 2. TOO CONTROVERSIAL/SENSITIVE

The topic of cross-cultural legal counselling may also be viewed as too “controversial,”<sup>61</sup> or raise uncomfortable feelings of sensitivity or tension:

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<sup>55</sup> Baggett, *supra* note 14 at 1496.

<sup>56</sup> Kari A Stephens, Sandra Ibarra & Kim Moore, “Advocacy in the Legal System: Cultural Complexities” in Kimberly Holt Barrett & William H George, eds, *Race, Culture, Psychology & Law* (Thousand Oaks, California: Sage Publications, 2005) 419 at 428.

<sup>57</sup> *Ibid* at 423.

<sup>58</sup> Kimberly Holt Barrett & William H George, “Judicial Colorblindness, Race Neutrality, and Modern Racism: How Psychologists Can Help the Courts Understand Race Matters” in Kimberly Holt Barrett & William H George, eds, *Race, Culture, Psychology & Law* (Thousand Oaks, California: Sage Publications, 2005) 31 at 32.

<sup>59</sup> Kavanagh & Kennedy, *supra* note 8 at 23.

<sup>60</sup> Jacobs, *supra* note 13 at 348.

<sup>61</sup> Baggett, *supra* note 14 at 1499.

[a]lthough students ... are open to the notion that being sensitive to and conscientious about personal identification differences makes for good lawyering, on more than one occasion some students have expressed dissatisfaction with the direction that some discussions have taken, and occasionally feelings have been hurt...While disagreements can occur in any group situation, some students are particularly thin-skinned over challenges on personal identification issues because their beliefs stem from very personal experiences.<sup>62</sup>

Resistance to “multicultural casework and to the assigned “Faculty of Color,” as well as emotions such as individual and collective guilt can be stirred up by this topic.<sup>63</sup>

Feelings of guilt and defensiveness can lead to avoidance of discussions of culture and race.<sup>64</sup> As a result, it may be easier for clinical educators to avoid the topic than finding some way to navigate these possibly controversial or uncomfortable discussions.

### 3. LACK OF SKILLS/TOO DIFFICULT

The lack of training in this area becomes self-perpetuating, as educators who have not received this type of training themselves in turn may feel they lack the skills to provide it. Because of this resulting lack of confidence, educators may fear that they will be perceived as prejudiced or racist when engaged in this training.<sup>65</sup>

[s]ensitivity with inadequate knowledge can result in fear of mismanaging situations and lead to resistance, as when anxiety over “hurting feelings” leads to avoidance of communication ... Perhaps the most common fear or that what is tried will be rejected ... Discomfort based on unfamiliarity and threatened personal integrity encourages resistance and defensiveness.<sup>66</sup>

A “lack of vocabulary, factual information, and understanding of the contemporary racial terrain” contributes to “unproductive emotions and arguments,”<sup>67</sup> creating a self-perpetuating cycle of anxiety, avoidance, and resistance. Further, the cycle is worsened by a belief that “culture and multiculturalism are not legitimate areas of study.”<sup>68</sup> The result can be excuses that there is “not enough time” for this type of training,<sup>69</sup> that there are too many other competing demands such as training in

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<sup>62</sup> Bill Ong Hing, “Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses” (1993) 45:6 *Stanford L Rev* 1807 at 1823.

<sup>63</sup> American Psychological Association, *Guidelines on Multicultural Education, Training, Research, Practice, and Organizational Change for Psychologists* (Washington: APA, 2002) at 36.

<sup>64</sup> Barrett & George, *supra* note 58 at 42.

<sup>65</sup> Madonna G Constantine, Christina M Capodilupo & Mai M Kindaichi, “The APA Multicultural Guidelines on Education, Training, Research, Practice, and Organizational Change: A Brief Overview” in Madonna Constantine, ed, *Clinical Practice with People of Colour* (New York: Teachers College Press, 2007) 1 at 7.

<sup>66</sup> Kavanagh & Kennedy, *supra* note 8 at 48-50.

<sup>67</sup> Barrett & George, *supra* note 58 at 42.

<sup>68</sup> American Psychological Association, *supra* note 63 at 32.

<sup>69</sup> Kavanagh & Kennedy, *supra* note 8 at 48.

substantive law or how to work with clients in crisis,<sup>70</sup> and that it is impossible to properly prepare for cross-cultural situations because there are simply too many different racial, ethnic and cultural groups to fully understand.<sup>71</sup>

I have certainly faced these feelings in my own attempts to grapple with this subject. I have felt uncomfortable in providing this training myself: because of a fear of perpetuating stereotypes or inaccurate information; a lack of certainty about how to present the material effectively; and a feeling that I was not doing justice to the subject by piggybacking it into another short workshop. An awareness of these potential barriers and pitfalls should not be discouraging, however, but should be helpful in guiding us when designing effective cultural competency training. Since we know the topic might be extremely sensitive or anxiety-producing for both educators and students, we can think of ways to reduce these feelings by depersonalizing some of the workshops or ensuring that self-reflection takes place in an environment that will not lead to judgment or fears of public censure. Any self-reflection exercises, for example, can be done on an individual basis rather than in a group discussion format. Similarly, if we understand that the myth of colourblindness may cause resistance to the topic of cultural competency, we might want to include a debunking of this myth as a prelude to this training. We can also explicitly discuss these barriers as a part of the training, so that students are more conscious of whatever difficulties they may be experiencing in absorbing or coping with the subject. We can provide leadership to ensure that students feel encouraged rather than judged.<sup>72</sup>

In contrast to law, there has been a lot more attention paid to the need for cultural competency training in other fields such as psychology, medicine, and social work. I will look at some of the models used in these disciplines, as well as in law, below.

### **III. MODELS OF CULTURAL COMPETENCY TRAINING**

In my research I have identified three main models of cultural competency training. While there is a good deal of overlap between them, these are different approaches with different underlying goals. The models, which are outlined below, are: a) training on culture and demographics of specific ethno-cultural groups; b) introspection and self-awareness; and c) anti-racism/issue-based training.

#### **A. TRAINING ON CULTURE AND DEMOGRAPHICS OF SPECIFIC ETHNO-CULTURAL GROUPS**

One of the common approaches to cultural competency training is to provide concrete information about the demographics and cultural values and practices of specific ethno-cultural groups to assist the service provider in responding to the needs of these communities and to avoid miscommunication based on cultural differences. In *Guide to Culturally Competent Health Care*, the authors set out a model for cultural competence (“the Purnell Model for Cultural Competence”) followed by chapters providing

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<sup>70</sup> Voyvodic, *supra* note 39 at 583.

<sup>71</sup> *Ibid* at 34.

<sup>72</sup> American Psychological Association, *supra* note 63 at 36.

information on the cultural practices and concepts of specific communities, including people of African American, Arab, Chinese, German, Iranian, Hindu, Mexican, and Jewish heritage and a wide range of other cultural backgrounds.<sup>73</sup> Each of these chapters describes the “dominant cultural characteristics of selected ethnocultural groups” and provides “a guide for assessing cultural beliefs and practices of clients” as a means of helping health care providers to provide culturally acceptable care.<sup>74</sup> Topics such as demographic background, communication styles, family roles and organization, nutrition, pregnancy and childbearing practices, and health risks and practices are covered for each group.

In a chapter on people of Chinese heritage, information is provided regarding the various first languages that immigrants from China may speak, cultural values such as Confucianism, and culturally based communication issues such as tone of voice: “[m]ost Chinese people speak in a moderate to low voice and consider Americans to be loud. Be cautious about tone of voice when interacting with Chinese clients.”<sup>75</sup> Details on pregnancy and childbearing practices, death rituals and spirituality as well as specific health information are provided, such as typical diet, increased incidence amongst people from the Chinese community of certain illnesses such as hepatitis B and pancreatic cancer, information on traditional Chinese medicine practices such as acupuncture, moxibustion, and herbal therapy, and cultural health concepts such as the balance between yin and yang.<sup>76</sup>

A chapter on people of Hindu (Indian) heritage provides information on communication styles; for example, it notes that women from this community may avoid direct eye contact with men and that direct eye contact may also be viewed as a sign of disrespect when dealing with older people and authority figures.<sup>77</sup> In terms of concepts of time, it is advised that “punctuality in keeping scheduled appointments may not be considered important. Do not misconstrue being late for appointments as a sign of irresponsibility or not valuing health.”<sup>78</sup>

Regarding childbearing, the authors report that women from this culture may place a high value on stoicism and self-control, and may thus “suppress their feelings and emotions during labor and delivery.” The authors advise health practitioners to therefore “closely observe nonverbal communication, such as body posture, restlessness, and facial expressions during labor, and provide assistance as necessary.”<sup>79</sup> The authors note that there may be stigma associated with seeking mental health treatment for members of this community, and that psychological distress may be manifested through somatization rather than the expected symptoms associated with mental health illnesses.<sup>80</sup>

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<sup>73</sup> Larry D Purnell & Betty Paulanka, *Guide to Culturally Competent Health Care* (Philadelphia: FA Davis Company, 2005).

<sup>74</sup> *Ibid* at 1-2.

<sup>75</sup> *Ibid* at 101.

<sup>76</sup> *Ibid* at 107-113.

<sup>77</sup> *Ibid* at 230.

<sup>78</sup> *Ibid*.

<sup>79</sup> *Ibid* at 238.

<sup>80</sup> *Ibid* at 244.

Demographic information is provided in the chapter on people of Vietnamese heritage, including information on how Vietnamese immigrants made their way to the United States:

[a]pproximately 1.2 million Vietnamese people live in the United States, the majority having arrived since 1975. Their departures were often precipitous and tragic. Escape attempts were long, harrowing and, for many, fatal. Survivors were often placed in squalid refugee camps for years. More than 100,000 left their homeland in 1978, and more than 150,000 left in 1979. For more than a decade, many others, known as the “boat people,” departed Vietnam in small, often unseaworthy and overcrowded vessels ... half died during their journey.<sup>81</sup>

The health implications of this history is linked to “high rates of depression, generalized anxiety disorders, and post-traumatic stress associated with military combat, political imprisonment, harrowing events during escapes by sea, and brutal pirate attacks,”<sup>82</sup> but it is also noted that stigma regarding mental health disabilities within the community may prove to be a barrier to treatment.<sup>83</sup> Other barriers to access to health care for members of this community are listed, including differences between Western and Asian health-care practices, language barriers, lack of knowledge of available resources as well as “caregivers’ judgment of Vietnamese as deviant and unmotivated because of non-compliance with medication schedules, diagnostic tests, follow-up care, and failure to keep appointments.”<sup>84</sup>

Much of this information would be very helpful for health practitioners in understanding their clients and providing appropriate services that are culturally sensitive and accessible, as well as in ensuring medical professionals are aware of specific health issues that each community faces and how to avoid possible misdiagnoses or inappropriate types of treatment. Such information would assist health professionals to avoid interpreting skin marks caused by traditional Vietnamese treatments such as cupping and coining as evidence of abuse,<sup>85</sup> or to aid in prescribing appropriate dosages of medications by taking into account that a particular ethnic group may have difficulty in metabolizing them.<sup>86</sup>

When providing this type of information about culture, such as styles of communication and values, however, there is a danger of diminishment of the unique characteristics, complexity and diversity of individuals within this cultural group. As noted above, in one of the training workshops that I conducted at PCLS, one student expressed a desire for a “list” of all of the cultural characteristics that one needed to know when working with clients at the clinic. At worst, negative stereotypes can be reinforced. In another training session at the clinic, for example, in the guise of providing cultural information, an interpreter made a negative generalization about the propensity of men from a certain country to get drunk and assault their wives.

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<sup>81</sup> *Ibid* at 426-427.

<sup>82</sup> *Ibid* at 432.

<sup>83</sup> *Ibid* at 444.

<sup>84</sup> *Ibid*.

<sup>85</sup> *Ibid* at 441.

<sup>86</sup> *Ibid* at 65.

Even well-intentioned cross-cultural information can inadvertently reinforce negative stereotypes. The *Chinese Cultural Guide for Employers* was published by a regional government in Ontario, and funded partly by the Ontario Chamber of Commerce and the Ontario government, to provide “information and guidelines for those who are interested in employing Chinese immigrants” and help employers “successfully maximize the benefits of a specific, valuable and needed labour pool.”<sup>87</sup> Despite these positive goals, however, organizations representing the Chinese Canadian community argued that the guide presents cultural information that reinforces stereotypes about this community. The guide reported, for example, that some of the advantages of hiring Chinese immigrant employees are as follows:

[m]ature Chinese workers have a tendency to seek stability and remain loyal to their employer ... In the Chinese tradition, the virtue of hard work is emphasized and celebrated. Parents often instil in their children the mentality that “one can achieve anything as long as one is willing to work hard.” This leads to a strong work ethic ... they are more likely to ... forgo their personal interests for the sake of completing assignments delegated to them ... . It is a Chinese tradition to deeply respect those who are higher in the hierarchy ... .Chinese employees tend to be detailed-minded. They may be suited to employers who require their employees to monitor minute details of their work.<sup>88</sup>

While these comments may initially seem positive, they reinforce the “model minority” stereotype, which is ultimately harmful to Asian Canadians:

[a]s well-meaning as it may be, the model minority myth ought to be rejected for three reasons. First, the myth is a gross simplification that is not accurate enough to be seriously used for understanding [millions of] people. Second, it conceals within it an invidious statement about African Americans along the lines of the inflammatory taunt: “They made it; why can’t you?” Third, the myth is abused both to deny that Asian Americans experience racial discrimination and to turn Asian Americans into a racial threat.<sup>89</sup>

Further, some of the information provided in the *Chinese Cultural Guide for Employers* is extremely sweeping in its generalizations, suspect in its accuracy, and may actually tend to promote discriminatory behaviour by employers:

[t]he following are some sensitive issues to be aware of:

Falun Gong: The Chinese government does not believe that Falun Gong is a health conscientious society focusing on meditation exercise and with no political agenda.

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<sup>87</sup> York, South Simcoe Training & Adjustment Board, *Chinese Cultural Guide for Employers* (2008), online: Workforce Planning Board <<http://wpboard.ca/english/pdfs/Chinese%20Cultural%20Guide%20-%20Final.pdf>> at 4.

<sup>88</sup> *Ibid* at 8-9.

<sup>89</sup> Frank H Wu, *Yellow* (New York: Basic Books, 2002) at 49.

Japan: Japan's involvements in China during WWII and recent disputes is a touchy subject for Chinese individuals. Generally, the Chinese people have strong or mixed feelings toward Japan. Some consideration is required if Chinese and Japanese individuals are to be placed in a team together.<sup>90</sup>

One wonders what an employer is supposed to do with this information when considering the hiring or promotion of Chinese Canadian employees, but it seems certainly more likely to harm rather than enhance their prospects. This danger is tempered in the Purnell Model, however, because it is made very clear that although health practitioners need specific knowledge of cultural groups for whom they provide care, any generalization made about the behaviours of any individual or group of people is almost certain to be an oversimplification. Within all cultures there are subcultures and ethnic groups that may not hold all the values of their dominant culture.<sup>91</sup>

Further, the specific cultural information is provided in conjunction with an Assessment Guide which consists of a framework of 12 cultural domains such as communications, family roles and organization, nutrition, and spirituality, which are accompanied by a series of open-ended questions that can be used as a means to assessing clients on an individual basis from a cultural perspective.<sup>92</sup> This Assessment Guide implicitly reinforces the point that each client must be viewed as an individual, and also provides a general framework for thinking about cultural differences that could be used in any cross-cultural encounter.<sup>93</sup>

This model is also based on explicit, equality-based principles and assumptions. Some of the elements of cultural competence as defined in this model include "accepting and respecting cultural differences," "resisting judgmental attitudes such as 'different is not as good,'" and "adapting care to be congruent to the client's culture."<sup>94</sup> The assumptions of the model include the following:

1. All cultures share core similarities.
2. One culture is not better than another culture; they are just different.
3. Cultures change slowly over time.
4. Differences exist within, between, and among cultures.
5. Culture has a powerful influence on one's interpretation of and responses to health care.
6. To be effective, health care must reflect the unique understanding of the values, beliefs, attitudes, lifeways, and worldview of diverse populations and individual acculturation patterns.
7. Learning culture is an ongoing process that develops in a variety of ways, primarily through cultural encounters.
8. Prejudices and biases can be minimized with cultural understanding.

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<sup>90</sup> *Chinese Cultural Guide for Employers*, *supra* note 87 at 40.

<sup>91</sup> Purnell & Paulanka, *supra* note 73 at 2.

<sup>92</sup> *Ibid* at 8-19.

<sup>93</sup> See Paul R. Tremblay, "Interviewing and Counseling Across Cultures: Heuristics and Biases" (2002) 9 *Clinical Law Review* 373. Tremblay's use of heuristics provides a similar approach.

<sup>94</sup> Purnell & Paulanka, *supra* note 73 at 4.

9. Cultural awareness improves the caregiver's self-awareness.
10. Each individual has the right to be respected for his or her uniqueness and cultural heritage...<sup>95</sup>

In addition, the cultural information provided in this guide is grounded in academic research rather than anecdotal impressions.

While the Purnell Model argues that self-awareness is an essential part of cultural competence,<sup>96</sup> it does not actually focus on how to gain this self-awareness, or what values and beliefs might be held by mainstream U.S./North American health care professionals that could interfere with their ability to best serve their clients. These assumptions and beliefs are implied in the discussions about cultural difference, but are not explicitly explored or set out, which might be helpful. For example, in the discussion of differences in Hindu culture regarding eye contact and punctuality described above, the mainstream American cultural interpretation of direct eye contact and being on time for appointments is assumed, but not explicitly identified or explored.

Despite its limitations, this model might be useful in the legal context in a number of ways. For example, cultural concepts of health, or by analogy, beliefs about the legal system that are culturally based, may determine and limit what information is provided by a client to her lawyer and also what types of legal actions might be seen by the client to be useful or not. A client who feels a strong stigma in relation to mental health illness, for example, may not feel comfortable testifying about or even acknowledging this in support of her claim for disability benefits. Similarly, her description of symptoms of such an illness might not make sense to a lawyer or a decision-maker if they are not aware that mental health disabilities may be manifested in physical ways (described as somatization) in some cultures. Further, legal advocates may find it useful to gather information about traditional health practices to supplement other medical evidence regarding treatment in support of a disability claim. Lawyers will only be able to do so, however, if they have some awareness of their clients' cultural beliefs regarding health.

In the same vein, differing beliefs or misunderstandings about the legal system can also pose barriers to ensuring effective legal representation for diverse clients. In one case at PCLS, I was brought into an intake interview to help interpret for clients having a landlord/tenant problem who spoke only Mandarin Chinese. During the interview it became apparent that the clients were reluctant to take legal action even though they had a strong claim for relief. Upon further exploration, we discovered that they mistakenly believed that any legal action would be recorded on a central government file, and that this record could negatively impact their ability to obtain Canadian citizenship. After further clarification and reassurance that this would not take place, the clients decided to go ahead with their legal action against their landlord.

Lawyers can also benefit from understanding that individuals from different cultures may use different communication styles with respect to tone of voice, eye contact, language, and vocabulary differences. Without this knowledge, they may interpret behaviour in a negative and inaccurate way, interfering with their relationships with their clients and impacting the clients' ability to get the best possible services available.

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<sup>95</sup> *Ibid* at 6-7.

<sup>96</sup> *Ibid* at 3.

In the context of training law students to work in a legal clinic setting, the provision of specific, concrete examples of cultural differences might be effective as a means of illustrating our own cultural assumptions and highlighting how miscommunication can take place because of cultural differences. On the other hand, when doing so in the past, I have felt uncomfortable providing this type of information without sufficient detail and an opportunity to situate it in a broader context, because of the danger of reinforcing stereotypes and creating the impression of a monolithic pattern of behaviour within a cultural group. As a result, it might be more effective to present general information about the various domains wherein there may be cultural differences (e.g., communication, family roles, and organization) to ensure that students will be aware that differences may exist, and to equip them to explore those differences with their clients on an individual basis when appropriate. Further, specific cultural information can also be made available to students in written form (such as Purnell's *Guide to Culturally Competent Care*) for use as a reference, which can be much more detailed and nuanced than possible in a short workshop format.

## B. INTROSPECTION AND SELF-AWARENESS

Another major model of cultural competency training focuses on the need for introspection and self-awareness of one's own cultural assumptions and frameworks. The model set out in Susan Bryant and Jean Koh Peters in "Five Habits for Cross Cultural Lawyering," for example, largely focuses on introspection and self-awareness as a means to achieving more effective cross-cultural communication and establishing trust and understanding between service providers and their clients.<sup>97</sup> There is much more of an emphasis on self-awareness, communication, and rapport, and on how lawyers think about their interactions with their clients, than in the previous model, and rather than providing specific information about particular cultural groups, this model provides five "habits" or techniques to help lawyers better understand possible cultural differences between them and their clients.

This model holds that in order "to meet the challenges of cross-cultural representation, lawyers need to develop awareness, knowledge, and skills that enhance the lawyers' and clients' capacities to form meaningful relationships and to communicate accurately."<sup>98</sup> Key to this work is becoming more aware of:

the significance of culture in the ways in which we make sense of the world ... . Through our cultural lens, we make judgments about people based on what they are doing and saying. We may judge people to be truthful, rude, intelligent, or superstitious based on the attributions we make about the meaning of their behaviour. Because culture gives us the tools to interpret meaning from behaviour and words, we are constantly attaching culturally based meaning to what we see and hear, often without being aware that we are doing so.<sup>99</sup>

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<sup>97</sup> Susan Bryant & Jean Koh Peters, "Five Habits for Cross Cultural Lawyering" in Kimberly Holt Barrett & William H George, eds, *Race, Culture, Psychology & Law* (Thousand Oaks, California: Sage Publications, 2005) 47.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid* at 48.

The goal of cultural competency is “for lawyers to attribute to behaviour and communication that which the speaker or actor intends.”<sup>100</sup> Some of the ways this can fail is through misperceiving body language, for example, assuming nodding indicates understanding or agreement; or misinterpreting lack of eye contact as a sign of dishonesty. Lawyers can also make incorrect assessments of credibility, since this is very culturally determined.<sup>101</sup> Differences between cultures, such as individualistic or collectivist orientations, can cause a disconnect between lawyers and clients regarding their choice of legal remedy and how they define “success.”<sup>102</sup>

The first “habit” set out in this model is described as “Degrees of Separation and Connection.” This habit focuses on the conscious identification of “the similarities and differences between their clients and themselves and to assess their impact on the attorney-client relationship.” This habit first involves brainstorming as many similarities and differences between the client and himself as possible, including qualities such as race, gender, age, and so on, and then to use this list to identify where cross-cultural challenges might exist and to analyze how these similarities and differences will impact gathering and presenting information. This habit is aimed at avoiding unexplored cultural assumptions that may interfere with the lawyer’s ability to effectively interview his or her clients.<sup>103</sup>

Habit 2, “Rings in Motion,” involves “identifying and analyzing how cultural differences and similarities influence the interactions between the client, the legal decision makers, the opponents, and the lawyer.”<sup>104</sup> Similar to Habit 1, the lawyer is asked to list the areas of similarity and difference between each of the combination of actors in a legal case, as well as the legal system itself, possibly through lists or Venn diagrams.<sup>105</sup> While “cumbersome,” this habit might help the lawyer identify problems such as why a judge is bothered by a particular issue, what may impede a judge’s ability to truly hear and understand the client’s narrative, or why a client is resisting her advice.

Habit 3, “Parallel Universes,” is focused on helping the lawyer to “identify alternative explanations for her client’s behaviour.”<sup>106</sup> This habit involves using “parallel universe thinking” to generate multiple alternative interpretations of any client behaviour as a means of avoiding an interpretation based on insufficient information. For example, a client might fail to keep an appointment for a number of reasons, aside from the fact that “she does not care about the case,” including a lack of money for transportation, getting lost, or not receiving the letter setting up the appointment. This habit is particularly recommended when the lawyer is “feeling judgmental about her client.”<sup>107</sup>

Habit 4, “Red Flags and Remedies,” is focused on specific skills and tips toward the goal of good communication with clients. Some of these skills include:

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<sup>100</sup> *Ibid* at 49.

<sup>101</sup> *Ibid*.

<sup>102</sup> *Ibid* at 50. See also Alexis Anderson et al, “Challenges of Sameness: Pitfalls and Benefits to Assumed Connections in Lawyering” (2011-12) 18:2 *Clinical Law Rev* 339 on the often problematic assumptions of sameness.

<sup>103</sup> *Ibid* at 51-53.

<sup>104</sup> *Ibid* at 54.

<sup>105</sup> *Ibid* at 53-56.

<sup>106</sup> *Ibid* at 56.

<sup>107</sup> *Ibid*.

- Being careful in the use of “scripts” (e.g., for explaining confidentiality) in cross-cultural encounters.
- Paying special attention to the beginning of communication to ensure that these rituals are culturally appropriate (e.g., by consulting with an interpreter familiar with the client’s culture).
- Using active listening techniques such as rephrasing client information to ensure clear understanding.
- Gathering information about the client’s cultural context; for example, asking the client how the problem would be handled in his country of origin.
- Looking for red flags that the interaction is not working, such as signs of disengagement, boredom or silence of the client or distraction or negative judgment by the lawyer.

When the lawyer feels that the interaction is running into problems, he or she should explore corrective measures or change tack. This could involve asking for further information about the client’s priorities or concerns.<sup>108</sup>

The fifth and final habit, “The Camel’s Back,” is also focused on specific skills, in this case to assist lawyers in recognizing when the interaction has reached “the breaking point;” for example, a situation when a lawyer is feeling angry thoughts toward her client and begins to fall back “on some awful, old conditioning: against people who are of a different race, people who are overweight, and people who ‘talk too much.’”<sup>109</sup> It is noted that in situations where people are feeling stress they are more likely to stereotype, so this habit involves recognizing situations where this can happen such as when the lawyer is experiencing fatigue, lack of control and frustration. Straightforward tips, such as taking a break, controlling factors such as hunger and thirst, recognizing time or resource constraints, are offered as a means to limit this negative influence on the lawyer-client relationship.<sup>110</sup>

Unlike the Purnell model, “Five Habits for Cross-Cultural Lawyering” does provide some specific ways that a lawyer can gain greater self-awareness by exploring her own cultural frameworks and how they may differ from her client’s. Further, it helpfully outlines concrete “red flags” for when cross-cultural communication may be breaking down, and the conditions when lawyers may be least able to have this self-awareness (for example, when tired and under stress). As noted by the authors themselves, however, this model is “cumbersome.” The thought of identifying all the possible combinations of cross-cultural interactions that might be taking place in a legal action feels quite daunting, so it may be unrealistic or overwhelming in the context of a busy law practice to propose such a complicated process of brainstorming lists of similarities and difference and creating multiple Venn diagrams of relationship. Of course, this exercise is not designed for use for every case or client interaction, but is rather aimed at developing habits of mind to counter our potential tendency to work from assumptions rather than facts.

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<sup>108</sup> *Ibid* at 57-59.

<sup>109</sup> *Ibid* at 59.

<sup>110</sup> *Ibid*.

Similarly, while the process of brainstorming and thinking in terms of “parallel universes” could be a useful exercise in terms of highlighting possible cultural differences in lawyers’ relationships with clients, this model does not provide a means of assessing or evaluating which of the possible alternative explanations for client behaviour might actually be accurate (in contrast to the Purnell model, which attempts to provide specific information about cultural attitudes regarding issues such as punctuality for appointments, eye contact, etc.).<sup>111</sup> Further, when brainstorming possible areas of cultural difference, it is probably important that the lawyer has some specific knowledge about her client’s culture and cultural differences in general; otherwise, they may not realize that cultures differ in their approach to time, and may not have a basis for thinking about whether a culture is “individualistic/collective” or uses “direct or indirect communication.”<sup>112</sup> While this model does recommend that “a competent cross-cultural lawyer also studies the specific culture and language of the client group the lawyer represents,”<sup>113</sup> it does not provide any guidance in how to do so. After completion of the brainstorming exercises, the lawyer is left a bit at sea, realizing that she may be misinterpreting her client on the basis of cross-cultural misunderstandings, but still unable to interpret her client more clearly or accurately. Based on the exercise alone, she can only speculate which, if any, of the possible areas of difference or “parallel universe” explanations that she has come up with might actually be relevant or correct.<sup>114</sup>

## C. ANTI-RACISM/ISSUE-BASED TRAINING

A third approach that forms a thread running through some of the writing on cultural competency involves a focus on anti-racism and training on issues facing specific communities. In comparison to the previous models, there is a greater focus on the impact of racism, discrimination and other specific legal issues that each community faces as a means of understanding their needs. Demographic information is also emphasized as a means of understanding the community’s needs. Attention is also paid to the need for organizational change to reduce barriers to service for diverse communities. Finally, in addition to examining culturally based communication styles, this model also looks at how the social context and experiences with racism in the justice system can present barriers to clear cross-cultural communication and rapport between clients and lawyers.

### 1. GOALS

The goals of this model of cultural competency are explicitly linked to an anti-racism, anti-discrimination framework. In “Psychology, Justice and Diversity,” Kimberly Holt Barrett and William H. George set out a series of five key challenges for professionals “pursuing an effective cross-cultural practice.”<sup>115</sup> Challenge #1, “Preparing to Work with a Diverse Society,” demonstrates the need for cross-cultural work as a result of changes

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<sup>111</sup> This distinction is somewhat artificial, of course, since both models are ultimately aimed at countering our assumptions about behaviour that might be culturally incorrect.

<sup>112</sup> *Ibid* at 52.

<sup>113</sup> *Ibid* at 51.

<sup>114</sup> The authors would probably say that a conversation with her client would be helpful in such cases.

<sup>115</sup> Barrett & George, *supra* note 19 at 4.

to immigration patterns, the need of minority groups for legal protection, and specific legal issues facing racialized and immigrant communities such as racial profiling, human trafficking, and high levels of incarceration of African Americans and Latino men.<sup>116</sup>

Challenge #2, “Racism and Cultural Discrimination in the Life of the Client,” calls on professionals to learn about racism and cultural discrimination facing their client communities as a means of being “better able to help their clients recognize and confront racism and bias when it occurs in their lives,”<sup>117</sup> to link individual struggles to the broader social context, and to address issues of discrimination and racism in the context of their own practices.<sup>118</sup>

Challenge #3 focuses on “Eliminating Personal and Professional Biases in Practice.” This work can be approached through reviewing the major influences on one’s views of other communities. A study of the history of minority groups will help to “reveal the historical stereotypes, myths, and omissions that have helped to construct negative views of minority groups.”<sup>119</sup> An assessment of the professional’s own “personal and professional familiars” is recommended as a part of the process of increasing self-awareness because a “lack of contact with diverse groups leaves one much more open to the impact of stereotypes.”<sup>120</sup> Further individual work can involve cross-cultural reading, community and cultural activities, travel, and language study as other means of breaking through cultural barriers.

Challenge #4, “Understanding the Power and Impact of the Judicial System in the Lives of Minorities in the United States,” involves learning about how the legal system has impacted the lives of minority groups, in particular how the law has been a source of both direct and systemic discrimination and, by doing so, gaining greater understanding of how minority groups view the courts, in particular feelings of estrangement and mistrust.<sup>121</sup> These feelings may be manifested as “guardedness, mistrust, suspicion and defensiveness” and therefore should not mistakenly be viewed as signs of resistance or non-compliance. Challenge #5 calls on professionals to debunk “Judicial Colorblindness and Race Neutrality” and help educate the courts to better understand issues of race.<sup>122</sup>

This model draws heavily from the American Psychological Association’s *Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations*.<sup>123</sup> These Guidelines were developed in order to improve psychological services to diverse populations as well as to guide all areas of service delivery. Some of the Guidelines call on psychologists to “seek to help a client determine whether a ‘problem’ stems from racism or bias in others so that the client does not inappropriately personalize problems,”<sup>124</sup> and to,

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<sup>116</sup> *Ibid* at 4-6.

<sup>117</sup> *Ibid* at 7

<sup>118</sup> *Ibid* at 6-9.

<sup>119</sup> *Idid*.

<sup>120</sup> *Ibid* at 10.

<sup>121</sup> *Ibid* at 10-14.

<sup>122</sup> *Ibid* at 14-15.

<sup>123</sup> American Psychological Association, *Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations* (Washington: APA, 1990).

<sup>124</sup> *Ibid* at 3d.

attend to as well as work to eliminate biases, prejudices, and discriminatory practices ... acknowledge relevant discriminatory practices at the social and community level that may be affecting the psychological welfare of the population being served ... [be] cognizant of socio-political contexts in conducting evaluations ... develop sensitivity to issues of oppression, sexism, elitism, and racism.<sup>125</sup>

Michelle Jacobs cites similar goals for professionals in “People from the Footnotes,” including the need for legal professionals to become “aware and sensitive to [their] own cultural heritage and to valuing and respecting differences” and to develop “a good understanding of the socio-political system’s operation ... with respect to its treatment of minorities.”<sup>126</sup> Similarly, the APA *Guidelines on Multicultural Education, Training, Research, Practice and Organizational Change for Psychologists* provide further ethical guidance for psychologists regarding their work with culturally diverse populations from anti-racism/equality-based principles.<sup>127</sup> Guideline 1 states that,

[p]sychologists are encouraged to recognize that, as cultural beings, they may hold attitudes and beliefs that can detrimentally influence their perceptions of and interactions with individuals who are ethnically and racially different from themselves.<sup>128</sup>

In this model, cultural competency requires a recognition not only that miscommunication can be caused by different cultural frameworks (as described in the Purnell model above, for example), but also from the idea that the “worldview of White European Americans” is “the ‘norm.’”<sup>129</sup>

Research has shown that worldviews that differ from one’s own can be negatively judged automatically and that it is common to have automatic biases and unconscious stereotypic attitudes toward those in devalued cultural groups. These unconscious biases and stereotypes prove to be powerful as disconfirming information does not serve to alter their presence. These automatic biases influence behavior, and can lead to cultural miscommunication ... research has suggested that immunity from negative beliefs about and stereotypes of populations of colour is impossible ... Self-awareness and self-exploration have been shown repeatedly to be crucial methods for becoming aware of unconscious beliefs and bias and reducing stereotypic attitudes.<sup>130</sup>

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<sup>125</sup> *Ibid* at 8a, b.

<sup>126</sup> Jacobs, *supra* note 13 at 418-419.

<sup>127</sup> American Psychological Association, *supra* note 63. See Kang, *supra* note 14; Christine Jolls & Cass R. Sunstein, “The Law of Implicit Bias” (2006) 94:4 Cal L Rev 969; and R Richard Banks, Jennifer L Eberhardt & Lee Ross, “Discrimination and Implicit Bias in a Racially Unequal Society” (2006) 94:4 Cal L Rev 1169.

<sup>128</sup> *Ibid* at 19.

<sup>129</sup> Constantine et al, *supra* note 65 at 5.

<sup>130</sup> *Ibid* at 5-6.

While there is an emphasis on self-awareness as in the second model outlined above, this analysis is undertaken through an anti-racism lens. As noted in the APA multicultural *Guidelines*, “even those who consciously hold egalitarian beliefs, have shown unconscious endorsement of negative attitudes toward and stereotypes about groups.”<sup>131</sup> Further, an awareness of one’s own worldview is necessary in order “to be able to understand others’ frame of cultural reference.”<sup>132</sup>

## 2. ISSUE-BASED INFORMATION ABOUT SPECIFIC COMMUNITIES

As indicated in the goals outlined above, an important focus of this model is to gain greater understanding of specific diverse communities. This understanding comes not only from learning about cultural beliefs and demographic information of various communities, but also from gaining awareness about the stereotypes that they face, the legal issues that they are dealing with, the ways that racism and discrimination are manifested against each community, and barriers that they face in accessing services to address these legal needs.

An example of this approach is provided in David Sue’s “Asian American/Pacific Islander Families in Conflict,” which outlines specific issues that this community faces, including stereotyping, discrimination, and hate crimes, in addition to information on demographics and cultural values.<sup>133</sup> Barriers that members of this community face in accessing services are identified and explored, including culturally based barriers such as shame and stigma, cultural perceptions of treatment that do not match with Western beliefs, communication and language barriers, and a lack of knowledge of available mainstream services.<sup>134</sup>

Similarly, in *Clinical Practice with People of Color*, chapters on specific population groups such as African Americans provide details not only of the demographics of these communities but also on specific stereotypes, experiences of racism, and barriers to accessing mental health services.<sup>135</sup> In a chapter entitled “Asian American Populations,”<sup>136</sup> in addition to demographic details and explanations of cultural concepts relating to treatment, the model minority stereotype and racial discrimination are noted as important factors affecting the mental health of members of these communities:

[o]ne stereotype that has long affected Asian Americans is that of the “model minority.” The notion of the model minority suggests that Asian Americans embody the American success story: They function well in society, and are somehow immune

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<sup>131</sup> American Psychological Association, *supra* note 63 at 22.

<sup>132</sup> *Ibid* at 24.

<sup>133</sup> David Sue, “Asian American/Pacific Islander Families in Conflict” in Kimberly Holt Barrett & William H George, eds, *Race, Culture, Psychology & Law* (Thousand Oaks, California: Sage Publications, 2005) 257 at 258.

<sup>134</sup> *Ibid* at 258-259.

<sup>135</sup> Madonna Constantine, ed, *Clinical Practice with People of Colour* (New York: Teachers College Press, 2007).

<sup>136</sup> Bryan SK Kim, “Asian American Populations” in Madonna Constantine, ed, *Clinical Practice with People of Colour* (New York: Teachers College Press, 2007) 15.

from cultural conflicts and discrimination, and experience few adjustment difficulties.<sup>137</sup>

This myth is debunked, and its negative impact is also explained:

First, Asian Americans are a heterogeneous racial category comprising numerous ethnic groups with different educational, economic and social characteristics. Second, Asian Americans earn significantly less income compared with White people with the same education level ... Furthermore, Asian Americans are overrepresented among people who suffer from poverty.

The model minority stereotype has implications for the mental health of Asian Americans. The stereotype serves to alienate Asian Americans from other ethnic minority groups because of the inherent message: “If Asian Americans can succeed, other minority groups can too” ... Furthermore, the stereotype hinders the allocation of resources to the mental health needs of Asian Americans, because of the erroneous assumption that they tend not to suffer from psychological difficulties.<sup>138</sup>

This type of information would be useful both in improving communication and rapport with clients from these communities, but also in guiding the legal service provider in developing their analysis of their clients’ cases.

Knowledge of stereotypes about specific communities can be used as an aid to gaining greater self-awareness of one’s own possible beliefs or inaccurate filters. For example, an awareness of the model minority myth might prevent a law student from unconsciously downplaying or dismissing the claims of an Asian client regarding discrimination in the workplace. Students can also be more conscious of possible errors in assessment of credibility of clients that could be affected by possible stereotypes or myths based on race.

An awareness of the issues facing a specific community will also be an aid in interviewing clients and assessing what issues and possible remedies arise from a particular fact pattern. At PCLS, we recently worked on a case involving a man whose claim for criminal injuries compensation had been rejected because the Criminal Injuries Compensation Board made a finding that his beating arose from an involvement in a drug deal gone sour. This finding was based on very circumstantial and unreliable evidence but also, we believed, on negative stereotypes about the client, who was an African Canadian man who at the time was homeless. Our decision to take on this client’s appeal, and our theory of the case, involving arguments including reasonable apprehension of bias, was informed by our awareness of stereotypes, such as an association with criminality, facing African Canadian men.

In the context of cross-cultural communication, “empathetic listening and active responses may be insufficient” to ensure clear understanding.<sup>139</sup> A lack of awareness of the impact of racism on clients’ lives may “limit the client’s legal options both by

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<sup>137</sup> *Ibid* at 20-21.

<sup>138</sup> *Ibid* at 21.

<sup>139</sup> Jacobs, *supra* note 13 at 391.

devaluing racial components of a client's legal claim and through cultural ignorance.”<sup>140</sup> In the same way that we provide training to law students regarding black letter legal issues so that they can be spotted and addressed, we also need to provide training on issues of stereotypes and discrimination so that they can be identified and provided with an appropriate response. Without such awareness, issues such as the “impact of racial prejudices and stereotypes” on a legal claim, or the importance of a claim for the restoration of dignity, may be missed.<sup>141</sup>

### 3. ORGANIZATIONAL CHANGE

A lack of cultural competency can result not only in miscommunication, but in discriminatory barriers to accessibility of services and a lack of response to the needs of racialized communities. As noted in the MTCSEALC study of Toronto legal clinics outlined above, for example, community organizations identified both a need for increased interpreter services to reduce barriers in accessing services, as well as increased immigration law services to address the needs of racialized and immigrant communities.<sup>142</sup>

Cultural and linguistic isolation are barriers that greatly compromise the ability of refugee and immigrant people to access services and information... .The lack of multicultural and multilingual resources prevents refugee or immigrant people from taking advantage of all options available for health care, mental health care, welfare, housing, and various social services ... . Gaps in social services also discourage cultural/ethnic groups from seeking help.<sup>143</sup>

Increased awareness by the legal professional is inadequate to address these barriers and gaps in services; what is needed is systemic, organizational change. Cultural competency includes not only behaviours and attitudes of legal service professionals, but also practices and policies.<sup>144</sup> It can be assessed and developed at a number of levels, including individual, professional, organizational and societal.<sup>145</sup> At the organizational level, some of this work can include evaluating agency mission statements and goals, identifying specific projects that work toward greater cultural inclusiveness, evaluating how well the agency complies with human rights and equality legislation, establishing training for staff on cultural competency, and developing outreach plans.<sup>146</sup>

In order to improve cultural competency, the services provided need to be responsive to the actual needs of a diverse range of clients, however the clinic defines the community it serves. A legal clinic therefore would not be culturally competent as defined by this model if it failed to provide services that address the needs of racialized and immigrant clients in the community it serves, for example with respect to issues such as immigration status or discrimination/human rights.

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<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid* at 392.

<sup>142</sup> MTCSEALC, *supra* note 46 at 3, 5.

<sup>143</sup> Stephens, Ibarra & Moore, *supra* note 56 at 427.

<sup>144</sup> *Ibid* at 428.

<sup>145</sup> American Psychological Association (2002), *supra* note 63 at 58.

<sup>146</sup> Stephens, Ibarra & Moore, *supra* note 56 at 428-429.

The American Psychological Association exhorts psychologists to “attend to as well as work to eliminate biases, prejudices, and discriminatory practices ... [and to] acknowledge relevant discriminatory practices at the social and community level that may be affecting the psychological welfare of the population being served.”<sup>147</sup> This can be accomplished by using “organizational change processes to support culturally informed organizational (policy) development and practices.”<sup>148</sup> Psychologists are asked to use their specific expertise and important role in society to become “change agents and policy planners” to promote organizational and societal change.<sup>149</sup>

Similarly, law students can also be inspired by their teachers to work on issues of cultural competency at a broader professional and societal level. They can be encouraged to help build cultural competency of agencies or the profession itself through involvement in agency boards or groups in the profession addressing these issues, such as the Federation of Asian Canadian Lawyers, South Asian Law Students Association or Canadian Association of Black Lawyers. They can work on issues of systemic discrimination through academic research, or by helping clients to challenge human rights violations through their case work.

#### 4. COMMUNICATION BARRIERS/SELF-AWARENESS AND INTROSPECTION FROM AN ANTI-RACIST PERSPECTIVE

In the first two models outlined above, communication barriers are examined from a perspective of cultural difference. These types of communication barriers are compounded by others that stem from the surrounding context of inequality and racism in which the parties are meeting. As argued above, law students working at a legal aid clinic and their clients often come from very different worlds in terms of class, race, and immigration status.<sup>150</sup> This very difference can pose barriers to clear communication.

The lawyer or law student may bring “pre-conceived notions rooted in the lawyer’s own cultural background” as well as “elements of unconscious racism.”<sup>151</sup> These notions can result in a self-fulfilling prophecy, where “one person’s attitudes and expectations about another may influence the believer’s actions, which in turn, may induce the other to behave in a way that confirms the original false definition.”<sup>152</sup>

In one study, white interviewers spent 25 percent less time with black applicants than white job applicants, and black applicants received less “immediate,” or reinforcing, behaviour from the interviewers. In a further research study, white applicants treated similarly to the black applicants performed less well, showing that the actions of the interviewers had an impact on the behaviour of the job candidates. In the medical field, it has been found that a doctor’s expectations regarding the patient can negatively impact their ability to communicate with each other, and that in hospital emergency rooms black patients receive different levels of service than white patients. Similarly, lawyers and law

<sup>147</sup> American Psychological Association, *supra* note 123 at 8.

<sup>148</sup> American Psychological Association, *supra* note 63 at 52.

<sup>149</sup> *Ibid* at 61.

<sup>150</sup> Voyvodic (2005), *supra* note 39 at 4.

<sup>151</sup> Jacobs, *supra* note 13 at 377-378.

<sup>152</sup> Jacobs, *supra* note 13 at 378.

students might unknowingly through their own behaviour cause negative behaviour in their clients, and their expectations may negatively impact how they frame their client's legal problem and develop a strategy.<sup>153</sup>

The American Psychological Association advises psychologists to be “cognizant of socio-political contexts in conducting evaluations ... [and to] develop sensitivity to issues of oppression, sexism, elitism, and racism.”<sup>154</sup> They are encouraged “to recognize that, as cultural beings, they may hold attitudes and beliefs that can detrimentally influence their perceptions of and interactions with individuals who are ethnically and racially different from themselves.”<sup>155</sup> Similarly, legal professionals need to be aware of the possible negative impact of their own beliefs and attitudes on how they perceive and interact with clients in cross-cultural interactions.

Client expectations can also negatively impact these interactions. Racialized and immigrant clients may feel a justifiable distrust of the legal system and lawyers, stemming either from issues such as corruption in their home country or from an awareness of or first-hand experience of discrimination in the legal system (e.g., the beating of Rodney King by Los Angeles police officers).<sup>156</sup> High levels of cultural mistrust by clients, however, can unfortunately lead to a lack of confidence in the service provider, a low level of disclosure by the client, or early termination of the relationship. This non-disclosure can be misinterpreted by the student or lawyer as a lack of honesty or willingness to establish a relationship.<sup>157</sup>

Although challenging, research has shown that cultural mistrust can be reduced by increased sensitivity to clients' racial identity.<sup>158</sup> Increased self-awareness can lead to changes in attitude and behaviour; for example, through completion of surveys that provide insight into value priorities or personality types.<sup>159</sup> Intergroup anxiety can be reduced through increased contact, especially when the contact between groups is structured, there are clear expectations and interaction is cooperative rather than competitive.<sup>160</sup>

This analysis of communication barriers can be contrasted with the second model outlined above (“Five Habits”), in which differences and misunderstandings are viewed somewhat more benignly or neutrally, and are not examined in the context of racism and other forms of oppression. Here, some communication problems are explicitly linked to the impact of bias and stereotyping. Further, this model goes beyond a focus on rapport and clear communication to look at whether services are accessible to a diverse range of clients, and whether the type of services offered actually meet these clients' needs.

## IV. PROPOSED MODEL: EQUALITY-BASED CULTURAL COMPETENCE

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<sup>153</sup> *Ibid* at 379-383. See also the research studies reviewed in Kang, *supra* note 14.

<sup>154</sup> American Psychological Association, *supra* note 123 at 8.

<sup>155</sup> American Psychological Association, *supra* note 63 at 8.

<sup>156</sup> Stephens, Ibarra & Moore, *supra* note 55 at 426.

<sup>157</sup> Jacobs, *supra* note 13 at 385-390; Barrett & George, *supra* note 19 at 10-14.

<sup>158</sup> Jacobs, *supra* note 13 at 384-391.

<sup>159</sup> *Ibid* at 392-397.

<sup>160</sup> *Ibid* at 398.

All three models outlined above have strengths, and are linked to different facets of cultural competency. Further, the distinction between these models is somewhat artificial, as there is a significant overlap between them. Nevertheless, there are differences between the models in their methodology and goals and, as a result, in what they will accomplish.

The first model, focused on the culture and demographics of specific ethno-cultural groups, is useful in providing specific guidance regarding cultural practices, values and communication styles of specific communities. This information would help service providers to ensure clear communication with clients as well as understanding specific issues that they might face. On the other hand, it is important that the individuality of members of these communities be emphasized when discussing such cultural information, that such information be accurate and non-stereotypical, and that there also be an examination of the cultural values and practices of the dominant culture as well.

The second model, which focuses on introspection and self-awareness, is useful as a means of becoming aware that we are always in a process of interpretation through a cultural lens, and that our interpretations can be faulty. Through an intensive process of analysis and introspection, a service provider can become more self-aware of the limitations and errors that can result from her own cultural frameworks. This process of introspection, however, is limited in that it is not more closely tied to actual information about what cultural values might be guiding both the client's and lawyer's behaviour and communication styles. It proposes a number of exercises that are useful to increase awareness of possible communication barriers, but does not provide guidance in determining what is actually happening in a cross-cultural exchange, only an awareness that the service provider's interpretation of an interaction might be wrong.

The third model, based on an explicit anti-racist and issue-based framework, focuses on increasing awareness of the issues that racialized and immigrant clients face as a means of improving communication across cultures. It extends the concept of cultural competency to include organizational change, such as improved accessibility of services to a diverse range of clients and changes to the type of services being provided. Introspection and self-awareness are also included in this approach, but from an anti-racism perspective as a means of addressing communication barriers that are caused by the context of inequality in which cross-cultural communication is taking place.

I would argue that this last model, which I would call "equality-based cultural competency," might be the most effective means of teaching cultural competency in a legal clinic setting. Training on issues and stereotypes will aid students both in assessing their own possible unconscious assumptions and biases as well as in spotting potential legal issues that stem from some form of discrimination. This model addresses head on some of the barriers to cultural competency training, such as denial and the myth of colourblindness, by focusing on concrete examples of inequality. I propose a model largely based on this approach, but with elements of the other two models as well.

## **A. GOALS AND HOW TO DESIGN TRAINING**

Although there is a good deal of writing on the subject of cultural competency and the need for training in this area, there is relatively little regarding actual exercises or

specific, concrete training models. Furthermore, very little is written evaluating the effectiveness of the few models that do exist. Nevertheless, the existing literature provides helpful guidance regarding the goals of cultural competency training, useful content, and potential pitfalls and barriers to effectively carrying out this training.

As outlined above, there are a number of key goals that cultural competency training is aimed at achieving:

1. Clear communication, and the avoidance of misunderstandings based on cultural differences (including knowledge of cultural communication styles, awareness of biases/stereotypes, and self-awareness).<sup>161</sup>
2. Services that are accessible to a diverse range of clients, delivered in a culturally-appropriate and sensitive manner.<sup>162</sup>
3. Types of services that respond to the differing needs of diverse communities.<sup>163</sup>
4. Ability to identify and respond to issues involving bias, discrimination and racism.<sup>164</sup>

These goals should guide the design of cultural competency training, even though some of the goals, such as organizational change,<sup>165</sup> might not be achievable through training alone. On the other hand, this training can form the foundation for further discussion and work in this area. Further, it should also be linked to other forms of training focused on ensuring accessibility and appropriate types of services. At PCLS, we already provide training to students in working with interpreters as well as in accommodation of clients with disabilities. It would make sense to link cultural competency training to these other workshops, because they all aim at ensuring that services are accessible and appropriate to all members of the community and, ultimately, organizational change. Students will find common issues arising from these other workshops, and holding them together would also send a message that they are equally important.

Cultural competency should also be incorporated throughout the curriculum instead of presented as a separate issue divorced from the rest of training,<sup>166</sup> which might otherwise reinforce the idea that issues of race, gender, class and so on exist “outside of the scope of our normal clinical subjects.”<sup>167</sup> At PCLS, these issues have been included in readings and discussion in the academic seminar, and have also been explored as a subject for the academic paper requirement, in substantive law training within each division, as well as in general training workshops focusing on subjects such as interviewing skills. These issues have also been addressed in supervisory sessions in division meetings at the clinic as well as in supervisory sessions with staff lawyers and

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<sup>161</sup> Purnell, *supra* note 4; Bryant & Peters, *supra* note 97.

<sup>162</sup> Purnell, *supra* note 4; Barrett & George (2005), *supra* note 11; Constantine (2007), *supra* note 65; American Psychological Association (2002), *supra* note 63; MTCSEALC, *supra* note 46.

<sup>163</sup> Jacobs, *supra* note 13; Barrett & George (2005), *supra* note 11; American Psychological Association (2002), *supra* note 63; MTCSEALC, *supra* note 46.

<sup>164</sup> Jacobs, *supra* note 13.

<sup>165</sup> Including issues of staff representation; resources such as funding for interpretation services; needs assessment and vision for organization; and range of services provided.

<sup>166</sup> Constantine (2007), *supra* note 65 at 7.

<sup>167</sup> Jacobs, *supra* note 13 at 407.

community legal workers. Cultural competency themes should also be incorporated within the work of the clinical program itself. Students can learn cultural competency by actually working on these issues: through casework focused on equality rights, participation on internal committees focused on issues of organizational change, and through public education and community organizing.

Barriers to carrying out cultural competency training must also be addressed in course design. As described above, one of the major barriers is the potential sensitivity or emotional content of the subject, potentially leading to resistance, anxiety and conflict among the students.<sup>168</sup> Teachers need to be prepared for a range of possible emotional reactions and to actively “facilitate respectful discussion and disagreement.”<sup>169</sup> They should be prepared to “speak up promptly if a student makes a distasteful remark,” responding tactfully in explaining “why a comment might be offensive or sensitive” and letting students know that discriminatory remarks are not acceptable in the class.<sup>170</sup> A study has shown that “the professor’s amiability, non-judgemental demeanor, enthusiasm, self-disclosure, and overall leadership in the class were sources of encouragement and positive modeling” for students in settings involving teaching about multicultural issues.<sup>171</sup> Work to increase student self-awareness can be done in relatively “safe” ways that may reduce the level of anxiety that it provokes (for example, by completing self-assessment questionnaires for individual use only). Education on stereotypes and issues relating to discrimination faced by specific communities might also help to counteract resistance and the myth of colourblindness that also serve as barriers. Students at PCLS have been more recently asked to take implicit association tests outside of class and to discuss the results as part of a discussion of how our identities and individual histories affect the work we do.

Because of these unique challenges, it is also important to think about different styles of learning. For example, “research on the development of multicultural competence has shown that experiential learning techniques can be more effective than traditional didactic learning.”<sup>172</sup> “Multiple teaching modalities” should be used to ensure that training is effective. In addition to lectures, training can incorporate discussion, self-evaluation, writing and other more active or participatory forms of learning. A library of materials or handouts can be provided for self-study. In addition, as discussed above, teaching of cultural competency can be accomplished by including it in the work that students do at the clinic, including academic reading and research, case work, and community organizing.

## **B. PROPOSED MODEL WORKSHOP FOR CULTURAL COMPETENCY TRAINING**

As discussed above, there are many challenges to providing training in cultural competency in a legal clinic setting. A workshop I have developed aims at achieving

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<sup>168</sup> Ong Hing, *supra* note 62 at 1823; American Psychological Association (2002), *supra* note 63 at 36; Constantine (2007), *supra* note 65 at 7.

<sup>169</sup> American Psychological Association (2002), *supra* note 63 at 36.

<sup>170</sup> Ong Hing, *supra* note 62 at 1833.

<sup>171</sup> American Psychological Association (2002), *supra* note 63 at 36-37.

<sup>172</sup> Constantine (2007), *supra* note 65 at 7.

some of the goals of cultural competency training and to address some of these barriers, but as previously noted, learning cultural competency is more of an ongoing process rather than an achievable end goal. This workshop aims at initiating an ongoing conversation that should continue throughout the students' time at the legal clinic and beyond. It is a proposal that will also need to be tested, evaluated, and revised.<sup>173</sup>

## **V. CONCLUSION**

Students and staff in clinical legal education programs are involved because of their commitment to access to justice for all members of the community. While there are challenges to making this vision a reality, my experience is that there is also strong commitment, goodwill and enthusiasm that we can take advantage of in trying to make our services as effective and accessible as possible.

Although there is broad consensus of a need for greater cultural competency in the provision of legal clinic services, there is a general lack of agreement on what cultural competency is or the best means of teaching it. It is hoped that the identification of barriers to teaching in this area, as well as different models or definitions of cultural competency, will be a helpful start for clinical educators.

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<sup>173</sup> See [the workshop outline](#) for reference.