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### **Being Culturally Competent: Why Is This Important?**

Agatha, a litigation lawyer, conducts a pre-trial examination. During the examination, the witness avoids her gaze and dodges her questions. Indeed, Agatha struggles to get direct and concise answers. It doesn't take much else for her to conclude that the witness is lying to her, but is that really the case?

There are many differences in language, gender or culture that influence the quality of our dealings with our clients, colleagues and even opposing parties. These differences also colour our interpretation of certain behaviours. In a context of globalization, which brings many changes such as increased trade and interdependence at the political, social and economic levels, cultural skills are undeniably major assets that lawyers in all fields of law must possess.

This article has three objectives: to define the concepts of culture and cultural competence, to provide food for thought on your cultural skills and the main obstacles to communication and, finally, to suggest preventive measures to avoid misunderstandings underlying cultural differences.

### **Culture and Cultural Competence: Some Definitions**

In this article, we will take a broad view of the concept of culture. More specifically, culture refers to any behaviour or value of an individual in relation to his or her identity characteristics. In addition to ethnicity, identity characteristics include: the individual's gender, sex, age, sexual orientation, religious beliefs and intellectual and physical abilities.<sup>1</sup>

Similarly, we understand cultural competence to mean an individual's ability to maintain his or her effectiveness in a context marked by cultural differences, as well as his or her ability to understand and adapt to these differences.<sup>2</sup> In other words, cultural competence not only requires an awareness of cultural differences, it also requires an active engagement in learning and adaptive behaviours to maintain healthy relationships with our culturally diverse clients.<sup>3</sup>

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<sup>1</sup> M<sup>e</sup> Nora Rock, *Cultural Competence: an essential skill for success in an increasingly diverse world*, Lawpro Magazine, 2014, vol. 13, no. 2. Found at: <https://www.practicepro.ca/wp-content/uploads/2017/09/2014-09-lawpro-magazine13-02-sept2014.pdf>

<sup>2</sup> M<sup>e</sup> Jatrine Bentsi-Enchill, *Client Communication: Measuring Your Cross-Cultural Competence*, September 29, 2014, CBA PracticeLink. Found at: <https://www.cba.org/Publications-Resources/CBA-Practice-Link/Young-Lawyers/2014/Client-Communication-Measuring-Your-Cross-Cultural?lang=en-ca>

<sup>3</sup> M<sup>e</sup> Nora Rock, *supra*, note 1.

## **Assessment of My Cultural Competence**

Humans are made in such a way that it is easier for us to relate to individuals who are like us. Each lawyer therefore has his or her own level of comfort with diversity.

We propose to identify your stage of cross-cultural sensitivity and emotional competence with the help of the *Development Model of Intercultural Sensitivity* designed by Dr. Milton Bennett. Dr. Bennett identified the following six stages of cultural competence:<sup>4</sup>

### **Stage 1: Denial**

This refers to lawyers who overlook the cultural dimension of their business relationships. They ignore the differences that may still exist with respect to values, beliefs, taboos and communication styles. In general, lawyers at this stage find it difficult to build trusting relationships with clients from different cultures. Similarly, there are more conflicts and misunderstandings caused by a lack of understanding of cultural differences.

### **Stage 2: Defence**

Lawyers at this stage acknowledge the existence of cultural differences, but view them negatively. In other words, instead of trying to understand behaviour that is different from their own, they criticize the behaviour or make a false or stereotypical judgment.

### **Stage 3: Minimization of difference**

At this stage, lawyers recognize cultural and linguistic diversity. Nonetheless, they consider their own values and beliefs to be universal and superior to those of others. When interacting with culturally different clients, they tend to misinterpret the clients' behaviours or opinions in the mistaken belief that the clients share their own values. Such lawyers will face many communication barriers due to their propensity to minimize the importance of the cultural differences that may exist between them and their clients.

### **Stage 4: Acceptance of difference**

Lawyers at this stage are aware of the cultural differences that exist and grasp the importance of understanding them to improve the quality of their relationships and the effectiveness of their communications with their clients. In other words, the relationship between the lawyers and their culturally different clients is respectful and free of negative bias. The lawyers' flexibility and open-mindedness allows them to adequately analyze the needs of culturally different clients.

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<sup>4</sup> The above description of the stages is based on a text by M<sup>e</sup> Jatrine Bentsi-Enchill, *Client Communication: Measuring Your Cross-Cultural Competence*, September 29, 2014, CBA PracticeLink. Found at: <https://www.cba.org/Publications-Resources/CBA-Practice-Link/Young-Lawyers/2014/Client-Communication-Measuring-Your-Cross-Cultural?lang=en-ca>.

### **Stage 5: Adaptation to difference**

At this stage, lawyers not only perceive cultural differences, but also interact skillfully within those differences. In other words, they adapt!

### **Stage 6: Integration of difference**

At this stage, lawyers have become experts in interpreting their clients' behaviours according to their cultural framework. They pay particular attention to both verbal and non-verbal language.

Please rest assured that this is in no way a value judgment on a particular stage. On the contrary, identifying the stage we are at, even if it is not the desired one, allows us to identify our strengths and weaknesses. In fact, it's about raising awareness so that we can target the actions that need to be taken to perfect our communications with culturally different clients. This leads us to end this section by sharing a quote from Shunmyo Masuno, a Buddhist monk, on open-mindedness: "If you debate endlessly about black or white, you fail to see the beauty of grey".

### **Cultural Differences and Barriers to Good Communication<sup>5</sup>**

Let's look at three cultural differences that may arise in your daily practice and that are the source of many misunderstandings.

#### **High-hierarchy vs. low-hierarchy cultures**

During a meeting with a client to explain his opinion on the file, Max has difficulty getting clear instructions from the client. Despite Max's encouragement, the client asks few questions, simply stating that he understands. Is the client merely shy or is there a cultural element involved?

The question is relevant. In high-hierarchy cultures, a high degree of respect is shown to individuals who have certain characteristics such as age, gender, education, type of employment, workplace seniority, etc. Thus, out of deference, people who adhere to this type of culture speak little in meetings or ask permission before speaking. They also tend to avoid challenging the ideas of those they perceive as hierarchically superior.

Conversely, in low-hierarchy cultures, individuals view challenging ideas positively, as long as opinions are expressed with respect.

It should be noted that low-hierarchy countries are the minority. Canada, the United States and the United Kingdom are countries with a low-hierarchy culture.

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<sup>5</sup> The description of the main obstacles mentioned in this article is based on the text by M<sup>e</sup> Nora Rock, *Cultural Competence: an essential skill for success in an increasingly diverse world*, Lawpro Magazine, 2014, vol. 13, no. 2. Found at: <https://www.practicepro.ca/wp-content/uploads/2017/09/2014-09-lawpro-magazine13-02-sept2014.pdf>

### **Culture of direct vs. indirect communication**

Marie, a family law lawyer, meets for the first time with a new female client who is married, is 35 years old and has two children. The client arrived in Canada less than a year ago and has difficulty expressing herself in English. Based on her discussion with the client, Marie perceives that the client seems to be emotionally abused by her spouse and wants a divorce. Despite a frank and direct question about the client's intentions, the client evades the question.

The way in which people communicate also varies from one culture to another. For some, conversations are "cloaked" in the sense that metaphors, references to culturally shared norms or examples are used to express one's thoughts. Indeed, cultures that favour indirect communication perceive direct communication as inappropriate or crude. Cultures favouring indirect communication are mostly found in ethnically homogeneous countries.

Conversely, in countries with great diversity, communication tends to be direct to ensure that the other person has understood the meaning of what is being said. Canada is an excellent example of a culture of direct communication.

### **Group vs. individual culture**

Harold, a litigation lawyer, is at a settlement conference with his client. His analysis of the case suggests it is in his client's favour and the judge seems receptive to their position. Despite his recommendations to try to obtain higher monetary compensation, the client is more concerned about obtaining a letter of apology and re-establishing the business relationship with the opposing party.

So-called group cultures place greater importance on the interests of the group as opposed to individual interests. Collaboration and consensus building is common. Conflicts must be avoided and social cohesion is paramount.

Individualistic cultures value the defence of individual rights and interests.

By being sensitive to cultural differences, it is possible to see the misunderstandings and errors that can result.

### **Some Preventive Measures...**

In light of the above, here are some preventive measures to improve how you communicate with culturally diverse clients:

- **Be aware of your biases and thought patterns.** During a meeting with a culturally different client, ask yourself what certain behaviours mean and how your own cultural context influences your interpretation. Avoid assuming that a gesture has the same meaning as in your culture.
- **Don't underestimate the role of stress.** Anxiety negatively influences the interpretation of events and behaviours by both lawyers and clients. So, in times of stress, why not take a step back to ensure that your interpretation is accurate and free of bias? As far as the client is concerned, encourage breaks if the conversation becomes anxiety-provoking. These breaks will allow the client to better assimilate information and make well-thought-out decisions.
- **Allow sufficient time for the client during your meetings.** When planning a meeting, allow time to answer all of the client's questions and work to dispel preconceived ideas, if any.

- **Practice active listening techniques.** Make your client understand that you are attentive to the problem they are presenting to you, in particular by rewording certain sentences. In all cases, it is important to reserve judgment and validate your understanding.
- **Adapt your language.** Two people may face a similar legal problem but have different language needs due to cultural differences. The person with a low level of education will appreciate clear, concise and jargon-free language. Conversely, a client who is a businessman involved in his tenth business transaction might find this language too simplistic. Another illustration is that of a client from a culture where communication is indirect. This client may be uncomfortable with your direct approach.
- **Avoid assuming that something is simple and that you don't have to explain it.** Some clients, out of fear of demonstrating ignorance or out of deference, do not ask any questions. They claim to have understood everything, when in fact this is not true! It is therefore crucial that you ensure clients understand all relevant information so they can make informed decisions in their case.
- **Encourage clients to ask questions.** Through their questions, clients will provide you with valuable insights into their understanding of the case. It is suggested that lawyers replace the so-called "closed" questions such as "Do you understand?" or "Is my strategy the right one for you?" with "open" questions such as "What do you think of the proposed strategy?".
- **Be proactive.** Learn about different cultures. For example, find out about business etiquette before attending a meeting involving culturally different people.

To return to our original issue about the importance of cultural competence, it goes without saying that cultural competence remains essential to effectively target client needs and expectations. In an era of increased individual mobility and competitiveness within firms, cultural competence contributes to providing good client service. It is therefore not irrelevant to reflect on how to improve this type of competence.

#### References:

M<sup>e</sup> Nora Rock, *Cultural Competence: an essential skill for success in an increasingly diverse world*, Lawpro Magazine, 2014, vol. 13, no. 2. Found at: <https://www.practicepro.ca/wp-content/uploads/2017/09/2014-09-lawpro-magazine13-02-sept2014.pdf>

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