

## ADVANCING THE JUSTICE ETHIC THROUGH CULTURAL COMPETENCE

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### Introduction

Professor Tanovich has focused our attention upon the potential for “accessing the justice in professionalism” by urging us to reclaim a “justice ethic”<sup>2</sup>. As he and others have noted, this will require significant effort on the part of legal educators and the profession itself to assume a much stronger role in developing and advancing appropriate lawyer competencies<sup>3</sup>, due to the prevalence of understandings of the role of the lawyer which tend to minimize the importance of justice as a foundational precept.<sup>4</sup> In this paper, I attempt to advance the “justice ethic” by focusing on cultural competence as an example of the pressing need for our understanding of professionalism to evolve and develop in response to changing social contexts<sup>5</sup>, and consider how the skills, attitude and values of cultural competence may form part of a clinical law

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<sup>1</sup> © 2005 Thanks are owed to research assistants Ryan Fritsch and Kerri Salata. All errors are mine.

<sup>2</sup> See D. Tanovich, “The Reconstruction of a Distinctly Canadian Role Morality “In the Interests of Justice” and its Implications for Reform”, presented at the fourth of the Chief Justice of Ontario’s Colloquia on the Legal Profession held at the University of Windsor on March 3, 2005.

<sup>3</sup> See Rosemary Cairns Way, “Reconceptualizing Professional Responsibility: Incorporating Equality”, (2002) 25 Dalhousie L.J. 27 (in which an “equality seeking ethic” is proposed); The Hon. Rosalie Abella, “Professionalism Revisited” (1999) 3:6 Ont. Law. Gaz. 20..

<sup>4</sup> As in other areas of reform which are also underway, changing professional culture in order to make this a reality requires more than knowledge, and calls as well upon values and attitudes. See, for example, “*Attitudes, Skills, Knowledge: Recommendations for Changes to Legal Education to Assist in Implementing Multi-option Civil Justice Systems in the 21st Century*”, a Report of the CBA Joint Multi-disciplinary Committee on Legal Education, in which the Chair, Dr. Moira McConnell acknowledged that shifting the legal profession toward alternative dispute resolution “will require a more reflective and self-conscious stance on the part of lawyers in considering their personal responsibility for affecting the process of settlement” at p. ii..

<sup>5</sup> “Whatever the nature of practice, it is now fair to say that understanding equality is a core competence for every legal professional. Just as the equality value is changing the law, so should it change our notions of what lawyers do and what professional responsibility requires.” Cairns Way, *supra* note 3 at 29.

program<sup>6</sup>.

### **The Social Context of Lawyering**

In order to effectively discern the goals and needs of clients and advise them of their options, lawyers of today must go beyond what may be stated by the client in the initial interview<sup>7</sup> and be capable of communicating with the client effectively, in order to understand what may be motivating the client, and appreciating the social contexts in which clients live, and in which they are seeking legal services<sup>8</sup>.

While not an immutable set of practices, beliefs or meanings<sup>9</sup>, cultural identifications, together with life experiences and histories, influence the ways in which those who hold them

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<sup>6</sup>I do not wish to suggest that cultural competence is only necessary, or teachable, in the context of poverty law – see Tanovich, *supra*, and Chris Tennant, “Discrimination in the Legal Profession, Codes of Professional Conduct and the Duty of Non-Discrimination” (1992) 15 Dalhousie L.J. 464, both of whom argue that law schools should actively teach difference analysis, in order to serve the community, and to “open the legal profession to people with different perspectives” (Tennant at 497).

<sup>7</sup> The practice of leaping to conclusions and purporting to provide legal advice based upon the client’s bald statements has been condemned as incompetent for years. See a still compelling meditation on “what clients want” written by former University of Wisconsin law professor Warren Lehman in , “The Pursuit of a Client’s Interest” (1979) 77 Michigan Law Review 1078, who wrote:

“The client may say, to take an obvious example, ‘I want a divorce.’ That goal of the client is a result, usually of his [sic] feeling trapped, hurt, and hopeless of any other way of coming to terms with his wife. It is not in any profound sense what he wants. ...The best that can be said of a divorce is that it is not what the client wants, but only that which at the moment seems to him most likely to move him toward that interior state of comfort or satisfaction that all of us ultimately seek.”, at 1080-1.

I will return to “what clients want” *infra*, in discussing client-centredness.

<sup>8</sup> For example, legal aid clinics recognize that, due to the widespread legal regulation of the poor, the “poor do not lead lives into which the law seldom intrudes” and therefore experience legal problems on a regular basis, leading to a greater need for legal services than may be met in their communities: *Report of the Ontario Legal Aid Review : A Blueprint for Publicly Funded Legal Services*, <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/>

<sup>9</sup> See Robert J. Smith, *Culture as Explanation, Neither All nor Nothing*, (1989) 22 Cornell Int’l. L.J. 425, who warns against the trap of regarding culture in this way, and instead suggests that culture “may best be thought of as a moving target rather than a fixed entity” at 428.

might see the world, communicate, and inform how they approach legal problems, make decisions and how they relate to the legal system and lawyers<sup>10</sup>.

Current Canadian society includes aboriginal peoples, recent immigrants from all over the world<sup>11</sup>, as well as long-standing communities of people from many racialized<sup>12</sup> groups and cultures. “Culture” is now understood to refer not only to religious, racial, or ethnic customs, beliefs, values and institutions, but also to social groups created by disability<sup>13</sup>, class<sup>14</sup>, nationality, age, language, sexual orientation, immigration status, accent, skin colour and a

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<sup>10</sup> *Ibid* at 191. Common to the experiences of people from racialized communities, immigrants, refugees, people with disabilities, and those living in poverty, is the experience of inequality, due to racism, sexism, able-ism, and other forms of injustice: see Ann Curry-Stevens, “Expanding the Circle”, Centre for Social Justice, 2005, [www.socialjustice.org](http://www.socialjustice.org), at 14.

<sup>11</sup> Recent immigrants tend to be from different areas of the world than Canada’s traditional sources of immigration. Census data shows that the group of immigrants who arrived during the late 1990s came from different nations, and spoke different languages, than those of the late 1960s. See Statistics Canada, *Explaining the Deteriorating Entry Earnings of Canada's Immigrant Cohorts: 1966 to 2000*, available online at:

<http://www.statcan.ca/Daily/English/040517/d040517a.htm>

Also, “[b]etween 1965 and 1969, 70% of Canada's immigrant men were born in the United States or Northern, Western or Southern Europe, and only 21% in Eastern Europe, Africa or Asia. By the late 1990s, these proportions had almost reversed.” In Windsor and Essex County, for example, census data analysed by United-Way Windsor noted that “[t]he growth in the visible minority [sic] population in Essex County was 40%, and 42.5% in Windsor between 1996 – 2001.” (*Fact Sheet: Immigrant Populations in Windsor and Essex County*, July 2003, on file with author). These relatively rapid and recent demographic changes are believed to account in part for the “gap” between lived realities of racialized groups and beliefs and values of mainstream Canadians.

<sup>12</sup> The term “racialized” is preferred, in the CBA Report on Racial Equality in the Legal Profession, [http://www.cba.org/CBA/cba\\_reports/RacialEquality.pdf](http://www.cba.org/CBA/cba_reports/RacialEquality.pdf), over terms such as “visible minority” or “racial minority” which “rely on physical appearance to identify members of a group and assume that the group is outside the majority community.” The Report adopts the term “people from racialized communities”, which “focuses on vulnerability to racism and refers to a community of individuals who may have individual experiences of racism and who are collectively vulnerable to racism because of the way institutions define and treat them”.

<sup>13</sup> See ARCH, “Providing Legal Services to Persons with Disabilities”, Law Society of Upper Canada, Bar Admission Materials, *Professional Responsibility*, at 11-1.

<sup>14</sup> Limited education, reliance on social assistance, subsistence employment, exposure to violence and environmental degradation are some of the ‘lived realities’ of these groups. See, for example, *ibid*, at 1.2 (“persons with disabilities are about half as likely to have a university education as persons without disabilities”).

variety of other characteristics<sup>15</sup> through which individuals may be regarded by other groups and experience similar patterns of human behaviour<sup>16</sup>.

In turn, the legal system and the legal profession must also be recognized as the cultural institutions they are, informed by dominant thoughts<sup>17</sup>, communications, actions, beliefs, and values<sup>18</sup>. And, while the legal profession itself is much more diverse in 2005 than it was in the past, it continues to be predominantly comprised of individuals who are privileged in Canadian society, namely: white<sup>19</sup>, male<sup>20</sup>, able-bodied<sup>21</sup> and from middle-class family backgrounds<sup>22</sup>.

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<sup>15</sup>This list, which also includes “physical characteristics, marital status, role in family, [and] birth order” is taken from material prepared for cultural competence training for health disciplines: [http://www.air.org/cecp/cultural/Q\\_integrated.htm#def](http://www.air.org/cecp/cultural/Q_integrated.htm#def). Others include “education, faith tradition, geography, craft, profession and economic status”: see, conference notes, Phyllis E. Bernard, *Can Character be Taught? Professionalism When the Going Gets Tough* (AALS Workshop on Clinical Legal Education, May 14-17, 2003, on file with author).

<sup>16</sup> See Ellen Hemley, “Representing the Whole Client”, *Poverty Law Manual for the New Lawyer*, National Center on Poverty Law, 2004, at 191, on file with author.

<sup>17</sup> See William Conklin, *The Phenomenology of Modern Legal Discourse* 1998, discussing the way a lawyer would legally process an event such as the deaths of aboriginal children in Davis Inlet by group suicides in 1993 “in order to make sense of the reported events”. The lawyer would “classify the behaviour...in a manner which made sense” and ignore the “multiplicity of context-specific experiences”, “transforming the event into an anonymous, general fact category which compares a multiplicity of experiences with the sameness of that category”, at 86-92.

<sup>18</sup> Many of these cultural practices are instilled through legal education, and through practice in particular legal settings. See Voyvodic, “*Re-imagining Legal Ethics After Touchstones for Change*” (forthcoming, University of Ottawa) and “*Change is Pain: Ethical Legal Discourse and Cultural Competence*” (forthcoming, *Legal Ethics*, U.K.)

<sup>19</sup> See Michael Ornstein, *Lawyers in Ontario: Evidence from the 1996 Census*, which concludes that the legal profession across Canada is 94.2% white and within Ontario is 92.7% white (as cited in Charles Smith, *Who Is Afraid of the Big Bad Social Constructionists? Or Shedding Light on the Unpardonable Whiteness of the Canadian Legal Profession* ([http://www.lsuc.on.ca/news/updates/define\\_prof.jsp](http://www.lsuc.on.ca/news/updates/define_prof.jsp)))

<sup>20</sup> See F. M. Kay, C. Masuch, and P. Curry, *Diversity and Change: The contemporary Legal Profession in Ontario*, [http://www.lsuc.on.ca/equity/pdf/oct2604\\_diversity\\_and\\_change.pdf](http://www.lsuc.on.ca/equity/pdf/oct2604_diversity_and_change.pdf) (hereinafter *Diversity and Change*) and Kay, Masuch and Curry, *Turning Points and Transitions: Women’s Careers in the Legal Profession*

<sup>21</sup> *ibid*

<sup>22</sup> The following anecdote is contained in Kay et al., *Diversity and Change*, *ibid*: “More attention needs to be paid to the effect of socio-economic class. This is becoming a larger source of problems than racial or sexual discrimination. High tuition fees keep out poorer

As this demographic reality suggests, lawyers are not representative of the larger Canadian society, and, depending on the type of practice they have, may not share the life experiences of many of their clients. Furthermore, although it is true that many lawyers who are women, members of racialized and ethnic communities, and/or persons with disabilities report having experienced or witnessed harassment or discrimination<sup>23</sup>, it is true that most lawyers, on the whole, are unlikely to have recognized these events, and therefore have not had direct experience of inequality. They are therefore more likely to hold values and beliefs, as many “mainstream” Canadians, that do not accord with the realities of potential clients who are women, members of racialized and ethnic communities, gay, lesbian, poor, unemployed, and/or persons with disabilities.<sup>24</sup>

When lawyers and clients come from different cultures, they “face special challenges in developing trusting relationships in which genuine and accurate communication can occur”<sup>25</sup>. However, the potential for cultural differences which may impede the lawyers’ and clients’ capacities to communicate accurately with each other, is not yet specifically addressed by Canadian rules of professional conduct, nor is this potential explicitly recognized in many

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students or affects ability to do public interest work. Heavy competition for few articling placements of any quality is unfair to those who lack the connections, and who were barred from volunteer work due to the need to earn money, whose marks were affected by poor diet, poor accommodation, lower ability to afford supplemental study material, and who have less time to study due to the need to earn money. It is extremely difficult to overcome disadvantages of being lower class. Too high a concentration of lawyers from higher classes may affect quality of profession, e.g. willingness or passion with which needs of poorer clients are met.” (Case # 4529: male, associate in a small law firm)

<sup>23</sup> See Kay et al., *Diversity and Change*, *ibid*, at 62-67.

<sup>24</sup> A 1992 survey of Toronto residents found 15% of respondents to be “non-racist”, while another 15% were classified as “openly racist” and the “remainder show various degrees of racial intolerance” Elliot and Fleras, referenced in Alma Estable, M. Meyer and G. Pon, *Teach Me to Thunder* Ottawa: Canadian Labour Congress (1997)

<sup>25</sup> Susan Bryant, “The Five Habits: Building Cross-cultural Competence in Lawyers”, (2001) 8 Clin.L.R. 33, at 42.

teaching materials used in Canadian law school courses which address ethics, advocacy and the lawyering process<sup>26</sup>.

### **The Role of Rules of Professional Conduct**

Legal ethics education is currently understood to require an approach that “goes beyond the mere learning of ethical rules of the profession and acceptable roles required by the adversarial system”<sup>27</sup>. But, regardless of one’s aversion to teaching ethics by rules, the rules serve an important function in practice and in learning how to practice. Much of the criticism of a rules-based approach focuses on the vague nature of rules, notwithstanding their unattainable promise of “certainty, predictability and enforceability”<sup>28</sup>. Indeed, even in the rare instances where rules of professional conduct *do* contain explicit references to considerations of client “difference”, as in the example of Ontario’s requirement that appropriate counseling be provided to clients with an impaired decision-making process<sup>29</sup>, there is no specific or “adequate guidance” or even a description of what competent service would look like.<sup>30</sup> This vague

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<sup>26</sup> Based on author’s informal survey of course outlines posted to the internet.

<sup>27</sup> Donald E. Buckingham, “Rules and Roles: Casting Off Legal Education’s Moral Blinders for an Approach that Encourages Moral Development” (1996) *Can. J. L. and Juris.* 111, at 111.

<sup>28</sup> Alvin Esau, “Teaching Professional Ethics and Responsibility at Law School: What, How and Why?” in *Legal Education in Canada* (Montreal: Federation of Law Societies of Canada, 1987) 308 at 317.

<sup>29</sup> As in the LSUC Rule 2.02(6) which require the lawyer “as far as reasonably possible” to “maintain a normal lawyer and client relationship if the client’s “ability to make decisions is impaired because of minority, mental disability, or for some other reason”.

<sup>30</sup> See *The Legal Advocate and the Questionably Competent Client in the Context of a Poverty Law Clinic* (1997), 35 *Osgoode Hall Law J.* 737, where it is argued that the rules should “assist the legal advocate in determining if the client is able to understand their legal situation and what to do if incompetency is suspected” at 759. Here too, one recognizes the generalized societal lack of awareness of what it is like to live with a disability, including mental illness. (See Michael L. Perlin, *You Have Discussed Lepers And Crooks”: Sanism In Clinical Teaching*, (2003) *Clin.L.R.*(9) 683, who discusses “sanism”, which he describes to be “as insidious as other ‘isms’ and is, in some ways, even more troubling, because it is largely invisible, to a considerable degree socially acceptable, and frequently practiced (consciously and unconsciously) by individuals who ordinarily take ‘liberal’ or ‘progressive’ positions decrying similar biases and

treatment brings to mind the oft-quoted notion of rules of conduct being as useful to a lawyer as a Valentine's Day card in an operating room.<sup>31</sup>

However, an example of a rule and commentary providing useful guidance may be found, interestingly, in those now enacted by many provincial and territorial law societies which require that lawyers respect the laws relating to discrimination and harassment "on grounds including, but not limited to, race, language, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status or disability"<sup>32</sup>. The anti-discrimination, anti-harassment rules, while controversial at the time they were introduced<sup>33</sup>, have certainly resulted in law firms adopting policies and engaging in diversity training, but despite these efforts, articling interviews are reported to continue to be:

as nightmarish an experience for students from equality-seeking communities as it was twenty years ago. Women are routinely asked about their personal lives and when and if they intend to have children while students from racialized communities are routinely asked how they intend to deal with racist clients (as if that is their responsibility) and whether the likelihood of racist clients should be a bar to their employment<sup>34</sup>.

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prejudices involving gender, race, ethnicity and/or sexual orientation. It is a form of bigotry that 'respectable people can express in public.' Like other 'isms', sanism is based largely upon stereotype, myth, superstition and deindividualization." at 686.

<sup>31</sup> Gavin Mackenzie cites this in his "The Valentine's Card in the Operating Room" article (1995) 33 Alta. L.Rev. 859.

<sup>32</sup> See Ontario's Rule 5.03 and 5.04, *Rules supra*. For example, the use of "lists" of some frequently encountered types of sexual harassment ("...jokes...leering...sexually degrading words...") is helpful in conveying what sexual harassment is.

<sup>33</sup> One Ontario lawyer famously submitted, on firm letterhead, the following response to rule which simply restated the existing legal requirement of the Ontario Human Rights Code: "If you pass this rule, I will not obey it", Carole Curtis, "Alternative Visions of the Legal Profession in Society: A Perspective on Ontario", (1995) 33 Alta.L.Rev.(No.4) 787, at ?

<sup>34</sup> Rosemary Cairns Way, *supra*, note 3 at 40.

Lawyers surveyed in Diversity and Change tell similar stories: *The Contemporary Legal Profession in Ontario*<sup>35</sup>.

If Rules of Professional Conduct have not been able to eradicate discrimination and harassment of lawyers by law firms, what have they done to protect clients from diverse communities? The Ontario Discrimination and Harassment Counsel reports that members of the public accounted for approximately half of the complaints received against Ontario lawyers in 2004<sup>36</sup>. These are individuals who were made aware of this program, and took action to make a complaint. Undoubtedly, many clients would either be unaware or feel powerless to make a complaint. This leaves one questioning how familiar the profession is generally with the anti-discrimination rules, and also what action can be taken, beyond the many efforts of the equity initiatives staff and bench volunteer, to encourage compliance, “in the cause of justice”.

Current standards of lawyer competence do not explicitly refer to social context or justice: because professional standards (and law school texts and law itself), are written and often read without conscious reference to cultural dimensions (or social context), they tend to be viewed and considered in an acultural manner<sup>37</sup>. It is therefore necessary to “read in” the skills, attitudes and values associated with cultural competence in order to frame cultural competence as an aspect of lawyer competence.

Currently in Canada, lawyer competence tends to be measured according to standards which generally define the abilities that every lawyer is expected to have in relation to legal

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<sup>35</sup> Kay et al, *supra* note 20.

<sup>36</sup> This includes employees of lawyers, clients, and litigants in cases. The other half came from members of the profession. [http://www.dhcounsel.on.ca/pdf/report\\_jan\\_june04.pdf](http://www.dhcounsel.on.ca/pdf/report_jan_june04.pdf) at 10.

<sup>37</sup> Of course, “acultural” does not mean “without cultural bias”: many theorists have focussed attention on the myths surrounding judicial and legal neutrality/objectivity. See, for example, Mary Jane Mossman, *Feminism and the Legal method: The Difference it Makes* (1986) 3 Aust. J. of Law & Soc. 30.

knowledge, problem solving, advocacy, analysis, intellectual ability and practice management.<sup>38</sup>

It is understood that these standards encompass ability, but also anticipate appropriate *quality* of service: it is not enough to *have* the requisite skills, attributes and values expected of a lawyer, the competent lawyer also must be able to *apply* them “in a manner appropriate to each matter undertaken on behalf of a client”.<sup>39</sup> This understanding that competence is more than knowledge, but also a standard of quality<sup>40</sup>, together with rules of interpretation which require recognition of diversity<sup>41</sup> and the rule prohibiting harassment and discrimination and commentary thereto,

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<sup>38</sup>See, for example, section 2.01 of the Rules of Professional Conduct of the Law Society of Upper Canada, which regulates lawyers in the Province of Ontario, which defines a “competent lawyer” as:

“a lawyer who has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client including:

- (a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises;
- (b) investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client on appropriate courses of action;
- (c) implementing, as each matter requires, the chosen course of action through the application of appropriate skills, including:
  - (i) legal research,
  - (ii) analysis,
  - (iii) application of the law to the relevant facts,
  - (iv) writing and drafting, (v) negotiation,
  - (vi) alternative dispute resolution
  - (vii) advocacy, and
  - (viii) problem-solving ability;
- (d) communicating at all stages of a matter in a timely and effective manner that is appropriate to the age and abilities of the client;
- (e) performing all functions conscientiously, diligently, and in a timely and cost-effective manner;
- (f) applying intellectual capacity, judgment, and deliberation to all functions;
- (g) complying in letter and in spirit with the Rules of Professional Conduct;
- (h) recognizing limitations in one's ability to handle a matter or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;
- (i) managing one's practice effectively;
- (j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
- (k) adapting to changing professional requirements, standards, techniques, and practices.

<sup>39</sup> The definition of ‘competence’ approved by Convocation of the Law Society of Upper Canada in November 1997 (*Competence Task Force Interim Report*, November 27, 1998), on file with author.

<sup>40</sup> Quality of service requires taking account of client satisfaction, and “outcome”.

<sup>41</sup> Rule 1.03(1)(b) requires Ontario rules to be interpreted in a way that recognizes that lawyers have “special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario”.

provide support for the view that “competence” as defined, must also include cultural competence.

Indeed, by using the approach taken in Ontario’s Rule 5.04 and its commentary as a model, a working definition may be created which sets out a framework, including the articulation of the skills required, and examples of practices which are culturally competent.

As Rosemary Cairns Way points out<sup>42</sup>, another leading example of professional recognition of the need for enhanced responsiveness on the part of lawyers may be seen in recently developed guidelines for lawyer representation of Aboriginal “survivors” of residential schools in widespread litigation against the Canadian government which ran or funded institutions in which these individuals were physically and sexually abused after being removed from their communities and families<sup>43</sup>.

By way of background, in 2000, the Canadian Bar Association passed a resolution calling upon provincial law societies to pass proposed “Guidelines for Lawyers” which articulated professional standards in relation to aboriginal clients. They called for consideration of the “vulnerability and need for healing”, in solicitation of such clients, and making legal services available. They also required that “[l]awyers should recognize that damage to the survivors of Aboriginal residential schools may well include cultural damages from being cut off from their own society, and should endeavour to understand their clients’ cultural roots”<sup>44</sup>. This resolution

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<sup>42</sup> *Supra*, note 3, at 45.

<sup>43</sup> See Law Commission of Canada, *Restoring Dignity 2000* (see [www.lcc.gc.ca/en/themes/mr/ica/2000/html/restore1.asp](http://www.lcc.gc.ca/en/themes/mr/ica/2000/html/restore1.asp))

<sup>44</sup> Guidelines for Lawyers Acting for Survivors of Aboriginal Residential Schools, LSUC Resolution 00-04-A, August 19-20, 2000. [http://www.cba.org/CBA/Sections/Abor/00\\_04\\_A.asp](http://www.cba.org/CBA/Sections/Abor/00_04_A.asp)

inspired the adoption of Guidelines by the Law Society of Upper Canada<sup>45</sup> which are intended “to educate and provide guidance to the profession on the Rule-based standards...applicable to counsel representing parties in residential school abuse litigation”.<sup>46</sup>

As Cairns Way notes,

These guidelines are exemplary of how ethical practice is informed and transformed by an operationalized equality principle. They particularize the circumstances of the client group, that is, they counsel practice which is attentive to context. They locate the lawyer’s practice obligations inside a larger social context with respect to the aboriginal community – and characterize the objective of the provision of legal services in a manner which reflects that community. They are attentive to impact. They counsel respect for and inclusion of appropriate community resources. ***They contextualize competence and encourage critical self-analysis.*** They challenge lawyers to learn about and be respectful of the client’s community—not only for the lawyer representing the client but for all the lawyers involved, The guidelines model an approach to client service which is broadly applicable, not in the sense that all clients will have these particular needs – but in the sense that they establish a protocol for thinking about client service in a way that has the potential to incorporate equality. It is a protocol that reflects the equality value emphasizing context, impact, critical thinking and systemic analysis.<sup>47</sup> [emphasis added]

### **Contextualizing Competence: A Matter of Perspective**

Using this point of reference for “an operationalized equality principle”, I will now consider whether guidelines of this nature might be created for lawyering “in the cause of justice” in other cultural contexts. The guidelines convey an approach which encourages learning about the client’s community, being respectful toward that community, and attending to the need of the client within the context of that community (providing legal services in a manner

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<sup>45</sup>They were the product of a working group of LSUC Benchers Judith Potter (chair), Stephen Bindman, Tom Carey and Avvy Go, and staff of the Equity Initiatives Department. In “General Comments from Respondents on the Guidelines”, the LSUC reported in October, 2003 that “the Yukon Territory has adopted the CBA Guidelines. Nova Scotia posted the CBA guidelines but did not formally adopt them. Newfoundland considered rule amendments but decided they were not needed, as did Alberta. British Columbia reviewed the Saskatchewan rule and consulted with the CBA Aboriginal Law Section, but decided not to amend the rules...”. ([http://www.lsuc.on.ca/news/pdf/convsept03\\_prc.pdf](http://www.lsuc.on.ca/news/pdf/convsept03_prc.pdf) at 20)

<sup>46</sup> *Ibid* at ¶32. The guidelines are careful to note that they are “advisory in nature, and meant to be educational”.

<sup>47</sup> *Supra* note 3 at 45.

which *reflects* the community). The guidelines recognize the cause of justice explicitly, and shape the approach to be taken around that cause. I suppose the competent lawyer operating according to these guidelines is mindful, in active and conscious ways, of the social context in which the lawyering is being done, and demonstrates respect for and attention to client needs which are both articulated by the client and implicit in the context and the cause of justice which must be understood by the lawyer. I imagine such a lawyer spending adequate time reading, listening, and thinking about residential schools, life as it existed in the family and community the client was taken from, what the client experienced in the residential school and afterward, as well as what resources exist in the community for healing and recovery. Such a lawyer takes an approach which adopts two related perspectives: the perspective of the client (What happened to him? What does he want to see happen now? What does he want?) and the justice perspective (How does the client's story relate to the overall story of residential school abuse? What are the client's "cultural roots"? What does the community need? What can the community do for the client?)

How might such an approach be taken in a clinical law program in which law students provide legal services to low-income clients, many of whom are immigrants, refugees and persons with disabilities who are facing eviction, sub-standard housing problems, or reduction or denial of welfare or disability benefits, or clients who have been victims of a crime of violence (most often sexual abuse) seeking criminal injuries compensation?

The reason for taking such an approach has two main purposes: the first relates to enhancing services to the community, by improving the quality of representation, while at the same time providing students with skills they may continue to develop in their post-law school work to continue to provide high quality and effective legal services<sup>48</sup>. The second, simply put, advances justice by providing students with cultural competence skills, attitudes and values that

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<sup>48</sup> Client satisfaction is an elusive concept. See H. Sommerlad, "English Perspectives On Quality: The Client-Led Model of Quality--A Third Way?" (2000) 33 U.B.C. L. Rev. 491

will help them to “build a more just legal system”<sup>49</sup>.

Understanding clients’ lived realities is important to the “justice ethic”, which recognizes, as a core value, the dignity and humanity of *all* clients<sup>50</sup>. Such an ethic would of necessity recognize the challenges faced by created by the way society and its institutions define and treat *difference*, which may be experienced as actual physical barriers, in the case of persons who use wheelchairs, or may be based upon “policies, procedures, practices and attitudes”<sup>51</sup>.

Guidelines for the provision of legal services in this context must also consider “context, impact, critical thinking and systemic analysis”. Each of these characteristics is interrelated but context and impact are discerned using critical thinking and systemic analysis, which also incorporate reflection on the perspective of the client (what does the client need/ want?), the justice perspective (what does the community need/want?) and self-reflection (am I performing in a competent manner?).

The guidelines for lawyers representing survivors contextualize competent client service around the perspective of the client. Similarly, in the clinical setting, cultural competence would seem to include: demonstrating respect for diversity and understanding of the social context of the client’s community, providing culturally responsive and appropriate services (e.g., openness, sensitivity, recognizing culturally based practices and values, using appropriate translation and interpretation services), and responding to need regardless of the culture of the client.

Other professions, such as social work, nursing and medicine in recognizing the role

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<sup>49</sup> Susan Bryant, *supra*, note 25 at 36.

<sup>50</sup> See Tanovich, *supra*, note 2.

<sup>51</sup> See ARCH, *supra* note 12, at 11-1. See also Ontario Legal Aid Review, *supra*, in which it is noted that, “[u]nlike that of people of means, low-income people’s relationship to government administrators and law will determine such things as their income, their housing, their health care, or their conditions of employment. In other words, the legal needs of low-income people extend across a wide range of areas because, while sharing many legal problems encountered by their more affluent counterparts, they also have...’lives significantly different from that of the traditional consumer of legal services””, at Chapter 4.

culture plays in effective practice, and in seeking to find ways of teaching specialized communication skills and ensuring competence within their professions, beginning in university programs, and continuing in service coursework professionally, in order to increase the quality of services, and produce better outcomes<sup>52</sup>. A clinical program will require curriculum, training, and measurements of success which reflect its goals of providing effective service and learning opportunities, as well as its social justice goals.

Clinical programs must assist law students who confront a steep learning curve in relation to both conceptual knowledge about the role of the legal profession in relation to poverty<sup>53</sup> and social justice, as well as the practical realities of their clients' lives, which often demonstrate the limitations of law's power to provide remedies in many cases.

A clinical legal education program which offers a dedicated seminar in social justice lawyering introduces students to many issues related to social context which are confronted in a poverty law setting, issues which reflect inequality as a result of gender and/or race and/or disability which are frequently met by students working with clients facing violence, homelessness, discrimination and despair.

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<sup>52</sup> Health care professional bodies have long recognized the importance of developing skills, attitudes and values in doctors, nurses and therapists which recognize the needs and interests of culturally diverse patients and clients, ranging from securing appropriate translation and interpretation services to understanding cultural practices in order to provide adequate care. See, for example, K. Davis, *Exploring the intersection between cultural competency and managed behavioural health care policy*, Alexandria, VA: National Technical Assistance Centre for State Mental Health Planning, referenced at National Association of School Psychologists website, [www.nasponline.org](http://www.nasponline.org)

<sup>53</sup> Student reactions are not to be discounted, whether they involve a feeling of being overwhelmed by the desperate circumstances of the clients ("swallowed by the lack of hope" in the words of one student) or a feelings of indifference, anger, frustration and blame. In the first case, students need to be supported emotionally to find a place from which they can do their clinic work without succumbing to despair themselves. In the second case, students need to be reminded of their ethical obligations and exposed to modeled behaviour of "caring" lawyers. See Michelle S. Jacobs, "Full Legal Representation for the Poor: The Clash Between Lawyer Values and Client Worthiness" (2001) 44 *Howard L.J.* 257.

Teaching this type of competence has unique challenges for clinic instructors. In addition to mastering multiple new instrumental competencies and knowledge of the substantive law in order to perform casework, the “successful clinical law student” must also quickly develop competence in communicating effectively with clients in crisis, often through interpreters, as well as other professionals<sup>54</sup>. After a “crash” orientation to the substantive and procedural aspects of “clinic law”, students meet weekly for a seminar class.

In this class, which must be sandwiched into an already very busy week<sup>55</sup>, assigned readings may include articles focusing upon skills, including cultural competence and ethics<sup>56</sup>, and students are encouraged to reflect on their own cases and experiences in the clinic in confronting issues, many of which are anticipated by or analogous to those described in the readings.

Clinical law programs may draw upon teaching and learning tools which have been developed in clinical programs<sup>57</sup> and in poverty law practice training<sup>58</sup>. These tools have been

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<sup>54</sup> At Legal Assistance of Windsor, for example, Windsor clinical law students work in an interdisciplinary setting in which lawyers and social workers provide a range services to low income people, including advocacy, public education and community development.

<sup>55</sup> At Windsor, students are allowed to take courses in addition to fulltime casework in the full semester program at Legal Assistance of Windsor. In addition, they may have extracurricular obligations including family and even employment.

<sup>56</sup> Decisions of discipline committees of law societies may be examined to highlight the limitations of the rules, on the one hand, and the promise of an ethical style of thinking, on the other, such as the case of *Law Society of Saskatchewan (LSS) v. Merchant* [2000] L.S.D.D. No. 2. In this case, which may be examined after discussing the guidelines for representing survivors of residential schools, a bar disciplinary panel failed to consider issues relating to cultural sensitivity, provides an example of the limitations of rules of professional conduct which do not explicitly address cultural competence. This case is contrasted with the LSUC *Guidelines for Lawyers Acting in Cases Involving Claims of Aboriginal Residential School Abuse*, *supra* note 45.

<sup>57</sup> See Shin Imai, “A Counter-Pedagogy For Social Justice: Core Skills For Community-Based Lawyering” (2002) 9 Clinical L. Rev. 195; Jane Harris Aiken, “Striving to Teach Justice, Fairness and Morality” (1997) 4 Clin. L.Rev. 1; Kimberly E. O’Leary, “Using ‘Difference Analysis’ to Teach Problem-Solving” (1997) 4 Clinical L. Rev. 65.

created in order to both help students acquire the skills they need to develop, and to expose them to issues they encounter in the context of providing services to clients living in poverty. These include videotaped role-playing exercises in a course long problem designed to engage the student in confronting practical and ethical problems; reflective writing assignments, in which students journal about their actual experiences serving clients in the clinic, as well as their simulated experiences, and in-class “games” designed to introduce the realities of living on social assistance<sup>59</sup>.

A central focus of the seminar course is the client-centred approach to interviewing and counseling<sup>60</sup>, which relates to both the goal of competent service and advancing the cause of justice. It rejects the traditional model of legal counseling in which the client “stand[s] by passively while the lawyer lays out all relevant legal considerations for the decision and indicates what decision he believes, as a matter of his professional judgment, the client ought to make”<sup>61</sup>. This approach and is a theoretical treatment of “client care” which explicitly seeks to enhance client autonomy and empowerment. It also implicitly challenges the advocate to seek to understand the client’s needs and interests, and encourages the development and use of communication skills which avoid constructing or pre-judging clients, in order to appreciate both

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<sup>58</sup> See [www.nlada.org/Training/TrainMaterials](http://www.nlada.org/Training/TrainMaterials) (National Legal Aid Defenders Association, U.S.A.)

<sup>59</sup> I have used “The Poverty Game”, a board game which operates much like Monopoly, and is designed to provide the client with the same amount of cash a typical client would receive (either a parent with kids or a single person) and then move them through situations on the board which represent unplanned for contingencies (“hot dog day” at school, requiring \$10 to be paid, when there are no groceries left and the food bank is closed, etc.) as well as a similar version designed by Windsor’s Taking Action on Homelessness Together, called “The Homelessness Game”.

<sup>60</sup> This approach was developed by David A. Binder and Susan Price in their classic text *Legal Interviewing and Counseling: A Client-Centered Approach* (1979 St. Paul, Minn.: West Publishing Co.). It is also central to the approach taken by Avrom Sherr in *Client Care for Lawyers*, 2<sup>nd</sup> ed. (London: Sweet & Maxwell)1999.

<sup>61</sup> Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, (1990) 32 Ariz.L.Rev. 501, at 518.

the uniqueness of each client's situation, as well as the social context in which the client's problem is located.

"Client-centredness" must also be approached in conjunction with cultural competency in order to avoid replicating cultural stereotyping<sup>62</sup>, by working with techniques which prioritize the perspective of the client<sup>63</sup> and self-reflection on the part of the student, together with "guided" practice (ideally under the close supervision of clinic lawyers who themselves are culturally competent and client-centred) in interviewing, counselling, fact investigation, negotiation and advocacy skills. In this respect, students are exposed to a reflective practicum, in which they are encouraged (and expected) to seek deeper, more nuanced understandings of "competence" than they may acquire elsewhere in traditional legal education, or through experiences in summer jobs and articling in law firms which may lack mentorship or role modeling of cultural competency.

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<sup>62</sup> See Jacobs, Michelle S., "People from the Footnotes: The Missing Element in Client-Centered Counseling", (1997) 27 Golden Gate U.L. Rev. 345, who notes, at 405, that cultural competence is often ignored in teaching the client-centred approach: "I propose that in conjunction with client-centered counseling, we engage in cross-cultural lawyer and student self-awareness training (CCLASS). I propose that all students, particularly those who will be working with either indigent or culturally dissimilar people, be taught how to interact with clients who differ from them... Without that awareness, students will not be able to recognize the interpretive violence they can do [because] to understand adequately any significant cultural problems and influences that their cross-cultural clients are experiencing, attorneys must rely on knowledge previously obtained about a particular minority culture and variations within it. In many cases, attorneys will have gained this 'knowledge' primarily from stereotypes endorsed by and embedded in the dominant culture and conjecture.... Reliance on knowledge derived in this way can create barriers to effective legal counseling and can cause other serious problems."

<sup>63</sup> The way in which "clients" are depicted in law school exam hypotheticals, and teaching materials, has been critiqued as encouraging students (and future lawyers) to "construct" clients by making assumptions, sometimes based on stereotypes, about client motivation and interests. See Ann Shalleck, *Constructions of the Client Within Legal Education* (1993) 45 Stanford. L. Rev. 1731, who notes that clients who appear in ethics courses "are almost always people who want wealth or freedom and have violated or are willing to violate commonly accepted norms of conduct to achieve these goals" at 1737.

In addition, clinical legal education offers a contextual method of teaching legal ethics. In the clinic, the student appreciates the limitations of that memorizing “black letter” rules of the profession and begins to ethically conceptualize the roles required by the adversarial system.<sup>64</sup>

The goal of developing an “ethical style of thinking” becomes very important when a student experiences the wide range of “decisions” which lawyers make with respect to a client’s case, each of which can be seen to have a direct impact upon the client’s life, or tell a student a great deal about the limits of law or the realities of “justice”.

One key ethical topic for student consideration in a clinic seminar or ethics course which includes experiential learning is cultural competence. Sue Bryant and Jean Koh Peters have developed “five habits” which they teach to clinical law students. These habits require culturally competent practitioners to:

- (1) take note of the differences between the lawyer and the client;
- (2) map out the case, taking into account the different cultural understandings of the lawyer and the client;
- (3) brainstorm additional reasons for puzzling client behavior;
- (4) identify and solve pitfalls in lawyer-client communications to allow the lawyer to see the client's story through the client's eyes; and

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<sup>64</sup> From a cultural competence perspective, the notorious “difficult client” is a wonderful teaching opportunity which can assist a student to uncover assumptions made, based on the client’s appearance or tone of voice, which may forestall an effective interviewing approach which is sensitive to issues of difference. In this light, a supervising lawyer might discuss with the student how “withdrawing services”, which might be the student’s plan of action, may be carried out ethically, in conjunction with “making legal services available”, recognizing the limits of service available to clients who come to clinics, and using Rule 1.03(1)(b) (which prohibits discrimination) as an interpretive tool.

- (5) examine previous failed interactions with the client and develop pro-active ways to ensure those interactions do not take place in the future.

In her article describing the development of this teaching tool, Sue Bryant notes that learning such habits requires changes in communication style at three major levels: cognitive, affective and behavioural<sup>65</sup>. At a *cognitive* level, a lawyer with a limited or inaccurate knowledge or understanding of the client's culture might fail to test assumptions he or she is making through ignorance or misinformation. These assumptions, or the failure to test them, may also arise from a lawyer's *affective* competence (the extent to which he or she is able to control or manage emotional reactions to dealing with difference). As well, the lawyer may not be capable of the *behaviour*, or possess the skills necessary, to communicate effectively in order to identify the client's goals, or to surface his or her culturally based assumptions.

In my experience, exposure to these habits and the thinking behind them, while challenging, assists students to challenge their own thinking, and tendencies to stereotype clients.<sup>66</sup>

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<sup>65</sup> *Supra*, note 25 at 62.

<sup>66</sup> Bryant recognizes, however, that learning these skills cannot be done in one class, and unless the Habits are raised in supervision "students are unlikely to engage in this kind of thinking as a routine matter...[o]ur experience confirms that of cross-cultural trainers and what we know as clinical teachers: learning requires practice, supervision and reflection" (*Supra*, note \_\_\_ at footnote 111). Habit #3 in particular (brainstorming possible reasons for client behaviour) can be used to encourage students to understand clients more fully and recognize how stereotypes can distort interpretations of client behaviour, thereby minimizing instances in which files are closed due to "losing contact with the client" when the actual reason for the client not remaining in contact with the student caseworker resulted from misunderstandings, or even illiteracy or lack of English language skills on the part of a client who may be too embarrassed to admit that the letter requesting instructions cannot be understood.

## Conclusion

In Canada, the challenge implicit in Michael Wylie's comment, in 1996, that the topic of cross-cultural legal counselling "has not received a great deal of attention"<sup>67</sup> in academic writing appears to have been largely ignored.<sup>68</sup> However, efforts are being on several Canadian fronts to teach self-reflective practice, in addition to the clinical courses described here in bar admission courses<sup>69</sup>, and in continuing legal education<sup>70</sup>. This coursework advances the goal of client-centred lawyering and recognizes that self awareness and understanding of one's own values are an integral part of reflective learning.

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<sup>67</sup> Wylie, M. Enhancing Legal Counselling in Cross-Cultural Settings (1996) 15 Windsor Yearbook of Access to Justice 47 at 47.

<sup>68</sup> However, in the United States, texts used in clinical legal education which address the teaching of skills have begun to incorporate these ideas by including chapters or references to material relating to cultural competence. See, for example, G. Nicholas Herman, Jean M. Cary, and Joseph E. Kennedy, *Legal Counseling and Negotiating: A Practical Approach* (Newark: Matthew Bender & Company, 2001), which includes a chapter on "Cross-cultural Negotiations and Negotiating Between Genders", at 393-406; and Martha R. Mahoney, John O. Calmore, Stephanie M. Wildman, *Social Justice Lawyering*, (Minneapolis: West Publishing, 2003). See also Johnson, Kevin R., "Integrating Racial Justice into the Civil Procedure Survey Course", (2004) 54 *Journal of Legal Education* 242, who notes, that "it may be tantamount to educational malpractice *not* to touch on issues of race and class when they can be found just below the surface and often are obscured by legal doctrine", at 245.

<sup>69</sup> See also Ontario's new model of skills training proposed for the Bar Admission Course: *Professional Development, Competence & Admissions Committee Report to Convocation*, January 27, 2005, which responds to focus groups' ranking of "interviewing to understand problems, issues, context and goals or objectives of the client" and "advising the client about decisions that must be made and options that are available" as #1 priorities in learning how to establish effective client relationships. (See *Taxonomy of Skills*, Appendix B)

<sup>70</sup> This movement is very well documented on the UK Teaching and Learning Service Network website, which links to many other on line resources for inculcating "personal development planning". See, for example, [www.ltsn.ac.uk/genericcentre/projects/pdp/docs](http://www.ltsn.ac.uk/genericcentre/projects/pdp/docs)

Traditional legal education does not include either “live-client” or simulated practical experience, in which a reflective practice model may be used in teaching, for a variety of reasons<sup>71</sup>. As a result,

... a high proportion of students graduate from law schools without any genuine exposure to a reflective practicum. In the typical law school, only one skills course is required, and it is generally the most underfunded course in the school (legal writing)<sup>72</sup>

If the “implicit curriculum” does not value professionalism, including a justice ethic, what must be done? Explicit statements, such as mission statements, objectives of law schools or even making ethics courses mandatory may be a first step<sup>73</sup>. Active recognition of the social

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<sup>71</sup> This may relate to a heightened sense of the distinction between the academic legitimacy of law schools as “university faculties” as opposed to “skills trainers”, which has shadowed the history of legal education in Canada and continues to plague curriculum developers. See Roy Matas and Deborah J. McCawley, eds., *Legal Education in Canada* (Montreal: Federation of Law Societies of Canada, 1987); H. W. Arthurs, *Law and Learning*. Report to the Social Sciences and Humanities Research Council of Canada by the Consultative Group on Education in Law (SSHRC, Minister of Supply and Services, Canada) 1983; Julie Macfarlane, “What Does the Changing Culture of Legal Practice Mean for Legal Education?” (2001) 20 Windsor Y.B. Access Just. 191; Rose Voyvodic, “Considerable Promise and Troublesome Aspects” (2001) 20 Windsor Y.B. Access Just. 111.

<sup>72</sup> Richard K. Neumann Jr., speaking in the context of U.S. accreditation standards (Canada has no similar requirement that law school teach legal research and writing or any other skills-based courses, and while some legal research and writing instructors may actively use a reflective practice approach in their teaching, this may not be consistent even in a particular law school). He is comparing law school to medical school (where 30-40% of students’ education is dedicated to clinical work) in this quote taken from “Donald Schon, The Reflective Practitioner, And The Comparative Failures Of Legal Education” (2000) 6 Clinical L. Rev. 401, at 424.

<sup>73</sup> See, for example, the Objectives of the University of Windsor Faculty of Law, which include: To provide opportunities for the development of social consciousness and self-awareness by students, and to examine and develop ethical and social values...; and in particular, to instill in...students a sense of social responsibility in the practice of law and the need for examination of social structures with a view to contributing to such changes as may ensure social justice”. From an ethical standpoint, and closely related to the adoption of the law school’s access to justice theme, clinical projects, both advocacy and mediation based, engage students in service-related academic settings and at the same time significantly contribute to the law school’s community initiatives to address legal needs and to the student’s orientation toward justice.

justice work undertaken by faculty and students is another<sup>74</sup>.

Clinic work also exposes students to professional role models: lawyers who consider themselves professionally bound to provide services appropriate to clients who may be members of other communities, and who regularly confront ethical challenges arising from scarcity of legal resources for the poor<sup>75</sup>. This is distinct from the traditional approach to lawyering, in which, as Allan Hutchinson notes,

The lawyer-as-hired-hand treats all clients exactly the same, in the sense that they are citizens who have had their rights infringed and want relief or vindication. Advocacy and action tend to be standardized and routinized. Insofar as lawyers and clients are from different cultures and classes, lawyers are expected to bridge the gap by personal empathy and professional solidarity<sup>76</sup>.

Even if personal empathy and professional solidarity were considered to be the appropriate means through which to bridge these cultural gaps, they are not subjects of study which are well covered by traditional legal education<sup>77</sup>. Indeed, while this deficiency in legal

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<sup>74</sup> At Windsor, in 2005 students who complete a clinic placement for academic credit will be recognized for their contribution to the school's community service, alongside competitive mooters, for their contribution to the school's community service.

<sup>75</sup> See Hemley, *supra* note 16, who also contributed to the "whole client" training curriculum for poverty lawyers, available on-line at [www.nlada.org/Training/TrainMaterials](http://www.nlada.org/Training/TrainMaterials) (National Legal Aid and Defender Association). See also, Lenny Abramowicz, who notes that "[a]lthough there are many areas of law that disproportionately impact on the poor, there is a much more limited number of legal issues that also lend themselves to a community of interests. It is this "community of interests" test that primarily separates community clinics from other legal services. Whereas in other forms of legal service, the response is purely based on the needs of the individual client, in a community clinic, the needs of an individual client are matched with the broader needs of the community the client comes from." *The Critical Characteristics of Community Legal Aid Clinics in Ontario*, May 2003, unpublished, on file with author.

<sup>76</sup> Allan Hutchinson, *Legal Ethics and Professional Responsibility* (Toronto, Irwin Law: 1999) at page 29

<sup>77</sup> See Rhode, Deborah, "Legal Education: Professional Interests and Public Values" (2000) 34 *Indiana Law Review* 23, who notes that law schools, while claiming to teach students to "think like a lawyer" in fact teach students to think like law professors, "in a form distanced and detached from human contexts" at 36.

education have frequently been decried<sup>78</sup>, change toward assuming the responsibility for shaping professional values is exceedingly slow.<sup>79</sup> Much of this discourse is generated through clinical scholarship and clinical legal education, which at best often “preach to the converted”, and even “pervasive” approaches to professional responsibility have not been conclusively proven to instill a social justice mission in law graduates. Law schools and law societies need to do more than recognize the role they must play in shaping approaches to the delivery of legal services and take action despite the absence of extrinsic rewards<sup>80</sup>, through raising awareness, education, training, and by establishing parameters of behaviour through more explicitly helpful guidelines and teaching materials in order to assist the learning of cultural competence, a necessary aspect of the justice ethic.

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<sup>78</sup> Margaret Barry et al. note the potential for such an approach to encourage diversity amongst clinical educators :“Clinical Education for this Millennium: The Third Wave, (2000) [7 Clinical L. Rev. 1, 32-38](#). See Peters, Jean Koh, “Access to justice: The Social Responsibility of Lawyers: Habit, Story, Delight: Essential Tools for the Public Service Advocate” (2001) 7 Wash. U. J.L. & Pol’y 17, and Sue Bryant, *supra*.

<sup>79</sup> In some areas, professional leaders are taking up this challenge. See, for example, the papers arising from the Chief Justice of Ontario’s Colloquia on the Legal Profession, as well as its efforts towards advancing professionalism in legal education, notably its February 2004 conference, at [http://www.lsuc.on.ca/news/updates/define\\_prof.jsp](http://www.lsuc.on.ca/news/updates/define_prof.jsp)

<sup>80</sup> See Rhode, *supra* note 77, who writes: “Improvements in the curriculum [toward professional responsibility] usually are not well reflected in law school rankings. Nor is excellence in teaching the path to greatest recognition for individual faculty”.