RECONCILIATION AND ETHICAL LAWYERING: SOME THOUGHTS ON CULTURAL COMPETENCE

Pooja Parmar*

This paper critically examines the turn to cultural competence as a response to the Truth and Reconciliation Commission ("TRC") Calls to Action 27 and 28. I suggest that an uncritical embrace of cultural competence, as currently understood, is inadequate and might even prove to be counterproductive despite best intentions. While acknowledging that the focus on cultural competence is often driven by genuine commitments to reconciliation within the legal profession in Canada, I outline concerns which show that a limited and deficient conception of cultural competence is unlikely to assist lawyers in representing Indigenous clients better or change Indigenous peoples' experience with the legal system more broadly. I suggest that the TRC Calls to Action demand a response that centres accountability, and that the legal profession must recognize Calls 27 and 28 as a unique opportunity to innovate and lead by rethinking legal education, competence, and ethical lawyering in a multi-juridical space such as Canada. I conclude with two suggestions for taking this conversation forward.

Le présent article examine, sous un angle critique, le recours aux compétences culturelles pour répondre aux appels à l'action no 27 et no 28 lancés par la Commission de vérité et réconciliation (« CVR »). L'auteure avance que, malgré les meilleures intentions, le fait d'embrasser aveuglément les compétences culturelles, telles qu'on les conçoit actuellement, constitue une solution insuffisante qui pourrait même aller à l'encontre du but recherché malgré les meilleures intentions. Tout en reconnaissant qu'un engagement sincère envers la réconciliation au sein de la profession juridique au Canada sous-tend bien souvent cette mise en valeur des compétences culturelles, l'auteure fait état de préoccupations voulant qu'une conception limitée et défaillante des compétences culturelles soit peu susceptible d'aider les avocats à mieux représenter leurs clients autochtones ou de modifier l'expérience de ces derniers au sein de l'appareil judiciaire en général. Selon l'auteure, les appels à l'action de la CVR requièrent la prise de mesures axées sur la responsabilisation, et la profession juridique doit reconnaître que les appels à l'action no 27 et no 28 représentent une occasion unique d'innover et d'avancer en reconsidérant la formation juridique, les compétences et la

* Assistant Professor at the University of Victoria Faculty of Law. I am grateful to John Borrows and Alice Woolley for their comments on an early draft of this paper, and to the anonymous reviewers for their comments and suggestions. This paper has also benefitted from the diligent research assistance of Sarah Pringle, Vanessa Udy and Mary Anne Vallianatos, and from funding from the Law Foundation of BC.

déontologie dans l'exercice du droit au Canada, pays aux facettes juridiques multiples. Pour conclure, l'auteure présente deux propositions afin de faire avancer ce discours.

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Introduction

What does ethical lawyering look like when we take reconciliation seriously? This was one of the questions on my mind as I prepared to teach a course on ethics and professional responsibility soon after the Truth and Reconciliation Commission of Canada ("TRC") published its final report in 2015.[1] This question eventually developed into an empirical research project in which I examine the relationship between processes of legal representation and access to justice for Indigenous peoples. In this paper, I draw on the conceptual framework for that ongoing project to share my concerns about the recent turn to cultural competence as a response to the TRC Calls to Action 27 and 28.[2] I suggest that a narrow focus on

[1] Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, (Ottawa: Truth and Reconciliation Committee, 2015), online (pdf) <www.trc.ca/assets/pdf/Honouring_the_Truth_Reconciling_for_the_Future_July_23_2015.pdf>. [TRC, *Summary Report*].

[2] Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg: Truth and Reconciliation Commission

cultural competence as currently understood in the context of lawyers is, on its own, inadequate, and might prove to be counterproductive despite best intentions. Despite being a worthy aspiration and often driven by genuine commitments to reconciliation within the legal profession in Canada, the current limited conception of cultural competence is unlikely to assist lawyers in better representing Indigenous clients. More broadly, it is also unlikely to change Indigenous people's encounters with the legal profession in meaningful ways. A more useful approach might be to recognize the TRC Calls to Action as a unique opportunity for rethinking lawyer competence, ethical lawyering, and legal education in a multi-juridical space such as Canada.

I share the concerns with an uncritical embrace of cultural competence in the first part of this paper in order to highlight the need for broader and more robust conversations about the role of legal education in enhancing access to justice for Indigenous peoples. I suggest that developing a normative conception of cultural competence must necessarily involve a critical examination of the culture of the Canadian legal profession and include inquiries directed at systemic issues and the knowledge base of the profession. Asking lawyers to be culturally competent without attention to the training required for a professional to understand both 'culture' and 'difference'—what these are and how each operates in Canadian society—is unlikely to meaningfully change Indigenous peoples' experience with the legal profession. The purpose of this critique is not to discourage new or ongoing initiatives that focus on cultural competence training for lawyers or law students, especially where the goal is to initiate broader conversations within the profession about legal representation and access to justice for Indigenous peoples. Instead, my goal is to introduce a note of caution and indicate why an uncritical embrace of cultural competence is not an adequate response to the TRC Calls 27 and 28.

In the second part of this paper, I develop the suggestion that the TRC recommendations be interpreted most fundamentally as a call to rethink legal education and ongoing lawyer training. This calls for a broader conversation about accountability. With that in mind, I explore two ideas in the context of competence and ethical practice of law in Canada: first, that all lawyers be trained to understand the relevance of Indigenous laws and epistemology not only to the substantive legal claims Indigenous peoples pursue, but also to the professional relationships between legal professionals and Indigenous peoples and to ethical practice of law more broadly; and second, that all legal professionals learn to recognize that

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of Canada, 2015), online (pdf): *Truth and Reconciliation Commission of Canada* <trc.ca/assets/pdf/Calls_to_Action_English2.pdf> [*Calls to Action*]. See note 4 and accompanying text.

ethical lawyering requires them to take seriously their role as translators across legal worlds and train to be ethical translators.

1. Reconciliation and the Legal Profession

The Truth and Reconciliation Commission was constituted pursuant to the Indian Residential Schools Settlement Agreement, which settled a class action lawsuit initiated by survivors of the residential school system for Indigenous peoples in Canada.[3] The Commission published its report in 2015. The Report includes 94 Calls to Action that set out several specific things that need to be done in order to further the process of reconciliation in the country and calls upon various relevant government and other bodies to take up these tasks. The TRC Calls 27 and 28 ask the Federation of Law Societies of Canada ("FLSC"), as well as law schools in Canada, to ensure that all lawyers and law students acquire certain knowledges that are typically not included in law school curriculums, or at least not included as *mandatory* components of the curriculum. These include knowledge of the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, and Indigenous law.[4] The TRC Call number 27 asks that these topics be included in cultural competency training that all lawyers

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[3] TRC, *Summary Report, supra* note 1 at 3. The last of these federally supported schools were in operation until the 1990s, although most had closed by the 1980s. While the TRC refers to "Aboriginal people" in Canada, in this paper—except when the word Aboriginal is used in the material I refer to—I use the contemporary term 'Indigenous', which is preferred by many Indigenous peoples and scholars in Canada as well as globally.

[4] See "A Denial of Justice" in *Final Report of the Truth and Reconciliation Commission of Canada: The Legacy*, vol 5 (Montreal & Kingston: McGill-Queen's University Press, 2015) [TRC, *Legacy*]; *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (Annex), UN GAOR, 61st Sess, Supp No 49, Vol III, UN Doc A/61/49 (2008) [*UNDRIP*]; *Calls to Action*, *supra* note 2. In Call No 27, the TRC states:

> We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal—Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

In Call No 28, the TRC calls on law schools to implement intercultural competency training for law students:

> We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

must receive. The two TRC Calls also note that this education requires that lawyers and law students acquire specific "skills-based training" that is otherwise not currently considered essential by all.[5] The list includes intercultural competency, conflict resolution, human rights, and anti-racism.[6] These Calls unmistakably convey the need to rethink the essential knowledge base and skillsets for all legal professionals in Canada.

The TRC Report provides extensive context for these Calls to Action by documenting the various ways in which the Canadian legal system—its substantive law, its legal and court processes, its criminal justice system and civil litigation processes, the adversarial nature of litigation, and the prejudices and biases of legal professionals—have failed Indigenous peoples.[7] The Report notes that Canadian law and the legal system have in fact hindered, not enabled or facilitated, access to justice for Indigenous peoples.[8]

Access to justice involves more than access to legal representation. But adequate, competent, and effective legal representation plays a significant part in enabling access to justice for members of the public.[9] In her paper on the Caring Society litigation, Cindy Blackstock writes about the challenges of working with counsel on that case.[10] Even as she acknowledges certain rewarding aspects of the experience, Blackstock points to gaps in the knowledge and skills of the lawyers working with Indigenous peoples. The TRC Report also refers to issues related to inadequate legal representation in cases where individual Survivors were "not well *understood* or *served* by their own lawyers."[11] These issues have a long history in Canada.

In her historical work on trials of Aboriginal men accused of murder in the late 19th and early 20th Century in Canada, Constance Backhouse notes that even when marginalized communities are able to "retain legal services, the lawyers are often *unable to represent* them properly," and that

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5 *Calls to Action, supra* note 2 at No 27–28.

6 *Ibid*.

7 See TRC, *Legacy*, *supra* note 4.

8 See Truth and Reconciliation Commission of Canada, *The Final Report of the Truth and Reconciliation Commission of Canada*, vol 6, *Canada's Residential Schools: Reconciliation* (Montreal & Kingston: McGill-Queen's University Press, 2015) at 48 [TRC, *Reconciliation*].

9 See Jamie Baxter, "Access to Justice" in Alice Woolley et al, eds, *Lawyers' Ethics and Professional Regulation*, 3d ed (Markham: LexisNexis, 2017) 691.

10 Cindy Blackstock, "The Complainant: The Canadian Human Rights Case on First Nations Child Welfare" (2016) 62:2 McGill LJ 285 at 303–08.

11 TRC, *Legacy, supra* note 4 at 208 [emphasis added].

this is most evident in the case of Aboriginal communities.[12] Backhouse shows how attempts by the accused to challenge the jurisdiction of the Euro-Canadian system at the time were "misconstrued", "unheard", or "mangled" by their counsel who were "incapable of comprehending the complex Aboriginal political and justice systems that had been operating for centuries before contact."[13] More than one hundred years later, the situation is not very different. In a legal system that relies on counsel being able to represent clients fully and competently, a lawyer's inability to hear, comprehend or re-present the client's interests and claims in a meaningful manner is a serious problem.

A commitment to reconciliation places an obligation on the legal profession to acknowledge and address the issue of inadequate or incompetent representation. It is therefore imperative that educators, regulators, and others concerned about this, join the conversation about how lawyers meet their obligations towards those whose encounters with the law and legal processes have been marked by the violence of colonialism. This requires something more than focusing on cases of professional misconduct or disciplining lawyers engaged in unethical practices while representing Indigenous clients. The TRC Report itself points to cases of unethical conduct by some lawyers who represented survivors of the residential school system in Canada in the Residential school litigation, and Law Societies in Canada have received complaints related to legal fees and to unethical behaviour in the representation of large numbers of Survivors.[14] The questions raised about lawyers' conduct in these cases certainly require attention and an appropriate response from the regulators in accordance with existing or modified rules of conduct. However, the problem is not necessarily or always unscrupulous lawyers.

Reconciliation demands that the profession also turn its mind to training competent lawyers who are committed to ensuring that the legal

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[12] Constance Backhouse, "Gender and Race in the Construction of "Legal Professionalism": Historical Perspectives" in Adam Dodek and Alice Woolley, eds, *In Search of the Ethical Lawyer: Stories from the Canadian Legal Profession* (Vancouver: UBC Press, 2016) 126 at 138 [Backhouse, "Legal Professionalism"][emphasis added]; See also Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: The Osgoode Society for Canadian Legal History by University of Toronto Press, 1999) at 115–17.

[13] Backhouse, "Legal Professionalism", *supra* note 12 at 138 [citations omitted].

[14] TRC, *Legacy, supra* note 4 at 208. The TRC also recognized the hard work of many lawyers who "tried to be sensitive" and did not take "advantage of their clients" at 209. See also *Law Society of Saskatchewan v Merchant* [2000] LSDD No 24, 2000WL35801832 (WL Can); Trevor CW Farrow, "Residential Schools Litigation and the Legal Profession" (2014) 64:4 UTLJ 596 for a critical assessment of the problematic litigation strategies and practices of lawyers in the residential schools litigation.

system no longer replicates colonial violence. In order to make skilled and effective legal representation a reality for Indigenous peoples, those tasked with ensuring professional competence must think of better ways to train all legal professionals. In this context, it becomes important to ask whether lawyers who take their responsibilities seriously and are committed to representing Indigenous clients competently and with integrity, have the necessary knowledge, training, and skills to do so. It is further imperative to determine what training is necessary for lawyers representing other parties in legal disputes involving Indigenous peoples and for judges who decide such disputes.

Early responses to the TRC Calls within the legal profession—in the form of public acknowledgments and my own conversations with members of the profession—indicate that regulators and educators are, in fact, concerned about this, and are turning their minds to reconciliation and what it means for the legal profession. The FLSC, as well as a number of Law Societies, have officially acknowledged the TRC Report, as well as struck committees to develop strategies and resources.[15] Specific guidelines for lawyers working with Indigenous clients are also beginning to appear.[16] An attention to cultural competence or skills generally associated with the idea are particularly noticeable in these responses.

These are all welcome interventions. I say this because my argument here is not that the desire for culturally competent lawyers (or judges) is misplaced, but rather that it is inadequate. Therefore, before I share my concerns about cultural competence, I want to emphasize that recent attention to cultural competence is a positive development *if* it serves to initiate conversations about the meaning of reconciliation for all legal professionals—the lawyers who represent Indigenous clients, the lawyers who appear for other parties in a dispute, and the judges called upon to decide on such claims. An uncritical embrace of a limited conception of cultural competence, on the other hand, is likely to do more harm than good. It is therefore imperative that we take a closer look at what cultural competence means in the here and now given our particular histories.

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15 See e.g. Law Society of British Columbia, "Why Reconciliation Matters" (2019) online: *Law Society of British Columbia* <www.lawsociety.bc.ca/our-initiatives/truth-and-reconciliation/>.

16 See The Indigenous Bar Association & The Law Society Ontario, "Guide for Lawyers Working with Indigenous Peoples" (8 May 2018), online (pdf): *The Advocates' Society* <www.advocates.ca/Upload/Files/PDF/Advocacy/BestPracticesPublications/Guide_for_Lawyers_Working_with_Indigenous_Peoples_may16.pdf> [*Advocates' Society Guide*]; Law Society of British Columbia, "Truth and Reconciliation Action Plan" (8 May 2018), online (pdf): *Law Society of British Columbia* <www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/TruthandReconciationActionPlan2018.pdf>.

2. Cultural Competence for Lawyers

Lawyers in Canada are required to provide competent legal services to clients.[17] The existing codes of professional conduct define a 'competent lawyer' as one who has the relevant knowledge as well as the ability to apply that knowledge to the task undertaken. The knowledge of relevant legal principles and procedures is regarded as fundamental to competence, while the list of skills considered necessary include legal research, ability to identify issues, ascertaining client objectives, advocacy and problem solving, effective communication, and an ability to adapt to changes in professional requirements, standards and practices.[18] The FLSC Model Code of Professional Conduct notes that an incompetent lawyer not only does a disservice to their client, they also bring discredit to the profession and to the justice system.[19]

While the specific meaning of competence can only be determined within each particular context, some scholars suggest that an obligation to be competent requires lawyers to also be culturally competent.[20] As in other professions that consider it crucial, calls for cultural competency training for lawyers are broadly based on the idea that a culturally competent professional will have the skills to work more effectively with a diverse range of clients, especially with clients that are perceived to be culturally different than the professional. As a general aspirational goal, provision of appropriate professional legal services oriented to specific needs of differently situated clients is a positive development.

The TRC Calls to the law schools and regulators of the legal profession, however, present a very specific context to consider both the generally progressive intent that underlies the turn to cultural competence, as well as the mechanics of such training for lawyers in Canada. Given that cultural and intercultural competency are specifically mentioned in the TRC Calls 27 and 28 as being necessary skills for lawyers, it is heartening to see energies being directed towards this. However, I want to introduce a note of caution and suggest that we think more carefully about cultural competence as a response to the TRC Calls. We must be careful and concerned not because cultural competency training for lawyers or law students is a bad idea. It is not. However, a narrow and singular focus on cultural competency without careful attention to the histories and the

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17 See Federation of Law Societies of Canada, *Model Code of Professional Conduct,* Ottawa: FLSC, 2017, r 3.1-2 [*Model Code*].

18 *Ibid*, r 3.1-1.

19 *Ibid,* r 3.1-1, commentary 14.

20 See Richard Devlin, "The Lawyer-Client Relationship" in Alice Woolley et al, eds, *Lawyers' Ethics and Professional Regulation*, 3d ed (Markham: LexisNexis, 2017) at 188–91.

social, political, and economic context for these particular calls might prove to be counterproductive in that it prevents thinking about the ethical practice of law in more meaningful ways.

The TRC Calls offer an opportunity to reimagine lawyering in ways that might further access to justice for Indigenous peoples. Before I explore how we might begin to do this reimagining, I share five broad concerns about the limited conception of cultural competence as a response to the TRC calls.

A) What does Cultural Competence Mean?

Cultural competency is regarded as essential to the effective delivery of services by professionals in a growing number of fields. It is often a reference to a set of skills, behaviours, attitudes, and knowledge that enable a professional to provide services that are appropriate to a diverse range of clients.[21] Each profession appears to have adapted this basic understanding to the issues it seeks to address, however there is some consensus on its core components. For example, an ability to communicate effectively across cultural difference is a key focus across the board. Scholarship on the topic in fields such as social work and health services also indicates that self-awareness is increasingly seen as an essential component of cultural competence training.[22] Within the legal profession, cultural competence is interpreted to also include work that is mindful of issues of justice and equality.[23]

These are all useful ways of thinking about cultural competence broadly. However, even as the legal profession in Canada begins to take cultural competency seriously, we do not know what it means in the

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[21] See Izumi Sakamoto, "An Anti-Oppressive Approach to Cultural Competence" (2007) 24:1 Can Soc Work Rev 105 at 107; Marcie Fisher-Borne, Jessie Montana Cain & Suzanne L Martin, "From Mastery to Accountability: Cultural Humility as an Alternative to Cultural Competence" (2015) 34:2 Soc Work Education 165 at 168; Cynthia Pay, "Teaching Cultural Competency in Legal Clinics" (2014) 23 JL & Soc Pol'y 188 at 190; Laura S Abrams & Jené A Moio, "Critical Race Theory and the Cultural Competence Dilemma in Social Work Education" (2009) 45:2 J Social Work Education 245 who describe cultural competence as a "fundamental tenet of professional social work practice" at 245; Michelle LeBaron, "Learning New Dances: Finding Effective Ways to Address Intercultural Dispute" in Catherine Bell & David Kahane, eds, *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2004) 11; Richard Devlin & David Layton, "Culturally Incompetent Counsel and the Trial Level Judge: A Legal & Ethical Analysis" (2013–14) 60:4 Crim LQ 360; *Advocates' Society Guide*, *supra* note 16.

[22] Sakamoto, *supra* note 21 at 107.

[23] Pay, *supra* note 21; Devlin & Layton, *supra* note 21. See also Travis Adams, "Cultural Competency: A Necessary Skill for the 21st Century Attorney" (2012) 4:1(2) William Mitchell L Raza J 1.

particular context of reconciliation. This is a problem because the task here is more than an acknowledgement of the multicultural nature of Canadian society, which is the idea that underlies much of the existing literature on cultural competence broadly, as well as in the specific context of lawyers.[24] As legal professionals continue to think about ways of providing effective and competent services to the diverse range of people and communities in Canada, they must also learn to recognize that reconciliation is not a diversity initiative. The questions reconciliation poses are not only about fair allocation of resources in Canadian society, although distributive justice is often the only way in which claims of Indigeneity can be understood within liberal democracies.[25] It is certainly important to be able to work more effectively with clients perceived as culturally different, or those seen as different based on gender, sexuality, religion, ability, or language.[26] But reconciliation requires more than an attention to the specific needs of a marginalized minority group, however defined. Any commitment to reconciliation demands acknowledgement of the foundational violence of colonialism that has shaped Canada, Canadian laws, and Canadians.[27] It also requires explicit acknowledgement of Indigenous peoples as the first peoples of Canada, whose rights are specifically recognized in the Canadian Constitution.[28] In fact, the longstanding and continued assertion of sovereignty sets Indigenous peoples apart from other

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[24] For ways in which discourse of multiculturalism shaped early understanding of cultural competency, see Leyla Feize & John Gonzalez, "A Model of Cultural Competency in Social Work as seen through the Lens of Self-awareness" (2018) 37:4 Soc Work Education 472 at 473. See also Abrams & Moio, *supra* note 21 at 245; Rose Voyvodic, "'Change is Pain': Ethical Legal Discourse and Cultural Competence" (2005) 8:1 Leg Ethics 55; Ruaim A Muaygil, "From Paternalistic to Patronizing: How Cultural Competence Can Be Ethically Problematic" (2018) 30:1 HEC Forum 13 at 15.

[25] See Pooja Parmar, "Undoing Historical Wrongs: Law and Indigeneity in India" (2012) 49:3 Osgoode Hall LJ 491 at 524. See also Aaron Mills, "Rooted Constitutionalism: Growing Political Community" in Michael Asch, John Borrows & James Tully, eds, *Resurgence and Reconciliation: Indigenous Settler relations and Earth Teachings* (Toronto: University of Toronto Press, 2018) 133 [Mills, "Rooted Constitutionalism"] for limits of the liberal constitutional and individual rights discourse to respond to colonial violence.

[26] See Abrams & Moio, *supra* note 21 at 245 for a summary of the evolution of cultural competency in the United States from an initial focus on racial and ethnic difference to encompass a broader range of differences such as gender and religion. See also Voyvodic, *supra* note 24 at 569 for an expanded conception of culture.

[27] For role of foundational violence (including destruction of pre-existing polities, economies, cultures, meanings and modes of life) in the creation of settler states see Joan Cocks, "Foundational Violence and the Politics of Erasure" (2012) 15:1 Radical Philosophy Rev 103. For the injustices associated with colonialism, including epistemic injustices, see Margaret Moore, "Justice and Colonialism" (2016) 11:8 Philosophy Compass 447; Mills, "Rooted Constitutionalism", *supra* note 25.

[28] *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 35.

minorities in Canada today. Recognition of this difference and knowledge of the legacies of Canada's colonial history has to be part of appropriate training required for lawyers in the context of reconciliation.

Another reason I suggest that we do not know what cultural competency means in this specific context is that there is currently a lack of conceptual clarity that will have implications for the design of programs and skills. For example, the TRC Calls mention both *cultural* competency and *intercultural* competency. While it is not clear from the Calls themselves what the TRC specifically had in mind while including both terms, the two signal very different approaches. While the former is based on the idea of understanding a different culture and adapting to it, the latter requires a distinctive approach to understanding cultural difference itself, promotes a mutual exchange of ideas based on respect for existing differences, and, in the view of some, involves using difference as a 'resource' for learning and responding in new ways.[29] Adding cultural competency skills to lawyer training, unaccompanied by critical reflection on the different ways in which this particular competence itself can be conceptualized for the legal professional is unlikely to lead to meaningful changes to Indigenous peoples' experiences. Thus, before adopting cultural competence as a requirement for lawyers, we need a broader dialogue on what we mean by it, and what the implications of adopting any particular term are.

This critique is not limited to the conceptual terrain. As signaled above, it is necessary to unpack the terminology as the profession moves from broad commitments to the more challenging task of translating the commitment into specific skills required to become culturally competent. Of the number of important skills recognized as essential for a culturally competent lawyer in existing literature in Canada, the US, and Australia, an ability to communicate effectively with a diverse range of clients is considered essential to cultural competence. Sensitivity to diversity and plurality, cross-cultural learning, listening carefully, humility, recognition of unconscious biases, are also highlighted in the context of lawyering.[30] But the work necessary to learn what it means to have these skills in our particular context given our particular history of dispossession, colonialism and racism, and how these skills can be acquired and practiced for reconciliation has only just begun.

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[29] See Voyvodic, *supra* note 24; Victor J Friedman & Ariane Berthoin Antal, "Negotiating Reality: A Theory of Action Approach to Intercultural Competence" (2005) 36:1 Management Learning 69.

[30] See Farrow, *supra* note 14; Voyvodic, *supra* note 24; Susan Bryant, "The Five Habits: Building Cross-Cultural Competence in Lawyers" (2001) 8:1 Clinical L Rev 33; *Advocates' Society Guide*, *supra* note 16.

The empirical research I am conducting on lawyering and access to justice for Indigenous peoples in British Columbia is based on the idea that we need to better understand how lawyers who actually do the work of representing Indigenous peoples approach their work, the challenges they might face in fulfilling their obligations due to gaps in their own training or those of other legal professionals, and the strategies they develop to deal with any challenges. The resources these lawyers draw upon when they encounter legal claims or concepts unfamiliar to them, and what they learn from their everyday successes and failures can all help identify knowledge and skillset necessary for a competent lawyer. The reason careful further research is necessary is that we need to have more meaningful conversations about ethical lawyering in this specific context of reconciliation.

B) What are we Talking about When we Talk about 'Culture'?

We live in a culturally diverse world, one in which people and ideas have been traveling for centuries. And even though it is not always easy to define 'culture', we have come to understand it generally as a set of beliefs, practices, and histories that inform our assumptions about and shape our reactions to the world around us. Culture is also understood as a source of individual and group identity.[31] Cultural identity, as any other identity, does not however represent or shape the entirety of human experience. Identities are also always contestable, even though we cannot disregard them.[32] That is because regardless of whether or not we can find any essence that lies at the core of an identity, being associated with a particular cultural identity has meaning for those who bear it, and even more significantly, these associations have consequences in terms of how others treat the bearer of a cultural identity.[33] It is therefore important to acknowledge difference. It is, however, equally important to recognize that every invocation of real or perceived difference is not in pursuit of justice. Some invocations of identity and difference are shaped by a desire

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[31] See Kwame Anthony Appiah, *Lies That Bind: Rethinking Identity, Creed, Country, Color, Class, Culture* (New York: Liveright Publishing, 2018) at 205. Appiah also presents a fascinating account of how we have come to understand culture in ways we do at 187–211.

[32] *Ibid.* For an assessment of the difference between First Nations and 'dominant' Canadian cultures, see generally LeBaron, *supra* note 21. See also Catherine Bell, "Indigenous Dispute Resolution Systems within Non-Indigenous Frameworks: Intercultural Dispute Resolution Initiatives in Canada" in Catherine Bell and David Kahane, eds, *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2004) at 241 for an argument for the "need to risk" generalizations of cultures and complex cultural identities.

[33] See Appiah, *supra* note 31 at 141.

to be heard and seen. Others are driven by desires to maintain existing relations of power and systems of oppression.

In the context of cultural difference, it becomes necessary to ask what understanding of culture, and what approach to difference, informs attempts to be culturally competent professionals. We must ask whether in invoking cultural difference we are relying on, or worse, reinforcing stereotypes deployed to understand the 'other' in ways that are problematic, or whether our approach to difference acknowledges that human beings are culturally complex, and that individual and group identities are shaped by multiple social, economic, professional, and other cultures both clients and lawyers inhabit simultaneously and at different times in their lives. We cannot expect professionals to be able to work effectively with and across difference in the absence of real opportunities to engage with culture and difference in meaningful ways.

Treating cultural competence as a critical skill requires lawyers to have a deeper understanding of culture and difference and an ability to recognize the consequences of being seen as culturally different for many. It is necessary, for example, to understand how difference is deployed to justify violence.[34] It is important to be able to recognize when and how attacks on a culture are also attacks on a peoples' self-determination.[35] Taking cultural competence seriously also requires critical thinking on how knowledge, including knowledge about cultures, is produced and by whom.[36] It is therefore not simply a matter of 'cultural literacy' or learning about the others' culture as part of cultural competence training.[37] It is not enough, for example, to point out to lawyers that there is no single Indigenous culture, or that Indigenous cultures like any other culture are not static. A lawyer must also understand why any particular articulation

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34 Oppressive colonial policies were often based on articulations of difference between the civilized colonizers and savage 'natives'. The literature on difference and colonial violence is too voluminous to cite here. See e.g. Frantz Fanon, *The Wretched of the Earth,* translated by Constance Farrington (New York: Grove Press, 1963); Albert Memmi, *The Colonizer and the Colonized*, Revised ed, (New York: Routledge, 2013). For the kinds of violence visited upon Indigenous peoples in Canada, see Mills, "Rooted Constitutionalism", *supra* note 25.

35 Kirsten Anker, "Reconciliation in Translation: Indigenous Legal Traditions and Canada's Truth and Reconciliation Commission" (2016) 33:2 Windsor YB Access Just 15.

36 See Sakamoto, *supra* note 21 at 106 for her insights into ways in which members of marginalized communities who otherwise feel silenced might self-essentialize in order to be able to speak. See Gayatri C Spivak, "Can the Subaltern Speak?", revised ed, in Rosalind C Morris, ed, *Can the Subaltern Speak?: Reflections on the History of an Idea* (New York: Columbia University Press, 2010) 21; Edward Said, *Orientalism* (New York: Vintage Books, 1979).

37 Sakamoto, *supra* note 21 at 107.

of something dynamic and ever-changing by an Indigenous person matters to them in the context of the issue at hand. What is the client really saying when they invoke 'their' culture or define it in a certain way? In what ways can any narrative of culture be re-presented in a language that may not have the necessary vocabulary? I return to this point below in my discussion on the need for lawyers to be better translators but I mention it here to emphasize that any attempts at taking cultural competence training for lawyers seriously must begin with some basic inquiries as to what knowledge of 'culture' and of 'difference' legal education provides to law students, and what skills lawyers possess that allow them to recognize how societies create and deploy difference.

Taking cultural competence seriously also requires turning the gaze to the culture of the legal profession. Cross cultural competence necessitates learning that enables professionals to understand how legal culture is constituted and to what ends. It requires a professional to learn to recognize that no culture, including one they might regard as their own, is neutral or passive, and that each culture needs to be interrogated for the relationships of power it produces and maintains.[38]

It is only professionals who have the necessary knowledge, skills, and confidence to question accounts of their own culture—as well as that of the clients—that can effectively navigate the multiple normative worlds they are called upon to work with and across. For example, a lawyer who has the training to engage with the broader questions of culture and difference highlighted above will be better placed to ask what in their professional culture might prevent them from taking seriously a client's reference to a cultural practice's relevance to the legal issue at hand. Such a lawyer is also less likely to simply accept a client's account of culture out of fear of offending the client and more likely to ask meaningful follow-up questions to better understand the information provided by the client. Similarly, a judge with appropriate training and skills to navigate conversations about culture and difference will be better placed to adjudicate and respond to claims in more meaningful ways.

Having highlighted the need for a more robust understanding of culture and difference above, I now suggest that our inquiry into what we are talking about when we talk about culture be extended to include another question: what are we *not* talking about when we talk about culture? It is critical to ask whether *cultural* competency is in fact the most appropriate concept in this context of ethical lawyering or whether these words are preferred because other words such as colonialism and racism, which seem more appropriate in certain contexts, make many lawyers

38 I draw on Sakamoto (*Ibid* at 108) for this argument.

uncomfortable. It is important to recall here that these other words, as well as specific references to human rights and the *United Nations Declaration on Rights of Indigenous Peoples*, are all mentioned in the same Calls to Action 27 and 28.

As Joyce Green notes in her paper on the Stonechild Inquiry in Saskatchewan, it is important to ask if 'cultural difference' is invoked only to avoid naming or addressing systemic racism.[39] Noting the relationship between colonialism and racism in Canada, as well as the ways in which institutional racism permeates professional cultures, Green argues that decolonization is more useful than 'cultural understanding' when the goal is systemic change.[40] Similarly, in the context of legal education, Jeffrey Hewitt has argued that Call to Action 28 requires that law schools engage in decolonization.[41] Attention to cultural competence training for legal professionals is similarly a missed opportunity if it does not include training in anti-racism and colonialism. It is for this reason that it is important to ask every time what work the words 'culture' and 'difference' are doing in each invocation within each response to the TRC.

The call for training culturally competent lawyers must be interpreted in the context in which it is made. The TRC Report documents how ideas of racial difference influenced policies of assimilation and cultural genocide in Canada. The basis of such policies was not simply a recognition of the diversity of human experience, knowledge, and ways of being. Instead, the difference was seen as a marker of all that Indigenous peoples were seen to lack, and deployed to create hierarchies of practices, knowledges, and political and legal systems in ways that continue to shape Indigenous and non-Indigenous encounters in Canada. Thus, a lawyer who is alert to the significance of listening carefully across cultural difference may be committed to listening, without being able to really hear their client, unless they understand how racial difference works, how such ideas frame law and policy, and how colonial legacies such as the pressure to conform or assimilate permeate the present.[42]

An aspiration to be competent in this context requires attention to the ways in which law and legal processes are implicated in the past and ongoing colonial practices. Cultural competence would therefore require an ability to navigate difficult conversations about racism and colonialism.

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39 Joyce Green, "From Stonechild to Social Cohesion: Anti-Racist Challenges for Saskatchewan" (2006) 39:3 Can J Political Science 507 at 520.

40 *Ibid* at 510.

41 Jeffery G Hewitt, "Decolonizing and Indigenizing: Some Considerations for Law Schools" (2016) 33:1 Windsor YB Access Just 65.

42 For the relevance of this to the work of social workers see Abrams & Moio, *supra* note 21.

These conversations are never easy.[43] Many law students, for example, arrive in the classroom without the knowledge base and skills necessary to engage in meaningful conversations about race. Depending on course selections they make while in law school, many lawyers join the profession without having developed any skills for navigating conversations about race and racism.[44] The resultant lack of a critical skill shows in the manner in which race is eclipsed in legal narratives in Canada.[45] Therefore, before professionals are expected to engage with ideas that many of them have never had to encounter before, care and attention must go into appropriate training. Thinking about racism in the context of cultural competency will inevitably also require attention to structural racism.[46] A profession that is genuinely committed to the radical transformation necessary for bringing about real change in lawyering cannot continue to ignore this issue and the ways in which racism contributes to the processes of othering. Unless the adoption of cultural competency creates space for such critical inquiries, it will not help the profession serve Indigenous peoples any better.

C) Individual Obligations to be Culturally Competent

Early thinking on cultural competence has emphasized individual interpersonal skill development.[47] This approach tends to focus on individuals, their ability or inability to communicate across cultural difference, and the need for training individuals, while disregarding the more difficult questions of wider systemic changes often necessary to address the complex issue of inequality at play. The rational independent self-reliant individual lies at the heart of this narrow approach to cultural competence.[48] In the individual-centric model of cultural competence, it becomes an autonomous individual's responsibility to find time and

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43 See *Ibid* at 248 suggesting that even educators might not be ready to "deal with the intense personal and interpersonal reactions that can arise" in discussions about racism or other kinds of oppression.

44 See e.g. Natasha Bakht et al, "Counting Outsiders: A Critical Exploration of Outsider Course Enrollment in Canadian Legal Education" (2007) 45:4 Osgoode Hall LJ 667 for choices students make regarding 'outsider' courses like those on race.

45 See David M Tanovich, "Constitutional Cases 2007: Ignoring the Golden Principle of Charter Interpretation?" (2008) 42 SCLR (2d) 441 for eclipsing of race and see David M Tanovich, "The Further Erasure of Race in Charter Cases" (2006) 38 CR (6th) 84.

46 See Abrams & Moio, *supra* note 21 at 253 arguing that, without a critical race analysis, cultural competency is inadequate.

47 See Muaygil, *supra* note 24 at 16; Fisher-Borne et al, *supra* note 21 at 165.

48 See Mark Furlong & James Wight, "Promoting 'Critical Awareness' and Critiquing 'Cultural Competence': Towards Disrupting Received Professional Knowledges" (2011) 64:1 Australian Social Work 38. See also Amélie Blanchet Garneau, Annette J Browne & Colleen Varcoe, "Drawing on Antiracist Approaches Toward a Critical Antidiscriminatory Pedagogy for Nursing" (2018) 25:1 Nursing Inquiry e12211 at 2 for critique of longstanding dominance of liberal individualism in cultural competency.

resources to acquire cultural competency. A requirement to be culturally competent without thinking about the human and financial costs involved also makes it possible to eventually treat as incompetent those individuals who do not have the means (for financial or other reasons) to acquire these skills.

The abilities of differently situated lawyers to avail themselves of opportunities to 'become' culturally competent vary depending on what area of law they practice in, where they practice, who they practice with, and the time and resources at their disposal. Cultural competency would typically require lawyers to be more understanding and aware of any cultural differences that might hinder communication with a client. The literature speaks to the significance of professionals building meaningful relationships with clients. This inevitably requires being able to spend time with a client. What does that mean for criminal defence lawyers with the ongoing crisis in legal aid funding? What does it mean for a lawyer based in a city who has to travel for hours to meet with members of small communities she is representing? What does it mean for a lawyer representing a diverse range of Indigenous communities? What does it mean for a lawyer at a firm where partners do not think spending time with clients in order to strengthen professional relationships is a sensible use of firm resources? How might distinctions be made between billable and non-billable hours in this context? These are all questions the profession needs to consider even as members are encouraged to acquire cultural competence.

A limited focus on individuals tends to eclipse necessary broader conversations about systemic inequalities in place, as well as about professional cultures themselves. Therefore, meaningful conversations about cultural competency as an essential skill must take into account the reality of legal practice represented in the questions above and the professional culture within which individuals operate. Sole focus on individual attitudes and skill development cannot prepare a professional to recognize or challenge systemic issues in Canadian legal culture that might limit their ability and impact the lawyer-client relationship.

Simply emphasizing cultural competency without working to bring about broader changes necessary within the legal system creates conditions for a superficial check-box approach to cultural competence. There is also a risk here of losing capable and, more importantly, committed practitioners—those who may walk away from representing Indigenous clients because they consider themselves incompetent without first obtaining a certificate in cultural competence. Others might feel personally discouraged because their personal or professional environments do not

afford them the opportunity to develop necessary skills. Such an outcome cannot be in the interest of the profession, the public, or Indigenous peoples.

D) A Turn to Cultural Competence does not Always Achieve the Stated Goals

The idea of cultural competence is relatively new within the legal profession but the concept itself is not a new one. Its roots are traced back to the American Civil Rights movement in the 1960s, even though the term itself was used for the first time in 1982 by an anthropologist in the context of child protection services.[49] Law enforcement agencies, healthcare professionals, and social workers began paying attention to cultural competency training early, while business and management professionals have turned to it more recently.[50] Each of these fields has its own reasons for adopting cultural competency and, over time, the concept itself has been defined in different ways, with each profession focusing on what they saw as the problem and the best approach to addressing it.

Despite concerns over a lack of "conceptual coherence", the concept remains popular in large part due to the fact that it is difficult to find fault with its "progressive intent".[51] Some consensus has emerged around core principles and skills across the range of disciplines that have adopted cultural competence. The same core principles, desirable skills, and intent, are reflected in the literature on cultural competence for lawyers. Thus, even though the Canadian legal profession's turn to cultural competence is a welcome development, as other professionals have discovered, intentions alone are inadequate. It is therefore important that the legal profession pay attention to critical insights from other professions.

Along with its emergence as a "professional imperative", cultural competency has also been subjected to numerous critiques.[52] The essence of critiques within social work and health professions is that mandating cultural competence does not help address structural issues. The reasons offered encompass a range of problems: the fact that cultural competence does not increase accountability, focuses on individual action and autonomy (both of professionals and clients), does not enable professionals to pursue a "transformative agenda", can lead to patronizing behaviour, and is often treated as an unproblematic add-on to professional education,

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49 See Feize & Gonzalez, *supra* note 24 at 472. Abrams & Moio, *supra* note 21 at 246.

50 See Fisher-Borne, Cain & Martin, *supra* note 21 for mandates in fields of medicine, social work, psychology, and nursing.

51 Furlong & Wight, *supra* note 48 at 39.

52 See e.g. Sakamoto, *supra* note 21 at 107.

or even worse, simply as a "slogan" or "flag of convenience".[53] One of the biggest criticisms of cultural competency is that it reinforces stereotypes. In an attempt to shed some of its early baggage, some disciplines have even sought alternative terminology like 'cultural safety', 'cultural humility', 'cultural sensitivity', 'cultural understanding', 'cultural awareness', and even 'diversity management'.[54] Each of these terms represent certain assumptions that operate within the different fields of practice. There appears to be no agreement on which term is better or what the set of otherwise desirable skills should be called.

It is not my goal to settle the debate over terminology, but rather to suggest that the debate matters and that the legal profession must take seriously the critiques that inform the various positions. Engaging with relevant critiques from other disciplines can offer insight into why cultural competency fails to bring about meaningful change even when there are genuine commitments to serve clients better. For example, critics have noted that particular models of cultural competency in social work might unintentionally eclipse the ways in which racism influences professional relationships.[55] A study on health professionals' perceptions about the medical autonomy of Saudi Arabian women in the United States illustrates the dangers of a hurried acceptance of a particular cultural narrative as a "cultural good".[56] Regardless of intentions, uncritical acceptance of accounts of any culture, and an unreflective imposition of 'presuppositions of difference' on clients, can be patronizing and could also cause harm to those who are meant to benefit from contact with a culturally competent professional, rendering the attempt to be ethical as in fact "ethically problematic".[57]

Another reason the legal profession might benefit from taking research in other fields seriously as it considers responses to the TRC Calls, is that the literature on cultural competence for lawyers has so far only focused on the need for serving a diverse range of clients generally without specific attention to Indigenous peoples. Insights from studies that have considered competence in the context of Indigenous peoples could therefore prove to be a useful resource. For example, a study on provision of healthcare services (where cultural competency is a standard requirement and expectation) shows that well-intentioned, culturally

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53 Furlong & Wight, *supra* note 48 at 39, 41. See also Sakamoto, *supra* note 21; Fisher-Borne, Cain & Martin, *supra* note 21 at 171.

54 See e.g. Fisher-Borne, Cain & Martin, *supra* note 21.

55 See Abrams & Moio, *supra* note 21.

56 Muaygil, *supra* note 24 at 25.

57 *Ibid.*

competent professionals are not able to serve the specific needs of Indigenous communities.[58]

A significant reason for the failure identified in the literature is a common misplaced belief that cultural competence can be acquired through add-on courses or skill-development workshops in the absence of broader curriculum-wide changes. Scholars point out that treating culture as a separate module, or cultural competence as a technical skill that can be learned in a short time, is an oversight.[59] A commitment to cultural competence requires fundamental changes in ways of thinking and interacting.[60] This relates to my earlier point about the importance of lawyers learning to think critically about culture and difference in ways that enable them to understand and serve Indigenous peoples better.

In view of the critique that cultural competence does not prepare professionals to recognize and challenge systemic problems that limit their ability to serve clients better, it is important to ask what, if anything, can be achieved through piecemeal attempts (such as an optional workshop or a set of guidelines for individual practitioners) in the absence of broader ongoing conversations in the profession and law schools about existing social, political, and economic inequities and ways in which law and legal processes continue to reflect or replicate colonial violence. I suggest therefore that the current initiatives, whether in the form of a workshop, course, or a published guide for lawyers, be treated primarily as opportunities for beginning critical conversations within the profession. In order to move the conversation forward, the legal profession's responses to the TRC Calls must be attentive to lessons from other disciplines that embraced cultural competency training early on, as well as to critical research that points to the need for more careful thinking about competence—especially when the goal is to make the legal system and legal services more accessible and responsive to Indigenous peoples.

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58 Patricia Johnston, *When Cultural Competence is Inadequate: An Opportunity for a New Approach to Child Welfare in Nunavut* (MSW Thesis, University of British Columbia, 2009) [unpublished] at 118: The researcher argues for a different approach, informed by the specific Indigenous community's values and beliefs, and against cultural competence as a piecemeal attempt to fix a system otherwise unsuitable to the community served.

59 Fisher-Borne, Cain & Martin, *supra* note 21. For a critique of incorporation of culture as a distinct topic in conflict resolution training, without attempts to integrate it into all aspects of skill acquisition and process design, see LeBaron, *supra* note 21.

60 Fisher-Borne, Cain & Martin, *supra* note 21 at 171.

E) Continuing Disregard of Indigenous Laws

Conversations about cultural competence for lawyers are attentive to cultural differences between lawyers and clients but imagine a single legal world. Existing literature draws attention to cultural differences between lawyers and clients.[61] Those who call for a 'client-centred approach' to lawyering see differences between lawyer and client as those arising from class, race, gender, and cultural practices.[62] Communications between lawyers and clients are seen mainly as communications between a legal expert and a non-expert client who has a story that needs to be translated into the language of the law.[63] A culturally competent lawyer in this context would be expected to better translate the set of facts presented by clients into a legal story while paying attention to the clients' cultural or linguistic differences. This would not be an incorrect understanding of a lawyers' role generally, but it is an incomplete one in multi-juridical spaces like Canada.

What is not acknowledged in conversations on cultural competence is that an Indigenous client may be speaking a different legal language, invoking a different law, and deploying different legal categories and claims that have been rendered untranslatable through colonial violence.[64] This is the violence that is often enabled by the very law the lawyer is expected to translate an Indigenous client's claim into. A lawyer who recognizes this violence and takes reconciliation seriously will also see the encounters between lawyers and clients as encounters between different legal worlds.[65] More specifically, such a lawyer will see them as encounters between the existing legal systems in Canada: the Common law, Civil law, and Indigenous laws.

Understanding a lawyer-client encounter only as one between 'law' and 'culture' replicates colonial violence. As generations of Indigenous peoples and scholars who study Indigenous laws have repeatedly pointed

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61 See e.g. Voyvodic, *supra* note 24 at 66.

62 *Ibid*. See also Bryant, *supra* note 30; Julie Macfarlane, *The New Lawyer: How Clients are Transforming the Practice of Law,* 2d ed, (Vancouver: UBC Press, 2017).

63 See Elizabeth Mertz, *The Language of Law School: Learning to "Think Like a Lawyer"* (New York: Oxford University Press, 2007) at 112.

64 See Pooja Parmar, *Indigeneity and Legal Pluralism in India: Claims, Histories, Meanings* (Cambridge: Cambridge University Press, 2015) at 15–20 [Parmar, *Indigeneity and Legal Pluralism*].

65 *Ibid.* See The Honourable Chief Justice Lance SG Finch, "The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice" (Paper 2.1 prepared for the Continuing Legal Education Society of British Columbia, Vancouver, November 2012), online: *CLEBC* <www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Documents_deposes_a_la_Commission/P-253.pdf> at 2.1.1 [Finch, "Duty to Learn"].

out, Indigenous laws are alive in Canada.[66] These laws live in resilient legal traditions that have survived repeated attempts by the colonial state to erase Indigenous laws along with Indigenous cultures and languages. The continued existence of these plural legal orders makes Canada a "multi-jural nation".[67] In fact, the TRC Report urges us to recognize 'Indigenous law' as a source for reconciliation and the Calls specifically point to the importance of learning Indigenous law. Article 40 of UNDRIP also acknowledges the relationship between ensuring access to justice for Indigenous peoples and formal recognition of Indigenous law and legal systems.[68] A study by the UN Expert Mechanism on Rights of Indigenous Peoples further points to the relationship between access to justice and Indigenous law, as well as to the strengthening of Indigenous legal institutions.[69] Despite these various and longstanding national and international calls to acknowledge the existence of Indigenous laws, and despite the role Indigenous laws have played in shaping Canadian law,[70] the legal profession does not take them seriously. This disregard is reflected in the narrow understanding of cultural competence that is inattentive to the critical importance of knowledge of Indigenous laws and institutions for practitioners.

A more meaningful response to the TRC Calls 27 and 28 therefore, would be for the legal profession to turn a critical eye towards its own culture and how it treats Indigenous laws. Reconciliation in this context demands a radical rethinking of not only the dominant understanding of

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66 See e.g. John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 244 [Borrows, *Canada's Indigenous Constitution*]; James (Sákéj) Youngblood Henderson, "Postcolonial Indigenous Legal Consciousness" (2002) 1 Indigenous LJ 1; Val Napoleon, "Tsilhqot'in Law of Consent" (2015) 48:3 UBC L Rev 873 [Napoleon, "Tsilhqot'in Law of Consent"]; Hadley Friedland & Val Napoleon, "Gathering The Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions" (2015–16) 1:1 Lakehead LJ 16 [Friedland & Napoleon, "Methodology"]; Sarah Morales, "'*a'lha'tham*: The Re-Transformation of s. 35 through a Coast Salish Legal Methodology" (2017) 37:2 NJCL 145 [Morales, "*a'lha'tham*"]; Anker, *supra* note 35; Darlene Johnston, "Aboriginal Traditions of Tolerance and Reparation: Introducing Canadian Colonialism" in Micheline Labelle, Rachad Antonius & Georges Leroux, eds, *Le devoir de mémoire et les politiques du pardon* (Sainte-Foy: Presses de l'Université du Québec, 2005) 141; Finch, "Duty to Learn", *supra* note 65.

67 Finch, "Duty to Learn", *supra* note 65.

68 *UNDRIP*, *supra* note 4.

69 *Access to justice in the promotion and protection of the rights of indigenous peoples,* EMRIP UNHRC, 24th Sess, Annex, Advice No 5, UN Doc A/HRC/24/50 (2013) at 23. It urges States to "consult with indigenous peoples on the best means for dialogue and cooperation between indigenous and State [justice] systems."

70 Canadian jurisprudence on Aboriginal Title as well as on treaty rights is an example of this. For a recent example of a Canadian court drawing on Indigenous laws, see *Restoule v Canada (Attorney General),* 2018 ONSC 7701, 431 DLR (4th) 32.

the lawyer-client relationship but also that of the legal landscape. Legal professionals need to ask why *their* culture disregards Indigenous laws. Further, they need to become familiar with histories that document how colonial logics shaped the idea that some people have 'culture' while others have 'law' and created hierarchies—placing Indigenous peoples' knowledges, governance systems, economies, laws and epistemologies at the bottom of those hierarchies everywhere.

A critical examination of the legal culture would allow professionals and educators to question received knowledge about the profession and professionalism. It would, for example, enable a lawyer to ask why the appearance of the lawyer "as an authoritative knower" is often the measure of success[71] and to examine how this measure of success might specifically interfere with competent representation of Indigenous clients. It is worth considering as we think more carefully about competence how the expert/non-expert model of the lawyer/client relationship specifically defines Indigenous peoples' experience of the legal system by reinforcing colonial relations of oppression. Once again, the task is more than what an add-on, optional cultural competency component to legal training can achieve. Critically reflecting on the knowledge base of a profession opens up space for questioning assumptions about peoples, places, and things that underlie the knowledge.[72] The more important question then becomes: what do lawyers learn about Indigenous legal systems, and of the profession's obligations towards reconciliation, when they learn about law?

A competent lawyer must learn common law and/or civil law well, but a competent lawyer in the context of reconciliation in Canada would have to be reimagined as one who, while learning these legal traditions, does not inherit the unquestioned belief that these legal systems are capable of responding to all the wrongs experienced by Indigenous peoples in Canada. It is only when legal professionals begin to recognize the limits of common/civil law that they will begin to see that competence in a multi-juridical space requires that all lawyers and judges have skills that also allow them to draw on Indigenous legal traditions to address legal problems.[73] Competence requires that all legal professionals have the knowledge and

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71 Voyvodic, *supra* note 24 at 59. For an argument against this view of the lawyer, see Macfarlane, *supra* note 62.

72 Here I draw on Sakamoto, *supra* note 21 at 109–12 arguing what a cultural competency model grounded in 'anti-oppressive practice' requires. See also Furlong & Wight, *supra* note 48.

73 The joint degree JD-JID program launched at the University of Victoria Faculty of Law in Fall 2018 is designed with this in mind. See: "Joint Degree Program in Canadian Common Law and Indigenous Legal Orders JD/JID", online: *University of Victoria Law* <www.uvic.ca/law/about/indigenous/jid/index.php>. See also Karen Drake, "Finding a

skills which allow them to understand when it is necessary to draw on Indigenous laws in order to represent or respond to an Indigenous claim.

3. Ethical Lawyering for Reconciliation

I have suggested that the TRC Calls 27 and 28 offer a unique opportunity to rethink lawyers' ethics in a multi-juridical space. I set out two ideas here that are worth considering as we think about possibilities of ethical legal practice in the context of reconciliation. These proposals are based on the premise that a meaningful response to the two TRC Calls would be to interpret them most centrally as a call to the legal profession to be more accountable to those it has not served well. The critical issue then is that of conceiving of competence in ways that centre the idea of accountability.[74] A focus on accountability leads away from models of competence that emphasize learning about others and towards one in which knowledge of, and engagement with, difference enables legal professionals to also learn about themselves individually and collectively. It also allows legal professionals to rethink competence and ethics in ways that takes the plurality of legal orders in Canada seriously.

A) Indigenous Laws, Epistemologies and Practitioners as a Source of Ethical Practice

The continuing disregard of Indigenous laws is a missed opportunity for reconsidering ethical lawyering and professional responsibility in the context of Canada's commitment to reconciliation. As I have set out in the preceding section, a limited understanding of cultural competence makes it impossible to conceive of critical questions that need to be asked. One of those questions must be about what we can learn about lawyering from Indigenous laws and those who practice it. In his paper on legal education and Indigenous laws, John Borrows calls for attention to Indigenous epistemology in order to better teach future Indigenous legal practitioners.[75] He also explores the relevance of Anishinaabe legal principles and teachings to contemporary legal issues and to legal

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Path to Reconciliation: Mandatory Indigenous Law, Anishinaabe Pedagogy, and Academic Freedom" (2017) 95:1 Can Bar Rev 9; John Borrows, *Law's Indigenous Ethics* (Toronto: University of Toronto Press, 2019) [Borrows, *Law's Indigenous Ethics*].

74 See Fisher-Borne, Cain & Martin, *supra* note 21 for cultural competence for social workers centred on accountability.

75 John Borrows, "Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education" (2016) 61:4 McGill LJ 795 at 807. The paper is about challenges as well as opportunities offered by the possibility of teaching Indigenous laws, and while it does not speak specifically to teaching of ethics and professional responsibility, I have drawn on this work in thinking about the significance of Indigenous epistemology for ethical lawyering for all professionals in plural legal spaces.

education broadly in Canada.[76] Val Napoleon, in her work on Indigenous laws and legal processes, has also created invaluable resources for legal practitioners.[77] Several other scholars have contributed to the creation of literature on ways to work meaningfully with different Indigenous legal systems in Canada by drawing on Indigenous epistemologies, ontologies, and legal principles, on the need for robust and ethical engagement with Indigenous legal orders, and the possibilities for respectful relations between the multiple legal traditions in Canada.[78] The Indigenous Law Research Unit at University of Victoria continues to direct energies and resources towards revival of Indigenous laws in ways that can make a real difference for communities.[79] This work of documenting and making visible laws that generations of Indigenous peoples have kept alive in their everyday practice is critical to undoing some of the colonial violence.

Building on this rich and growing body of work on Indigenous laws, I suggest that the continuing disregard of Indigenous laws impoverishes not only the development of substantive law and legal principles in Canada, but also impoverishes the practice of law. The legal profession can only be enriched by seeking out ways in which Indigenous epistemologies might inform the ethical practice of law and ideas of professionalism. Existing codes or principles of ethics are shaped by old and new stories about practices of lawyering and judging in the common and civil law traditions. Absent from these are the stories of ethics that exist within Indigenous legal traditions. More research in this area is likely to reveal stories of representation, practices of advocacy, and ethical practices of responding to claims that can help us build upon, or even rethink, obligations of lawyers and judges as recognized in existing codes of professional responsibility or principles of ethics. For example, by drawing on multiple legal traditions,

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76 Borrows, *Law's Indigenous Ethics*, *supra* note 73 offers valuable insights into what can be learnt about regulation, dispute resolution, holistic learning and so on if we take seriously the Anishinaabe understandings of concepts like 'love', 'humility', 'truth' and 'wisdom'.

77 See e.g. Val Napoleon et al, *Mikomosis and the Wetiko*: *A Teaching Guide for Youth, Community, and Post-Secondary Educators* (Victoria: Indigenous Law Research Unit at the University of Victoria, 2013); Napoleon, "Tsilhqot'in Law of Consent", *supra* note 66; Friedland & Napoleon "Methodology", *supra* note 66 at 20; Val Napoleon, "Thinking about Indigenous Legal Orders" in René Provost & Colleen Sheppard, eds, *Dialogues on Human Rights and Legal Pluralism* (Dordrecht: Springer, 2013) 229.

78 See e.g. Morales, "*a'lha'tham*", *supra* note 66; Anker, *supra* note 35; Drake, *supra* note 73 at 20–21; Hadley Friedland, "Waniskā: Reimagining the Future with Indigenous Legal Traditions" (2016) 33:1 Windsor YB Access Just 85–101; Aaron Mills, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today" (2016) 61:4 McGill LJ 847 [Mills, "Lifeworlds"].

79 Indigenous Law Research Unit (ILRU), "Our Vision", online: *University of Victoria Law* <www.uvic.ca/law/about/indigenous/indigenouslawresearchunit/index.php> [ILRU].

we may reconceptualise effective, competent representation, the lawyer-client relationship, conceptions of confidentiality, and even ideas of who one's client is (an issue that comes up for lawyers working with communities) in ways that enable, rather than hinder, access to justice.

In arguing that we treat Indigenous laws and epistemologies as sources for ethical lawyering, I am neither suggesting a rejection or replacement of existing common or civil law principles or the codes of conduct, nor proposing a one-sided appropriation of Indigenous principles. I am also not proposing an unquestioned uncritical acceptance of Indigenous legal principles.[80] The task, instead, is that of treating Indigenous legal principles seriously and rethinking ethical practice and professionalism by drawing on more than one legal system. This work begins with humility.[81] It must begin with recognizing the limits of traditions one is most familiar and comfortable with. Genuine commitments to reconciliation demand that legal professionals commit to unlearning colonial logics, hierarchies of legal cultures, and the disregard of particular knowledges, and approach differences with humility and respect. Instead of a cultural competence model that focuses solely on learning about the culture of particular Indigenous peoples, this alternative model would require legal professionals to consider what legal representation means within the particular Indigenous culture. It enables the professional to ask about obligations placed within that culture on a person who represents another, upon one who speaks for the other, upon one who tells the stories of another.

The kind of necessary work I am suggesting requires us to direct our energies and resources to the development of rigorous research methods, protocols, and careful thought as we seek to draw principles of ethical lawyering from multiple legal traditions. This is necessary to ensure that attempts to learn do not end up replicating colonial practices

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[80] I especially acknowledge my many conversations with Val Napoleon on this issue. Napoleon and other scholars have argued that taking Indigenous laws seriously requires development of robust methodologies and meaningful engagement with them and that includes, for example, questioning multiple interpretations of Indigenous laws, as one is expected to do while engaging with any legal tradition. See e.g. Val Napoleon & Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions through Stories" (2016) 61:4 McGill LJ 725. See also Morales, "*a'lha'tham*", *supra* note 66; Anker, *supra* note 35.

[81] For humility as an important legal principle, see Lindsay Borrows, "*Dabaadendiziwin*: Practices of Humility in a Multi-Juridical Legal Landscape" (2016) 33:1 Windsor YB Access Just 149. For need for humility, respect and receptivity in legal practitioners' individual and collective approaches to Indigenous legal systems, see Finch, "Duty to Learn", *supra* note 65 at 2.2.2.

of appropriation.[82] Navigating multiple legal worlds is hard work, and not just in the sense of trying to figure out the rules of an unfamiliar legal system. Ideas about ethics, ethical practice, as well as professional aspirations, are grounded in cultures.[83] Figuring out ways to work with rules and aspirations that might, at times, be irreconcilable with ones we are familiar with cannot be easy. For example, ideas of zealous advocacy, civility, effective representation, and competence might differ not just between common law, civil law, and Indigenous laws, but even across different Indigenous laws. What the common law expects from a legal practitioner may not be what a particular Indigenous legal tradition might ask of her, or vice versa.

The difficulty of the task ahead, or even the potential of failure, are not however good reasons not to try if accountability lies at the heart of the profession's response to the TRC Calls. The need to take this seriously is also obvious if we recognize the reality of legal practice in Canada. The fact is, legal professionals in Canada are already being called upon to navigate multiple legal terrains. The evolution of the Canadian jurisprudence on Aboriginal title is one example of this. Lawyers working on different sides of disputes over resource development are other examples. Judges are regularly called upon to decide on claims shaped by Indigenous legal conceptions of right and wrong. Recognizing the reality of Canada as a plural legal space, and training legal professionals who can work across and with the multiple systems of law, will better prepare them and make them more competent. This is why training in Indigenous laws is necessary for all lawyers and judges, and not just for those that represent Indigenous clients.[84] I argue that this knowledge must not be confined to substantive legal principles but must also inform every legal professional's understanding of ethical practice. Considering this an issue for the profession collectively, rather than relying on individual attempts at cultural competence, will also enable the profession to develop resources and tools that help identify and respond to conflicts that are bound to arise as professionals attempt to draw on multiple legal traditions to develop ideas of professionalism and ethical lawyering.

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82 See ILRU, *supra* note 79. See also Mills, "Lifeworlds", *supra* note 78.

83 For a cautionary exploration of transnational professional ethics drawing on multiple legal systems see Andrew Boon & John Flood, "Globalization of Professional Ethics? The Significance of Lawyers' International Codes of Conduct" (1999) 2:1 Leg Ethics 29 at 50–56.

84 For clear and compelling arguments on the need for mandatory training in Indigenous laws for all legal actors see Drake, *supra* note 73. See also Borrows, *Canada's Indigenous Constitution, supra* note 66 at 129ff; James (Sákéj) Youngblood Henderson, "Constitutional Vision and Judicial Commitment: Aboriginal and Treaty Rights in Canada" (2010) 14:2 Australian Indigenous L Rev 24; Finch, *supra* note 65.

B) Ethical Translations

A commitment to ethical lawyering in multi-juridical spaces requires attention to the critical work lawyers do as translators and to questions of ethical translation. All lawyering involves translation (of complex, messy realities into focused narratives required by law) and all translations are necessarily incomplete and imperfect.[85] But for lawyers in plural legal societies, the task is even more challenging, as they are called upon not only to translate social realities into legal facts, but are often also required to translate claims that arise from, and are shaped by, one legal system (e.g. an Indigenous legal system) into claims that will make sense within another legal system (e.g. the common law).[86] However, legal concepts and processes are not always perfectly translatable across different legal cultures. An expert who testified at trial in the *Delgamuukw* case has noted the challenges of "translating Gitxan and Witsuwit'en concepts into a form that the court would comprehend and respect."[87] Other reflections on the trial and appeal process in this case further point to the struggle faced by the Indigenous claimants, their lawyers, and expert witnesses in presenting the claim or evidence in a manner that would make sense within the common law.[88] Kirsten Anker makes a similar argument about the "problem of translation" in the *Marshall/Bernard* decision.[89]

Cases like *Delgamuukw* and *Marshall/Bernard* offer opportunities to recognize the limits of the Canadian legal system, which demands a translation in order to address a claim. However, when lawyers and judges are not trained to recognize these limits for what they are, or look critically at their own roles as translators, they are incapable of comprehending the

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85 See, on lawyers and translation, Mertz, *supra* note 63. On justice and translation, see James Boyd White, *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago: University of Chicago Press, 1990) at 255–56, 257–58. On impossibility of translation, see Gayatri C Spivak, *Outside in the Teaching Machine* (New York: Routledge, 1993) at 196 and see generally, Jacques Derrida, *Monolingualism of the Other, or, The Prosthesis of Origin*, translated by Patrick Mensah (Stanford: Stanford University Press, 1998) at 56–57.

86 See Parmar, *Indigeneity and Legal Pluralism*, *supra* note 64.

87 Antonia Mills, "Problems of Establishing Authority in Testifying on Behalf of the Witsuwit'en" (1996) 19:2 Political & Leg Anthropology Rev 39 at 40. *Delgamuukw* v *British Columbia*, [1997] 3 SCR 1010, 153 DLR (4th) 193.

88 See Michael Jackson, "Forward" in Richard Daly, *Our Box Was Full: An Ethnography for the Delgamuukw Plaintiffs* (Vancouver: UBC Press, 2005); Michael Asch & Catherine Bell, "Definition and Interpretation of Fact in Canadian Aboriginal Title Litigation: An Analysis of *Delgamuukw*" (1993) 19:2 Queen's LJ 503; Leslie Hall Pinder, "The Carriers of No: After the Land Claims Trial" (Speech to the BC Library Association in Vancouver, British Columbia, April 1991), (Vancouver: Lazara Press, 1991).

89 See Anker, *supra* note 35 at 27. *R v Marshall*, 2005 SCC 43, [2005] 2 SCR 220*; R v Bernard*, [2005] 2 SCR 220, 255 DLR (4th) 1.

consequences of the untranslatability of claims. This is especially true in the context of Indigenous peoples as meanings change in the process of translation, sometimes changing the nature of the claim to such an extent that it ceases to represent the original grievance, often making any response from a court meaningless.[90] The violence of this process is evident in Canadian jurisprudence both in cases where the Indigenous claimants are successful in litigation (*Tsilhqot'in Nation*) and in those where the claimants are unsuccessful (*Ktunaxa Nation*).[91]

Lawyers and judges often push against the perceived limits of state law in pursuit of justice. In fact, a practitioner's ability to disrupt what law is comfortable with in order to further a client's interest, is often seen as a sign of successful lawyering. And yet Indigenous peoples in Canada continue to struggle with the state law's inability to offer them a just response. The inadequacy or lack of response is because the Canadian legal system and its representatives and adherents are often unable to 'hear' what the Indigenous claimant is saying. This is not because they are not making an effort to listen (although this happens too), nor because what is being said makes them uncomfortable (which too is not uncommon),[92] but primarily because the claim brought forward is unrecognizable within the common or civil legal system that lawyers and judges are familiar with. Sometimes the issue is mistranslation due to incompetence of the translator. Sometimes the state law does not have an equivalent category into which it can successfully translate the original claim.[93]

Attention to the nature of work involved when working across different legal traditions therefore reveals that access to justice for

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90 See Parmar, *Indigeneity and Legal Pluralism*, *supra* note 64 at 135, 200–07, 215.

91 See *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44, [2014] 2 SCR 257 [*Tsilhqot'in Nation*], and *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 SCR 386. For an assessment of *Tsilhqot'in Nation* that makes this violence visible, see Bradford W Morse, "*Tsilhqot'in Nation v. British Columbia*: Is It a Game Changer in Canadian Aboriginal Title Law and Crown-Indigenous Relations?" (2017) 2:2 Lakehead LJ 64; John Borrows, "The Durability of *Terra Nullius*: *Tsilhqot'in Nation v. British Columbia*" (2015) 48:3 UBC L Rev 701 at 727ff. For the Ktunaxa Nations' unsuccessful attempts to frame their claim as a *Charter* right and the ways in which Canadian laws privilege settler religions, see Howard Kislowicz & Senwung Luk, "Recontextualizing *Ktunaxa Nation v. British Columbia*: Crown Land, History and Indigenous Religious Freedom" (2019) 88 SCLR (2d) 205.

92 See e.g. Pinder, *supra* note 88.

93 See generally Parmar, *Indigeneity and Legal Pluralism*, *supra* note 64. For incommensurability of common law with some Indigenous laws see also Aaron Mills, "What is a Treaty? On Contract and Mutual Aid" in John Borrows & Michael Coyle, eds, *The Right Relationship: Reimagining the Implementation of Historical Treaties* (Toronto: University of Toronto Press, 2017) at 209ff.

Indigenous peoples is also an issue of translation.[94] More specifically, it is about the mistranslation of their claims, sometimes by well-intentioned lawyers and judges who may otherwise be committed to ensuring justice. It is important to understand however, that the issue of mistranslation is not only one of linguistics and cross-cultural communications as emphasized in the cultural competence approach,[95] but also of failures in conceptual translation across legal systems. The fact that a person's right to legal representation can be lost in the very process of being represented should concern those who care about access to justice for Indigenous peoples.[96]

The practice of law that is not attentive to this translational aspect of representation in multi-juridical spaces cannot be considered ethical or competent if we are committed to undoing historical wrongs and meaningful reconciliation. A commitment to enabling access to justice for Indigenous peoples requires an acknowledgement of an obligation to engage in ethical translations. When the legal system requires claims to be rendered legible in the language of the common or civil law, a meaningful response to the TRC Calls would be training lawyers to have the skills to navigate multiple legal orders and for them to strive to be better translators for Indigenous peoples. I use the word 'strive' here because I am not suggesting that awareness of their roles will allow legal professionals to translate successfully and completely across legal worlds. My intention is to suggest that a better understanding of their roles will allow lawyers to develop practices of ethical translation that can lead to more effective representation and response.

Let us, for example, consider the skill of listening carefully to a client. This is considered a critical skill in the context of all lawyering but it is particularly emphasized in cultural competence literature aimed at helping professionals overcome cultural differences between them and the client. How might we conceive of ethical practices of listening in the context of reconciliation? It is worth considering here what it might mean for a legal professional to interpret the essential skill of listening carefully as an "act of hearing-to-respond," a necessary component of ethical translation.[97] The phrase hearing-to-respond centers accountability. It is

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94 See Parmar, *Indigeneity and Legal Pluralism*, *supra* note 64 at 125–26.

95 See e.g. Diana Eades, "Legal Recognition of Cultural Differences in Communication: The Case of Robyn Kina" (1996) 16:3 Language & Communication 215 for argument that access to justice for Indigenous peoples is partly a linguistic issue.

96 See Homi Bhabha, "The Voice of the Dom: Retrieving the Experience of the Once-Colonized", *Times Literary Supplement* (8 August 1997) 14 for an account of the "once-colonized" whose very "right to representation is […] lost in the process of translation".

97 Gayatri C Spivak, "Translation as Culture" (2000) 6:1 Parallax 13 at 22 for suggestion that an ethical translation involves an "act of hearing-to-respond".

an act of hearing grounded in a responsibility to respond to what is said. It necessarily involves an obligation to respond to what an Indigenous client is actually seeking a response to.

I suggest that listening as act of 'hearing-to-respond' calls upon lawyers and judges within the common law system to not only take note of an Indigenous claimant's inability to meet the requirement of the common law, for instance, but also to recognize when the inability is attributable to the impossibility of translation owing to the limits of the language of the common law itself. This is not a scenario where an Indigenous claim is unable to meet a neutral test set out by the common law, but rather an unequal encounter between two legal systems where the outcome is predetermined by one legal system's power to determine a test that is incapable of responding to the Indigenous person's actual claim. An ethical professional who understands this process will not simply be satisfied with translating a claim for the common law, but will also be able to see and reveal for others the violence of untranslatability. Such a professional will demand a response that takes the untranslatability into account. It is worth considering whether such legal representation is closer to the ideal of access to justice in a process centered on a claimant 'being heard' by the decision-maker.

Conclusion

The TRC Calls to Action directed towards regulators and educators deserve serious attention and an urgent response. Even as I recognize the commitments to do things differently in the turn to cultural competence as a response to TRC Calls 27 and 28, I have argued in this paper that we have yet to understand what cultural competence means in the specific context of reconciliation in Canada. I have set out concerns about a narrow and limited conception of cultural competency and suggested that careful thought and research must precede any response. Any normative conception of cultural competence must necessarily involve a wider critical examination of the culture of the legal profession itself.

I have suggested that asking legal professionals to be culturally competent without attention to how Indigenous peoples' encounters with the legal system and its various actors are affected by systemic racism, colonial legacies, and ideas of professionalism that privilege only the practitioner's knowledge (as well as the limited knowledge base of the legal profession and the legal professionals' inability to engage meaningfully with culture and difference) are unlikely to lead to any meaningful change. I have suggested that unless the adoption of cultural competency opens up the space for critical inquiries into these larger issues, it will not have

the desired impact on Indigenous peoples' experience with the legal profession.

In order to be more accountable to Indigenous peoples, and to train professionals that can better understand, represent, and respond to Indigenous peoples, we must interpret the TRC recommendations primarily as a call to rethink legal education both in and outside of law schools. One way to begin this work is by recognizing that any training in ethics and professional responsibility is incomplete unless it includes Indigenous perspectives on competence and ethical legal practice. Piecemeal attempts where cultural competency is treated as an optional skill that can be uncritically added to the existing training programs are unlikely to serve the goal of reconciliation. I have suggested that rethinking ethical lawyering requires attention to Indigenous laws, legal practices, and epistemologies as sources of ethics and professionalism. It also requires legal representatives to recognize their role as translators across legal worlds and learn to be more effective, competent, and ethical translators.