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Creating families and establishing parentage when there is a disconnect between Assisted Reproductive Technologies and the Legal System: A New Zealand perspective of a global problem

Dealing with challenges that arise when lawyer and client are from different cultures

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Dealing with challenges that arise when lawyer and client are from different cultures

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Think for a moment. What takes up the most space in your office? Is it a large desk? A conference table? Bookshelves filled with books? Or something else?

Few people answer this question correctly. In every office, air takes up the most space. People tend to overlook air because it is invisible and commonplace; it is usually noticed only in extreme situations such as near drowning or tropical cyclones. Yet it is profoundly important.

Culture is a lot like air. It is invisible, commonplace and tends to be overlooked, unless extreme differences bring it to one's attention. It is also very important. It shapes the actions people take and the way they view the world. Ignoring cultural differences or allowing the dominant culture to overshadow others is not the remedy for success. The difference between Māori and British worldviews has been recognised by commentators[1] and the New Zealand Waitangi Tribunal.[2] The importance of recognising Māori culture was underscored by the Tribunal when it noted that:[3]

> ... unless it is accepted that New Zealand has two founding cultures, not one; unless Māori culture and identity are valued in everything government says and does; and unless they are welcomed into the very centre of the way we do things in this country, nothing will change.

The Law Commission has recognised the frequent need of judges to understand Māori cultural values and practices.[4] Nor is the need for cultural understanding limited to Māori; as a result of immigration, New Zealand has experienced an "extraordinary increase in wider cultural diversity" over the last few decades.[5]

Culture has been recognised as an important consideration in family law. The United Nations Convention on the Rights of the Child expressly mentions the need to take:[6]

- due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child;
- the importance of promoting the child's cultural identity, language and values; and
- the right of the child to enjoy his or her own culture and language in community with others.

The Care of Children Act 2004 lists preserving and strengthening a child's culture and language, and relationship with whānau, hapū and iwi, as principles which relate to his or her welfare and best interests.[7] The Family Court has acknowledged the importance of taking culture into account in translating legal principles appropriately, in order to support the welfare of each individual child.[8] Cultural practices, such as the disciplining of children by whānau, are also taken into account by the Family Court.[9]

Navigating cultural difference is of great importance for lawyers in their care of clients. Failure to recognise and adapt to situations where the lawyer and client come from different cultures can have consequences that range from significant to extreme.[10] In *R v Kina*, for example, an appeal against a murder conviction was allowed due to a miscarriage of justice.[11] The Queensland Court of Appeal recognised that cultural differences had affected communication between the Australian Aboriginal accused and her non-Aboriginal lawyers. In combination with personal and psychological factors, cultural differences:[12]

> ... bore upon the adequacy of the advice and legal representation which the appellant received and effectively denied her satisfactory representation or the capacity to make informed decisions on the basis of proper advice.

These types of Australian aboriginal issues have been identified across the Australian legal system and continue to present challenges for all lawyers in those jurisdictions.[13]

This article will focus on situations of "culture clash", where the lawyer and client come from different cultures or subcultures, and significant differences exist between those cultures. Differing cultural perspectives can give rise to the possibility of misunderstanding and conflict, but this term should not be understood as suggesting that there is actual conflict or hostility between the cultures, merely that they see things differently. This article will begin by discussing culture, and common problems caused by culture clash. While the aim is to cover culture clash in general, some specific examples will be included, with particular reference to Māori and Pacific cultures.[14] The article will also cover strategies for interacting with culturally different clients, including:

- becoming more self-aware of the influence of the lawyer's own culture;
- recognising and responding to cultural differences;
- using good communication techniques; and
- advising clients from other cultures.

The aim is to make lawyers aware of the ways in which cultural differences can affect the lawyer-client relationship, and to provide a toolkit of techniques to expand the lawyer's repertoire of options. No single strategy will work well in every situation.

What is culture?

Krieger and Neumann describe culture as "a body of values, customs, and ways of looking at the world shared by a group

of people."[15] Culture is developed and reinforced by membership in groups. These groups can be defined by nationality, race, ethnicity, language, religion, education, profession, socio-economic status, age, gender, geography and many other factors. Some aspects of culture are conveyed directly, such as when parents teach children to talk and use manners. Other aspects are acquired by osmosis — there is an innate human tendency to conform, and it is common for individuals to consciously or subconsciously adapt their behaviour to fit in with their surroundings.

Culture is important because of the extent to which it affects people. As LeBaron has noted, "Cultures are like underground rivers that run through our lives and relationships, giving us messages that shape our perceptions, attributions, judgments, and ideas of self and other."[16] Brandon and Robertson summarise this as culture "provid[ing] a lens by which people view their world."[17] Saner explains that sharing a cultural background with another person enables one "to convey large messages with small gestures".[18] This can be very efficient, but those who are unfamiliar with the culture will often lack the ability to decode such messages. Emotions are particularly easy to mis-read, and culture strongly influences the way in which they are expressed.

Cultures are highly complex and dynamic — in other words, they are always changing. Culture influences dress, behaviour, standards for politeness and priorities (for example, should the primary focus be on work or family, on personal success or group success?). Culture helps to determine roles (for example, is the lawyer expected to be a respected expert who will call the shots, or a hired gun or mere mouthpiece who will be directed by the client?) and values (for example, should the client forgive the person who has wronged him or her, or hold them to account through litigation if necessary?). Culture also influences factors such as the:[19]

- degree of formality that is expected
- appropriateness of interruptions
- meaning of eye contact
- meaning attributed to silence in an interaction
- contours of personal space
- conceptions of time
- conventions about the display of emotion
- appropriateness of self-disclosure
- way in which agency is viewed
- attitudes towards authority
- relative priorities for dispute resolution (for example, competitive or '"win-win")
- preference for confrontation or for preserving a relationship
- focus on universal rules or on case-by-case analysis of circumstances
- value placed on debate
- inclination to take other perspectives
- inclination to consider counter-arguments.

At any given time, individuals will belong to many different cultural groups and be influenced by a variety of factors. In New Zealand, many Māori and Pasifika[20] have mixed ethnicities due to having a European parent or grandparent.[21] Within each main culture, there are also subcultures. One that is especially important is the legal subculture. Lawyers use a specialised legal vocabulary, tend to dress in particular ways, and hold to a special set of values (ones that the general public often finds difficult to understand, such as a commitment to protecting the rights of guilty clients). Even where the lawyer and client come from otherwise very similar backgrounds, the specialised legal subculture can result in conflict between lawyer and client. A client may believe, for example, that the lawyers and court should be focused on doing justice, rather than on rigidly interpreting the law, or on applying restrictive rules of procedure and evidence. Another example of legal subculture creating a potential issue involves the barrister's intervention rule in New Zealand, which in most cases requires a client to use an instructing solicitor in order to access the services of a barrister, even if the client knows the barrister personally. Māori and Pacific people find the intervention rule to be odd.

Problems caused by culture clash

Culture clash can lead to communication errors and difficulties

Clear and accurate communication between lawyer and client is very important. Errors can be critical if they mean that the lawyer does not understand the client and his or her needs, or if the client does not understand the lawyer's instructions (for example, on what to do if contacted by the police). In the *Kina* case, the cultural differences in communication were significant but went unnoticed, and prevented the lawyers from understanding her history, which included horrific abuse and fear of her partner.[22]

Significant communication difficulties may arise when the client and lawyer are native speakers of different languages. In some cases of those cases, a lawyer-client relationship may not be possible without using a translator, but formal translators are expensive and may not be available. Using informal translators increases the risk of mistranslation, and if the client has brought a friend or family member along to translate, there is a risk that this person will shape the translations, based on his or her own view of the situation. Translation involves interruptions: either the translator will be speaking simultaneously with the client, which increases the risk of the translator missing something and is more disconcerting to listen to, or the translation will be sequential, with the speech broken into short blocks, with pauses for translation every minute or two. These breaks in the flow of the dialogue can make it much harder for a speaker to organise his or her thoughts in a logical order, and to remember to include the appropriate details. Yet even with its limitations, translation will be a better alternative to continuing an interview where the client is having difficulty (acknowledged or unacknowledged) understanding the lawyer, or the lawyer is having difficulty understanding the client.

Individuals who have some competence with the other's language also face challenges. Accents may be difficult to understand. The law often involves a specialised vocabulary that the client may lack, increasing the likelihood of mistakes. Some words and phrases lack a simple equivalent in English.[23] Slang and idiom may also create difficulties. A "rubber" is an eraser in Australasia, but a condom in America. "I am full" in English can be literally translated "je suis plein" in French and "ich bin voll" in German.[24] The nuance is very different, however: in Paris, the speaker is disclosing a pregnancy, and in Hamburg, admitting to being very drunk. The Māori expression "kei te pai" can literally mean "I am fine" or in another context, "I feel bothersome. The court

system is rigged against us Māori and that is just how the system works, so just get on with punishing me".

Potential misunderstandings go beyond language and idiom. As noted above, culture enables people to interpret meaning from events. If one is unfamiliar with the culture, however, it is easy to misinterpret meaning. In Western cultures, for example, a client's failure to make eye contact is likely to be perceived as indicating shame or deception. Yet in other cultures, it could be showing proper manners,[25] or a sign of respect for the lawyer's higher status.[26] For Māori, eye-to eye contact can be seen as disrespectful in a number of social situations — not only in a lawyer-client situation but in a health professional-client situation as well.[27] A client's long silence following a lawyer's question could indicate distraction or resistance to answering, or alternatively it could be a sign that the client is carefully considering the answer.[28] In certain cultures, nodding one's head signifies "I agree", but in others it conveys only "I hear what you are saying".[29]

Communication can also be hindered by cultural attitudes surrounding courtesy. For example, direct questioning of a client may be foreign to a culture. Asking direct questions may be perceived as invading the interviewee's privacy and embarrassing him or her. Information exchange may be viewed as most appropriately a two-way process, with patience and cultivation of a relationship being very useful elements.[30] Politeness may discourage or prevent a lawyer or client from asking certain questions, and it can also influence answers: in some cultures, for example, "I will think about it" is merely a polite way of saying "no".[31]

Dissimilar perspectives can also affect communication even when the words themselves are clearly understood. For example, if a lawyer asks a client whether he or she used a product properly, the lawyer probably is thinking along the lines of product liability. If the client answers "yes", the lawyer may assume that the client obeyed the printed instructions that came with the product. The client, on the other hand, may be answering the question by referring instead to his or her perception of how this type of product should be used. A lack of familiarity with the legal world may result in similar misunderstandings and unwarranted inferences. For example, the client may believe that if the lawyer says "you can apply for sole day-to-day care of your child" that it means "you are likely to be awarded sole day-to-day care".

Culture clash can lead to poor decision-making

Many decisions need to be made in the course of legal representation. The client's legal rights, financial well-being and perhaps even his or her freedom will depend on those decisions. There are a number of reasons decision-making can be impaired when the lawyer and client come from different cultures. First, as mentioned above, there is an enhanced risk of miscommunication. The lawyer's advice will be based on his or her understanding of the situation. If there is an inability to communicate or an undetected communication error, inappropriate advice may be given. Second, the lawyer may not have an accurate understanding of the client's preferences because an unwarranted assumption has been made. For example, lawyers may assume that non-Māori and non-Pasifika clients are not interested in using Māori and Pasifika legal procedures, yet Rangatahi Courts and Pasifika Courts (branches of the Youth Court) are available to all ethnicities in New Zealand.[32] The case study discussed in Appendix 1 provides another example of how lawyers can make inappropriate assumptions about client preferences. A lawyer who is not sensitive to the client's difference may assume mistakenly that the client's values and preferences are similar to the lawyer's own. For example, where the client has a strong case, the lawyer may push litigation as the clear remedy. Yet litigation may be regarded as disreputable in some cultures, and the client may prefer to forego compensation and receive an apology instead. A client from the same culture as the lawyer may find it easier to be assertive and dissuade a lawyer who is offering unwelcome recommendations than would a client from a different culture. In some cultures, it is expected that the client will defer to the lawyer's expert judgment, and this too is likely to interfere with the correction of mistakes.

A third way in which decision-making may be strained when cultures clash is if the lawyer disagrees with the client's method for decision-making, and resists it. In Western culture, for example, it is not common for an adult woman to delegate decisions over her legal affairs to an elder sibling, or for a client to need to consult a religious leader prior to making a legal decision. Amongst the Pasifika, however, church leaders are such an important part of their society that they are seen as vital for the operation of the Pasifika Court in New Zealand, and it would not function without a church leader in attendance. Church leaders can have more influence with a client than the client's lawyer.[33] The delay and perceived uncertainty involved in such processes may present the lawyer with unexpected frustration, and he or she may attempt to dissuade the client from such courses of action, producing stress, and possibly resulting in rushed and ill-advised decisions.

Culture clash can damage the lawyer-client relationship

A lawyer-client relationship functions best when there is an atmosphere of understanding and trust. The client must be willing to entrust the lawyer with all relevant information however sensitive or embarrassing it might be. The client must have faith in the lawyer's abilities, or he or she will be excessively anxious, and may be unwilling to follow the lawyer's recommendations. It is also beneficial for the lawyer to trust the client to be consistent, and to follow instructions. Similarities between the lawyer and client can lead to a feeling of connection between them, supporting a good working relationship; differences can have the opposite effect. Culture clash can lead to feelings of suspicion, mistrust and hostility by the client. Lacking a natural affinity, lawyers and clients from different backgrounds will have to work harder to make the lawyer-client relationship succeed. For example, Sian Elias, the current Chief Justice of New Zealand, was involved with a number of Māori clients in the late 1970s and early 1980s. She eventually built up a rapport with Māori that enabled her to navigate complex Māori claims before the Waitangi Tribunal over the Manukau Harbour in Auckland.[34]

There are three ways in which culture clash can affect the client negatively. First, communication problems can prevent the client from feeling heard and understood. This factor is extremely important in the development of rapport between lawyer and client.[35] If the client does not feel that the lawyer understands his or her position and desires, it is unlikely that the client will have faith in the lawyer's advice. The case study

discussed in Appendix 1 gives an example of how the client can come to lose faith in the lawyer's advice. Second, the lawyer's behaviour can offend the client; differences in culture can lead the client to perceive the lawyer's behaviour as rude. In the *Kina* case mentioned earlier, for example, the Australian Aboriginal defendant had very little time to get to know her lawyers, and was subjected to culturally inappropriate one-way rushed interviews.[36] Offending the client is not conducive to the development of a trusting lawyer-client relationship.

Finally, the client may be affected by clash with legal culture. He or she may feel alienated by the legal system, and view the lawyer as its representative. Clients who are unfamiliar with legal process may be particularly affronted by it. For example, they may feel overly limited by the requirement that, when testifying, they only answer questions and do not volunteer things they wish to say. Clients also may object to hearing their lawyer refer to opposing counsel as "my learned friend", thinking that this shows the likelihood of collusion between them. The fact that the legal system stemmed from the dominant culture can enhance the alienation felt by members of other cultures or subcultures when dealing with the system. Negative feelings towards the legal system may be transferred to the lawyer, who may be viewed as its agent. Conversely, when the lawyer and client have a good relationship, the lawyer can serve as a translator of the law and legal system for the client, and a guide to complying with legal requirements.[37] In litigation, this includes helping the client to function in the foreign environment of a courtroom.

Culture clash may also affect lawyers negatively, potentially damaging the lawyer-client relationship. First, just as the lawyer's behaviour may be inadvertently impolite to the client, so too may the client's behaviour seem rude to the lawyer. A perceived lack of courtesy can lead to negative feelings towards the client. Most lawyers will try hard to remain unaffected by any such feelings, but it would be better to instead manage cross-cultural situations well, and avoid needing to remain unaffected. Second, if the lawyer feels compelled to alter his or her usual way of doing things in order to adapt to the client, this can push the lawyer outside his or her comfort zone, and may lead to feelings of resentment.

Culture clash can lead to inaccurate negative perceptions of the client

Culture clash may lead the lawyer to make inaccurate attributions about the client. In attempting to decipher why a client did something, and what the behaviour says about the client, the lawyer may place the primary focus on factors that are either internal or external to the client. If a client breaks down and cries when speaking with the lawyer, for example, is it because the situation is so stressful (an external attribution, focusing primarily on the client's external circumstances), or because the client is mentally unstable (an internal attribution, focusing instead primarily on the client's inner qualities and character)? When people consider the behaviour of others, they tend to make internal attributions too readily, and fail to recognise the strong impact of external circumstances, including culture.[38] The difficulties in understanding that are associated with culture clash make negative internal attributions even more likely. Without an appreciation of cultural differences, the lawyer's reactions to challenging client behaviour are more likely to include negative attributions about the client.[39] In the *Kina* case, for example, the lawyers considered the client's reticence in answering questions to indicate that she was passive, uninterested in the preparation of her defence, uncommunicative and difficult.[40] The case study discussed in Appendix 1 gives another example of how culture clash can lead to the creation of unwarranted negative perceptions of the client.

Examples of situations in which inaccurate attributions could be made include:

- The client fails to follow the lawyer's instructions. This could be attributed to the client failing to understand the instructions due to communication issues (external attribution), or to the stupidity of the client (internal attribution).
- The client fails to agree with the lawyer's recommendations. This could be attributed to cultural differences in preferences, or to the client being stubborn, unreasonable, and/or naïve.
- The client fails to make eye contact, answers questions in a very short and uninformative way, and is generally very difficult to interview. This could be attributed to the client's unfamiliarity and difficulty (possibly for cultural reasons) with a question and answer format, or it could be concluded that the client has negative feelings towards the lawyer, is unwilling to cooperate, and/or is a difficult and unpleasant person. If the lawyer thinks that the client does not like him or her, this can lead to the lawyer making negative attributions about the client, which in turn actually produces the negative relationship that was erroneously thought to exist earlier, thus becoming a self-fulfilling prophecy.

In addition to inaccurate negative attributions about the client's qualities or character, the lawyer may also make negative judgments about the strength of the client's case. If the lawyer attributes the client's difficulty answering questions or downcast gaze as evidence of deception, for example, instead of culturally appropriate behaviour, the lawyer may doubt the client's credibility and downgrade the perceived strength of the client's case. This perception can lead to strategic errors, as well as strain on the lawyer-client relationship.

Culture clash can be stressful for lawyer and client

Culture clash usually results in stress for both lawyer and client. The misunderstandings, unfortunate decisions and tense lawyer-client relationships discussed above generate and reinforce negative feelings, and these in turn can further magnify problems. For example, the frustration and stress associated with difficult communication in early meetings can make it even more difficult to listen and understand properly in later sessions, thus exacerbating the miscommunication. Another source of stress comes from the fact that representing clients from other cultures almost always requires more time and effort (by both lawyer and client) than would a similar case involving a client from the same culture. Day-to-day care and contact cases involving parents from different backgrounds with competing cultural values put strain not only on clients but also on lawyers and the court. The case study discussed in Appendix 1 shows how culture clash can lead to stress for both lawyer and client.

The importance of becoming culturally aware and receptive to difference

A person's own culture is something that he or she has been socialised to expect and accept, often from a very young age, and thus it can be almost invisible. It is often perceived not just as normal, but also as neutral and even the way things naturally should be. There is a tendency to notice difference *in others*, but to overlook the extent to which *one's own* behaviour and perspectives have been influenced by cultural forces. An analogy could be drawn to people who say "I don't speak with an accent but that person has an accent". In fact, whether someone has an accent depends entirely on the basis used for comparison. Ethnocentrism is a tendency to view one's own culture (and its people, artifacts and institutions) as the standard for evaluating others.[41] Almost invariably, this leads to rating it more favourably than other cultures, and even to feeling superior. A number of steps can help to deal with ethnocentrism, and lead to greater cultural sensitivity and awareness.

Appreciate how culture has shaped one's self, and the diversity that exists

Culturally sensitive lawyers recognise the extent to which culture is always present and influencing them. For example, the late Peter Bloomer practiced law amongst the Māori community in the Hawkes Bay region in the 1950s through to the early 1980s. Bloomer was a British and Canadian lawyer who came to New Zealand after World War II. He was acutely aware that his own British and Canadian values were different to the New Zealand values at the time, and certainly different to Māori values. The Māori value of manaakitanga (nurturing anybody, including an unknown visitor) was something that impressed Bloomer. He was always given food when he visited Māori homes to gather signatures, no matter the socio-economic situation of the host. One Māori lady lived in cardboard boxes in a forestry area and even though she had little in terms of material goods, she treated him with the utmost kindness. Bloomer's recognition of his own cultural background, and his corresponding alterations to his behaviour, showed that he was perceptive, reflective and culturally sensitive.[42]

Weng advises developing an understanding of how one's culture shapes "attitudes, values, biases, and assumptions about lawyering".[43] There may be ignorance of the ways in which everyone is influenced by his or her own culture, but that does not mean that it is not happening. The culturally aware lawyer correctly perceives that it is not possible to be culturally neutral. When a behaviour is an established part of the culture, it will almost always seem like the natural thing to do. One must dig deeper to recognise that it is only one amongst many possible behaviours. The incredible range of cultural diversity should not be overlooked. For example, it is common to say "thank you" (or some other verbal expression of gratitude) to someone who has been helpful or given a gift. Young children are expressly taught to do this. It could be argued that thanking a person is not cultural, but instead is a natural human thing to do. But why are words — rather than perhaps a smile, or a reciprocal favour or gift — considered to be the appropriate response? The culturally aware lawyer appreciates that there are many different ways of expressing gratitude, and words are just one way.

This article has certainly been influenced by the authors' cultural backgrounds and choices. For example:

- It is an attempt to educate by writing for a publication, rather than using an oral method or modelling appropriate behaviour in front of apprentices.
- It is expository (focusing on explanation) rather than using narrative (telling a story).
- In trying to predict what information will be most helpful to include, the authors have considered what information they find to be the most interesting and useful, and inferred that others are likely to feel the same way.
- It is written from the perspective of the lawyer and dominant British/New Zealand legal culture. It would look very different if, for example, it aimed to explain Western legal traditions and behaviours to clients from Asia.

Counter the tendency to be dismissive

Another important step is learning to counter any tendency to be dismissive of other cultures. A lawyer labelling behaviour that is consistent with his or her own culture as normal may come to see the behaviour of those from different cultures as strange or even abnormal. Negative stereotypes of other cultures are also common. They are bound to complicate the lawyer-client relationship, and many have little or no basis in fact. For example, Yglesias quotes pundits who have suggested that the recent European financial crisis reflected the fact that Greeks are not as hard working as Germans. He then shows that in 2008, in fact, the average German worker put in 1,429 hours on the job, whereas the average Greek worker put in 2,120 hours.[44] Often, it is unfamiliarity with other cultures that leads to hasty negative evaluations; familiarity can lead to appreciation.

Manifest genuine curiosity and a non-judgmental attitude

Respect for other cultures includes a willingness to accept them on their own terms, without judging them.[45] It is more productive to think in terms of different, rather than better or worse. Manifesting genuine curiosity and a non-judgmental attitude will put the client at ease, and help him or her to share information without feeling attacked or defensive.

Recognise culture clash and develop a strategy

It is important to be alert to the possibility of cultural differences in order to recognise culture clash when it occurs, and to employ a strategy for dealing with it effectively.

Prepare for cultural differences

As noted above, culture is a decoder that enables people to interpret meaning from events. If one lacks the decoder, it is easy to misinterpret the meaning. Studying other cultures can increase the likelihood that the lawyer will be able to properly identify the meaning underlying the client's actions. The culturally sensitive lawyer becomes familiar with common cultures and subcultures in the community, and studies how they differ from the lawyer's own cultural background. Consultation with cultural advisors and experts may be beneficial.[46] Investigation helps display the range of possibilities, but should not lead the lawyer to *assume* that the client will reflect a particular culture, or need to be treated in a particular way. Cultural knowledge alerts the lawyer to possible differences, and potential problems and issues to be explored.

Recognise culture clash

There are a number of reasons why it can be challenging to recognise cultural differences between the lawyer and client. Migration has meant that people are scattered all over the world, far from their ancestral homelands. It is seldom possible today to make accurate guesses about a person's background from their name, or the colour of their skin. For example, there is an increasing number of Māori who at first glance would appear to be white New Zealanders, and yet they have Māori ancestry. This is particularly common with Māori from the tribal groups in the South Island of New Zealand, but it is becoming common in the North Island as well because of the increased number of children with at least one Māori parent or grandparent.

Many of the most profound cultural differences may not be obvious. Schneider's model of culture compares it to an iceberg.[47] Very little of an iceberg is visible; most of its bulk is submerged beneath the surface of the water. In the same way, only certain indicators of a culture are easy to notice (for example, obvious racial characteristics, manner of dress, language or accent). The majority of cultural influences are less obvious, including the client's values, standards for politeness, expectations and assumptions.

It would not be wise to wait for the client to signal that culture clash exists. Some clients may try to hide differences, as they want to blend in with the mainstream culture, and not appear to be ignorant or strange. Other clients will be unaware of the magnitude of the potential problems associated with culture clash, and so feel no need to call it to the lawyer's attention. Even if they recognise their own struggles to understand the lawyer, they may fail to appreciate reciprocal difficulties for the lawyer. If lawyer-client relations are strained due to cultural factors, many clients will respond to the confusion with silence. Or, more damaging still, they may say what they think the lawyer wants to hear. A widely-held assumption in Aboriginal societies throughout Australia is said to be: "If a white person in authority asks you many questions, especially in a pressured situation, the best thing is to say 'yes,' to keep them happy. If it's a negative question, say 'no.'"[48]

Failing to correctly identify the client as possibly being from a Māori or mixed background could lead to flawed legal advice. For example, most Māori in New Zealand have proprietary interests in traditional Māori lands that are subject to certain legislative rules.[49] It often never occurs to lawyers that a person who looks like a white New Zealander could be of Māori descent and therefore own Māori land, and overlooking this has serious ramifications for the effectiveness of wills. Legacies within a will could fail and intestacies could result, thwarting the wishes of the testator, but this would not be noticed until the person dies.[50] Matrimonial claims can also be affected if there was not an appreciation of the cultural and legal rights of Māori to their lands.[51] It is therefore important that lawyers recognise possible cultural factors concerning their clients as this could have serious implications on the correct legal principles to apply and practices to adopt.

The culturally adept lawyer does not assume similarities but instead looks for indications of culture difference. The client's name, accent, manner of dress, and other characteristics may be suggestive, but are not determinative. Finding out about the client's background when getting to know them may also be useful in many cases. Cultural factors can give some suggestions of what the client may be like. This information may guide the lawyer in choosing tentative approaches to use with the client, subject to confirmation and any necessary changes as the relationship develops. Most important is remaining alert, when interacting with the client, to cues that cultural differences exist and are affecting mutual understanding, the relationship, and/or the course of the legal representation. If there is any indication of difficulties, the culturally adept lawyer proceeds very carefully, taking steps to make sure that there is good communication and appropriate advising of the client, as will be discussed below.

Avoid stereotyping

Learning about other cultures and recognising when a client comes from another culture are important, but it would be inappropriate to use this information to make assumptions about the client's values, perspective and behaviour. Doing so would be stereotyping — assuming that the perceived characteristics, attributes and behaviour of members of a group apply uniformly within the group.[52] The culturally adept lawyer concentrates on getting to know the client as an individual. Some stereotyped perceptions are incorrect, as discussed above. Also, individual differences must be considered. Within cultures, individuals vary greatly. For example, it might be suggested that Americans are very talkative, and love to sue and have their day in court. Yet even if this were correct (and there is considerable reason to view it as an over-generalisation), there is a lot of diversity within American culture and many individuals will be quiet, shy, and prefer collaborative approaches to dispute resolution. A final reason to avoid stereotyping is that clients with a different cultural background may nevertheless be very familiar with dominant culture, and insulted if treated differently.

Develop a strategy

Once the client's perspective has been identified with some precision, it will be useful for the lawyer to develop a strategy for dealing with differences. There are four focuses. The first is on identifying the most productive ways to interact with this client. For example, might this client prefer a direct approach, or would they be more comfortable with an indirect manner? Indirect ways of obtaining information or dealing with delicate subjects can be effective. The second focus is on identifying things that might offend the client or make them uncomfortable. Once identified, these can often be avoided. The third focus is on developing an approach for situations where it will not be possible to avoid uncomfortable actions. For example, it may be culturally inappropriate for the client to discuss their marriage with a stranger. Nevertheless, a prosecutor or defence lawyer involved with a domestic violence case will need to enquire into such topics. The best approach for dealing with this situation will be influenced by cultural factors. For example, apologising for the necessity of asking difficult questions may help some clients to deal with their distress. For other clients, this will draw further attention to the matter and may make the discomfort worse. Familiarity with the specific client and culture will help the lawyer to make the best choices.

The final focus is on developing a plan to manage culture clash between the client and third parties. The lawyer can, in essence, serve as a cultural translator for the client, explaining the client's behaviour and perspective to others (in settlement negotiations, for example) or the court. In addition to

helping the client to adjust to the legal system and its procedures, the lawyer also should help the legal system to deal fairly with this client. The lawyer needs to be alert to the fact that courts and tribunals may be culturally biased, and may make mistakes when dealing with a culturally different individual. For example, Valverde's research on a Toronto taxi licensing tribunal showed that parties who did not follow the culturally expected behaviour (based on Christian values) of admissions of wrong-doing, expressions of remorse and promises for reform were dealt with much more harshly than those who understood what was expected of them. A threat by an applicant to commit suicide if refused a license was viewed as manipulative; Western courts have a preference for stoicism over melodrama. No attempt was made to discern the intended meaning behind this culturally influenced remark.[53]

The lawyer should watch for opportunities to gently guide a court or tribunal to recognise the client's cultural perspective, and to lead it to see alternative ways of viewing and dealing with the situation. This is not to say that the law and legal system need to bend themselves to fit the client's culture. Countries are entitled to insist on certain culturally specific practices (for example, with regards to disciplining of children and marriage customs). But even in situations where the client must conform, a recognition that the client has been shaped by cultural factors can help opposing counsel and the court to better understand the client, and to make it less likely that they will develop an unduly harsh view of his or her behaviour.

Use techniques for good communication

Miscommunication is one of the most significant potential problems when lawyer and client come from different cultures. Culturally sensitive lawyers therefore place a high priority on establishing good communication. This section considers some techniques for doing so.

Create an atmosphere that is conducive to good communication

Clients are often anxious when consulting lawyers. They may be facing stressful legal problems. Even if the legal work involves transactions instead of disputes, clients may feel ill at ease because the law office is an unfamiliar environment, or because they are concerned about legal fees. Cross-cultural issues may magnify this anxiety. Stressed and anxious clients are less able to explain their situation clearly, and less able to retain what the lawyer is saying. Putting the client at ease, to the extent that this is possible, will facilitate communication.

Important general techniques for putting the client at ease include maintaining a friendly, respectful, relaxed yet professional demeanour. So long as the lawyer is not overly familiar, this approach is unlikely to backfire and create problems, regardless of the client's cultural background. It is also important to let the client know what he or she can expect. The lawyer should not wait to be asked, but should be proactive in explaining what will happen at the present meeting, and throughout the course of the legal representation. Fees should be included in this explanation.

Some common approaches to putting the client at ease may not have the desired effect. For example, offering tea or coffee may not help if the client does not regularly consume such drinks (perhaps because it is not common where the client comes from, or because the client's religion prohibits the consumption of caffeine), or if the client usually eats and drinks only in the presence of family members. The client may feel that it would be impolite to refuse, and feel pressured to agree, even if he or she is uncomfortable doing so. Another common technique for putting the client at ease is to begin with small talk as an icebreaker. Yet this technique may not be effective if the client expects the lawyer to get directly to the point, and views it as unprofessional and a waste of time (and money) to discuss unimportant topics. Conversely, in other cultures it may be rude to get down to business without a very extensive preliminary period getting to know each other, including a discussion of family, occupation and mutual acquaintances.

As noted above, the lawyer will need to consider cultural factors in choosing tentative approaches for meetings with the client. Depending on the subject matter, some Māori and Pasifika clients may wish members of their family to attend. Lawyers must also be ready to make any necessary changes as the meeting unfolds. Things that may offend the client or make him or her uncomfortable need to be avoided, and these will vary from culture to culture. For example, mirroring is an approach that involves the lawyer adopting the client's posture, gestures, level of formality and way of speaking. In general, it is an extremely successful technique for putting the client at ease and developing rapport.[54] Mirroring reinforces a feeling of similarity between lawyer and client, even if obvious differences exist. Yet it may be inappropriate and ineffective when dealing with a client from a very hierarchical society. The lawyer may be accorded higher status than the client, and, if that is the case, the client may feel very uncomfortable if the lawyer's behaviour instead seems to put him or her on the same level as the client.

Consider indirect approaches

Lawyers in New Zealand are used to being fairly direct with their clients. In many cultures, however, this is impolite, and possibly even intimidating. Culturally adept lawyers learn to use indirect methods where appropriate. For example, instead of asking the client certain questions, the lawyer might instead tell the client that knowing certain information would be useful to the lawyer. The lawyer could then be silent for a suitable period and see if the client volunteers the information. If the client does not, the lawyer could move on to other matters; the client may need some time to adjust and may be willing to volunteer the information at a subsequent meeting. Note that many other cultures are more tolerant of silence than dominant New Zealand culture, so the lawyer may need to be still for what seems like a long time.[55]

Another indirect approach is to avoid yes/no questions, and instead offer multiple options to the client. For example, instead of asking whether the client would like a cup of tea, the lawyer could indicate that there are a variety of drinks available on a trolley, including tea, coffee and water, and that the client can get up and take one at any time. This approach also works when discussing alternate courses of action (for example "you might decide that it is worth taking this matter to court, or you might wish to try mediation first, or you might prefer to drop the matter"). Following further information on the various options, the client can express a preference for one without needing to disparage the others, which the client may not feel comfortable doing. This same technique could be used in fact gathering (for example "you

might have hit the man because you were angry, or because you were frightened"), but care must be taken not to be suggestive and lead the client to supply inaccurate information.

Use active listening

Active listening (also called paraphrasing or empathetic listening) is a key technique for enhancing communication. It involves reflecting back the gist of what the client has said, and often the underlying emotions felt by the client (whether or not these were expressed openly) also. The goal is to make the speaker feel heard and understood, but not judged. Empathising with the client in this way shows respect; encourages further disclosure; and helps to establish rapport and to build a trusting lawyer-client relationship. Because active listening involves the lawyer paraphrasing what the client has said using the lawyer's own words, it also prompts the client to correct the lawyer if the lawyer has, in fact, misunderstood. Using active listening (and longer summaries) can help to ensure that the message the lawyer intended to send was the same one that the client received.

Yet even active listening needs to be shaped by the cultural context. Express reference to likely emotions felt by the client would be inappropriate if they view emotions as only to be discussed in the privacy of the home with family and close friends. In dealing with these clients, the lawyer's paraphrasing should not mention emotions. Blunt reflection back of content may also offend in situations where the client has implied rather than stated, or been indirect, subtle and delicate in describing the situation. In these situations, the lawyer should be less direct and more subtle when paraphrasing. Finally, some clients will not feel comfortable explicitly correcting the lawyer's misunderstanding. Nevertheless, if the lawyer uses active listening, at least the client will be aware that the lawyer has misunderstood, and this knowledge can motivate him or her to find some way to correct the lawyer in a more subtle fashion.

Active listening is a way of checking the lawyer's understanding during the interview, as it invites the client to correct the lawyer if necessary. Reverse active listening, where the lawyer invites the client to paraphrase back to the lawyer what the client has heard, can be another effective way of checking the client's understanding. For example, the lawyer might say: "I want to make sure that I have been clear in explaining the things the court will take into account in determining the children's best interests. What do you understand them to be?" Of course, just as regular active listening would not be appropriate for every situation, reverse active listening may make certain clients very uncomfortable, and in those cases, it would be best to use other techniques. Ideally, the lawyer will check for mutual understanding at multiple points during each meeting with the client.

Focus on the underlying meaning instead of the behaviour

The same behaviour can have different meanings in different cultural contexts, as discussed earlier. For example, is silence from the client in response to a lawyer's question evidence of ignorance, stupidity, and/or obstreperousness? Or is it a sign that the lawyer's question is culturally inappropriate? (It might be culturally inappropriate because of the sensitive nature of the topic, or the fact that question and answer is not a culturally approved format for soliciting information.) Or is it a sign that the client is thinking carefully, and thus indicative of the client's respect for the lawyer? The focus must be on assessing the underlying meaning. The client's body language may give clues to the meaning, but care must be taken, as body language is easily misinterpreted in cross-cultural settings.

Be proactive in adopting methods to deal with misunderstanding

The lawyer needs to anticipate the possibility (perhaps even likelihood) of misunderstanding, and to adopt structures to deal with it if it arises. Active listening and longer recaps can be used to check for mutual understanding, but there are also other useful techniques. First, the lawyer should consider creating a context at the start of the relationship to pre-empt problems, with periodic reminders at later meetings as necessary. It should be emphasised that the lawyer and client need to work together on the client's legal issues, and that each has an important role to play. The lawyer should acknowledge that things might be said that are not fully understood by the client. The client should be encouraged to confirm, clarify or correct the lawyer's understanding at any time. The lawyer should indicate that he or she would genuinely appreciate being corrected or questioned. He or she might consider adding that there are sure to be misunderstandings, and to apologise for these in advance. This explanation would put the relationship on a good foundation, but it will not prevent all problems, as the appropriateness of correcting another person is heavily influenced by culture, and so is whether it is appropriate for the lawyer to "humble" themselves by apologising.

The lawyer should also provide a lot of explanations, even if not sure whether they are necessary. It should not be assumed that the client has knowledge of court process, for example. It may not be appropriate to put the client on the spot by asking if he or she knows things; the client may be unwilling to admit ignorance, or lose face by doing so. Instead, the lawyer should freely convey all necessary information. Unnecessary explanation is better than the reverse: a poorly informed client.

Advising clients from other cultures

It is difficult to generalise because of the wide variety of situations for which clients seek legal advice, but there are often choices to be made between differing, yet acceptable, courses of action. For example, there may be a trade-off between pursuing legal rights and remedies, and irreparably damaging a family relationship. This is often the case with Māori clients and land issues in the Māori Land Court. Even where there are breaches of trustees' duties causing monetary losses to a trust, Māori are reluctant to take the trustees (who are relatives) into the Courts for restitution. Or Māori may wish to give up their legal rights to valuable property in order to maintain harmony within families.[56] In a criminal case, there may be a need to decide between foregoing the chance of acquittal but receiving sentencing credit for an early guilty plea, and deciding to plead not guilty and risking a conviction. Some clients will be more willing to tolerate uncertainty and risk than others, and clients' values will also differ, for example as to whether the client believes that he or she must forgive others. It is important that the decisions made reflect the preferences and values of the client, as the impact of the

decisions will fall on him or her. The case study discussed in Appendix 1 shows how unwarranted assumptions about the client's wishes may be made where there is culture clash.

In client-centred lawyering, the lawyer's first task is to provide information so that the client can make an informed choice with respect to the major decisions. Decisions involving process and many decisions involving strategy will of course be more appropriate for the lawyer to make, but the big picture decisions such as whether to proceed with civil litigation, or how to plead in response to a criminal charge, belong to the client.[57] Some clients may try to get the lawyer to make all the decisions. This is seldom a good idea, and particularly risky in this context. The lawyer's second task is to facilitate the client's preferences. The lawyer needs to construct a plan of action in conjunction with the client. Mutual understanding is essential; it would be unfortunate if a lawyer incorrectly assumed that the client was committed to litigation, and took corresponding steps, when that was not the case. A good lawyer-client relationship based on effective communication and mutual respect will go a long way towards pre-empting problems at this stage.

In certain circumstances, ascertaining the client's preferences may be difficult. In general, lawyers are trained to list the options available to the client, giving the pros and cons of each, and to ask the client for feedback.[58] Securing genuine and useful feedback on options from the client may be difficult if the client views the lawyer as an authority who must be given deference. In that situation, the client may feel unable to disagree with the lawyer's perceived preferences, or to criticise any of the options presented. In assisting the client to choose between different but acceptable courses of action, the lawyer could indicate that there is a range of acceptable options. If appropriate under the circumstances, the lawyer should present the options without recommending any of them. Acknowledging that some options may be suitable to the client's situation, and others unsuitable, effectively gives the client permission to criticise or dismiss certain options without fearing that doing so will give offense. Normalising statements may also be useful in some cases. They take the form: "Many people have found doing x to be of use in similar situations." They present an option in a way that does not directly endorse it. For example, "Faced with a similar situation, many people agreed to shared day-to-day care and have found this to be acceptable. Others have preferred pushing for sole day-to-day care."

The lawyer needs to pay attention not just to what the client says, but also to what the client does not say, as underlying perspectives and values are often not articulated explicitly. The lawyer may need to be alert for indications to them in the client's statements or behaviour, and to gently question the client to tease them out. For example, if the client does not want to decide about bringing a legal complaint without first talking with a pastor (which is not uncommon amongst Pasifika families), it suggests that religion is very important to the client and that litigation may be perceived to be of doubtful morality or appropriateness. Even if this client perspective is frustrating for a lawyer who views the decision as legal and not moral, the lawyer must resist the tendency to make the negative attributions that the client is indecisive or dependent.

Lawyers should be prepared for the possibility that clients may use very different decision-making strategies or have radically different values than the norm. For example, a client might indicate that they cannot decide whether to plead guilty to an offense without first talking to a revered elder family member, or a pastor or priest, or even an astrologer. Or a client may see making certain types of complaints (for example, discrimination), or pursuing litigation, as disreputable or immoral. Although difficult, the lawyer must recognise that the client calls the shots.

Conclusion

Where a lawyer and client come from cultures or subcultures that differ significantly from each other, misunderstandings and conflict may result. If the lawyer fails to recognise and adapt to this situation, it can have serious consequences for both the lawyer and the client. There are many effective techniques that lawyers can utilise to ensure that culture clash does not prevent them from establishing relationships of trust and respect with clients from cultures different from their own. Employing these techniques will also improve the likelihood of lawyers empowering their clients to make informed decisions that reflect the client's preferences.

Appendix 1 — a case study

An Asian woman living in America killed her husband and was arrested. She had been physically abused by him and had a strong self-defence claim, but she faced a 25-year prison sentence if convicted of murder. Her lawyers negotiated a deal with the prosecutor whereby the woman would plead guilty to a lesser charge of assault and be placed on probation. The lawyers saw this as an excellent result, but the woman refused to go through with the deal. To plead guilty, even to a minor offence, would be to "humiliate herself, her ancestors, her children and their children by acknowledging responsibility for the killing."[59]

The authors do not have further information on this true-life scenario, but it is possible to speculate on a number of issues that could have arisen. First, in situations where lawyers have taken the time to negotiate a plea deal that is unacceptable to their client, there are probably communication issues. Possibly an assumption was made that the client's values and preferences were similar to their own; it is likely that the lawyers were quite shocked by the client's failure to accept the plea bargain. The culturally adept lawyer would have taken steps to avoid miscommunication, including discussing the client's preferred outcomes with her.

A second issue arising from this situation is the likely effect on the lawyer-client relationship. In a worst case scenario, the lawyers may feel perplexed and affronted by their client's reaction. The rejection of the plea deal may make them feel that their time and efforts have been wasted. It may also be perceived as criticism of their expertise and actions, making them feel defensive. They may form the view that their client is superstitious, irrational and/or masochistic. To the extent that they perceive the client to be difficult and stubborn, they may thereafter fail to work as diligently to protect her interests. The client may feel misunderstood, let down, marginalised and bullied by the lawyers. She may perceive them as smug, superior cultural imperialists who have not listened to her. She may mistrust them, and not even listen to their future advice. The culturally sensitive lawyer will remember that the client's behaviour is heavily influenced by her cultural background and the situation, and attempt to refrain from making negative attributions about the type of person she is. This lawyer will help the client to see that any misunderstandings were unintentional, and can be rectified.

A final issue involves giving effect to the client's preferences. Lawyers immersed in dominant American culture might not see anything shameful or humiliating about being a victim of domestic violence, or taking appropriate action to protect one's self when threatened. The client's reference to emotional harm to be suffered by ancestors who are deceased and grandchildren who are yet to be conceived would also be a very foreign concept. The harm of spending 25 years in prison would be viewed as real, concrete and severe, but the harm of being humiliated would likely be seen as less significant, intangible and transitory. The lawyers' response to these differences might be to see the woman as a victim of an ignorant and/or sexist culture, and to react by assuring the woman that there was no need to feel guilt or shame. While well-intentioned, in essence this amounts to denying the legitimacy of the client's feelings, suggesting that her response is mistaken or inappropriate, and attempting to superimpose the lawyers' own view of the situation onto the client. They might paternalistically attempt to pressure the client into accepting the deal, perhaps by emphasising the indignities and deprivations of incarceration. This approach is unlikely to persuade the client to change her mind, and may greatly increase her stress and further damage her relationship with the lawyers. The culturally adept lawyer would ascertain the client's values and preferences. If considered and genuine, the client's stated position that it would be better to risk a long custodial sentence than to face certain shame by pleading guilty would be respected by this lawyer. The client is autonomous; the law clearly gives her the decision as to pleas; and she is the one who will bear the consequences of this decision.

Footnotes

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1. For example, John Te Manihera Chadwick "Whanaungatanga and the Family Court" (2002) 4 BFLJ 91.
2. Waitangi Tribunal *Ko Aotearoa Tēnei: Te Taumata Tuatahi — A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011). The Treaty of Waitangi was an agreement between the British Crown and Māori which purported to transfer sovereignty over New Zealand to the British. The Treaty is in two languages and there has been constant debate and disputes between the New Zealand governments and Māori about the meaning of its terms and conditions. The Waitangi Tribunal since 1975 has been a highly influential legal body that has helped mediate such disputes. See Claudia Orange *The Treaty of Waitangi* (Allen & Unwin, Wellington, 1987); Matthew SR Palmer *The Treaty of Waitangi in New Zealand's Law and Constitution* (Victoria University Press, Wellington, 2008). In *Barton-Prescott v Director-General of Social Welfare* [1997] 3 NZLR 179, the High Court held that the interpretation of all legislation dealing with the status, future and control of children must be coloured by the principles of the Treaty.
3. *Ko Aotearoa Tēnei*, above n 2, at xviii.
4. Law Commission *Māori Custom and Values in New Zealand Law* (NZLC SP9, 2001) at [203].
5. *Ko Aotearoa Tēnei*, above n 2, at xviii.
6. United Nations Convention on the Rights of the Child, Preamble, art 29(c) and art 30.
7. Care of Children Act 2004, s 5(f) and (e).
8. For example, *Paenga v Lemmon* (2000) 20 FRNZ 236 (FC) at [20].
9. Above, at [23].
10. Judge Annis Somerville notes the importance of lawyers having cultural intelligence in in her article "Tikanga in the Family Court — the gorilla in the room" (2016) 8 NZFLJ 157 at 159.
11. *R v Kina* CA Queensland CA221/93,. 29 November 1993.
12. At [64].
13. For example. Chris Cunneen and Melanie Schwartz "Civil and Family Law Needs of Indigenous People in New South Wales: The priority areas" (2009) 32 UNSWLJ 725; Diana Eades "Understanding Aboriginal English in the Legal System: A Critical Sociolinguistics Approach" (2004) 25 Applied Linguistics 491.
14. Several excellent articles focus on Māori in more detail, for example Somerville, above n 10; Chadwick, above n 1; and Annis Somerville "Whanaungatanga in the Family Court" (2006) 5 NZFLJ 140.
15. Stefan H Krieger and Richard K Neumann, Jr, *Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis* (4th ed, Aspen, New York, 2011) at 59.
16. Michelle LeBaron "Culture and Conflict" (July 2003) Beyond Intractability <http://www.beyondintractability.org/essay/culture-conflict>.
17. Mieke Brandon and Leigh Robertson *Conflict and Dispute Resolution: A Guide for Practice* (Oxford University Press, Melbourne, 2007) at 24.
18. Raymond Saner *The Expert Negotiator* (3rd ed, Martinus Nijhoff, Leiden, 2008) at 256.
19. Jean R Sternlight and Jennifer Robbennolt "Good Lawyers Should Be Good Psychologists: Insights for Interviewing and Counseling Clients" (2008) 23 Ohio St J on Disp Resol 437 at 509–511.
20. This is a generic term used in New Zealand to refer to Pacific Island people or culture.
21. Carol Archie *Skin to Skin: Intimate true stories of Māori-Pakeha relationships* (Penguin, Auckland, 2005); Peggy Fairbairn-Dunlop and Gabrielle Makisi (eds) *Making our Place: Growing up PI in New Zealand* (Dunmore Press, Wellington, 2003).
22. Diana Eades "'I Don't Think the Lawyers were Communicating with Me': Misunderstanding Cultural Differences in Communicative Style" (2003) 52 Emory LJ 1109 at 1116.
23. Chadwick, above n 1 at 91.
24. The French half of this example comes from G Nicholas Herman, Jean M Cary and Joseph E Kennedy *Legal Counseling and Negotiating: A Practical Approach* (LexisNexis, Newark, 2001) at 395.
25. Eades, above n 22, at 1130–1131.
26. See for example Paul R Tremblay "Interviewing and Counseling across Cultures: Heuristics and Biases" (2002) 9 Clin L Rev 373 at 393–394.
27. Te Kani Kingi "The Treaty of Waitangi: A Framework for Maori Health Development" (2007) 54 NZJOT 10.
28. Eades, above n 22, at 1121.

29. See for example Susan Bryant "The Five Habits: Building Cross-Cultural Competence in Lawyers" (2001) 8 Clin L Rev 33 at 43.
30. Eades, above n 22, at 1117 and 1120.
31. For a discussion of Japanese hesitance to say "no" directly, see eg Leigh L Thompson *The Mind and Heart of the Negotiator* (2nd ed, Prentice Hall, New Jersey, 2001) at 232–233.
32. Alison Cleland and Khylee Quince *Youth Justice in Aotearoa New Zealand: Law, Policy and Critique* (LexisNexis, Wellington, 2014) at 249–255; Heemi Taumāunu "Te KÃ…Âti Rangatahi — the Rangatahi Court: Background and operating protocols" (paper presented to New Zealand Law Society Youth Advocates Conference, Auckland, July 2015) 23.
33. Eleanor Chan Boon, Ida Malosi and Elizabeth Purcell "The Pasifika Court" (paper presented to New Zealand Law Society Youth Advocates Conference, Auckland, July 2015) 47 at 49–51.
34. Waitangi Tribunal *Report of the Waitangi Tribunal on the Manukao claim* (Wai 8, 1985); "Chief Justice Pays Tribute to Dame Ngāneko Minhinnick" (19 June 2017) Māori Television <www.maoritelevision.com/news/national/chief-justice-pays-tribute-dame-nganeko-minhinnick>.
35. See for example David A Binder and others *Lawyers as Counselors: A Client-Centered Approach* (2nd ed, West Publishing Company, St Paul, 2004) at 48.
36. Eades, above n 22. The interviews were one way in the sense that the focus was on the client providing information about her case.
37. For example, the lawyer can help in demystifying legal jargon. Chadwick, above n 1, at 93.
38. Richard Nisbett and Lee Ross *Human Inference: Strategies and Shortcomings of Social Judgment* (Prentice Hall, New Jersey, 1980) at 30–31.
39. Thompson, above n 31, at 242.
40. Eades, above n 22, at 1119–1120.
41. See eg Lola Akin Ojelabi "Communication and Culture: Implications for Conflict Resolution Practitioners" (2008) 19 ADRJ 189 at 192.
42. Interview with Peter Bloomer (Paerau Warbrick, 9 October 2002).
43. Carwina Weng "Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness" (2005) 11 Clin L Rev 369 at 398.
44. Matthew Yglesias "Are Greeks Lazy?" *Slate* (19 December 2011) <www.slate.com>.
45. Krieger and Neumann, above n 15 at 63.
46. Chadwick, above n 1, at 93.
47. Susan C Schneider *Managing Across Cultures* (Prentice Hall, New Jersey, 1997) at 25–26.
48. Eades, above n 22, at 1128.
49. Te Ture Whenua Māori Act 1993; Māori Purposes Act 1983.
50. See *Re Philip Tauwhare-Succession* (2012) 15 Te Waipounamu MB 65 (15 TWP 65).
51. See *Grace v Grace* [1995] 1 NZLR 1 (CA).
52. The word "stereotype" comes from an early printing technique, which produced virtually identical copies. *Concise Oxford Dictionary* (7th ed, Clarendon Press, Oxford, 1982).
53. Mariana Valverde "The Ethic of Diversity: Local Law and the Negotiation of Urban Norms" (2008) 33(4) Law and Social Inquiry 895.
54. See for example Benedict Carey "You Remind Me of Me" *New York Times* (online ed, New York, 12 February 2008).
55. Eades, above n 22, at 1121.
56. Eg *Cowan — Estate of Hami Wharepouri Te Awa Waetford* (2017) 371 Aotea MB 157 (371 AOT 157) at [42]. Even after 40 years had passed, the adult children all wanted to respect the arrangements their uncles had proposed following the death of their father.
57. Lawyer and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 13.1.
58. Selene Mize "Effective Client Interviewing" (2017) 9 NZFLJ 44 at 49.
59. Bryant, above n 29, at 47. My thanks to Professors Bryant and Maguigan for this example.