

Incorporating Cultural Diversity – How do Tribunals Respond

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Cultural Diversity

Cultural diversity is defined as differences in race, ethnicity, language, nationality or religion among various groups within a community, organization or nation.¹

Cultural Competence

Cultural competence is the end result of a process that integrates cultural diversity into all aspects of an organization's structures, policies and practices.

In the context of a tribunal, it is the ability of both the individual and the system to function fairly and effectively in cross-cultural situations.

Why Should Tribunals Become Culturally Competent?

What are the realities that impact a tribunal's ability to create or ensure access to fair processes?

¹ *Cultural Competence: A Guide to Organizational Change* by Hieu Van Ngo p. 113

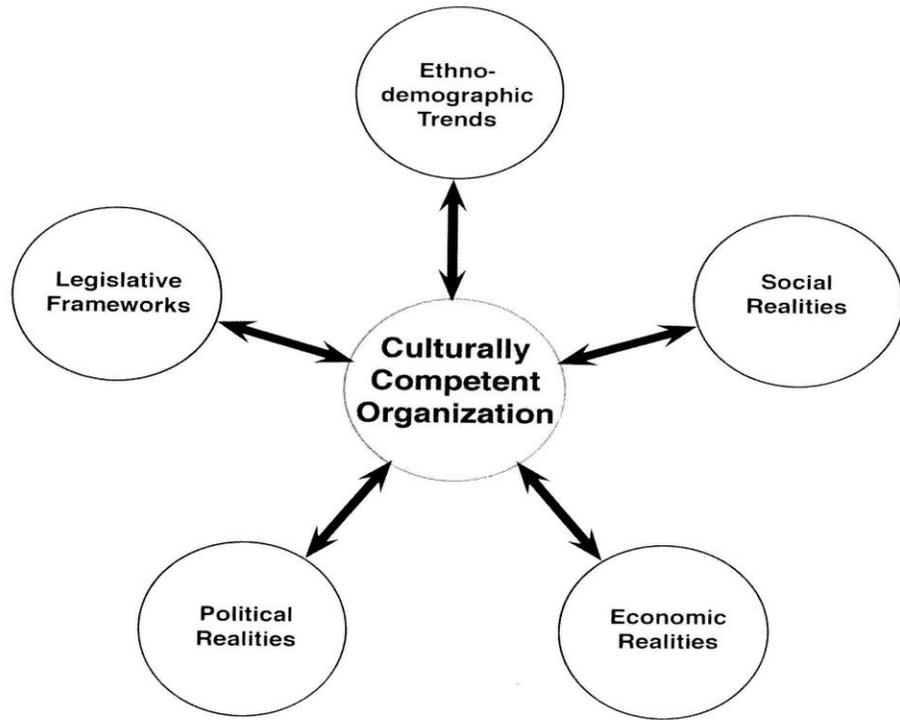


Figure 1: Interactions between an organization and various realities.

1. (a) Ethno Demographic Trends

- About one if five Canadians was born outside of Canada
- Immigrants from Asia make up more than half of all newcomers (58.3%) followed by those from Europe (16.1%), The Caribbean, Central and South America (10.8%), Africa (10.6%), and the United States (3.5%)
- The top source countries are China, India, Pakistan, United States, South Korea, Romania, Iran, United Kingdom and Columbia
- Ontario, Quebec, British Columbia and Alberta are the top immigrant receiving provinces
- About one in five Canadians has a mother tongue other than English and French
- 15% of the employed population aged 15 and over use more than one language at work
- About one in six Canadians is a visible minority
- 30% of visible minorities were born in Canada
- About seven out of 10 Canadians identify themselves as either Roman Catholic or Protestant
- Sikh, Hindu, Buddhism and Muslim have demonstrated the greatest growth²

(b) Implications for Tribunals

What is the effect of a shift in source countries of immigration?

- First generation Canadians are unfamiliar with Canadian systems and organizations
- There are varying perceptions of authority and authority figures
- Family structures and the value placed on family cohesiveness may impact public institutions
- Different ways of dealing with conflict may affect resolution processes and adversarial hearings

How do tribunals assess the changing and growing cultural diversity of their client/service base? What are the generational differences among groups?

What is the effect of a multilingual client base?

- Use of interpreters
- Plain language informational materials
- Multilingual staff

² Ibid p. 7

Are tribunals aware of the religious observances of non Roman Catholic/Protestant groups and how this might affect their procedures and practices?

- Scheduling around religious holidays
- Administering of oaths
- Accommodation of religious practices/dress/observances

2. (a) Social Realities

- Only 34% of immigrants who have been in Canada for 10 years or less participates in groups or organizations (the national rate is 46%) – 6% are involved in ethnic or immigrant associations
- About 24% of visible minorities compared to 10% non-Aboriginal Canadians feel uncomfortable or out of place because of their ethno-cultural characteristics all, most, or some of the time
- About one in five visible minorities have sometimes or often experienced discrimination because of their ethnicity, skin colour, race, language, accent or religion
- Two in five non-visible minorities have experienced discrimination because of their language or accent
- One in three newcomers experience problems accessing language training³

(b) Implications for Tribunals

How does the fact that first generation Canadians have low rates of participation in sports groups, community organizations, hobby clubs or ethnic associations impact a tribunal's work?

- Individuals have little familiarity with organizational structures and practices
- Low participation rates may be due to the fact that individuals may be working two or three jobs. This may impact the scheduling of appointments or hearings with traditional office hours.

How does the reality that members of visible and non-visible minorities have experienced discrimination affect any potential relationship with a tribunal?

- Some ethnic group members may fear being typecast as gang members, extremists or persons interested in following only their ethnic agenda
- Those who had experienced discrimination or persecution from government agencies in their countries of origin would be hesitant to approach Canadian government agencies.

³ Ibid p. 12

How could tribunals deal with discrimination on the basis of language and accent?

- Avoid a tendency to devalue an individual's capability based on their language or accent
- Be cognizant that the use of jokes and slang terms in hearings and interviews may be misunderstood or misinterpreted
- Practice and improve listening skills
- Assist individuals to access language skill training when appropriate

3. (a) Political Realities

- Only one in two eligible first generation voters who have lived in Canada for 10 years or less exercised their right to vote
- Ethnocultural members are underrepresented at the candidate level and have a smaller percentage of elected representatives in various levels of government.⁴

(b) Implications for Tribunals

With little political experience in Canada or Canadian role models from their communities, the political knowledge of first generation Canadians may be based on politics in their country of origin. In a number of cases, political systems and decision makers were corrupt or dysfunctional.

The challenge for government appointed decision makers is to assure those individuals coming before them that they are trustworthy, honest, and make decisions in accordance with the law.

4. (a) Economic Realities

- New immigrants are three times as likely as Canadian born Canadians to hold university degrees. They are between two and three times more likely to have master's degrees and four times more likely to have doctorates.
- Immigrants often experience a wide range of barriers to employment: a lack of Canadian work experience, a lack of connections in the job market, a lack of acceptance or recognition of their foreign work experience or qualifications, and language problems.
- Recent immigrants with university degrees earn 31% less than those born in Canada.
- Many groups including those of African, Arab, Haitian, Korean, and West Asian descent have low income rates more than double the national low income rate.⁵

⁴ Ibid p. 14

⁵ Ibid p. 17

(b) Implications for Tribunals

Tribunals have the opportunity to recruit new immigrants with the linguistic, cultural and educational skills required to make their organizations more accessible and their practices more relevant to diverse cultural groups.

The involvement of new immigrants with tribunals not only helps them gain employment and Canadian work experience, but provides tribunals with the opportunity to train, mentor and validate the new immigrant's experience.

5. (a) Legislative Frameworks

There are international, national and provincial legislative frameworks that require organizations to address the issues of equality and access to opportunities and services for all citizens. These are:

- The International Convention on the Elimination of All Forms of Racial Discrimination
- The United Nations International Convention on Economic, Social and Cultural Rights
- The Canadian Charter of Rights and Freedoms
- Canadian Human Rights Act
- Canadian Multiculturalism Act
- Canadian Citizenship Act
- Immigration and Refugee Protection Act
- Employment Equity Act

(b) Implications for Tribunals

As quasi-judicial organizations, tribunals need to:

- 1) be cognizant of these relevant pieces of legislation and provide training to decision makers and staff
- 2) ensure that the principles of these acts and conventions are reflected in their policies and procedures.

What are the Benefits of being Culturally Competent?

- The tribunal will fulfill its mandate to serve all
- The staff and tribunal members will reflect the population which in turn will signal that diversity is valued and respected in all its aspects
- Decision makers will be culturally literate which will lead to better decision making
- The tribunal will be seen as an open, accessible organization in synch with the community it serves

How to Become Culturally Competent

(1) Individuals

Tribunal members and staff need to become culturally literate. They need to begin by identifying their own values and biases and then taking actions to become knowledgeable and skillful participants in cross-cultural interactions.

As it relates to racial and ethnic groups, tribunal members and staff need to increase their knowledge in such areas as the tenets of various religious beliefs, family and social relationships, patterns of work, language issues, social structures, traditions, law, symbols and system of beliefs.⁶

As one's culture is dynamic and evolving, becoming culturally literate requires members and staff to continually reflect and to take action in order to remain skillful.

Applying Cultural Considerations

a) Case Incident

The complainant was an older First Nations woman. She was raised in a remote community and had a basic understanding of written and spoken English.

The complainant received financial assistance from the Department of Education to attend a private vocational school under the department's Skill Development Program. After attending for over one year, the school was audited by the government. As part of the audit, a number of students were interviewed. Interviews were conducted by a contracted accounting firm and were held in a hotel room in the local hotel. The complainant was interviewed. She was accompanied by her grandson who could act as an interpreter, if required. As a result of the audit, the private school's funding was removed and the school closed.

In her claim, the complainant alleged that she was discriminated against on the basis of her race. She stated that her cultural background and linguistic ability were not taken into account during the interview. She believed that this had an impact on the school closure.

What cultural considerations would impact:

1. the preparation for the hearing
2. the setting of the hearing
3. the hearing process
4. the writing and issuing of the decision

⁶ Ibid p. 28

b) Small Group Exercises

How to Become Culturally Competent

(2) Organizations

Cultural Competence Continuum

Cross, Barzon, Dennis & Isaacs (1989) propose a multi-stage, developmental model to illustrate how an organization progressively moves toward cultural competence. Depending on its level of readiness and the integration of cultural diversity into its structure and functions, an organization may reflect different states in the cultural competency continuum: cultural destructiveness, cultural incapacity, cultural blindness, cultural pre-competence and cultural competence (see Figure 2).

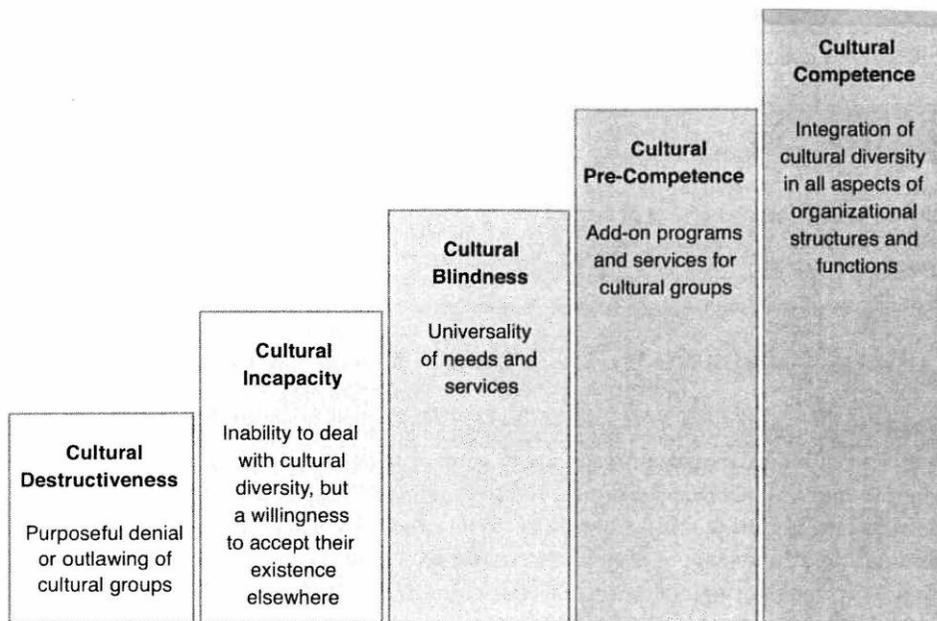


Figure 2: Cultural Competence Continuum (Adapted from Cross et al., 1989; University of Michigan Health System, 2003).

1. Cultural Destructiveness

In this stage, an organization exhibits attitudes, policies and practices that are destructive to cultures and consequently to the individuals within those cultures.⁷

Indicators of cultural destructiveness

- Residential schools
- Chinese Exclusion Act.

2. Cultural Incapacity

An organization, in this stage, does not intentionally seek to be culturally destructive. Rather, it lacks the capacity to work with people of diverse racial, ethnic, religious and linguistic backgrounds. In its relationship to ethnocultural communities, the organization assumes a paternal posture towards “lesser” races.⁸

Some Indicators of Cultural Incapacity

An organization may:

- Engage in discriminatory hiring practice;
- Have low expectations for people of certain cultural backgrounds;
- Support segregation policies;
- Insist that ethnocultural people are best served elsewhere;
- Allocate inadequate resources for services for people of adverse cultural backgrounds; and
- Insist that ethnocultural groups adopt cultural values of the dominant group.

3. Cultural Blindness

In this stage, an organization prides itself on being unbiased. It functions with a belief that people are all basically alike, so what works with members of one culture (often the dominant culture) should work within all other cultures

Some Indicators of Cultural Blindness

An organization may:

- Dismiss merits of policies and programs that address cultural diversity;
- Demonstrate a lack of cultural diversity in board membership and staff;

⁷ Ibid p. 32

⁸ Ibid p. 32

- Support the belief that people, regardless of their cultural background, are the same;
- Allocate inadequate resources in terms of staff, time and budget to services for diverse cultural groups;
- Not have in place mechanisms to keep track of access to services by cultural groups, and to evaluate cultural responsiveness of existing services;
- Refuse to deal with past histories related to inter-group relations; and
- Not provide adequate professional development opportunities for board and staff members to develop knowledge and skills in dealing with cultural diversity.⁹

4. Cultural Pre-Competence

An organization at this stage takes notice of the changing diversity in the community, and recognizes weaknesses in its current services, as well as potential strengths and contributions of diverse cultural groups. With good intent, the organization often tries out some ad-hoc, piecemeal strategies to deal with cultural diversity. It, however, lacks a coherent, coordinated plan to integrate cultural diversity in all aspects of its structures and functions.

Some Indicators of Cultural Pre-Competence

An organization may:

- Experiment with new services;
- Hire some front-line staff of diverse cultural backgrounds;
- Explore some new strategies to reach out to people of diverse cultural backgrounds – but without concrete support in place to provide culturally responsive services;
- Ensure availability of some basic cultural sensitivity training for staff and board members; and
- Conduct need assessments of cultural groups – without concrete follow-up strategies.¹⁰

5. Cultural Competence

An organization at the level of cultural competence demonstrates a clear capacity to integrate cultural diversity into all aspects of its structure and functions. It has a coherent, coordinated strategy plan. The organization is clearly committed to the principles of social justice, equality, equity and inclusion. Cultural competence is its core business, not an add-on function.¹¹

⁹ Ibid p. 33

¹⁰ Ibid p. 33, 34

¹¹ Ibid p. 34

Some Indicators of Cultural Competence

An organization may:

- Have in place policies, business plans, programs and practices that explicitly acknowledge and address cultural diversity;
- Develop or adapt service models to better meet diverse, unique needs of people of various cultural, ethnic, religious and linguistic backgrounds;
- Actively recruit people of diverse cultural backgrounds for board membership, senior management and all levels of staff;
- Establish standards for cross cultural services, licensing, skills and training;
- Allocate adequate resources to implement policies that deal with cultural diversity;
- Use research and consult with ethnocultural communities in decision making process;
- Involve people of ethnocultural communities as participants, advisors and consultants in the work of the system or organization; and
- Require cultural knowledge and skills as key qualifications for employment and performance.¹²

Conclusion

It is important that tribunals assess where they fit on the cultural competence continuum. It is only by realistically examining both the individuals' and systems' ability to respond to cultural diversity that a tribunal can become accessible and relevant.

¹² Ibid p. 34