

YOU HAVE THE RIGHT TO REMAIN SILENT

... BUT I'M YOUR LAWYER! YOU
ARE SUPPOSED TO TALK TO ME!

*Working toward creating culturally safe
working relationships.*

EVELINE MILLIKEN *

I. INTRODUCTION

This article is based on a presentation given at the Association for Canadian Clinical Legal Education (ACCLE) Conference in Winnipeg, Manitoba, in October, 2012. The presentation was based upon research conducted at the University of Manitoba's Inner City Social Work Program (ICSWP). Qualitative methods were used to analyze data gathered through conversations with graduates and non-graduates about the meaning, presence, or absence of cultural safety in their social work education. Additional reflections with talking circles and an Indigenous Advisory group provided cultural guidance throughout the study. In general, the concept of cultural safety was found to be useful for assessing the relationships between people of Indigenous and non-Indigenous cultures, in that it helped participants to name and locate nuances in relationships that otherwise went unnamed. In particular, three categories of safety/unsafety were identified, having to do with living in two worlds, the longitudinal effects of racism, the need for constant vigilance, and often for various forms of silence, for self-protection or as a means of resistance.

I began the presentation, as is my custom, by expressing gratitude to the Treaty One First Nations peoples (and honour to their Elders past and present) on whose land we met. I identified myself as an ally to Indigenous issues and concerns, and indicated

* MSW, RSW, PHD, Associate Professor, Faculty of Social Work, Inner City Social Work Program at the University of Manitoba.

that the material presented was gathered in a cooperative research methodology in which Indigenous graduates of a professional Social Work degree program were my co-researchers. The original research conclusions and descriptions were vetted by various groups of Aboriginal¹ participants and an Aboriginal advisory group.

Having been raised in a northern community and having worked alongside Indigenous peoples for most of my life, I learned from the Elders that I can only speak for myself. I cannot speak for others. Indigenous people's voices are strong and they do not need others to speak for them. I do not presume to do so here.

My purpose is to speak of my experiences and research, as a non-Indigenous person, to other non-Indigenous people within Euro-Canadian institutions, that we may examine our assumptions and take responsibility for the relationships we have with Indigenous people, families and communities. My co-researchers shared their stories and perspectives with me in order that they might be retold in a good way, and I might offer our collective work on creating cultural safety to non-Indigenous colleagues. It is in that spirit that this information is presented:

You can take this message farther than our voices can take it, individually. Now you're taking a strong message that is put together by a group of people. . . . You know this is an issue that needs to be dealt with. . . . You're here because (as an academic) . . . you can push it in that direction (Milliken, 2008).

Lawyers, as social workers, occasionally find themselves facing clients who present as stoney-faced and silent, which helping professionals might interpret as an uncooperative attitude. This appearance may make sense when clients have been mandated to attend and arrive involuntarily. It is more perplexing when clients have sought professional assistance and yet present the same way.

The thoughtful professional might assume that such silence is merely a strategy of self-protection to avoid awkward legal or social situations. To be sure this would be an appropriate assumption. The realities of abuse of Indigenous peoples by the legal system (Hamilton & Sinclair, 1991), the disproportionately high rate of incarceration of Aboriginal people, intentional institutional strategies to break down Indigenous families and communities ("60's Scoop", residential schools; McKenzie, 1985), government policies

¹ The word given to me by the Advisory group was Aboriginal although my own use of terms Indigenous, First Nations and First Peoples reflect connections to First Voice scholars who prefer those terms.

aimed at disempowering First Nation's people (*The Indian Act*, Canada, 2013), are well documented.

With this history of having been abused as a culturally-identified demographic, and having experienced unfair treatment personally or of their kin, it makes sense that Indigenous people might approach the representatives of such systems with trepidation and suspicion.

However, my research on cultural safety showed that the rationale for silence goes at least two steps deeper than this. First, the vulnerability guarded by the mask of silence is far more profound than even most alert professionals recognize. The degree to which marginalized peoples' experiences differ from those of the mainstream is remarkable. As Simone Weil (1909-1943) once pointed out: "Someone who does not see a pane of glass, does not know they do not see it. Someone who, being placed differently, does see it, does not know the other does not see it" (cited in Young, 1990, p 39). A person living in a world constrained by racism knows it as reality and might assume all others would know it also. However, a person, differently placed, living in a world of privilege where one does not experience these limits and injuries of racism, may be blithely unaware of that other world. Euro-Canadians often have little ability to imagine what a lifetime of racism is like, or what it is like to live with the constant expectation of racism.²

The experiences described by my co-researchers suggests the pervasive, persistent and pernicious (Milliken, 2008) impact of racism which they have experienced follows these professionals throughout their lives, regardless of attaining successful positions in academia, government, and other societal institutions:

...not very long ago . . . I went to a meeting. I shook a hand of a, when you go in, you know, you shake hands and . . . the man wiped his hand on his pants . . . after I shook his hand. . . and I don't know if that was intentional, if he noticed it . . . and then he was very condescending you know, with his attitude. So I kind of figured, well . . . as much as it's not stated, like it's hidden, it's still there.

People never assume that you can do something really well, as their colleagues. Somehow you have to be able to prove it. And you're not likely to be asked to do some things, because they see someone else as being better for that role.

² A corollary to this observation is that non-Aboriginal professionals often are not aware of just how much privilege of race and education and class they possess and are seen to possess by their clients (McIntosh, 1990). This difference is part of what is measured in the silences, as discussed below.

If you get a comment, you know, that's all it takes –just one comment. That's all it takes to dissolve all that other stuff. Even if it's only momentarily.

The pain that is experienced is not just the pain of the individual but also of the community:

So these bigwigs flew out and back from [city name] one evening. . . . They were talking about child welfare, and that had been my childhood experience. And I became very emotional, because the speaker was talking about my life. And I couldn't stop the tears. And I felt really embarrassed, and you're trying right?! And you just can't. But at that conference, it had been organized by colleagues from different universities, but the majority, the vast majority, 98% were non-Aboriginal.. and then I had to go in and give an hour presentation. . . . It was tough, because I really needed to debrief, and there was nowhere to debrief. I really needed to smudge, [but I] couldn't smudge, you know?

Even though we are . . . educated . . . are professionals in our field, we still have and live with, on a daily basis, all of that history, all of . . . the pain and the hurt and the death and the loss, and I mean that's what continuously happens.

I really think that's reality. I mean, I think that's reality for all of us, for those of us, you know, who have managed to get to this place, you know, where we go up the ranks, we have reached the professional level. Those things still exist; you can't take them away. Those are things that are deeply embedded. And I think sometimes that you have to, you continuously have to rework those, work with them.

Beside the history of systemic abuse, and the heart-rending stories of racism experienced personally and perpetually, my research identified another factor eliciting silence in interactions. Cultural safety, or unsafety, may be yet another dynamic, perhaps deeper and more relevant, which contributes to the perplexingly silent intercultural encounters. My research with Indigenous graduates (Milliken, 2008) has identified that this silence is in fact a strategy for coping where participants feel culturally unsafe.

The concept of cultural safety was first named in Aotearoa /New Zealand by indigenous (Maori) health care professionals (Ramsden, 1990, 1997, 2002) who noticed that when services were used there was reticence and friction along cultural lines; there was a disconnect between mainstream systems and Maori traditions of interaction. "Cultural safety," in that health care setting was defined as:

that state of being in which the [individual] knows emotionally that her/his personal wellbeing, as well as social and cultural frames of reference, are acknowledged - even if not fully understood. Furthermore, she/he is given active reason to feel hopeful that her/his needs and those of her/his family members and kin will be accorded dignity and respect. (Fulcher, 1998, p 333)

Indigenous Canadian social work graduates found the term to be relevant to their experiences in educational settings as well (Milliken, 2008). They paraphrased the definition this way:

“For me personally the term ‘cultural safety’ means to be able to feel safe . . . in an environment where you’re able to express yourself emotionally, spiritually, mentally, and physically ... the four aspects of who we are as Aboriginal people.”

Canadian helping professionals have been exhorted to attain cultural competence, sensitivity, relevance and awareness and to believe that training in these “competencies” should suffice to deal with cultural reticence and friction. The problem with these concepts, however, is that those in the mainstream who practice these “competencies” retain power and privilege, and remain the arbiter of what is competent, sensitive, relevant and aware. This generally means the professional stays within his/her own comfort zone and cultural perspective, and only takes in as much of the experience of the “other” as the professional is comfortable doing. The reference point always remains the professional’s own culture and comfort.

By shifting the culture question to an issue of safety, the person in the helping conversation with the least power, in terms of culture (gender, class, age, race, sexual orientation, and ability also) necessarily becomes the arbiter of what feels safe. The professional cannot say: “you feel safe now.” Only the client can make that determination. Hence, the professional needs to take his/her cues from the client. When the person feels ready to open up, she/he will. It is up to the helping professional to remain patient, welcoming and open until the person feels safe enough to proceed. Then, and only then, may the mask of silence be dropped.

While there are many complex differences in culture and tradition within the 60 plus First Nations communities in Manitoba, First Nations people, in varying degrees of course, understand their life experiences using different worldview and interpretive lenses. These lenses are not necessarily conscious, any more than a non-Aboriginal is conscious of how thoroughly Eurocentric concepts inform mindsets with which 21st Century Canadians interpret their lives. Trying to function within a world view with which one is unfamiliar is like putting on a pair of spectacles that are not one’s own; the familiar world is suddenly bent out of shape. When one is asked to see through someone else’s glasses, “it feels wrong, unsafe.”

The Medicine Wheel, described in *The Sacred Tree* (Bopp, Bopp, Browne, & Lane, 1985), which, among other things, helps to illustrate the sense of global spirituality, is one description of a world-view shared by many

Aboriginal peoples in North America. The Medicine Wheel is a circle divided into four equal quarters. The sections are named by the four cardinal directions of the compass: East, West, South, and North. Through the use of colours corresponding to these directions (yellow, red, black, and white), each quarter is used to represent one of the main racial streams of humanity. Each section, similarly, is used to represent one of the various aspects within the individual person. The quarters represent the emotional, physical, mental and spiritual aspects of who we are as people. All these quarters signify parts of humanity, all of which are needed if humanity, individual or collective, is to be whole.

At a basic level, the circle implies a different set of meanings than does the linear logic of time-lines, causality, history, or scientific analysis so prevalent in Western thought. The circle implies inter-relationship of all things, and an equality of all things. It is not hierarchical but egalitarian. Nothing is separate; nothing is superior. This would be the philosophical underpinning of a high context culture (Hall, 1976).

Indigenous world-view tends to be highly contextual in nature; that is, the context has a major influence. These tend to be relationship based and collective.³ For citizens of high context cultures, the four components of self, wholistic and relational, are to be honoured. Cultures based in Western European heritage tend to be low context cultures; that is to say, the context has a minimal impact upon thought and decision making. Consequently, low context cultures tend toward being more individualistic, word and paper-based.

In low context cultures, legal terms define relationships, and rules are defined by written agreements: job descriptions, terms of reference, rules of order, and contracts. "...individualistic cultures such as Canada prize rationality, and linear, logical thinking. They value the ability to be impartial...they rely on facts, figures and experts..." (Adler, Rosenfeld, Proctor & Winder, 2006, p. 72). These rules frequently need review and may change as quickly as ink dries on paper. Meaning and relationships are highly flexible. Safety in a low context culture would derive from adherence to contracts and the protection of those expectations by judicial authorities.

By contrast, in high context cultures, harmonious relationships are seen to be more important than rules. "They ... are less impressed by precision,

³ That is not to say that individuals are unimportant. For example, the value of never speaking for someone else safeguards the value of the individual within the community.

classification... they accept that people, things, ideas can be both right and wrong, good and bad at the same time.” (Adler, Rosenfeld, Proctor & Winder, 2006, p 72). The good of the community supersedes that of the individual (Triandis, 1994). Whereas the low context culture defines relationship by roles, job descriptions, and contracts, high context cultures define relationship by status and traditions. In a high context culture, safety would derive from the depth of relationship persons had within community. Safety comes from awareness of the community, shared values, and familiar and expected traditions.

As a result, ambiguity and silence are valued more in a high context culture than in a low context society, in that through the former, relationships are allowed to develop and be explored. Trust is allowed to grow organically rather than to be artificially or superficially created or cut off by a desire for decisive action. Sarris (1993, p. 68) writes about a Pomo woman’s strategy when a university professor wanted to interview her. “I watched. I listened. I let him show who he was. The White people, they’re not like us. They show fast.” Ambiguity and silence also can be used to provide an insulating distance between cultures. Sarris (1993, p. 81), feeling uncomfortable when asked to be an interpreter between two cultures, demonstrates the use of silence to protect himself: “I became Indian. I ignored her. Silence, the Indian’s best weapon, an aunt of mine once said. Be an Indian, cut yourself off with silence, anyway you can. Don’t talk. Don’t give yourself away.”

As we consider the encounter of the high context client and the low context professional, we can now discern the collision of world-views and expectations.⁴ For a high-context client, silence may be highly valued, and seen as an offering of respect. Silence is not empty space. It is a technique for building relationship. It provides time to evaluate the safety of situation based upon the relationship that gets established.

Nor is story-telling a meandering waste of the professional’s time. It is a verbal interplay in which context is being shared, a world view being painted. Further, the high context client may be assessing the professional’s willingness to engage in the client’s world view and experience. The member of a marginalized group is well aware of and observant of the person with

⁴ Lawyer and author, Rupert Ross (2006), in *Dancing with Ghosts: Exploring Indian Reality* described how actions thought to be respectful by First Nation’s people may be misconstrued when viewed through the lens of Euro-Canadian processes of justice.

privilege, while the reverse is not true (Young, 1990). The low context professionals may think they are evaluated only upon the behaviour that takes place when they are officially "on duty" and that everything else doesn't matter. What matters, they think, is the agenda on the yellow note pad. Time is money. Get to the point.

However, in a high context culture, everything counts. Long before the low-context professionals present in their official roles, they are being observed and measured to see whether they will be culturally safe to trust. High context evaluation begins from the moment professionals come into view. Where they park their car or if they step off a bus is noted. They are observed for their attitude toward security and office staff, toward visitors in the common room and colleagues. Those with a high context orientation observe whether we do our own dishes in the kitchen, whether we contribute to the common meal, whether we assume privilege. One of my students confessed to me that she had followed me around a shopping mall one Saturday, to see how I talked to and treated my children who were with me. That contextual information was essential to determining if I could be trusted with the truths of her situation or if I was a teacher with whom she was willing to learn.

An awareness of the several motivations for silence, of this particular difference between high and low context world-views, and of the need to allow the client to determine the adequacy of cultural safety means that helping professionals need to adapt their approach and adopt a posture of cultural safety. This might mean:

- Assuming silence is not an uncooperative attitude, but may be the reflection of a history of abuse, a life-long expectation of racism, and a desire to approach the world through relationship rather than rights.
- At a minimum, therefore, helping professionals must name and honor the risk being taken by those clients who still dare to trust and interact with mainstream systems.
- Recognizing that the client has the power, and decides whether the situation is safe, not you;
- Understanding that silence and story-telling are the tests of evaluation, at the gate of relationship;
- Investing the time in patience and upon relationship up front. The professional's most efficient strategy to serve that client may

well be to seek to build genuine relationship before attending to the issues at hand.

These behaviours may feel awkward and contra-indicated to those of us shaped by the traditions and expectations of Western European philosophical trend. There are the pressures to deliver billable hours. There is the assumption that it is precisely the lawyer's role to speak on behalf of others.

However, without developing that relationship and bridging the silence, the information gleaned will be of questionable value. Pressing for "just the facts, Ma'am" may satisfy the low-context professional's need, but will fail to elicit "the whole truth." Such an approach will not serve the client and will confirm the sense of frustration. Paradoxically, spending the time and encouraging relationship leads to gathering "the facts" more quickly, rather than when there is a lack of trust when information is not shared. . The actual waste of time is found in insisting, once again, that the "other" adopt "our" ways.

In conclusion, if you encounter a client who responds with silence you may consider the issue of cultural safety and have a few more strategies with which to engage that person.

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