Impact of Race and Culture Assessments (IRCAs) in combatting anti-Black racism and reducing recidivism

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ABSTRACT

The Gladue report, named after R. v. Gladue, is a landmark Supreme Court of Canada case which emphasizes the need to consider unique circumstances faced by Indigenous individuals when determining appropriate sentences. Given the overrepresentation of Black identities at all levels in the justice system, it is argued that the use of pre-sentencing reports referred to as Impact of Race and Culture Assessments (IRCAs), also needs to be comprehensively implemented for Black offenders in Canada. IRCAs are pre-sentencing reports that help sentencing judges better understand the effect of poverty, marginalization, racism, and social exclusion on the offender and their life experiences, and how those factors inform the circumstances of the offender, the offence committed, and the offender’s experience with the justice system. This is significant as it goes beyond a one-size-fits-all punitive justice system that has been ineffective in reducing recidivism. By recognizing the intersections of race, culture, and justice, IRCAs enable judges to make more informed decisions contributing to an equitable consequence for the accused. More importantly, we argue that the insights from IRCAs should be used to connect offenders with culturally reflective wraparound social services upon return into the community to address the root causes in areas of employment, education, and housing that gravitate people towards criminality. By acknowledging historical and systemic biases and tailoring supports to individual identities, life experiences, and community conditions, IRCAs have the potential to transform the criminal justice system through promotion of alternatives to custody that correlates with reductions in recidivism.

Key Words  Anti-Black racism; Impact of Race and Culture Assessment (IRCA); Gladue report; pre-sentencing reports; equitable sentencing; culturally reflective wraparound services; recidivism; Canada.

INTRODUCTION

There is an overrepresentation of Black people in the Canadian justice system at all levels (Chan et al., 2017; Government of Canada, 2022a) due to anti-Black racism, systemic barriers, and over-policing of racialized communities (Colour of Poverty – Colour of Change, 2019; Eizadirad & Raj Varma, 2022; Khenti, 2013; Ontario Human Rights Commission, 2023). According to the Rethinking Community Safety report (Toronto Neighbourhood Centres, 2020) by the Toronto Neighbourhood Centres, “Black people are 3.9 times more likely to be charged by police than white people” (p. 3). At the federal level, Black Canadians represent over 8% of the prison population, despite making up about 3.5% of the whole population. In Ontario, Black adults make up about 5% of the adult population, but account for 14% of admissions to custody (Public Safety Canada, 2022). Furthermore, Black youth continue to be disproportionately streamed into lower education tracks as a result of individual prejudice and systemic factors (Eizadirad, 2019; James, 2017; VoicEd Radio, 2023). Invisibility within curricula, the predominantly white demographic makeup of educators (Abawi & Eizadirad, 2022; Maynard, 2022), and systemic discrimination within police services (Ontario Human Rights Commission, 2023) all contribute to the perpetuation of the school to prison pipeline (Black Legal Action Centre, 2022; Khenti, 2013; Reece, 2020; Sharpe, 2022). Gun violence disproportionately affects lower-income and racialized communities (Eizadirad & Raj Varma, 2022; Khenti, 2013). Racialized Ontarians “account for 75% of
homicide victims, 44% of whom are identified as Black” (Sharpe, 2022, p. 3). Gun violence can have a life-lasting traumatic and intergenerational impact on family dynamics (Olivia, 2022; Sharpe, 2022). It affects the physical and mental health of the victim, their family, and the larger community. It can also have an intergenerational impact in cases where the main person responsible for the family income becomes incarcerated or deceased, which inadvertently forces the family into alternative living circumstances due to the unaffordability of their rent or mortgage (Olivia, 2022).

The social determinants of health are the conditions under which people are born, raised, and live. Income, employment, education, and housing are all key social determinants that result in the inequitable treatment and unequal outcomes in justice and education systems (Government of Canada, 2020). People living in low-income areas are more likely to be exposed to more frequent violent acts and are at greater risk of experiencing fatal and non-fatal shootings (Helpguide, 2022; Khenti, 2013). Greater and more frequent exposure to violence reduces the likelihood of educational achievement and limits future economic success (Centers for Disease Control and Prevention, 2022; Eizadirad & Chambers, 2023; James, 2012; Khenti, 2013; Sharpe, 2022). Exposure to violence at the community level also contributes to greater mental health issues and a greater likelihood of engagement in risky behaviour such as involvement with gangs and criminality (Eizadirad, 2023; McMurtry & Curling, 2008).

Therefore, to achieve equitable outcomes, there must be intentionality in how the root causes of anti-Black racism are mitigated to address inequitable institutional policies and practices contributing to overrepresentation of Blacks with incarceration at various levels of the justice system (Eizadirad, 2017; Maynard, 2022; McMurtry & Curling, 2008; Reece, 2020; Sharpe, 2022).

RECOGNITION OF HISTORICAL INJUSTICES: THE GLADUE REPORT’S LEGACY

The Gladue report, named after R. v. Gladue, is a landmark Supreme Court of Canada case which emphasizes the need to consider the unique circumstances faced by Indigenous individuals when determining appropriate sentences (Government of Canada, 2023a; MacCarthy, 2023; Rudin, 2008). The 1999 landmark Supreme Court of Canada case established that as part of sentencing Indigenous offenders, the judge must consider (Ralston, 2021):

- The unique systemic or background factors which may have played a part in bringing the particular Indigenous offender before the courts; and
- The types of sentencing procedures and sanctions which may be appropriate given the circumstances of the offender because of their particular Indigenous heritage.

R. v. Gladue highlights how historical injustices, systemic discrimination, colonization, and cultural factors play a significant role in shaping the lives of Indigenous offenders (Government of Canada, 2023a; MacCarthy, 2023; Rudin, 2008; Truth and Reconciliation Commission of Canada, 2015). Although Gladue reports and courts are implemented across Canada, there have been challenges in their comprehensive implementation to significantly reduce the overrepresentation of Indigenous Peoples in the criminal justice system (Government of Canada, 2023a; MacCarthy, 2023; Rudin, 2008). As MacCarthy (2023) explains,

While Gladue’s reform may appear to be a transformative or liberating change, in practice, the Gladue principles support the maintenance of a system in which Indigenous people are filtered through a white judicial lens that perpetuates historical power relations. Adding in Gladue Reports or Gladue Courts allows for a further actualization of the Gladue principles; however, the problem for Indigenous people remains that they must depend on the goodwill of an often non-Indigenous judge in a non-Indigenous criminal justice system. (pp. 42-43)

Hence, there is still work to be done in terms of how Gladue can be adapted to be more effective and lead to reduced incarceration and recidivism (Government of Canada, 2023a).

HOW TO MITIGATE OVERREPRESENTATION OF BLACK IDENTITIES IN THE JUSTICE SYSTEM? R. V. MORRIS

In Ontario, the new 17-storey high-rise courthouse has amalgamated six Ontario Court of Justice criminal courthouse locations (Infrastructure Ontario, 2023). It offers 63 courtrooms including Gladue courts for Indigenous offenders, but none for Black offenders. We argue that, given that Black identities are also overrepresented in all aspects of the criminal justice system (Chan et al., 2017; Government of Canada, 2022a; Public Safety Canada, 2022; Reece, 2020), the pre-sentencing report framework needs to encompass supporting Black offenders. One crucial step towards creating equitable outcomes for Black identities would be the holistic implementation of Impact of Race and Culture Assessments (IRCA) rooted in the principles of the Gladue report (Government of Canada, 2023a). This was acknowledged in the case of R. v. Morris (Government of Canada, 2021) where a lower sentence was given to a Black offender facing possession of a firearm charge due to their past negative experiences with anti-Black racism (Mann, 2022). The Ontario Court of Appeal in R. v. Morris ruled that an offender need not demonstrate a causal link between systemic racism and the relevant offence, but judges may consider the impact of anti-Black racism when considering the offender’s moral culpability, but not in considering the seriousness of the offence (Fox, n.d.).

WHAT ARE IRCAs?

According to the Department of Justice Canada (2021), “IRCA are pre-sentencing reports that help sentencing judges to better understand the effect of poverty, marginalization, racism, and social exclusion on the offender and their life experience. IRCA explain the relationship between the offender’s lived experiences of racism and discrimination and how they inform the circumstances of the offender, the offence committed, and the offender’s experience with the justice system” (para. 2). Similar to Gladue reports, IRCA can inform judges of the disadvantages and systemic racism faced by Black and
other racialized Canadians (Fox, n.d.). It can also recommend alternatives to incarceration in community settings which correlates with more effective reintegration strategies (Latessa & Lowenkamp, 2006).

Currently, pre-sentencing reports similar to IRCAs are used occasionally in Ontario and Nova Scotia (African Nova Scotian Justice Institute, 2023; The Sentencing & Parole Project, 2023). IRCAs must be done by clinical social workers who provide judges and parole boards with a complete picture of an individual’s personal background, with a focus on their past traumas and their impact on decision-making and engaging in criminality. IRCAs provide an opportunity to look deeper into the systemic inequities experienced by Black people across their lifespan with a focus on their difficult living situations related to accessing education, housing, employment, healthcare, and past or ongoing traumatic experiences (Eizadirad & Leslie, 2023).

For example, people who experience various forms of racial discrimination and live in under-resourced communities are more likely to experience severe symptoms of post-traumatic stress disorder, suicidal ideations, anxiety, low self-esteem, and substance use (Colour of Poverty – Colour of Change, 2019; James, 2012; Khenti, 2013; McMurtry & Curling, 2008; Mental Health, 2022). Oftentimes, low-income communities are places where there are fewer opportunities, strained relationships with police, fewer social services, and higher rates of unemployment, which leaves people living in such circumstances lacking support and resources (Eizadirad, 2017; James, 2017; Sharpe, 2022). Exposure to such risk factors can gravitate people towards guns, gangs, and criminality as a means of survival (Colour of Poverty – Colour of Change, 2019; Eizadirad, 2016; McMurtry & Curling, 2008). The experience of trauma as a child or young adult can contribute to the individual perpetuating violence later in life by inflicting trauma on others and continuing the intergenerational cycle of violence at the family level and in the larger community where they live, where violence has become normalized and accepted as part of life.

**REFLECTIONS FROM A BLACK SOCIAL WORKER: MR. GREG LESLIE**

While various studies have been commissioned, reports written, and programs launched to address institutional racism since the 1970s (Ontario Human Rights Commission, 2023), Black Canadians across diasporas continue to bear the brunt of systemic racism. Society often ends up blaming the person for their actions without contextualizing how their past traumas and failure of the social service ecosystem in addressing their needs in a timely and culturally reflective manner contribute to tragic outcomes.

As a Black Jamaican man who was raised by a single mother and grew up in the Jane and Finch community within Toronto in the 1980s and early 2000s, I am no stranger to gun violence or its lasting traumatic impacts. For most of my life, I have witnessed friends, family, and clients lose their lives, or have their lives severely impacted by gun violence. My experience propelled me to become a social worker and psychotherapist, with now over 25 years of educational and hands-on experience in the mental health field supporting clients from diverse ethno-racial backgrounds.

In my practice, I provide trauma-focused therapy and cognitive behaviour therapy to survivors and witnesses of violence including gun violence, domestic violence, and accidents. Many of my clients are Black individuals and families, particularly from underserved communities dealing with mental health challenges and experiencing trauma because of violent crime. I use best practices from research, along with a strengths-based, anti-oppression, anti-racist framework, to deliver compassionate counselling and psychotherapy services. Many Black clients express not feeling comfortable sharing their grief and trauma with a social worker who may not identify with their lived experiences and understand the cultural nuances and complexities it entails.

Not feeling represented can be intimidating and undermine trust in the criminal justice system (Government of Canada, 2022b). I often receive referrals for Black clients from service providers that have increased recognition regarding the importance of representation and cultural competence within the social service sector. The goal of cultural competence in healthcare settings is to reduce economic, ethnic, racial, and social disparities when meeting a community’s healthcare needs (Regis College, 2023). Substantive equity can only be achieved when programs and services meet unique needs and circumstances such as cultural, social, economic, and historical disadvantages. Unaddressed race-based traumas contribute to mental health problems, which by extension place greater strain on the social service sector, where there are existing gaps for accessing timely and culturally reflective services.

**SIGNIFICANCE OF IRCAs AND THE ROLE OF BLACK-SERVING COMMUNITY ORGANIZATIONS**

Adapting the Gladue process to provide pre-sentencing reports for Black identities would help judges contextualize traumas experienced by offenders for equitable sentencing purposes. Currently, IRCAs can be used for Black offenders facing jail time of 2 years or more or for youth facing a custodial sentence. IRCAs can be transformational by disrupting the one-size-fits-all justice system that often views Black offenders as dangerous through a stereotypical lens without consideration for offenders’ upbringings, traumas experienced, and intergenerational impacts of poverty, discrimination, and marginalization (Eizadirad & Leslie, 2023; Parsaud, 2021).

We believe that IRCAs can be revolutionary in advancing more equitable outcomes for Black offenders because it will promote community-based alternatives to custody which are correlated with reduced recidivism (Cullen et al., 2011; Latessa & Lowenkamp, 2006; Waller, 2019). We argue that what is lacking is to increase the efficacy of IRCAs is using them as a tool to connect offenders with culturally reflective wraparound services as part of integration back into the community with a focus on employment, education, and housing supports. This is an area where IRCAs and Gladue reports have failed (MacCarthy, 2023; Rudin, 2008). IRCAs are not meant to be a jail-free card as some of the criticism states, but rather an important process that identifies the root causes of why someone gravitates towards criminality. Once the root causes are identified, the focus should shift to mitigating such...
risk factors by ensuring the person has access to relevant support services post-release back into community settings. This has to be a comprehensive process with considerations for the individual, family environment and dynamics, and the community where they live (Centers for Disease Control and Prevention, 2022; McMurtry & Curling, 2008; Parsaud, 2021; Waller, 2019).

Community organizations offering culturally reflective support services can play a significant role in this process. For example, Youth Association for Academics, Athletics, and Character Education (YAAACE) is Black-led, Black-focused, and Black-serving non-profit organization housed in the Jane and Finch community in Toronto that is working with their social workers to lead the way in advocating and implementing IRCAs in Ontario (Eizadirad & Leslie, 2023; YAAACE, 2024) while also connecting offenders with wraparound services post-release. One of their programs “New Narrative” features frontline risk intervention services offered by Community Resource Engagement Workers (CREW) who have lived experiences and deep connections to northwest communities in Toronto. CREW supports individuals who are impacted by the justice system (in the community, have been released from incarceration, or are currently incarcerated) to use their strengths in pursuing structure, promote positive and healthy lifestyle choices, and build life skills. By engaging and developing trust with clients, CREW supports the building of their capacity and skills, setting life goals, and connecting them with relevant and culturally appropriate spectrum of services.

Black community organizations such as YAAACE hold a wealth of knowledge and lived experiences that are indispensable in crafting effective IRCAs and connecting people with wraparound services once they return to the community. Additionally, YAAACE is working with various stakeholders to support initiatives, policies, and frameworks such as the City of Toronto’s SafeTO Strategy which involves the establishment of a Toronto Office to Prevent Gun Violence (City of Toronto, 2022), the Federal Framework to Reduce Recidivism (Public Safety Canada, 2022), and Canada’s Black Justice Strategy (Government of Canada, 2023b). Their leadership can ensure that the implementation process and the system navigation are less burdensome for Black offenders. Therefore, community organizations should serve as bridges between incarceration facilities and institutions, fostering trust and cooperation, and shifting from a deficit lens of blaming racialized communities for violence in the community to a more systemic asset-based approach of working with key figures, elders, and resources to mitigate the risk factors gravitating folks towards criminality.

CHALLENGES AND RESOURCES FOR IMPLEMENTATION

One of the key challenges for why Gladue reports and courts have not drastically reduced the overrepresentation of Indigenous Peoples in incarceration facilities is the lack of resources, training, and holistic implementation post-release with connecting offenders with accessing relevant wraparound services within community settings (Government of Canada, 2023a; MacCarthy, 2023; Rudin, 2008). Currently, IRCAs and Gladue reports are mainly used for equitable sentencing but are not used as a diagnostic tool to connect offenders with community organizations and agencies that can offer culturally reflective services in areas such as housing, employment, and education. There are also challenges given that each province in Canada implements pre-sentencing reports in unique ways and that it is not holistically embedded within all aspects of the justice system (Government of Canada, 2023a; MacCarthy, 2023; Rudin, 2008).

The following are important factors to consider for more effective implementation of IRCAs to contribute to reducing recidivism with a focus on connecting folks with wraparound services once back into a community setting:

Training and Education

Legal professionals, judges, police officers, and corrections staff must undergo comprehensive training on cultural competence, unconscious bias, and the historical context of systemic racism and colonization. This training is essential to ensure that IRCAs are administered and implemented effectively. Such training needs to be led by people with lived experiences including folks previously incarcerated.

Data Collection

Accurate data collection is crucial to measure the impact of IRCAs and address potential disparities in their implementation in the short and long term. This requires collaboration between government agencies, academic institutions, and community organizations. More studies that track folks longitudinally are required focusing on people who have gone through the Gladue court and had IRCAs used as part of their sentencing to get a true measure of the effectiveness of these tools and their impact on reducing recidivism.

Community Leadership

Black community organizations and agencies should play a pivotal role in guiding the implementation of IRCAs, but just as importantly, in connecting offenders with culturally reflective wraparound services based on the needs of the person in the areas of employment, education, and housing.

Government Support

All three levels of government in Canada must provide adequate resources and funding to support the implementation of IRCAs including the training of professionals and organizations to meet demand and reduce costs. This should involve sustainable long-term funding for training programs, data collection initiatives, and collaboration with community organizations.

CONCLUSION

Embracing IRCAs grounded in the Gladue principles is a critical step towards creating a more just criminal justice system in Canada. By recognizing the intersections of race, culture, and justice, IRCAs enable judges to make more informed decisions for equitable sentencing. We argue that insights from IRCAs should be used to connect offenders with culturally reflective wraparound services upon return to the community to address the root causes in the areas of employment, education, and housing that gravitate people towards criminality. By acknowledging historical
and systemic biases and tailoring interventions and supports to the unique needs of individuals and where they live, IRCAs have the potential to transform the criminal justice system through promotion of alternatives to custody which correlates with reduced recidivism. Through collaboration, education, and community leadership, Canada can pave the way for a more equitable justice system and safer communities from coast to coast.

CONFLICT OF INTEREST DISCLOSURES

The authors have no conflicts of interest to declare.

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