

R. v. X., the Advent of Cultural Assessment, and Considerations for Correctional Service Canada Practices

March 20, 2019

Robert S. Wright, MSW, RSW

Welcome and Introductions!!

I would like to acknowledge that as we undertake this national initiative that we do so in the land Indigenous peoples call Turtle Island. Scores of First Peoples have called this land their home for millennia. From the Beothuk and Mi'kmaq in the east, to the Coast Salish people in the west, to the Inuit in the north, Canada has always been a nation of diverse peoples.

I would also like to acknowledge that racism is North America's 'original sin' that is at the root of all current social inequities. Acts of reconciliation and reparations, both symbolic and substantial, are critical to our collective emancipation and the ability to live peacefully and sustainably on this land.

I would invite everyone to introduce themselves in a way that orients them to the work we are about to embark on.

Who is Robert Wright?

- Social Work Private Practitioner
 - Direct Practice and Forensics
- Former
 - E.D., Child & Youth Strategy
 - E.D., Child Welfare Cumberland
 - Race Relations Coordinator of DDSB
 - Racial Equity Committee, NSBS
- Judicial Diversity Advocate and Educator
- Consultant ANSMHAI
- Post-Grad Studies in Social Work & Sociology – Race, Identity, Power



© Robert S. Wright, MSW, RSW
www.robertswright.ca

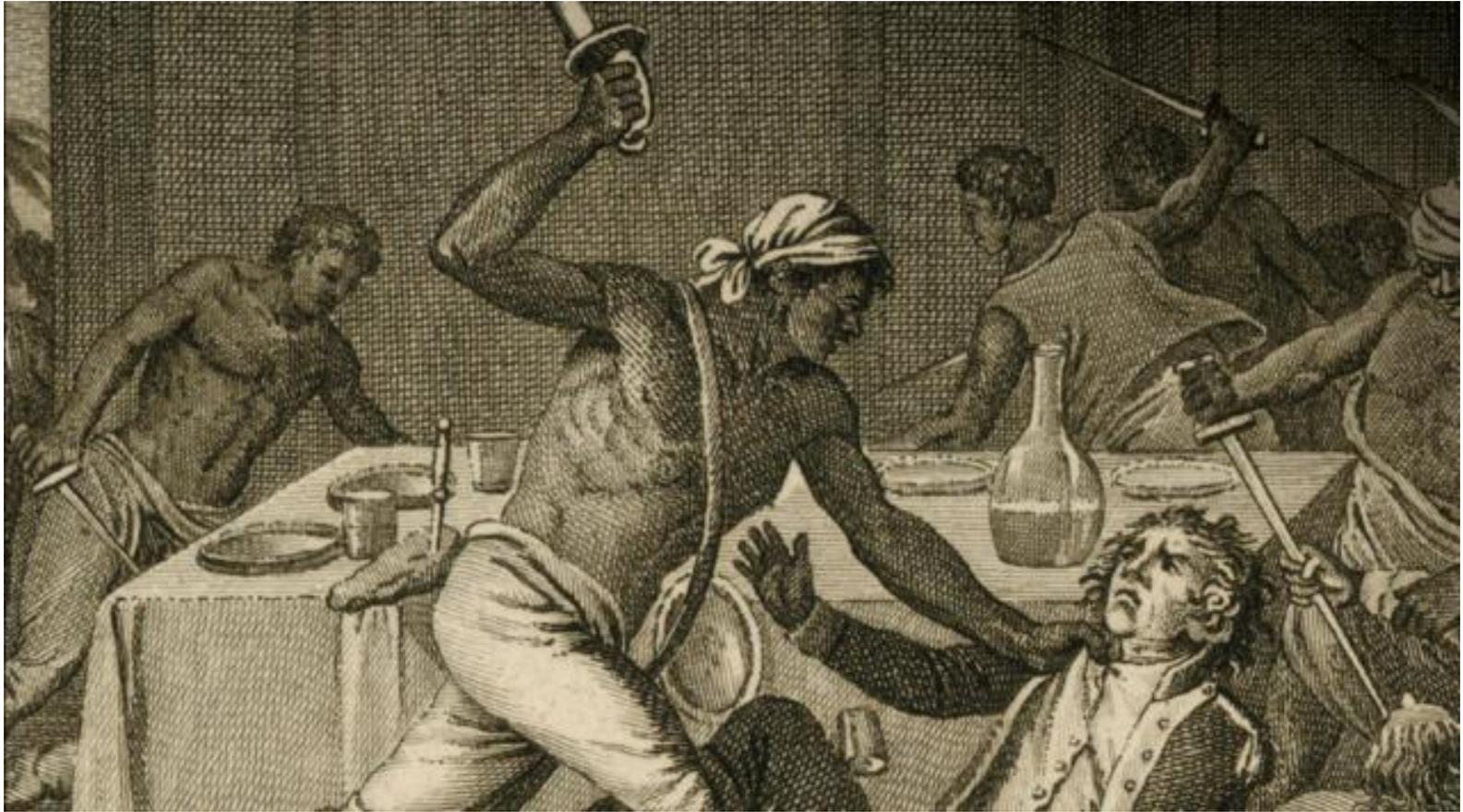
How We Got Here

- Robert works for many years at intersection of race and justice, began conducting Impact of Race and Culture Assessments (c. 2011)
- Canadian Human Rights Commission met to consider the question: Does the lack of appropriate mental health services to Black Inmates constitute a human rights violation (c. 2012)
- Office of the Correctional Investigator made diversity in corrections a focus of its 2014 year end report (2014)
- Members of National and Regional Ethnocultural Advisory Committees have been discussing for a number of years implications of IRCA for CSC practices. Advocated for this work (2018)
- Contract signed 2019

Substance of the Contract

- Need: To increase the ability to better understand the needs of African, Black, and Caribbean (ABC) Canadian inmates through including IRCA's within assessment processes currently practiced within CSC.
- The Plan: Work with a lead CSC employee and a small reference group of 2-3 additional CSC personnel who are responsible for "assessment" at various stages of CSC practice (classification, etc.), Develop and deliver training in IRCA specifically designed for CSC personnel responsible for assessment.
- Month 1 & 2 (Assemble the team); Month 2 & 3 (Develop the training); Month 4 & 5 (Deliver the training); Month 6 (Evaluate the training).
- All meetings and materials will be delivered electronically. Participants in training will be responsible for printing resources or using electronic versions at their discretion and cost.
-
- Note. Improving skill in IRCA should be seen as just the first step in meeting the needs of African, Black and Caribbean (ABC) inmates. Once CSC has begun to better identify inmates' needs it will increase the expectation that programming is actually in place to meet those needs. Integrating culturally appropriate content in CSC programming and providing training for personnel who deliver programming will be an anticipated next step. This project will create a foundation and basis for increasing cultural competence generally, but the content will be specific to ABC inmates.

Resistance



© Robert S. Wright, MSW, RSW
www.robertswright.ca

Resistance



© Robert S. Wright, MSW, RSW
www.robertswright.ca

Legal Foundations

Dum Diversas – 1452

Papal Bull authorizing Portugal to
conquer and enslave Saracens and
North Africans

Barbados Slave Code – 1661

Codified British North American
slave trade in the Carribean
And



European Trade Triangle



Hx of African Substance Patterns

- Precolonial, culturally bounded, ritualized use:
 - Fireside use by nomadic traders
 - Hospitality shown to honored guests
 - Religious and ritualistic use

- Qat, Cannabis, fermented beverages, and a range of hallucinagens

Sugar, Rum and People

- African persons stolen, shipped to America to farm sugar (and other crops)
- Sugar (and other crops) sent to Europe to be distilled and refined
- Foreign intoxicants (distilled alcohols) and trade goods shipped to Africa, disrupt local economy and cultural patterns of substance use
- Alcohol used as a mollifying agent to pacify enslaved Africans in America
- Entrenchment of culturally disrupted patterns of substance use among African Americans

Emancipation's Influence

- Classes of African Americans emerge
 - Rural poor – those who remain in subsistence farming
 - Urban poor – establish the foundations of inner city ghettos
 - Working class – largely urban, later form the foundation of the Black middle class

Early American Drug Attitudes

- By the late 1800's, perhaps influenced by prevalent use of morphine during civil war . . .
- Drugs – morphine, cocaine, cannabis – gain increasing popularity

Great Awakening – Temperance

- Religious revivals in late 1700's and mid 1800's create push back against growing drug prevalence
- Temperance movement created the foundation for the policy of prohibition
- Prohibition in US 1920-1933, in Canada 1918-1920's

Illegality of Substances

- Prohibition pushed urban drug and alcohol use underground
- Many speak easies and gin joints were established in African American ghettos
- White ethnic criminal organizations systematically recruit African American persons to traffic in narcotics

Cultural Paradox of Substance Use

- Growing prevalence of drug use and trafficking in White community detracts from social and economic engagement
- Despite devastating effects of drugs in ANS communities, substance trafficking provides significant economic input to historically, socially and economically excluded peoples

R. v. X.

Well reviewed in
Jon Tattrie's 4
part piece:
Colour of Justice

Judge Anne
Derrick's
decision is
available in full
online

The screenshot shows the CBC News website interface. At the top, there are navigation links for TV, RADIO, NEWS, SPORTS, MUSIC, ARTS, LOCAL, and MORE. A search bar is located on the right. Below the navigation is a banner for CBCnews Nova Scotia featuring four people's faces. A 'LIVE' indicator for CBC Radio One is also present. The main navigation menu includes Home, World, Canada, Politics, Business, Health, Entertainment, Technology & Science, and Video. The article title is 'IN DEPTH | Colour of Justice Part 1: The Crime' with a sub-headline 'They were coming after me. I'm protecting myself'. The author is Jon Tattrie, CBC News, and the article was posted on March 09, 2015. A photograph shows a police car and a person at a crime scene in a basketball court. A sidebar on the right offers ways to stay connected with CBC News (Mobile, Facebook, Podcasts, Twitter, Alerts, Newsletter) and an advertisement for Porter's 10th birthday savings. A 'Weather' section at the bottom right lists locations like Halifax, Sydney, and Yarmouth. A 'Listen' button is visible at the bottom left of the article content.

TV RADIO NEWS SPORTS MUSIC ARTS LOCAL MORE WATCH LISTEN LOG IN SEARCH CBC.ca...

CBCnews Nova Scotia

LIVE Halifax More Streams
CBC Radio One
Listen Live

radio one

Home World Canada Politics Business Health Entertainment Technology & Science Video

Canada NS

IN DEPTH | Colour of Justice Part 1: The Crime

'They were coming after me. I'm protecting myself'

By Jon Tattrie, CBC News Posted: Mar 09, 2015 6:11 AM AT | Last Updated: Mar 10, 2015 1:02 PM AT

This basketball court was the scene of an April 15, 2013, shooting in North Preston. (CBC)

Stay Connected with CBC News

Mobile Facebook Podcasts Twitter Alerts Newsletter

ADVERTISEMENT

porter
flying refined

10th birthday savings!

Search Now

Book by Oct. 25, 2016.
Travel by Feb. 15, 2017.
Some conditions apply.

Weather

Halifax: Sydney Yarmouth Annapolis Royal Greenwood

Listen

Race a factor in sentencing
7:35

Nova Scotia Judge Anne Derrick recently had to make a potentially groundbreaking decision. A young man (called X in court documents) stood convicted of the attempted murder of another teenager (called Y). Should the fact that X is African Nova Scotian be a mitigating factor when she decided to sentence X as an adult, or as a youth?

The Case – R. v. X.

April 2013. X, a 16-year-old boy, shot Y, his 15-year-old cousin on the court at their local rec centre. The bullet perforated Y's bowel and chipped his spine. Amid the screaming, X ran away.



The Prosecution – R. v. X.

Prosecutor previously tried a youth who received an adult sentence. Three Psych reports found X. to be a sophisticated criminal.

Prosecutor sought life sentence.



The Defence – R. v. X.

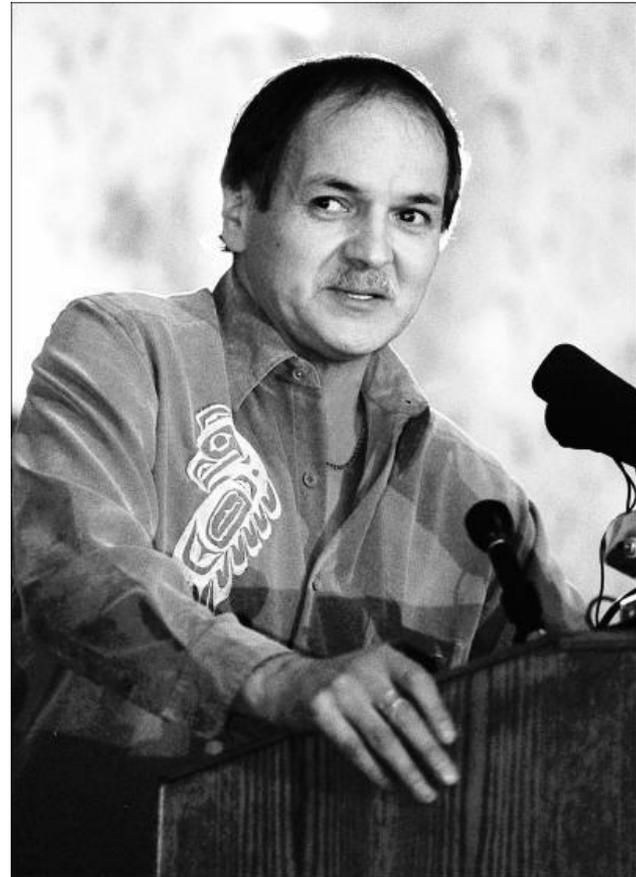
- Defence argued that “Section 34” assessments were incomplete.
- Didn’t factor in what is known about race and justice.
- Commissioned the Impact of Race and Culture Assessment.



LEGAL AID
NOVA SCOTIA

Nova Scotia Context for IRCA: Racism in Criminal Justice System - 1989

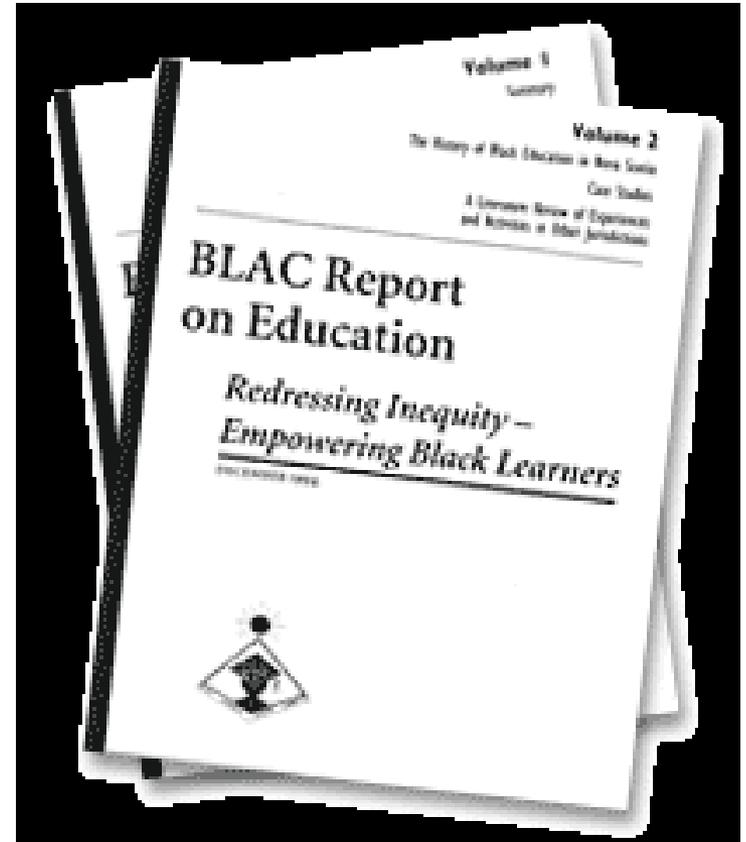
- Established clearly racism and discrimination in the criminal justice system
- Makes 82 recommendations aimed at reforming systems
- OCI's 2013 report documents overrepresentation and differential treatment of African Canadian inmates



© Robert S. Wright, MSW, RSW
www.robertswright.ca

Nova Scotia Context for IRCA: Racism in Education - 1994

- Explores the history of ANS experience in Education
- Establishes that systemic racism persists in education
- Links the “deplorable” socio-economic conditions in Nova Scotia’s Black communities to this history.



DSM-V CFI (DSM-IV-TR – 2000)

Figure. Flow of Cultural Formulation Interview domains for cultural assessment



- CFI, developed over decades, provides a logical framework for cultural formulation
- Establishes the necessity of understanding clients' cultural narratives

Canadian Context for IRCA: Racism in Mental Health Service Delivery

- 2009 Mental Health Commission of Canada Task Group on Diversity Publishes paper “Issues and Options”
- 2012 Nova Scotia releases “Together We Can” Mental Health and Addiction Strategy: Acknowledges poor service to ANS and other cultural groups



The Diversity Task Group Report:

Issues and Options for Improving Mental Health Services for Immigrant, Refugee, Ethno-cultural and Racialized Groups – A Summary

Canadian Context for IRCA: OCI 2013 report

- Summer 2011 Canadian Human Rights Commission discussed mental health needs of African Canadians in federal corrections
- OCI studies the matter and highlights Black Inmate Experience in its 2013 report

A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries

In the 2011-12 Annual Report, the Office committed to a review of the experiences and outcomes of Black inmates in federal custody. A case study was completed over a 4-month period (November 2012 – February 2013) which included a literature review, data analysis and qualitative interviews with Black Inmate Committees, Black inmates, CSC personnel, Audmax (an organization currently on contract with CSC to provide ethno-cultural services in the Ontario region) and community volunteers. Site visits were also conducted in institutions in the Ontario, Quebec and Atlantic region, recognizing that the majority of federally sentenced Black inmates (86%) are incarcerated in these regions.

The Chair of the Black Inmate Committee at each institution was contacted informing them of the case study and requesting their participation and assistance in consulting with members of

the Committee to identify issues to bring forward as part of the case study. Notices were also posted on all ranges informing all Black inmates of the study and the opportunity to voluntarily participate. The Chair of the Black Inmate Committee was interviewed at each institution. Voluntary interviews were also conducted with interested Black inmates in one of three ways: individually, in small groups (2-3 participants) or in larger focus groups (15-20 participants). In total, 73 Black inmates (30 women and 43 men), were interviewed. Interviews were also conducted with 24 CSC personnel representing a variety of positions (e.g. Wardens, Correctional Officers, Program Managers), 2 community volunteers and Audmax. In addition, the OCI contracted with the Afrikan Canadian Prisoner Advocacy Coalition (ACPAC) to provide a literature review, expertise and analysis of Black Canadians in conflict with the law⁷.

Impact of Race and Culture Assessment Conceived – Sentencing Principles

- “718.2 A court that imposes a sentence shall also take into consideration the following principles: (e) all available sanctions, other than imprisonment, that are reasonable in the **circumstances** and consistent with the harm done to victims or to the community should be considered for **all** offenders, with particular attention to the **circumstances** of Aboriginal offenders.”
- This section was amended to address Aboriginal over-representation within the criminal justice system c.1996

Impact of Race and Culture Assessment Conceived – Gladue

- The Gladue decision and Gladue reports come from 718.2(e), sometimes referred to as “aboriginal sentencing guidelines”. The reports were designed to provide the court with a documentation of the “circumstances” to be considered.
- Given the similar overrepresentation of African Canadians under correctional supervision, and that 718.2(e) applied to **all** offenders, it was left then to simply construct a format for presenting the “circumstances”.

Impact of Race and Culture Assessment Constructed – Sentencing Principles

- Built on legacy of Gladue, Cultural Assessments involve 4 levels of consideration:
 - What is known about African Canadian experience generally and as it relates to crime and justice;
 - How does the individual's experience with culture and crime play out;
 - How does this knowledge inform the services and resources that could facilitate rehabilitation and reintegration for this offender?
 - May also comment on or contextualize other reports

R.v.X. Assessment and Examination

- Commissioned by Nova Scotia Legal Aid lawyer, Christa Thompson
- Completed after review of documents, interview and collaterals
- Report submitted
- One and a half day examination for qualification as expert
- Another day and a half of testifying
- The Section 34 Assessments
- Criminally sophisticated or cultural mask
- Criminally instrumental or social violence
- Premeditated or impetuous

The Judgement – R. v. X.

[198] X” has put this evidence forward I have asked myself what the evidence of Robert Wright contributes . . . ? I find it raises significant questions about the assessment of “X” as a criminally-entrenched, sophisticated youth. It provides a more textured, multi-dimensional framework for understanding “X”, his background and his behaviours. . . . Mr. Wright’s evidence gives me a lens through which to view “X” in determining this application. And it suggests that “X”’s character and maturity are still in a formative stage. Mr. Wright encountered a significantly conflicted young person, still located in his loving, pro-social family, who is struggling with his identity in the context of a criminally-impacted community that has incubated mistrust, rivalries, and violence.

Boy gets 3 years in custody for 2013 shooting

THE CHRONICLE HERALD

newsroom@herald.ca

@chronicleherald

A 17-year-old boy has been given a three-year sentence in a provincial youth facility for the attempted murder of another teen outside the North Preston Community Centre.

Halifax youth court Judge Anne Derrick sentenced the North Preston teenager, whose identity is protected, to the maximum penalty allowed for a young offender, rejecting the Crown’s application for an adult sentence.

“I find that when (the offender) shot (the victim) he was not a hardened, criminally sophisticated teenager who had the makings of an effective mercenary,” Derrick said Friday. “He was a vulnerable young person with a reduced capacity for moral judgment.”

and their grandfathers are brothers. They had known each other since they were very young, but their relationship began deteriorating by elementary school and their arguments and fights began escalating.

On April 15, 2013, at about 5 p.m., the victim was talking to a friend on the outdoor basketball court when the offender, then 16, came out of woods with his face partially covered and shot him with a high-powered hunting rifle.

The victim was shot in the stomach and seriously injured but has made a full recovery.

At the time of the shooting, the offender “was an immature, dependent 16-year-old caught up in the dysfunctional dynamics of his community,” Derrick said.

In deciding not to sentence him as an adult, Derrick weighed the sometimes conflicting evidence of different experts who assessed the accused, as well as evidence

Culture Assessments – Emerging Themes

- Historical, geographical isolation
- Historical, systemic educational disadvantage
- Historical economic marginalisation, poverty
- Systemic, criminal recruitment
- Community displacement through relocation or gentrification
- Modern economic collapse & increased demand for education
- Particular patterns of violence and crime (incl. Black on Black*)
- Community and individual experiences of violence and trauma
- Tragic family of origin issues intensified by racial location
- V64.2 Target of Adverse Discrimination . . . Sometimes by police

IRCA in CSC

- Here's where the work for us begins

R. v. X., the Advent of Cultural Assessment, and Considerations for Correctional Service Canada Practices

March 20, 2019

Robert S. Wright, MSW, RSW

Q & A



© Robert S. Wright, MSW, RSW
www.robertswright.ca

Differential Cultural Experience

Differential MH and Behavioural Concerns

