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## R. v. “X” and the Advent of Cultural Assessments in Criminal Court

In the case cited as: [R. v. “X”, 2014 NSPC 95](#), it is possible that the first “Cultural Assessment” of an African Canadian youth was presented and tested as evidence in a sentencing hearing in Canada. Though much had been written about the intersection of race and the criminal justice system, and in particular the experience of North Americans of African descent, until then, there was no structured presentation of this knowledge for the court to consider. The “X” Assessment then, can serve as a template and example for future cultural assessments.

Similar to the growing number of Gladue Reports that are regularly being presented in court to assist in the trial and sentencing of First Nations Canadians (see [R. v. Gladue, \[1999\] 1 S.C.R. 688](#)), the “X” Assessment offered information in an attempt to answer 4 questions related to the youth’s cultural background. In this case, their African Nova Scotian (ANS) background:

1. What is known about ANS experience, and how might that have influenced “X”’s involvement with criminal behavior;
2. How should this history and “X”’s unique history and status as an ANS be considered when delivering sentence;
3. What services or resources should be made available to “X” to support his rehabilitation and reintegration given his unique history and status as an ANS, and;
4. What light does “X”’s status as an ANS shed on the conclusions and recommendations that were offered in the reports that are already before the court?

This first three questions seem to be standard in Gladue reports, flowing directly from the question: “What are the circumstances of Aboriginal Offenders” asked in the Gladue decision. The fourth is unique and was added by the author for a particular reason. In “X”’s case there were 3 clinical assessments already in evidence: psychiatric, psycho-educational, and psycho-social. All three were conducted by white clinicians, all three made no substantial reference to “X”’s status as an ANS, and all three were in agreement that “X” was a seriously criminalized individual who needed a substantial sentence. It was perceived that these reports supported the crown’s position that “X” should receive an adult, life sentence. In the cultural assessment the author, themselves a forensic clinician, was qualified by the court to comment on the conclusions rendered in those reports.

In delivering their decision, Judge Derrick not only accepted the evidence in the “X” assessment but commented that: “[. . . ] the evidence of Robert Wright [. . . ] 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 [. . . and] gives me a lens through which to view “X” [. . . ] And it suggests that “X”’s character and maturity are still in a formative stage.”

It seems then, that the “X” assessment gave the court sufficient evidence to reject the crown’s application for an adult sentence. The court rendered a maximum youth sentence of 3 years, to be served in the provincial youth detention centre.

In subsequent discussions about the nature and role of Cultural Assessments the following issues are emerging as critical:

1. Though the Gladue decision is a natural inspiration and foundation of Cultural Assessments, it is imperative that writers make explicit that they are different, and not attempt to expropriate it.
2. Given the prevalence of clinical reports offered at sentencing, many of which will make little reference to the racial location of their subject, it is important that writers of Cultural Assessments be sufficiently qualified to contextualize and perhaps even rebut other assessments. For this reason it is highly recommended that writers of Cultural Assessments also be qualified clinicians.
3. Not only should the writer of Cultural Assessments be qualified clinicians, they should also be experienced forensic clinicians familiar with giving evidence in criminal and other court settings.
4. The role of the forensic clinician, like the role of crown attorney, is supposed to be a neutral one. Even if this is not the case, it is important that the writer of Cultural Assessments conduct themselves this way. The evidence of “activist assessors” is too easily dismissed.