



Race, Mental Health, the Criminal Justice *System and Impact of Race and Culture (IRCAS)* Reports

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RACIALIZED
COMMUNITIES
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WHAT ARE IRCA'S

- IRCAs (Impact of Race and Culture), are special reports used by the court when deciding the sentence for Black individuals, both adults and youth, who have been convicted of a crime.
- They are important because they tell the court how systemic racism has affected the person and their actions.
- These reports might suggest better options than putting someone in jail, or they might recommend jail time along with culturally appropriate accountability measures.
- They helps make sure that the sentence is equitable.

A black and white photograph of a woman with glasses and a headband, looking down and writing in a notebook. She is holding a pen in her right hand. The background shows a window with a grid pattern.

WHO PREPARES IRCAS

Specially trained writers create reports about an individual's life for the court.

The writers are trained to understand and deal with the impact of anti-Black racism in a sensitive way, taking into account any trauma the person may have experienced.

Writers often have a background in social work, psychology, or education

Most of the reports in Ontario are prepared by a not-for-profit group called the Sentence and Parole Project (SPP).

A row of ten light-colored wooden blocks, each with a dark letter cut into its top surface. The letters, from left to right, are E, L, I, G, I, B, I, L, I, T, Y, spelling out the word "ELIGIBILITY". The blocks are arranged on a light blue-grey textured surface against a dark grey background.

ELIGIBILITY

WHO CAN GET AN LAO FUNDED IRCA?

- If someone has a legal aid certificate, identifies as Black, and is facing more than two years in jail, or if it's a young person (12-17) who might go to jail, they can get an IRCA.
- The court can also issue an endorsement for an IRCA for non legally aided accused persons and adults facing less than two years of incarceration.

WHY ARE IRCAS NEEDED?

Racism impacts the lives of many
Black Canadians in many ways

Ontario's low-income
population

Children in state care

Housing

Education

Employment

Disparities in health

Canada's
Anti-Black
Racism
Myths

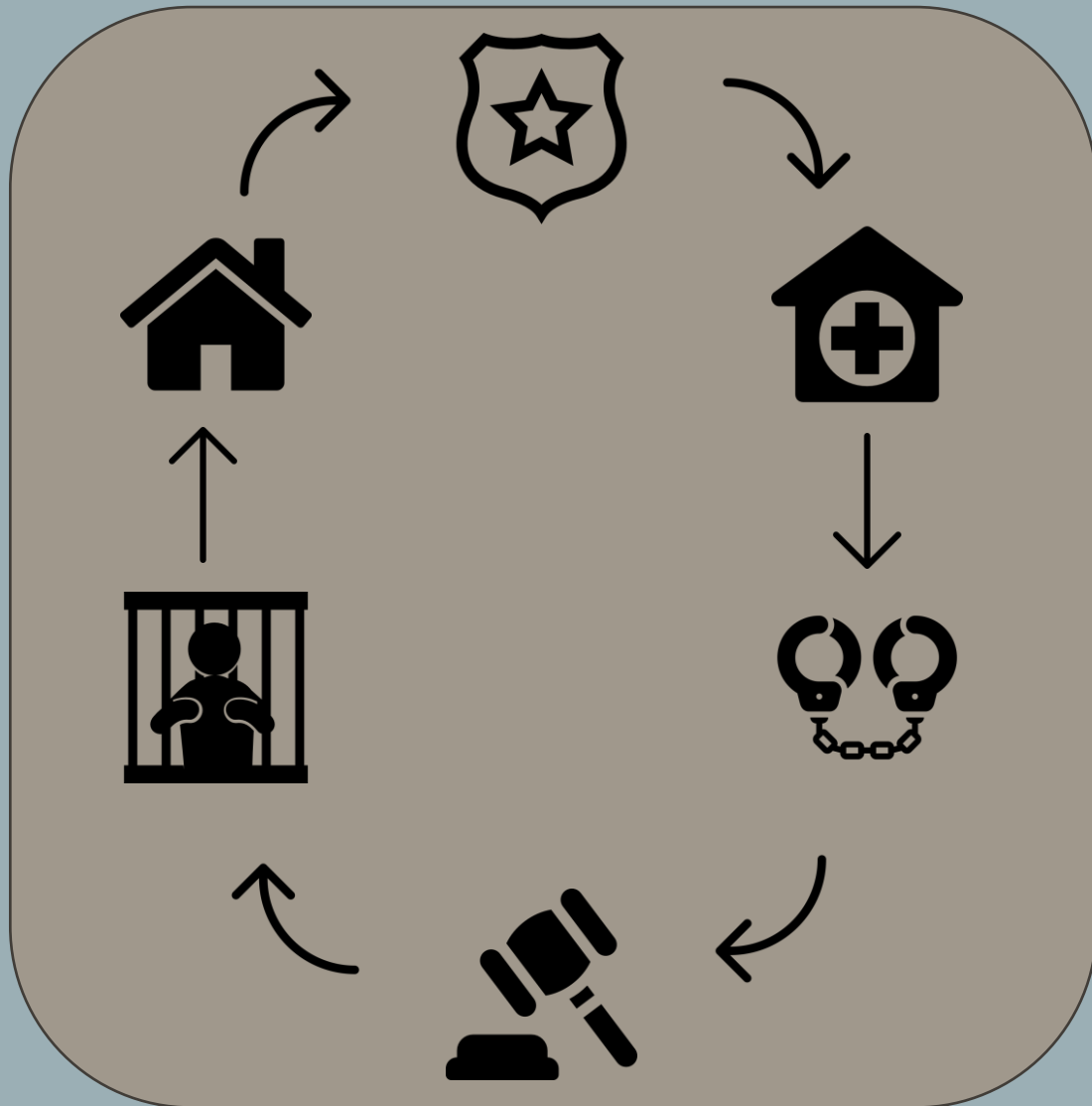
CANADA IS
NOT IMMUNE
TO
RACISM

WHY ARE IRCAS NEEDED?

Anti-Black racism also exists in the Criminal Justice System. It is evident in:

- Overrepresentation of Black Persons in the Criminal Justice System
- Over-scrutiny
- Bias in policing
- Higher rates of arrest:
- Increased likelihood of being injured or killed by police:
- Higher-rate of pre-trial detention:

INTERSECTIONALITY: BLACKNESS AND MENTAL HEALTH IN THE JUSTICE SYSTEM




Individuals with mental health conditions are also overrepresented in the criminal justice system.

- **Race, Mental Health and Incarceration**
 - Black individuals with mental health conditions like schizophrenia or bipolar disorders are more likely to end up in jail compared to people of other racial backgrounds.
- **Racial Bias in Correctional Institutions**
 - Many studies have shown that there is unfair treatment and discrimination against racialized individuals within prisons.
- **Overrepresentation and Stereotyping**
 - Some behaviors of Black prisoners, which might be considered cultural, are wrongly stereotyped as aggressive. This bias affects how their mental health is perceived.
 - Behaviours that are traditionally viewed as indicative of mental health concerns among non-Black prisoners were viewed as aggression when associated with Black prisoners



WHY IS LAO INVOLVED?

- Legal Aid Ontario (LAO) has a role in making the justice system fairer for Black people.
- LAO helps lawyers learn how to talk about race when they're working on cases.
- LAO also supports important cases that challenge things like racial profiling and other issues where race matters.



THE LAW (PRE-IRCAS)

The Law

When deciding what sentence to give someone who has broken the law, the Canadian Criminal Code, specifically Section 718.2(e), requires the court to think about all the possible sanctions not just so jail.

Mitigating Factor

Judges consider things that might make the person less responsible for their actions.

This can include social, economic, and political issues, like how the government might be involved in the problem.

Recognizing Social Context

Supreme Court of Canada, in *R v. Gladue*, a case that involved an Indigenous woman, recognized the impact of racism, and historical policies and practices including colonialism, residential schools among other deleterious policies should be considered when deciding what to do with Indigenous persons who have broken the law.

THE CASES RACE IN SENTENCING



R. v. Morris, 2021 ONCA 680

- Judges in Ontario's highest court strongly promoted the use of IRCA to find the right punishment for Black individuals.
- They recognized the need to acknowledge, confront, mitigate and ultimately eliminate Anti-Black racism.
- The court found that it is essential to look at how racism affects the person and their community. This helps us better understand who they are and why they did what they did.

R. v. Kelly, 2022 ONSC 5500

- The court used the IRCA to help the judge consider the overincarceration of Black people and the principle of restraint.
- Instead of incarceration, a conditional sentence was imposed for the charge of importing cocaine. A conditional sentence was seen as fit and proportional because of several mitigating factors which included but were not limited to the accused's age at the time of the offence, her role in the offence was secondary, she had no criminal record or history, exhibited remorse, and faced disadvantage and systemic anti-Black racism.

R. v. Vaughan Roberts

- The IRCA helps to ensure that the justice system considers the person's background and the challenges they face, which is important for crafting a sentence that is fit and proportional, promotes accountability, and reintegration.

IMPACT OF RACISM AND DISCRIMINATION ON THE MENTAL HEALTH



There is growing awareness about the link between racism and mental health. Psychiatrists in various countries have noted that the impact of structural and institutional racism are a risk factors for developing mental illness.

Many Public Health Associations and medical professional associations have pronounced that racism is a Public Health Issue .They note:

Those who experience racism exhibit poorer health outcomes including negative mental health outcomes, negative physical health outcomes, and negative health-related behaviours.

FORENSIC MENTAL HEALTH

There is concern that black persons in the forensic system – that is, accused persons under the Ontario Review Board's jurisdiction – are overrepresented and are treated differently than other groups

One study found that use of restraints was 44% higher for black patients as compared to white patients

Consider how barriers to accessing mental health care impact the pathways of a black accused person experiencing mental illness in the justice system as well as their outcomes in the forensic system

PRACTICAL REALITIES WITH
HELPING BLACK ACCUSED
WITH MENTAL HEALTH ISSUES

Systemic issues that impact income level, housing and access to healthcare present challenges

When the accused person comes in contact with the justice system, they may not have a plan of treatment or even a diagnosis. This impacts the availability of mental health diversion and makes it harder for their criminal matter to be triaged into mental health court

Limited culturally appropriate mental health related programming for client referrals

Systemic issues related to anti-black racism also have an impact on recidivism; backsliding after release/discharge

Furthermore, advancing evidence of anti-black racism at sentencing or at review board hearings can be difficult. IRCAs are helpful in this regard, as well as studies and reports that can be presented in court or at the board.



WHAT WE CAN DO TO HELP

Develop educational and training programs related to unconscious bias and anti-black racism training for mental health and justice service providers

Implement race-based data collection in the mental health and justice contexts

- Useful for policy makers, legislators, health and justice administrators; they won't know what they don't know – they need numbers and facts to make change

Develop and implement strategies and policies aimed at dismantling anti-black racism in the mental health and criminal justice contexts

Improve access to mental health services for the black community, as well as early intervention services



QUESTIONS?

Thank you!

Merci!



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