

# Storytelling in sentencing reports: comparative reflections

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# The Canadian “Gladue Report”

- *“Takes into account systemic and background factors of an Aboriginal offender & possible alternatives to prison”*
- *“The report is based on information provided by the offender, their family & their community supports”*
- *“Unlike a pre-sentence report, the Gladue Report does not make conclusions” (Feathers of Hope, Ontario, 2016)*



# Dr Diana Eades, Legal Linguist

- *“The legal system has its own culture with distinct ways of thinking, believing and acting which are shared & passed on from generation to generation”*
- *“There are fundamental contractions between everyday storytelling and the expectations and interpretations of storytelling in court”*



# Legal cultural assumptions and cultural conflict

- *“Cultural differences [and] wider society power relationships ... [create] difficulties for Aboriginal people telling their stories in court” (Eades 2008)*



# Alexis Wright, Waanji storyteller

- *“Aboriginal people have not been in charge of the stories other people tell about us.”*
- *Despite being “skilled in the art of an oral culture”, we are “voices in the wilderness”*



# Narrative *about* Aboriginal people in Pre-Sentence Reports

- *Lawyer: "A pre-sentence report says more about the assessment tool than the person who it concerns"*
- *Judicial officer: pre-sentence reports tend to be a formulaic 'snapshot' of the person and structured according to standard 'templates of risk'*



## Example of relevance of community story for culpability

*“Where you get a very serious assault upon a police officer ... [you need to know] if that person has come from a community where historically police officers or authority figures have been associated with removing children or forcing people into missions ... because what he’s been told about authority figures potentially would have an impact upon that offender’s attitude towards authority figures.” (Judicial officer)*



# Rewriting the story as a reconciliatory measure

- *Gladue* Reports promote understandings about Indigenous community and community-based options
- *"You don't know what you don't know"* (Lawyer)
- *"There wouldn't be a magistrate who didn't want to understand the defendant's community"* (Judicial officer)



# Transformative storytelling in Canadian *Gladue* reports

- *“The Aboriginal person’s voice and the voices of family & community pervade reports” (Gladue Report writer)*
- *“It is a candid account of the person’s life that the court or lawyer may not acquire because of lack of trust” (Judge)*
- “Reports tie the individual’s background together with historical systemic discrimination because they recognise that the person is part of a collective” (Judge)



# Judicial perspectives on the impact of *Gladue* Reports

- *“The person becomes a whole human”*
- *“It fosters respect and reciprocity”*
- *“Hearing the voice can be painful. But it makes the person more real”*
- *“We see where the person comes from to inform us of the best way forward”*



# Changing sentencing stories

- *Retelling the story of substance abuse*
- *Recognising colonisation & systemic discrimination*
- *Focus on resilience rather than hopelessness*
- *Holistic sentencing considerations: informed by trauma, strengths and needs rather than risk*



# Lessons from Canada: more than an oily rag

- Evaluations of *Gladue* Reports point to need for substantial resources for report writers & follow-up case workers
- Education for writers, lawyers and judicial officers
- Aboriginal community-owned report writing services is necessary for cultural safety of defendants, Aboriginal report writers and others from community providing information