

Culture as Healing: Synthesizing Expert Knowledge on the Relationship between Access to Culture and Justice Involvement for Indigenous Persons

Research Summary for the Centre for Forensic Behavioural Science and Justice Studies, University of Saskatchewan

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Rationale

Canadian courts acknowledge that Indigenous persons experience discrimination in all parts of the criminal legal system due in part to culturally inappropriate practices.¹ Parliament, in turn, has directed judges and correctional officers, among others, to account for unique systemic and background factors that affect Indigenous peoples as well as their fundamentally different cultural values and world views.² Yet, in spite of these legal reforms, studies continue to find systemic failures when it comes to realigning Canada's criminal legal system to address Indigenous peoples' experiences, cultures, and perspectives.³ To support culturally-informed decisions in Canada's criminal legal system, this study aimed to determine where consensus exists among the views of subject matter experts on the relationship between access to culture and justice involvement for Indigenous persons and where there is disagreement that may benefit from further research. There were two overarching research questions: (1) What role can access to Indigenous culture play in reducing criminal involvement for Indigenous persons?, and (2) What factors or circumstances can be identified that either support or impede culture-based interventions for Indigenous persons?

Methods

We conducted an online mixed methods three-round Delphi study to elicit expert consensus on the relationship between access to culture and justice involvement for Indigenous persons. We achieved expert consensus on 34 propositions within three rounds. Participants' responses were anonymous.

Participant Inclusion Criteria

Participation was open to anyone who had: 1. at least two years of research or work experience of relevance to the relationship between access to culture and criminal justice involvement (or related factors) for Indigenous persons; AND 2. (a) published at least one scholarly article that is relevant to the relationship between access to culture and criminal justice involvement (or related factors) for Indigenous persons; OR (b) completed graduate-level research (i.e. a doctorate or master's thesis) that is relevant to the relationship between access to culture and criminal justice involvement (or related factors) for Indigenous persons; OR (c) gained a comparable or greater level of knowledge and experience from working directly with Indigenous persons on interventions of relevance to the relationship between access to culture and criminal justice involvement (or related factors) for Indigenous persons.

Recruitment & Participant Characteristics

This study was guided by an Indigenous Advisory Committee. Recruitment was based on literature review, Advisory Committee input, and snowballing recommendations. Seventeen subject matter experts were recruited for the Round 1 survey. Eleven of those participants identified as Indigenous, 12 as women, and 5 as men. Thirteen of the Round 1 participants took part in the Round 2 survey. Seven of them identified as Indigenous, 8 as women, 4 as men, and 1 preferred not to say. Finally, all participants in previous rounds were invited to take part in a final clarificatory Round 3 survey to which we received 14 complete responses. Nine of them identified as Indigenous, 10 as women, and 4 as men.

Rounds

Round 1 aimed to gather a broad range of insights from participants on the research questions through eight open-ended questions, including one asking for participants to list their top three priorities in the

¹ See e.g. *Ewert v Canada*, 2018 SCC 30, at para 57; *R v Sharma*, 2022 SCC 39, at para 114.

² *Ewert v Canada*, 2018 SCC 30, at para 58.

³ See e.g. Ivan Zinger, *Ten Years Since Spirit Matters: A Roadmap for the Reform of Indigenous Corrections in Canada* (Minister of Public Safety, 2023); Marie-Andrée Denis-Boileau, "The Gladue Analysis: Shedding Light on Appropriate Sentencing Procedures and Sanctions" (2021) 54:3 UBC Law Review 537.

area, and two 10-point Likert-type questions on overall perceptions in the area. In Round 2, participants were asked to refine their opinions and indicate their level of agreement to 36 propositions based on Round 1 responses using a 4-point Likert scale (1 being *strongly disagree* to 4 being *strongly agree*). Participants were given an opportunity to explain their answer. They were also asked to rank priorities from most important to least important, noting that lesser importance did not mean unimportance. In Round 3, the final round, we sought to better understand participant views on two propositions that fell below the threshold for consensus in Round 2. While various standards have been used in Delphi studies, we defined consensus as 75% agreement on a 4-point Likert scale based on existing literature.⁴ We also sought participants' views on the results from priority ranking in Round 2. They were presented with four questions in a bar chart with the most important prioritization.

Results

We found consensus among participants on 34 propositions, supplemented by participant commentary that provides additional nuance and detail. These propositions are set out in the next three paragraphs.

According to our experts, access to culture can reduce an Indigenous person's likelihood to be involved in the criminal legal system; strengthen their support network, including connections to healthy family members, friends, and community members; and strengthen their ties to an Indigenous value system. It can also help an Indigenous person build a positive self-identity; help them develop pro-social skills and behaviours; and support the development of a positive, pro-social environment for others beyond the individual participant, including by supporting the well-being of their family and community members. Access to culture can help an Indigenous person gain greater insight into the impacts of colonialism on their lives; help protect them from anti-social influences among their friends, family, and community members; and support their sense of purpose and planning for the future. It can also help protect an Indigenous person from the negative consequences of experiences of racism and discrimination on both their mental health and their self-identity. Cultural alienation (devaluing or disconnection from one's culture) can increase an Indigenous person's likelihood to be involved in the criminal justice system. The suppression and marginalization of Indigenous cultures can diminish an Indigenous person's sense of self-worth. The suppression and marginalization of Indigenous cultures by colonial legal institutions can diminish the criminal legal system's legitimacy among Indigenous persons. Discrimination in the criminal legal system can increase an Indigenous person's likelihood of being involved in that system, including by increasing the level of stress they face and by disrupting their family and community supports.

While access to culture is important, other barriers like systemic discrimination, bias, and colonialism limit the opportunities that Indigenous persons have for rehabilitation or avoidance of involvement in the criminal legal system. Access to culture in general can help Indigenous persons deal with or avoid substance use issues. Indigenous persons tend to be more successful in programs for substance use that are informed by Indigenous culture. Substance use issues among Indigenous persons need to be understood as consequences of trauma and colonialism, including discriminatory government policies and practices. Access to culture in general can help protect Indigenous persons against mental health symptoms, including by strengthening their positive self-identity. Indigenous cultures provide holistic ways in which to understand and address mental health symptoms, including through cultural practices and community connections. Decision-makers in the criminal legal system tend to undervalue the

⁴ Ivan R Diamond et al., "Defining consensus: a systematic review recommends methodologic criteria for reporting Delphi studies" (2014) 67:4 *Journal of Clinical Epidemiology* 401; Maite Barrios et al., "Consensus in the Delphi method: what makes a decision change?" (2021) 163:120484 *Technological Forecasting and Social Change*.

importance of access to culture for Indigenous persons when addressing mental health related risk factors. Mental health symptoms among Indigenous persons are often linked to systemic issues like facing higher rates of exposure to trauma and substance use. There are not enough opportunities for Indigenous persons to learn about their own culture in support of their mental health and well-being, such as through Elders.

Programming to address an Indigenous person's risk of criminal justice involvement is less likely to be effective when it relies on a generalized (pan-Indigenous) representation of Indigenous culture; when it is developed and delivered by non-Indigenous persons; or when it does not give someone the autonomy to decide what they already know and what they would like to learn more about. Opportunities for access to culture must be inclusive of many different experiences of being Indigenous, including individuals who are reconnecting with their Indigenous culture and identity. They must also meet the needs of Indigenous persons who face distinct forms of marginalization, such as Indigenous women and two-spirited persons. Racism and discrimination in the criminal legal system are barriers to accessing culture for Indigenous persons. Many programs for Indigenous persons to access culture are inconsistent in their availability because they are pilot projects or otherwise have limited funding. Prison populations are typically divided by gender and individuals with marginalized gender identities or expressions are more likely to face violence and discrimination while in prison. As a result, Indigenous persons with marginalized gender identities or expressions are unlikely to have opportunities to access culture in ways that are relevant to their gender identities or expressions while in prison. Some Indigenous Elders and Cultural Advisors restrict who can take part in cultural practices and ceremonies based on their gender identity or expression, such as by enforcing gendered clothing protocols. Indigenous persons with marginalized gender identities or expressions are more likely to face discriminatory attitudes and perspectives from their family and community members, limiting their ability to access culture outside of prison.

Consensus was not achieved on two propositions, although participants indicated some common views with regards to the complexity of these matters. There was some disagreement on whether prison tends to disrupt an Indigenous person's access to culture and can increase the likelihood of further involvement in the system. Likewise, there was some disagreement on whether greater awareness of racism and injustices against Indigenous Peoples could be a risk factor for developing adverse mental health conditions.

Participants ranked priorities for accessing culture as follows: 1) access to ceremony; 2) access to Elders/Cultural Advisors; 3) access to language; and 4) access to land-based practices. Highest priority features for cultural interventions were ranked as follows: 1) consistency and continuity; 2) being welcoming to those who are reconnecting; 3) respecting individual autonomy; and 4) distinction-based. Priorities for addressing systemic barriers were ranked as follows: 1) discriminatory treatment and funding (equal); and 2) housing and institutional ignorance (equal). Indigenous involvement in interventions was ranked as follows: 1) Indigenous designers/facilitators; 2) self-government; and 3) community involvement.

Discussion and Conclusion

Canada's criminal legal system mandates careful attention to the cultural appropriateness of interventions for Indigenous persons. Yet, these requirements remain poorly implemented in practice. This study has demonstrated a remarkable level of agreement among academic and front-line experts on the relationship between access to culture and justice involvement for Indigenous persons. While propositions identified in this study are highly generalized, they provide clear foundations for more individualized assessment of interventions' cultural relevance, which should support more informed recourse to culture-based options.