Re-contextualizing pre-sentence reports
Risk and race

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Abstract
In the past two decades, Canadian policies governing the structure and content of pre-sentence reports (PSRs) have shifted to focus more directly on the systematic identification of offender’s criminogenic risk and needs. In this article, we (1) examine how risk-based approaches to offender management have altered the structure and format of the PSR in Canada, and (2) contrast the structure of risk-based PSRs to Gladue reports for Aboriginal offenders in Canada. Gladue reports are designed to identify the unique systemic race/cultural and historical factors specific to Aboriginal offenders and to recommend alternatives to incarceration. We argue that although risk-based PSRs incorporate recognition of race-related issues, their structure and emphasis on actuarially based risk assessments frames race and risk differently from Gladue reports. In Gladue reports, holistic approaches and cultural impact factors are documented and used to understand risk and need. Finally, we argue that the conceptualization and relevance of race is limited by actuarial risk logic.

Keywords
actuarial, Gladue, pre-sentence report, race, risk, sentencing

Sentencing is an important aspect of legal decision making, in which information about an offender’s risk and needs is produced, contested and used to craft sanctions. Risk information is clearly relevant to the judiciary during the sentencing process (Vigorita, 2003): to evaluate ‘risk’, judges use information from a variety of sources (i.e. criminal history, professional assessment, pre-sentence, ‘Gladue reports’ and offender statements), and decisions based on risk are often informed by conflicting penal rationales (i.e. rehabilitation, deterrence, incapacitation). Scholars have recently raised concerns about how criminal law, and sentencing

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in particular, is increasingly being shaped by the proliferation of actuarially based knowledge about ‘risk’ (Simon, 2005; Netter, 2007) and, more broadly, how punishment is being viewed through the lens of actuarial probability (Ashworth, 2005; von Hirsch and Ashworth, 2005; Maurutto and Hannah-Moffat, 2006, 2007; Harcourt, 2007). In this article, we examine the incorporation of risk into pre-sentence reports (PSRs), which are ordered by the Canadian judiciary in cases that require more detailed information about an offender and community options for release. We examine how applying risk-based approaches to offender management has changed the structure of the PSR and explore how this change affects the characterization of offenders’ risk and treatment needs. We also examine how it conflicts with recent legal reforms directing courts to foreground racial histories when sentencing Aboriginal people.

Many Canadian and international jurisdictions are modifying policies and mandating the use of standardized actuarial risk assessment instruments in PSRs; and some US states are incorporating actuarial risk scores into sentencing guidelines (i.e. Virginia, see discussion in Harcourt, 2007). Actuarial-based risk assessments use statistical techniques to assess and classify offenders’ criminogenic need(s) and to predict the likelihood of recidivism. Actuarial assessments focus on ‘objective’ criteria (i.e. type of offence, prior criminal history, age and gender and sentence length) and factors that are empirically shown to be statistically co-related with recidivism. The criteria contained in the actuarial risk instruments, such as the Level of Service Inventory – Revised (LSI-R) are easily identifiable and verifiable, and hence can be quickly scored by correctional staff, thereby reducing the need for broad, lengthy assessments by professionally trained clinicians (Hannah-Moffat, 2004; Maurutto and Hannah-Moffat, 2006). This form of actuarial assessment is considerably different from alternative methods of assessing an offender’s risk and needs for the purpose of sentencing.

PSRs frame legal subjectivities for the court. They play an important role in informing the court about the offender’s risk and treatment potential, and in defining the type, length and conditions attached to the final sentence. Risk technologies are framed as superior to unstructured clinical judgement, which involves ‘the exercise of educated intuition where information items gleaned from interviews, client history, psychometric instruments, and conferences with other professionals are engaged at the discretion of the individual carrying out the assessment’ (Meehl, 1954 cited in Harris, 2006: 8). Risk technologies are often characterized as having supplanted much of practitioners’ discretionary decision making with structured, quantitatively derived decision-making templates. Some scholars maintain that the transition to risk-based penalty has led to the ‘deskilling’, ‘scientification’ and ‘erosion of professional discretion’ (Robinson, 2003: 33; see also Schneider et al., 1996; Baker, 2005; Fitzgibbon, 2007, 2008), or even to the elimination of discretion among criminal justice practitioners. Feeley and Simon (1992, 1994) argue that the proliferation of actuarial tools, the rise of incapacitation policies and the apparent decline of more clinical approaches to offender management signal a new form of penal managerialism, namely ‘actuarial justice’.
The restructuring and alignment of PSRs within actuarial risk logic marks a significant change in the penal system, especially since the PSR literature clearly illustrates a high level of concordance between recommendations by probation officers and the sentences imposed by judges (Cole and Angus, 2003: 302; see also Thorpe and Pease, 1976; Thorpe, 1979; Brown and Levy, 1998; Creamer, 2000; Bateman and Stanley, 2002; Bonta et al., 2005). For example, Canadian studies report an 80 per cent concordance rate between PSR recommendations and dispositions (Hagan, 1975; Boldt et al., 1983) and demonstrate a high level of judicial satisfaction with these reports. International research has reported similarly high levels of concordance between PSRs and judicial decision making: 92 per cent in the United States (Norman and Wadman, 2000); 78 per cent in England and Wales (Thorpe and Pease, 1976); and 77 to 80 per cent in New Zealand (Deane, 2000). Although evidence on concordance between PSR and sentencing is contested, highly nuanced and difficult to unravel empirically (Haines and Morgan, 2007; Tata et al., 2008), existing research demonstrates that the PSR plays a central interpretive role in sentencing and among criminal justice professionals (see also Tata, and Wandall, both this issue).

International literature has raised important concerns about how the rise of actuarial technologies affects, targets and indirectly discriminates against racial minorities (Bhui, 1999; Durrance and Williams, 2003; Pridemore, 2004; Hudson and Bramhall, 2005; Harcourt, 2007). Some researchers have argued that rather than producing more neutral practices, the use of actuarial risk assessments reproduces and embeds forms of systemic discrimination (Maurutto and Hannah-Moffat, 2007). Research has shown that legal understandings of risk are gendered and racialized (Hannah-Moffat and O'Malley, 2007; Harcourt, 2007) and that the integration of conventional risk/need assessments into penal practices produces gendered and racial effects. Some scholars have investigated specific gendered (Deane, 2000; Horn and Evans, 2000) and racial biases inherent in the writing of PSRs (Cohen and Palmor, 1985; Power, 2003; Hudson and Bramhall, 2005), but these studies have not addressed how race and gender concerns shape the risk-based structure of the PSR, and few, if any, have compared the PSR and other specialized court reports such as the ‘Gladue report’ about Aboriginal offenders, which differently constitute offender risk and rehabilitation.

In this largely conceptual article, we argue that the risk-based focus of the PSR provides a decontextualized and limited understanding of the impact of racial histories on offending, sentencing and treatment options. Concerns about race, in particular the vastly disproportionate incarceration of Aboriginal people in Canada, have given rise to new sentencing provisions that affect all court reports. The 1996 amendments to Canadian sentencing law, specifically section 718.2(e) of the Criminal Code of Canada, provide new guidelines for how judges are to approach the sentencing of Aboriginal offenders. The Supreme Court of Canada decision in R v. Gladue (1999) requires the court to consider non-custodial options for Aboriginal people and to consider the unique circumstances of Aboriginal offenders. Canadian courts, and consequently PSRs, now have a statutory duty...
in the case of Aboriginal offenders to incorporate cultural information about risk. Nevertheless, few scholars have focused on the compatibility of actuarial risk logic with the type of contextualized analysis of race required by Canadian law. As we will show in this article, the PSR policy resulting from this new legal framework positions race (and gender) issues as secondary, or at best supplementary, to actuarial risk.

This article uses data from two separate studies. We use data from 43 detailed semi-structured interviews with probation officers, defence lawyers and Crown prosecutors across Canada. These interviews asked participants about the use, preparation and content of the PSR, the use of risk assessments in the PSR process and the role (if any) of gender and race in the preparation of the PSR. We also rely on a content analysis of the provincial and territorial risk assessment policies and risk instruments used in probation and sentencing. These two sources of data were collected for a larger study on the expanding use of risk assessments within Canadian legal and criminal justice systems (see Hannah-Moffat and Maurutto, 2004). Second, we rely on three additional data sources: 12 semi-structured interviews with judges, court works and lawyers; 12 months of court observations in Gladue courts; and content analysis of 15 pre-sentence and Gladue reports. These data were collected for an ongoing study of Canadian specialized courts beginning in 2008.

Practitioners’ dissatisfaction with the information provided in PSRs for Aboriginal offenders and their unique circumstances has recently motivated some courts to order more specialized, separate ‘Gladue reports’, often in lieu of the PSR. A Gladue report and its recommendations are holistic and contextualized accounts that characterize the Aboriginal offender’s needs, risk and community options differently from the actuarial risk-based character of PSRs. Essentially, they adopt a non-actuarial model and more contextualized approach to situate and frame Aboriginal offenders’ risk.

This article examines how, over the past two decades, policies governing the structure and content of PSRs in Canadian jurisdictions have been revised to focus more directly on systematic identification of the offender’s criminogenic risk and needs, and how these factors have affected, are affecting and will affect offender behaviour. First, we argue that the incorporation of actuarial risk logic into the preparation of PSRs changes the content, structure and recommendations of these reports. We demonstrate how an offender’s risk/need levels as presented in PSRs increasingly reflect an actuarial definition of criminogenic risk/need. This shift is a consequence of policies that mandate probation officers in many jurisdictions to use ‘objective’ risk assessment instruments when preparing the PSR, such as the Level of Service Inventory – Revised (LSI-R). Second, we explore how the application of actuarial logic in the PSR reframes rehabilitative concerns, social histories and sentencing recommendations. We argue that these differences are significant because they change how legal subjects are characterized and what type of information is presented to courts. The international research shows that these reports play a key role in sentencing (Tata et al., 2008). Third, we argue that although
risk-based PSRs consider race, their structure and emphasis on actuarially based risk assessments tend to frame offender risk quite differently from Gladue reports, which culturally situate offenders and incorporate racial knowledge to position criminal behaviour holistically within a wider collective history of race relations and colonialism. To make these arguments, we draw on detailed analysis of policies for court-ordered reports, sample PSR and Gladue reports and a comprehensive review of the risk tools and types of data used to compile reports. Although our data include information from 11 provinces and territories, our focus is the province of Ontario, which has one of the most explicit risk-based PSR policies. Ontario’s PSR policy simultaneously addresses Gladue and criminogenic risk/need; its judiciary have been ordering Gladue reports either in lieu of or to supplement the PSR, and it has a specialized Aboriginal People’s Court explicitly designed to enact Gladue principles.

Understanding the PSR: Canadian legal/policy context

In Canada, PSRs are prepared by probation officers at the request of a judge following a conviction. The PSR, also known as a ‘predisposition report’, a ‘social inquiry report’ or ‘pre-sentence investigation’ in the international literature, contains life history information about offenders and occasionally information about victims. PSRs are time consuming to compile (10–14 hours on average) and are, therefore, generally requested only in cases when custody is being considered or ‘complex’ cases (Bonta et al., 2005; Cox, 2008). Comprehensive national data on the number of PSRs ordered in Canada are not available, but individual jurisdictions report that PSRs are provided in a relatively small number of cases. In Ontario, for example, 7017 PSRs were completed in 2006–7 (Cox, 2008), which represents approximately 10 per cent of the cases in adult criminal court. PSRs are prepared on the request of a sentencing judge, they are not mandatory.

Judges use information and recommendations from the PSR to determine the suitability of community supervision and to develop the conditions for supervision. Criminal Code section 721.3 stipulates that unless otherwise specified by the court, the PSR must, wherever possible, contain information about the following: (a) the offender’s age, maturity, character, behaviour, attitude and willingness to make amends; (b) any history of previous dispositions under the Young Offenders Act and of previous findings of guilt under this Act and any other Act of Parliament; and (c) any history of alternative measures used to deal with the offender, and the offender’s response to those measures. Criminal Code guidelines also grant provinces and territories the authority to make further specifications about the PSR’s content and form (sec. 721.2). Consequently, the exact format of the PSR is left to the discretion of each province or territory. The structure of the PSR is also defined by section 718.2 of the Criminal Code of Canada and the R v. Gladue (1999) decision, which provided new guidelines for judges when they approach sentencing, specifically the sentencing of Aboriginal offenders. According to section 718.2(e), ‘all available sanctions other than imprisonment that are reasonable in the
circumstances should be considered for all offenders, with particular attention to
the circumstances of Aboriginal offenders’.

The Supreme Court of Canada decision in *R v. Gladue* (1999) was based on an
interpretation of section 718.2(e) as an alteration of the method of analysis used by
judges in sentencing. It indicated that when crafting a sentence for an Aboriginal
offender, judges must:

[c]onsider unique circumstances arising from or specific to Aboriginal heritage
(e.g., marginalization, residential school, overt racism, chronic substance abuse in
his or her community, family or community background, isolation, community relo-
cation, dislocation from Aboriginal community given adoption and/or product of
child welfare system, etc.), and to consider other sanctions specific to Aboriginal
heritage (e.g., sentencing circles, Aboriginal healing lodges, etc.). (Ministry of
Correctional Services, 2007b: 3)

These provisions explicitly address the problem of the overrepresentation of
Aboriginal people in custody and encourage the consideration of alternative sen-
tences. Historically, Aboriginal people in Canada have been overincarcerated. These
Aboriginal people account for approximately 3 per cent of the adult population
in Canada, but represent roughly 22 per cent of the Canadian prison population
(Perreault, 2009). Consequently, PSR policy in many provinces has been modified
to include information specific to Aboriginal offenders. In most Canadian jurisdic-
tions, policies for court reports include supplementary descriptions of the
Gladue decision and instructions for including Gladue factors in PSRs. These legis-
latve frameworks require the writers of the PSR to incorporate Aboriginal issues,
but do not explicitly require that the PSR include information about criminogenic
risk. Thus, whether or not to include actuarial risk assessment in the PSR is a
matter of discretionary policy for and practice in each jurisdiction.

Since 2000, eight of Canada’s 13 jurisdictions have integrated risk assessments to
structure their PSRs, and the remaining three provinces and territories are contem-
plating their integration (Cole and Angus, 2003; Hannah-Moffat and Maurutto,
2004; Bonta et al., 2005). Most provinces have used a version of the LSI-R,12
developed by Andrews and Bonta (1995, 2003), to restructure PSRs and to focus
recommendations on criminogenic risk/need factors. Others have developed their
own tools; for example, British Columbia pioneered the Youth Community
Assessment Risk/Need Tool, and Manitoba and Nunavut are using the Offender
Risk Assessment and Management System (ORAMS), a tool that the Northwest
Territories used previously.13 However, jurisdictions across the country vary
greatly in terms of how risk information is reported in PSRs. For example, PSRs
prepared in Manitoba and Saskatchewan include a subsection with the findings of
an evidence-based, actuarial risk assessment; other jurisdictions use similar assess-
ments to guide the writing of the PSR without formally referencing the risk assess-
ment. Nova Scotia included a separate section on risk assessment, but removed it
after a court challenge (*R v. Elliot*, 2004). Nova Scotia now uses the risk assessment
to structure the PSR report without directly referencing the risk instrument (Bonta et al., 2005). In Ontario, provincial policy requires that practitioners preparing PSRs use an Ontario Revision risk assessment instrument (LSI-OR), but the score is not to be disclosed or discussed in the report (Ministry of Correctional Services, 2007b). In contrast, PSRs prepared in Saskatchewan include the risk score and clearly identify the use of the LSI.

**Actuarial risk and the PSR**

Most of the literature about PSRs focuses on judicial use, interpretation and satisfaction with the reports (Brown, 1991; Bonta et al., 2005; Tata et al., 2008), as well as on the training of PSR writers and the assessment of the quality of reports (Gelsthorpe and Raynor, 1995; Raynor et al., 1995; Creamer, 2000; Norman and Wadman, 2000; Bateman and Stanley, 2002; Downing and Lynch, 2002). Few have conducted a detailed analysis of how actuarial risk-based rehabilitative logics are being used to restructure the content of the PSR. The recent emphasis on risk in the PSR can be linked to three broad shifts in penalty: (1) the rise of penal managerialism with its emphasis on efficiency and effectiveness; (2) risk-based penalty, and particularly the use of actuarially based assessment techniques; and (3) the reframing of rehabilitative approaches and offender management (Hannah-Moffat, 2004; Maurutto and Hannah-Moffat, 2006; Ward and Maruna, 2007). These broader trends have affected probation practices and consequently the PSR (Stinchcomb and Hippensteel 2001; Cole and Angus, 2003; Kemshall, 2003; Hudson and Bramhall, 2005, 2007; Cole, 2007). The type of actuarial risk assessment integrated into Canadian policy emerged from the ‘what works movement’, which advocates an empirically based assessment of an offender’s ‘criminogenic’ risks/needs and the provision of accredited, evidence-based treatment services, which are matched to the offender’s risk/need levels (Robinson, 1999; Hannah-Moffat, 2004; Mair, 2004). This risk logic and related assessment tools are treatment focused. This form of risk/need assessment identifies ‘criminogenic factors’ which are ‘treatable’ and statistically correlated with recidivism. Targeted ‘evidence-based’ rehabilitative programmes which are matched to the offender’s level of risk/need are recommended. If a motivated offender completes these rehabilitative programmes, their probability of recidivism is assumed to be lower.

Since the 1990s, Canadian probation and correctional institutions have integrated formal risk assessment into their case management and supervisory practices (Maurutto and Hannah-Moffat, 2006). A version of the Level of Service Inventory (LSI) is routinely used by probation officers across the country to classify and formulate treatment plans for sentenced offenders and to manage growing case-loads through the efficient, targeted allocation of scarce treatment and supervisory resources. Advocates of risk-based probation management claim that the application of tools such as the LSI ensures offender management is more efficient, empirically sound, objective and transparent (Bonta et al., 2005).
Actuarial risk/need assessment was incorporated into the PSR process in 2000. In Canada, the current trend is to collapse actuarial data into the PSR narrative and to use actuarial templates to structure the PSR, even though the assessment of an offender in a pre-sentence context differs from the assessment of a sentenced offender. For example, Maurutto and Hannah-Moffat (2007) argued that the inclusion of risk assessment information in PSRs raises questions regarding the extent to which information that is not directly pertinent to the offence, but rather is a prediction of future behaviour based on a narrowly defined set of criminogenic needs, ought to be used to inform dispositions.

Evidence-based risk/need assessment tools used in the preparation of PSRs combine static (unchanging) historic factors with dynamic (changeable or amenable to treatment) criminogenic need variables. The most prominent tools, the LSI – Revised (LSI-R) and Youth Level of Service Inventory/Case Management Inventory (YLS/CMI), typically contain eight risk/need factors: (1) criminal history (measured in terms of number of offences rather than type of offence); (2) education/employment; (3) family circumstances; (4) leisure/recreation; (5) pro-criminal attitude; (6) substance abuse; (7) antisocial patterns; and (8) acquaintances. A series of questions is typically used to determine the relevance and strength of each factor. A numerical evaluation of these variables produces a total risk score that is used to classify an offender as having a low, medium or high risk of recidivism. Currently, the LSI is used in jurisdictions throughout Canada, the United States, the United Kingdom, Australia and Europe. The tool, originally written in English, is available in Spanish, Croatian and French (French European and French Canadian), and it is in the process of being translated into Dutch and Icelandic (Maurutto and Hannah-Moffat, 2006: 439).

The LSI-R is principally based on a Risk-Need-Responsivity (RNR) framework (Andrews et al., 1990). An RNR framework assessment focuses on identifying criminogenic need, which narrowly represents the areas of an offender’s life that are statistically correlated with offending and are believed to be amenable to treatment. Addressing these risk/need factors through treatment programmes is expected to lower recidivism and, consequently, ‘risk’. For example, substance abuse is known to increase recidivism, but treatment programmes can diminish such problems, thereby lowering the chance of recidivism. This particular definition of ‘criminogenic needs’ differs from that of ‘self-defined needs’ or ‘clinically defined holistic needs’, and often excludes socio-cultural understandings of need and structural factors such as racism or poverty (see Hannah-Moffat, 2004). Additionally, advocates of the RNR framework and broader principles of effective rehabilitation support matching the intensity of treatment and supervision to the offender’s assessed level of risk/need (Andrews et al., 1990). They argue that lower risk/need offenders do not require a high number of interventions and that overprogramming can produce the adverse effect of escalating risk. The vast literature on the RNR and related risk/need assessment tools has only recently considered its implications for gender (Blanchette and Brown, 2006; Hannah-Moffat, 2008), and
few scholars have examined the logic of this risk-based rehabilitative model’s compatibility with racial, ethnic and cultural considerations.

Those advocating the inclusion of risk/need-based instruments in PSRs argue that these tools can identify the necessary level of intervention and supervision, and systematically identify treatment targets by providing information on the needs of the offender that must be addressed to reduce recidivism (Bonta, 2002; Andrews and Bonta, 2003). They claim that it is in the best interest of the courts to apply risk/need assessment to structure PSRs or to identify what needs to be done to manage offender risk (Bonta et al., 2005: 24). In Canada, PSRs tend to be rehabilitation oriented, and thus the integration of risk/need tools is intended to facilitate the principles of effective intervention.

Even though some jurisdictions may not formally use risk assessments to structure PSRs, research by Hannah-Moffat et al. (2009) reveals that the language of risk can informally shape a probation officer’s conceptualization of what information should be included in PSRs. During our research, several probation officers indicated that although actuarial risk assessments may not be required, as a matter of ‘common practice’ they rely on their own subjective judgement of risk factors to complete the PSRs. Consequently, the use of actuarial risk assessments in PSRs is not always transparent or easily contestable; yet it is often present.

Prior to the incorporation of risk instruments into the preparation of the PSR, information about offenders and their history was normally recorded in a narrative format modelled on clinical or social casework investigations methods. Clinicians and probation officers used their professional judgement together with their clinical and diagnostic skills to document the offender’s social and criminal history and their treatment needs. An offender’s risk level and needs were defined largely through these clinical or social work approaches, which emphasized the range of personal, historical and socio-economic factors related to the offences. Probation officers were given considerable discretion, and the structure of reports varied slightly across individuals and jurisdictions. As late as 2003, Ontario PSRs typically included separate sections about sources of information, particulars of offences, family information, information about the person (i.e. physical/emotional health; education/employment), character/behaviour/attitude, willingness to make amends, interests/future plans, response to past court sanction(s), agency involvement/services used to date, recommendations and a separate section about Aboriginal circumstances/approaches. These reports discussed the risk of the offender, but did so in a narrative format without the aid of the results of a formal risk/need assessment template.

Studies have demonstrated that recommendations by probation officers during this time focused on prior record, attitude towards offences and willingness to make amends (or remorse) (Hannah-Moffat and Maurutto, 2004; Bonta et al., 2005). Previous research in the USA and in Canada has suggested that recommendations in PSRs were often affected by the seriousness of the offence, prior record and past and/or perceived likelihood of success upon the completion of probation
(Carter, 1967; Hagan, 1975). Nevertheless, individualized reports provided a detailed contextualized narrative about the offender.

With the introduction of actuarial risk logic, policy on PSR preparation shifted. In 2007, Ontario’s policy mandated that the PSR’s focus is ‘on identifying risk/needs and managing those risk/needs in the community’. This new policy is clearly organized around the logic of criminogenic risk; it states that the PSR should:

provide the court with personal information on the offender and his/her assessed criminogenic risk and needs; (b) submit well-founded recommendations based on an assessment; recommend conditions that will address the offender’s criminogenic needs and that will assist a PPO [Probation and Parole Officer] to manage the identified risk should community supervision be included in the court’s disposition; and assist the court in arriving at an appropriate disposition. (Ministry of Correctional Services, 2007a cited in Cox, 2008: n.p., emphases added)

Ontario’s policy extends the legal framework mentioned above, explicitly directing the probation officer to assess the offender’s risk and criminogenic needs. Whereas probation officers preparing PSRs already used a range of assessment techniques to determine a defendant’s level of risk and needs, the policy now requires the use of the LSI-OR to assess criminogenic risk/need systematically. Ontario’s new policy guidelines state the following:

Although the PPO is not required to complete an electronic Level of Service Inventory – Ontario Revision (e-LSI-OR) on an offender for whom a PSR has been ordered, information gathered for a PSR closely parallels the information contained in a LSI-OR. Since the PSR must address the criminogenic factors, strengths, needs and responsibility issues of the offender, PPOs are encouraged to use the LSI-OR tool to assist in the identification of these factors. Previous LSI-ORs may also be used to help identify these factors. However, the use of the LSI-OR is not to be referenced in the PSR. (Ministry of Correctional Services, 2007b: 8, emphases in original)\(^\text{16}\)

Accompanying the incorporation of risk assessments in Ontario was a shift in PSR structure and, more notably, a shift in the direction of the policy and operational manuals provided to probation officers writing the PSR. Probation officers are now explicitly instructed to avoid ‘personalizing the offender by using his/her name’, who is to be ‘referred as the subject or by surname’ because the PSR ‘is a professional report for the court’ (Ministry of Correctional Services, 2007b: 3). The content of the report is organized around a discussion of criminogenic factors outlined in the LSI-OR. Although the specific headings vary slightly across reports, headings include sources of information, previous record, family situation, companions, leisure, education/employment, substance use, character/behaviour/attitude, response to community services and past court sanction(s)/disposition(s)/sentences(s), victim(s) comments, assessment and recommendations.
(ON PSR #149). Notable within this list is the inclusion of factors such as companions, leisure, substance abuse, personal/family circumstance, attitudes and education/employment, which are also criminogenic factors, as listed on LSI-OR templates and interview guides. Now excluded are sections such as ‘overall information about the individual person’, which normally included a discussion of non-criminogenic items such as physical and emotional health.

Categories such as ‘interests/future plans’ and ‘willingness to make amends’ are also absent; information that would have typically been included in these sections is now repositioned relative to a broader understanding and assessment of criminogenic risk/need. For example, the policy clearly states that ‘obtaining information about an offender’s willingness to make amends, attitude toward the offence, and remorse is an important component of the PSR and it is viewed as an indicator of the offender’s amenability to correctional intervention’ (Ministry of Correctional Services, 2007b: 8, emphasis added). These differences reflect a shift in emphasis from rehabilitation (understood within an individualized treatment model) to risk of re-offending and risk-informed rehabilitation (for which non-criminogenic factors such as remorse, future plans and physical and emotional health are no longer considered relevant and are considered difficult to target in treatment). Factors such as family background and education/employment appeared in earlier risk-inspired PSRs, but these have now been reconstituted as criminogenic risk factors. Each subsection of the policy detailing the section’s purpose clearly states that the section should document ‘related strengths or criminogenic factors that are identified’ (Ministry of Correctional Services, 2007b: 8, emphasis added), and then provides further instructions about the type of information to include in these sections to ensure probation officers direct their attention to criminogenic and treatment responsivity issues.

The content and structure of the information which the probation officer is supposed to collect for each section closely parallels the categories in the LSI-OR and its interview guide. Even the section pertaining to past responses to community supervision has been restructured to include information about the offender’s motivation to address current criminogenic factors, which are also directly related to LSI-OR categories. Although not readily apparent from the policy, this restructuring ensures the information collected and contained in the report is directly related to criminogenic factors. This restructuring of PSRs has the effect of characterizing the offender as a constellation of risk/need factors that can be isolated, targeted and treated to reduce the chances of recidivism. An offender’s problems are no longer situated within a broader social context, and sentence recommendations and, ultimately, sentences become a mechanism to regulate offender risk through treatment interventions as determined through actuarial techniques. Interestingly, the research of Hannah-Moffat et al. (2009) demonstrates that although risk tools curtail professional discretion, practitioners often embrace actuarially based risk tools because they are perceived as providing a layer of protection or ‘professional risk management’ that insulates practitioners and provides them with more defensible decision making.
Re-contextualizing race in the risk-based PSR

Prior to the introduction of actuarial risk assessment, PSR recommendations were based on a holistic analysis of overall needs relevant to the crime, not just criminogenic factors. Current PSR trends have resulted in ‘the replacement of subjective insights into the social, educational, economic, and interpersonal profile of the offender’s past life with considerably more objectively quantified numbers, dates, and dispassionate descriptions of previous criminal convictions’ (Stinchcomb and Hippensteel, 2001: 172). As shown earlier, application of the LSI-R explicitly connects the information collected and presented in the PSR with a specific risk logic: the PSR is now organized according to a narrow actuarial understanding of risk and need.17 The portrait of the offender provided to the court prioritizes areas of an offender’s life that are statistically correlated with recidivism. This type of PSR places more emphasis on the factors that an offender has in common with an aggregate population than on the individual’s unique history and circumstances. Although PSR policies are increasingly linking risk factors and recommendations, the judiciary is rarely aware of these policy shifts and the complexity of actuarial risk assessments (Maurutto and Hannah-Moffat, 2007). The following discussion builds on the above analysis to show how race is integrated into Ontario’s LSI -informed risk assessment PSR policies.

Alongside the emphasis on criminogenic risk, Ontario’s 2007 PSR policy indicates that the PSR should consider the race and ethnic background of offenders (a provision that has since been extended from its original focus on Aboriginal offenders to other racial minorities) (Ministry of Correctional Services, 2007b: 4). Stemming from the Gladue decision, which requires the judiciary to consider the unique circumstances of the Aboriginal offender, the 2007 PSR policy offers direction on culturally specific information for Aboriginals. According to the decision, judges were supposed to: ‘[t]ake judicial notice of the broad systemic and background factors affecting Aboriginal people, and of the priority given in Aboriginal cultures to a restorative approach to sentencing’ (R v. Gladue, 1999: para. 7). In Ontario, Gladue factors typically include, among others, a consideration of the following: personal circumstances; histories of adoption or foster care; impact of residential schools on the offender or offender’s family; homelessness and poverty; factors leading to a separation from Aboriginal traditions.18

A Gladue report is intended to contextualize the life and behaviour of an Aboriginal person, including the offender’s family’s experiences and his/her spiritual, cultural, family and community support network. For example, the courts are interested in: the family’s involvement in the criminal environment; whether the offender or family members attended residential school; if so, where, how many years, how were they treated, how long were they denied family contact; the main social issues affecting the offender’s home/original community; how the offender’s family/community addressed those issues; how the offender, offender’s family and the community have been affected by economic conditions; and the quality of the offender’s relationship with family, extended family and the community.
In keeping with the legislation’s non-custodial emphasis, reports prepared for Aboriginals are intended to advise the court about the availability of culturally relevant or mainstream healing resources and relevant alternatives to incarceration (Campbell Research Associates, 2006, 2008). This analysis is meant to provide the court with culturally situated information which places the offender in a broader social-historical group context. It offers a different and more holistic understanding of the Aboriginal offender, which clarifies how broader systemic factors are related to offending and sentencing. These factors are not intended to mitigate offending, but can be used to justify a non-custodial sentence (where one may be appropriate), or, to shape conditions in the case of a conditional sentence or probation order, and to present creative alternatives to the court. This kind of analysis can reframe the offender’s risk/need by holistically positioning the individual as part of a broader community and as a product of many experiences.

Although Ontario’s 2007 PSR policy acknowledges and underscores the main principles of the Gladue decision, its organization and emphasis is nevertheless on criminogenic risk/need. A situated racialized analysis of broader circumstances and how these contribute to the offence or a person’s offending patterns is a secondary consideration. According to policy, the PSR must meet the legislative requirements set out in the Criminal Code and respect the provisions pertaining to Aboriginal people. This policy framework resulted in the removal of a section of the PSR entitled ‘Aboriginal Circumstances/Approaches’, and the new policy now addresses Aboriginal concerns through guidelines about the content and form of each component of the PSR. Instead of Aboriginal issues being located in one small section of the report, this information can be found throughout the report in the appropriate sections. Each section of the policy includes a qualification that states ‘when the PSR is being written for an Aboriginal offender, information should include...’ (Ministry of Correctional Services, 2007b). For example, when preparing the ‘personal and family information’ section in a PSR for Aboriginal offenders, Ontario probation officers are to include not only information pertaining to personal and family issues, but also Gladue factors including the offender’s community or band; their residence; whether they were raised on a reserve; any family history that is unique to Aboriginal culture, including whether the offender or family members were sent to residential schools; and other ‘unique systemic background factors’ (Ministry of Correctional Services, 2007b: 13–14). While this information is consistent with the legal direction to consider the unique circumstances of Aboriginal people, it is also located within the newly structured risk-based PSR in which assessments and recommendations are primarily based on criminogenic risk/need. Consequently, Gladue factors are positioned and itemized alongside (and sometimes interpreted as) risk factors. Racial considerations are simply added on to actuarial methods of assessing ‘risk/need’. The racially situated framing of the offence required by Gladue is not normally present in the PSR. The policy gives little guidance on how probation officers ought to reconcile their holistic culturally situated assessments of the offender.
with the policy’s emphasis on criminogenic risk/need. The result is Aboriginal offenders continue to be characterized as high risk and high need.

PSR policy is thus limited. Its effect is to situate race within a broader actuarial risk framework with no clear direction on how to reconcile the embedded contradictions. Race is identified as a ‘special consideration’ for Aboriginal offenders, but simply adding race as an addendum does not sufficiently address the situational context of the Aboriginal person, nor the theoretical and methodological difficulties associated with the use of conventional risk/need assessment instruments on non-white and Aboriginal populations. For example, an increasing number of race-aware critics of risk/need assessment argue that actuarial tools such as the LSI-R include items (variables) that target the social disadvantages experienced by women and minority groups (Aboriginals, Blacks, Hispanics) or reflect moral and social values that are rejected by certain segments of a population (Zimmerman et al., 2001; Belknap and Holsinger, 2006; Hollin and Palmer, 2006; Folsom and Atkinson, 2007; Harcourt, 2007; Hannah-Moffat, 2008). An examination of the context of Aboriginal peoples’ lives in Canada, particularly on reserves, clearly reveals the problems inherent to risk assessments. A focus on actuarial risk assessment of criminogenic risk/needs should not be abstracted from the socio-political, economic and cultural conditions. The statistical calculus underlying actuarial risk assessments is based on a set of assumptions which underestimate and devalue the importance of social and power relations and social inequality. Empirical data on how race matters in assessments of risk/need factors are inconclusive and poorly theorized, and yet are routinely used in the preparation of PSRs. Locating Aboriginal issues within a risk framework simply appears to address the specificity of Aboriginal context. Arguably drawing a probation officer’s attention to a series of Gladue (and ‘risky’) factors with little guidance on how to reconcile the structural contradictions embedded in PSR policy about how to interpret risk can have an unintended discriminatory effect. Consequently, the newly mandated focus on social and historical circumstances of Aboriginal people can escalate (rather than mitigate or contextualize) probation officers’ assessments of risk and treatment requirements.

**Alternative understandings of race and risk in Gladue reports**

This section explores how alternative sentencing reports can constitute risk quite differently from actuarially based PSRs. We draw on Gladue reports as a way of further analysing the limits within actuarial PSRs, particularly when used to assess racial minorities. As noted, Gladue reports are an alternative type of sentencing report that include a comprehensive overview of the social ‘systemic factors’ facing an offender along with the identification of specific resources available in the community to address the needs of a particular offender. They are increasingly being used in Ontario to supplement or replace the court-ordered PSRs (Campbell Research Associates, 2008) because the PSR does not systemically include Aboriginal issues as required by law. Reports are typically prepared by dedicated
Aboriginal court workers, who are trained and hired by Aboriginal Legal Services of Toronto (ALST) and operate in a number of courthouses throughout Ontario. Preparation of reports involves lengthy and in-depth interviews with the client, and where possible with family members and acquaintances, as well as experts familiar with Aboriginal histories and communities. The reports are expected to include: a synopsis of the offence; the offender’s past record; the offender’s personal circumstances; report writers’ contacts with the offender’s family; options for services consistent with the proposed sentence; plan for services to meet offender’s needs; contextualization of the offender’s situation, including a description of the systemic issues affecting Aboriginal people; applications to and arrangements made with residential treatment facilities; and recommendations for sentence (Campbell Research Associates, 2008: 10). These reports clearly specify a treatment plan and recommend conditions.

One of the primary objectives of Gladue reports is to contextualize the offender’s personal and family circumstances within the history and treatment of Aboriginal people in Canada. Our analysis of a sample of these reports reveals that, Gladue reports include considerably more detailed information regarding the offender’s background, family and life circumstances than PSRs. Although both PSRs and Gladue reports both document histories of adoption and/or foster care, Gladue reports detail how these experiences affect attachment to others and discuss how separation from family, community and traditions may affect an offender’s subsequent life experience. In the following excerpt from a Gladue report linkages are made between the offender’s charge of child abuse and her own experience of violence by her mother and grandmother, the latter a residential-school survivor. The report documents how:

residential school led to a disruption in the transference of parenting skills from one generation to the next… The lessons learned in childhood are often repeated in adulthood with the result that many survivors of the residential school system often inflict abuse on their own children. These children in turn use the same tools on their own children. (Gladue report 1–2009)

Such accounts are not used to excuse violent behaviour by an offender, but rather to clarify and underscore how past experiences linger and continue to affect behaviour; this is in contrast to PSRs, which, even with the inclusion of Gladue factors, focus almost exclusively on individual behaviour, devoid of social and historical context. By comparison, the PSR, although making allowances for race, typically positions Aboriginality within a risk framework that abstracts individual agency and mobilizes hegemonic white, western cultural values.

Gladue reports are able to provide a comprehensive survey of the offender’s life and criminal history and can include categories that go well beyond criminogenic risk factors. In particular, detailed information is provided about experiences of discrimination and abuse; factors that are not labelled ‘criminogenic’ but are
relevant to a Gladue analysis. For example, the following report recounts the offender’s extensive experience of addiction and associated violence:

My dad and uncles would drink when in the community. Probably ninety percent of our people were drinking... I remember seeing my cousins beating up their parents, my older brother beating up our mom, my dad beat me up. The next day they’re sorry, they don’t remember doing that. I haven’t talked to others about that, it’s in here [at this point Mr M. pointed at his chest, and he had tears in his eyes]. I lost lots of family through alcohol, disease; people got bad livers, people dying outside, passed out drunk and freezing. One of my aunts died, froze to death, a few steps away from her house. (Gladue report 2–2009)

This level of analysis of personal and family histories is designed to ‘shed light on determining how these factors have contributed to [the] present charge’ (Campbell Research Associates, 2006: n.p.).

Moreover, in Gladue reports, narrative descriptions of an offender’s life circumstances are situated and contextualized within discriminatory state policies and systemic factors affecting communities. For example, the above narrative of violence and addiction experienced by Mr M is contextualized within, and associated with, government-forced dislocation. Mr M’s Gladue report relies on academic studies and Aboriginal histories to situate the roots and community effects of government policies. His report recounts how:

[alcoholism is often cited as a response to, and an escape from, the physical and psychological stresses of relocation and the depressing sense of loss and powerlessness among relocates... Connecting this experience of psychological stress and loss to Mr. M. and his resulting struggle with alcohol abuse is perhaps best laid out in the following:

...We believe that relocations must be seen as part of a broader process of dispossession and displacement, a process with lingering effects on the cultural, spiritual, social, economic and political aspects of people’s lives. We are troubled by the way relocations may have contributed to the general malaise gripping so many Aboriginal communities and to the incidence of violence, directed outward and inward. As we noted in our report on suicide, the effects of past oppression live on in the feelings of anger and inadequacy from which Aboriginal people are struggling to free themselves. ... Alcohol abuse is one way in which Mr. M. has directed violence both outward and inward. (Gladue report 2–2009)

This account is illustrative of the distinctiveness of Gladue reports; particularly their focus on situating behaviour within histories of race relations, colonialism and discriminatory state policies.

PSRs and Gladue reports frame the offender differently; this has important implications for how offenders are subsequently governed. Both reports record
information about a number of similar factors, including, but not limited to, family histories, offence history, education and employment, but the content of this information differs. Within PSRs, individual risk/criminogenic categories are typically decontextualized, hierarchically ordered and reconstituted as criminogenic needs associated with recidivism. By contrast, Gladue reports situate these same factors within histories of race relations. This level of analysis is absent from the PSR, which focuses on a limited range of factors closely aligned with risk/need assessment templates. The result is a narrowly defined set of categories that are not self-identified by the offender or clinically determined by a treatment professional, but are based on statistical correlations derived from aggregate data from a large population sample of mostly white adult male offenders. This logic necessarily excludes a focus on areas of an offender’s life that do not easily lend themselves to probabilistic statistical calculations. Experiences of abuse and discrimination are not considered actuarial risk factors, and although some PSRs may refer to such experiences, these experiences are not factored into, nor do they affect, risk scores or assessments of risk. More importantly, because they are not identified as criminogenic needs, they are not identified as a priority for treatment intervention. Although concern about an offender’s ‘needs’ has always had a place in traditional court reports, the concept of need takes on a new meaning and status within a Gladue report. Here understandings of need move beyond the realm of ‘criminogenic’; they are culturally infused and situated in broader histories of colonization, intergenerational violence, overincarceration, poverty and racism (Maurutto and Hannah-Moffat, 2007).

We have shown that Gladue reports present offenders not simply as dysfunctional ‘risky’ criminals, but rather as individuals firmly situated within racialized histories of oppression that place them ‘at risk’. In addition, we have shown that Gladue reports do not use offender risk of recidivism as the benchmark from which to determine recommendations; instead, they use a more nuanced holistic approach to address the particular circumstances of the offence and the overall needs of an offender. This approach draws on restorative principles wherein sanctions are, in part, designed to ‘heal’ and ‘restore’ the offender. Actuarial methods of assessing risk cannot meaningfully interpret the increasingly well-established systemic impact of racial histories on individuals’ conduct. Gladue reports offer courts a structured management plan that is developed with the consultation of offenders. The offender’s probable adherence to proposed recommendations is assessed ahead of time to avoid conditions that would necessarily result in breaches and further criminalization. Although the PSRs and Gladue reports share some concerns about risk/need, each approach the question of ‘risk’ and ‘need’ quite differently. In Gladue reports, holistic approaches and ‘cultural impact factors’ (e.g. discrimination, institutional or personal abuse, dislocation from culture or family, and substance abuse) are recognized and positioned as highly relevant and are used to understand, culturally define and assess risk and need.

Gladue reports go beyond providing a ‘context’ of racial discrimination and disadvantage. They are purposefully designed to address the problems that
continue to bring the offender before the court and to assist the judge in crafting a ‘meaningful sentence’. These reports are especially useful for persistent Aboriginal offenders because they recommend community sentences and conditions that are likely to be followed, locate culturally appropriate programmes and identify programme availability that targets the overall needs of an offender. Our findings suggest that judges are receptive to these reports and, in particular, the plan of care recommended. Our court observations reveal that although judges often follow the recommendation of these reports, they clearly weigh community alternatives against concerns about the severity of the offence, the length or criminal history and other aggravating factors, which can result in a custodial sentence. Gladue reports represent a new and creative approach to understanding the relevance of racial histories in sentencing; they offer an approach that may be extended to other racialized communities.

Conclusions

The use of risk assessments (particularly the LSI) to structure PSRs can result in what Reichman (1986) and Silver and Miller (2002) term actuarial or ‘statistical justice’, wherein dispositions are determined based on how closely an offender matches an actuarial profile, with less weight being given to other relevant criteria. Although judges consider a range of factors at sentencing, they are clearly influenced by the PSRs they order and how lawyers for both the Crown and defence use the information contained in the reports to make sentencing submissions (also see Tata, this issue). The judiciary and legal counsel see certain advantages in having the PSR include actuarial risk information, which appears on the surface to be unproblematic, objective and empirically sound. However, some judges and counsel are now raising concerns about the transparency and legal relevance of information used to compile risk scores, as well as the appropriateness of probation officers’ training for risk assessment, and the meaning of the score itself (see Cole and Angus, 2003; R v. Elliot, 2004; R v. BHD, 2006; Cole, 2007).

This article documents how actuarial risk assessments have been incorporated into and are being used to structure PSRs. The restructured risk-based PSR redefines rehabilitation and decontextualizes the offender. PSR recommendations are now focused primarily on ‘treatable’ criminogenic areas. We have argued that the shift towards actuarial-risk PSRs is significant because it impacts the type of information collected and analysed, as well as the data judges and legal counsel use in sentencing hearings. Given the significance of PSR recommendations to sentencing decisions, it is important to examine the changes in the PSR narratives and recommendations.

We have argued that newly formed racialized understandings of risk reconstitute the Aboriginal legal subject and her governance. The integration of racial considerations into the PSR policy appears to address legal concerns about the unique circumstances of Aboriginal people. However, a meaningful consideration of race
is difficult to accomplish given the preoccupation with actuarial risk assessment. The statistical calculus underlying risk assessments is based on a set of assumptions that undervalues and diminishes the power relations and forms of structural inequality. An increasing number of race-aware critics of risk/need assessment argue that actuarial tools such as the LSI-R disadvantage racialized groups (Zimmerman et al., 2001; Belknap and Holsinger, 2006; Hollin and Palmer, 2006; Folsom and Atkinson, 2007; Harcourt, 2007). Writers of PSRs, who are trained in an actuarial risk/need model, must now write reports which provide culturally situated contextual analyses of race. PSRs continue to adopt risk-based strategies that have been shown to produce discriminatory outcomes for minorities. Actuarial risk practices continue to operate on the assumption that static and criminogenic risk can be isolated and treated with minimal consideration as to how they are related to other social processes (Maurutto and Hannah-Moffat, 2007). For Aboriginal offenders, their experiences of dislocation and discrimination are reduced to individual problems that reinforce common stereotypes of the alienated and violent offender (Fitzgibbon, 2007). Consequently, actuarial risk-based approaches are more likely to result in PSR recommendations that reinforce high rates of incarceration. By comparison, Gladue reports offer an alternative way of assessing risk that is attentive to racism and racializing processes.

Diversity issues, although salient, particularly in terms of Aboriginal status, have not yet reached the same level of international esteem as risk among scholars, practitioners and policy makers. Race in policy and research continues to remain at the margins of mainstream legal/correctional practice, and institutions have yet to consider how historic and systemic forms of oppression conflict with (and should inform) practices such as the preparation of court reports. As critical race theorists and proponents of Gladue reports have argued, incorporating race is not simply about acknowledging identity and culture, but rather it requires a nuanced understanding of the interlocking systems between risk, racialization, criminalization and economic and social marginalization (Hooks, 1981; Hall, 1992; Back and Solomos, 2000). Although there are some commonalities in how race, ethnicity and/or culture are defined and used to organize penal practices, there are also significant cross-country and local racial differences which require further nuanced analysis. This article focused on the PSR, but our argument raises broader questions about the absence of a sophisticated understanding of how race and ethnicity define risk-based penalty.

**Notes**

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2. On the concept of craft in justice and sentencing see Flemming et al. (1992) and in sentencing see Tata (2007).
3. Gladue reports are specialized reports prepared by Aboriginal court workers for Aboriginal accused. These reports explore how racial histories and wider systemic factors impact the offence history and current circumstances of an Aboriginal accused.

4. The use of Level of Service Inventory – Revised (LSI-R) in Scotland is being incorporated into the ‘National Standards’ for the writing of reports.

5. The use of actuarial risk tools is particularly evident in the United States, especially in states such as Virginia, which is notable for passing a sexually violent predator statute that is the ‘first law ever to specify, in black letter law, the use of a named actuarial prediction instrument and an exact cut off score on that instrument’ (Rapid Risk Assessment for Sex Offence Recidivism (RRASOR)) (Harcourt, 2007: 13).

6. Bonta et al. (2005: 16) found that 87.4 per cent of Canadian judges surveyed were generally satisfied with PSRs and 68 per cent found them useful.


8. Interview data (ABCJ-03; ABCR-02).

9. Normally, the PSR is written by a probation officer, but in some complex cases the PSR can be contracted to a partner organization to provide a more detailed and comprehensive report on the offender.

10. For the purposes of this article, we used the Canadian census classification, for which Aboriginal identity includes non-status Indian, North-American Indian, Aboriginal, Métis and Inuit.

11. Although only Ontario, British Columbia, Saskatchewan, Nunavut and the Northwest Territories have policies on information relevant to Gladue, the decision applies to all Canadian jurisdictions.

12. The Youth Level of Service/Case Management Inventory (YLS/CMI) is often used for young offenders.

13. For a description of these risk/need assessment scales, see Hannah-Moffat and Maurutto (2004).

14. For a detailed elaboration on the RNR, see Maurutto and Hannah-Moffat (2007).

15. Somewhat similar categories have been incorporated across the country. For example, PSRs in Nova Scotia and Labrador include the following categories: family/marital background; education/training/employment; collateral contact; present situation; addictions; emotional/medical/health; previous record; and pre-sentence report recommendation (Hannah-Moffat and Maurutto, 2004).

16. Furthermore, in the case of sexual offenders, the policy manual specifies that ‘the PPO must use the sex offender risk assessment tools (Static 99 and Stable 2000)’ in addition to the LSI-OR during the preparation of the PSR. Although use of these instruments and their scores are not to be specifically referenced in the reports, the PPO must identify and highlight pertinent risk factors and strengths as well as any other assessment information from the completed sex offender risk assessment tools and available professional reports (psychiatric/psychological/treatment programmes) (Ministry of Correctional Services, 2007a: 8).
17. This area warrants further investigation (Silver and Miller, 2002; Blanchette and Brown, 2006).

18. In other provincial jurisdictions, for example British Columbia, the list of Gladue factors is more explicit. They include substance abuse, poverty, overt/covert racism, family or community breakdown, abuse, relationship to the offender, witnessing violence, unemployment, lack of educational opportunities, dislocation from Aboriginal communities, foster care/adoption (Justice Education Society, 2005).

19. Interview data (PO 20, PO22).

20. Interview data (J1, J2, J4, J6 and A1).

21. Attempts have been made to extend Gladue considerations to Black offenders (see R v. Borde, 2003).

22. Interview data (CR 01, CR 02, J2, J3, SK1, M1).

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