

RACE, DIVERSITY AND CRIMINAL JUSTICE IN CANADA: A view from the UK

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ABSTRACT

This article examines the way in which those employed in the Canadian criminal justice system perceive race and diversity, and how such perceptions could affect professional practice. By drawing on research carried out under the Canadian High Commission Institutional Research Program, the paper has a number of purposes. Firstly, to explore the possibility that disparities in the outcomes of courtroom proceedings could be related to the perceptions and practices of those who play a key part in the sentencing process. Secondly, to examine the nature of current anti-racist criminal justice practices in one province of Canada. Thirdly, the paper also makes recommendations for the development of future antiracist training. Finally, the paper discusses the implications of the findings with respect to developments in the British criminal justice system.

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Introduction

The research presented below was undertaken in Vancouver and Toronto between July and September of 2001 and was funded by the Canadian High Commission under the auspices of their Institutional Research Programme⁴. The research aimed to: understand the manner in which race and/or ethnicity could differentially affect visible minorities in the Canadian Criminal Justice system; record what anti-racist training, if any, criminal justice staff were receiving and; capture the extent to which anti-racist training was included in the development of criminal justice policy and practice.

On one hand, Canada represents an example of an advanced society noted for its fairness and equity, while on the other, it appears as subject to the same racially biased disparities within its criminal justice system as many other comparable developed western countries. Racial discrimination by the Canadian police, courts, prisons, legal professions, and jury selection has been well documented (Henry et al 1995, Nelson, 2000, Ontario, 1995) and various attempts have been made to tackle it. This article, therefore, first examines Canadian approaches to anti-racist training in the criminal justice system and then outlines the results of our analysis of pre-sentence reports prepared for the courts by Canadian Probation Officers, in order to establish whether the training offered is reflected in practice (see methods section below). The article ends with a discussion of the impact of existing anti-racist training in Canada and emphasises the need to maintain its impetus. This is done partly by comparing developments in England and Wales. First, however, we provide a brief summary of our research methods.

Research Methods

This was an exploratory or 'primary' research project with a limited budget. Therefore, research resources did not allow for a coverage of anti-racist training and practices in the Canadian criminal justice as a whole. For our focus here, we therefore selected Ontario as our primary site, partly because Ontario has produced the most advanced anti-racism

⁴ The Institutional Research Programme is an annual competition funded by the Canadian Government with the aim of extending interest and encouraging British academics to research contemporary Canada. One of the authors (David Denney) had been invited by Judge David Cole Chair of the 'Ontario Commission on Systematic Racism within the Criminal Justice system' in 1995 to give evidence to the Commission and make

programme in Canadian criminal justice, and partly because the researchers already had existing links with the Ministry of Correctional Services in Ontario, which facilitated easier access to records and personnel.

The focus here is on the analysis of probation service pre-sentence reports (PSRs), which is outlined in more detail below. The Ministry of Correctional Services agreed to select a purposive sample of 40 PSRs to reflect ethnic (including white offenders) and gender issues, although we were not given clearance to interview the report writers. We also used a wide range of individual and group interviews with: probation staff; provincial and federal judges; a Chief Justice; parole and probation managers; an independent anti-racism consultant (and equity advisor of the Law Society of Upper Canada); a coordinator of the Access and Equity Unit in a large Canadian City; a representative from the Aboriginal Legal Service of Toronto; a representative from the League for Human Rights; anti-racist trainers from the Ministry of Correctional Services; academics working in relevant areas; and defense and Crown attorneys. In all, 75 criminal justice and related personnel were interviewed (see Table 1).

Table 1 Methods used with different criminal justice respondents

Criminal Justice Respondents (n=75)	Individual semi-structured interview	Group semi-structured interview	Documentary analysis
Academics (3)	✓	✓	✓
Attorneys (4)	✗	✓	✗
Judges (11)	✓	✓	✗
Probation Officers (40)	✗	✗	✓
Probation/Parole managers (5)	✗	✓	✗
Correctional staff delivering 'systemic change' Program (3)	✓	✗	✓
Voluntary agency staff (7)	✗	✓	✗
Representatives from pressure groups members (2)	✗	✓	✗

In the interviews, we established who had received anti-racist training, the nature of that training and the supposed effectiveness of any training that had been offered. Interviewees were also asked to identify areas in which they felt that further training was required.

We also carried out documentary analysis of academic, probation service and anti-racism training literature and undertook some courtroom observations. Transcriptions of interviews were analysed both qualitatively and quantitatively, though the small number meant we focused primarily on the former. We read PSRs repeatedly, and variations in respondent thinking were identified between us. Transcripts and reports were also indexed for each theme we identified and agreed (Murphy and Kinmouth, 1995).

Anti-racist training in the Canadian criminal justice system

As is the case in England and Wales, some minority ethnic groups are over-represented in the Canadian criminal justice system. Although only 2% of the Canadian population is made up by black people, 6% of the prison population is black (Wortley, 1999). This is not the case with regard to Canadians designated 'Asian' who constitute 7.2%, of the Canadian population, whilst accounting for only 2.4% of the prison population (Wortley, 1999). More recent data is available on the Aboriginal Prison population. On April 11th 2004, out of a total prison population of 12,413, some 2,301 were Aboriginal (Correctional Service of Canada, 2005), making up 18% of the prison population, compared to 2.8% in the Canadian population as a whole.

As a response to the over-representation of minority ethnic groups processed by Canada's criminal justice system, the 1990s saw the introduction of anti-racism and anti-discriminatory education. However, its implementation has been variable.

The Report of the Commission into Systemic Racism in the Ontario Criminal Justice System (RCSROCJS) (Ontario, 1995), focused upon the need to develop an anti-racist training model that would equip trainees with the skills to recognize:

'The organizational and systemic factors which influence behavior as well develop critical thinking problem solving techniques to prevent conduct with a racist impact' (Ontario, 1995: 34).

The aims of the program were to foster and maintain working relationships based upon mutual respect, dignity, and co-operation, and to maintain an environment which is fair equitable and free from all forms of discrimination and harassment (Harris, 2000).

The underlying approach was distinctive in a number of respects. The brief for training was not confined to 'race' but directed towards all forms of discrimination as listed in the Ontario Human Rights Code (Ontario, 1998: 14) This included race; ancestry; place of origin; color; ethnic origin; citizenship; religion; sex/gender; sexual orientation; age; marital status; family status; and disability. Harassment by other employees at work was also regarded as a form of discrimination.

The content of the resultant training program reflected this eclectic approach. This included: establishing ground rules for engagement during the training day; understanding the corporate culture; ethical principles; understanding the Ontario Code of Human Rights; and acceptable workplace behavior. These areas of training were illustrated with specific case scenarios.

Probation and other criminal justice staff

Following (and as a direct result of) the recommendations of the 1995 RCSROCJS regarding putting the Human Rights code of Ontario into practice (and with the exceptions of judges and lawyers/attorneys), all Ontario Correctional Service staff (eg, correctional officers, probation officers, psychologists, food service staff, medical staff, teachers, etc.) were required to complete at least one anti-racist training day, organized centrally by the Ontario Correctional Service.

This 'Systemic Change Training Program' (SCTP) was underpinned by anti-racism theory, which itself requires a recognition of the maldistribution of power. The Ontario Correctional Service accepted that there was an imbalance of power across different ethnic groups and therefore, radically for its time, SCTP was able to go beyond the development of 'cultural awareness' and 'multicultural approaches' that had preceded it in Canada. It is worth noting here that in the Inspectorate of Probation's thematic report, Towards Race Equality (HM Inspectorate of Probation, 2000, p.27) in England and Wales, it was noted 'In many services, understanding of equal opportunities had not progressed beyond the

level of “*treating everyone alike*”. While progress had been made on reducing objective measures of institutional racism when a follow up inspection was carried out (HM Inspectorate of Probation, 2004a), there was still no accompanying discussion of the development of an underpinning theoretical model.

SCTP specifically addresses areas mentioned in the Ontario Human Rights Code (1961), which focus upon the boundaries between acceptable and unacceptable behavior in the workplace. The rationale of this approach is that until a workplace is created which directly challenges discriminatory practices between employees, offenders cannot be dealt with fairly. Trainees are therefore exposed to materials which provide opportunities to apply relevant policies and practices in specific workplace situations and are given as much opportunity as possible to mix with those from other job categories. In this respect, analogous work on US police training in dealing with victims of sexual assault (Lonsway et al 2001) suggests that achieving desired behavioural, rather than attitudinal, change through such methods as role play and simulation exercises rather than lecture-based activities is more effective (see Holder et al, 2000). In effect, participants recorded high satisfaction levels (Harris, 2000): 92.8% felt the training increased understanding boundaries between acceptable and unacceptable behavior in the workplace and 93.3% felt the training had provided an increased understanding of rights and responsibilities.

Despite these high satisfaction rates, interviewed trainers described various levels of resistance to training, which took both verbal and non-verbal form. One correctional official involved in the one-day training program therefore took a ‘realistic and slightly cautious’ approach about the outcome of the program:

‘Changing people’s lifelong learned behavior in the course of one day is an extremely optimistic goal.’

Given these comments, there is a need to consider the potentially negative effects of this type of limited-duration training. Evidence shows that anti-racist policy and training can cause a ‘backlash’ from those being trained (Gregory and Lees, 1999, Brown, 1997), similar to the effects of the implementation of affirmative action for prison staff in the US (Camp et al, 1997; Owen, 1985). Social psychological examples (Macrae et al., 1994) also show analogous evidence of ‘rebound’ when attempts are made to suppress negative

stereotypes. The policies might therefore provoke the exact opposite of what was intended, with discrimination and harassment becoming more subtle and pernicious. This has been referred to by some commentators as 'modern racism' (Swim et al, 1995).

Some of the respondents who were academics, working for community groups, or working in voluntary organizations, suggested that the potential for harm was very real. While supporting the aims of anti-racism, they were also sceptical of the policy and training approaches used. One interviewee saw Canadian anti-racist education as an *'imaginary form of social healing'*, which *'bordered on evangelical zeal'*. Another claimed that 'anti-discrimination' training in the Police Force of Toronto was regarded as a 'joke' by white participants and had the opinion that it was therefore simply 'window dressing'.

Pre-sentence reports

In order to gain evidence of the effectiveness of anti-racist training, we examined the content of 40 probation PSRs, concentrating on the explanations for offending behavior provided by probation officers. Evidence collected during this research, suggests that the concordance between probation officers' recommendations and the sentencing outcome is high. The Commission into Systemic Racism (Ontario, 1995) therefore recommended that correctional ministries carried out further research into race differentials in PSRs (including sentencing outcomes). The Commission went on to recommend that the Ontario correctional ministries requested an explanation in writing, whenever a PSR provided material which referred to a convicted persons 'race, ethnicity, immigration status, religion, or nationality'.

Although the format of the reports was standardized, the text included varied in length and detail. For instance, the written text on a male Philippino was one page long, while others were up to six pages in length.

The Commission into Systemic Racism (Ontario, 1995:226) commented that references to nationality in pre-sentence reports were often of questionable relevance and at times 'bizarre'. Some years later, the same comments could have been applied to some of our sample. References to nationality appeared to be a requirement and appeared in all 40 reports examined. Table 2 shows there was a level of inconsistency in the migration status

categories used to mark an individual's identity. Thus, it was possible to describe an offender as being a *'landed immigrant'*, although one of the judges interviewed found this designation unacceptable.

Table 2 Nationality and gender of offenders in pre-sentence reports examined

Nationality	Number	Men	Women
Bangladeshi	1	1	0
Chinese	1	1	0
Jamaican	4	3	1
Dominican	1	1	0
White Canadian	13	10	3
Vietnamese-Canadian	1	1	0
Vietnamese	1	1	0
Pakistani	2	2	0
Sudanese	1	1	0
Slovak/Czech	1	1	0
Filipino	1	1	0
Canadian/ First Nation Aboriginal	13	10	3
TOTAL	40	33 (83%)	7 (17%)

Some probation officers appeared to have their own distinctive ideas about forms of cultural expression, and were confident in stating the likely impact of cultural practices. In writing a report on a Sudanese defendant, one probation officer combined cultural assumptions with nationality:

'The subject is fluent in Spanish and according to his brother in law he appears to have more of a Latino culture from his Cuban exposure than that of the Sudan culture'

In 3 PSRs, a clear relationship was inferred between cultural norms, values and offending. For example, one report was on a Jamaican woman found guilty of assaulting her own child:

'She does not believe that what she did when she committed this offence was wrong but does know that this type of abuse will not be tolerated in this society'.

Here the PSR contains ideas about the apparent gap between what is culturally acceptable behaviour in Canada and Jamaican child rearing practices forms the basis for an explanation of offending behaviour.

Proposals for sentencing

All defendants in our sample had pleaded guilty, and there was no discernible reluctance by sentencers to impose community sanctions on visible minorities, even for relatively serious cases, where the PSR writer had proposed this. In 3 cases, (2 robberies and 1 manslaughter), no specific recommendation was made, which reflected the seriousness of the offence. British evidence suggests this is a de facto proposal for custody (Hedderman et al 1998).

All PSR proposals were combined with specific conditions, including: 'cooperation with the probation officer'; 'sobriety'; anger management courses; parenting skills; drug abuse programs; addictions assessments; curfews; and conditions of residence. Encouragingly, there was no evidence to suggest that such conditions were being recommended differentially for visible minorities compared with other offenders. However, there were very few justifications as to why any of the offenders would benefit from a particular program, despite 'what works' meta-analytical research showing a close link between suitability for a project and successful completion (Lipsey, 1995, Ellis and Underdown 1998).

PSR writers used key themes to explain offending behavior that led to the proposals for sentencing. In some cases, the themes selected were discontinuous and served to partially remove the offender from the 'rehabilitative discourse' recognised by both probation officers and sentencers. For instance, part of the assessment of a 'Vietnamese' man found guilty of drug possession read:

'One wonders where he gets the money for these activities and where he gets the money to dye his hair, wear a leather jacket, Tommy Hilfiger Jeans and thick silver chains around his neck. It is evident that he is getting money from some source, yet he reports that he is not collecting social insurance'

Such speculative comments combine nationality, guilt, the quality or price of clothes and leisure activities. Such material in an official document does little to assist the court in reaching an objective decision as how best to deal with the offender. The conclusion to the report is negative:

'X has already had the benefit of community supervision and he committed another offence while on probation. As such he is not deemed suitable for another period of probation'

A second report, on a Pakistani man, contained the following:

'During the interview for the report X showed little remorse for his action...As a martial arts expert, and one who has been taught respect and manners, he does not demonstrate any of these qualities by his actions for which he stands charged before the court today'

Again, the sentence proposal is pessimistic:

'Should the court wish to make community supervision as part of the disposition in this case, this writer would have some concerns.'

A third case demonstrated the negative impact of language difficulties on the proposals made in PSRs:

'There is limited counseling for her to take advantage of and her language barrier poses a problem as she does not seem willing to improve her skill in that area.'

There were a number of key themes in PSRs that determined whether a defendant was suitable for a community sentence. First, report writers only constructed a rationale for community supervision for 'penitent' offenders who explicitly accepted responsibility for the offence. Second, there was a dominant explanation of offending through alcohol abuse over different generations for Aboriginal people. This was often combined with other explanatory factors, which included: 'lack of emotional closeness to parents and siblings'; 'frustration'; and 'unhappiness'. Third, was the supposed inability of Aboriginal people to control their anger. Finally, although only 3 reports mentioned mental illness, forms of

quasi-medical discourse (e.g. 'poor impulse control' or 'hyperactivity') were often used to explain offending. Although we found no overtly racist views in our research we did find examples of negative subjective contextualisation of race and offending, within pre-sentence reports.

Discussion

The substantial research carried out for the Commissions on Systemic Racism in the Ontario Criminal Justice System in 1995 was groundbreaking at the time, and one of the authors of this paper was involved in contributing to the report that resulted from the commissions findings. Clearly, our updated research is only exploratory and cannot be regarded as a follow-up study of the 1995 Commission. However, it is also clear that the findings indicate that there is a need to re-emphasize the need for the Commission's recommendations to be revisited by government.

All respondents were genuinely supportive of anti-discrimination initiatives in principle. In practice, there was no evidence of overt racism, but it was clear that most sentencers interviewed, and the PSRs analysed, preferred multi-cultural to anti-racist approaches in criminal justice. In other words, explanations tended to be based on cultural differences and not on an analysis of imbalanced power relations leading to socio-economic disadvantage. There was also scepticism on the part of some trainers and academics that the current level of anti-racist training was more than tokenistic and that there was no evidence that it was effective.

We did not conclude that there was likely to be a direct causal link between the views expressed by sentencers and probation officers, and the over representation of visible minorities in the Ontario Criminal Justice System. However, we did find a sense of powerlessness expressed by some judges, in that they felt that discriminatory practices had occurred earlier in the criminal justice system, particularly in relation to the police.

From analysis of our respondents' transcripts, we were able to establish 3 key approaches to anti-racism within Canadian criminal justice, irrespective of professional group.

'Pioneers' were angry at the apparent lack of progress in improving the fairness of Canadian criminal justice. They wished to see immediate political action and more resources allocated to reduce discrimination in order to avoid increasing discontent among visible minorities. 'Dualists' while recognising the inherent unfairness of the system, considered some disparity to be inevitable in the 'real world'. Finally, 'denialists', while denouncing institutionalised injustice, denied the overt existence of unfairness within the criminal justice process. One probation service manager argued:

'If I thought it was unfair, I wouldn't be part of it'.

All the respondents in this research broadly accepted that the criminal justice system should be based on a notion of equity. They gave no examples, even anecdotally, of overt or intentional racism in criminal justice professionals and saw that battle as won. However, we found a number of areas where additional intervention could make a significant difference. For instance, the lack of training in equality issues and poor salaries had led to worrying standards of representation and low morale among some state funded defence lawyers.

Recommendations

Since our key focus has been on anti-racist training, we have suggested below a number of recommendations, based on our findings, which we think will improve policy and practice and could have a relevance to the development of training in the England and Wales.

There is a need to develop, sustain and evaluate some of the imaginative sentencing packages, such as circle sentencing, which focus on the benefits of the communities as a whole. This will require training to be fully extended to lawyers and attorneys, and more resources devoted to Legal Aid. Indeed, in 1995, the RCSROCJS recommended that 'Legal Aid' be specifically funded for a programme of test cases that may contribute to greater racial inequality. This now needs to be implemented.

1. While the Ontario 'Program for Change' anti-racist training was a thoughtful and well-organized initiative, it is clear that a single day is too short a period in which to ensure positive change over all aspects of discrimination. The program also needs to base itself on practical evidence of what works in training generally, and in reducing prejudice and

discrimination more specifically. This will require a greater range of methods. For training generally, as noted above, there is evidence that aiming to change behavior rather than attitudes, is more achievable and effective. There are also at least 3 promising theoretical and empirical streams of social psychological interventions that could be imported into anti-racist training. First, direct inter-group contact hypothesis studies show how to manage conditions (more easily achievable within a sustained training event) to reduce prejudice between two initially hostile groups (Schwarzwald et al, 1992; Cook, 1985; Cook and Pelfrey, 1985; Aronson et al, 1978; Riordan, 1978).

Second, recategorisation studies, based on the *common group identity model* (Gaertner et al, 1989) have shown in laboratory conditions (Brewer et al, 1987; Gaertner et al, 1989; Gaertner et al, 1990), and more importantly in a large field study (Gaertner et al, 1993), that realistic and measurable reduction (though not elimination) of prejudice is achievable through the setting and context managing of joint tasks across different groups.

Third, cognitive interventions, as in corrections more generally, and especially in Canada, have produced some success when applied to reducing stereotypical thinking, while avoiding the potential rebound effects noted above (see Neuberg, 1989). This is largely achieved, either by ensuring institutional rewards are based on the performance of other *individuals*, or by rewarding accuracy of forming impressions of others. This latter method has obvious applications in the writing of PSRs.

Anti-racist training needs to be truly multi-disciplinary so as to include all judges, Crown Attorneys and Defense Attorneys. The introduction of interdisciplinarity would be least disruptive to court schedules, whilst enhancing the opportunity to expand pedagogical possibilities.

The overlap between what constitutes 'training' and 'education' needs to be developed and operationalised explicitly, so that the emphasis on cultural expectations of religion and diet, etc. is developed alongside historical dimensions of Canadian racism, making unwitting decisions based on unconscious stereotyping, etc. This would enhance the underpinning anti-racist stance taken by the trainers which locates racism as an ideology pervading Canadian society and its social institutions.

2. Training can be evaluated from two standpoints. Formative evaluation is undertaken to assist program development. Summative evaluation is designed to measure whether the training has produced any change according to the aims of the program (Rossi et al, 1999). For SCTP, more attention could to be directed toward both. It is notoriously difficult to measure the impact of training, but more post-course evaluation research could be carried out to ascertain whether the specific desired effects of the training (based on its aims), such as reducing the level of discriminatory and judgmental content of PSRs. Canada has certainly led the field in evaluating the impact of criminal justice training in other areas and this best practice is transferable (see Ellis et al, 2001). Indeed, there has been some action on anti-racist measures through the Law Society of Upper Canada (1996) which has established ethical obligations together with practical guidelines to govern lawyers' conduct when they observe racist acts. Again though, it remains unclear as to how this program will be evaluated in relation to practice.

According to the respondents, a number of recommendations of the Commission appear not to have been implemented, including: changing the arrangements relating to imprisonment before trial; charge management; imprisonment after caution; and community policing. Other recommendations concerning the reform of bail applications and legal aid that could, according to our respondents, have had a substantial impact on creating more trust in the system, have also been virtually ignored.

A view from England and Wales

As researchers from the England, we were impressed by the co-ordinated and structured manner in which all criminal justice staff, excluding judges, have been required to undergo diversity training for some considerable time. From the English and Welsh perspective, the new National Probation Service, under the even newer auspices of the National Offender Management Service (NOMS), has been playing catch-up in relation to the Canadian experience.

Anti-racism is a term which has only recently been re-introduced into the discourse of offender management at this level (see HM Inspectorate of Probation, 2000 p.21), although the use of this term is somewhat loose. As the Inspectorate go on to note, 'There was no evidence to suggest that promotion of race equality had been assisted by the development

of specific anti-racism strategies in their current form (HM Inspectorate of Probation, 2000 p.21). This is not to say that the probation service, over a long period, has not effectively engaged with racism both in policy and practice since the 1980s (Bhui, 2005). It has responded positively to section 95 of the 1991 Criminal Justice Act which requires all criminal justice agencies to monitor racial/ethnic discrimination within its jurisdiction.

However, as the then Chief Inspection of Probation noted 'The attention given by probation services to the promotion of equal opportunities during the 1980s and early 1990s has clearly diminished in recent years' (HM Inspectorate of Probation, 2000 p.8), though there is no reference to the fact that this was largely due to the increased focus on cost efficiency and risk management (Bhui p.20).

It took the murder of a young black man, Stephen Lawrence, and the subsequent Macpherson Report (1999) to require all public sector bodies in the criminal justice system to take institutional racism seriously (Bhui p.20-21). It is fair to say that the subsequent introduction of the Race Relations (Amendment) Act 2000, and its Public Sector Agreement targets, has been the primary force in motivating the National Probation Service to start to put in place the sort of determined approach which in the Canadian case has transformed some pioneering managers into champions of diversity. The Act required the national implementation of Race Equality Schemes by 31 May 2002. However, the follow up inspection of race equality (HM Inspectorate of Probation, 2004a) tends to focus on the existence of strategies and performance measures, at the expense of the development of theory and evidence-based practice in improving race equality. In contrast, the opposite appears the case in Canada, where theory has been developed well, but objective evidence of impact is poor.

What we do know in England and Wales is that monitoring and evaluation have improved, and in some areas, this means we are able to evidence progress. In 2000, the Inspectorate commented that 'Despite some examples of good practice, examination revealed a significantly higher quality of reports overall written on white than on minority ethnic offenders' (HM Inspectorate of Probation, 2000 p.18): 60% of reports on white offenders were satisfactory or very good, while the equivalent figure for African/African Caribbean offenders was 49%. In the 2004 follow up, the situation had demonstrably improved, with 83% of white and 75% of 'minority ethnic offenders' subject to a 'satisfactory or better'

report, but as the Chief Inspector notes, the overall differential remains (HM Inspectorate of Probation, 2004a p.9). A further recent inspection report notes minority ethnic offenders were still less likely to: have their diversity needs considered; have effective intervention methods considered in their case; and be assessed for self-harm or re-offending appropriately (HM Inspectorate of Probation, 2004b p.8). Finally, we also know that there is a long way to go before we get the type of individualised assessments that take race and other differences into account without resort to ethnic stereotyping (Calverley et al, 2004 p.59).

Conclusion

The Canadian High Commission, in financially supporting our research, has a working assumption that independent academics can view afresh an issue of contemporary importance in Canadian society. They have received the findings and were very accepting. Perhaps one of the most striking conclusions that we reached, was that a familiar (to English researchers) gap existed between good intentions and actual practices. We have argued that the discriminatory processes that occur in the Canadian Criminal Justice system are not reducible to the overt racism of small numbers of staff. Discriminatory practices that we describe are both complex and differentiated throughout the Canadian Correctional System. For the most part, the representatives of the criminal justice system included in our study expressed a willingness to tackle inequality and unfairness. However, in the case of Ontario, despite the commitment of individuals, this has not been fully backed with political will and resources, a situation not so different from that in England and Wales until recently. If there are transferable lessons to be learned for Canada and England and Wales, they may lie in the fact that Canada has developed a training process underpinned by theory, while England and Wales has developed a system to measure how effective such training is. Both are needed if Canada is to avoid the decline, after a promising period of development, evidenced in England and Wales up until the early 1990s. Indeed, Bhui (2005) has argued that the continued level of individual commitment to anti-racism in English and Welsh probation has to be supported through stronger management, monitoring and accountability if it is not to decline again. The findings from this research suggest that these observations are equally applicable to the both the Canadian and English criminal justice systems.

From these exploratory findings and recommendations, it is obvious that there is plenty of scope for further research, but in the race arena, this is also dependent on political realities. It seems that the best way forward would be a comparative one, which takes the lessons learned from the Canadian research and from the English and Welsh inspection process so that they can be combined into a single, more powerful approach. As we write, we are awaiting the imminent publication by the Office for Criminal Justice Reform (OCJR) Race Unit (England and Wales) of the Root and Branch Review of Race and the CJS Statistics (Lewis and Ellis, in press). That report makes over 30 recommendations on how to improve statistical collection, research, and evaluation on race and criminal justice issues. It should represent the same type of landmark in England and Wales as did the Report of the Commission into Systemic Racism in the Ontario Criminal Justice System (Ontario, 1995) in Canada over a decade ago. Once the OCJR report is in the public domain, it will be possible to revisit the findings presented in this paper and devise a proposal to carry out a more thorough going review of race and criminal justice in both Canada and England and Wales. In particular, we would wish to conduct a larger study which combines quantitative methods with qualitative, with a bigger sample of probation officers from more Canadian states and more examples of Pre-sentence reports. Beyond this, we would like to explore the nexus between policy and practice in both Canada and England and Wales. Since good intentions have not fully translated into practice in either country, it is important to access practitioners' views on both the obstacles to achieving fairer practice and how these might be overcome.

References

- Aronson, E., Bridgeman, D. L. and Geffner, R. (1978) Interdependent interactions and prosocial behavior *Journal of Research and Development in Education*, 12, 16-27.
- Bhui Hindpal Singh. (2005) Anti-racist practice in NOMS: Reconciling managerial and professional realities. Bill McWilliams Memorial Lecture, 29 June 2005, Birmingham Council House.
- Brewer, M. B., Ho, H., Lee, J. and Miller, M. (1987) Social identity and social distance among Hong Kong schoolchildren. *Personality and Social Psychology Bulletin*, 13, 156-165.
- Brown, J. Campbell, E. A. and Fife-Schaw, C. (1995) Adverse impact experienced by police officers following exposure to sex discrimination and sexual harassment, *Stress Medicine* 11:221-8.
- Brown, J. (1997) Equal Opportunities and the Police in England and Wales: Past, Present and Future Possibilities. In Francis, P. Davies P. and Jupp.V. (eds.) *Policing Futures: The Police, Law Enforcement and the Twenty-First Century*. Basingstoke: Macmillan, 20-50.
- Calverley, A., Cole, B., Kaur, G., Lewis, S., Raynor, P. Sadeghi, S., Smith, D., Vanstone, M. and Wardak, A. (2004) *Black and Asian Offenders on Probation*. Home Office Research Study 277. London. Home Office.
- Camp, S.D., Steiger, T.L., Wright, K.N., Saylor, W.G. and Gilman, E. (1997) Affirmative Action and the 'Level Playing Field': Comparing perceptions of Own and Minority Job Advancement Opportunities. *Prison Journal*, Vol. 77, No.3 (September 1997) pp.313-334.
- Carrington. and Bonnet, A. (1997) The Other Canadian 'Mosaic' - 'race' equity education in Ontario and British Columbia *Comparative Education* 33 (3) 411-431
- Cayley, D. (1998) *The Expanding Prison: the crisis in crime and punishment and the search for alternatives* Cleveland, Pilgrim Press.
- Cook, S. W. (1985) Experimenting on social issues: The case of desegregation. *American Psychologist*, 40, 452-460.
- Cook, S. W. and Pelfrey, M. (1985) Reactions to being helped in cooperating interracial groups: A context effect. *Journal of Personality and Social Psychology*, 49, 1231-1245.
- Correctional Service Division/Ontario Public Services Employees Union (1998) *People Working Together for the Elimination of Discrimination and Harassment*, Ontario.
- Correctional Service of Canada (1997) *Aboriginal Offender Survey: case files and interview sample R 16 in Forum* 2001 13 (2) 10 Correctional Service of Canada, Ottawa.
- Correctional Service of Canada (2005) *Facts and Figures: Aboriginal Offenders - Overview* http://www.csc-scc.gc.ca/text/prgrm/correctional/abissues/know/7_e.shtml [Accessed 24 January 2006]

Crenshaw, K. Gotanda, N. Peller, G. Thomas, K. (eds) 1995 *Critical Race Theory -Key writings that formed the movement*, New Press, New York.

Denney, D. (1992) *Racism and Anti-racism in Probation*, London Routledge.

Devlin, R. Mackay, W. and Kim, N (2000) Reducing the democratic deficit: Representation, diversity and the Canadian Judiciary, or towards a “triple P” Judiciary *Alberta Law Review* 38(3) 734-867.

Donald, J. and Rattansi, A. (eds) (1992) *Race Culture and Difference*, London, Sage.

Edwards, J. (1992) Multi-cultural education in a contemporary context, *Canadian Ethnic Studies* 24(3) 23-34.

Ellis, T., Denney D., Nee, C., Loveday, B. and Betts, P. (2001) Police Drugs Training Activities: An International Perspective. *Police Journal*, Vol. 74, No.2, 134-148.

Fevre ,R.(1984) *Cheap Labour and Racial Discrimination*, Aldershot, Gower.

Gregory, J. and Lees, S. (1999) *Policing Sexual Assault*. London, Routledge

Gaertner, S. L., Dovidio, J. F., Anastasio, P. A., Bachman, B. A., and Rust, M. C. (1993) The common ingroup identity model: Recategorization and the reduction of intergroup bias. In W. Stroebe and H. Hewstone (Eds) *European Review of Social Psychology*, 4, 1-26.

Gaertner, S. L., Mann, J. A., Dovidio, J. F., Murrell, A. J. and Pomare, M. (1990) How does cooperation reduce intergroup bias? *Journal of Personality and Social Psychology*, 59, 692-704.

Gaertner, S. L., Mann, J. A., Murrell, A. J. and Dovidio, J. F. (1989) Reducing intergroup bias: the benefits of recategorization. *Journal of Personality and Social Psychology*, 57, 239-249.

Glaser B. and Strauss, A.S. (1967) *The Discovery of Grounded Theory* Chicago, Aldine.

Hagan, J. (1977) Criminal Justice on rural and urban communities: A case study off the Bureaucratization of justice *Social Forces* 55(3)

Hammersley, M. and Atkinson, P. (1986) *Ethnography, Principles in Practice*, London Tavistock.

Harris, E. (2000) Report of the One Day Training Initiative Systemic Change Programme, Correctional Services Division, Ontario

Head, W. (1991) The Donald Marshall Prosecution: a case study of racism and the criminal justice system *Current Readings in Race Relations* 7 (1) 49-57.

Her Majesty’s Inspectorate of Constabulary (1996) *Developing Diversity in the Police Service*, London: Home Office.

- Hedderman, C., Ellis, T. and Sugg, D. (1998). Increasing sentencer confidence in community penalties: the results of two demonstration projects. Home Office Research Study 194. London: Home Office.
- Henry, F. Tator, C. Mattis, W. and Rees, T. (1995) *The Color of Democracy*, Harcourt, Toronto,
- HM Inspectorate of Probation (2000) *Toward Race Equality: Thematic Inspection Report*. London: Home Office
<http://www.homeoffice.gov.uk/docs/hmiprobthematicracefulldoc.pdf>
Retrieved 7 July 2005.
- HM Inspectorate of Probation (2004a) *Toward Race Equality: Follow-up Inspection Report*. London: Home Office
<http://www.homeoffice.gov.uk/docs2/towardsraceequality04.pdf>
Retrieved 7 July 2005.
- HM Inspectorate of Probation (2004b) *Probation Service for England and Wales: Inspection Findings 2/04: Aggregate Results for the First 14 Probation areas*. London: Home Office
http://www.homeoffice.gov.uk/docs3/esi_first14probareas04.pdf
Retrieved 7 July 2005.
- Holder, K., Nee, C. and Ellis, T (2000) Triple jeopardy: experiences of sexism and racism in black and Asian female police officers. *International Journal of Police Science and Management* 3, 1.
- James, R. (1998) Black Passengers targeted in Pearson searches? *Toronto Star* November 29.
- Johnstone, G. (2002) *Restorative Justice Cullompton, Willan*.
- Kalbach, M. and Kalbach W.E. (1999) *Demographic Overview of ethnic origin groups in Canada* in Li, P. (ed) *Race and Ethnic Relations in Canada* (second edition) Oxford University Press.
- La Prairie, C. (1999) *Contemporary Issues in Aboriginal Corrections in Canada* Unpublished paper.
- Law Society of British Columbia (2000) *Addressing Discriminatory Barriers facing Aboriginal law students and lawyers*, Vancouver.
- Lewis, C. and Ellis, T. (forthcoming) *Root and Branch Review of Race and the CJS Statistics: Final Report*. London: Office for Criminal Justice Reform Race Unit
- Lewis, G. (200) *Race, Gender, Social Welfare*, Cambridge, Polity Press.
- Lipsey, M. (1995) What do we Learn from 400 Research Studies on the effectiveness of treatment with juvenile delinquents? in Maguire, J. (ed.) (1995) *What Works: Reducing Offending*, Chichester, and Wiley.

Lonsway, K.A., Welch, S. and Fitzgerald, L.F (2001) Police training in sexual assault response: Process, outcomes and elements of change. *Criminal Justice and Behaviour*, 28, 6, 695-730.

Mcperson, W. (1999) *The Steven Lawrence Inquiry*. London:TSO.
<http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm>

Macrae, C.N., Milne, A.B., and Bodenhausen, G.V. (1994) Stereotypes as energy-saving devices: A peek inside the cognitive toolbox. *Journal of Personality and Social Psychology*, 66, 37-47.

Matlow, T (2001) Why Jail Innocent People? *The Globe and Mail* August 22nd

Murphy E. and Kinmouth, A. (1995) No symptoms no problem? Patient understandings of non-insulin diabetes *Family Practice* 12 184-192.

Nelson, C.A. (2000) Out of Sync-Reflections on the culture of diversity in private practice *Canadian Women's Studies* 19 1 and 2 199-205 York University Toronto.

Neuberg, S. L. (1989) The goal of forming accurate impressions during social interaction: attenuating the impact of negative expectancies. *Journal of Personality and Social Psychology*, 56, 374-386.

Ontario. (1995) Report of the Commission on systemic racism in the Ontario Criminal Justice system, Queens Printer for Ontario.

Ontario. (1998) *People Working Together for the elimination of discrimination and Harassment*, Toronto, Pollock Consulting/ Wilson Associates.

Ontario Human Rights Code (1961) Legislative Assembly of the Province of Ontario [Accessed 24 January 2006]
http://192.75.156.68/DBLaws/Statutes/English/90h19_e.htm

Owen, B.A. (1985) Race and Gender Relations Among Prison Workers. *Crime and Delinquency*, Vol.31, (1) (January) 177-159.

Omatsu, M. (2001) *Judging Critical Race Theory* (unpublished paper)

Singh-Bhui, H.(2005) Bill McWilliams Memorial Lecture, Birmingham.

Reed, M. and Roberts, J. (1997-1998) Adult Correctional Sentences *Juristat*, 19(4) 9-10 Statistics Canada Centre for Justice statistics.

Report for the Law Society of Upper Canada. Institute for Social Research, York University.

Rossi, P.H., Lipsey, H.E. and Freeman, M.W. (1999) *Evaluation – a systematic approach* 6th edition , London, Sage.

Schwarzwald, J., Amir, Y. and Crain (1992) Long-term effects of school desegregation experiences on interpersonal relations in Israeli defense forces. *Personality and Social Psychology Bulletin*, 18, 357-368.

Smith, D.J. (1997) Ethnic Origins, Crime, and Criminal Justice in England and Wales. In M. Tonry (Ed) Ethnicity, Crime, and Immigration: Comparative and Cross-National Perspectives Crime and Justice: A Review of Research vol XXI Chicago: University of Chicago Press.

Stenning, P. and Roberts, J. (2001) Empty Promises: Parliament, the Supreme Court and the Sentencing of Aboriginal Offenders. Saskatchewan Law Review 64 137.

Stuart, B. (1996) Circle Sentencing: Turning swords into ploughshares. In B. Galaway, B. and J. Hudson (Eds) Restorative Justice, International Perspectives New York, Criminal Justice Press.

Swim, J.K., Aikin, K.J., Hall, W.S., and Hunter, B.A. (1995) Sexism and racism: Old-fashioned and modern prejudices. Journal of Personality and Social Psychology, 68, 199-214.

The Law Society of Upper Canada (1996) The Duty to Accommodate. Toronto.

Torry, W. (2000) Culture and Individual Responsibility: Touchstones of the Culture Defense, Human Organisation 59 (1) 58-71.