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Cultural safety as a constitutional standard in Canada

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Topic and importance

Indigenous peoples in Canada continue to face serious harms rooted in the colonial legacy of laws like the Indian Act, from discriminatory child welfare practices to racist healthcare. The death of Joyce Echaquan, an Atikamekw mother who passed away in a Quebec hospital in 2020 after being subjected to racist slurs by healthcare workers, illustrates the human cost of these failures. Addressing them requires clear legal and ethical tools. First developed by Māori nurse and scholar Irihapeti Ramsden in New Zealand, “cultural safety” refers to the idea that Indigenous individuals and communities must be able to define for themselves what constitutes safe and equitable service. While the concept has gained attention across healthcare, education, and child welfare, its legal dimensions have received little scholarly attention. This article aims to fill that gap by analyzing the interwoven ethical and

constitutional grounds of the legal concept of cultural safety, with a focus on the Canadian context.

Main arguments

The legal concept of cultural safety can be theorized through Philip Pettit's concept of non-domination (meaning no person should be subject to another's unchecked power over their choices and wellbeing) and Miranda Fricker's concept of epistemic injustice (meaning everyone should be taken seriously, including when they communicate about their own experience). As both a process and an outcome, cultural safety requires moving beyond "cultural awareness" and "cultural sensitization" to deconstruct and restructure the domination and power relations between Indigenous and non-Indigenous groups.

Following John Borrows's approach, which holds that the law applied to Indigenous peoples must be defined through a hermeneutical community in which they can participate in constructing that law, it is further argued that cultural safety requires respect for at least two general standards entrenched in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP): self-determination and self-governance, as well as the related principle of free, prior, and informed consent. This latter principle encompasses the co-construction standard for laws and policies that may affect Indigenous rights and interests. While Canada is still implementing UNDRIP, these key principles are also rooted in Canadian constitutional law and section 35 of the Constitution Act, 1982, as illustrated by the recent case law discussed.

Conclusion and additional considerations

Incorporated into the legal realm, cultural safety becomes a powerful tool to name and recognize harmful experiences as failures of cultural safety and to create normativity to address them through institutional arrangements, laws and policies. Achieving cultural safety requires recognizing Indigenous self-governance rights, ensuring communities have adequate resources to exercise those rights in practice, and building genuine consent into the development of laws and policies that affect Indigenous peoples. Future litigation will be critical to implementing cultural safety by interpreting Canadian law in the spirit of “reconciliatory justice.”