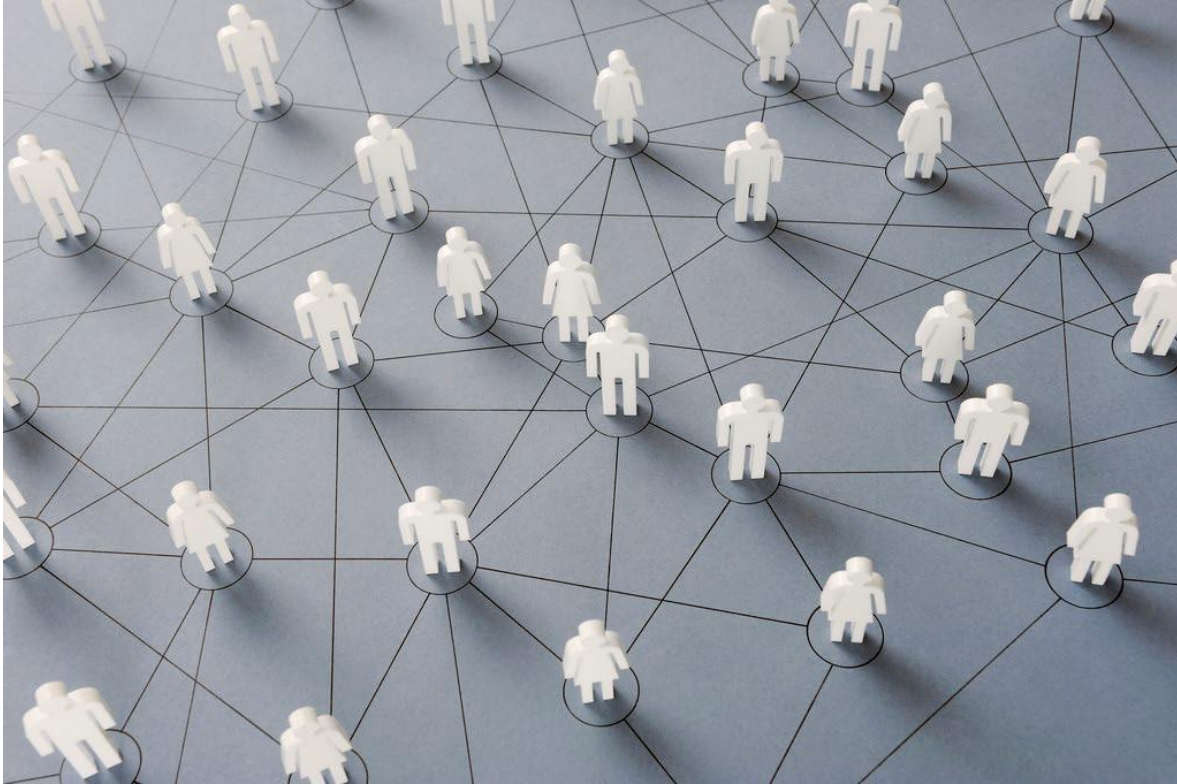


Opinion Piece



In The Matter of: The Cultural Report Discount

- By Kathryn Goodman-Creed

The proliferation of what has become colloquially known as “the cultural report”, has enabled the Court to receive a fuller picture of the person they are sentencing. While it may be an unpopular opinion in some social circles, the humanisation of offenders is crucial in addressing the underlying drivers of offending.

Section 27 of the Sentencing Act 2002 provides the opportunity for offenders to have additional information provided to the Court at the time of sentencing. The additional information may give insight into the offenders’ familial circumstances, cultural background, how their background may have contributed to the offending, how familial support and how cultural integration may assist in preventing further offending etc.

Of course, some of this information is available in the Provision of Advice to Courts (PAC) reports often directed at the time of sentencing. Arguably, the material provided in a cultural report is more specific and provides a broader insight into the offender. While the PAC report may incur lower associated costs the quality of those reports varies and is largely contingent on the writer's workload.

Apathy appears to have set in with some members of the local Constabulary insofar as the relevance of a cultural report with a preference for reverting to tired social rhetoric around cost:

"Police did not require the extensive s27 'cultural report' filed, produced at presumably significant expense (to the taxpayer), to come to the above decision".

It is imperative that the Court is as informed as possible when sentencing an offender and cultural reports are useful in that respect. The cost associated with the report is a small price to pay to ensure all parties before the Court are adequately heard and the sentence is tailored to the individual before the Court. Defendants are consistently at a disadvantage when compared to the resources available to Prosecutors in executing their roles.

Perhaps an unintended outcome of using cultural reports is the spawning of an industry of specialist writers who can provide a holistic view of the offender's circumstances in a palatable format for the Court. Cultural reports seem to range in price from free up to \$7,000 (in my experience) per report. The quality and insights of these reports also span the same range. There is no requirement that a cultural report be undertaken by someone who markets themselves as a cultural report writer. Sentencing appearances where community elders have been brought in to speak on the defendant's behalf have also been utilised and carry the same weight without the associated cost.

Irrespective of the form the information comes in, having insight into an offender's background allows the Presiding Judge to tailor sentences which could resonate with the person being sentenced. Perhaps it's a case of eternal optimism, however the long-term goal of the justice system should surely be to minimise the risk of reoffending. If Counsel can assist the Court by providing background information by way of a cultural report, criminal justice workers stand a better chance of addressing issues that are known. Ultimately, whether the offender takes the opportunities afforded to them via a reduced sentence is up to them and no amount of mitigation will overcome personal choice.

The continual oscillation between whether society wants a retributive or rehabilitative approach to sentencing has recently led to animosity towards discounts at sentencing. As society swings back towards the retributive approach 'easy targets' such a discounts become a focus and the potential discount for a cultural report is in the realm of 10-30%. Of course, it is not simply a case of 'have culture, will discount' there must be a causal link between the factors highlighted in the report and the discount.

Without question, Judicial discretion should reign supreme, and regulation of discounts should be avoided whether that is in the form of addressing individual components of sentencing discounts (cultural factors, rehabilitation, remorse, guilty plea etc) or limiting the total amount of discount available at sentencing, those matters should be left for determination by the Judiciary and their resultant case law.