Bias, Barriers, and Discrimination: Treatment of Indigenous Peoples in Wellness Courts

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Land Acknowledgement

I would like to begin this Major Research Paper (MRP) by acknowledging the land on which I reside and work today. Land acknowledgments have become the new trend at the beginning of an event and have been critiqued as being empty and performative, emphasizing the need for us all to do more. That said, it is important to reflect on what acknowledging land means to us as individuals. Recognizing that Indigenous knowledge comes directly from the land, I believe it is important to acknowledge the historic and ongoing uncomfortable truths that these communities have endured on their land at the hands of white settlers.

Before colonization, St. Catharines was the traditional home to First Nations, Métis, and Inuit Peoples, and the traditional territory of the Haudenosaunee and Anishinaabe peoples who still live here and who contribute to the existence of this land. This territory is covered by the Upper Canada Treaties and is within the land protected by the Dish with One Spoon Wampum Agreement. This land was dispossessed by white settlers who carried out the cultural and colonial genocide of Indigenous men, women, two-spirit persons, and children through violent acts such as Residential Schools, the Sixties Scoop, as well as missing and murdered Indigenous women and girls who were displaced and stolen. Indigenous communities continue to be impacted by intergenerational trauma, emotional, physical, gendered, and sexual violence, the prison industrial complex, and other modern acts of colonial genocide today. As a student, I would also like to acknowledge the historic and ongoing role universities have in the epistemic violence and oppression of Indigenous peoples, and the calls of action made by the Truth and Reconciliation Commission of Canada to decolonize universities.

As a white settler (or immigrant to Turtle Island) living on stolen land, I work to recognize my privilege, which Indigenous people have been deprived of by hegemonic, oppressive Western society. For seven generations backward and forward, I commit to holding myself and others responsible for prioritizing relationships with all beings and the natural world in caring for our Earth, advocating for Indigenous voices and stories to be heard, as well as actively working toward transformative change. I plan to have this reflected through ongoing education on social justice and supporting land back initiatives, community-centred decolonization, as well as the resurgence, sovereignty, and self-determination of Indigenous people. I hope that this project is an action that will contribute to these goals in some small way.

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Thank you to my leadership team at the Centre de Santé Communautaire for supporting me throughout my program by allowing me to work a flexible schedule. I am eager and looking forward to applying my new set of skills as I return to my position on a full-time basis.

I am grateful to have had the opportunity to work with Sudbury's Wellness Court's Mental Health Diversion program and a client who inspired my MRP. As it is my goal to eventually return to the courthouse, I believe this MRP has equipped me to better support future clients through my strengthened knowledge and advocacy for marginalized communities.

To my partner Anthony Colaco for standing by me and never letting me give up, you have been my rock, and I could never thank you enough.

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Introduction

Wellness Courts and History

Wellness Courts are an alternative therapeutic diversion from the regular court stream supporting people living with mental health and/or addictions. According to Therapeutic Courts in Canada (2021), Mental Health Court was established in 1997, following with the Drug Treatment Court in 1998, and finally, the first official Wellness Court targeting both concerns opened in 2007. To date, almost every province in Canada (excluding PEI), has therapeutic courts, with some as recently as 2019. The tension driving this project considers whether a program that has emerged from a traditional justice system rather than Indigenous ways of knowing can effectively support the cultural needs, rehabilitation, and recovery, and address the risk of recidivism within Indigenous communities. Indigenous peoples of Turtle Island (also known as Canada) live with the ongoing effects of colonization which include multi-generational trauma and the legacy of Residential Schools. These realities elevate their involvement with welfare and justice systems. If you are not trained to see what systemic racism and discrimination look like, it may often be missed or confused.

This research project will explore the impact of anti-Indigenous racism in the criminal justice system. I am also writing with experiential insights from my previous professional role as a justice case manager supporting people referred to Sudbury Ontario's (located on the traditional territory of the Atikameksheng Anishnaabeg and Wahnapitae First Nation) Wellness Court's Adult Mental Health Diversion Program which was established in 2014 (Therapeutic Courts in Canada, 2021, p.107). The screening process for Wellness Court includes internal or external referrals from Crown attorneys, duty counsel, lawyers, community partners, or from the individuals themselves where a mental health court outreach worker examines the circumstances

that may have contributed to their charge that must be within the first two classes of offence (i.e., breach of bail or probation, theft or mischief under $5000, break and enter, failure to comply, utter threats, indecent act, assault, etc.). With the individual's consent, they are presented with a Mental Health Diversion plan that typically lasts three, six, or twelve months with the support of a justice case manager who assists them with goals that may be tailored to their needs (Ontario Shores Centre for Mental Health Sciences, 2021).

This plan may include assessments, programming, and community referrals to increase their circle of care, strengthen security in their lives, or abide by their conditions. A court report consisting of updates is presented to the judge and Crown every four to eight weeks, depending on their progress, to support the individual in staying on track or to provide them with the opportunity to share what may be impeding them from achieving their goals. Upon successful completion of the program, the individual's charges are typically withdrawn and are not added to one's criminal record, or in more severe cases, they may receive less strict outcomes, such as a reduced sentence, conditional discharge, etc. In the rarer cases where a person is not engaged in the program, they must return to the regular court stream. The goals of this program and court are to support peoples' recovery, rehabilitation, and reintegration into the community, and to reduce recidivism (CMHA Sudbury/Manitoulin, 2023). These programs do not particularly target Indigenous people.

Research Purpose

The purpose of this major research project is to understand the impact of Wellness Courts on Indigenous peoples and communities. Having dedicated the last 10 years to the practice of Social Work and over two years with Wellness Court from 2018 to 2021, I feel that social justice was not considered in the foundation of my Social Work degree nor my employment to date. As

Kim states, restorative and transformative justice "provide promising frameworks to guide a new set of practices and policies"; it was refreshing to see social work researchers advocating the need for these alternative options (2018, p.229).

I contend the practice of Social Work must strengthen its responsibility, commitment, and integral role in social justice for the future of the marginalized communities we serve. Through my critical literature review, common areas of agreement, outcomes, methods, as well as gaps of understanding will inform how my textual analysis will be conducted. This project has the potential to increase insight into the elevated recidivism rates within Indigenous communities and shape policy and practice in ways that could advance social justice within these contexts.

Research Question

The following research question will guide this investigation: What are the impacts of Wellness Courts on Indigenous people and communities? This question will be addressed through a critical literature review that considers the adequacy of support and the degree of active involvement of Indigenous ways of knowing in policy and practice within Wellness Courts in Northern Ontario, with comparative work of Wellness Courts and their histories within Canada.

My focus will also be on Sudbury's Wellness Court's Adult Mental Health Diversion program, given my professional experience. I came about my research question in an inductive way (via professional work experiences), and upon completing my research, I discovered there is a massive gap in the literature that needs to be addressed. If there was an answer that exists, it does not exist in the literature which I address later. The insights from my previous professional experiences will be integrated by using reflexivity as part of my data analysis.

Social Location

Reflexivity to Personal Experiences

Growing up in a French catholic environment in Timmins Ontario (located on the traditional Lands of Mattagami First Nation), I unfortunately have no recollection of learning about decolonization as there was simply no education or discussion of the topic. Canadian history was limited to conflicts between the English and the French. Despite the fact I lived in a place where the Indigenous population is larger, Indigenous culture was very segregated and completely absent in my daily life. From my knowledge, I never learned alongside or interacted with Indigenous children in any setting. When there are no lessons that you are taught as a child, all that you can take in and absorb are others' attitudes. People in my hometown can unfortunately be quite racist. In reading Tuck and Yang's discussion of settler moves to innocence, the common responses "we all are a 'little bit Indian'" and "I don't experience the problems you do, so I don't think about it" allowed me to reflect on my own experiences, specifically in remembering some of my extended family members ignoring and exempting our responsibilities as settlers. These statements echo the desire to "not have to deal with this problem anymore" in moving forward with 'our' settler future (2012).

Transition for me in my life is moving from ignorance and a lack of knowledge to purposely trying to think about and consider Indigenous resurgence and decolonization. Pillay quotes: "It was a moment of coming to terms with the realization that our education had equipped us very well to know many things. But it had also equipped us excellently to be ignorant of most of the world and arrogant about our ignorance" (2015, p.4). Realizing the source of ignorance is the first step to the ultimately more challenging task (and obligation) of taking responsibility for correcting our ignorance – so that our awareness reflects in action (i.e.,

speaking out to the ignorance of others). My goal is to change from not knowing to placing it at the forefront of my mind.

Reflexivity to Professional Experiences

My interest in this topic comes from my own experiences working in Wellness Court, having witnessed firsthand the shortcomings of the system through my experiences in the fields of mental health, rehabilitation, and justice (diversion), in addition to instances of what (I suspect) have constituted racially motivated discrimination. For example, one of the last people I assisted near the end of 2021 was a young Indigenous man who received much harsher outcomes than any of my other clients with a similar record and charges. When I shared my concerns with our Crown attorney, he confirmed that although he would have offered Mental Health Diversion, other Attorney's decisions in other jurisdictions were out of his control.

I remember wondering if it was discriminatory and why he was referred to the Canadian Mental Health Association as opposed to our partnered Indigenous agency: N'Swakamok Native Friendship Centre; however, I was made aware by our mental health court outreach worker that their program was typically limited to supporting people in the regular court stream who require a plea of guilt (which Wellness Court does not require). In reflecting on how I could make an impact on racialized communities in Wellness Court, I questioned how a colonial institution could attain justice for Indigenous peoples, remembering specifically how difficult it was for this person to engage and complete the goals of his Mental Health Diversion plan. I concluded that the programs he was assigned by our Crown attorney and mental health court outreach worker were not culturally supportive services, nor did they offer an Indigenous Trauma-Informed Approach (Olson, 2018) that could have been significantly more meaningful to him.

Privilege and Identities

In reflecting on my positions of privilege, my different identities that come into play in my study are as a young, white settler, middle-class, cis-gendered, heterosexual, able-bodied, healthy, primarily English-speaking, Northerner, Canadian, woman, student, Registered Social Worker, and Mental Health Therapist. Some of my values include being person-centred, inclusive, equitable, collaborative, and innovative, while some of my goals are to not be biased or "translating truths". The following quote from Nagar's (2018) "Hungry Translations" left me with no choice but to take a moment to pause and reflect: "I engage the truths that often get muffled when words from one place are translated into more words of another language and robbed of their accents, melodies, and meanings..." (p.6).

Although I am still interested in the ongoing process of exploring how my research question may be done in a "just" way, I am far more aware and cautious of the risk of "robbing" Indigenous communities' views and authentic experiences in the process. As stated, the implications of my positionality are the potential to be biased; hence, the need for and importance of remaining aware of how my prejudices and biases can come into play in my project so that I can take others' perspectives into account. Considering my research question, I must explore the notion of intersectionality (i.e., age, Indigenous women vs. men, etc.). Intersectionality is explored further in my critical literature review.

Conceptual Framework

Justice as a Colonial Framework

Within the legal system, there is a stark contrast between colonial interpretation and Indigenous ways of knowing justice. The systems and institutions that exist are derivative of the

ideas, attitudes, and beliefs that we have, which in turn only reinforces our existing attitudes and beliefs. For example, Kirmayer (2019) addresses the mental health inequities Indigenous peoples in Canada face in access to appropriate care due to structural determinants of health such as poverty, exposure to violence, and racism that in turn affect our cultural knowledge, values, and attitudes in society. Although the court is supposed to be an institution where all judges, lawyers, or jury are assumed to be impartial, not above the law, politically neutral, etc., discrimination, bias, and racial disparities persist. This is also reflected in the mass overrepresentation of Indigenous peoples in the criminal justice system (30% of provincial/territorial custody while representing approximately 4% of the Canadian adult population) and their lack of support in all phases of court, including access to Wellness Court, culturally responsive treatment and services, and opportunities to complete programming (Government of Canada, 2019; COI, 2019).

As Klees (2020) discusses the "one-size-fits-all" recommendations and "best practices" that force ideological conformity (p.14) it had me reflect on the universal applicability of colonial justice. We tend to think of justice as this "one-size-fits-all" approach, however, colonial ideas of justice are not appropriate, specifically for Indigenous peoples. Hence, the social problem that is significant to my research is the universal applicability of colonial justice (and the subsequent systems that result from them), driving my theme of whether they render Indigenous peoples ill-equipped to access justice and achieve rehabilitation in Wellness Courts. Given that the standard of justice is within this colonial framework, the effects of discourse present themselves both in the literature and in how people discuss this social problem in society. For example, dominant Western society may think that Indigenous peoples are less able to be reformed because they do not fit into the system of rehabilitation as well.

As reflected in the identified gap in the literature, some people may tend to accept colonial attitudes or systems as the ideal of what or how things should be. Within the field of psychotherapy, this could be reflected in the way services are structured, or the type of programs that are offered (i.e., programs not being Indigenous-led or developed with Indigenous consultation, the implementation of an Indigenous approach only being considered for future projects, etc.) (Weiler et. al., 2022, p.21). One of the problems is that when one thinks about justice, dominant Western society may think about colonial ideas of justice as the basis of what is known and lived by. If justice to dominant Western society means colonial ideas about justice being universally applicable, then our ideas of justice are not diverse. An alternative to what this could look like is incorporating Indigenous ideas of justice in Wellness Courts, given Indigenous peoples' significant overrepresentation and being at higher risk of returning to the system.

Examples of courts that include cultural sensitivity are Dartmouth's Wellness Court, which partners with the Mi'kmaq Legal Support Network (2019, p.12), Alberta Health Services which requires a Mental Health Diversion Indigenous Justice Facilitator (2018, p.23), and Elsipogtog Healing to Wellness Court who help to "bridge the gap between the provincial court and Aboriginal culture" to "make the justice system more responsive to the needs of Aboriginal people" (2010). Considering the years in which Wellness Courts were made, my experience in Sudbury's Wellness Court not having culturally specific services for Indigenous peoples, and the results of my research exposing numerous Diversion programs that explicitly do not disclose Indigenous consultation, there is a strong indication that traditional courts are not well equipped to meet the needs of Indigenous communities. This is something I will take in a more deliberate and detailed fashion in my methodology and my critical literature review.

Restorative and Transformative Justice

My conceptual framework of social justice brings together restorative justice (social responses to violations of the law) that highly informs diversion programs, and transformative justice (a political framework for responding to violence) to be explored for improving diversion programs. As described by Kim (2018), these include "responses to violence that challenge punitive, retributive criminal responses to violence" (p.225). Through these lenses, community-based interventions, restorative justice, and transformative justice are alternatives to incarceration and offer anti-violence options to criminalization. Kim argues (2018), "Demands by contemporary social movements to challenge interpersonal and law enforcement violence add urgency to the call for the creation of restorative and transformative responses" (p.229). Kim also claims that restorative and transformative justice interventions "prompt a reimagining of the role of social work in relationship to social justice and social movements" as culturally sensitive alternative options are advocated for over dominant Western methods (2018, p.219). This will be further explored in my methods and methodology.

Critical Race Theory and Feminism

Given my research interests in racial and criminal justice, Avila and Bundy's (2021) lens on Critical Race Theory is an additional crucial piece. Focusing on the relationships between legal systems and racial power, this theory aims to achieve "social change by dismantling the sophisticated and deeply embedded discourses and practices that justify, support, and re-create these realities" (p.15). These authors address the foundation of white supremacy shaping the world in the interests of white people, sharing how Critical Race theorists argue that racism is "ordinary" as it "remains hidden beneath a veneer of normality" (2021, p.17). These authors highlight the mythical 'post-racial state' and the re-designing of the racial caste system in the

form of the penal system, “leaving untouched the insidious social organization that continues racial discrimination, segregation, and ultimately the imprisonment of people of colour” (2021, p.21). As per Ward (2018), Critical Race Theory challenges dominant discourses and is committed to social justice and the experiences of marginalized people (p.12).

According to Ward et. al. (2021), Critical Race Theory “critically examines the way in which race is implicated in all aspects of society and can be helpful to use as a theoretical framework to see how racial groups with power govern other racial groups” (p.306). When considering the impact of Wellness Courts on Indigenous people and communities, it is important to acknowledge that this alternate diversion to the regular court stream was developed as a response to the increasing concerns surrounding mental health and addictions and the need for more therapeutic services. Comprised of a court team (i.e., judge, Crown attorney, Duty Counsel lawyers) and community partners who for many programs did not explicitly state being made with Indigenous consultation, there is a strong indication that they were established for dominant Western society and ignorant to the culturally specific needs of racialized people. Similar to the COI’s (2019) argument about Wellness Courts’ lack of culturally responsive services, other arguments will be discussed further in my critical literature review.

Dunbar (2008) speaks to this lack of recognition or ignorance of Indigenous knowledge systems, ways of knowing and doing via Eurocentrism’s belief in the superiority of European people over non-European peoples. They also argue against the continued colonization of Indigenous people where the dominant culture expects them to fit into “one-size-fits-all” institutions, stating: “Members of the dominant society control the structure, content, processes, and staff within these institutions, and they consciously or unconsciously reinforce the marginalization of Indigenous knowledge systems” (p.11). Results of these practices concerning

my MRP can include the overrepresentation of Indigenous communities in the criminal justice system as they are not as often presented with the opportunity to have their charges diverted and if they are, the lack of meaningful therapeutic programming decreases their likelihood of successful completion. I will address this later in my critical literature review. Dunbar (2008) contends that "where there is a void in morality, justice cannot exist" (p.20). Comparatively, Ward et. al. (2021) bring attention to the survival of Indigenous people in Canada being dependent on their adaptation to the customs and habits of the oppressor, with the criminal justice system as a colonial response to criminalize mental health and addictions in racialized communities (often-times as ongoing effects of colonization).

More specifically, Pon et. al. (2011) argue critical race feminism and anti-colonialism as more transformative approaches to Social Work in addressing anti-Native racism and responding to the overrepresentation of Indigenous children in care more effectively. According to Ontario's Human Rights Commission (2018), "There are more Indigenous children in care today than there were in residential schools at the height of their use" (p.7). This speaks to the ongoing effects of colonization (i.e., overrepresentation of Indigenous youth in the child protection system often leading to their overrepresentation in the criminal justice system). Pon et. al. address this narrative of their overrepresentation as othered subjects being inseparable from the history of white supremacy and normativity that was central to the formation of Canada and the welfare state. Concerning my MRP, the subsequent formation of the criminal justice system (and the standard of justice within this colonial framework) was by no means exempted or untouched by white supremacy and normativity in today's dominant Western society. Applied to Social Work practices encouraged through Wellness Court Mental Health Diversion programs, Pon et. al. argue the shift of mainstream anti-oppression perspectives resulting in the policing of service

users and reinforcing the role of the state as a welfare provider that is embodied largely by white female social workers (p.401). As a white female social worker who recognizes this approach via my work experience, this article reminded me of the importance and need to further explore the potential harm and impact of commonly used practices (not simply assuming their validity just because they are well-known evidence-based theories in psychotherapy).

Methodology and Methods

Plan of Study and Reflexivity

This critical literature review concentrates on discourses focused on Indigenous knowledge systems and Mental Health Diversion programs. As the purpose of this major research project is to understand the impact of Wellness Courts on Indigenous peoples and communities, I will compare common goals assigned through Mental Health Diversion programs and Indigenous organizations like Aboriginal Legal Services (2022) and the Ontario Federation of Indigenous Friendship Centres' Indigenous Community Justice Program (2020) to expose variances, shortcomings, and to better understand how they shape the delivery of Wellness Court Mental Health Diversion programs. I am interested in understanding the impact of Wellness Courts on Indigenous people and communities through scholars such as the COI (2019), Han et. al. (2020), and Gaba, et. al (2022).

Reflexivity is a central method that will inform my analysis. Ngata (2021) encourages an anti-colonial approach and understanding our positionality within these relationships as good practice for 'starting where you are', imploring readers to explore who is making, influencing, benefitting, and suffering from policies at play. They also call on the need to expose and dismantle the racist and imperialist structures while highlighting the decolonial and re-

indigenizing practice that seeks to understand the "influence of colonialism and reframing it from an Indigenous perspective" (Ngata, 2021, p.4). Through my critical literature review and analysis of data and research needs, my previous client's story inspired my project to be carried out in the following three phases: (1) to identify the different types of Mental Health Diversion programs that are available, (2) to explore the literature on how Indigenous peoples would want to foster restorative justice and transformative justice, and (3) to assess specific, tangible, action items and ways Indigenous communities would want the criminal justice system to manage diversion programs. The existing critical literature about Wellness Court programs I examine are the COI (2019), Han et. al. (2020), and Gaba, et. al. (2022).

These phases address my research question surrounding the impact of Wellness Courts on Indigenous people and communities. Comparing Mental Health Diversion programs provided within Wellness Courts to Indigenous ideas of justice may speak to the resulting impacts Indigenous communities face because of these practices (i.e., unmet needs due to services that are not culturally sensitive, higher risk of unsuccessful completion, recidivism, overrepresentation of these people in the system, etc.). My MRP will add to the dearth of studies examining race and court diversion in Canada (Turtle Island), as well as highlight the racial/ethnic differences and specific needs of Indigenous people that should be considered in services provided within these courts.

Data and Research Needs

Recent research identifies a dearth of scholarship investigating ethnic and racial differences in Wellness Court participants' needs, as well as a lack of scholarly focus on the impact of Wellness Courts on people from equity-seeking communities (Alberton et. al., 2021; Gaba, 2022; Han et. al., 2020). According to the Community of Interest (COI) for Racialized

Populations and Mental Health and Addictions led by CMHA, with representation from racialized service users with lived experience who received or were denied mental health diversion (four of whom identified as Indigenous), "there are currently no studies examining race and mental health court diversion in Canada" (2019, p.13). As per my research, this remains true today.

Through the growth of Wellness Courts, Gaba et. al. (2022) urge the need for more equity-informed research, while Alberton et. al. (2021) and the COI (2019) specifically encourage the collection and reporting of publicly available race and ethnicity-based data throughout all phases of a person's involvement in the justice system to explore the entanglement of race, and court diversion access or denial for marginalized populations. As Canada's racialized populations continue to grow and are deserving of recognition in services, Owusu (2014) encourages the value of exploring reasons for the suppression of racial data within the criminal justice system. As stated earlier, the COI (2019) argued the same need that remains advocated for today. Han et. al. (2018) also share their goal to fill the gap in research regarding racial and ethnic minorities being what they argue as significantly less likely to connect with and benefit from mental health and substance use treatment compared to white people (p.2).

Phase 1: Mental Health Diversion Programs

The first phase seeks to identify the common goals that are assigned to Sudbury Ontario's Wellness Court's Adult Mental Health Diversion plans and is presented through the following five themes: (1) Assessments, (2) Supports and Security, (3) Community Programming, (4) Direct Accountability, and (5) Conditions. This analysis, therefore, requires research on how the development of traditional programming may not align with Indigenous culture or ways of knowing.

Assessments

The first goal that is typically assigned to Mental Health Diversions plans is to complete the Ontario Common Assessment of Needs (OCAN). The tool has two components: a consumer-self-assessment section that allows the client to identify any unmet needs (i.e., housing, supports, substance use concerns, etc.), as well as a staff assessment portion that prompts discussions on 24 domains of social and health determinants and summarizes any referrals or actions to have their unmet needs addressed. To monitor progress, a re-assessment is completed at the end of the typical six-month Mental Health Diversion program (Hitchcox, 2023). Through a survey, focus groups, and interviews with staff and clients of Aboriginal Mental Health Programs in North-Eastern Ontario, independent researchers Mariette of First Nation origin and Marion (2010) conducted an evaluation of how to best implement the OCAN within the Aboriginal population in determining the needed cultural supports, barriers, and challenges experienced. Cultural incongruence related to specific domains and the lack of certain elements was noted among many issues, ultimately recommending cultural safety: "to devise cultural supports to better reflect the Aboriginal individual's journey and community realities in order to improve uptake and implementation of the OCAN" (p.1).

According to CAMH (2020), the OCAN 3.0 which was released almost a decade later in 2018 addressed its limitations by adding more options for reporting Aboriginal origin including First Nations, Indigenous/Aboriginal or Métis that anticipated to "strengthen the value of the OCAN for examining equity of access issues" (p.17), compared to the OCAN 2.0 that only provided the options 'Aboriginal' or 'non-aboriginal'. It is important to note, however, that the optional question may be answered as unknown or declined. The feedback gathered by the OCAN Aboriginal Working Group Report recommended OCAN Aboriginal supports such as

Aboriginal-specific training materials, an Aboriginal Education Specialist, and an Aboriginal Subject Matter Expert. Although the OCAN Version Update Working Group indicated the involvement of service providers working with Indigenous populations (CCIM, 2018, p.4), representation of Indigenous communities was not explicitly stated.

People who are struggling with addictions may be recommended to complete the Global Appraisal of Individual Needs (GAIN) assessment, a tool that assesses one's life and experiences (CAMH, 2023). For a person to access funded treatment homes or programming for addictions in Ontario, they are typically required to complete the GAIN assessment. Given the length of this standardized clinical assessment consisting of hours of extensive, intrusive, and personal questions measuring all areas of biopsychosocial needs, it is known for being traumatic to Indigenous communities. Concerns around the GAIN assessment identified by Smith and Abel (2016) include, "issues around cultural sensitivity and relevance, it being developed without input from Indigenous people, as well its language and terminology" (p.13). If conducted by a worker with no background or knowledge of an Indigenous Trauma-Informed approach (which will be defined further in my critical literature review), this may result in the refusal or withdrawal of the assessment, and may ultimately lead to increased risk, harm, and triggers for the individual. To aid, Smith and Abel encourage professionals to "develop tools that are culturally relevant, created and developed for and by First Nations and Inuit people, as well as assessing impacts of historical and intergenerational trauma" (p.14).

According to the Task Force on Responding to the Truth and Reconciliation Commission of Canada's Report (2018) (a report by members of the Canadian Psychological Association and the Psychology Foundation of Canada), Indigenous people may be justifiably cautious or avoid Western psychological assessments due to their historical misuse, fear of being labelled or being

referred to unknown and possibly harmful interventions. They argue, “Extreme caution is needed to avoid approaches that prioritize the preconceived assumptions, theories, and approaches of Western culture as was the case with the residential school system” (p.29). In short, the findings of this task force raise awareness of the harmful impacts of adapting a program from a Western community to an Indigenous community that should prioritize the gaps in the referral process, services, and the diversity of their cultural needs.

Supports and Security

The second most common goal that typically follows an intake assessment is strengthening the person’s circle of care. This may include personal or professional support, such as obtaining a family physician, or a psychiatrist, or financial support if eligible such as Ontario Works (OW) or the Ontario Disability Support Program (ODSP). Other unmet needs that may be determined as useful for the participant would be to explore securing housing, employment, or education. Although securing employment or education may seem like valuable goals to dominant Western society, I argue that these goals tend to favour our capitalist society’s approaches and may not be as meaningful to Indigenous communities.

Through a review of 40 research studies regarding mental health service use among Indigenous populations in Canada and other countries, Goetz et. al. (2022) identified that participants expressed skepticism about the effectiveness of these services, ultimately stating the desire to manage their concerns independently or being more comfortable confiding in family and friends than to a psychologist or counsellor who often-times have year-long wait lists. It is important to note that one of the main underlying themes to their reluctance was mistrust of mainstream services and non-Indigenous counsellors with a lack of cultural competence due to the history of damaging institutional experiences of Indigenous people.

Community Programming

Another common goal assigned to participants' Mental Health Diversion plans is to complete community programming that relates to the circumstances surrounding their charges. Examples from my work experience may include programming with the Sudbury Counselling Centre, Monarch Recovery Services, Positive Steps, or Health Sciences North's Mood and Anxiety Program (MAP), Early Psychosis Intervention Program (EPI), Outpatient addictions and gambling services (OAGS), Assertive Community Treatment Team (ACTT) or Positive Steps for medication management, receiving inpatient treatment, or completing life skills programs with Inner City Home (i.e., managing stress, anger, building self-esteem, conflict-free communication, and managing money). It is important to note that through my research of these programs via their websites, the only organization that explicitly states any mention of Indigenous communities is Health Sciences North, highlighting Indigenous Health and Patient Navigator Services (2023).

As many of these programs require intake assessments and have onsite psychiatrists or psychologists, the Task Force Report (2018) argues their tendency to draw on Western theories of mental health and illness and the subsequent need for culturally appropriate assessments and trauma-informed care training developed with Indigenous communities. This research exposes the impacts of Western society's 'one-size-fits-all' approach regarding therapeutic practices that may ultimately contribute to the recidivism and overrepresentation of Indigenous communities in the criminal justice system.

Direct Accountability

In more unique cases, the judge or Crown attorney may specifically request the participant to complete direct accountability programming. As per the John Howard Society (2023), the program involves participants being held accountable through community-based sanctions with the most common being to complete anger management programming, completing an apology letter to a person involved in the charges, entering a s.810 Peace Bond where the person agrees to keep the peace and be of good behaviour, or pay restitution. Other options may include volunteer work, substance awareness, and their Shoplifting Education Program (Legal Aid Ontario, 2023). Expanding on the Anger Management Program developed by the John Howard Society of Windsor in collaboration with Correctional Service Canada, their sessions are Cognitive Behavioural Therapy (CBT) based and teach participants to use appropriate thoughts and actions to express anger (2023). In the same instance, Métis-Cree author Walker (2021) states that CBT does not leave room for spirituality or culture and argues that to bridge the gap in mental health after generations of trauma, discretion should be used with Indigenous communities in ensuring services, programming, and approaches are culturally sensitive, considerate, respectful, inclusive, adapted, and responsive for it to be effective within ethnically diverse populations. For example, LifeWorks (an employee assistance program) launched the first Indigenous iCBT program developed in collaboration with Indigenous communities nationally, described as delivering "specialized mental health support integrating Indigenous cultural and spiritual concepts within clinical frameworks to provide tailored support and solutions" (2022, para. 1).

As I critically reflected on the value of the above-mentioned common goals for Indigenous communities, I could not help but return to the young Indigenous man I briefly

supported who inspired my MRP. From my recollection, his charges involved assaulting a police officer. When examining the circumstances surrounding his charges, he described being under the influence of substances late at night at his friend's home on an Indigenous reserve, when the police arrived. In attempting to put myself in his shoes, I furthered my research surrounding Indigenous trauma and fear of the police. As per Cotter (2022), "generations of systemic racism, discriminatory policies and practices directed at Indigenous people, and the historical and ongoing legacy of colonization likely explain these lower levels of confidence, as they have contributed to an overall sense of mistrust in the police, criminal justice system, and many other institutions" (Text box 2). In reflecting on some of these common goals that had been requested on his Mental Health Diversion plan, I argue that integrating culture with Indigenous healing methods would be much more effective in making mental health services less colonial.

Conditions

A final more serious goal that may be ordered by the Judge or Crown attorney is for the Mental Health Diversion participant to abide by their conditions. This may include bail or recognizance (i.e., conditions of a person's release), a Community Treatment Order (CTO) that mandates medication compliance through supervised treatment on a patient who is discharged from the hospital, completing the Sudbury Counselling Centre's Partner Assault Response (PAR) program, meeting with their Probation Officer (PO), their Children's Aid Society (CAS) worker, or abstaining from substances.

Returning to the Task Force on Responding to the Truth and Reconciliation Commission of Canada's Report (2018), they draw attention to the harmful effects of institutionalizing Indigenous people who are overrepresented in the mental health and correctional system, arguing, "Current clinical approaches, because they tend to focus on an individualistic view of

the self, may come across as victim blaming. This is particularly true when those approaches fail to situate a psychological problem or behaviour in the context of people wounded and traumatized by longstanding discriminatory government policy and law" (p.21). Due to these above-mentioned risk factors, any goal that could be experienced as victim blaming is crucial in considering the harmful impacts of Wellness Courts on Indigenous communities.

Phase 2: Indigenous People and Justice

The second phase of my MRP explores the literature on how some Indigenous communities would want to foster restorative justice and transformative justice (Kim, 2018). This helps to answer my research question surrounding the impact of Wellness Courts on Indigenous communities given the urgent call to decolonize restorative justice practices and work towards resurgence, which in the context of this MRP informs a significant portion of the design of Wellness Courts. In doing so, my analysis aims to shift ideologies, prioritize relationships with Indigenous communities, and move forward to change while being informed by texts such as "Rights-Based Restorative Justice: Questioning and Decolonizing our Ways of Knowing, Doing and Being in Canada and Beyond" (Moore, 2021).

Although I knew of restorative justice from my previous employment, Moore's article was my first time being introduced to honouring the Indigenous roots of this theory and the subsequent urgent need to decolonize these practices and discourses. Despite the discourse of Canada (Turtle Island) being a postcolonial state, Moore exposes the presence of gender domination, heteropatriarchy, and settler colonialism by stressing the importance of truth-telling, un-learning, learning, and re-learning what restorative justice means, as well as unconscious biases that shape our world views. Moore also addresses how Canada's history of colonization has deeply impacted and transformed everything we know and live by, including our tolerance

and ignorance of colonial institutions, policies, and practices that do not allow the space for meaningful participation, resurgence, or potential reconciliation from equity-deserving communities.

To support this, prison abolitionist Sol Neely (2021) states, “As modern subjects, we breathe coloniality all the time and every day” (p.71). As a society, it is our responsibility to educate ourselves and question how this violence originated. Moore discusses how “racialized, gendered, heteronormative, classed and settler-colonial biases are easily imported into restorative justice processes” (2021, p.100). This is imperative to analyze further in my critical literature review as Wellness Court’s Mental Health Diversion initiatives, goals, and programming are based on alternative therapeutic and restorative justice processes.

Phase 3: Indigenous Approaches to Diversion

The third phase assesses specific, tangible, action items, and ways some Indigenous communities want the criminal justice system to manage diversion programs. According to the BC First Nations Justice Council, one of the Indigenous Justice Centre’s objectives determined by community experts is to divert Indigenous people to a healthy path away from justice involvement, which includes “promoting diversion as a ‘first option’ at all levels of the criminal justice process; promoting better transitions from jail and reintegration into community; and referrals to health/treatment services, victim services, or other supportive programming” (2023, Objective 2). This focuses on the people who feel and understand the impact and power of colonization and need to be involved in meaningful solutions. I will evaluate these responses through the following three themes: (1) Gladue Principles, (2) Cultural Competence, and (3) Indigenous Diversion.

Gladue Principles

As per Aboriginal Legal Aid (2023), a crucial factor judges in the Canadian criminal justice system must prioritize is Gladue principles, defined as "a way for the judge to consider the unique circumstances (experiences) of Indigenous peoples", as well as Gladue factors, defined as "challenges of colonization a person, their family, and community faced and resisted as Indigenous people that continues to affect them today" (2023, para. 3). Gladue originates from a 1995 Supreme Court of Canada case surrounding an Aboriginal woman named Jamie Gladue (Clarke, 2017): "In this case, the court said the criminal justice system failed Aboriginal people and too many were being sent to jail. The court also said Aboriginal peoples face racism, in Canada and in the justice system" (p.1). Gladue principles are an attempt to address the failures of the criminal justice system in reducing the overrepresentation of Indigenous peoples in conflict with the law that are sentenced to jail perpetuated by systemic discrimination, background factors, and challenges created through colonialism (i.e., impacts of colonization, dislocation from culture or family, racism, foster care, the child protection system, abuse, trauma, violence, addictions, poverty, lack of education or employment, Residential Schools, the Sixties Scoop, missing and murdered Indigenous women and girls, etc.) (2023, para. 3)

This allows the judge to consider alternative options to incarceration that are appropriate to one's particular Indigenous heritage or connection, such as a restorative justice program or an alternative measures program where the person "accepts responsibility for their actions and takes steps to repair the damage without going to court" (2023, para. 11). Gladue principles support a successful bail release plan and decisions surrounding probation, before and during Diversion if offered. According to Steps to Justice (2019) as a partnership led by Community Legal Education Ontario, an Indigenous person's lawyer may also make Gladue submissions, which

can include experiencing systemic discrimination in the arrest or detention (i.e., if they were removed from their community to be brought to court), and if a jail sentence would have an unreasonable or unfair effect on the accused.

Gladue applies to every court where one confirms self-identification as Indigenous, Métis, First Nations, or Inuit, while Gladue or Indigenous Peoples Courts are limited to bail and sentencing hearings. To reduce recidivism, the plan of care made with an Indigenous court worker may include Indigenous support for mental health, trauma, addictions, homelessness, or participation in cultural activities. As stated by BC First Nations Justice Council, the Canadian Criminal Code under s718.2(e) states "all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders... The goal of the Gladue report[1] is to increase rehabilitation, prevent future offences, promote community safety, and prevent victimization (people being harmed)" (2023).

Cultural Competence

Culture is a core foundation for identifying who one is and their sense of belonging. Through colonization and colonialism, Indigenous communities were stripped of their cultural identities. Considering the failures of Canada's criminal justice system, cultural competence is crucial in effectively diverting Indigenous people out of custody and breaking the vicious cycle of their overrepresentation. According to the Provincial Court Wellness Court Programs Working Group (2018), the principles of cultural competence include respect for diversity, social justice,

[1] "Gladue reports and plans contain information on the unique circumstances of Aboriginal people accused of an offence or Aboriginal offenders. The court can consider these reports during sentencing" (Legal Aid Ontario, 2023).

fairness, trust, and equity, which recognizes that "people with unequal needs often require different treatment to achieve the same results" (p.3). The cultural competence framework encompasses self-awareness, cultural knowledge, and cultural resources as tools for bridging the gap, both on the individual service provider and organizational service system levels in terms of policies, procedures, and partnerships.

The Provincial Court Wellness Court Programs Working Group (2018) describes cultural competence as a continuum that ranges from 'cultural destructiveness' to 'cultural proficiency'. One level of the continuum that I believe reflects the story of the young Indigenous man who inspired my MRP is 'cultural blindness', characterized as "the belief that traditionally used approaches by the dominant culture are universally applicable; if the system worked as it should, all people–regardless of culture–would be serviced with equal effectiveness" (p.4). The universal applicability of colonial justice, as well as the absence of culturally competent court personnel, diversion goals, and community resources, speak to the unwarranted negative impacts Wellness Courts have on Indigenous communities. An approach suggested by the working group to counter this is cultural humility, where questioning to understand the person's cultural needs is prioritized over making assumptions or informing what one may think is in their best interest (p.5). The working group argues that becoming a culturally competent Wellness Court can help reduce inequity regarding the overrepresentation of racialized communities in the criminal justice system and address diversity needs, as culture impacts how people define justice and appropriate versus unhelpful resources (i.e., Indigenous people not accessing assessments, treatments, or therapies for mental health and addictions, involving law enforcement in resolving conflicts, etc.).

The working group argues: “For a Wellness court program to be effective, all the different organizations (e.g., judicial, policing, social services, health, etc.) must work together in a culturally informed manner within agreed upon cultural norms and expectations” (p.7). To support this, the working group encourages Indigenous cultural competence and safety training to explore the potential barriers to services, empower participants by working collaboratively at all levels of Wellness Court programming to meet their culturally sensitive needs, as well as challenge systemic policies, procedures, barriers, and social determinants of health that disproportionately impact Indigenous people.

Indigenous Diversion

Through my research, I discovered Indigenous diversion who work in tandem with Wellness Court and offer alternative therapeutic programming to the regular court stream. As per Community Legal Education Ontario (2020), the reason this was never discussed in my previous role in Sudbury Ontario is that it is only available in limited courthouses. Similarly to Mental Health Diversion programs, one does not have to plead guilty, have a trial, or accept the police version of events for one’s matters to be resolved from a criminal conviction. I argue that it should always be this way for Indigenous people; their case should be removed from the criminal justice system’s regular court stream and immediately referred to an Indigenous organization or members of the Aboriginal community. Indigenous diversion programs focus on personal and community accountability, healing and restorative as opposed to punitive, and most importantly: “it is supposed to be meaningful to one’s Indigenous identity” (Community Legal Education Ontario, 2020). According to Steps to Justice (2019), a critical difference noted between Mental Health Diversion and Indigenous diversion is that although some programs require updates on

the progress of one's diversion, for others, there will not be further court dates for one's charges if there is the successful completion of the work assigned in the community.

For example, Toronto's Aboriginal Legal Services (ALS) leads the Indigenous court worker program and the Community Council diversion program for Aboriginal adults and youth offenders. The focus of the Community Council is to develop a healing plan by which all parties agree that will allow the offender to take responsibility for their actions, address the root causes of the problem, and reintegrate them into the community in a positive way. They argue: "The concept of the Community Council is not new -- it is the way justice was delivered in Aboriginal communities in Central and Eastern Canada for centuries before the arrival of Europeans to North America and also the way that disputes continue to be informally resolved in many reserve communities across the country. This is the first project to apply these principles in an urban setting" (2022).

Another example available in eight cities (including London, Niagara, Fort Erie, Ottawa, Kenora, Hamilton, North Bay, and Geraldton) is the Ontario Federation of Indigenous Friendship Centre's (OFIFC) Indigenous Community Justice Program (ICJP) which is a culturally based, healing, and wholistic approach providing meaningful alternatives to justice and where possible, addressing the needs of victims (The Law Foundation of Ontario, 2020). This program believes in the need for alternative solutions to prison for people whose charges are non-violent, considering many people's cycles of re-offending involve mental health, homelessness, food insecurity, and/or larger societal issues such as inter-generational effects of colonization, the legacy of Residential Schools, and ongoing institutionalized violence that affects the health and wellbeing of Indigenous communities. They argue,

> "The involvement of the Indigenous community at all stages of program development is an integral component for meeting the mandate of the program by ensuring it is reflective of the local community customs, values, and cultural practices… The direct-service user and the victim (where possible) appear before a trained Community Council that holds a Healing Circle to identify and address the causes of the offence." (Ontario Federation of Indigenous Friendship Centres, 2020).

A service offered within this program is a Healing Circle that connects people to the traditional smudging ceremony, resulting in the success story of a woman who completed her culturally driven Healing Plan according to her unique needs and returned home healthy with her family. Executive Director and Niagara's Regional Native Centre's ICJP Program Coordinator Sylvia Maracle argues: "It's important to not just look at the statutes and the structure of the law but to look at the word 'justice', it can't just be about the administration of the law; it has to be about trying to stop harmful behaviour in culturally appropriate ways… Once their cultural relationship is empowered, they're able to repair a lot of the trauma they've experienced. When they have a community supporting them and the right services in place, they start following the path we helped lay out" (The Law Foundation of Ontario, 2020, para. 14).

Critical Literature Review

The following six themes were identified in the works of this critical literature review: (1) Cultural Sensitivity, (2) Critiques of Social Work, (3) Risk and Overrepresentation, (4) Race and Gender, (5) Indigenous Initiatives and Social Inclusion, and (6) Two-Eyed Seeing. The literature that directly deals with my topic is the COI (2019), Han et. al. (2020), and Gaba, et. al. (2022).

Theme 1: Cultural Sensitivity

Firstly, Gaba et. al. (2022) address our obligation to mitigate pre-existing disparities through their following impact statement: "Racial and ethnic differences in Mental Health Court (MHC) enrollees with co-occurring mental health and substance use disorder and their

behavioral health and service needs exist and should be considered in psychological services provided within MHCs" (p.637). The findings of the COI's report (2019) argue for attention to these differences through the implementation of culturally sensitive, responsive, and trauma-informed services informing peoples' acceptance into programming, assessments, and treatment planning alongside community partners (such as probation, strengthening partnerships and training with the police, etc.). As my research indicates that Wellness Court initiatives are not desired or equipped to support or be effective for Indigenous populations, Kirmayer (2019) asserts that cultural resources may be offered as a solution to improving services through Wellness Courts, advocating for systematic attention to diverse systems design, assessment, and interventions to increase accessibility and health outcomes for these populations: "Culture shapes the experience and expression of mental health problems, modes of coping, pathways to care and the effectiveness of treatment and prevention, as well as the processes of resilience and recovery" (p.11).

Considering this, Alberton et. al. (2021) explore how social workers may unknowingly play a role as gatekeepers to the criminal justice system, noting, "the overrepresentation problems across the criminal justice system are not due to failures of Indigenous peoples or communities" (p.14). Similarly, Shoshanna Pollack (2020) focuses on the power of anti-carceral feminisms surrounding discourses of racialized and colonial carceral spaces and control practices. As a Registered Social Worker like me, Pollack speaks to the resistance and/or risk of social workers' complicity in incarceration. Speaking to feminist praxis and abolitionism, Pollack argues: "Carceral feminism has recently been challenged for its complicity with a system that perpetuates the criminalization of Indigenous and racialized peoples by turning to the criminal justice arm of the state as a response to gender-based violence" (2020, p.348). Although Social

Workers may have the best of intentions, if there is a lack of awareness of social justice issues and how we may be contributing to them as a pipeline to these services, then we are unfortunately part of the problem. That said, part of my literature review consists of exploring the intersections between the Social Work profession, colonization, and Indigenous peoples, as well as critiques of Social Work as a field (i.e., the risk of Social Workers reducing structural problems to individualized problems, Social Work being a tool as opposed to a structure of the colonial state, decolonizing Social Work, etc.).

Theme 2: Critiques of Social Work

Middelton-Moz et. al. (2021) speak of the North American and global calls to action to acknowledge the influence of colonization on Social Work research, education, and practice. These authors address the pathways toward truth and reconciliation with Indigenous peoples that the profession of Social Work in Canada must face, given the role it played in the process of cultural and social disruption, ultimately leaving Indigenous people wary of the field. They also guide the urgent need to decolonize Social Work education and practice by creating programs grounded in Indigenous epistemology in integrating Indigenous knowledge with Western practice and theory. With the renewed traumas following the discoveries of unmarked graves of Indigenous children at former residential schools, these authors argue, “We are at a moment in time when destructive histories that implicated social work can be bridged to a future in which a transformed social work can be part of healing in global indigenous communities” (p.13).

Krawec (2022) speaks on behalf of many social workers who enter the field believing in their good intentions, however, do not consider the impact of the larger structure and patterns at play. In her sixteen years of experience in the field, she speaks to the evolution of Indigenous children disappearing from reservations into white families, stating: “Canada began quietly

redirecting the horror of residential schools to the more congenial removal of children from their families via the now fully engaged child welfare system" (p.95). For those who are mandated to meet with Children's Aid, Krawec speaks to the unspoken threat behind every suggestion, question or command, and the higher risk Indigenous families experience of being deemed "dangerous" or "unfit" as most referrals are based in culturally constructed ideas about "neglect" and "conflict". Their focus is typically examining the risk inside the home, however, there is significant ignorance in considering the risks and safety once Indigenous children are removed. Speaking to persisting disparities today, Krawec notes, "7.7 percent of all children under the age of fifteen are Indigenous, but of all the children in foster care who are under fifteen, 52.2 percent are Indigenous" (p.97).

In sharing the story of a family she worked with, Krawec discusses the circumstances that led to the impossibility of accessing meaningful mental health services and the difference safety would have made in terms of stable housing, as well as trauma-informed care for their mental and physical health. Similarly to the story of the young Indigenous man I assisted who inspired my MRP, I was left ruminating on what I believe to be a trauma response that ultimately led to his charges and the subsequent difference it would have made for him to have been offered and provided meaningful, culturally responsive services. The goals assigned for him to complete on his mental health diversion plan reflected what dominant Western society values and says one should have; however, policies would be put into place that provide protection and security to accessing and maintaining these basic needs longer-term if they truly wanted vulnerable populations to do well.

Absolon (2016) examines the most significant global trends related to Indigenous and cross-cultural social work, determining that "good and effective social work practice demands

that we make culture explicit in thinking and practice" (p.45). Additionally, Wendt et. al. (2015) relay the systematic sources of harm due to oppressive, culturally insensitive, ethnocentric psychotherapy practices and traditional, mainstream European interventions for racially diverse people: "Counseling and psychotherapy have done great harm to culturally diverse groups by invalidating their life experiences, by defining their cultural values or differences as deviant and pathological, by denying them culturally appropriate care, and by imposing the values of a dominant culture upon them" (p.339). These authors specifically note treatment disparities regarding access, availability, and mistrust in utilization due to institutional factors that contribute to discrimination and racism among ethnoracial minorities. They also highlight psychotherapy's focus on the individual client and conceptualizing who and what is harmed. This speaks to the risk of social workers reducing structural problems to individualized problems by not reframing their focal point to who and what has harmed. Wendt et. al. argue that mainstream psychotherapy is often a form of social control or an instrument of oppression due to values, behaviors, and norms of the dominant culture promoted to vulnerable ethnoracial minority clients. Wendt et. al. encourage radically cultural-divergent healing approaches including "partnerships with indigenous healers…in designing and delivering culturally centered interventions, integration of various indigenous approaches into psychotherapy, and 'culture-as-treatment' approaches" (p.350).

Theme 3: Risk and Overrepresentation

Similarly, Owusu (2014) and Alberton et. al. (2021) recognize Canada's criminal justice system as a site of structural violence perpetuating Indigenous peoples' overrepresentation within this system and in corrections, while Han et al. (2018) specifically encourage Wellness Courts to acknowledge the factor that race, ethnicity, and class may contribute to the overrepresentation of

arrests among these communities. These authors explain that court sanctions and incentives impact participant satisfaction and life changes which results in recidivism, highlighting how "Mental Health Court (MHC) processes and community outcomes are pervaded by bias and discrimination" (2020, p.810). In addressing Indigenous peoples having increased mental health distress and risk of suicide higher than average Canadians, the COI (2019) conducted three semi-structured interviews and two focus groups of 17 participants (some of which included racialized peoples in conflict with the law). These participants reported a lack of awareness of Diversion programming and experience of racial and class bias affecting the treatment they received (i.e., interaction with the police taking racialized people with mental health to jail as opposed to the hospital, lower chances of getting bail or supports once released compared to white people, etc.).

Owusu explores the circumstances surrounding charges of Indigenous peoples in Canada, including social and housing conditions that contribute to offending and evidence of racial bias and discrimination by both police and court decisions. They make an important note, sharing, “Discrimination and disparity are at times acknowledged by the government, but they are seldom wholeheartedly addressed” (2014, p.1). Furthermore, Alberton et. al. (2021) address the importance of highlighting the unconsidered and exposed risk factors of colonization, mistreatment, and oppression of Indigenous women in Canada. The results of their studies and meta-analysis reflect Indigenous peoples (specifically women) being at higher risk of longer and harsher outcomes and sentences. Comparably, Gaba et. al. (2022) stress the importance of the social determinants of health[2], increased vulnerability, risk, and patterns of criminal involvement among racialized populations. That said, Absolon (2016) speaks to this through the following

[2] Social determinants of health refer to social and economic factors that have the potential to impact an individual’s health and access to health care. Factors include race, economic class, gender, age, geographic location, etc.

statement: “Indigenous people continue to represent the highest social statistics, yet are not included in solution finding and funding to remedy high mortality rates, homicide rates, suicide rates (an ultimate manifestation of exclusion), incarceration, violence, abuse, addictions, homelessness and poverty” (p.46).

Reid’s and Robert’s (2017) response to the current and historical trends in disparity resulting in persisting disproportionately high rates of Aboriginal incarceration in Canada is that it is simply a repetition of the “same story” since 1978 (which is the Canadian justice system failing Aboriginal people). They argue, “Despite judgements from the Supreme Court and provincial courts of appeal, as well as several other remedial interventions, such as the creation of so-called Gladue courts and an alternate form of custody that would be served in the community, the problem of Aboriginal over-incarceration has worsened, not improved” (p.314). This is still true today (based on statistics reviewed earlier in my MRP). Despite the court system questioning the effectiveness of the conventional approach of sentencing for Aboriginal offenders, these authors expose the limited solutions suggested by the Truth and Reconciliation Commission to reducing the use of incarceration (as it was noted that Indigenous communities have not experienced the use or benefit anticipated by community-based forms of custody). Wellness Court’s Mental Health Diversion programs were specifically created as a therapeutic alternative to the regular court stream to address social conditions giving rise to crime and convictions; however, it seems as though Indigenous communities’ cultural sensitivity to services and their significant overrepresentation in the system was not prioritized in the development of this specialized court (especially given the limited number of Indigenous Diversion programs offered in Canada). They state that in Ontario “Canada’s most populous province accounts for the second-highest total number of Aboriginal admissions to custody” (2017, p.328). These

authors also urge the understanding of the differential impact that criminal justice has upon diverse Indigenous communities in avoiding a pan-Indian response and oversimplification of the category “Aboriginal”.

Another group that sheds light on Indigenous risk and overrepresentation is Ontario’s Mental Health and Addictions Leadership Advisory Council (2017) working with the Minister of Health and Long-Term Care. This council argues the need for more ongoing collaboration and engagement with Indigenous partners, effective support at all levels of the mental health and system for Indigenous people involved with the child welfare and justice systems, as well as ongoing attention and commitment towards conscious and deliberate efforts to eradicate the factors that cause disparities in health outcomes and equity. These recommendations result from the lack of opportunities for positive mental health that Indigenous communities in Ontario face due to the impacts of social determinants of health and discrimination, barriers to access to services, and less effective outcomes. Speaking to the risks and overrepresentation of Indigenous people in child welfare and justice systems, they hope to address practices to “reduce and prevent incarceration and apprehensions and create supportive diversion and family healing models” (p.13). I argue that this would include expanded access to culture-based services in Wellness Court’s Mental Health Diversion programs.

Theme 4: Race and Gender

In addition, Loppie et. al. (2014) also discuss the power of racial disparities among these communities that are justified by falsely constructed ideas of racism: “Racism also intersects with, as well as reinforces, other ways in which human beings discriminate against each other, including socially constructed categories of gender, disability, ability, sexual orientation, class, and age” (p.2). This is significant to my research as the discrimination within these socially

constructed categories does not escape its intersecting and reinforcement through the criminal justice system and Wellness Courts. As per McGregor (2018), The Truth and Reconciliation Commission of Canada speaks to the racism Indigenous peoples face, referring to the: "…intense racism and the systemic discrimination Aboriginal people regularly experience in this country…The beliefs and attitudes that were used to justify the establishment of residential schools are not things of the past: they continue to animate official Aboriginal policy today. (TRC 2015, 103–104)" (p.225). In analyzing policies, programs, and strategies to address anti-Indigenous racism, Reading (2014) highlights the need to not overlook services tasked with protecting the public from harm. They argue that: "the most successful approaches to reducing anti-Indigenous racism within policing services involve the recruitment and support of Indigenous officers, as well as screening for racism among new recruits and cross-cultural training for all police officers" (p.11). Mandatory cultural awareness training has demonstrated positive results in an increased sense of inclusion on behalf of the officer involved, ultimately removing the power dynamic barriers separating the police from the community.

With that said, another theoretical lens for my work is Wynter's "Unsettling the Coloniality of Being/Power/Truth/Freedom" (2003) where she seeks to understand how Indigenous and Black peoples were produced as the inferior Other of the European by returning to the histories of colonialism. Sylvia Wynter (2003) describes the historicization of Indigenous people and their existence as being labelled the inferior Other of Europeans. Wynter's analysis highlights the core ideas surrounding my exploration of the intersection between race and social justice. Through historical storytelling of colonization, Wynter (2003) discusses the ongoing slandering, expropriation, and expulsion of Indigenous peoples, rights, and lands that would be made to seem legitimate and just: "race–unlike gender… is a purely invented construct" that

enabled the West to replace the earlier distinction of the descriptive statement and conception of what it was to be human (2003, p.264). These efforts resulted in the idea of human Otherness, which was adopted as a new descriptive statement to define this population's freedoms and was used as the systemic classifying, categorization, and inferiorization of Indigenous peoples.

In turn, Indigenous peoples were branded as unemployed, poor, homeless, and criminalized. Following, a divide was created institutionally and discursively to be accepted and reproduced in Western society. This new descriptive statement imprisoned these populations as "irrational, savage, and abnormal animals" (being the colonized peoples), separating them from the "rational humans" (the European settlers). Wynter's (2003) analysis of the coloniality of power and difference is reinforced through my discussed social problem, which relates to how the colonial foundation of justice is universally applied to Indigenous peoples in the criminal justice system without critical questioning. Another author who explores the cultural construction of the 'Other', extending specifically into the law that continues to govern Indigenous rights and masking forms of epistemic injustice, is Tsosie (2017), who argues, "forms of epistemic injustice permeate the legal system and reflect the long-standing cultural construction of Indigenous peoples as 'Others'" (p.360).

Finally, St. Denis' conceptualization of Indigeneity within the epistemological discourses of feminism also supports a gendered lens of analysis of the textual documents explored in this MPR. St. Denis (2007) highlights European societies' foundational history of power, capitalism, patriarchy, sexism, and misogyny. They continue to outline the practices, ideologies, structures, and institutions that influence the socialization, productivity, and overall shaping of Indigenous communities. Notably, St. Denis (2007) discusses the consequences and impacts of colonization and the reality that sexual discrimination could not "be separated from the twin legacies of

colonialism and racism" (p.44). Another author highlighting gender is Wilson (2018), who states how Indigenous women were previously viewed as being equal to men, honoured, respected, and supported for their role in giving life before colonization. This is a stark contrast to the colonizer's worldview which valued individualism, male-superiority, and competition. Further discrimination that Indigenous women still fight to overcome today includes violence, long-term poverty, marginalization, and criminalization resulting from their oppression under the Indian Act (Wilson, 2018, p.50).

Theme 5: Indigenous Initiatives and Social Inclusion

An Indigenous Trauma-Informed approach is a focus of this critical literature review and in alinement with Olson's (2018) argument that "an Indigenous Trauma-Informed Approach recognizes the social historical impacts that have disrupted Anishinaabe Bimatisiwin (Indigenous life), and the revitalization of this worldview that naturally encompasses strategies of anti-oppression, non-interference and client self-determination" (p.15). Mental health, addictions, and recovery look different for different people – specifically for Indigenous peoples who are born and living with the daily trauma and legacy of colonization, colonialism, and Residential Schools. That said, a trauma-informed approach is often encouraged in my practice of Social Work; however, it was only through my research that I discovered the importance of an Indigenous focus in trauma-informed care for these communities. Other scholars who cover this are Panofsky et. al. (2021) by addressing the neglect of Indigenous perspectives in dominant counselling methods for mental health in Canada. This is of utmost importance to my research, as in my experience, many Wellness Courts require counselling as part of their programming. However, as Panofsky et. al. state, evidence-based trauma interventions that are effective for Indigenous historical and psychological trauma in Canada are needed (p.1). Trauma-informed

interventions through an Indigenous worldview and context incorporate Indigenous perspectives to traditional responses, practices, and methods of healing. Via a holistic, culturally appropriate and informed approach, one must understand and recognize the historical and present-day effects of the intergenerational traumas Indigenous people face.

Along with this approach, I must further explore the relevance and benefits of Indigenous theory to Mental Health Diversion programming. As per Absolon (2010), "Indigenous theory is rooted intimately within Indigenous epistemologies, worldviews, cultures, and traditions. Indigenous wholistic theory is holistic and multi-layered, which encompasses the spiritual, emotional, mental, and physical elements of being. We also acknowledge our past, present, and future" (p.74). Other works in this area I have explored are by Coates et. al. (2023) who illustrate Indigenous Institutional Theory as a framework that "acknowledges the Indigenous perspective, with the intention of offering a new lens in which the Indigenous experience within institutions can be interpreted and analyzed…investigating ways in which discriminatory (e.g. gendered and racialized) structures are created and culturally challenged within Western institutions" (p.903).

This theory is highly relevant to my MRP as it facilitates the centring and viewpoint of Indigenous voices within prejudiced policies and political agendas of Western institutions, such as Canada's criminal justice system. As Indigenous spirituality and ways of life are directly linked to the land and its resources, breaking this connection was key to the colonial agenda. This specifically applies to my MRP as I argue that excluding cultural programming from Wellness Court's Mental Health Diversion goals is a tool of shape-shifting colonial entities to separate Indigenous people from their cultures and diverts attention away from community resurgence under state-centric agendas. Absolon (2016) argues that agendas rooted in equality, social justice and respect for diversity will create fertile ground for social inclusion in addressing

matters of spiritual, emotional, mental and social wellness at individual, community, national and allied levels. (p.47)

In addition, scholars Sasakamoose et. al. (2017) offer an Indigenous Cultural Responsiveness Theory that recognizes and encourages the value of Indigenous healing and decolonizing practices. This theory works to counter colonialism, challenge the assumptions and privileging of Western practices, and restore well-being, supporting "the development of collaborative relationships between Indigenous Peoples and non-Indigenous allies who seek to improve the status of First Nations" (p.1). These authors highlight the importance of empowerment, identity, and resilience developed within Indigenous knowledge and ways of knowing to recover culturally responsive, trauma-informed, community-engaged, spiritually grounded Indigenous systems. This theory also recognizes the continued detriment of colonial policies and practices to Indigenous health and well-being, arguing that "any attempts to improve First Nations mental, emotional, spiritual, or physical well-being must involve co-participation in protocols specific to the community for whom they are being designed" (p.6). In the context of this MRP, the use of these theories is valuable to strengthen my research question regarding the impact of Wellness Courts on Indigenous communities as they provide a pathway of valuing "culture-as-intervention" designed to guide and continuously improve the outcomes and governance of Indigenous peoples. Concerning Wellness Courts, I imagine these theories translating into practice by prioritizing the revitalization of culturally responsive Indigenous knowledge systems by and for Indigenous communities (i.e., expanding the accessibility of Indigenous Diversion programs beyond the limited cities in Ontario, to throughout Canada).

Moreover, Nova Scotia's Wellness Courts' report (2019) on their progress and next steps based on graduates with lived experience is of high value. This research follows a community-

driven approach using 15 individual semi-structured interviews with seven court graduates and 31 team members across the four Wellness Court programs, six focus groups, and document review (p.18). These methods required informant recruitment, transcription, de-identifying, knowledge sharing, analysis, and secondary analysis of qualitative data collected (2019). The team shared that the Wellness Court Program in Wagmatcook First Nation was not included in this evaluation, though they highlight their efforts to have a dedicated court worker who oversees their work, stating, "Both the Mental Health Court Program and the Opioid Court Program at the Dartmouth Wellness Court partner with the Mi'kmaq Legal Support Network (MLSN) to ensure the cultural and other unique needs of their Aboriginal participants are considered throughout the court process" (p.12). Although this model contributes to the effectiveness of Wellness Court initiatives for Indigenous populations, it is unclear whether these initiatives are leading to the desired outcomes of Wellness Courts, as Indigenous-related issues were given such a limited space in the overall report. To determine whether partnering with an Indigenous Legal Network is effective in having these peoples' unique mental health and addiction needs met, a review of Indigenous literature was required. This helps us determine whether further program involvement is needed to decrease recidivism rates and Indigenous people's overrepresentation in the criminal justice system.

According to Indigenous practitioner Absolon's experience (2016), at many community and municipal levels: "Indigenous people are not consulted and if it is a 'consultation', it is constructed to seem like one, but is not authentically driven" (p.46). Absolon discusses the assimilative, patriarchal, and sexist Indian Act legislation that has contributed to the exclusion of Indigenous people. The subsequent challenge argued by Absolon is to recognize that ideas and values of inclusion from and within a colonized environment where exclusion dominates still

contain Western values that have been internalized. That said, for the restoration, reconciliation, and social inclusion of Indigenous people to become a reality in Canada, it requires not contrived attempts of inclusion as token or superficial, but rather a journey of authentic relationship building guided by Indigenous values and treaty obligations toward truthful, meaningful, and relevant problem-solving.

We must prioritize existing culturally-based informed responses, programs, and frameworks created from Indigenous knowledge, protocols, and traditions. Absolon supports this by stating: "Culturally-infused models governed by the seven sacred principles create a consciousness of mutual respect which in turn fosters inclusion of members of all age groups and members from various belief systems" (p.53). Indigenous knowledge is deserving of space on strategic agendas and action plans that must be rooted in respect for diversity, equality, as well as social justice for these communities to address matters of wellness and thrive as Indigenous people. Middelton-Moz et. al. (2021) similarly argue that "Indigenous issues must be understood through the perspectives of Indigenous people a process which must be 'Indigenous-driven and Indigenous-led together with the support of those individuals who understand how to be effective and supportive allies'" (p.4).

Theme 6: Eptuaptmumk/Two-Eyed Seeing

Through my research, I discovered Eptuaptmumk/Two-Eyed Seeing (E/TES). Based on a metaphor provided by Elder Albert Marshall, it encourages the opening of our eyes to two or multiple perspectives. Defined as a guiding principle in Mi'kmaq knowledge and a collaborative, inter-cultural relationship with mainstream Western society, I lean into his following description: "Learn to see from your one eye with the best or the strengths in the Indigenous knowledges and ways of knowing ... and learn to see from your other eye with the best or the strengths in the

mainstream (Western or Eurocentric) knowledges and ways of knowing ... but most importantly, learn to see with both these eyes together, for the benefit of all" (2017, p.1). E/TES is considered a method, theory, and approach to literature and can be made useful extending passed the academy in our personal and professional lives.

Relating to my MRP and how I see E/TES aiding Wellness Court issues, my analysis examines how the development of traditional Wellness Court programming does not align with Indigenous culture, ways of knowing, healing methods, or ideas of justice. I discovered Indigenous diversion run by and for Indigenous communities through my research, and although I argue the importance of this approach, I would be remiss to not address and explore the benefits of E/TES knowing Indigenous communities advocate for it. If each Mental Health Diversion program is successful for their respective populations in their unique ways, E/TES would permit us to learn to see and work with both eyes together for the benefit of all (Marshall, 2017). The only potential disadvantage I can see to using E/TES is recognizing that Indigenous people are their experts on what they need (and Western programming may not align with their idea of rehabilitation); however, E/TES may have very well been considered in the implementation of Indigenous Diversion programs. Ultimately, there is no reason why Indigenous ways of knowing cannot be implemented in areas like the criminal justice system, just as mainstream, Western, and Eurocentric knowledge have been and continue to be foundational to most existing disciplines today. E/TES is a guiding principle to how we see the world and I strongly believe that this approach should not only be useful for Indigenous peoples but for the benefit of all communities as Indigenous teachings are meant to be universal and inclusive.

The following question from Thomas's (2016) Ted Talk spoke a harsh truth: "How do Indigenous people find success in a colonized world?" I believe a potential solution to this

question could be E/TES. E/TES speaks for furthering resurgence as it allows the reclaiming of space, teachings and being in existence as Indigenous. This approach makes visible the way we see the world and encourages us to question what we are doing every day and why. Are our actions led by our core values, or should we examine how everything we know and live by is conditioned by society's capitalist and shape-shifting colonial structures; who it is truly benefiting (or distracting), and who it is harming? Considering a different perspective than one's own is only one critical step of many to decolonization, but the impact it can make on communities from all walks of life is worth our attention. If there is any hope for reconciliation and social justice, the time to consider Indigenous ways of knowing and stop imposing solely Western knowledge on Indigenous communities is long overdue.

Conclusion

Effectiveness and Scholarly Relevance

The impetus for this research emerged initially from my interests in racial and criminal justice, as well as my experiential insights as a justice case manager supporting an Indigenous client near the end of my employment while reflecting through a social justice lens. It was also inspired by Moore (2021), wherein she argues the need for decolonizing restorative justice practices and our legal systems (recognizing the development and delivery of Wellness Court's Mental Health Diversion programs being highly informed by restorative justice practices). These insights as well as those identified through my research emphasize for me the importance of Indigenous communities taking the lead towards the development of culturally supportive court initiatives.

This project acts as an essential bridge between race, mental health and addictions, and Wellness Court Diversion by offering an empirically informed lens through which we should understand the culturally specific needs of Indigenous communities. Adopting this lens is key to ensuring that Wellness Court Mental Health Diversion programs are indeed reflective of principles of restorative justice, and essential to bring about the rehabilitation of Indigenous populations. By exploring a wide range of concerns that arise in traditional courts, this project also serves as a guide for more culturally competent and trauma-informed services, practices, and policymaking through Indigenous Diversion programming made by and for Indigenous communities.

Truth and Reconciliation

Through my MRP, I hoped to identify Mental Health Diversion programs that have not served Indigenous peoples in the past to contribute cultural-specific resources that support a more inclusive society, actively working towards Truth and Reconciliation. Middelton-Moz et. al. (2021) argue, "While cultural competency and trauma-informed practices are not new, integrating Indigenous content and knowledge requires the additional work of accepting the truth of indigenous experiences and moving toward reconciliation" (p.5). Potential validity threats to my conclusion I must consider are the arguments of self-sovereignty of Indigenous peoples, in advocating the need to stop trying to fit Indigenous knowledge and practices into a white institution. For example, Neely argues, "Building abolition must give up systems of justice predicated on colonial theories of sovereignty and rediscover–across political and phenomenological horizons–a new sovereignty within and against theories of domination that characterize the genocidal wars of settler colonialism" (2021, p.93).

Although this may be the ideal goal, it is important to consider feasibility when making plans of action. As improving Wellness Courts is necessary for improving Indigenous peoples' lives now, these changes could be imagined or understood as strides toward abolition that call for an end to all policing and prisons, for Indigenous people and everyone. Similarly, Moore states, that we cannot continue to ignore and be unresponsive in action to the overrepresentation of Indigenous peoples in conflict with the law (2021, p.102). Thinking from a sociological and critical criminology perspective, all crime and the production of "criminality" should be scrutinized. The need for alternative pathways outside of the conventional court stream and trauma-informed approaches is useful as many justice-affected people arguably come from poor, traumatic, and other difficult backgrounds and these contexts can be largely tied to the failure (or "success") of the state. Reconciliation requires the truth of sharing, accounts, accountability, and presence that is only visible when people collectively walk together. Mental Health Diversion programs rooted in equality, social justice and respect for diversity will create ground for authentic action and social inclusion in addressing matters of wellness for all people. Ultimately, the ideas of reconciliation are steps to the arguably more important task of decolonization.

Decolonization and Resurgence

Decolonization is the responsibility of all, especially of settlers who created and contributed to the colonial structures, systems, and institutions (such as the criminal justice system) that were designed to benefit dominant Western society and continuously oppress racially marginalized communities. As Absolon (2016) argues: "Let's not negate or ignore the underlying culprits and government's role in creating and maintaining colonial illiteracy and inaction, ultimately leaving social injustice and inequity under the social radar and without social accountability by society" (p.46). It is also crucial to identify how our own social identity

impacts decolonization and resurgence, as well as critically examine and analyze what we are doing and why every day through a decolonial lens. To achieve meaningful change, we must first recognize our internalized Western values and ideas of inclusion that come from and within a colonized environment.

Considering E/TES from my own reflexivity and social location, there are many ways this approach may impact me, specifically as a social worker. Notably, its guiding principles highlighting positionality and the goals of relationship building, results that foster change, as well as the concept of the four Rs (respect, relevance, reciprocity, and responsibility), reminded me of the importance of forming rapport and trust. In practicing mindfulness and similarly to E/TES, we must build awareness to pursue our values, needs, and meaningful goals. A particular takeaway I have from Jeffery et. al. was the need for research, that "colonialism is an underlying cause of problematic substance abuse in Indigenous people, and that traditional culture is key to healing" (2021, para. 7). This relates to the purpose of my research surrounding the impacts of Wellness Courts on Indigenous communities and the need for culturally responsive services.

We must also challenge the dominance of colonial Eurowestern narratives, theories, and beliefs through the political and cultural resurgence of Indigenous knowledge via visibility in roles impacting public and social policy. Resurgence is the reclaiming and restoring of history, space, culture, and teachings from traditional knowledge keepers that were stripped from Indigenous communities through colonial acts of genocide (Barker, 2015, p.46). Genuine holistic and ethical culturally-based frameworks for social inclusion with Indigenous peoples in our spaces must go beyond surface-level engagement and be built on truth, respect, understanding, and trust. As Krawec (2022) states, becoming kin begins with having difficult conversations

about marginalized experiences of injustice that challenge and point out harms we may be perpetuating, consciously or unconsciously (p.148).

Concentration on Justice and Indigenous Communities

To conclude my MRP, I believe it is important to highlight this powerful quote relayed by McGregor (2018):

> "If we continue to simply equate justice with punishment and choose to continue to ignore our own Indigenous teachings and concepts of justice, then we are forced to remain dependent upon colonial institutions. These institutions have been built upon colonial ideologies of racism and eurocentrism that perpetuate discrimination and oppression. The end result therefore should not be surprising: the colonial power imbalances are maintained and colonial ideologies are legitimized and enforced" (p.228).

Through my research of literature and Indigenous Diversion programs, I hoped to discover how Indigenous peoples would treat mental health, addictions, crime, and justice and how our interventions have evolved. Given the difference in our histories and the tendency of colonial justice to neglect Indigenous ideas of justice and rehabilitation, they are not compatible. I also hope to continually center equity-seeking communities by handing over the torch for the development and implementation of what culturally-centred solutions and programs mean to them. The lack of race-based data in the criminal justice system demonstrates that this matter is worth exploring further. With the support of the above critical literature review and analysis on Mental Health Diversion programs, my MRP will enhance knowledge about race, mental health and addictions, and Wellness Court programming. This is important to ensure equity-seeking communities are granted the same access and opportunities to achieve the goals of Wellness Courts, which are to manage the risk of recidivism and ensure all peoples' needs are met.

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