Overrepresentation of Indigenous youth in Canada's Criminal Justice System: Perspectives of Indigenous young people

Carla Cesaroni, Chris Grol and Kaitlin Fredericks
University of Ontario Institute of Technology (UOIT), Canada

Abstract
The central purpose of this study was to provide a platform for Indigenous young peoples' opinions regarding the overrepresentation of Indigenous young people in the criminal justice system. Specifically, the study sought (a) their thoughts on broader issues that contribute to the overrepresentation of young people, and (b) strategies on how to reduce the overrepresentation of young people in the future. Results mirrored themes and findings from the research literature. However, the results are themes that are derived from the lived and observed experiences of Indigenous young people and the Anishinaabe, Haudenosaunee, and Métis communities.

Introduction

Indigenous peoples[1] are overrepresented in the prison populations of most western nations including Australia, Canada, and New Zealand (Roberts & Melchers, 2003). The problem of Indigenous overrepresentation in Canada has been well documented in

Corresponding author:
Carla Cesaroni, University of Ontario Institute of Technology (UOIT), Canada, 55 Bond Street East, Oshawa, ON L1G 0A5, Canada.
Email: carla.cesaroni@uoit.ca

all principal correctional texts for several years, and widely acknowledged by the Canadian public (Roberts & Melchers, 2003). The Supreme Court of Canada has called the overrepresentation of Indigenous people "a crisis in the Canadian justice system" (Rudin, 2005, p. 5). In its review of the overrepresentation of young people in custody, the Truth and Reconciliation Commission of Canada (TRC) (2015a, 2015b) suggested, "The youth justice system perhaps more than the adult criminal justice system, is failing Aboriginal families" (p. 177). According to the Council of Provincial and Child Advocates (2010), "For Aboriginal children and youth in Canada, there is a greater likelihood of involvement in the criminal justice system, including detention in a youth custody facility, than there is for a high school graduation" (p. 6).

The most significant casual factors underlying overrepresentation of Indigenous peoples are complex. They have been identified as the legacy of colonialism, its socioeconomic impacts on Indigenous families and communities, and the attitudinal and institutional racism of the present (Corrado, Kuehn, & Margaritescu, 2014; Rudin, 2005). As Cunneen (2006) argues in the following:

> An adequate explanation involves analyzing interconnecting issues which include historical and structural conditions, of colonization, of social and economic marginalization, and institutional racism, while at the same time considering the impact of specific (and sometimes quite localized) practices of criminal justice related agencies. (p. 334)

Thus, it is theorized, the interaction of structural inequality, community and cultural breakdown, and systemic discrimination (rooted in the vestiges of colonialism) result in Indigenous overrepresentation in prisons (Grekul & LaBoucane-Benson, 2008). The Royal Commission on Aboriginal Peoples (1995) locate the root cause of Indigenous crime and overrepresentation in the criminal justice system in Canada's history of colonialism and its continuing effects in respect to social disorder in Indigenous communities. There are profound social and economic problems in Indigenous communities, fundamental breakdowns in social order that never existed pre-colonization (Jackson, 2015; Rudin, 2005).

The TRC (2015) was clear in drawing the connection between the legacy of colonialism, specifically residential schools,[2] and the overrepresentation of incarcerated Indigenous young people as noted in the following:

> The great vulnerability and disadvantage experienced by so many Aboriginal youth undoubtedly contribute to their over representation, a factor that is intimately tied to the legacy of the residential schools. Many of today's Aboriginal children and youth live with the legacy of residential schools every day, as they struggle to deal with high rates of addictions, fetal alcohol disorder, mental health issues, family violence, incarceration of parents, and the intrusion of child-welfare authorities. All these factors place them at greater risk of involvement with crime. (p. 178)

Policies connected to colonization have created a complete disconnect between a whole generation of young people and their families, young people who are lacking an identity, education, and in many cases suffering from various forms of trauma

(Bania, 2017). Their parents were burdened with significant psychological issues, which meant they could not care for themselves or others, did not have the ability to develop healthy relationships and, in some cases, passed on the neglect and abuse they themselves had suffered as children (Bania, 2017). Poverty, multi-generational trauma, social dislocation, and family in strained and deprived circumstances have led to Indigenous young people being housed outside their family home either in foster care, secure custody, or in some instances both (Canadian Council of Provincial Child and Youth Advocates, 2010).

Surprisingly, there are very few, if any, Canadian studies that have engaged and consulted Indigenous young people on their perceptions regarding why they believe Indigenous young people are over represented in the criminal justice system. The central purpose of the following study is to provide a platform for Indigenous young peoples' opinions regarding these issues.

Understanding the overrepresentation of Indigenous peoples

Several theories have been put forth to explain the overrepresentation of Indigenous peoples in Canada including (a) differential criminal processing due to cultural conflict and racial discrimination, (b) higher Indigenous offending rates, and (c) the commission of offences by Indigenous people that more likely warrant a prison sentence (Bracken, 2008). Each of these, can be connected to socioeconomic disadvantage (low income, lack of education, transiency, single parent homes), and the relative deprivation found within Aboriginal communities (Balfour, 2012; LaPrairie, 2002). The Royal Commission on Aboriginal Peoples found that though over-policing and systemic discrimination play their part in higher Indigenous crime rates, economic and social deprivation are the underlying causes of higher rates of criminality amongst Indigenous people (Anand, 2000). Therefore, sentencing reform or innovation "cannot remove the causes of Aboriginal offending because it cannot address problems like inadequate housing, substance abuse, lack of education, and scarcity of opportunities" (Anand, 2000, p. 416). Risk factors associated with offending and disproportionality found among Aboriginal communities must be understood in the context of structural factors connected to the legacy of colonization (Barker et al., 2015). That legacy is quite clear as noted in the following:

> From the expropriation of land, prohibition of language and cultural practices, forcible removal of Aboriginal children into Church-run residential schools in the late 1800s onwards, to the unaddressed intergenerational trauma, continued economic marginalization, and elevated rates of substance use and poverty today, a myriad of factors contribute as underlying determinants of Aboriginal overrepresentation in prison populations. (Barker et al., 2015, pp. 1665–1666)

The history of colonialism in Canada, and the cultural conflict, lack of power, systemic discrimination, and structural inequality that accompanied it, provide the broad context in which to understand the impoverishment which exist in Indigenous communities to this day (Grekul & Laboucane-Benson, 2008). Colonialism therefore continues to impact Indigenous communities today and has consequences in terms of trauma and

intergenerational trauma for individuals, families, and communities (Bracken, Deane, & Morrissette, 2009). This is particularly true regarding the intergenerational trauma of residential schools, which has included "the loss of generations of family networks and parental remodeling" the disruption of families and communities, and the loss of knowledge, language, tradition, and identity (Barker, Alfred, & Kerr, 2014).

The overrepresentation of Indigenous peoples therefore, is not because of any natural inclination toward crime among Canada's Indigenous people, but rather because the causes of Aboriginal criminal behavior are rooted in a long history of colonialism, discrimination, and social inequality that has impoverished Aboriginal people and consigned them to the margins of society (Bracken, 2008). The history of colonialism, displacement, and residential schools continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of suicide and substance abuse, and higher rates of incarceration (Office of the Correctional Investigator, 2013).

As noted previously, there is a strong association between the social disorganization, social disadvantage, and crime rates found in Indigenous communities (Fitzgerald & Carrington, 2008). These structural conditions may influence police decisions to patrol, police, and formally charge (Fitzgerald & Carrington, 2008). Sentencing decisions are also impacted by the lack of community capacity to address needs for education, employment, housing, and social services (Balfour, 2012).

Key decisions of the Supreme Court of Canada, and several reports on Indigenous people and the justice system, have concluded that Indigenous people face systemic discrimination throughout the criminal justice system (Rudin, 2005). According to (Rudin, 2005), "The failings of the criminal justice system toward Aboriginal people are most clearly seen in the overrepresentation of Aboriginal people in federal and provincial prisons" (p. 8).

The overrepresentation of Indigenous young people in custody

Indigenous young people are eight times more likely to be incarcerated than their non-Indigenous peers (Corrado et al., 2014). In 2014/2015, though Indigenous young people comprise 7% of the general population, they accounted for 33% of admissions to custody (Canadian Centre for Justice Statistics, 2016). Indigenous females accounted for 44% of all females admitted to custody, while Indigenous males accounted for 29% of all males (Canadian Centre for Justice Statistics, 2016). Research suggests that Indigenous young people are not only overrepresented in custody, but also in remand custody and probation (Calverley, Cotter & Halla, 2010). Custody rates for administrative offences are three times higher than for non-Indigenous young people (Corrado et al., 2014).

Doob and Sprott (2007) have argued that there is evidence to suggest that (a) differences in sentencing cannot be accounted for by discrimination at sentencing alone, (b) a number of cities in Canada have much higher Indigenous populations than others, and (c) the operation of Canada's youth justice system varies across cities. Generally, in countries with populations of Indigenous young people, Indigenous young people are more likely to have a prior offending history, to have had contact with police at an earlier age than non-Indigenous young people, and to be arrested for public order offences (Cunneen, 2008). Doob and Sprott (2007) suggest that researchers have still

not adequately addressed the question: What is it in the lives of Indigenous young people that accounts for their high rate of involvement in the criminal justice system?

Jackson (2015) argues that though consideration of an Indigenous young person's unique background at sentencing is important, it simply is not impacting Indigenous young peoples' over-incarceration. He suggests that there are several nonjudicial factors that may have an impact on the overrepresentation of Indigenous young people through the use of their discretion. In their study of the overrepresentation of Indigenous adults in Canada, New Zealand, and Australia, Jeffries and Stenning (2014) found that sentencing contributes little to the over-incarceration of Indigenous adults compared to decisions of police and prosecutors in the process, and the social conditions of Indigenous people.

Jackson (2015) argues that systemic discrimination, racism, and the over-policing of Indigenous communities play their part in the overrepresentation of youth in custody. However, he also notes that there is evidence that police may be more likely to respond informally to non-Indigenous young people (through diversion) and more likely to respond formally (through arrest) to Indigenous young people. He argues that this may be because of prejudices against Indigenous young people from disadvantaged backgrounds. More incidents of formal contact diminish the likelihood of diversion.

For many Indigenous peoples, the police are inseparable from the broader white culture and white domination in which racism is embedded (Perry, 2009). Colonialism has led to distrust of all government agencies, but in particular in terms of the police who participated in assimilationist policies (Perry, 2009). Indigenous peoples "undoubtedly expect trouble from the police" (Neugebauer as cited in Perry, 2009, p. 3). In communities where Indigenous young people are routinely stopped, searched, and questioned, it is not surprising that these same young people are hostile toward police (Perry, 2009).

Jackson (2015) suggests that the same prejudices may be true of the Crown in terms of formal charging versus extrajudicial sanctions, given the fact that appropriate community-based Indigenous-specific programming may not be available. At bail, the necessity of a surety is an obstacle for Indigenous young people "whose communities and families have been devastated by colonialism's enduring impact" (Jackson, 2015, p. 10). Lack of a parental presence, which is tied to bail success, also disadvantages Indigenous young people (Jackson, 2015). Jackson (2015) also suggests that stereotypes about Indigenous families being irresponsible or having addiction problems may also come to play.

This study attempted to engage Indigenous young people in the community (and key Indigenous community members) by including them in a conversation about both the problems of overrepresentation and the possible solutions.

Method

The term "research" is inextricably linked to European imperialism and colonialisms (Battiste, 2014; Cunneen, Rowe, & Tauri, 2016). Social science research has historically reaffirmed the West's view of itself as the center of legitimate knowledge and the arbiter of what counts as knowledge (Cunneen et al., 2016). In a colonial context, research becomes a way of representing "the Other" to a non-Indigenous world (Denzin &

Lincoln as cited in Ray, 2012). The "othering" positions the university/institution as dominant in the area of knowledge and scholarship even as it recognizes and includes community knowledge (Bird-Naytowhow, Hatala, Pearl, Judge, & Sjoblom, 2017). The role of "othering" Indigenous peoples in the context of epistemological and methodological frameworks has only recently received critical attention (Cunneen et al., 2016).

Indigenous peoples have been seen as subjects or objects of research (Champagne, 2015), and research has historically been completed *on* them, rather than *with* them (Drawson, Toombs, & Mushquash, 2017). Until recently, many research institutions in the world did not believe that Indigenous research required any particularly different legal, ethical, or human rights protocols (Champagne, 2015). Academic research did not undergo ethical and moral engagements with Indigenous peoples as academic research and scholarship has been plagued with clandestine colonialism (Bird-Naytow-how et al., 2017).

In Canada, formalized research policies for Indigenous research that promote inclusiveness have recently been implemented federally (Drawson et al., 2017). These policies outline acceptable research practices and prioritize Indigenous values, traditions, and knowledge (Drawson et al., 2017). They create ethical guidelines for the researcher and the Indigenous knowledge holders related to informed consent, partnerships, academic integrity, equity, and benefit sharing. However, research ethics boards, located at individual universities, still must grant consent in order for research to be conducted. This would appear to be what Smith (as cited in Ray, 2012) describes as the "re-inscribing or reauthorizing of the privileges of non-Indigenous academics" (p. 95).

Research done in collaboration with Indigenous peoples using Indigenous methods can decolonize and re-balance power (Drawson et al., 2017). The heritage of Indigenous peoples is not just a collection of objects, stories, and ceremonies, but a complete knowledge system with its own languages, epistemologies, and scientific and logical validity (Battiste, 2014). According to Smith (as cited in Darder et al., 2014), research methodology is a theory of inquiry and research method is a technique by which to gather empirical materials. Thus, Indigenous methods, including poetry, drama, storytelling, and critical personal narratives are performance practices that make Indigenous life visible (Darder et al., 2014). Indigenous methods value self-knowledge and subjective experience (Absolon as cited in Victor et al., 2016).

The study attempted to respect key core values of Indigenous research as suggested by Cunneen and Tauri (2016), which include recognition of Indigenous knowledge and respectful and culturally informed engagement of participants. The team worked to organize and establish an Indigenous Young People's Justice Community Advisory Committee comprised of an Elder, a chief, an Indigenous knowledge keeper, Indigenous young people and Indigenous practitioners who work with high risk Indigenous young people. The team consulted with the Advisory Committee on (a) what was the appropriate research and research question, (b) how the research should be conducted, and (c) who should be included as participants. An understanding was reached that publications that were derived from the project would be reviewed and approved by the Advisory Committee before being shared with the public or the Canadian government. The central purpose of this study was to understand young Indigenous peoples' opinions regarding the overrepresentation of Indigenous young people in the criminal justice system. Specifically, the study sought (a) their thoughts

on broader issues that contribute to the overrepresentation of young people, and (b) strategies on how to reduce the overrepresentation of young people in the future.

Thus in consultation with the Advisory Committee and respecting Indigenous methods the process involved reflection, story, and dialogue (Kovach, 2009). Talking circles were the means by which focus groups were established. The talking circle method recognizes young people as collaborators in the research project and contributors to community knowledge (Bird-Naytowhow et al., 2017). This method aligns with an Indigenous world view that honors orality as a means by which to transmit knowledge (Bird-Naytowhow et al., 2017). Each talking circle was led by an Elder, his two Oshkawbaywuss (helpers/apprentices), and an Indigenous Cultural Advisor. The two helpers met with participant volunteers individually (and before the circle began) in order to review and sign consent forms. Following the establishment of the circle (with a smudging ceremony), the Elder posed the question, "Why do you feel Indigenous youth are overrepresented in the youth custody system?" An eagle feather was then passed around allowing each individual to speak. The conversation progressed organically until its conclusion.

The sample of young people was comprised of young people who grew up in an urban area. Perhaps this is not surprising given that the population of Indigenous peoples living off reserve has increased almost 50% since 2006 (Statistics Canada, 2017). With one exception, all of the individuals that made up the Advisory Committee, and those who lead the talking circle, had grown up on reserve. It is important to note that the Advisory Committee, those leading the talking circles and the participants agreed that we should be cautious about making any assertions about young people who grew up in urban areas versus on reservation as it may only serve to feed misconceptions and stereotypes about which groups are more or less entrenched in Indigeneity, including presumptions about being more or less connected to the land.

An inductive approach was used for the analysis of the raw data. This approach was used in order to allow research findings to emerge from the frequent, dominant, or significant themes inherent in the raw data (Thomas, 2003). Emerging themes (or categories) were developed by studying the transcripts repeatedly, and considering possible meanings and how these fit with developing themes (Thomas, 2003). Many of the themes that arose from our discussions with the Indigenous Advisory Group and the young people who participated in our talking circles mirrored themes and findings from the research literature. However, the results that follow are themes that are derived from the lived and observed experiences of Indigenous young people and the Anishinaabe, Haudenosaunee, and Métis communities.

Results

The impact of colonization and residential schools

A strong and overwhelming theme that arose from this study is the impact of colonization and residential schools which participants saw as generational, ongoing, and directly connected to the overrepresentation of young people in the youth justice system and youth custody in particular. The Elder, his helpers, the cultural advisor, and the participants all shared their personal experience and that of their families in

terms of the legacy of colonization. Each shared personal, familial, and community stories connected to substance abuse, sexual and physical violence, poverty, and loss. As one circle member noted, "*(Colonization) is not something that only happened at first contact but is still going on today.*"

There were specific words that appeared connected to the discussion of the history of colonization and residential schools such as "pain," "loss," "broken," and "unbalanced." One young person noted, "*Everything we are seeing ... is a culture in crisis.*" Participants linked colonization and residential schools to the (a) loss of Indigenous ceremony, culture, and tradition, (b) the destruction of the Indigenous family unit and Indigenous parenting practices, (c) racism and stereotypes, all of which have culminated in (d) the loss of identity and sense of self. Each of these issues is intricately connected and, as the participants noted, inextricably connected to the overrepresentation of young people in the criminal justice system and youth custody.

Loss of history, tradition, culture, and ceremony

Within traditional Indigenous societies, individuals, clans, communities, the natural environment, and spirit were connected through interdependent relationships (Grekul & LaBoucane-Benson as cited in Bania, 2017). Teachings were passed from generation to generation through healthy relationships, ceremony, role-modeling, and living on the land. This taught young people the values and rules they needed to observe to become adults who understood their place within the interconnected world, for harmony, peace, and the "good life" (Grekul & LaBoucane-Benson as cited in Bania, 2017). Participants noted that the loss of Indigenous traditions, culture, and ceremony has meant that many young people "*are not bound in your culture which makes a big difference.*" As one participant shared, "*I have a total disconnect from my heritage.*" There was a sense from participants that Indigenous young people no longer have culturally appropriate direction, support, or an understanding of their own history as Indigenous peoples.

It became clear in the talking circles—as voiced by the participants the helpers/cultural advisor, and the Elder—that a key ingredient to re-building the well-being of Indigenous young people is connected to Indigenous young people learning about their history, including knowledge concerning their ceremonies, their clans, the role of treaties, the role of Elders in Indigenous communities, and the Indigenous connection to the land. The loss and inability to translate and pass on Indigenous history, tradition, culture, and ceremony was mentioned in conjunction with the destruction of Indigenous communities and, more importantly, Indigenous families.

The destruction of Indigenous families

Before first contact, the "family" within Indigenous communities could be described as a complex combination of biological ties, customary adoptions, clan membership bonds, and economic partnerships (Grekul & LaBoucane-Benson as cited in Bania, 2017). Indigenous families did not resemble traditional "nuclear" families found in European societies, but instead large extended families within which many functions of the community were performed (Grekul & LaBoucane-Benson as cited in Bania, 2017). Therefore, issues like parental non-involvement (at bail, in programming etc.)

needs to be situated in the history of the colonial destruction of kinship systems (Schwan & Lightman, 2013).

The destruction of Indigenous families, which participants connected directly to colonization and residential schools, was a common theme in the study's talking circles. Almost every participant shared a story about the impact their shared history has had on their own families. Though participants talked about "inferior parenting skills" and the inability of parents to communicate effectively with their children, each had great empathy for parent's pain and loss. One member of the circle shared the following:

> My parents act like children because they never learned how to parent properly, they yelled a lot and had temper tantrums ... and they passed it on to me. It just reminded me how powerful ceremonies would have been if parents could have had them, how that would have molded us...

A young person was clear about the ongoing impact and connectedness of colonialism, the child-welfare system, residential schools, and the intergenerational impact of both:

> My dad came from an abusive home, CAS (Children's Aid Society) took him away when he was four. It's always about the loss of identity. His adopted mother was Aboriginal, but she lost her heritage too. It's a ripple effect. . .. One person suffers from (what happened to their) parents then the next suffers from them. . .. Kids are lost and don't have an identity. . .. We all lost our identity with residential schools. Ripple effect.

The disruption of Indigenous communities, the forced removal of Indigenous children from their families and communities, cruel assimilation strategies that prohibited the practice of Aboriginal culture and language, and the experienced abuse in Canadian residential schools have "broken" generations of Aboriginal families (Corrado et al., 2014). These have created stereotypes and racism that Indigenous people experience from the non-Indigenous community that continue to be manifested and reinforced.

Racism and stereotypes

Another prominent theme among participants was regarding the stereotypes and racism that exists in the dominant community regarding Indigenous criminality. Connected to this theme was the recognition that identifying as Indigenous could have severe repercussions, as evident in the removal of Indigenous peoples to residential schools, but also in being charged more severely for minor offences (in comparison to non-Indigenous peers). Participants discussed being bullied for being "too native" or being made to feel like, somehow, they were trying to "get off" or take advantage of the system by utilizing the very laws that were meant to recognize the context and vulnerability of their lives.

Perceptions regarding racism among law enforcement were widespread. The following comment by one of the Oshkawbaywuss (helpers/apprentices) is indicative of a widely held belief among participants:

> But one piece is racism and stereotypes ... like police have stereotypes in their head every single Indigenous person is a criminal or lazy or a drunk ... so I think that has a lot to do with how they treat them (youth) even if it is a minor crime they treat them like they are a huge murderer.

This comment is in keeping with findings from research done on the policing of Indigenous communities which suggest that police appear to carry into their actions with Indigenous people "the same stockpile of stereotypes and images that shape the broader patterns of cultural imperialism" (Perry, 2009, p. 49). Participants suggested that racism impacted how Indigenous young people see themselves. One young person noted, "*Intergenerational racism meant that youth never found their soul and no one put them in the right direction, where they needed to be.*"

The theme of identity was a key theme in the talking circles, and another critical point in understanding the overrepresentation of young people in the criminal justice system and youth custody.

Loss of identity and sense of self

Each of the aforementioned themes underscored an important and central message; that Indigenous young people often feel directionless, have lost their identity and sense of self. As one participant suggested, "*Our young people don't know who they are.*" Without exception young people, the circle's helpers, and the cultural advisor all voiced their struggle with their identity and the disconnect they have sometimes felt from their Indigenous heritage. This universal sentiment was echoed in the comment of one young person who stated, "*I never grew up getting to know (about) my Indigenous identity.*" One participant argued that the loss of identity for Indigenous young people was historic and ongoing noting, "*It goes from when Columbus discovered North America. Systemic barriers being put in place ... residential schools ... inter-generational struggle. No guidance to put them in the direction of what they should be.*"

The fear of self-identifying as Indigenous was also a common thread, often connected to the repercussions that might come with such an identity. "*(We are) Afraid to talk about being Indigenous...*" Because of ongoing stereotypes in the dominant society (and to some degree in the Indigenous community) about what it means to be Indigenous, some participants suggested that they often did not "*Feel Indigenous enough*" and in fact had people remark "*...Well he doesn't look Indigenous.*" Participants noted the irony in this experience, because there were times in their lives that they experienced bullying as several participants said, "*For being too native.*" As the Elder so succinctly noted to the talking circle:

> Residential school was very symbolic, it took away our language, our young ones, our ability to parent ... Generations of loss of our culture, our identity, our young men do not have the ability to know who they are..... Four generations of loss of our culture loss of our identity. They do not know what it means to be Anishinaabe.

Repeatedly participants talked about internalized messages that Indigenous young people likely feel such as, "*I'm no good*" or "*We will always lose.*" One participant

succinctly outlined how without a sense of self, without direction, it is not surprising that something else may move in to fill the void:

> It wasn't instilled in me, who I was. My brother was more influenced. Other people filled that void. He hung with gang kids, and they did bad stuff. They told him who he was instead of my parents. There was no view of the future. They didn't tell us who to aspire to be.

Participants were quite passionate and thoughtful about strategies that might reduce the overrepresentation of Indigenous young people.

Strategies to address overrepresentation

There is a growing consensus that the overrepresentation of Indigenous young people is not due to a single factor, such as increased offending or the discriminatory practices of police, but by a complex mix of massive over-policing, racist law, order politics, a greater level of offending, and social disorganization (Corrado et al., 2014). Some would argue, the problem of the overrepresentation of Indigenous young people has failed to show improvement because law reform does little to tackle the intergenerational social problems resulting from government policies that underpin violence, poverty, and substance abuse in Indigenous communities (Murdocca as cited in Balfour, 2012). Additionally, it has been suggested that traditional development and design of programs and legal solutions continue to be based on adversarial justice and mainstream interventions that fail to be responsive to the needs and aspirations of Indigenous people (Ryan, Head, Keast, & Brown, 2006). Many have argued that law reform can only do so much without a change in the attitude and practices of law enforcement (Brown, 2012). The interactions with Indigenous young people (worldwide) and police continue to be problematic, antagonistic, and rarely positive (Brown, 2012).

Young people have always played an important role in Indigenous cultures. Unfortunately, there has also been a historical focus on young people as targets of colonial tactics. Research suggests that the greatest impact of colonial legacies have been felt by young people (Schwan & Lightman, 2013). Not surprisingly, Indigenous young people are confused about their identity. They are unsure whether they should remain true to an Indigenous identity or take on aspects of mainstream society (Pirbhai-Illich, 2011). Stewart, Riecken, Scott, Tanaka, and Riecken (2008) argue that, "Identities form the foundation from which Indigenous youth negotiate their many interactions with the larger dominate culture in which they find themselves immersed" (p. 181).

Indigenous culture stresses the importance of community knowledge and connection to community (Stewart et al., 2008). Any initiative within the Indigenous community and efforts to "help" need to be sensitive to the history of colonization and other efforts of "caretaking"—particularly in regard to social services (Schwan & Lightman, 2013). Unfortunately, non-Indigenous foundations, NGOs, and social services have a chequered reputation for either overlooking the Aboriginal community, helicoptering in with ready-made solutions, and not consulting in good faith (Schwan & Lightman, 2013).

Indigenous community in community initiatives means developing close, power sharing relationships with the communities most trusted members—typically Elders or cultural knowledge keepers (Allen, Mohatt, Markstrom, Beyers, & Novins, 2012). This generally requires a substantial time commitment to build relationships (Allen et al., 2012). Criminal justice models are witnessing the increasing ownership of the administration of law by Indigenous communities (see, e.g., the Children's Koori Court in Victoria, Australia, and the initiatives of the Mohawk band at Akwesasne, the first of its kind in Canada).

Involving the Indigenous community in a genuine way in programming for Indigenous young people, means endeavouring to teach from within a culture rather than about a culture (Swayze, 2009). Indigenous communities share a deep spiritual connection to the land and have relied on ceremonies and oral traditions to pass knowledge from one generation to the next (Flicker et al., 2014). Drumming, singing, carving, weaving, and beading continue to be considered important forms of storytelling (Flicker et al., 2014). The arts are perceived by Indigenous communities to be functional, and sacred endeavours that continue to be used for communication, teaching, values transmission and experiential learning (Flicker et al., 2014).

The transmission of Indigenous knowledge is often through a dialogue with community Elders (Swayze, 2009). Within this framework, Elders are considered "the original teachers" (Swayze, 2009). Successful Indigenous prevention, rehabilitation, and programming are facilitated by the inclusion of a cultural match (Ryan et al., 2006). In other words, practice-based examples reflecting Indigenous life experiences couched in Indigenous language and the use of Indigenous program designers and instructors (Ryan et al., 2006). The aforementioned themes of Indigenous young people-centric, Indigenous community engagement, and the importance of history, tradition, culture, and ceremony, as described in the research literature clearly emerged as central themes in the study's talking circles.

The themes that arose in the talking circles regarding how to address overrepresentation of Indigenous young people not only mapped quite clearly onto findings from the research literature, but also clearly flowed from what the circle had identified as the reasons for overrepresentation. The circles intuitively recognized the central (and respected) role that young people once occupied in Indigenous communities. As the Elder noted, "*Youth—we can deal with youth in ways we've always dealt with them.*" One circle member suggested that, "*One hundred years ago, youth would have been heard by the community. Now older people (are) making the decisions, youth have no voice. Youth feel undervalued and unimportant in institutions today.*"

One of the helpers remarked, "*Now older people make all the decisions in back rooms. Youth have no voice. Youth feel undervalued and unimportant in institutions today.*" All participants recognized the importance of hearing young people's opinions, the necessity to demonstrate to Indigenous young people that they were cared for, and the importance of gaining young people's trust. The one theme that was clearly paramount in regard to young people was that, "*We need to get youth more involved in decisions.*" This is in keeping with notions of best practice in regard to engaging Indigenous young people.

Perhaps the theme that involved the longest and deepest conversations in the talking circles among the Elder, the Oshkawbaywuss (helpers/apprentices), the cultural advisor

and all of the participant young people, was the key role that history, tradition, culture, and ceremony would need to play in the well-being of Indigenous young people, particularly in regard to identity and self-worth. As one participant suggested, "*(it's about) reclaiming roots, giving them tools, showing them supports and how to access.*" One participant gave an example of the importance of ceremony in their everyday saying that, "*Reclaiming our roots. Give Indigenous youth somewhere to feel safe and like they belong. I have never been incarcerated, but I still feel (the need) for a grounding in my culture. If I don't smudge I lose myself.*"

Each individual described the role that Indigenous history, tradition, culture, and ceremony had played in their own recovery or reparation of their self-worth. One of the helpers noted that, "*I grew up in a house with alcohol, lots of violence, sexual and verbal abuse. How they hell did I make it out? I looked at ceremony and spirit.*" Another circle member shared the following:

> I did not know who I was. Though I was raised on (a) First Nation, I wasn't raised in the culture. I went to Pow Wows since I could walk…. But I did not get it, did not understand it, till I sought it out myself…. One thing (that's important is) knowing who they are, knowing good things about their identity.

There were specific examples of how the talking circles thought history, tradition, culture, and ceremony could be delivered in a therapeutic manner. However, one that was discussed the most and which held the most resonance for all circle members was the need to return young people to nature and the natural world around them.

An example that the talking circles gave of the kind of activity that could engage young people in history, tradition, culture, and ceremony (and one that is seen in the research literature as key to the Indigenous identity) was any activity that was connected to the land. One of the helpers and the Elder are regularly engaged in activities with young people that involve the outdoors, traditional activities, and teachings. The circles' members agreed that Indigenous young people (particularly those who are marginalized and struggling) need to "*Go back to roots including (learning) the connection to land, (the) use of Elders.*" As one of the helpers suggested, "*(it's important that they) Go back to the land, canoe through swamp, fish, make connections there is a teaching behind each bush, each fish, learn about their clans…. They need to see us doing it.*" One of the young people agreed, noting that, "*Getting back into nature is a big part of it. Even sitting beside a tree makes me calmer.*" The circles' members were in agreement that engaging Indigenous young people in activities that taught young people the centrality of the land to Indigenous life could satisfy multiple objectives, including the building of Indigenous identity, the learning of traditional teachings, culture and ceremony, the building of trust, and, "*While doing (the) activity, (you) can check in, break down walls…. Getting them on the land and off the streets….*"

Conclusion

> We have a memory of our history…
> take them to the mountains to fast, to find their name…

Through our ceremony, through our own traditional values, with our own communities getting healthy,
we can bring our young people home.

The above quote by the circles' Elder, encapsulates the belief that many Indigenous community members likely share—and that is that, through Indigenous traditions, Indigenous peoples can heal their own young people. This study attempted to understand the thoughts of Indigenous young people regarding the overrepresentation of young people in the criminal justice system. As Wilson (2008) argues, research which attempts to engage with Indigenous methodologies by utilizing talking circles and storytelling must honor "the talk" (p. 99). The results of the study suggest that Indigenous young people and key informants for the Indigenous community have a high level of agreement on the reasons for overrepresentation of Indigenous young people in the criminal justice system and the solutions. Though their opinions are correlated and supported by the research literature on Indigenous young people, the circle members engage with the subject matter via their own lived experience. Each of the young people involved in the circles indicated that it was important to them that they were able to spend meaningful time with an elder and also to be able to be heard. They indicated that it meant a lot that they were able to be with other Indigenous young people who shared their opinions and sympathized with their own attempts to understand their identities. The elder, knowledge keeper and all the adult Indigenous members of the circle were able to share their own personal histories, the histories of the Indigenous peoples and discuss how they may heal together.

Given the concurrence between the circle member's thoughts and that of the research literature regarding the overrepresentation of Indigenous young people and possible solutions, the way forward seems apparent. Youth-centric programming for Indigenous young people should be developed in conjunction with key members of the Indigenous community (in particular, Elders and knowledge keepers) and embedded in Indigenous history, tradition, culture, and ceremony. Programming should include young people not just as participants, but as developers and leaders with input of their own. Indigenous young people are more likely to be engaged in programming and initiatives if they are anchored in history, tradition, culture, and ceremony, but are also centred on participatory learning.

There are a number of limitations to this study. The circle participants were a convenient sample that were likely self-selected (i.e., they were individuals who were likely already aware of Indigenous issues/concerns and were connected with key individuals in the local Indigenous community). The number of key informants and participants was small and drawn from a particular geographic location in Southern, Ontario. Therefore, the results are not generalizable to the larger community of Indigenous young people in Canada. The Elder guided the talking circles in a holistic manner that is in keeping with Indigenous methodologies. The study cannot ascertain if different results may have arisen with more specific, targeted questions.

Much of this paper has discussed the challenges and difficulties facing Indigenous young people. However, as Schwan and Lightman (2013) argue, we need to critically assess how we narrate, characterize, and label the Indigenous experience. Seldom are narratives about Indigenous peoples counterbalanced with explorations of resilience,

resistance, agency, and power (Schwan & Lightman, 2013). In fact, portrayals of Indigenous peoples in peer-reviewed literature tend to be problem-focused and deficit-based (Drawson et al., 2017).

A number of researchers are now calling for a focus on strength-based approaches as, they argue, risk-focused descriptions are often unfairly negative and stigmatizing (Jardine, Genius, Lukasewich & Tang, 2016). Merritt (as cited in McGuire, 2017) suggests that it is important that resilience be defined in an Indigenous context. McGuire (2017) suggests that resilience in an Indigenous context is related to the surviving foundations of Indigenous knowledge(s). Homel, Lincoln, and Herd (1999) describe Indigenous cultural resilience in terms of Indigenous peoples' diversity, revival and distinctiveness.

Weibe (2015) argues that "the mere existence of Indigenous people is an everyday act of survival and resistance." This paper will close with two quotes, one from the circle's Elder and one from one of the circle's young people. Both give testimony to the strength of Indigenous peoples in Canada. "*(Youth, need to) Get to know there is a greater purpose for being here. You are a product of generations who survived ... we survived genocide, colonization.*"... "*A lot of people did not survive colonization. I like to think it's (because of) our resilience that we are still here.*"

Acknowledgements

Declaration of conflicting interests

Funding

Notes

1. "Aboriginal Peoples" is a collective name for all of the original peoples of Canada and their descendants (National Aboriginal Health Organization (NAHO). Section 35 of the Constitution specifies that Aboriginal Peoples in Canada consists of three groups; First Nations, Inuit and Metis (NAHO). It should be noted however, that the term "Indigenous" (meaning native to the area), is the term used by the United Nations, for Aboriginal Peoples in Canada and is increasingly used by Aboriginal scholars and advocates to describe Aboriginal Peoples collectively, inclusively and to recognize the place of Aboriginal Peoples in Canada's late-colonial era (NAHO).

2. The term residential schools refers to an extensive school system set up by the Canadian government and administered by churches that had the nominal objective of educating Indigenous children but also the more damaging and equally explicit objectives of indoctrinating them into Euro-Canadian and Christian ways of living and assimilating them into mainstream Canadian society. The residential school system operated from the 1880 into the closing decades of the 20th century. The system forcibly separated children from their families for extended periods of time and forbade them to acknowledge their Indigenous heritage and culture or to speak their own languages.

References

Allen, J., Mohatt, G. V., Markstrom, C. A., Beyers, L., & Novins, D. K. (2012). Oh no we are just getting to know you": The relationship in research with children and youth in indigenous communities. *Child Development Perspectives*, *6*, 55–60. doi: 10.1111/j.1750-8606.2011.00199.x

Anand, S. (2000). The sentencing of Aboriginal offenders, continued confusion and persisting problems: A comment on the decision in R. v. Gladue. *Canadian Journal of Criminology, 42*(3), 412–420.

Balfour, G. (2012). Do law reforms matter? Exploring the victimization-criminalization continuum in the sentencing of Aboriginal women in Canada. *International Review of Victimology*, *19*, 85–102. doi: 10.1177/0269758012447213

Bania, M. (2017). *Culture as catalyst: Preventing the criminalization of Indigenous young people*. Ottawa, ON: Crime Prevention Ottawa.

Barker, B., Alfred, G. T., Fleming, K., Nguyen, P., Wood, E., Kerr, T., & DeBeck, K. (2015). Aboriginal street-involved youth experience elevated risk of incarceration. *Public Health*, *129*, 1662–1668. doi: 10.1016/j.puhe.2015.09.003

Barker, B., Alfred, G. T., & Kerr, T. (2014). An uncaring state? The overrepresentation of First Nations children in the Canadian child welfare system. *Canadian Medical Association Journal*, *186*, 533–534.

Battiste, M. (2014). Research ethics for protecting Indigenous knowledge and heritage: Institutional and researcher responsibility. In N. K. Denzin, Y. S. Lincoln, & L. T. Smith (Eds.), *Handbook of critical and Indigenous methodologies* (pp. 497–410). Thousand Oaks, CA: Sage Publishing.

Bird-Naytowhow, K., Hatala, A. R., Pearl, T., Judge, A., & Sjoblom, E. (2017). Ceremonies of relationship: Urban Indigenous youth in community based research. *International Journal or Qualitative Methods*, *16*, 14.

Bracken, D. C. (2008). *Canada's Aboriginal people, fetal alcohol syndrome & the criminal justice system*. ISBN 978-1-100-51281-5. Ottawa, ON: Aboriginal Corrections Policy Unit, Public Safety Canada.

Bracken, D. C., Deane, L., & Morrissette, L. (2009). Desistance and social marginalization: The case of Canadian Aboriginal offenders. *Theoretical Criminology*, *13*, 61–78. doi: 10.1177/13624806100173

Brown, L. (2012). The criminalisation of conduct: Indigenous youth in the criminal justice system. *Indigenous Law Bulletin*, *7*, 8–11.

Calverley, D., Cotter, A., & Halla, E. (2010). *Youth Custody and Community Services in Canada, 2008/2009*. Ottawa: Statistics Canada.

Canadian Centre for Justice Statistics. (2016). *Youth Correctional Statistics in Canada, 2014/2015*. Ottawa: Statistics Canada.

Canadian Council of Provincial Child and Youth Advocates. (2010). Position Paper: *Aboriginal children and youth in Canada: Canada must do better*. Retrieved from http://www.cccya.ca/images/english/pdf/aboriginal_children_youth_advocates_position_paper_2010.pdf

Champagne, D. (2015). Centering Indigenous nations within Indigenous methdologies. *Wicazo SA Review*, *30*, 57–81.

Corrado, R. R., Kuehn, S., & Margaritescu, I. (2014). Policy issues regarding the overrepresentation of incarcerated Aboriginal young offenders in a Canadian context. *Youth Justice*, *14*, 40–62. doi: 10.1177/14732254135

Cunneen, C. (2006). Racism, discrimination and overrepresentation in the Criminal Justice System. *Current Issues in Criminal Justice*, *17*, 329–346.

Cunneen, C. (2008). Changing the neo-colonial impacts of juvenile justice. *Current Issues in Criminal Justice*, *20*, 43–58.

Cunneen, C., Rowe, S., & Tauri, J. (2016). Fracturing the colonial paradigm: Indigenous epistemologies and methodologies. *Method(e)s: African Review of Social Science Methodologies*, *2*, 62–79. doi: 10.1080/23754745.2017.1354548

Cunneen, C., & Tauri, J. (2016). *Indigenous criminology*. Bristol, UK: Policy Press.

Darder, A., Mirón, L. F., Denzin, N. K., Lincoln, Y. S., Guba, E., Olesen, V., . . . Spivak,. G. C. (2014). Locating the field: Performing theories of decolonizing inquiry. In N. K. Denzin, Y. S. Lincoln, & L. T. Smith (Eds.), *Handbook of critical and Indigenous methodologies* (pp. 21–430). Thousand Oaks, CA: Sage Publishing.

Doob, A. N., & Sprott, J. B. (2007). The sentencing of Aboriginal and non-Aboriginal young people: Understanding local variation. *Canadian Journal of Criminology and Criminal Justice*, *49*, 109–123.

Drawson, A. S., Toombs, E., & Mushquash, C. J. (2017). Indigenous research methods: A systematic review. *The International Indigenous Policy Journal*, *8*. doi: 10.18584/iipj.2017.8.2.5. Retrieved from https://ir.lib.uwo.ca/iipj/vol8/iss2/5

Fitzgerald, R. T., & Carrington, P. J. (2008). The neighbourhood context of urban Aboriginal crime. *Canadian Journal of Criminology and Criminal Justice*, *50*, 523–557. doi: 10.3138/cjccj.50.5.523

Flicker, S., Danforth, J.Y., Wilson, C., Oliver, V., Larkin, J., Restoule, J.P., Mitchell, C., Konsmo, E., Jackson, R., & Prentice, T. (2014). "Because we have really unique art": Decolonizing with Indigenous youth using the Arts. *International Journal of Indigenous Health, 10*(1), 16–33.

Grekul, J., & LaBoucane-Benson, P. (2008). Aboriginal gangs and their (dis)placement: Contextualizing recruitment, membership, and status. *Canadian Journal of Criminology and Criminal Justice*, *50*, 59–82. doi: 10.3138/cjccj.50.1.59

Homel, R., Lincoln, R. and Herd, B. (1999). Risk and resilience: crime and violence prevention in aboriginal communities. *Australian and New Zealand Journal of Criminology, 32*(2), 182–196

Jackson, N. (2015). Aboriginal youth overrepresentation in Canadian correctional services: Judicial and non-judicial actors and influence. *Alberta Law Review*, *52*, 927–947.

Jardine, C., Genius, S., Lukasewich, M., & Tang, K. (2016). *Using Strength-Based Approaches to Engage Indigenous Youth in Health Risk Communication*. Edmonton: University of Alberta.

Jeffries, S., & Stenning, P. (2014). Sentencing Aboriginal offenders: Law, policy, and practice in three countries. *Canadian Journal of Criminology and Criminal Justice/Revue Canadienne De Criminologie Et De Justice Penale*, *56*, 447–494. doi: 10.3138/cjccj.2014.S03

Kovach, M. (2009). *Indigenous methodologies*. Toronto: University of Toronto Press.

LaPrairie, C. (2002). Aboriginal overrepresentation in the criminal justice system: A tale of nine cities. *Canadian Journal of Criminology*, *44*, 181–208.

McGuire, P.D. (2017). Tensions, contradictions, and uneasiness of stories, and the resurgence of Indigenous societies. *Canadian Review of Sociology, 54*(3), 372–374.

Office of the Correctional Investigator. (2013, September 16). Backgrounder: Aboriginal offenders – A critical situation. Retrieved from http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx

Perry, B. (2009). *Policing race and place in Indian country: Over- and under-enforcement.* Toronto: Lexington Books.

Pirbhai-Illich, F. (2011). Aboriginal students engaging and struggling with multiliteracies. *Journal of Adolescence and Adults Literacy*, *54*, 257–266. doi: l0.1598/JAAL.54.4.3

Ray, R. (2012). Deciphering the 'Indigenous' in Indigenous methodologies. *Alternative: An International Journal of Indigenous Peoples*, *8*, 85–98. doi: 10.1177/117718011200800107

Roberts, J. V., & Melchers, R. (2003). The incarceration of Aboriginal offenders: Trends from 1978 to 2001. *Canadian Journal of Criminology and Criminal Justice*, *45*, 211–242.

Royal Commission on Aboriginal Peoples. (1995). *Bridging the cultural divide: A report on Aboriginal people and criminal justice in Canada*. Ottawa: Canada Communications Group.

Rudin, J. (2005). *Aboriginal peoples and the criminal justice system.* Toronto, ON: Ipperwash Inquiry.

Ryan, N., Head, B., Keast, R., & Brown, K. (2006). Engaging Indigenous communities: Towards a policy framework for Indigenous community justice programmes. *Social Policy & Administration*, *40*, 304–321.

Schwan, K., & Lightman, E. (2013). Fostering resistance, cultivating decolonization. The intersection of Canadian colonial history and contemporary arts programming with Inuit youth. *Cultural Studies Critical Methodologies*, *15*, 15–29.

Statistics Canada. (2017, October 25). Aboriginal peoples in Canada: Key results from the 2016 census. *The Daily*. Retrieved from http://www.statcan.gc.ca/daily-quotidien/171025/dq171025a-eng.pdf

Stewart, S., Riecken, T., Scott, T., Tanaka, M., & Riecken, J. (2008). Expanding health literacy: Indigenous youth creating videos. *Journal of Health Psychology*, *13*, 180–189. doi: 10.1177/1359105307086709

Swayze, N. (2009). Engaging Indigenous urban youth in environmental learning: The importance of place revisited. *Canadian Journal of Environmental Education*, *14*, 59–73.

Thomas, D. R. (2003). A general induction approach for qualitative analysis. *American Journal of Evaluation*, *27*, 237–246.

Truth and Reconciliation Commission of Canada. (2015a). *Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada.* ISBN 978-0-660-02078-5. Vancouver, Canada: Truth and Reconciliation Commission of Canada.

Truth and Reconciliation Commission of Canada. (2015b). *What we have learned: Principles of truth and reconciliation.* ISBN 978-0-660-02073-0. Vancouver, Canada: Truth and Reconciliation Commission of Canada.

Weibe, S. M. (2015) Decolonizing engagement? Creating a sense of community through collaborative filmmaking. *Studies in Social Justice*, *9*, 244–257.

Wilson, S. (2008). *Research is ceremony: Indigenous research methods.* Winnipeg, MB: Fernwood Publishing.