



# “Symptoms of something all around us”: Mental health, Inuit culture, and criminal justice in Arctic communities in Nunavut, Canada



Priscilla Ferrazzi<sup>\*</sup>,<sup>1</sup>, Terry Krupa

Queen's University, 31 George Street, Kingston, Ontario K7L 3N6, Canada

## ARTICLE INFO

### Article history:

Received 24 October 2015

Received in revised form

27 June 2016

Accepted 25 July 2016

Available online 27 July 2016

### Keywords:

Nunavut

Arctic

Canada

Culture

Inuit

Mental health

Criminal justice

Therapeutic jurisprudence

## ABSTRACT

**Rationale:** Rehabilitation-oriented criminal court mental health initiatives to reduce the number of people with mental illness caught in the criminal justice system exist in many North American cities and elsewhere but not in the mainly Inuit Canadian Arctic territory of Nunavut.

**Objective:** This study explores whether the therapeutic aims of these resource-intensive, mainly urban initiatives can be achieved in criminal courts in Nunavut's resource constrained, culturally distinct and geographically remote communities.

**Method:** A qualitative multiple-case study in the communities of Iqaluit, Arviat and Qikiqtarjuaq involved 55 semi-structured interviews and three focus groups with participants representing four sectors essential to these initiatives: justice, health, community organizations and community members. These interviews explored whether the therapeutic jurisprudence (TJ) principles that guide criminal court mental health initiatives and the component objectives of these principles could be used to improve the criminal court response to people with mental illness in Nunavut.

**Results:** Interviews revealed 13 themes reflecting perceptions of Inuit culture's influence on the identification of people with mental illness, treatment, and collaboration between the court and others. These themes include cultural differences in defining mental illness, differences in traditional and contemporary treatment models, and the importance of mutual cultural respect.

**Conclusion:** The findings suggest Inuit culture, including its recent history of cultural disruption and change, affects the vulnerability of Nunavut communities to the potential moral and legal pitfalls associated with TJ and criminal court mental health initiatives. These pitfalls include the dominance of biomedical approaches when identifying a target population, the medicalization of behaviour and culture, the risk of “paternalism” in therapeutic interventions, and shortcomings in interdisciplinary collaboration that limit considerations of Inuit culture. The pitfalls are not fatal to efforts to bring the rehabilitative benefits of these initiatives to Nunavut, but they require careful vigilance when employing TJ principles in an Indigenous circumpolar context.

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## 1. Introduction

The problem of the overrepresentation of people with mental illness in the criminal justice system is pervasive in many countries (Arboleda-Florez, 2009) including Canada (Mental Health Commission of Canada, 2012), and the issue is acute for Canadian

Inuit and other Aboriginal offenders. People with mental illness in general represent a disproportionately high number of those arrested, prosecuted and/or imprisoned in penitentiaries (Butler and Allnutt, 2003; Office of the Correctional Investigator, 2010; Ogloff, 2002; Steadman et al., 2009) and, although mental disorders among Canadian federal inmates are up to three times as common as in the population at large (Dupuis et al., 2013), access to mental health treatment in the criminal justice system is often limited or unavailable (Davis et al., 2012; Mental Health Commission of Canada, 2012). For Canada's Inuit, the concern is heightened by disadvantage and circumstances that lead them and other Aboriginal people to comprise one fifth of the nation's prison population (while representing only 3% of the adult population;

<sup>\*</sup> Corresponding author. University of Alberta, School of Public Health, 3-300 Edmonton Clinic Health Academy, 11405-87 Avenue, Edmonton, Alberta T6G 1C9, Canada.

E-mail address: [ferrazzi@ualberta.ca](mailto:ferrazzi@ualberta.ca) (P. Ferrazzi).

<sup>1</sup> Permanent address: University of Alberta, Faculty of Rehabilitation Medicine, 8205-114 Street, 2-64 Corbett Hall, Edmonton, Alberta T6G 2G4, Canada.

Statistics Canada, 2015) and to be considered 10 times more likely to be incarcerated than non-Aboriginal Canadians (Office of the Correctional Investigator, 2013). In the mainly Inuit Arctic territory of Nunavut, for example, the crime rate is 5.5 times higher than the rest of Canada (Statistics Canada, 2014a) and growing (NTI, 2014). Meanwhile, Inuit experience higher rates of mental health problems than the general population (Kielland and Simeone, 2014), often associated with a context of rapid social, cultural, and economic change (Petrasek MacDonald et al., 2013) and exacerbated by social disparities in education, income and health that persist to this day (TRC, 2015). In Canada's prisons, Aboriginal inmates are more likely to suffer from health problems, including mental health issues, than non-Aboriginal inmates (Mann, 2009).

Nunavut (pop. 31,906) is Canada's geographically largest (~2 million km<sup>2</sup>), most northerly and youngest territory (established in 1999), and Inuit culture remains central: 85% of the population is Inuit and more than half use Inuktitut as their dominant language at home (Statistics Canada, 2011). Criminal justice in the territory is administered by the Nunavut Court of Justice based in the capital Iqaluit with a “fly in” court travelling by plane to 25 of 27 communities (Nunavut Court of Justice, 2016). While these courts include Inuit elders' panels at sentencing, Inuktitut interpretation (Nunavut Court of Justice, 2016), diversion for youth and adults involving community justice committees (Nunavut Court of Justice, 2014), and regular adherence to Aboriginal sentencing considerations outlined by the Supreme Court (*R v. Gladue* 1999), they are otherwise conventional in the way most criminal cases are dealt with in Canada (NTI, 2014), including their adversarial (Griffiths and Verdun-Jones, 1994) and denunciatory focus on individualizing wrong and fixing blame (Groarke, 2009). This conventional approach has been criticized for marginalizing Inuit participation and values (NTI, 2014; Tagalik, 2012). Mental health resources in the territory, meanwhile, are generally scarce and frequently inaccessible (Kielland and Simeone, 2014; NTI, 2014) making the justice system “too often the first stop for troubled people who do not have access to care” (NTI, 2014, p. 1). This reliance on the courts exacts high costs to families, communities and society at large (territorial average daily inmate costs were two to three times higher than most other Canadian provinces and territories in 2013–14; Statistics Canada, 2014b).

In many cities in North America and elsewhere, a leading response to the overrepresentation of people with mental illness in the criminal justice system has been criminal court mental health initiatives. These initiatives are aligned with, and belong to, a broader North American movement to develop specialized non-adversarial “problem-solving courts” animated, in the main, by a concept known as therapeutic jurisprudence (TJ). These courts substitute the conventional court focus on the determination of guilt for an emphasis on court oversight of rehabilitation (Castellano, 2011) that aims for, among other things, improved social functioning and quality of life as well as less criminal justice involvement (Slinger and Roesch, 2010). Criminal court mental health initiatives—namely Mental Health Courts and mental health diversion programs—redirect people with mental illness in conflict with the law away from prosecution and jail to community mental health treatment (Honegger, 2015). Many studies in mainly urban settings have shown that these initiatives reduce further criminal justice involvement for offenders with mental illness (Hiday and Ray, 2010; Honegger, 2015; Lange et al., 2011; Michigan Supreme Court, 2015; Steadman et al., 2011) and can improve measures of mental health and well-being, such as indices of addiction severity, behavioural and psychiatric rating scales, post-court psychiatric service use, and education and job outcomes (Lange et al., 2011; Luskin, 2013; Michigan Supreme Court, 2015; but see Honegger, 2015 for cautionary review). Importantly, this therapeutic

approach to criminal justice has also been recognized as being well-aligned with traditional, rehabilitation-focused conflict resolution in Aboriginal cultures in Canada (Johnson, 2014), Australia (King and Auty, 2005) and New Zealand (Toki, 2010).

As criminal court mental health initiatives have proliferated in North American urban centres, scholarship concerning the concept of TJ, as the “theoretical foundation” for these initiatives (Winick, 2013), has also been developing (Ferrazzi and Krupa, 2016a). Criminal court mental health initiatives that more closely and consciously adhere to TJ concepts are more likely to lead to improved criminal justice outcomes (Redlich and Han, 2014). TJ recognizes the law and its application has therapeutic and anti-therapeutic consequences, and it advocates for maximizing the former while minimizing the latter as long as other legal values are not compromised as a consequence (Wexler and Winick, 1996; Winick, 2013). In their recent review of TJ literature, Ferrazzi and Krupa (2015) conclude that, in essence, TJ advances three key principles, namely *the need for a therapeutic response* (i.e., a focus must be on the enhanced well-being of an offender, the integration of treatment services with judicial case processing, and ongoing judicial supervision), *the response must be interdisciplinary/multi-disciplinary* (i.e., the therapeutic response is guided by social sciences and includes collaboration with community-based and governmental organizations), and *the response cannot trump other values* (i.e., other legal values and considerations are paramount, including due process, predictability in the law, community safety, and others). Among TJ's widely recognized strengths is its interdisciplinarity (it relies on insights from psychiatry, psychology, criminology, and social work; Wexler, 2008) as well as its importance in encouraging more comprehensive and humanistic approaches to the law (Winick and Wexler, 2003). As justice and health system recognition of the value and importance of these approaches continues to grow, TJ is being embraced across the legal spectrum and beyond, and it is growing in influence (Freckelton, 2008).

Yet, TJ and the rehabilitation-oriented criminal court initiatives it animates are not without critics (see Boldt, 2009; Freckelton, 2008 for reviews). Some suggest efforts to forge an “uneasy partnership” between treatment and criminal justice may risk the expansion of the medical and judicial control of behaviour, the misallocation of treatment resources, and a compromise of procedural fairness and open justice (Boldt, 2009, p. 14). For instance, among the key concerns is the lack of clarity about the meaning of “therapeutic” (Slobogin, 1995), creating a likelihood for TJ's deference to established psychiatric/medical authority (Arrigo, 2004; Perlin, 1993) and the unnecessary medicalization of behaviour (e.g., Conrad, 1992). Some also fear the approach opens the door to court oversight extending beyond a crime's typical sentence (Seltzer, 2005), as well as to a compromise of the legal rights of the accused (Nolan, 2010). Nevertheless, others argue these risks can be mitigated by an awareness of the moral and legal issues they raise (Freckelton, 2008) and by a clear understanding of the intended modest scope of TJ as a “lens” through which to study the therapeutic implications of the law and legal procedure (e.g., Wexler and Winick, 1996). Meanwhile, in Nunavut, criminal court mental health initiatives do not exist. Indeed, these initiatives are rare outside of urban centres in North America and elsewhere where there are large populations and sufficient resources to facilitate a separate criminal docket and a “triage team” of specially trained judges, prosecutors, lawyers and others (Slinger and Roesch, 2010, p. 260).

This research examines the potential for using the three theoretical principles of TJ to deliver the rehabilitative aims of TJ and criminal court mental health initiatives to Nunavut communities.

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