THERAPEUTIC JURISPRUDENCE, REHABILITATION, AND RESPONDING TO MENTAL ILLNESS IN THE CONTEXT OF CRIMINAL COURTS IN REMOTE, MAINLY INUIT ARCTIC COMMUNITIES

By

Priscilla Ferrazzi

A thesis submitted to the Graduate Program in Rehabilitation Science in conformity with the requirements for the Degree of Doctor of Philosophy

Queen’s University
Kingston, Ontario, Canada
January 2015

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Abstract

Researchers have recently suggested using the problem-solving court principles that guide criminal court mental health diversion initiatives in large North American cities and elsewhere to deliver similar objectives outside of well-resourced, specialized urban courts. The proliferation of these initiatives is a response to the overrepresentation of people with mental illness caught up in the justice system. But while the “problem-solving court” principles and those of the foundational theoretical approach known as therapeutic jurisprudence (TJ) include the need for an effective “rehabilitative response,” a contemporary understanding of this response from mental health rehabilitation research—including current thinking about the role of culture in mental health recovery—is not well explored. Meanwhile, in the mainly Inuit Canadian Arctic territory of Nunavut, criminal court mental health diversion initiatives do not exist. This dissertation examined the potential for delivering the objectives of criminal court mental health diversion in Nunavut using TJ and problem-solving court principles. A qualitative multiple-case study involving 55 semi-structured interviews as well as three focus groups was used to gather and analyze the experiences of justice personnel, health workers, members of community organizations and other community members in three Nunavut communities (Iqaluit, Arviat, and Qikiqtarjuaq). The study showed that the confounding effects of Inuit culture comprised a dominant issue in conversations about the three most-discussed objectives of TJ and problem-solving principles: identifying mental illness, approaches to treatment and therapeutic services, and interdisciplinary/multidisciplinary collaboration. The impacts of geographic remoteness and resource limitations were of less concern. Themes revealed in conversations about culture showed a clear resonance with culturally responsive concepts from mental health research known
as “protective factors” in the mental health of Inuit and other indigenous people. This result suggests a consideration of protective factors may be essential for TJ and problem-solving court thinking in the context of mainly Inuit Arctic communities. Further, the research revealed culturally relevant characteristics of mainly Inuit communities relevant to identifying mental illness that could pose hurdles to importing typical criminal court mental health diversion initiatives across cultural and social boundaries in the Far North.
Priscilla Ferrazzi is the PhD candidate and sole author of this dissertation. Her PhD program and dissertation study were developed under the guidance of her academic supervisor Terry Krupa. Priscilla Ferrazzi was responsible for the study’s subject and design, relevant literature reviews, data collection, data analyses, and writing for this dissertation. Terry Krupa provided editorial guidance ahead of preparation for journal submission of manuscripts flowing from chapters 2, 4, 5, 6 and 7 of this dissertation and she is named as co-author therein. In general, however, Priscilla Ferrazzi can be considered responsible for all of the material contained in this thesis.
Acknowledgements

I would like to thank Dr. Terry Krupa for her support and guidance in this research project. Thank you also to my committee members, Dr. Rosemary Lysaght, Dr. Margo Paterson, and the Honourable Justice Richard Schneider who provided helpful comments on this research. Similarly, I would like to thank Dr. David Wilman and Elisapee Daviidee for their northern perspective which helped inform this work, Paola Durando and Leslie Taylor for their invaluable library research help, Stuart Robertson from NVivo QSR International for his timely soft-ware support, and Barry McLaren for paving the way to my connection with Nunavut.

As usual, much of my gratitude is reserved from my husband Peter. His level of engagement, unwavering support and encouragement continue to reflect his commitment to me and my ambitious endeavours. I am also very grateful to my brother Dr. Gabriel Ferrazzi who generously made himself available for invaluable consultations while busy on international business. Of course, this undertaking also benefited from the support and interest of my two lovely daughters Hannah and Laura who twice accompanied me to Nunavut, along with my husband, to share my Arctic experiences.

This project could not have been accomplished without the support of numerous other people. Among them are Shirley Tagalik, Nicholas Arnalukjuak, Sarah Curley, Kimberly Arulak, Lissie Anaviapik, Vivian Goneau, Dawna Bilko, Linda Potyok, Valerie O’Doherty, Sharon David, Philomene Kocker, Bobby Foreman and Michelle Villeneuve.

I am also grateful to Health Canada, the Government of Nunavut, Nunavut Tunngavik Inc., the Law Society of Nunavut, the Nunavut Research Institute, the Royal Canadian Mounted police, and the communities of Arviat, Iqaluit, and Qikiqtarjuaq for their general support of this
project. Finally, I would like to express my appreciation to Dr. Stanley Corbett and my Committee members, for their kind support of funding applications for this endeavour. In this connection, I am grateful to the many organizations for their invaluable financial or in-kind support for this project, including the Social Science and Humanities Research Council of Canada (the Joseph-Armand Bombardier Canada Graduate Doctoral Scholarship), The Nunavut Law Foundation (project grant and the Lucien Ukaliannuk Award), the Canadian Federation of University Women (the Dr. Margaret McWilliams Pre-Doctoral Fellowship and the Dr. Alice E. Wilson Award), Aboriginal Affairs and Northern Development Canada/ Canadian Polar Commission (Northern Scientific Training Program), Queen’s University (Graduate Dean’s Doctoral Field Travel Grant and the Queen’s University Graduate Awards), the Public Prosecution Service of Canada, and the Arviat Wellness Centre.
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<td>MHR</td>
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Chapter 1--General Introduction
1.1 Introduction

People with mental illness are over-represented in the criminal justice system (Mental Health Commission of Canada, 2012) and represent a disproportionately high number of those arrested, prosecuted and/or imprisoned in penitentiaries (Butler & Allnutt, 2003; Ogloff, 2002; Steadman et al., 2009; for Canada, see also Office of the Correctional Investigator, 2010a) where access to mental health treatment is often limited or unavailable (Davis et al., 2012). For the purposes of this dissertation, mental illness means mental problems or disorders that cause distress and limit everyday functioning (Kirmayer, Whitley, & Fauras, 2009). In the past two decades, the concept of therapeutic jurisprudence (TJ) has emerged and is often invoked as a theoretical answer to this challenge. TJ is an approach to criminal justice that argues for a “rehabilitative response to what would otherwise be criminally sanctioned behaviour” by treating the underlying mental illness, improving the mental health of the offender and generally maintaining or improving the long-term safety of the community (Schneider, 2010 p. 202). In several Canadian cities and elsewhere, the theoretical concept of rehabilitation-oriented TJ is intimately linked to the practical emergence of specialized criminal court mental health diversion initiatives for people with mental illness known as Mental Health Courts and mental health diversion. They belong to a family of criminal justice responses known as “problem-solving courts” which, by adhering to a set of central principles, are intended to address the individual and social problems that explain criminal behavior as well as structural and operational issues in the justice system (Berman & Feinblatt, 2003). TJ, meanwhile, is considered the “philosophic foundation” for problem-solving courts (Winick, 2013).
In remote Arctic communities in the Canadian territory of Nunavut, however, problem-solving courts for people with mental illness do not exist, and the capacity of criminal courts to deliver the rehabilitative objectives of TJ is constrained by scarce resources, geographic isolation and unique cultural considerations. These problems contribute to the likelihood that offenders from northern communities, many of them Inuit, will face jail and other criminal sanctions for crimes that have mental illness at their root.

1.2 Background and Study Rationale

Criminal court mental health diversion initiatives intended to deal with the growing numbers of people with mental illness in conflict with the law—known as mental health courts or mental health diversion (Schneider et al., 2007)—were initially established in large North American cities and elsewhere in the late 1980s and 1990s. They share the underlying aim of other members of the specialized problem-solving court family (including distinct courts for drugs, domestic violence and other socio-legal problems), which is to look beyond the legal determination of guilt and innocence and toward the broader underlying causes of crime (Council of State Governments, 2005; Slinger & Roesch, 2010). Problem-solving courts attempt “to understand and address the underlying problem that is responsible for the immediate dispute, and to help the individuals before the court to effectively deal with the problem in ways that will prevent recurring court involvement” (Winick, 2013, p. 211-212). Problem-solving courts address the individual and social problems that explain criminal behavior (Council of State Governments, 2005; Mirchandani, 2008; Schneider, Bloom, & Heerema, 2007) as well as structural and operational issues in the justice system (Berman & Feinblatt, 2003) by adhering to suites of problem-solving principles considered foundational to their operation. These principles, derived and consolidated from the literature, are a problem-solving orientation, collaboration
among and between relevant sectors, and accountability (Berman & Fox 2010; Farole, Puffett, & Rempel 2005; Farole, Puffett, Rempel, & Byrne 2005; Farole, Puffett, & Rempel 2007; Farole, Rempel, Byrne, & Chang 2008; Goldberg 2011; Hora 2011; Hora, Schma, & Rosenthal 1999; James 2006; Porter, Rempel & Mansky 2010; Wolf 2007(b); Wolf 2008).

Criminal court mental health diversion initiatives arose at the same time as legal academics began developing TJ as, among other things, a robust new argument for alternatives to criminal sanctions for offenders with mental illness while encouraging therapeutic, rehabilitation-oriented goals that reduce the risk of reoffending and generally improve community safety (Winick, 2013). TJ recognizes the law—including the way it is applied and the people (lawyers, judges, etc.) who apply it—as a social force with both therapeutic values to be maximized and counter-therapeutic consequences to be minimized, as long as other judicial and legal values are not compromised as a result (Wexler & Winick, 1996; Winick, 2000; Winick, 2013).

The term “therapeutic jurisprudence” was first coined in 1987 (Hora et al., 1999) and has been rapidly growing in influence (Freckelton 2008; Wexler, 2008; Winick, 2013). Relying on insights developed in psychiatry, psychology, criminology, and social work (Wexler, 2008), TJ is “an interdisciplinary method of legal scholarship that aims to reform the law in an effort to improve the psychological and emotional well-being of those affected by the legal process” (Winick et al., 2010, p. 428). TJ asserts that understanding legal rules and the way they are applied as social forces will pave the way to effectively reshaping or redesigning the law to minimize its anti-therapeutic effects (Winick, 2013). Some have argued for the usefulness of describing TJ as a legal theory (Birgden, 2004; Birgden, 2009; Birgden & Perlin 2009; Hora et al., 1999) or as a theoretical framework, (Campbell, 2010; Goldberg, 2011). TJ has been called
an important element of a so-called “comprehensive law movement” that encourages increased focus on more comprehensive, interdisciplinary, integrated, humanistic and restorative approaches to the law and the way it is practiced (Daicoff, 2006).

The functioning of problem-solving courts generally relies on the application of key TJ principles that are sometimes called “instrumental prescriptions” meant to direct courts in how to perform problem-solving functions (Winick, 2013). These principles derived and consolidated from the literature, are a therapeutic response, an interdisciplinary approach, and recognition that TJ does not trump other values (Birgden 2002; Conference of Chief Justices and Conference of State Courts Administrators 2000; Hora, Schma, & Rosenthal 1999; Wexler & Winick 1996; Winick 2002; Winick, 2013). In practice, problem-solving mental health courts in Canadian cities and elsewhere are circumscribed by specific operational formulae, such as a dedicated court with a separate docket for mentally ill offenders and other dedicated court resources considered essential to the functional delivery of therapeutic objectives (Almquist & Dodd, 2009; Casey & Rottman, 2005; Council of State Governments, 2005; Monahan, Robbins & Petrila, 2006; Redlich, Steadman, Schneider, Bloom, & Heerema, 2007; Stefan & Winick, 2005; Thompson, Osher, & Tomasini-Joshi, 2007).

Recently, researchers have explored using the underlying principles that animate problem-solving courts in conventional court settings—rather than relying on the resource-intensive operational elements usually associated with specialty courts—to expand the availability of the problem-solving approach (Farole, Puffett, & Rempel, 2005, 2007; Farole, Puffett, Rempel, & Byrne, 2004; Farole, Rempel, Byrne, & Chang, 2008, Wolf, 2007b) and to facilitate the sharing of available resources within urban contexts (Wolf, 2007b). This idea aligns with the suggestion of Winick & Wexler (2003), the original authors of TJ, that problem-solving
courts may be “a transitional stage” towards “an overall judicial system attuned to problem solving” (p. 87).

In the Canadian Arctic territory of Nunavut, problem-solving courts and criminal court mental health diversion initiatives for people with mental illness do not exist, and the capacity of criminal courts to deliver the objectives of TJ is constrained by scarce resources, geographic isolation and unique cultural considerations. Nunavut is distinguished by its geography, Inuit population, culture and language. Created in 1999 as a result of a 1993 Land Claims Agreement, Nunavut extends across almost 2 million square kilometres (Richmond, 2009) covering 20% of the land mass of Canada (Clark, 2011), and has a population of 31,906 (Statistics Canada, 2011) scattered across three time zones (Nunavut Tunngavik, 2008). Eighty five percent of the population is Inuit living in 25 remote communities (as well as in the capital of Iqaluit) with over 50 percent speaking primarily the Inuit language at home (Statistics Canada, 2011; Nunavut Tunngavik, 2008).

Like other Arctic regions, Nunavut communities have undergone rapid social, economic, environmental and cultural change over the past 50 years impacting Inuit mental health (Kral, et al, 2011; MacDonald, Ford, Willox, and Ross, 2013) and criminal justice involvement. Nunavut has a high rate of crime relative to other jurisdictions and it continues to climb (Nunavut Tunngavik, 2014). The territory’s crime rate in 2012 was 114% higher than it was in 1999, and the proportion of serious and violent crimes has more than doubled over that period (Nunavut Tunngavik, 2014). This picture of criminal involvement reflects “a society that has been under immense social, cultural, and economic stress for at least the last three generations” (Nunavut Tunngavik, 2014). More broadly, Inuit, along with other aboriginal adults, account for more than a fifth of all admissions into custody (Office of the Correctional Investigator, 2013; Perrault,
2009) while representing 3% of the Canadian population (Perreault, 2009). The aboriginal inmate population has increased significantly over the past decade (37.3%) while the non-aboriginal prison population has only increased by 2.4%, (Office of the Correctional Investigator, 2012) and is estimated to be 10 times higher than the national average (Office of Correctional Investigator, 2013). The high rate of incarceration of Inuit and other aboriginal people has been recognized by the Supreme Court of Canada as linked to the impact of historical colonialism (R. v. Gladue, (1999; and R. v. Ipeelee, 2012). Against this geographic landscape and larger socio-cultural history, the criminal courts in Nunavut administer justice. The Nunavut Court of Justice services the territory by a fly-in court that visits communities every 6 weeks to 2 years, typically for one to five days (Nunavut Court of Justice, 2013a). Nunavut courts are unique because they are unified (combining superior court and territorial court; Clark, 2011; Nunavut Court of Justice, 2013b), include cultural elements (such as Inuit elders’ panels at sentencing; Clark, 2011), and interpretation for the public (Nunavut Court of Justice, 2013b) and offer a diversionary process for youth and adults involving community justice committees (Clark, 2004; Nunavut Court of Justice, 2014). They are otherwise conventional in the way most criminal cases are dealt with in Canada (Nunavut Tunngavik, 2014). Nunavut does not however, have existing specialized programs for dealing with accused people with mental illness.

Indeed, mental health and rehabilitation resources in Arctic communities are generally scarce and often inaccessible (Mental Health Commission of Canada, 2012; Nunavut Tunngavik Inc., 2008, 2013, 2014) due in part to remoteness (Nunavut Tunngavik Inc., 2008; see also Cotton, Nadeau, Kirmayer, 2014 for general discussion on mental health services in remote and indigenous communities). Problems of access are also exacerbated by cultural differences in the Inuit understanding of psychological distress and mental health (Nunavut Tunngavik Inc., 2008,
Inuit see mental illness as belonging on a continuum of mental wellness which is a holistic approach (Mental Health Commission of Canada, 2012) that includes “self-esteem and personal dignity flowing from the presence of harmonious physical, emotional, mental, spiritual wellness and cultural identity” (Alianait Inuit-specific Mental Wellness Task Group, 2007 p. 9; see also Nunavut Tunngavik Inc. 2013 and Kral et. al., 2011) with support from Western clinical approaches (Mental Health Commission of Canada, 2012).

1.3 Purpose

This dissertation extends a theoretical and empirical understanding of TJ and problem-solving courts and uses their underlying principles to explore how criminal courts in remote, mainly Inuit Arctic communities can provide rehabilitation-oriented approaches to criminal justice for offenders with mental illness in the face of constrained resources, geographic remoteness and Inuit cultural considerations. The study was aimed at creating a theoretical foundation that can be used for future criminal court mental health diversion initiatives in the Canadian Arctic that respond to the needs of people with mental illness while enhancing community safety.

This dissertation consists of 6 manuscripts with 4 foundational to answering the study’s ‘central’ research question and 2 relating to the study’s findings. The manuscripts that lay the foundation for answering the study’s research question were, respectively:

1. To synthesize and critically appraise the research literature on interdisciplinary synergies in health and justice approaches to responding to people with mental illness in the criminal justice system.

2. To explore the characteristics of descriptive theory in law and methodological theory in this constructivist inquiry and assess whether the interdisciplinary approach of TJ...
succeeds in meeting their definitional requirements for the purpose of providing guidance for researcher decision-making in this empirical study.

3. To examine and describe how TJ legal theory functions as a methodological theory in this qualitative inquiry at the complex intersection of mental health care and criminal law with a particular focus on the research questions and related propositions that focus the study’s analysis.

4. To examine and describe how the methodological theory of TJ provides guidance to the steps of the qualitative research process that link the study’s findings to the initial purpose of the research.

1.4 Research Objectives and Questions

Using TJ and the research purpose, the research began by asking “How can TJ as theory elevate and illuminate the practical issues of dealing with offenders with mental illness in Arctic criminal courts from the perspectives of health and justice professionals, representatives of community organizations as well as key community members?”

Peer-reviewed and grey literature was retrieved using subject heading and free-text searches of scholarly databases and other sources for health, law and social science, focusing on TJ, TJ in the context of mental health and criminal courts, and on scholarly explorations of “problem-solving courts” currently operating in other jurisdictions, including considerations of the delivery of “problem-solving” in non-specialized, conventional court settings (see, for e.g., Wolf, 2008; Porter, Rempel & Mansky, 2010). This preliminary work uncovered literature identifying the key theoretical principles that underlie TJ (e.g., Conference of Chief Justices and Conference of State Courts Administrators, 2000; Winick 2003, 2013) as well as the main principles, goals and objectives derived from “problem-solving courts” in other jurisdictions.
(e.g., Farole, Puffett & Rempel, 2007; Farole, Puffett, Rempel, & Byrne 2005; Farole, Rempel, Byrne, & Chang, 2008; Hora, 2011; James, 2006; Porter, Rempel & Mansky, 2010; Wolf, 2007(b)). Knowing that TJ, the idea, is the foundation for problem-solving, the practice, (Winick, 2002; 2013), the review findings were distilled and consolidated to align the theoretically deduced principles of TJ with the principles identified as guiding existing problem-solving courts. This helped to focus on the key theoretical principles of TJ with the greatest potential for applied impact. This information was then used to hone the research questions (see, for e.g., Table 4.2).

The honed research questions asked, “How do the principles of TJ—as the foundation for the organizing principles of court problem-solving—relate to the experiences of health and justice professionals, representatives of community organizations and other community members dealing with people with mental illness in Nunavut’s criminal justice system?” and “How can the principles of TJ affect mental health rehabilitation (MHR) for offenders with mental illness in these Arctic communities in the future?” The inquiry was then expressed in terms of the characteristics considered most distinctive in the study sites. In particular, participants were asked for their experiences, perceptions and opinions to answer, “How and why do (i) remoteness, (ii) resource considerations, and (iii) Inuit culture affect responses to offenders with mental illness in Nunavut criminal courts?” and “How could these characteristics of remote Arctic communities be accommodated to encourage the implementation of TJ/problem-solving principles in the context of offenders with mental illness in the future?”

The study’s research questions were further refined to the following sub-questions which correspond with the manuscripts:
1. How does an interdisciplinary understanding of health and justice approaches to responding to people with mental illness contribute the theoretical and therapeutic validity of TJ and, similarly, help efforts to effectively implement or evaluate criminal court mental health diversion initiatives?

2. How can TJ practically and usefully be considered theory in a descriptive and methodological sense to provide an “heuristic” that offers direction and meaning for constructivist research at the intersection of law and health?

3. How does TJ legal theory function as a useful methodological theory in a qualitative inquiry at the complex intersection of mental health care and criminal law for the purpose of directing a study’s research questions and the related propositions that focus analysis?

4. How does TJ legal theory function as methodological theory in a qualitative inquiry at the complex intersection of mental health care and criminal law for the purpose of linking a study’s findings to the initial purpose of the research?

1.5 The Interdisciplinary Nature of this Study

This study explores the feasibility of criminal court mental health diversion initiatives to divert offenders with mental illness from the justice system to community treatment in remote, mainly Inuit Arctic communities. These initiatives emerged from within the discipline of law and criminal justice as formalized efforts at different stages in the criminal justice process (Lange et al. 2011) to identify and divert individuals with mental illness away from courts and jails and
into the community mental health care system (Petrila & Redlich, 2008; Redlich, 2007; Redlich, Hoover, Summers, & Steadman, 2010; Schneider, 2010; Schneider, Bloom, & Heerema, 2007). Diversion programs are built upon the premise that for some people criminality is often the product of untreated mental illness (Schneider et al., 2007). The goal of diversion initiatives was—and is—to provide a “rehabilitative response to what would otherwise be criminally sanctioned behaviour” (Schneider, 2010 p. 202) by treating the underlying mental illness, improving the mental health of the offender and, at the same time, generally maintain the long-term safety of the community (Schneider et al., 2007).

Yet, despite the objective of these programs to provide a “rehabilitative response” for accused people with mental illness, consideration of advances in the discipline of rehabilitation science have been largely absent in the development of criminal court mental health diversion initiatives and in evaluations of their effectiveness. Rehabilitation science, sometimes referred to as rehabilitation research (Tate, 2006), has been difficult to define on account of its interdisciplinary nature (Tate, 2005). This broad-based discipline (Tate, 2005; also referred to as a ‘hybrid’ discipline Siegert, McPherson, Dean, 2005), is rooted in medicine, psychology (Siegert, McPherson, Dean, 2005; Tate, 2006) nursing, occupational therapy, and physiotherapy (Siegert, McPherson, Dean, 2005). The central goal of rehabilitation science is the improvement of the quality of life for people with disabilities (Tate, 2006). In discussing rehabilitation science, this study adopts Barnes and Ward’s (2000) definition of rehabilitation: “Rehabilitation can thus be defined as an active and dynamic process by which a disabled person is helped to acquire knowledge and skills in order to maximise physical, psychological and social function. It is a process that maximises functional ability and minimizes disability and handicap” (p.4).
Efforts to assess whether diversion programs achieve their goals typically rely on justice and clinical indicators (see, for example, Lange et al., 2011; but see an exception in Kopelovich et al., 2013; Pratt et al., 2013) that are often separate and distinct from contemporary recovery thinking within the field of rehabilitation science. Despite recognition that criminal court mental health initiatives and TJ include a therapeutic response as a key animating principle, these concepts and initiatives have developed from within the practice and discipline of law. Meanwhile, within the separate discipline of rehabilitation science, scholarship and approaches to mental health rehabilitation (MHR) have witnessed significant developments in recent decades. In particular, concepts of MHR have shifted from a biomedical focus to a psychosocial model as reflected in the MHR concept of “recovery” that emphasizes considerations of self-esteem, adjustment to disability, and self-determination for people with mental illness (Anthony, 1993). In circumstances in which acculturation and other social and economic problems contribute to issues of mental health, growing numbers of researchers identify the concept of “protective factors” to fortify the mental well-being of those affected, especially in northern and indigenous communities (Kirmayer, Brass, & Tait, 2000; Kirmayer, Malus, & Boothroyd, 1996; MacDonald, Ford, Willox, & Ross, 2013). Yet, while these new mental health and MHR concepts are considered important to an effective rehabilitative response, their influence has been paradoxically little evident in the conceptual development of criminal court mental health diversion initiatives.

The proposed research bridges this gap through an interdisciplinary study involving criminal law and rehabilitation science. This study explores and expands upon legal scholarship relevant to the theoretical concept of TJ (Wexler & Winick, 1996) and problem-solving courts (Farole, Puffett, & Rempel, 2005, 2007; Farole, Puffett, Rempel, & Byrne, 2004; Farole,
Rempel, Byrne, & Chang, 2008; Porter, Rempel & Mansky, 2010; Wolf, 2007(b)) while developing new ideas of contemporary rehabilitation science concerned with recovery (Anthony, 1993) in a criminal law context, and the mental health concept of protective factors in a cross-cultural specifically indigenous context (Kirmayer, Brass, & Tait, 2000; Kirmayer, Malus, & Boothroyd, 1996; MacDonald, Ford, Willox, & Ross, 2013). Other considerations relevant to this project are Inuit cultural perspectives of mental illness (Alianait Inuit-specific Mental Wellness Task Group, 2007; CIHI, 2009; Kirmayer et al., 2011; Kirmayer and Valaskakis, 2009; Mental Health Commission of Canada, 2010) and justice (Paletta & Burnett, 2008).

This study is the beginning of an important long-term program of research. The data from this research will support scholarship well beyond the scope of this dissertation. Although this dissertation touches upon the broad areas of scholarship supported by this research, the ability to address all areas is circumscribed by the nature of a dissertation. It is anticipated that future scholarship arising from this research will be available through publications that reflect the interdisciplinary nature of this academic work.

1.6 Researcher’s Perspective

This study is informed by my experiences as a health science academic and as a criminal prosecution lawyer who has practiced for many years in Ontario and, for the past four years, worked occasionally in Nunavut with the fly-in criminal court circuit in communities throughout the territory. This perspective brings a valuable interdisciplinary understanding of criminal court mental health diversion initiatives to this study.

Although an asset in understanding the legal context of this study, my role as prosecutor also brings with it certain perspectives including an acceptance of the law and criminal courts as
a legitimate means of resolving societal issues in the North, within an Inuit cultural context. Therefore, my interpretations and findings should be interpreted in this light.

This research benefited from my dual role as researcher and prosecutor in participating Arctic communities facilitating both a theoretical and contextual understanding for this study. Although this dual role was of considerable assistance, I was also cognizant of the potential implications of perceived authority given my prosecution role and accordingly, took necessary steps for ethical compliance with Tri-Council Guidelines and Queen’s ethics policies to ensure voluntary participation. This was done by disclosing to participants my dual role and making clear that there was no obligation to participate or answer questions in this study on account of my role as prosecutor. Similarly, in keeping with the ethical requirements of this study, the academic nature of this research was explicitly disclosed to participants and it was made clear that the study did not relate to my government work as prosecutor for the Public Prosecution Service of Canada. Nevertheless, my sense is that my dual role played a significant part in the overwhelming willingness to participate in this study. The frankness of participants in interviews is, I think, related to confidence in the exercise of discretion and good judgement given my legal role. In some instances, it appears that my dual role instilled hope in participants that my research findings would find their way to government decision-makers and contribute to shaping the territory’s response to mentally ill offenders caught up in the justice system. In the end, I have found that my dual role brings with it a level of responsibility that compels me to respond to community expectations in a manner that surpasses what might otherwise have been the case in my research capacity alone. Accordingly, the findings of this research will be shared widely with participating communities, the territorial and federal government, legal and health professionals, and the scientific community. A knowledge translation plan responsive to the
findings of this study, and supported by funders in Nunavut, has been developed and will be implemented following defence of this dissertation (see Appendix M).

1.7 Study Significance

This research advances an understanding of the utility of TJ as a guiding principle for rehabilitation in the context of people with mental illness in conflict with the law. It addresses the therapeutic cross-over between health and justice in the context of criminal courts and extends this comprehension into remote, resource-constrained and culturally specific circumstances. The findings of this research advance a theoretical foundation that can be used to inform future criminal court initiatives in the Canadian Arctic that respond to the needs of people with mental illness in remote, mainly Inuit communities while enhancing community safety.

1.8 Dissertation Outline

This dissertation is written in manuscript style requiring that each manuscript stand on its own. This means that background information is repeated in each manuscript in order to be sufficiently comprehensive for publication. As a result, the nature of this style results in some repetition throughout the dissertation and the author is grateful to readers for their patience in this respect.

The dissertation is comprised of 8 Chapters. Chapter 2 is a literature review that synthesizes and critically appraises the research literature on interdisciplinary synergies in health and justice approaches to responding to people with mental illness in the criminal justice system. The objective of this literature review is to explore developments in MHR and discuss their potential in the context of TJ and criminal court mental health diversion initiatives. It is argued that a more inclusive, interdisciplinary consideration of contemporary concepts from MHR
within TJ and problem-solving court research improve the theoretical and therapeutic validity of TJ and, similarly, fortify related criminal court mental health diversion initiatives for persons with mental illness who might otherwise face prosecution and jail. This manuscript will be submitted to the *International Journal of Forensic Mental Health*.

Chapter 3 is the first of three chapters dealing with the methods of this dissertation study. This chapter introduces the legal approach of TJ and its potential as a methodological theory in qualitative analysis. This is discussed in the context of the arguments of some authors that TJ is not a coherent, homogenous legal “theory” and therefore of limited utility. This chapter re-evaluates this conclusion and the narrow, positivist definition of theory that appears to inform it. It explores descriptive theory in law and methodological theory in a constructivist inquiry to argue that TJ can be usefully thought of as meeting the definitional requirements of both. Rather than dismiss TJ as unhelpful as a testable theory, it is argued that researchers can benefit from considering TJ as theory that provides a practical guide to decision-making in empirical studies, especially those that affect the research questions, propositions, methodology, method and findings. This manuscript will be submitted to the *Monash University Law Review*. Chapter 4 is a second methods paper that describes how TJ, recruited across discipline boundaries, succeeds in guiding a qualitative inquiry at the complex intersection of mental health care and criminal law by providing a framework foundation for directing the study’s research questions and the related propositions that focus analysis. This manuscript is currently published as an advance online publication at the journal of *Qualitative Health Research*. Chapter 5, the final methods chapter, documents how TJ as a methodological theory provides an important guide to the steps of a qualitative research process that link a study’s findings to the initial purpose of the research. In particular, it shows how the use of theory helped to identify the methodology and method
(including the research design and cases) and illuminate and validate the findings. This chapter offers a uniquely detailed picture of how theory can function in the methodological sense to provide an “heuristic” for a complicated constructivist qualitative inquiry. This manuscript has been submitted to the *Qualitative Research Journal*.

Chapter 6 features results from this dissertation research. It reports from the overall study that identifies 13 key themes relevant to the importance of culture and cultural change in the context of Inuit mental health and criminal justice. These themes, which emerged from discussions about identifying and treating people with mental illness in Nunavut and about collaboration between the court and other sectors in the territory, pose potential problems for expanding the availability of TJ principles in mainly Inuit Arctic communities. As a solution, this study argues for an explicit consideration of the culturally responsive concept of “protective factors” for aboriginal mental health in TJ and problem-solving court initiatives in indigenous northern communities. This chapter concludes with the suggestion that this research highlights the need for a greater incorporation of contemporary concepts from mental health rehabilitation science (such as the notion of protective factors) in TJ thinking and in problem-solving courts as a practical response to people with mental illness in conflict with the law. This manuscript will be submitted to the *American Journal of Community Psychology*.

Chapter 7 is a second paper resulting directly from the research findings. It reports on how 4 of the study’s 13 themes relating to the identification of mental illness pose 6 dilemmas for TJ. It is suggested that the TJ objective of identifying people with mental illness presents a fundamental difficulty for importing typical models of criminal court mental health diversion initiatives across cultural boundaries to mainly Inuit Arctic communities. Instead, the results suggest that a new model for delivering an appropriately universal therapeutic response in
criminal cases in Nunavut, regardless of a mental health diagnosis, needs more study. This manuscript will be submitted to the *International Journal of Circumpolar Health*.

Chapter 8, the concluding chapter, highlights the study’s findings, their implication, and future research. The study’s findings suggest 13 key themes are relevant to expanding the availability of TJ principles as a problem-solving approach in non-specialized court settings in remote Arctic communities in Nunavut. These themes point to the importance of culture, cultural change, and Inuit mental health in potential criminal court mental health initiatives for Arctic communities. The study’s results are unique in their illustration of an explicit role for MHR science in understanding the application TJ and problem-solving courts in responding to people with mental illness in conflict with the law. In particular, these findings suggest for the first time the potential value in acknowledging the therapeutic (and collaborative) benefits of the mental health effects of protective factors in TJ and problem-solving court thinking. Moreover, 4 of these 13 themes suggest that the TJ objective of identifying people with mental illness presents a fundamental difficulty in transposing typical models of criminal court mental health diversion initiatives across cultural boundaries to mainly Inuit Arctic communities. Instead, these results suggest the a more universal approach to a therapeutic response in criminal cases in Nunavut regardless of a mental health diagnosis, needs more study. Finally, this chapter concludes by indicating that this study is the beginning of an important long-term program of research that seeks to improve our understanding of the role of mental health rehabilitation science in TJ, while helping people with mental illness in conflict with the law in unique social, historical, geographic and cultural circumstances such as those encountered in Canadian Arctic communities.
Chapter 2--Using Concepts from Rehabilitation Science to Improve Criminal Court Responses to People with Mental Illness in Conflict with the Law: A Literature Review
2.1 Abstract

Criminal justice initiatives that divert people with mental illness away from prosecution and into mental health treatment have emerged in the past few decades as a practical response to the disproportionate numbers of people with mental illness caught up in the criminal justice system. These initiatives, principally mental health courts and mental health court diversion, belong to the family of what are known as problem-solving courts, which seek to address the underlying causes of crime and, in the context of mental health, are intended to provide a “rehabilitative response” to people with mental illness in criminal courts. Legal scholarship relevant to these initiatives has created the theoretical concept of therapeutic jurisprudence (TJ), an approach that seeks to maximize the law’s potential for therapeutic outcomes. Despite recognition that both problem-solving mental health court initiatives and TJ include a therapeutic response as a key animating principle, these concepts and initiatives have developed from within the practice and discipline of law and mainly in the context of large U.S. and Western cities. Meanwhile, within the separate discipline of rehabilitation science, scholarship and approaches to mental health rehabilitation (MHR) have witnessed significant developments in recent decades. In particular, concepts of MHR have shifted from a biomedical focus to a psychosocial model that incorporates notions of independence, empowerment and social factors including, importantly, culture. Researchers and practitioners, for example, now acknowledge the pre-eminence of the MHR concept of recovery, which incorporates ideas of self-esteem, self-determination and identity in rehabilitation efforts. This focus has contributed to the development of MHR scholarship devoted to the effects of culture on recovery. In circumstances in which cultural change, acculturation and other social and economic problems contribute to issues of mental health, for example, growing numbers of researchers identify the concept of “protective factors”
to fortify the mental well-being of those affected. For example, these protective factors may be very important in indigenous mental health, particularly in northern communities. This review discusses these developments in the context of criminal justice mental health initiatives that divert people with mental illness from prosecution to treatment. It is argued that greater consideration of these contemporary concepts from MHR, such as recovery, the role of culture in MHR and the idea of protective factors, in TJ and problem-solving-court thinking will improve the theoretical and therapeutic validity of TJ and, similarly, help efforts to effectively implement or evaluate mental health criminal court programs. It is suggested that more research is needed to bridge the interdisciplinary gap between concepts of MHR from rehabilitation science and the legal scholarship and practice that informs criminal justice responses to people with mental illness in conflict with the law.

2.2 Introduction and Purpose

Among intentional and unintentional developments coincident with the international movement to deinstitutionalize people with mental illness beginning in the 1950s, the expansion of mental health rehabilitation (MHR) as scholarship and practice and the disproportionate rise in the number of people with mental illness incarcerated in prisons and jails are notable examples. The former was a natural consequence of global, post-World War II psychiatric reforms promoted by the World Health Organization, to develop therapeutic approaches to support the shift from asylum-and-hospital-based responses to people with mental illness to rehabilitation approaches aimed at helping these people to remain in their communities (Novella, 2008). The latter was the result of more people with mental illness living and visible in communities whose law and order and mental health care apparatuses were unfamiliar with and/or unprepared to respond to this population (Abramson, 1972; Hartford et al., 2004; Seltzer, 2005; Teplin, 1984).
As a consequence, people with mental illness in North America and elsewhere have come to represent a disproportionate number of those arrested, prosecuted and/or imprisoned in penitentiaries (Butler & Allnutt, 2003; Ogloff, 2002; Steadman et al., 2009; for Canada, see also Office of the Correctional Investigator, 2010) where access to mental health treatment is often limited or unavailable (Davis et al., 2012).

Criminal court mental health diversion initiatives—in particular, specialized mental health courts and mental health diversion programs—made their appearance in North America beginning in the 1990s (Schneider, 2010) as an untested response to this challenge. These initiatives emerged from within the discipline and practice of law and criminal justice as a means to divert some people with mental illness away from prosecution and its risk of incarceration to mental health care alternatives based in communities (Redlich, Hoover, Summers, & Steadman, 2010). These initiatives signalled that the range of issues faced by criminal courts had broadened to include therapeutic and social welfare issues, which usually fall under the purview of other parts of the legal and social system, namely, the civil mental health system and social security system (Carver, 2011). These initiatives developed in a manner analogous to, and often integrated with, a family of specialized courts called “problem-solving courts” intended to look beyond the legal determination of guilt and innocence and toward the broader underlying causes of crime (Council of State Governments, 2005; Slinger & Roesch, 2010). Concurrent with these applied ideas, legal scholars also developed a theoretical framework known as therapeutic jurisprudence (TJ) which offered a kind of philosophic foundation for the problem-solving court concept (Winick, 2013). TJ is a legal approach that aims to maximize the law’s potential for therapeutic outcomes (Wexler & Winick, 1996). Indeed, the goal of criminal court mental health diversion initiatives was—and is—to provide a “rehabilitative response to what would otherwise
be criminally sanctioned behaviour” (Schneider, 2010 p. 202; emphasis added) by treating the underlying mental illness, improving the mental health of the offender and, at the same time, securing the long-term safety of the community (Schneider, Bloom, & Heerema, 2007).

Meanwhile, within the separate, health science field of MHR, the idea of what constitutes an effective “rehabilitative response” has been developing rapidly in recent decades. Rehabilitation research emerged as a broad-based discipline (Tate, 2005; or “hybrid” discipline, Siegert, McPherson & Dean, 2005) with roots in medicine, psychiatry, psychology (Siegert et al., 2005; Tate, 2006), nursing, occupational therapy, and physiotherapy (Siegert et al., 2005). While the interdisciplinary nature of rehabilitation research makes a precise definition difficult (Tate, 2006), Barnes and Ward (2000) offer a useful description of rehabilitation as “an active and dynamic process by which a disabled person is helped to acquire knowledge and skills in order to maximise physical, psychological and social function. It is a process that maximizes functional ability and minimizes disability and handicap” (p. 4). Applying the discipline of rehabilitation science to the mental health field, Anthony and Farkas (2009) cite a definition of psychiatric rehabilitation adopted in 2007 by the United States Psychiatric Rehabilitation Association, the major professional association of the field of psychiatric rehabilitation:

Psychiatric rehabilitation promotes recovery, full community integration, and improved quality of life for persons who have been diagnosed with any mental health condition that seriously impairs their ability to lead meaningful lives. Psychiatric rehabilitation services are collaborative, person directed, and individualized. These services are an essential element of the health care and human services spectrum, and should be evidence-based. They focus on helping individuals develop skills and access resources needed to increase their capacity to be successful and satisfied in the living, working, learning, and social environments of their choice (p. 9).
The central goal of rehabilitation science, therefore, can be seen in general terms as the improvement of the quality of life for people with disabilities (Tate, 2006).

Instead of a focus on treating mental illness *per se*, contemporary concepts of MHR have increasingly turned their attention to enabling people with mental illness to live meaningful lives within their communities (Jones, 2013). That is, the MHR relevance of clinical condition, as an outcome and a way of interpreting what is relevant and central to mental health, is being increasingly eclipsed by the importance of other outcome measures, such as social functioning, independence and quality of life (Rossler, 2006). Since the 1990s, these ideals of MHR have been further advanced through the concept known as “recovery,” which has emphasized considerations of self-esteem, adjustment to disability, empowerment, self-determination and social interactions for people with mental illness (Anthony, 1993).

More recently, researchers and practitioners of mental healing and recovery have used this backdrop to include and explore the role of culture as it affects the personal and social meaning of mental illness (Alegria, Atkins, Farmer, Slaton, & Stelk, 2010; Kirmayer, Jarvis, & Guzder, 2014), and recovery in mental illness (Adeponle, Whitley, Kirmayer, 2012). Studies which have suggested that individuals with mental illness who live within developing countries may experience better health and well-being outcomes than those living in developed societies (for example Myers, 2010) have contributed to a growing interest in context and culture. In particular, mental health researchers working in northern and indigenous communities have turned to the concept of “protective factors” (Kirmayer, Brass, & Tait, 2000; Kirmayer, Malus, & Boothroyd, 1996; MacDonald et al. 2013), emphasizing the mental health importance of culturally specific elements relevant to self-perception that strengthen social bonds and self-esteem (MacDonald, Ford, Willox, & Ross, 2013).
Yet, while these mental health and MHR concepts and factors are increasingly being considered important to an effective rehabilitative response, their influence has been paradoxically little evident in the conceptual development of criminal court mental health diversion initiatives. Today, they remain not often considered relative to considerations of criminal justice metrics (Kopelovich et al., 2013, Pratt et al., 2013) in efforts to systematically implement new mental health court and court diversion programs or to evaluate existing ones (see, for e.g., Lange, Rehm, & Popova, 2011).

This paper explores bridging this gap. Relevant literature from law and rehabilitation science is critically reviewed to ask whether more thorough answers to how and whether mental health courts and mental health diversion programs work, would benefit from simultaneously examining these questions from the separate disciplines of both law and MHR science.

This review includes literature describing recovery, cultural considerations in mental health and, in particular, the mental-wellness concept of protective factors in the context of indigenous, northern communities as examples to argue that a consideration of contemporary MHR concepts can improve the theoretical and therapeutic validity of TJ. It can also improve the creation and subsequent evaluation of on-the-ground criminal court mental health diversion initiatives for people with mental illness who might otherwise face prosecution and jail. This review reveals existing knowledge gaps and encourages further research to better understand the value of this interdisciplinary nexus between MHR from rehabilitation science and legal scholarship to better inform the criminal justice response to people with mental illness in conflict with the law.
2.3 Methods

Peer-reviewed articles and grey literature were retrieved using a combination of subject headings and free-text searches of scholarly databases for law, health and social science (see Table 2.1 for databases and search terms; and Appendix L for examples of searches).

Table 2.1 Approach to search of scholarly databases and other sources for literature review.

| Additional searches were conducted using tools and resources including Canadian Electronic library--Health Collection and Google Scholar in order to find other relevant literature. | including Canadian Electronic library--Health Collection and Google Scholar |
| Non peer-reviewed relevant literature or unpublished work retrieved. | Other electronic searches of the internet |
| Used combinations of the search terms to provide the broadest parameters for retrieving database literature. (See Appendix K for example of search using combination of above in PsychInfo). | Terms included “mental health” “recovery model” “recovery (disorders)” “recovery approach”, “recovery principle”, “recovery paradigm,” “recovery philosophy,” “recovery movement,” “recovery vision” “rehabilitation” “forensic psychiatry”, “forensic mental health”, “mental wellness,” “well-being,” “wellness,” “therapeutic jurisprudence,” “mental health court,” problem-solving court,” “protective factors,” “resilient factor,” “adaptive capacity,” “culture,” “indigenous,” “aboriginal,” “Native,” “Inuit,” “circumpolar,” “North,” “Arctic,” “Nunavut,” “interdisciplinary,” “interdisciplinarity,” (with truncation and proximity operators as required) to provide the broadest parameters for retrieving literature from the databases |
2.4 Background

Abramson (1972) was among the first to recognize that the widespread movement, beginning in the 1950s, to keep people with mental illness out of state hospitals and asylums and in their own communities was unintentionally exposing these people to an increased risk of being arrested and jailed for relatively minor offenses. He described this phenomenon as the “criminalization of mentally disordered behaviour,” and the idea has since been widely embraced (Epperson et al., 2014). Abramson and many subsequent researchers identified key factors that contribute to this criminalization phenomenon, including increased numbers of people with mental illness in the community, police responses to people with mental illness, and limited community access to treatment for people with mental illness, among others (Abramson, 1972; Hartford et al., 2004; Ryan, Brown, & Watanabe-Galloway, 2010; Schneider, 2010; Seltzer, 2005; Sinha, 2009). Over the past five decades, many researchers have used this hypothesis to explain an increasingly stark reality—disproportionate and rising numbers of people with mental illness are being caught in the criminal justice system (Davis et al., 2012; Steadman et al., 2009). In many cases, these people face limited access to adequate mental health treatment in jail or prison as a result (Beck, 2000).

According to the Correctional Investigator of Canada (2010a), for example, the proportion of people with mental illness in Canada’s penitentiary population significantly exceeds that of the general population and is growing. It is estimated that the proportion of offenders with mental health needs identified at intake has doubled between 1997 and 2008 (Office of the Correctional Investigator, 2012). It is also estimated that one-in-four new admissions to federal corrections present with some form of mental illness (Office of Correctional Investigator, 2010b). Eleven percent of federal offenders have an actual mental
health diagnosis at admission, an increase of 71% since 1997 (Office of the Correctional Investigator, 2010a). At least one institutional mental health service was delivered to 48.3% of the total federal prison population, and to 47% of aboriginal offenders in the fiscal year 2011/2012 (Office of the Correctional Investigator, 2013). Schneider (2010) has noted that in some jurisdictions in Canada, the number of people with mental illness in conflict with the law has increased at a rate of more than 10 percent per year for the past dozen years. In the United States, a recent review by Davis and colleagues (2012), suggests that 1 million people with serious mental illness are jailed each year, and the authors point to epidemiologic studies that suggest 15% to 24% of current inmates in that country have at least one serious mental illness. These researchers suggest the problem of the overrepresentation of people with mental illness in jails and prisons is made more acute for want of treatment options in the U.S correctional system (Davis et al., 2012). One study reviewed found 43% of state prisoners with mental illness who were set to be released within 12 months still had not received any mental health treatment in jail (Beck, 2000). A review of treatment options available to people with mental illness in Canadian penitentiaries also suggests significant capacity issues (Office of the Correctional Investigator, 2012). Hartford, Carey and Mendonca (2007) similarly describe inadequate treatment within Canadian corrections as a significant consequence of criminal justice involvement of people with mental illness in Canada.

Meanwhile, the review by Davis and colleagues (2012) revealed that inmates with serious mental illness are incarcerated longer, are less likely to qualify for community supervision, are more likely to have their parole revoked, and have higher rates of reoffending. These facts have led some authors to question “whether jails are being used as an alternative to treatment” (Lange et al., 2011, p. 201). The implications of this may be particularly problematic in circumstances
where rates of criminal justice involvement for identifiable groups and minorities are already much higher than the general population. In Canada, for example, Perreault’s (2009) review of criminal justice statistics suggests aboriginal adults, including Inuit, account for more than a fifth of all admissions into custody while representing 3% of the Canadian population, and this has not abetted over time (Officer of Correctional Investigator, 2013).

2.5 Criminal Court Mental Health Diversion Initiatives

As numbers of people with mental illness in the justice system began to surge, North American courts introduced criminal court mental health diversion initiatives in the 1990s (Schneider, 2010). In Ontario, for example, the report of the province’s Martin Committee—a government advisory committee reviewing the early stages of the criminal process in the province—in 1993 recommended an increased use of alternatives to prosecution, such as diversion for people with mental disability (Martin, 1993). Many articles in this review characterize these initiatives—namely specialized courts known as mental health courts as well as related programs collectively known as “court diversion”—as formalized efforts at different stages in the criminal justice process (Lange et al. 2011) to identify and divert people with mental illness away from courts and jails and into the community mental health care system (Petrila & Redlich, 2008; Redlich, 2007; Redlich et al., 2010; Schneider, 2010; Schneider et al., 2007).

As Schneider and colleagues (2007) note, criminal court mental health diversion initiatives are built upon a recognition that untreated mental illness renders an individual more susceptible to attracting the attention of the constabulary and, as a result, entering the criminal justice system charged with offences which are often but not always of a minor nature. They enter the system because of untreated mental illness rather than, for the most part, deliberate
criminality. Similarly, Hartford and colleagues (2005) argue that the relationship between criminality and mental illness is unrelated to a greater propensity of people with a mental illness to commit crimes. Instead, the higher visibility of deinstitutionalized people with a mental illness in the community may increase their contact with police and increase their susceptibility for arrest for minor, nuisance offences (Canadian Mental Health Association, 2004). Some authors suggest that legal involvement of persons with mental illness who are mental health program consumers is a significant issue but that it must be considered in the broad context of social disadvantage, including poverty and social isolation (Sheldon, Aubry, Arboleda-Florez, Wasylenki, and Goering, 2006). Others suggest the relationship between mental illness and crime is explained by the fact that individuals with mental disorders are more likely to have risk factors for criminality including substance use and antisocial behaviour (e.g., Hiday, 2006). Sinha (2009) notes this higher visibility may be related to discrimination and stigma. Paterson and colleagues (2004), on the other hand, argue that mental illness does put people at higher risk of committing crime and violence than people in the general population, but several studies supporting this association have been criticized for their methods (Sinha, 2009). Regardless of the relationship between criminality and mental illness, criminal court mental health diversion initiatives are widely considered essential to efforts to mitigate against the overrepresentation of people with mental illness in the criminal justice system.

Schneider and colleagues (2007) and Richardson and McSherry (2010) describe mental health courts and court diversion in some detail. Schneider and colleagues (2007) characterize mental health courts as separate, broad-based, multi-intervention courts—often including court diversion as an element—that exclusively pursue mental health diversion objectives. Richardson and McSherry (2010) describe diversion as involving either pre- or post-charge programs.
(sometimes referred to as pre-and post-booking), with the former involving diversion prior to formalized charges and the latter diversion following arrest. Court diversion, in particular, refers to a post-charge diversion program involving the criminal court that exists either as a stand-alone program or as a component of a broader-based, multi-intervention mental health court. In practice, these courts and programs are circumscribed by specific operational formulae, such as a dedicated court with a separate docket for identified offenders, specially trained court staff, prosecutors, judges and defence lawyers, as well as other dedicated court resources (Schneider et al., 2007). As Petrila (2004) points out, these initiatives mean judges are no longer simply gatekeepers to health and other services for accused people with mental illness, but are “squarely in the centre of treatment planning” (p.8). Typically, these cases remain under the court’s jurisdiction for a short while to ensure that the individual is linked with and adhering to treatment services before charges are withdrawn or stayed (Schneider, Bloom, & Heerema, 2007).

Like drug courts and domestic violence courts, mental health courts and diversion programs are often described as belonging to a family of specialized courts called “problem-solving courts”. These emerged in the late 1980s and 1990s as court efforts to look beyond the legal determination of guilt and innocence and toward the broader underlying causes of crime (Council of State Governments, 2005; Slinger & Roesch, 2010). In his overview of these courts and the rationale behind them, Winick (2002) suggests that the key to problem-solving thinking is the recognition that sometimes criminality is the result of adverse social conditions. Problem-solving courts were intended to provide alternatives to jail and other criminal sanctions when offenders came from vulnerable or marginalized circumstances causally related to their crimes (Farole, Puffett, & Rempel, 2005; Farole, Puffet, Rempel, & Byrne, 2004). The problem-solving emphasis, according to many authors, includes the accountability of an offender (Labriola,
Rempel, O’Sullivan, & Frank, 2007) but also the role of communities in defining the “problem” and the need for interdisciplinary collaboration with players both internal and external to the justice system (Porter, Rempel, & Mansky, 2010).

While many problem-solving courts are guided in part by theories of accountability and community justice, mental health courts and mental health diversion exist predominantly within the legal theoretical framework known as therapeutic jurisprudence, or TJ (Berman & Feinblatt, 2005; Porter et al., 2010). Professors David Wexler and Bruce Winick (1996)—the acknowledged founders of the TJ concept—suggest that TJ’s central aim is to maximize the law’s potential for therapeutic outcomes by simultaneously focusing on criminal justice while keeping one eye open to developments in mental health. That is, TJ works within the confines of traditional criminal justice goals, “such as punishment and protection of the public,” to also produce a “beneficial impact” on persons with mental illness in conflict with the law (Schneider et al., 2007, pp. 43-44). TJ, argue Wexler and Winick (1996), emphasizes the role of the law as a therapeutic agent and, as such, it seeks to minimize the law’s anti-therapeutic consequences and maximize its therapeutic value without sacrificing the rule of law or other legal values. These include predictability and stability (Abrahamson, 2000), and, in practice, TJ is not intended to put therapeutic values ahead of legal ones (Wexler & Winick, 1991).

Since the emergence of the idea beginning in the late 1980s, TJ has become increasingly influential (Freckelton, 2008; King et al., 2009; Winick, 2013). Wexler and Winick (2002) retrospectively acknowledge that their approach was originally developed within the arena of mental health law, but it was quickly embraced across the legal spectrum to become synonymous with a therapeutic approach to the law in general. In his recent overview, Winick (2013) describes TJ as having become the *ex post facto* “philosophical foundation” for the problem-
solving court initiatives that have been and continue to be developed by judges, lawyers and other practicing legal professionals since the early 1990s. The first problem-solving court dedicated to accused people with mental illness was established in Broward County, Florida in 1997, and within eight years, the number of mental health courts in cities across the United States grew to 111 (Schneider et al., 2007). Similar programs can be found in urban centres in the United Kingdom, Australia and elsewhere (Nolan 2009). In Canada, the first dedicated mental health court opened in Toronto in May 1998, and similar or related pilots and programs have since emerged in Saint John, New Brunswick; Kitchener, Ontario; London, Ontario; Winnipeg, Manitoba; Ottawa and elsewhere (Slinger & Roesch, 2010).

Legal scholar James Nolan (2009) argues that while problem-solving court and TJ ideas are now found in various incarnations in many Western countries around the world, their birthplace in large U.S. cities continues to have a significant influence. For example, says Nolan, the concepts owe much of their existence to American culture and to its “increasing societal preoccupation with feelings” over the past few decades (p. 54). That is, problem-solving and TJ can be considered cultural products of a uniquely “American therapeutic culture” and ethic of emotivism (p. 54). Further, TJ and problem-solving concepts were not only imagined in an American cultural context, they were imagined in the context of large American cities. These cities, which typically have large, diverse populations and resources enough to facilitate specialty courts, have facilitated a conception of problem-solving courts as generally restricted to circumstances in which a separate criminal docket and a “triage team” (Slinger & Roesch, 2010) of specially trained judges, prosecutors, lawyers and court workers can be present, often further restricted by the need for well-resourced mental health services in the community (Erickson, Campbell & Lamberti, 2006).
Only recently have researchers begun exploring whether the underlying principles that animate problem-solving courts could be used in conventional court settings—rather than relying on the resource-intensive operational elements usually associated with specialty courts—to potentially expand the availability of the problem-solving approach beyond urban centres (Farole, Puffett, & Rempel, 2005, 2007; Farole, Puffett, Rempel, & Byrne, 2004; Farole, Rempel, Byrne, & Chang, 2008; Wolf, 2007b) and to facilitate an improved sharing of available resources within urban contexts (Wolf, 2007b). This vision is in keeping with that of Bruce Winick and David Wexler (2003), the original authors of the TJ approach, who described the problem-solving court movement as potentially “a transitional stage” towards “an overall judicial system attuned to problem solving” (p. 87). Their efforts, in any case, are suggestive of the potential to achieve problem-solving goals in less populous, less resourced and possibly even remotes settings.

2.6 Therapeutic Jurisprudence, Problem-solving and Interdisciplinarity

TJ, according to Wexler (2008), was always expected to seek direction from beyond the discipline of law. The author suggests TJ’s aim is to incorporate insights developed in psychiatry, psychology, criminology, and social work. Winick and colleagues (2010) offer a similar explanation: TJ is “an interdisciplinary method of legal scholarship that aims to reform the law in an effort to improve the psychological and emotional well-being of those affected by the legal process” (p. 428). This makes sense since, as Birgden (2009) describes, the TJ concept is based on the notion that offender rehabilitation is equally desirable from both a legal and a health perspective (all else being equal). Similarly, Freckelton (2008) describes TJ’s cross-disciplinary nature as among its key, widely recognized strengths.
Yet, in practical terms, how TJ is being realized by problem-solving oriented criminal court mental health diversion initiatives suggests a lack of clarity surrounding the definition of “interdisciplinary” in this context. In their review of these initiatives in the United States, Epperson and colleagues (2014) note that these interventions have functioned principally as legal means of “establishing an enduring treatment connection” between people with mental illness and existing mental health care providers (p. 428). That is, these authors do not see any rehabilitation component in these initiatives as necessarily integrated within the court’s diversion efforts. Indeed, Roderick and Krumholtz (2006) along with other commentators have criticized TJ (and its practical, problem-solving incarnations) for failing to define what is “therapeutic” or “anti-therapeutic” in any meaningful or precise way.

The result has been a tendency to see the goals of criminal court mental health diversion initiatives from the perspective of mainly justice objectives first, and if therapeutic outcomes are considered, to discuss only clinical metrics such as mental health service utilization, substance abuse, etc. (see, for e.g., Frailing, 2010; Hiday & Ray, 2010; Moore & Hiday, 2006; O’Keefe, 2006; Steadman et al., 2011; Wolff & Pogozelski; 2005). For instance, recent work by Porter and colleagues (2010) attempts to systematically distill the universal performance indicators of problem-solving courts to, in part, guide the implementation of these specialized initiatives in conventional court settings. These authors suggest criminal court mental health diversion initiatives are “primarily concerned with rehabilitating their participants through a lengthy course of treatment” using clinical measures such as compliance with medication prescriptions, reliance on mental health care services and hospitalizations and housing (p. 51). Similarly, studies from several countries seeking to evaluate the effectiveness of mental health court diversion initiatives have so far relied mainly on justice criteria (e.g., reduced recidivism, less jail time) and, less
frequently, objective clinical outcomes (e.g., reduced substance abuse, less mental health service use) as assessment measures (James, 2010; Lange et al., 2011; Richardson & McSherry, 2010; Ryan, Brown, & Watanabe-Galloway, 2010). In their recent review, Epperson and colleagues (2014) characterize this evaluation literature as focused “primarily on criminal justice outcomes, such as re-arrest, jail days, or injuries to officers during ‘mental health calls’ to the exclusion of mental health outcomes” (p. 429).

In the context of health services, Aboelela and colleagues (2007) recently surveyed education, business and health care literature that featured interdisciplinary research published between January 1980 and January 2005. Their objective was to better understand how various scholars defined the term “interdisciplinary”. These authors conclude that interdisciplinary research “is any study or group of studies undertaken by scholars from two or more distinct scientific disciplines … that links or integrates theoretical frameworks from those disciplines, uses study design and methodology that is not limited to any one field, and requires the use of perspectives and skills of the involved disciplines throughout multiple phases of the research process” (p. 341). They cite Rosenfield (1992) who distinguishes interdisciplinary approaches (multiple disciplines working jointly using shared frameworks and methods) from multidisciplinary (multiple disciplines working in parallel around common problem) and transdisciplinary (the emergence of a new field with its own language). These distinctions, although not in the same terms, are similarly important to legal scholar Arie Frieberg (2011) who explores the history and implications of collaborative thinking between the disciplines of law and psychiatry, especially in the context of TJ and other aspects of non-adversarial justice. Frieberg argues that interdisciplinary thinking in this arena needs to involve more than simply a simultaneous consideration of the two disciplines but rather a thoroughly “integrated approach to
legal theory, practice and education” (p.297). What’s true of law and psychiatry may equally apply to law and the larger field of MHR science.

This fully integrated notion of interdisciplinarity appears to be what many TJ and problem-solving court advocates contemplate when they imagine what Daicoff (2006) describes as “an explicitly comprehensive, integrated, humanistic, interdisciplinary, restorative, and often therapeutic approach to law and lawyering” (p. 1). Indeed, TJ founders Wexler and Winick (1996) write not of adding therapeutic considerations to the law but, rather, of considering the law itself as a therapeutic (or anti-therapeutic) agent. As Frieberg (2011), citing Winick (1997), observes TJ is not “just a general interdisciplinary approach … [It] is intensely interdisciplinary” (p. 301). The result, writes the author, is that TJ’s impact (along with the impact of related non-adversarial justice approaches) has the potential to transform rather than merely augment an understanding of the justice system. Included in this intensely interdisciplinary approach for an approach to the law that seeks a therapeutic response to people with mental illness must be a thorough comprehension of what MHR means today.

2.7 Recovery

Among the most profound developments affecting mental health and MHR discussions in the English-speaking world over the past few decades has been the emergence of the concept of recovery (Slade, Adams, & O’Hagan, 2012). Slade (2009) calls the recovery approach as “the guiding principle for 21st century mental health services throughout the Anglophone world” (p. 367) while others acknowledge its role as a touchstone concept for international mental health policy (Davidson & Roe, 2007; Davidson et al., 2009; Ramon et al., 2009; Slade, Adams, & O’Hagan, 2012). The recovery vision has been officially embraced by Canada, the United States, Australia, England, Israel and others as a philosophical precept for mental health services and
rehabilitation (Ramon, et al., 2009; see also Canadian Mental Health Commission, 2012; Senate of Canada, 2006). Anthony (1993) provides perhaps the most widely cited definition of the idea framed in individualistic terms:

Recovery is described as a deeply personal, unique process of changing one’s attitudes, values, feelings, goals, skills, and/or roles. It’s a way of living a satisfying, hopeful, and contributing life even with limitations caused by illness. It involves the development of new meaning and purpose in one’s life as one grows beyond the catastrophic effects of mental illness. (p. 14)

It has also been described by a notable American recovery advocate as “the lived or real-life experience of people as they accept and overcome the challenge of the (mental) disability” (Deegan, 1988, p. 11). But, a precise definition of recovery remains heterogeneous (Corlett & Miles, 2010; Onken et al., 2007) and its theoretical underpinning is still developing (Dinniss, 2006). Similarly, many authors acknowledge that a clear understanding of the processes and stages involved in recovery is still being explored (Silverstein & Bellack, 2008) and measurement tools for assessing the service delivery of recovery in MHR remain a focus of research (Leamy et al., 2011).

Williams and colleagues (2012) characterize the common key features of the MHR concept of recovery as reflected in the lived experiences of individuals and, thus, differ considerably from the traditional clinical approaches to MHR (Slade et al., 2012). Current perspectives on recovery have differentiated between the experience of recovery, which belongs to the individual with mental illness, and the responsibility for mental health systems to provide services which are oriented to enabling the recovery process. In addition to the development of measures which evaluate personal recovery of individuals, many authors and service providers have attempted to use common themes emerging from qualitative studies of the lived
experiences of service users (and providers) to develop useful measures to determine specific features of services which are enabling recovery and the extent to which existing mental health services employ the recovery approach (Burgess et al., 2011; Williams et al., 2012). These measures of the recovery orientation of services assess “the extent to which mental health staff and services attempt to facilitate or promote personal recovery, and encompasses the different aspects of service delivery and practices that are believed to do this” (Williams et al., 2012 p. 2). Among examples of these measurement frameworks are the Recovery Self-Assessment (RSA; O’Connell et al., 2005; revised in 2007 but unpublished), as well as the less well-known Consumer Evaluation of the Collaborative Recovery Model (CEO-CRM; Marshall, Oades, & Crowe, 2009). These reflect efforts to create a recovery oriented system of health care (Davidson, et. al., 2007).

In this connection, and serving as an example, Leamy and colleagues (2011) conducted an extensive review of published literature on recovery to develop a novel framework that could be empirically verified and provide a workable basis for assessing recovery-oriented practices. The authors identified five key recovery processes: Connectedness (includes a sense of connection to supportive family, friends, community), Hope and optimism (includes a sense that recovery is possible and reasons exist to be hopeful about the future), Identity (includes a clear sense of self capable of overcoming stigma), Meaning and purpose (includes a personal and possibly spiritual sense of meaning to life, as well as clear goals and roles), and Empowerment (includes a sense of control over one’s own life, as well as an understanding of personal responsibility). The resulting categorical framework is referred to by the acronym CHIME (Leamy et al., 2011), and it has been found to provide an effective metric against which to
evaluate many of the existing measures used to assess the recovery orientation of MHR services (Williams et al., 2012).

2.8 Culture and Mental Health Rehabilitation

Among the consequences (or, perhaps, causes) of the ascendency of recovery thinking has been a growing scrutiny of the influence and importance of a person’s social environment on mental health and recovery (Beresford, Nettle, & Perring, 2010; Ramon, Healey, & Renouf, 2007; Repper & Perkins, 2003). A natural and important recent focus by many researchers, therefore, has been on the role of culture as it affects the personal and social meaning of mental illness (Alegria et al., 2010; Kirmayer, 1989; Kirmayer et al., 2012; Kirmayer, Jarvis, & Guzder, 2014) and recovery (Adeponle, Whitley, Kirmayer, 2012). Culture denotes “otherness” which is the “marking off of a group or community as distinct from others, defined in terms of some shared lineage, geographic origin, or other characteristics, including language, religion, and a way of life” (Kirmayer, et. al., 2014, p. 2). Alegria and colleagues (2010) describe consideration of cultural diversity to be among the significant gaps affecting MHR for families with mental illness in the United States. These authors reviewed several studies that make the case that many world cultures view mental disorders from essentially dissimilar perspectives. These disparate views can affect everything from whether and how mental illness are detected to notions surrounding the usefulness, type or availability of treatment: “These facts suggest that cultural differences may play a critical role in the individual’s recognition of mental illness and the provider’s detection of the mental illness including the perception and intensity of stigma associated with mental health help-seeking behavior and the understanding of what might be considered mental health disorder requiring appropriate mental health services” (p.49). Historical or environmental conditions and expectations faced by some cultural groups can also have an
impact on mental health. Takeuchi, Bui and Kim (1993), for example, suggest youth from ethnic or cultural minorities may avoid seeking professional mental health care because of an expectation that social institutions will misunderstand them or respond coercively. Moreover, better outcomes for people with schizophrenia in some low and middle income countries, as compared with the developed world in World Health Organization longitudinal studies may be instructive in revealing the processes in the social and cultural environment that influence recovery (Myers, 2010).

In Canada, Kirmayer and colleagues (2012) point to evidence that links culture to differences in overall health and to disparities in access to care. Cultural knowledge and identity, report these authors, are also critical determinants of MHR outcomes. “Culture is the constantly evolving medium through which we articulate our deepest values and greatest aspirations,” writes Kirmayer and colleagues (2014) in the introduction to their recent book on the subject. “Human biology, behavior, and experience are culturally shaped and mental health practice must respond to the resulting diversity” (p. 1). That is, culture is a key consideration in determining differences in the central values of recovery, despite recovery’s conceptual origins in “Euro-American concepts of self and personhood” and individualism that values self-sufficiency, self-determination, and independence (Adeponle, Whitley, Kirmayer, 2012, p. 126). For those cultures that are differently oriented, this raises an issue of the cross-cultural applicability of the construct of recovery particularly when conceptions of personhood are more collectivist and relational encompassing a person’s connection to the land and environment, to a larger world of ancestors and spirits or to relationships with others (Adeponle, Whitley, Kirmayer, 2012)
2.9 Protective Factors

Thus, scholars and mental health care practitioners increasingly view culture and culturally relevant circumstances as crucial to MHR. As an example, cultural considerations are often seen as having particular resonance in the context of aboriginal peoples in Canada. As Kirmayer and colleagues (2012) point out, until recently the education of MHR professionals has not concerned itself with contemporary impacts on the mental health of indigenous people from past Eurocentric policies and actions: “Recent years have seen greater recognition of the history of colonization and the devastating impact of the policies of forced assimilation on aboriginal Peoples in Canada, along with appreciation of the resilience and vitality of First Nations, Inuit and Métis cultures, languages and traditions as resources for mental health and well-being” (p. 2).

For example, Kirmayer, Malus and Boothroyd (1996) were among the first to propose using the concept of “protective factors” as a means of identifying key cultural and contextual features vital to considerations of mental health and MHR for Canada’s Inuit. This concept recognizes the effects of colonization, including the disruption of indigenous peoples’ relationship to the land, are important determinants of mental health (Kirmayer, Tait, & Simpson, 2009) and health generally (King, Smith, & Gracey, 2009). Indeed, elevated mental health issues in indigenous populations have been linked to acculturation as well as other social and environmental upheavals that have taken place over the past 50 years (Kirmayer et al., 2009; MacDonald et al., 2013). These facts align with the World Health Organization’s suggestion that mental health for indigenous people exists squarely within their contemporary social, cultural, economic, and political environments (Cohen, 1999). Just as individuals are viewed as having
strengths and capacities that are protective of mental health and growth promoting, so too are cultures and social contexts becoming increasingly viewed as potential protective factors.

MacDonald and colleagues (2013) describe the concept of protective factors (their review focuses on Inuit youth) as a strength-based, culturally specific approach to mental health care that shifts the focus from the typical clinical management of deficit-oriented risk factors (substance abuse, previous mental disorders, family conflict, etc.) to a focus on cultural and contextual factors that promote positive mental health outcomes. The authors explain protective factors are linked to bolstering three culturally vital components of Inuit mental health: “They contribute to developing a supportive social environment; they enhance self-esteem and self-confidence and foster self-reliance; and they enable individuals to participate in their land-based culture” (p. 7). These, in turn, contribute to what many researchers describe as mental health “resilience”—that is, the notion of “a defence mechanism which enables people to thrive in the face of adversity” so that “improving resilience may be an important target for treatment and prophylaxis” (Davydov, Stewart, Ritchie, & Chaudieu, 2010, p. 479; see also Compton, 2010).

In circumpolar contexts, MacDonald and colleagues (2013) characterize resilience as “the ability to adapt to challenging and rapidly changing physical, cultural, political and socio-economic environments, and includes an understanding of the importance of community cohesion, overall health, spiritual traditions and cultural connectivity” (p. 2). Resilience, from an indigenous perspective, is characterized by cultural values that have persisted despite these profound changes (Kirmayer, Dandeneau, Marshall, Phillips, and Williamson, 2012).

This literature review surveyed several papers, including systematic reviews, that sought to identify at least some mental-wellness promoting factors (including those explicitly described as protective factors) with specific resonance in the context of Inuit or First Nations people in
North America and around the Arctic. Ten of the 15 mental-wellness promoting factors listed in Table 2.2 below were explicitly identified as protective factors in a systematic literature review by MacDonald et al., (2013). Table 2.2 provides a more in-depth description of those protective factors and also adds literature supporting the review by MacDonald and colleagues (2013). The additional 5 wellness promoting factors have not necessarily been labeled protective factors but like the protective factors identified by MacDonald and colleagues (2013), they similarly focus on cultural and contextual factors that promote positive mental health outcomes.

Table 2.2. Examples of key “protective factors” relevant to Inuit and indigenous mental health identified from literature review.

<table>
<thead>
<tr>
<th>Protective factors</th>
<th>Description (from the literature)</th>
<th>Authors identifying mental wellness promoting factors including those explicitly described as protective factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Familial history of psychiatric treatment</td>
<td>Family history of receiving treatment for a psychiatric problem was seen as a significant protective factor in suicide attempts in Inuit youth in Nunavik. This suggests that recognition and treatment of the psychiatric problem was helpful.</td>
<td>Kirmayer et al., 1996</td>
</tr>
<tr>
<td>Having someone to talk to</td>
<td>Talking to family, friends, and others informally, including elders (not a “private therapeutic monologue”) was viewed as one of the three most important features of well-being among Inuit in Nunavut. Talking and interaction on an informal basis (more so than with a professional) such as visiting, listening and talking to as a form of support was considered to be a prevention strategy in the context of Inupiat youth suicide in Alaska. An integrated approach with community members at the centre of the healing process and Western practitioners as secondary healers was, in the context of health promotion, considered consistent with the Canadian aboriginal worldview.</td>
<td>Kral et al., 2011; MacDonald et al., 2013; Wexler &amp; Goodwin, 2006</td>
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<tr>
<td>Family Support/Connectedness</td>
<td>Connection to family was identified as a</td>
<td>Cummins, Ireland, Resnick &amp;</td>
</tr>
<tr>
<td>Topic</td>
<td>Description</td>
<td>Reference</td>
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<tr>
<td>--------------------------------------------</td>
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<tr>
<td>Family</td>
<td>Consistently influential aspect of physical and emotional health among Native American youth. Family support among American Indians and Alaska Natives had a significant effect on wellness and substance abuse. In this context, family served as a major social group and was considered influential in social relationships and standing in the community. Family remains central to Inuit life despite cultural change. Well-being is associated with the experience of spending time with family—talking, sharing food, and experiences on the land.</td>
<td>Blum, 1999, Walters, Simoni &amp; Evans-Campbell, 2002, Kral et al, 2011</td>
</tr>
<tr>
<td>Supportive communities/social networks</td>
<td>Drawing from Canada’s 2001 Aboriginal People’s Survey, social support was found to be a consistent feature of health among Metis and Inuit populations. Social support referred to social interaction, emotional support, tangible support, and affection and intimacy. Social support was identified as a strong determinant of Indigenous health, in particular among women. Strong social networks among Alaskan Native youths, considered in the context of resilience, was seen to increase youth adaptability by providing more options when faced with challenges. Community (and family) were identified as protective and recovery factors by providing a wider social environment that supported the decision to not abuse alcohol. This support contributed to an interdependent and expanded sense of self that brings a heightened sensitivity to the effects of behavior on the whole, and</td>
<td>Richmond, Ross and Bernier (2007), Richmond, Ross, and Egeland (2007), Wexler, Joule et. al., 2014, Mohatt, et al., 2004</td>
</tr>
<tr>
<td>Category</td>
<td>Description</td>
<td>References</td>
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<tr>
<td>Protective and safe family environment</td>
<td>A study of Alaska Native sobriety, found provision of an environment that was safe to be a protective characteristic of family and community. An Alaskan Native study of youth resilience identified finding safe places in families and in the home of others as a dimension of self-reliance.</td>
<td>Allen et al., 2006; Mohatt et al., 2004; Wexler, Joule et. al., 2014</td>
</tr>
<tr>
<td>Self-reliance</td>
<td>Inupiaq Alaska Native Youth sought out resources, relationships, and opportunities that enabled them to practice and demonstrate responsibility, autonomy and community connectedness. Inupiat Alaska Native Youth responded to hardship through self-reliance.</td>
<td>Wexler, Jernigan et al. 2014; Wexler, Joule et al., 2014</td>
</tr>
<tr>
<td>Transmission/communication of expectations and values in families</td>
<td>A study of Alaska Native sobriety, found that transmission of cultural expectations and values was a protective factor in families.</td>
<td>Allen et al., 2006; Mohatt et. al., 2004</td>
</tr>
<tr>
<td>Community-wide limits/standards/expectations to encourage healthy communities</td>
<td>A study of Alaska Native sobriety, found that transmission of community-wide limits/standards/expectations was a protective factor in communities.</td>
<td>Allen et al., 2006; Mohatt et. al., 2004</td>
</tr>
<tr>
<td>Culture and the meaning of mental illness</td>
<td>Culture affects the personal and social meaning of mental illness. Many world cultures view mental disorders from essentially dissimilar perspectives. Understanding these disparate views can improve whether and how mental illness is detected. Cultural models influence how individuals interpret the signs and symptoms of illness, including psychiatric disorders.</td>
<td>Alegria et al., 2010; Kirmayer, 1989; Kirmayer et al., 2012; Kirmayer, Jarvis, &amp; Guzder, 2014; Kirmayer &amp; Bhugra, 2009</td>
</tr>
<tr>
<td>Cultural awareness of impacts of social and cultural change/disruption to indigenous mental health</td>
<td>The effects of colonization, including the disruption of indigenous peoples’ relationship to the land, are important determinants of mental health. Study findings on mental health in Greenland have been explained by social and cultural change. But variation in</td>
<td>Kirmayer, Tait, &amp; Simpson, 2009; Bjerregaard &amp; Curtis, 2002</td>
</tr>
</tbody>
</table>
mental health of some population groups compared to others, as a result of successful integration into modern society, suggest the need to modify the commonly shared notion that rapid societal change is in itself a cause of poor mental health.

Cultural change can also be understood from the perspective of resilience through persistence of identities and the re-creation of traditions that show that indigenous cultures can prosper in contemporary times.  

Csonka & Schweitzer, 2004

| Culture and mental health recovery | Culture is a key consideration in determining differences in the central values of recovery.  
Notions of mental illness are enmeshed with recovery from the impact of colonialism, historical trauma, and the residential school experience, cultural suppression and assimilation policies.  
Culture is important to self-regulatory strategies for ethnic minorities and is understood to promote resilience. | Adeponle, Whitley & Kirmayer, 2012  
Kirmayer and Valaskakis, 2009  
Yasui & Dishion, 2007 |

| Cultural/ethnic identity or affiliation | A study comparing symptoms of anxiety and depression among indigenous Sami and non-Sami youth in the Arctic examined the influence of perceived discrimination and ethnic identity on these symptoms. In finding no differences among ethnic groups, it discussed culture-specific protective factors including ethnic pride as potential explanations for why ‘colonial pain’ does not seem to be associated with internalization symptoms in Sami adolescents.  
A study across three generations of Alaskan Natives, found that culture, including ethnic pride, can act as a protective factor by giving people a sense of identity, feeling of commitment, and purpose. However, in the absence of a clear understanding of collective suffering, Bals, Turi, Skre, Kvernmo, 2010  
Wexler, 2014 |
youth did not draw upon ethnic identity as a source of collective strength unlike the adults and elders.

Author presents a model for understanding the role of ethnic identity development in Indigenous youth wellness and resilience and points to the value of historical consciousness in that process.

Research in the context of European and African Americans, suggests that ethnic identity is related to fewer symptoms of depression and is a significant predictor of adolescent social and emotional adjustment. Ethnic identity is seen as an important contributor to self-concept particularly for those in socio-economically disadvantaged contexts.

In the context of a study of Filipino Americans, the strength of identification with an ethnic group was found to be directly associated with fewer depressive symptoms. That is, having a strong ethnic identity was understood to “buffer” the stress of racial/ethnic discrimination likely contributing to protection of mental health.

Adolescent Korean Americans with higher levels of ethnic identity were less likely to experience frequent problem behaviors.

In a study involving Latino adolescents, higher levels of ethnic identity exploration and resolution significantly predicted higher levels of self-esteem for both boys and girls.

A review of theoretical literature suggested that a strong, positive ethnic identity benefits adolescent mental health.

<table>
<thead>
<tr>
<th>Traditional Knowledge, cultural values, and practice</th>
<th>Culture and tradition (shared practices, beliefs and language) affected Inuit women’s perceptions of their health and well-being.</th>
<th>Healey &amp; Meadows, 2008</th>
</tr>
</thead>
</table>

Wexler, 2009
Yasui et al., 2004
Mossakowski, 2003
Shrake & Rhee, 2004
Uman˜a-Taylor & Updegraff, 2007
Wakefield and Hudley, 2007

Traditional Knowledge, cultural values, and practice

Culture and tradition (shared practices, beliefs and language) affected Inuit women’s perceptions of their health and well-being.
Being on the land contributed to well-being and a collective sense of purpose. Eating country foods, being out on the land was associated with well-being. Wexler, Joule et al., 2014
Kral et al., 2011

| Bicultural competence | Authors suggest that an individual is able to gain competence within 2 cultures without losing his or her cultural identity or having to choose one culture over the other. It is suggested that the key to psychological well-being may well be the ability to develop and maintain competence in both cultures. Berry, 1984; LaFromboise, Coleman, & Gerton, 1993; Yasui and Dishion, 2007 LaFromboise, Coleman, & Gerton, 1993 |

2.10 Mental Health Rehabilitation Concepts and Criminal Court Mental Health Diversion Initiatives

Despite the significance of many recent developments in MHR thinking—such as the ascendency of the recovery approach and new attention to the role of culture and the culturally attuned concept of protective factors described above—this literature review revealed that scholarship making explicit reference to these ideas was disproportionately overshadowed by literature relating to criminal justice or clinical indicators in the development, implementation and evaluation of criminal court mental health diversion initiatives.

In some cases, the reasons for this are understandable: Pouncey and Lukens (2010), for example, describe the recovery model’s uneasy fit with criminal justice. Davidson and Roe (2007) describe one tension as relating to the justice system’s goal to control those who have engaged in criminal behavior—an approach that runs directly counter to the recovery model’s ethos of free agency through concepts of autonomy, choice, and self-determination (see also Green, 2004). Similarly, the criminal justice system operates on an assumption of necessary
involuntariness to accomplish many justice goals, while the recovery model depends on the voluntary nature of efforts to improve mental health. This contrast highlights existing arguments about whether voluntariness exists in mental health courts (Boothroyd, Poythress, McGaha, & Petrila, 2003; Poythress, Petrila, McGaha, & Boothroyd, 2002; Redlich et al., 2010) and court diversion. Although questions about voluntariness in this context pose a challenge to the recovery model, some authors argue that issues of perceived coercion in these scenarios are saved by the mitigating influence of procedural fairness (Galon & Wineman, 2010; Poythress et al., 2002; Wales et al., 2010), allowing for an uneasy but workable co-existence. Wales and colleagues points out that procedural fairness is, however, associated with the role of the judge. The involvement of judges however, varies depending on the court diversion model adopted. Where the judge plays no role, or where the judge’s role is circumscribed, it may be that other key players in court diversion, such as court support workers, can similarly engage in procedural fairness. Ultimately, however, resolution of this voluntariness “tension” depends on the threshold at which the recovery model can co-exist with some elements of coercion in court diversion.

Other potential points of tension between the recovery model and mental health criminal court diversion initiatives are informed by recovery focused research in the context of forensic psychiatry (Corlett and Miles, 2010; Dorkins & Adshead, 2011; Pouncey and Lukens, 2010). For example, Dorkins and Adshead (2011) identify four areas in which the recovery model is challenged by the needs of users of the forensic system—areas that may also be helpful in understanding similar challenges in the court diversion context. The authors argue the following: that forensic users are frequently antisocial, challenging the emphasis of the recovery model on shared values between service users and service providers; that the community demands social exclusion as a sanction for criminal offenders while the recovery model emphasizes meaningful
and satisfying roles for people with mental illness within local communities; that society demands assessments be conducted by mental health professionals because a forensic user’s view is unreliable, antisocial, and risky, while the recovery model focuses on empowerment and flattens the hierarchy between service users and professionals; and that the pessimism and despair of forensic service users often challenges the recovery model’s emphasis on hope.

More recently, however, some consideration of recovery has begun to enter mental health criminal court scholarship. Pratt and colleagues (2013), for example, completed a study that used identified measures from the recovery process—rather than criminal justice outcomes of recidivism and re-incarceration—to evaluate the effectiveness of four problem-solving mental health courts in New York City. Their results, based on the experiences and perceptions of mental health court participants, suggest that participants who perceived coercion during the mental health court experience were less likely to experience perceptions of recovery. They also found that perceptions of “negative pressures” (an element of coercion) were important predictors of criminal justice involvement in the year following mental health court admission. In a separate publication based on the same research, the authors also found participants’ perceptions of procedural justice increased after involvement and that this increase in procedural justice was associated with a decrease in symptoms (Kopelovich et al., 2013). Canada and Gunn (2013) similarly examined the views of mental health court participants to determine that social support during the process was considered a key factor in their perceptions of recovery following mental health court involvement.

The relevance of culture, too, is more recently being incorporated into a consideration of the most appropriate therapeutic response in a TJ and problem-solving context. In the context of indigenous Maori culture, for example, Toki (2010) proposes that TJ “allows and acknowledges
different conceptual frameworks [including] the Maori conceptual framework [which] is at odds with the existing mono-cultural system in New Zealand” (p. 444). Nolan (2009), meanwhile, discusses the relationship between culture and TJ and problem-solving courts in more explicit terms and is correspondingly less sanguine. The author points especially to the potentially invasive effects of the “therapeutic culture” of the United States. Since many contemporary legal scholars and social anthropologists agree that laws are central to culture and identity, he says, transposing problem-solving and TJ notions across cultural barriers can come with the risk of significant U.S. cultural influence and other more complicated effects pertinent to cultural globalization. These impacts, says Nolan, are relevant for even cultural differences between English speaking Western nations, such as those that separate the cultural differences between the United States and Canada or other Commonwealth Nations.

While the term “protective factors” has a long history in the context of criminology and the risk and prediction of criminal behaviour, especially violence by youth (for discussion see Land, 2014) and in the context of violence in North Americans indigenous communities (e.g., Pu et al., 2013), the mental health concept of protective factors (especially in cross-cultural and specifically indigenous contexts) did not surface as an explicit reference in this literature review of research relevant to criminal court mental health diversion or TJ. In one recent study, however, Broner, Lang and Behler (2009) examined whether what they described as “community stability indicators”—a concept akin to the general concept of protective factors—could predict mental health court program completion and likelihood of re-arrest of participants in these initiatives. The authors found that homeless status did not predict graduation or re-arrest nor did self-reported measures of quality of life, social support, functioning and housing type predict re-arrest. Generally, however, the concept of protective factors as a useful construct in a
consideration of MHR and mental health outcomes from criminal court mental health diversion initiatives appears largely unexplored.

2.11 Conclusion

Criminal court mental health diversion initiatives—and the TJ ideas that animate them—are intended as interdisciplinary approaches to providing a rehabilitative response to people with mental illness in conflict with the law (Winick, 2013). To be meaningful in this context, interdisciplinarity—according to Freiberg (2011)—cannot be interpreted as merely using two different disciplines to look at the same problem. Instead, he argues, interdisciplinary approaches succeed through the “recombination” of disparate ideas and influences and through a creative “inter-breeding” of disciplines (p. 298). By seeking to provide a rehabilitative response to certain criminal behaviours in this context, criminal court mental health diversion initiatives aspire to be interdisciplinary. They simultaneously refer to the criminal law along with psychiatry, psychology and other mental health fields. Nevertheless, efforts to fully understand this therapeutic response through the lens of rehabilitation science, assisted by concepts from contemporary MHR, have not been well developed. Indeed, studies looking for evidence of the effectiveness of criminal court mental health diversion initiatives are overwhelming represented by research measuring criminal justice outcomes or, less often, traditional clinical metrics (Epperson et al., 2014). Studies assessing the therapeutic goals of these initiatives are few. More research is needed.

The recovery model for improving the lives of people with mental illness can provide a useful addition to this inquiry. The recovery model can provide an “overview” assessment of the extent of recovery orientation of diversion. For example, if diversion is effectively using the recovery model tools from outside of the legal context then the diversion program could be
considered to be meeting its therapeutic aims. Similarly, the concept of protective factors as it applies to the culturally specific needs of indigenous North Americans could also inform ideas about what is “therapeutic” in a criminal court mental health response. Inuit in the Canadian Arctic territory of Nunavut, for example, currently do not have access to criminal court mental health diversion initiatives. Could an improved understanding of how the concept of protective factors aligns with notions of an appropriate therapeutic response provide an important tool in efforts to establish these initiatives in the Far North?

This review discusses these MHR concepts within the context of criminal court mental health initiatives that divert people with mental illness from prosecution to treatment. A greater consideration of these contemporary concepts from MHR in TJ and problem-solving-court thinking will improve the theoretical and therapeutic validity of TJ and, similarly, help efforts to effectively implement or evaluate mental health criminal court programs. It is suggested that more research is needed to bridge the interdisciplinary gap between concepts of MHR from rehabilitation science and the legal scholarship and practice that informs criminal justice responses to people with mental illness in conflict with the law.
Chapter 3 – It’s Theory, Practically Speaking: Revisiting the Role of Therapeutic Jurisprudence as Theory in the Context of Constructivist Inquiry
3.1 Abstract

After almost two decades as a fast-accelerating arena of legal scholarship, therapeutic jurisprudence (TJ), an approach that views the law as a therapeutic agent, has seen interest appear to flag in recent years. This follows a raft of criticism that TJ is not a coherent, homogenous legal “theory” and therefore of limited utility. This chapter re-evaluates this conclusion and the narrow, positivist definition of theory that appears to inform it. It explores descriptive theory in law and methodological theory in a constructivist inquiry to argue that TJ can be usefully thought of as meeting the definitional requirements of both. Rather than dismiss TJ as unhelpful as a testable theory, researchers can benefit from considering TJ as theory that provides a practical guide to decision-making in empirical studies, especially those that affect the research questions, propositions, methodology, method and findings. The argument is illustrated using an example of a qualitative inquiry into the potential for criminal court mental health diversion initiatives in the Canadian Arctic. This manuscript describes how TJ can practically and usefully be considered theory in a descriptive and methodological sense to provide an “heuristic” that offers direction and meaning for constructive research at the intersection law and health.

3.2 Introduction

From the late 1980s until recently, therapeutic jurisprudence (hereinafter “TJ”) saw its influence grow and gather momentum across a variety of legal fields and elsewhere (Freckelton, 2008; King et al., 2009; Winick, 2013). TJ is most often described as an interdisciplinary approach to the law that emphasizes the well-being of those affected by the legal process (Wexler & Winick, 1996; Winick, 1997; Winick, 2002) through an understanding of the
therapeutic and counter-therapeutic consequences of the law (Winick, 2002). While the approach originally emerged in the arena of mental health law, it received much broader scholarly and legal attention over the past two decades and has since expanded to encompass a therapeutic approach to the law in general (Wexler & Winick, 2002).

Some describe TJ as “a law reform approach” and “grounding for [a] new judicial movement” (Winick, 2013, p. 219). Daicoff (2006) similarly includes TJ as among the key elements of what she describes as a new “comprehensive law movement.” On a practical level, judges, lawyers and other practicing legal professionals have applied principles of TJ to their court work (King et al. 2009), and TJ has become known as “the philosophical foundation” for hundreds of what are known as problem-solving courts—non-traditional courts that attempt to understand and address the underlying social or psychological problem responsible for a legal dispute—at work in many cities and countries around the world since the early 1990s (Winick, 2013).

More recently, however, scholarly enthusiasm for TJ could be described as diminished following a concursion of new criticism that suggests, in the main, that TJ is not a coherent, homogenous legal “theory” as some proponents claim and that this confusion has caused it to be improperly invoked for purposes beyond its intended scope and utility (see, for e.g., Arrigo, 2004; Brakel, 2007; Freckelton, 2008; Johnston, 2012; King et al., 2009; Roderick & Krumholz, 2006). While TJ has faced critical scrutiny from the outset (e.g., Slobogin, 1995), the focus of several more recent TJ critiques converge upon the idea that TJ is too ill-defined and vague to stand as a testable theory, and “by not specifically defining TJ, proponents have not operationalized the construct that is necessary to empirically support the theoretical principles of TJ” (Roderick & Krumholz, 2006, p 211). Others point to the intended modesty and limits of TJ
first envisioned by one of its founding authors David Wexler (Freckelton, 2008; King et al. 2009). Wexler emphasized that TJ “is not and has never pretended to be a full-blown ‘theory’” (Wexler, 2011, p. 33), and thus TJ cannot and should not aspire to qualities of theory that make it predictive, descriptive or explanatory (Roderick & Krumholz, 2006). In more general terms, critics warn against considering TJ as theory because the nomenclature equates TJ with a revolutionary paradigm shift or “cure all” for the justice system (King et al., 2009, p 32).

This chapter revisits the repeated assertions that TJ “is not a theory” (e.g., Freckelton, 2008; King et al. 2009) to explore how a clearer understanding and definition of what theory is within law and within a constructivist worldview highlights the validity, utility and practical value of TJ as theory. It is argued that TJ can be usefully thought of as meeting the requirements of a descriptive theory in law and methodological theory in constructivist inquiry by providing an heuristic to better facilitate meaning and understanding at the complicated intersection of mental health and criminal justice. In particular, an example of a criminal court mental health diversion study in the Canadian Arctic is used to show how TJ can function as theory to contribute to a framework that circumscribes, focuses and validates research that examines the experiences and opinions of health and justice professionals, members of community organizations and community members regarding the potential for diversion programs in criminal courts in three Nunavut communities.

3.3 Therapeutic Jurisprudence and its Influence

TJ recognizes the law—including the way it is applied and the people (lawyers, judges, etc.) who apply it—as a social force with both therapeutic values to be maximized and counter-therapeutic consequences to be minimized, as long as other judicial and legal values are not compromised as a result (Wexler & Winick, 1996; Winick, 2000; Winick, 2013). Relying on
insights developed in psychiatry, psychology, criminology, and social work (Wexler, 2008), TJ is “an interdisciplinary method of legal scholarship that aims to reform the law in an effort to improve the psychological and emotional well-being of those affected by the legal process” (Winick et al., 2010, p. 428). TJ asserts that understanding legal rules and the way they are applied as social forces will pave the way to effectively reshaping or redesigning the law to minimize its anti-therapeutic effects (Winick 2013). In this respect, TJ can be considered, in a general sense, “normative” (i.e., a value-based proposition) in its valuation of offender rehabilitation as universally desirable from both a legal and a health perspective, all else being equal (Birgden, 2008; Winick, 1997). Its cross-disciplinary nature along with its breadth and inclusiveness are also key strengths (Freckelton, 2008).

The term “therapeutic jurisprudence” was first coined in 1987 (Hora et al., 1999) and it has been rapidly growing in influence across a variety of legal fields for more than two decades (Freckelton, 2008; Wexler, 2008; Winick, 2013) including everything from health law and criminal law to tort law, industrial law, compensation law and regulatory law (Freckelton, 2008). Freckelton (2008) characterizes TJ “as an approach to the law [that] has proved extraordinarily successful within a surprisingly short time” (p 581) and notes that toward the end of the last decade the topic had spawned more than 900 articles, 42 books, countless forums and conferences, its own devoted journal, special issues in other journals, and an International Network on Therapeutic Jurisprudence website. King et al. (2009) describe a May 2009 LexisNexis search for law journal articles using “therapeutic jurisprudence” as a search term resulted in 1371 hits. Publications on the subject have appeared in journals within the disciplines of law, psychiatry, social work, criminology and other interdisciplinary publications (King et al. 2009). Daicoff (2006) argues that TJ has ascended to become one of the major pillars in what has
been called the “comprehensive law movement” toward a growing emphasis on more comprehensive, interdisciplinary, integrated, humanistic and restorative approaches to the law and how it is practiced.

In non-academic contexts, TJ has also become regularly invoked by practicing judges, lawyers, regulators and other legal professionals at work in the courts and elsewhere (Freckelton, 2008), and is considered the “theoretical grounding” (Winick, 2002) or the “philosophic foundation” (Winick, 2013) for hundreds of on-the-ground “problem-solving courts.” Problem-solving courts are a family of working courts that have emerged in a variety of legal arenas over the past 30 years that attempt “to understand and address the underlying problem that is responsible for the immediate dispute, and to help the individuals before the court to effectively deal with the problem in ways that will prevent recurring court involvement” (Winick, 2013, p. 211-212). In the criminal court context, problem-solving courts address the individual and social problems that explain criminal behavior (Council of State Governments, 2005; Mirchandani, 2008; Schneider, Bloom & Heerema, 2007) as well as structural and operational issues in the justice system (Berman & Feinblatt, 2003) by adhering to suites of problem-solving principles (Wolf, 2007a).

These courts—which include mental health courts, drug treatment courts and domestic violence courts among others—are intended to be voluntary, and those who use them typically have mental health, social or substance abuse problems (Winick, 2013). The functioning of problem-solving courts generally relies on the application of key principles from TJ that are sometimes called “instrumental prescriptions” meant to direct courts in how to perform problem-solving functions (Winick, 2013).
3.4 Recent Therapeutic Jurisprudence Critiques

In recent years, however, TJ and its significance have come under a kind of concentrated scrutiny and the subject of criticism (e.g., Arrigo, 2004; Brakel, 2007; Freckelton, 2008; Johnston, 2012; King et al., 2009; Roderick & Krumholz, 2006) that appears to have cooled scholarly interest in the subject (with some notable exceptions; see, for e.g., Perlin 2014). The founders of the concept, professors David Wexler and Bruce Winick, insist that the scope and aspirations of TJ have always been modest, suggesting the concept is mainly an awareness-raising approach to focus on the role of the law as a therapeutic agent (Wexler & Winick, 1996) and insisting that therapeutic goals make no claim over other legal or judicial values (Wexler, 2008). Instead, TJ is described by these authors as a generalized “lens” through which to study the therapeutic implications of the law and legal procedure (Winick, 1997). “In actuality, therapeutic jurisprudence (‘TJ’) is not and has never pretended to be a full-blown ‘theory’,,” writes Wexler (2011). “More properly, and more modestly, it is simply a ‘field of inquiry’ – in essence a research agenda – focusing attention on the often overlooked area of the impact of the law on psychological wellbeing and the like. From the very beginning, however, TJ has sought to work with frameworks or heuristics to organise and guide thought” (p. 33).

This description, however, appears to mean different things to different people, and critics argue that some TJ proponents have overstepped the original modest aspirations (King et al., 2009) and, in some cases, misinterpreted the potency of the TJ idea. Brakel (2007), for example, suggests the TJ enthusiasm advocated in some publications verges “on the mystical, if not the occult” and appears to link TJ to “new-age law” (p. 467). Other critics are less inclined to dismiss TJ as intellectually nonsensical and unintelligible, but raise central questions around the precision of the term “therapeutic” and whether the vague language offers anything new for an
understanding of the law (anticipated by Slobogin (1995) who called it “the definitional issue”). That is, TJ’s unclear nomenclature may make it indistinguishable from many other jurisprudence approaches that already encourage the beneficial-versus-harmful employment of the law (King et al., 2009). Indeed, Roderick and Krumholz (2006) argue this lack of clarity disqualifies TJ as a testable theory for want of a workable conceptual framework or a definition that could somehow be operationalized. The authors invoke the logical positivist and scientific rigour described by Karl Popper, the father of scientific falsification, to suggest TJ’s uncertain language makes the theory impossible to falsify, unscientific and therefore empirically not very helpful (Roderick & Krumholz, 2006).

Arrigo (2004), meanwhile, finds TJ’s failure as theory arises from its shortcomings as transformative philosophy and from its assumptions concerning “the law’s legitimacy … [and] the ideology, power and violence embedded within legal narratives” (p 25). This view appears to require normative transformation (a clear change in values) to legitimate TJ as a theory, which is negated by TJ’s “central normative stance” (King et al., 2009). For example, the uncertainty in the use of the term “therapeutic” appears, in some instance, to create opportunities for “covert paternalism” legitimizing the medical authority in the application of TJ principles (Freckelton, 2008, p 586). Others argue TJ’s main failure from a normative perspective arises again from the definitional issue and the resulting difficulty TJ has elevating itself (and its values) relative to other legal or policy values and considerations (Johnston, 2012). That is, TJ is not adequate as theory, because it offers no clear normative benchmark for evaluating the relative value of one answer over another in any therapeutic consideration of the law as policy (Johnston, 2012). As Wexler (1992) describes, “therapeutic jurisprudence does not itself purport to resolve the value questions; instead it sets the stage for their sharp articulation. “ (p. 518).
In the main, however, concerns about TJ’s performance as theory can be usefully thought of in terms that have more to do with the variously intended meanings of “theory” within these critiques than with other conceptual or definitional issues raised by the TJ approach. The confusion is understandable in light of assertions that Wexler’s and Winick’s founding arguments for TJ are essentially “paradigmatic” (Slobogin 1995, p. 195), and yet, TJ is “merely a conceptual framework and not a true ‘theory’” (Wexler, 2011, p. 33; emphasis added). For example, King (2008) faults Roderick and Krumholz because they “incorrectly contend that therapeutic jurisprudence is a theory” (p. 1117) but, at the same time, he describes TJ as a guide and as a legitimate vehicle for law reform and “improving how the law operates” (p. 1113). While some are emphatic that TJ is “no more is no more and no less than ‘the study of the role of the law as a therapeutic agent’” (Freckelton, 2008, p. 576) and “is not a theory” (King et al., 2009), these same authors agree that TJ is a useful framework and “heuristic” in the study of the law’s impact on individual wellbeing. To offer insight into the utility of TJ, therefore, many of these assertions require significant clarification concerning the use, context and understanding of the term theory. This is addressed in more detail in the next section.

3.5 Descriptive and Methodological Theory: A Constructivist View

In truth, the term “theory” is profoundly varied in the way it is understood and used by researchers (Gibson & Brown, 2009; Sandelowski, 1993). In general terms, theory arranges concepts or sets of concepts to help define or explain a phenomenon (Silverman, 2010). Theory can be descriptive, predictive or normative, but always involves description per se—“every theory being nothing else but concise generalized description, in fact the only accepted description” (Morgenstern, 1972). Predictive and normative theories provide a theoretical basis for testing or challenging predictions concerning some phenomenon (e.g., does the data support
the theory or vice versa?) or for outcome valuation (e.g., is the result “good” or “bad”?), while the descriptive theory can be considered “nothing else but concise, generalized description” of phenomena from which “one proceeds … to heuristic reasoning” (p. 700). The meaning of theory can also change (and is frequently confused) if its associated verb is used intransitively (to theorize about something) or transitively (to theorize the something itself) (Smallwood, 1997). Meanwhile, some theories are considered “ideal theories” (with the assumption that everybody complies with them) and are distinguished by “nonideal theories” for which full compliance cannot be assumed (Stemplowska, 2008).

Within the exact sciences, theory is often used as synonymous with a scientific paradigm (e.g., Kuhn, 1962) or is sometimes considered to be any testable scientific hypothesis (e.g., Popper, 1959). Within social sciences and other inexact sciences, meanwhile, the meaning of theory offers a variety of “guises and disguises,” and it often functions at different levels (Gibson & Brown, 2009, p 11). Assumed meanings of “legal theory”, for example, are the subject of scholarly “turf wars,” because the term is sometimes understood to mean the same thing as “jurisprudence” or as “the philosophy of law” or sometimes as both, but at other times it is used more broadly to encompass these concepts and a variety of other perspectives as well (Solum, 2011). Gibson & Brown (2009) and Yin (2009) distinguish “grand theory” in social science as a broad-ranging theoretical system that, in itself, is focused on examining or creating theory, and they warn against using it in qualitative research because it detracts from the empirical work of research. Instead, Sandelowski (1993) suggests two useful functions for theory. A “primary” function for theory in qualitative research is as a deductive conceptualization of some phenomenon that serves as a kind of “theoretical basis” for using the data to test or challenge the theory. A second function for theory, meanwhile, is as a rationalization or justification for a
particular methodological approach, “accurately interpreting, and evocatively and imaginatively representing data” (p. 217).

The definition of what makes an effective theory is, therefore, imprecise and depends significantly on its context (Gibson & Brown, 2009): “there is nothing precise about the term [i.e., theory], or particularly generalizable about it as an activity” (p. 11). Consequently, how the term theory is used continues “to raise questions concerning its proper role” (Sandelowski, 1993, p. 213).

In law, descriptive theory—which comprises a set of general statements used to “describe” (rather than “justify” or “explain”) something—is a key and valuable tool (Moore, 2000). In the past, some authors have criticized descriptive theory because of the mistaken belief that it must, as unquestionable theory, take priority in decision-making (that it must be “foundational”). Others deride descriptive theory for encouraging people to deduce particular characteristics from general standards, for being too canonical, and for ultimately not having any meaningful impact on the real world (Moore, 2000). But these criticisms are, generally speaking, overstated, and theory remains inherently useful: “Theorizing an area of law allows us to grasp quickly what such doctrines are about, allows us to extend those doctrines in a principled way, and allows us to render such doctrines consistent in the sense that they collectively promote equality. Theories … do all of these things without for a moment succumbing to simple-mindedness in decision procedures or naivete about foundational status” (Moore, 2000, p. 740). This essential value in descriptive theory resides in part in its “heuristic function” (p. 735). That is, theory in constructivist inquiry is both useful and practical as an heuristic, guide or blueprint in researcher decision-making (Gibson & Brown 2009; Merriam, 2009; Silverman, 2010; Yin, 2009) without being a testable statement about the nature of phenomena.
Constructivism (also called “interpretivism” (Merriam, 2009) or “constructionism” (Patton, 2002) assumes “that reality is socially constructed, that is, there is no single, observable reality. Rather, there are multiple realities, or interpretations, of a single event. Researchers do not ‘find’ knowledge, they construct it” (Merriam, 2009, p. 8-9). Constructivist research begins with the perspective that our understanding of reality is both manifold and context-bound (Merriam, 2009). Constructivism is therefore relativist and subjective. It depends on interpretations of reality (it is hermeneutic) and incorporates opposing ideas and opinions (it is dialectic) (Patton, 2002, p. 98). From a constructivist point of view, “meanings are varied and multiple, leading the researcher to look for the complexity of views rather than narrowing meanings into a few categories or ideas. … The researcher’s intent is to make sense of (or interpret) the meanings others have about the world” (Creswell, 2009, p. 8).

Constructivism is the most common overarching paradigm (or worldview or perspective) for situating qualitative research (Merriam, 2009). As distinct from quantitative studies that rely on numeric data and pursue (as much as possible) objectivity, qualitative inquiry seeks to understand how people interpret experiences from their own point of view, how they ascribe meaning to them and how they construct their worlds (Denzin & Lincoln, 2005; Flick, Kardorff & Steinke, 2004; Merriam, 2009). The steps that comprise this research can be usefully thought of as the “levels of analysis” set out by Silverman (2010). These are hierarchic and linearly arranged and span steps between the initial philosophical paradigm or worldview (the author uses the term “model”) to an analysis of the findings (Figure 3.1). Reflecting its importance, theory has a central place in this “levels of analysis” schematic, connecting concepts that arise from a particular worldview to the main impetus for conducting research in the first place—that is, the research question(s) and in some cases, the related propositions. “Theories provide
complex and comprehensive conceptual understandings of things that cannot be pinned down: how societies work, how organisations operate, why people interact in certain ways” (Reeves et al., 2008, p. 631).

Figure 3.1. The Role of Theory as Central within the “Levels of Analysis” in Constructivist Qualitative Research. Adaptation of Silverman (2010) with additional terms and elements suggested by Creswell (2009), Gibson & Brown (2009) and Yin (2009).

Theory works in this sense—i.e., as a methodological theory—by encouraging greater insight and a more thorough engagement with research findings (Gibson & Brown, 2009; Jackson & Mazzei, 2012; but see Avis, 2003 for contrary argument) and can affect research
quality by influencing study design, decisions about methodology and, in turn, the qualitative analysis itself (Kelly, 2010). However, the function or theory in qualitative inquiry varies (Creswell, 2009; Gibson & Brown, 2009; Kelly, 2010). It may have multiple roles to play that affect every research stage (Kelly, 2010), and “[h]ow theory is used affects its placement in a qualitative study” (Creswell, 2009, p. 65). Theory is, for instance, considered vital to qualitative research involving case study, a research method for investigating complicated, in-depth phenomena relevant to individuals, organizations, social issues and political matters (Yin, 2009). For Yin (2009), this methodological role for theory is its key function in case study, providing the essential “blueprint” for directing the research and supplying a means to generalize results for research that has been built around one or a few cases (Yin, 1999, 2009). Thus, as Yin (2009) points out, “theories can be practical and not just academic” (p. 54).

3.6 Therapeutic Jurisprudence as Theory Revisited: An Example from Arctic Court Research

As described earlier, the role of TJ as “theory” is contentious. While many critics appear to focus on its possible limits as predictive or normative theory (Freckelton, 2008; King et al. 2009), many others argue for the usefulness of describing TJ as a legal theory (Birgden, 2004; Birgden, 2009; Birgden & Perlin 2009; Hora et al., 1999; or as a theoretical framework, Campbell, 2010; Goldberg, 2011). Birgden (2009), for example, argues that the value questions surrounding TJ do not affect its role as theory but are important only in distinguishing the idea as philosophy (p. 50): “[T]herapeutic jurisprudence can be defined as a legal theory if it explains or predicts behavior without providing an opinion on how the law ought to function.” (p. 48). TJ fulfills this role (as theory) by describing the therapeutic consequences of rules (“offering descriptive propositions that can be empirically validated”) even without statements regarding
the value of those rules (Birgden, 2009, p. 48). In research directly relevant to the intersection of health and law, TJ relies on health science in the discipline of psychology to reveal how the law can affect an individual’s well-being (Wexler, 1996; Wexler & Winick, 1996; Winick 2013). TJ can be, according to Birgden (2004), a legal theoretical supplement to the explanatory power of psychological theories of offender rehabilitation which address the “internal responsivity” (the ways in which an individual can affect his or her rehabilitation) by similarly addressing “external responsivity” (how external factors such as the law, the legal system and its relevant players affect an offender’s rehabilitative outcome).

Despite the controversy, TJ has arguably been touted as a useful descriptive or methodological theory from the beginning—although not necessarily in the same language—when it was described early on by Wexler (1995, p. 221) as an “heuristic for better seeing and understanding the law” in the context of its therapeutic/anti-therapeutic implications. The term “heuristic” in this sense means “an approach that focuses one’s attention during learning, construction, discovery, or problem solving” (VanWynsberghe and Khan, 2007, p 2). Since then, many have echoed this characterization of TJ while assiduously avoiding the word “theory,” describing TJ as “a mechanism, vector, prism, lens, and heuristic for viewing the content of law and legal process, and as having the potential for reform of the law” (Freckelton, 2008, p 575). That is, TJ, as a coherent set of concepts, has long performed the definitional task required of descriptive or methodological theory in constructivist inquiry: “as a trick (or set of tricks) for helping to gain insights into the empirical world” (Gibson & Brown, 2009, paraphrasing sociologist Howard Becker, p. 19).

The utility of TJ in the role of methodological theory is illustrated using as an example my research. This work explores the potential for criminal court mental health diversion
initiatives in remote Arctic communities in the Canadian territory of Nunavut where these programs do not currently exist. Understanding that the principles of TJ are important to the delivery of courtroom “problem-solving” (Winick, 2013), the research uses a qualitative multiple case study to explore the capacity of Arctic criminal courts to deliver the principles of TJ in criminal courts that face the scarce resources, geographic isolation and unique cultural considerations that characterize Arctic communities. The research examines this question by exploring the experiences of justice and health professionals, representatives of community organizations and key community members in three communities in Nunavut. The study extends and develops recent research that has explored the use of the underlying principles that animate problem-solving courts in conventional court settings to expand the availability of the problem-solving approach in non-specialized court settings (Farole, Puffett & Rempel, 2007; Farole, Puffett, Rempel, & Byrne, 2004, 2005; Farole, Rempel, Byrne, & Chang, 2008; Porter, Rempel, & Mansky, 2010; Wolf, 2007b; Wolf, 2008).

For this research, experimentally derived and/or longitudinal data were unavailable so an understanding of how the law and health systems function in the context of remote northern communities must rely on the individual and shared meanings of those working in those systems as well as from community members affected by the systems. That is, the research is necessarily constructivist, and relevant findings are expected to emerge from locally, specifically and personally constructed, subjective understandings of the phenomena and to involve an interpretation of the varied and opposing points of view that are uncovered (Guba & Lincoln, 2005). Constructivism is also useful in examinations of phenomena across different disciplines (Denzin & Lincoln, 2005), such as health and justice, and is equipped to incorporate complexity. As described above, the success of constructivist research of this kind is closely linked to the
utility and power of its methodological theory to perform as an “heuristic” for guiding and illuminating the work.

For this study, for example, TJ was specifically invoked to direct the key researcher decisions that followed after the selection of theory in the levels of analysis for the research (see Figure 3.1). In particular, TJ was found to provide crucial guidance affecting the formulation of research questions, the identification of my key propositions, the decision to use a qualitative research methodology, the selection of a multiple case study as the method, as well as, the approach to the organization and analysis of the research findings. For example, employing TJ as theory in this study narrowed the identification of relevant literature from law, health and social science that allowed distillation of the key theoretical principles that animate TJ (e.g., Winick 2002, 2013). Since TJ functions as the foundation for the criminal court “problem-solving” (Winick, 2013) at the heart of criminal court mental health diversion, TJ as methodological theory also steered the literature review to uncover articles that identify—from a mainly empirical perspective—the main principles, goals and/or objectives derived from an understanding of “problem-solving courts” in other jurisdictions (e.g., Farole, Rempel, Byrne, & Chang, 2008; Hora, 2011; Porter, Rempel & Mansky, 2010; Wolf, 2007(b); Wolf, 2008). These review findings were then consolidated to align the theoretically deduced principles of TJ with the principles identified as essential to existing operational problem-solving courts to develop and hone the research questions and to create a cascading logical framework (e.g., Cropper, Berg, Culligan & Radstone, 2010) that served to distill specific research propositions directly relevant to the theory.

That is, the literature helped to situate the theoretical principles of TJ as the foundation for the organizing principles identified from problem-solving courts, to further break these
problem-solving principles into their component goals for each principle and into the component objectives for each goal. This approach allowed the effective categorization of data and the subsequent identification and analysis of research “themes” (for e.g., Morse, 2008). The general concept for this framework is based on a model developed by Porter, Rempel & Mansky (2010) which used problem-solving principles to identify specific problem-solving court “performance indicators” in order to judge the effectiveness of problem-solving in specialized and conventional courts. This framework focused the inquiry and influenced the research scope, design and selection of participants necessary to meet the propositions suggested by TJ as the study’s theory. Importantly, the framework also served as a link between the study’s propositions and TJ theory to satisfy Yin’s (2009) notion of “replication logic” in validating the findings.

The purpose of this chapter is to argue that TJ scholars should consider the usefulness of TJ as a descriptive and methodological theory in interdisciplinary research before dismissing its utility as theory altogether. Further details about the specific application of TJ as theory in the above example are too extensive to treat here. They appear elsewhere to describe in stepwise detail the utility of TJ as an “heuristic” and research guide to the study’s research questions and propositions (Chapter 4; Ferrazzi & Krupa, 2014) and to its methodology, methods and findings used in the analysis (Chapter 5). The emphasis of this paper is more general: it suggests that recent positivist inclinations to dismiss the usefulness and value of TJ as theory may be narrow and limiting, and that researchers may benefit from a consideration of TJ’s potential and significance as a tool in constructivist inquiry.

3.7 Conclusion

Among TJ’s most caustic critics, Brakel (2007) is also perhaps among the most colourful: TJ “cannot deliver because it lacks content,” he writes, and he describes a leading book on the
subject as “bordering on the mystical, if not occult… encompassing to the point of being soft-headed” (p 468). It is Freckelton (2008) who concludes that, in truth, Brakel’s critiques commit “[t]he fallacy … of positivism and mistaken expectation” (p 589). Yet, at the same time, Freckelton agrees in his assessment of Brakel’s overall complaint “that therapeutic jurisprudence is not a coherent, homogenous legal doctrine.” Indeed, critics of TJ appear to demonstrate a very similar positivist bias and consequent assumptions about the definition and narrow utility of “theory” as it applies to the TJ concept (e.g., Freckelton, 2008; King et al., 2009).

In understanding the role of theory in constructivist inquiry, we can develop a better and clearer view of the utility of TJ as a theoretical framework. As a descriptive and methodological theory, TJ can be usefully seen as providing a legal theoretical context as well as an important heuristic for guiding and illuminating research, especially in the complex interdisciplinary arena of mental health and criminal justice. For example, TJ was instrumental to the examination of the roles of the health and justice systems as well as community players in responding to offenders with mental illness in criminal courts in remote, mainly Inuit, Arctic communities. As a legal theory whose underlying principles point to combined ideas of rehabilitation and justice, TJ helped develop the research framework and was a vital guide, affecting decisions regarding the research questions, the literature, the study design, the data handling, and the analysis.

Theory adds important depth to constructive research. While debate continues about whether TJ has the credentials to be considered a theory from a formal and normative perspective, it can nevertheless usefully be considered to satisfy the definition of theory from the point of view of constructive qualitative methodology. That is, TJ’s utility as theory should not be so readily dismissed if researchers are interested in taking advantage of the full scope of its
guidance for directing inquiries to improve our understanding at the complicated intersection of mental health and law.
Chapter 4 – Therapeutic Jurisprudence in Health Research: Enlisting Legal Theory as a Methodological Guide in an Interdisciplinary Case Study of Mental Health and Criminal Law
4.1 Abstract

Studies that seek to understand and improve health care systems benefit from qualitative methods that employ theory to add depth, complexity and context to analysis. Theories used in qualitative health research typically emerge from social science, but these can be inadequate for studying complex health systems. Mental health rehabilitation (MHR) programs for criminal courts are complicated by their integration within the criminal justice system and by their dual health-and-justice objectives. In a qualitative multiple-case study exploring the potential for these mental health court programs in Arctic communities, this research assesses whether a legal theory, known as therapeutic jurisprudence (TJ), functions as a useful methodological theory. TJ, recruited across discipline boundaries, succeeds in guiding this qualitative inquiry at the complex intersection of mental health care and criminal law by providing a framework foundation for directing the study’s research questions and the related propositions that focus the analysis.

4.2 Introduction

Studies that seek to understand and improve health care systems often face difficult choices when selecting and refining research methods sufficiently robust to capture both the nuance and the complexity that characterize these systems. While recent health system research has seen an increased emphasis on qualitative methods that are considered “particularly useful for addressing the complex issues related to improving health care quality and implementing system change” (Tripp-Reimer & Doebbling, 2004, p. S65), many authors insist that qualitative approaches must be conceptually grounded in theory to be effective (Kelly, 2010). While theories are by definition only conjecture about the nature of reality (Morse, 1992), they are nevertheless useful tools for organizing sets of concepts in ways that help to define or explain
some phenomenon (Silverman, 2010), and help researchers “to move beyond basic description to
in-depth description, interpretation and explanation” (Kelly, 2010, p. 286). Theories are often
considered critical, for example, in qualitative research that uses case study methods (Yin, 2009),
which are often employed by researchers attempting to understand health care organizations
(Anderson et al., 2005).

In many circumstances, however, finding a suitable theory appropriate to a particular
qualitative case study is difficult (Gibson & Brown, 2009), and this difficulty is especially acute
when the focus of an inquiry is a multipart health system affected by critical relationships
(Anderson et al., 2005). Indeed, Anderson et al. (2005) argue, “[t]raditional case study designs,
although often helpful, have been driven by theoretical models that are not congruent with the
nature of the health care organizations we study” (p. 670). Instead, qualitative case studies in
these instances may be best developed using novel theoretical models to drive the research. The
qualitative health system research that is the subject of this paper illustrates the challenge of
selecting an appropriate theory. The research uses a qualitative multiple-case study to explore the
potential for a mental health rehabilitation initiative complicated by its integration within the
criminal justice system in Canadian Arctic communities in Nunavut. The research examined the
potential for developing a program known as criminal court mental health diversion, a complex
program that diverts offenders with mental illness from the justice system to community
treatment to provide a “rehabilitative response to what would otherwise have been criminally
sanctioned behaviour” (Schneider, 2010, p. 202). This complex health-and-justice backdrop—
including the need to incorporate perspectives from both health and justice professionals (as well
as community members) and to concurrently address complementary objectives from both the
discipline of health science and the discipline of law—complicated the choice of theory that could usefully guide and illuminate my qualitative case study data and analysis.

TJ can be considered a legal theory (Birgden, 2004; Birgden, 2008; Birgden & Perlin, 2009; Hora et al., 1999) that uses knowledge in psychology to reveal how the law can affect an individual’s well-being (Wexler, 1995; Wexler & Winick, 1996; Winick, 2013). It provides an “heuristic for better seeing and understanding the law” (Wexler, 1995, p. 221). TJ is also considered the “philosophic foundation” for the family of courts and court programs that focus on “problem-solving” to address the underlying causes of crime (Winick, 2013), and these include mental health court programs intended to divert offenders with mental illness away from prosecution and toward rehabilitation (Schneider, Bloom & Heerema, 2007).

This chapter assesses whether the legal notion of TJ can usefully fulfill the role of theory to illuminate and guide a qualitative case study at the intersection of health and law. It identifies elements that comprise an effective theoretical framework in qualitative research and assesses the performance of TJ in satisfying these elements in Arctic criminal court mental health diversion research. In particular, this research asks whether the theoretical concept of TJ can practically connect the worldview used to illuminate the inquiry and the research approach by creating a framework foundation for both the research questions and the related propositions necessary to better direct and focus the research methods and analysis. To my knowledge, this is the first time TJ has been assessed for effectiveness as a theory, in the narrow, methodological sense, for the purpose of informing qualitative health research.

4.3 Theory in Constructivist Qualitative Inquiry

For many authors, theory plays an essential role in qualitative research (Creswell, 2009; Gibson & Brown, 2009; Jackson & Mazzei, 2012; Kelly, 2010; Reeves et al., 2008; Silverman,
2010) by connecting concepts that arise from a particular philosophical worldview to the main impetus for conducting research in the first place—that is, the research question(s) and the related propositions. While researchers must be careful not to mistake theory for “fact,” it is nevertheless an important tool for organizing data and making sense of reality (Morse 1992). Silverman (2010), for example, situates theory centrally in the qualitative research process. The author describes multiple “levels of analysis” that characterize the pathway between a study’s purpose and the ultimate interpretation of the research findings. Figure 4.1 illustrates Silverman’s (2010) “levels” but includes additional terms and elements suggested by Creswell (2009), Gibson & Brown (2009) and Yin (2009). In this schematic, researcher decisions about theory follow directly from a study’s particular worldview and from the concepts arising from that perspective. Theory, then, helps researchers arrange these concepts (or sets of concepts) as deductive guides to orient an inquiry in a way that can best help define or explain a phenomenon.

In this study, which explores how the health and justice systems can better respond to offenders with mental illness in criminal courts in the Canadian Arctic territory of Nunavut, a generally constructivist worldview is adopted. That is, the data rely on the perspectives of those who work in these systems and of community members for whom these systems are directly relevant. The research asks how these people experience and interpret their current roles in dealing with offenders with mental illness in Arctic criminal courts, why they think they have these experiences now and how they think these experiences could be changed “for the better” in the future. In the absence of any capacity for experimental manipulation or for longitudinal studies of people with mental illness who have direct experience with these systems, this study instead relies on the experiences and impressions of involved professionals and others regarding
what “for the better” might look like (e.g., some criminal court mental health rehabilitation opportunities are better than none, some are better than others and/or more are better than less).


| Purpose: The overall intent of the study (“builds on a need (the problem) and is refined into specific questions”) (Creswell, 2009, p. 112). |
| Concept: An idea deriving from a given worldview (Silverman, 2010). |
| Theory: A set of concepts used to define or explain some phenomenon (Silverman, 2010, p. 111). |
| Research Questions: Questions suggested by “the concepts and analytic focus specified by a given theoretical orientation” (Gibson & Brown 2009, p. 31). |
| Propositions: “Directs attention to something that should be examined within the scope of the study” (Yin, 2009, p. 28). |
| Methodology: A general approach to studying research topics (Silverman, 2010). |
| Method: A specific research technique (Silverman, 2010) with its specific design. |
| Findings: Can modify propositions through feedback mechanisms (Silverman, 2010). |

This constructivist approach is the most common worldview employed in qualitative research (Merriam, 2009). Indeed, qualitative research is a means of inquiry that seeks to understand how people interpret experiences from their own point of view, how they ascribe
meaning to them and how they construct their worlds (Denzin & Lincoln, 2005; Flick, Kardorff & Steinke, 2004; Merriam, 2009). Constructivism (also called “interpretivism” (Merriam, 2009) or “constructionism” (Patton, 2002; but see Crotty, 1998 for a distinction)) assumes “that reality is socially constructed, that is, there is no single, observable reality. Rather, there are multiple realities, or interpretations, of a single event. Researchers do not ‘find’ knowledge, they construct it” (Merriam, 2009, p. 8-9). That is, constructivism is relativist and subjective, and any inquiry conducted from this perspective necessarily relies on interpretations of reality (hermeneutic) and incorporates opposing ideas and opinions (dialectic) (Patton, 2002, p. 98).

Theories help in constructivist inquiry because, as Reeves et al. (2008) describe, they “provide complex and comprehensive conceptual understandings of things that cannot be pinned down: how societies work, how organisations operate, why people interact in certain ways” (p. 631). Theory is widely acknowledged as important for encouraging greater insight and a more thorough engagement with data (Gibson & Brown, 2009; Jackson & Mazzei, 2012; but see Avis, 2003 for contrary argument) and can affect research quality by influencing research design, decisions about methodology and, in turn, the qualitative analysis itself (Kelly, 2010). However, the function of theory in qualitative inquiry varies (Creswell, 2009; Gibson & Brown, 2009; Kelly, 2010). It may have multiple roles to play that affect every research stage (Kelly, 2010), and “[h]ow theory is used affects its placement in a qualitative study” (Creswell, 2009, p. 65). For example, theory can be considered to fulfill “descriptive,” “predictive” and “normative” functions (Morgenstern, 1972). Predictive and normative theories provide a theoretical basis for testing or challenging predictions concerning some phenomenon (e.g., does the data support the theory or vice versa?) or for outcome valuation (e.g., is the result “good” or “bad”?), while the
descriptive theory can be considered “nothing else but concise, generalized description” of phenomena from which “one proceeds … to heuristic reasoning” (p. 700).

Theory has many “guises and disguises” and functions at different levels. In particular, the term “theory” is varied in the way it is understood and used by researchers (Gibson & Brown, 2009; Sandelowski, 1993). How it is used continues “to raise questions concerning its proper role” (Sandelowski, 1993, p. 213). Defining what makes an effective theory, therefore, is a necessarily imprecise enterprise and, as Gibson & Brown (2009) point out, discussions about theory depend significantly on context. As these authors warn, “there is nothing precise about the term [i.e., theory], or particularly generalizable about it as an activity” (p. 11).

For example, Gibson and Brown (2009) and Yin (2009) caution against the use of “grand theory”—that is, a broad-ranging theoretical system that, in itself, is focused on examining or creating theory—because it distracts researchers from empirical investigation. Instead, Sandelowski (1993) suggests two useful functions for theory. A “primary” function for theory in qualitative research is as a deductive conceptualization of some phenomenon that serves as a kind of “theoretical basis” for using the data to test or challenge the theory. The author contrasts this with a second function for theory as a rationalization or justification for a particular methodological approach, “accurately interpreting, and evocatively and imaginatively representing data” (p. 217). This paper concerns theory in the sense of this latter, mid-level, and methodological role and is referred to in this paper as “methodological theory” in the manner of Avis (2003).

Theory, therefore, arises from philosophical fundamentals but functions pragmatically as a guide whose effects on qualitative research “can be practical and not just academic” (Yin, 2009, p. 54). In particular, theory functions in qualitative research to connect the purpose of a
study and the concepts that arise from a particular worldview to a practical understanding of the research questions that need to be asked and the propositions that need to be addressed (Figure 4.1). As a coherent set of concepts that help define or explain phenomena (Silverman, 2010), theory also specifies “the concepts and analytic focus” that, in turn, give rise to the research questions (Gibson & Brown, 2009, p. 31) and/or the propositions (e.g., Stake, 1995). Theory can affect other researcher decisions as well, and its role influencing the data collection and analysis of this research—that is, the methodology, choice of method and the interpretation of findings—is described in detail elsewhere (Chapter 5). In short, theory may be best characterized as a guide to qualitative inquiry that provides a specific and pragmatic grounding for key research steps that deductively align otherwise inductively derived data with a study’s initial purpose and overarching worldview.

4.4 Therapeutic Jurisprudence as Theory

TJ recognizes the law—including the way it is applied and the people (lawyers, judges, etc.) who apply it—as a social force with both therapeutic values to be maximized and counter-therapeutic consequences to be minimized, as long as other judicial and legal values are not compromised as a result (Wexler & Winick, 1996; Winick, 2000, 2013). The term “therapeutic jurisprudence” was first coined in 1987 (Hora et al., 1999) and has been rapidly growing in influence (Freckelton, 2008; Wexler, 2008; Winick, 2013). Relying on insights developed in psychiatry, psychology, criminology, and social work (Wexler, 2008), TJ is “an interdisciplinary method of legal scholarship that aims to reform the law in an effort to improve the psychological and emotional well-being of those affected by the legal process” (Winick et al., 2010, p. 428). TJ asserts that understanding legal rules and the way they are applied as social forces will pave
the way to effectively reshaping or redesigning the law to minimize its anti-therapeutic effects (Winick 2013).

TJ is frequently described as a legal theory (Birgden, 2004; Birgden, 2009; Birgden & Perlin 2009; Hora et al., 1999; or as a theoretical framework, Campbell, 2010; Goldberg, 2011). It can be considered, in a general sense, “normative” (i.e., a value-based proposition) in its valuation of offender rehabilitation as universally desirable from both a legal and a health perspective, all else being equal (Birgden, 2009; Winick, 1997) but it does not need to be: “[T]herapeutic jurisprudence can be defined as a legal theory if it explains or predicts behavior without providing an opinion on how the law ought to function.” (Birgden, 2009, p. 48).

In more practical terms, TJ is considered the “philosophic foundation” for the recent proliferation of hundreds of what are known as “problem-solving courts” (Winick, 2013). Problem-solving courts are a family of courts that have emerged in a variety of legal arenas over the past 30 years and that attempt “to understand and address the underlying problem that is responsible for the immediate dispute, and to help the individuals before the court to effectively deal with the problem in ways that will prevent recurring court involvement” (Winick, 2013, p. 211-212). In the criminal court context, problem-solving courts address the individual and social problems that explain criminal behavior (Council of State Governments, 2005; Mirchandani, 2008; Schneider, Bloom & Heerema, 2007) as well as structural and operational issues in the justice system (Berman & Feinblatt, 2003) by adhering to suites of problem-solving principles (Wolf, 2007a). Problem-solving courts include mental health courts but also drug treatment courts, domestic violence courts and others. These courts are sometimes generally described as relying on the application of key principles from TJ—called “instrumental prescriptions”—to direct courts in their problem-solving functions (Winick, 2013). Others see TJ most commonly
framing the approaches of mental health courts and drug courts, while other paradigms (accountability and community justice) are central to other problem-solving courts (Porter, Rempel, & Mansky, 2010).

TJ is now influential in a variety of legal arenas, from criminal, family and civil law to tort law, industrial law (Freckelton, 2008) or to law more generally (Winick, 2013) but it first emerged in the area of mental health law (Wexler, 2008; Winick, 2013). In the criminal context, it offered a theoretical answer to the challenge of increasing numbers of people with mental illness over-represented in the criminal justice system. In several Canadian cities and elsewhere, the concept of rehabilitation-oriented TJ underpins approaches to specialized courts and programs aimed at people with mental illness in conflict with the law. Mental health courts and programs are built upon the recognition that untreated mental illness renders an individual more susceptible to attracting the attention of the police making them vulnerable to criminal justice involvement (Schneider, 2007). These courts and programs are usually circumscribed by specific operational formulae, such as a dedicated court with a separate docket for identified offenders, specially trained court staff, prosecutors, judges and defence lawyers, as well as other dedicated court resources considered essential to the functional delivery of therapeutic objectives (Almquist & Dodd, 2009; Casey & Rottman, 2005; Council of State Governments, 2005; Redlich, Steadman, Monahan, Robbins, & Petrila, 2006; Schneider, Bloom, & Heerema, 2007; Stefan & Winick, 2005; Thompson, Osher, & Tomasini-Joshi, 2007).

4.5 Therapeutic Jurisprudence as Methodological Theory: An Example from Research into Mental Health Court Diversion in Arctic Communities

In remote Arctic communities in the Canadian territory of Nunavut, problem-solving courts and diversion programs for people with mental illness do not exist, and the capacity of
criminal courts to deliver the objectives of TJ is constrained by scarce resources, geographic isolation and unique cultural considerations. These issues contribute to the likelihood that offenders from northern communities, many of them Inuit, will face jail and other criminal sanctions for crimes that have mental illness at their root. The purpose of this research is to extend a theoretical and empirical understanding of TJ and its underlying principles to examine how criminal courts in Nunavut can better address the rehabilitation of offenders with mental illness.

Given the purpose of this study and the inaccessibility of other experimentally obtained or longitudinal data, an understanding of how the health and legal systems function in the context of remote northern communities was considered best derived from the individual and shared meanings of those working in those systems. Consequently, a constructivist worldview was chosen as the appropriate perspective for this inquiry. That is, the relevant findings were expected to emerge from locally, specifically and personally constructed, subjective understandings of the phenomena and to involve an interpretation of the varied and opposing points of view that are uncovered (Guba & Lincoln, 2005). Constructivism is also useful in examinations of phenomenon across different disciplines (Denzin & Lincoln, 2005) and is equipped to incorporate complexity. Many of these same constructivist concepts—a hermeneutic, relativist and dialectically derived understanding, a capacity for exploring complex phenomena and an applicability across disciplines—align with the theoretical principles of TJ (Table 4.1).
Table 4.1: An example of aligning therapeutic jurisprudence with constructivism and case study.
For many researchers, the key definitional task for methodological theory in qualitative research is “as a trick (or set of tricks) for helping to gain insights into the empirical world” (Gibson & Brown, 2009, paraphrasing sociologist Howard Becker, p. 19). Anaf et al. (2007) provide an example of this approach in their argument for combining systems theory with case study to create an “heuristic model” for understanding the role of physiotherapists within the systems context of Australian emergency rooms. In their study, systems theory offered a kind of intellectual spotlight for directing researchers to considerations of research design and an interpretation of findings suited to the nature of their health settings (p 1309). The term “heuristic” in this sense means “an approach that focuses one’s attention during learning, construction, discovery, or problem solving” (VanWynsberghe & Khan, 2007, p 2).

TJ, according to one of its founding authors David Wexler (1995), is foremost an “heuristic for better seeing and understanding the law” in the context of its therapeutic/anti-therapeutic implications (p. 221), including mental health. That is, its intention has always been primarily to provide a practical guide. Indeed, TJ has already shown itself to be a useful tool beyond the discipline of law as a theoretical framework in health research. In studies of health policy, for instance, TJ can expand “the range of questions to ask, with an eye toward health promoting (or not) consequences. Results may help inform new approaches not only to health policymaking, but also health policy implementation, evaluation, and diffusion.” (Campbell, 2010, p. 291). In research directly relevant to the intersection of health and law, TJ relies on health science in the discipline of psychology to reveal how the law can affect an individual’s well-being (Wexler, 1996; Wexler & Winick, 1996; Winick, 2013).

While many researchers describe the usefulness of methodological theory as an “heuristic,” just how, in practical terms, theory succeeds in this role is often unclear. Theory can
inform research from the top down (using a theoretical and conceptual scheme to make deductive sense of findings about a phenomena) or from the bottom up (using findings to inductively clarify and create conceptual ideas) (Gibson & Brown, 2009). In a manner typical of social research (Gibson & Brown, 2009), this Arctic criminal court mental health diversion research invoked both of these approaches. In particular, TJ was employed to connect its theoretical concepts (i.e., rehabilitation and justice from perspectives of both the disciplines of law and health sciences) to the applied goals and objectives of problem-solving courts generally in order to create a clear framework for isolating and describing the two key analytic elements that address the main purpose of the research, the research question(s) and the related propositions. These elements, discussed below, in turn affect other key theory-informed research practices outlined by Gibson and Brown (2009) such as the methodology (e.g., qualitative research), the method (e.g., multiple case study) and analyzing the findings.

### 4.6 The Research Questions

Among the key roles for TJ as theory is its guidance in formulating and revising the research questions. Theory, in this sense, orients the “concepts and analytic focus” that guide “ways of asking questions” for the study (Gibson & Brown, 2009, p. 31). This is abetted by theory’s role in helping to identify and engage with the relevant literature which, in turn, “forms the context in which research is conducted” (Gibson & Brown, 2009, p. 31). Using TJ and the research purpose as a starting place, the research began by asking, “How can TJ as theory elevate and illuminate the practical issues of dealing with offenders with mental illness in Arctic criminal courts from the perspectives of health and justice professionals, representatives of community organizations as well as key community members?”
Peer-reviewed and grey literature was retrieved using subject heading and free-text searches of scholarly databases and other sources for health, law and social science, focusing on TJ, TJ in the context of mental health and criminal courts, and on scholarly explorations of “problem-solving courts” currently operating in other jurisdictions, including considerations of the delivery of “problem-solving” in non-specialized, conventional court settings (see, for e.g., Porter, Rempel & Mansky, 2010; Wolf, 2008). This preliminary work uncovered literature identifying the key theoretical principles that underlie TJ (e.g., Conference of Chief Justices and Conference of State Courts Administrators, 2000; Winick 2002, 2013) and the main principles, goals and/or objectives derived from an understanding of “problem-solving courts” in other jurisdictions (e.g., Farole, Puffett & Rempel, 2007; Farole, Puffett, Rempel, & Byrne 2005; Farole, Rempel, Byrne, & Chang, 2008; Hora, 2011; James, 2006; Porter, Rempel & Mansky, 2010; Wolf, 2007(b); Wolf, 2008). Knowing that TJ, the idea, is the foundation for problem-solving, the practice, (Winick, 2002; 2013), the review findings were distilled and consolidated to align the theoretically deduced principles of TJ with the principles identified as guiding existing problem-solving courts. This helped to focus on the key theoretical principles of TJ with the greatest potential for applied impact. This information was then used to hone the research questions (e.g., Table 4.2).

The honed research questions asked, “How do the principles of TJ—as the foundation for the organizing principles of court problem-solving—relate to the experiences of health and justice professionals, members of community organizations and other community members dealing with people with mental illness in Nunavut’s criminal justice system?” and “How can the principles of TJ affect mental health rehabilitation (MHR) for offenders with mental illness in these Arctic communities in the future?” The inquiry was then expressed in terms of the
characteristics considered most distinctive in to the study sites. In particular, participants were asked for their experiences, perceptions and opinions to answer, “How and why do (i) remoteness, (ii) resource considerations, and (iii) Inuit culture affect responses to offenders with mental illness in Nunavut criminal courts?” and “How could these characteristics of remote Arctic communities be accommodated to encourage the implementation of TJ/problem-solving principles in the context of offenders with mental illness in the future?”

Table 4.2 Theoretical principles of therapeutic jurisprudence and operating principles of “problem-solving” courts distilled from literature along with the research questions that follow from them.

<table>
<thead>
<tr>
<th>Principles of therapeutic jurisprudence</th>
<th>Key organizing principles of problem-solving courts</th>
<th>Research questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Therapeutic response:</td>
<td>Problem-solving orientation:</td>
<td>How and why do (i) remoteness, (ii) resource considerations, and (iii) Inuit culture affect responses to offenders with mental illness in Nunavut criminal courts?</td>
</tr>
<tr>
<td>Focus on enhanced well-being of offender</td>
<td>Court (includes judges) is oriented towards problem solving</td>
<td>How can these characteristics of remote Arctic communities be accommodated to encourage the implementation of therapeutic jurisprudence/problem-solving principles in the context of offenders with mental illness in the future?</td>
</tr>
<tr>
<td>Integration of treatment services with judicial case processing</td>
<td>Includes defining target population</td>
<td></td>
</tr>
<tr>
<td>Ongoing judicial supervision includes close monitoring of and immediate response to behavior</td>
<td>Includes links to services and adequacy of services</td>
<td></td>
</tr>
<tr>
<td>Outcome orientation</td>
<td>Includes individualized justice</td>
<td></td>
</tr>
<tr>
<td>Includes focus on outcomes (e.g., rehabilitation outcomes, change behavior, reduce recidivism, voluntary retention in the program)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interdisciplinary/Multidisciplinary:</td>
<td>Collaboration among and between relevant sectors:</td>
<td>How and why do (i) remoteness, (ii) resource considerations, and (iii) Inuit culture affect multidisciplinary/interdisciplinary collaboration/cooperation between justice-health-social service</td>
</tr>
<tr>
<td>Interdisciplinary/multidisciplinary involvement -- is guided by social sciences.</td>
<td>Multidisciplinary/interdisciplinary planning and administration</td>
<td></td>
</tr>
</tbody>
</table>

92
Collaboration with community-based and governmental organizations.

Collaboration within justice system

Collaboration between justice system, health and social service providers, and community-based organizations

-- includes community engagement, such as engaging citizens to solve local problems and public education

-- includes information sharing among and between agencies (along with case confidentiality)

Does not trump other values:

Accountability:

- Court accountability
- Offender accountability
- Health and social service provider accountability
- Community responsibility

How and why do (i) remoteness, (ii) resource considerations, and (iii) Inuit culture affect accountability in Nunavut?

How can these characteristics of remote Arctic communities be accommodated to encourage better accountability?

Does not trump other legal values and considerations, such as due process, predictability in the law, community safety and others.

4.7 The Propositions

TJ, as a theory representing a coherent set of concepts, also provided a critical guide for generating the propositions that, in turn, help to direct the design and analysis for this study—including the selection, interpretation and explanation of relevant data (Reeves et al., 2008). All the propositions were derived from the theory-influenced research questions and from a main, central proposition—that the theoretical principles suggested by TJ can help deliver
rehabilitation-oriented criminal court mental health diversion initiatives for offenders with mental illness in three remote, mainly Inuit Arctic communities with constrained resources.

Although case studies are not required to identify and address propositions as part of a research approach (Baxter & Jack, 2008), the theoretically derived propositions provided a useful guide for developing the study’s conceptual structure (per Stake, 1995). That is, the literature-derived theoretical principles of TJ were used to develop a cascading logical framework (e.g., Cropper, Berg, Culligan & Radstone, 2010) to identify a series of specific research propositions directly connected with the theory yet relevant to the applied elements of the research interests at hand. This is illustrated by the example framework in Table 4.3 (see also the complete framework in Appendix G). The framework uses the literature review, which situates the theoretical principles of TJ as the foundation for the organizing principles identified from problem-solving courts, to further break these problem-solving principles into their component goals for each principle and into the component objectives for each goal. This approach allowed the effective categorization of data and the subsequent inductive identification and analysis of research “themes” (for e.g., Morse, 2008).

Table 4.3. An example illustrating how the logical framework is used to derive the research propositions from the methodological theory (TJ). See Appendix G for complete framework.

<table>
<thead>
<tr>
<th>Principles of therapeutic jurisprudence</th>
<th>Aligned principles of problem-solving courts</th>
<th>Goals of each problem-solving court principle</th>
<th>Objectives (to achieve each goal)</th>
<th>Research Propositions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Therapeutic response</td>
<td>Problem-solving orientation</td>
<td>Early identification, screening and assessment of persons with mental health issues</td>
<td>Early identification and screening of persons with mental health issues for eligibility for court mental health program and assessment using valid screening technique to determine psychosocial</td>
<td>Remote geography of Arctic communities affect mental health identification, screening and assessment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Early identification, screening and assessment of persons with mental health issues</td>
<td>Constrained resources of Arctic communities affect mental health identification, screening and assessment</td>
<td></td>
</tr>
<tr>
<td>Needs</td>
<td>Arctic communities affect the capacity for mental health identification, screening and assessment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individualized treatment/therapeutic intervention plan</td>
<td>Court links individuals to appropriate treatment and therapeutic services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Remote geography of Arctic communities affect the capacity for courts to link individuals to appropriate treatment and therapeutic services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Constrained resources of Arctic communities affect the capacity for courts to link individuals to appropriate treatment and therapeutic services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Inuit cultural considerations in Arctic communities affect the capacity for courts to link individuals to appropriate treatment and therapeutic services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judicial interaction with offender</td>
<td>Judge interacts with offender for effective behaviour modification</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Remote geography of Arctic communities affect the ability of judges to interact with offenders to promote effective behavior modification</td>
<td></td>
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<tr>
<td></td>
<td>Constrained resources of Arctic communities affect the ability of judges to interact with offenders to promote effective behavior modification</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Inuit cultural considerations in Arctic communities affect the ability of judges to interact with offenders to promote effective behavior modification</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The general concept for this framework is based on a model developed by Porter, Rempel and Mansky (2010) which used problem-solving principles to identify specific problem-solving court “performance indicators” in order to judge the effectiveness of problem-solving in specialized and conventional courts. The modified framework focused the inquiry and influenced the research scope, design and selection of participants necessary to meet the objectives using the propositions. Importantly, the framework also served as a link between the study’s propositions and TJ theory to help satisfy Yin’s (2009) notion of “replication logic” in assessing the reliability of the findings. The propositions articulated by the theoretically informed framework, helped guide the inquiry into whether the rehabilitation objectives of criminal court mental diversion initiatives could be met in Arctic communities using the theoretical principles of TJ. The framework was a means for generalizing to new cases (Yin, 2003) by using theory as a “template
with which to compare the empirical results of the case study” (Yin, 2003, p. 32-33). If two or more of the cases supported the notion that the principles suggested by TJ are helpful in delivering rehabilitation-oriented criminal court mental health diversion initiatives for offenders with mental illness in remote, mainly Inuit Arctic communities, replication was considered to have been achieved (Yin, 2003).

4.8 Conclusion

While the overall intent of any study “builds on a need (the problem) and is refined into specific questions” (Creswell, 2009, p. 112), the pathway between the study purpose and its particular research questions is not always clear. Theory offers an indispensable signpost. This chapter describes how the concept of TJ can be enlisted as theory in qualitative health research using case study, becoming a useful model for interdisciplinary inquiry at the nexus of health and law. In particular, the combination of TJ and case study allowed for a rich examination of the roles of the health and justice systems as well as community players in responding to offenders with mental illness in criminal courts in remote, mainly Inuit, Arctic communities. As a legal theory whose underlying principles point to combined ideas of rehabilitation and justice, TJ provided an important “heuristic” and methodological guide that incorporated the complexity of a health system (mental health court diversion) at the intersection of health and law. Its use as theory enabled the identification of specific research questions that guided the study of three cases to reveal both aspects of the whole system, including its dual health-care-and-criminal-justice objectives, but also how the system influences each case and each case influences the system.

Theory adds important depth to constructivist qualitative health research and is often considered essential to the validity of case study as a qualitative method. Case study, meanwhile,
is often considered the method of choice for understanding complicated health care systems and organizations because of its capacity to incorporate complexity while ensuring research is manageable (e.g., circumscribed in scope, effectively designed and generalizable). While TJ is a new and developing legal concept whose credentials as a theory from a formal and normative perspective continue to be discussed (e.g., Freckelton, 2008), it nevertheless satisfies the definition of a useful theory from the point of view of constructivist qualitative methodology. That is, TJ can direct research by helping to derive the research questions relevant to the study’s overall intent and, by facilitating the creation of a cascading logical framework, revealing the key research propositions. In the context of criminal court mental health diversion initiatives and arguably in research into other problem-solving court initiatives, the use of TJ and case study together can yield important insights. In the current study, these insights can be instructive in making health and justice system changes in Canadian Arctic communities that may ultimately improve the way criminal courts respond to offenders with mental illness and assist in efforts to reduce the numbers of people with mental illness caught with fewer opportunities for rehabilitation within Canada’s criminal justice system.
Chapter 5 – A Practical Application of Methodological Theory as an “Heuristic”: An
Example at the Nexus of Health and Law
5.1 Abstract

Theory is widely considered a necessary guide for much constructivist qualitative research because it adds depth and is considered essential for generalizing results from qualitative case study. Less clear is how theory functions, in practical terms, to direct researcher decisions that affect the approach and analysis of qualitative research. The example of a constructivist qualitative multiple-case study exploring the potential for criminal court mental diversion initiatives in the Canadian Arctic is used to document how a novel methodological theory provides an important guide to the steps of the qualitative research process that link a study’s findings to the initial purpose of the research. In particular, it shows how the use of theory helped to identify the methodology and method (including the research design and cases) and illuminate and validate the findings. This paper offers a uniquely detailed picture of how theory can function in the methodological sense to provide an “heuristic” for a complicated constructivist qualitative inquiry.

5.2 Introduction

In much qualitative research, the quality of an inquiry can be said to depend on the role of theory (Kelly, 2010). Theories organize sets of concepts in ways that help to define or explain some phenomenon (Silverman, 2010). They help researchers “to move beyond basic description to in-depth description, interpretation and explanation” (Kelly, 2010, p. 286). Many academics argue that theories, while not to be confused with fact (Morse, 1992), nevertheless provide more opportunities for greater engagement with research data and elevate findings to an analytical level that is beyond mere description (Gibson & Brown, 2009). Theory plays a key role, for example, in qualitative research that uses case study (Yin, 2009). Case study employs theory to
circumscribe a study’s scope, ensuring a more effective design, and providing a way to
generalize the findings (Yin, 1993). Theory can play several research roles (Gibson & Brown,
2009; Sandelowski, 1993), but it is useful in research methodology if it “offers a justification for
the use of particular research techniques to generate empirical evidence” (Avis, 2003, p. 996).
That is, theory succeeds in its methodological role if it provides a “sufficient blueprint” (Yin,
2009, p. 36) and/or “a tool for doing empirical work” (Gibson & Brown, 2009, p. 16).

While the guiding methodological roles for theory in qualitative research have been very
generally described as categorizing, describing, comparing, interrogating and generalizing
observed phenomena (Gibson & Brown, 2009), the details concerning how theory can
pragmatically succeed at these things is often less than clear. Indeed, while many texts and
papers describe approaches to the design of qualitative studies and the means for collecting
qualitative data, the analysis of qualitative research has generally received far less attention
(Bradley, Curry & Devers, 2007). Theory may be central to the distinctive levels of analysis that
comprise a qualitative research process (Silverman, 2010), but examples are few that describe
how theory can practically direct researcher decisions that affect each of these steps.

The example of a complex constructivist qualitative multiple-case study concerning
mental health rehabilitation (MHR) programs in Canadian Arctic criminal courts is used to
document in detail how a theory can function as an important, step-wise methodological guide to
methods and analysis in qualitative research. Documented here is the role of a novel theory
known as therapeutic jurisprudence in identifying the methodology and method (including the
research design and cases) and illuminating and validating the findings. This chapter offers a
uniquely detailed picture of how theory can function in the methodological sense to provide an
“heuristic” for a constructivist qualitative inquiry of a complex mental health criminal court program.

5.3 Theory, Constructivist Qualitative Research and Case Study

Like most qualitative research, this study is conducted from a generally constructivist perspective. Qualitative research seeks to understand how people interpret or find meaning in their perceptions of experience and how they build their worlds (Flick, Kardorff & Steinke, 2004; Merriam, 2009). Consequently, most qualitative research is situated within an overarching paradigm (or worldview or perspective) known as constructivism (Merriam, 2009). Constructivism assumes reality has no single objective truth but, rather, is socially constructed so that multiple realities or interpretations of a single event exist at the same time. “Researchers do not ‘find’ knowledge, they construct it.” (Merriam, 2009, p. 9). A constructivist perspective holds that beliefs about reality are both manifold and context-bound (Merriam, 2009). That is, constructivism is relativist and subjective. “Meanings,” writes Creswell (2009) of constructivism, “are varied and multiple, leading the researcher to look for the complexity of views rather than narrowing meanings into a few categories or ideas. … The researcher’s intent is to make sense of (or interpret) the meanings others have about the world” (p. 8).

As a constructivist approach, qualitative research is often characterized by a variety of complex, interrelated terms, concepts and assumptions (Denzin & Lincoln, 2005, p. 2). Further, terms and phrases used in qualitative research are not always uniformly applied and can be ambiguous. In this chapter, the terms used to describe the components and analytic elements of research generally follow those of Silverman (2010) with modifications, additional terms and elements suggested by Creswell (2009), Gibson & Brown (2009 and Yin (2009). In his book, Silverman (2010) systematically distinguishes what he calls “levels of analysis” that can be
usefully thought of as comprising the research process (p. 111). These levels of analysis are hierarchic and linearly arranged and span steps between the philosophical worldview (the author uses the term “model”) to an analysis of the findings. This schematic was revised and modified as a useful guide to a research process that will instruct the remaining structure of this chapter (see Figure 5.1). Reflecting its central importance in this study, theory plays an essential role in this “levels of analysis” schematic, connecting concepts that arise from a particular worldview to the main impetus for conducting research in the first place—that is, the research question(s) and the related propositions. For Silverman (2010), theory arranges concepts or sets of concepts to help define or explain a phenomenon. “Theories provide complex and comprehensive conceptual understandings of things that cannot be pinned down: how societies work, how organisations operate, why people interact in certain ways” (Reeves et al., 2008, p. 631).

Theory is also considered vital to qualitative research involving case study (Yin, 1999). Case study is commonly called a research method (or, as Yin (2003) calls it, a “research strategy”) for investigating in-depth and complex phenomena relevant to individuals, groups and organizations as well as social and political matters (Yin, 2009). It can be the study of a fixed number of specific, naturally occurring settings (Silverman, 2010). It is also described as “a means of investigating complex social units consisting of multiple variables of potential importance in understanding the phenomenon” (Merriam, 1998, p. 41). Among other things, case study refers to one of the various “strategies of inquiry” used in constructivism (Creswell, 2009) and can be “an analysis process” (Patton, 2002, p. 447). Considerable diversity of views can be found on what constitutes a case study; VanWynsberghe and Khan (2007) suggest the past three decades of case study research have produced 25 different definitions of case study. In general terms, however, case study can be thought of as a research means for exploring a
phenomenon from a holistic perspective within its context and using the multiple perspectives of those involved as its data source (Baxter & Jack, 2008; Stake, 1995, 2005; Yin, 2009). Stake (2005) argues that case study is especially adept at revealing the intricacies of phenomena. Case studies have been described as best suited to research that asks “how” and “why” questions (Stake, 2005; Yin, 2003). In particular, case study is especially useful to health services research because of its capacity to gain insight into complex, multi-component “mega-systems” characterized by change (Yin, 1999, p.1209). It also offers research versatility that can cross disciplines and paradigmatic perspectives (VanWynsberghe & Khan, 2007) that can be useful for these potentially complex systems.

The role for theory in a qualitative case study is as the essential “blueprint” for the research comprised of propositions with a theoretical orientation that direct the inquiry (Yin, 2009, p. 36). In particular, theory guides research by providing case study with a means to generalize results for research that has been built around one or a few cases (Yin, 1999, 2009; see also “Trustworthiness of Data below). This function, however, can be quite general: In the current study, for example, the data was not used to test or challenge the theory—therapeutic jurisprudence (TJ)—except to see if it could provide a helpful tool in thinking about mental health problem solving in Arctic criminal courts. Stake (1995) sees a similar but perhaps more flexible role for theory (or a “framework”) in case study as a general guide that directs research from the perspective of constructivist inquiry. Anaf et al. (2007) adopt a similar view in their description of the use of theory in a case study—in this instance, systems theory—as an “heuristic model,” or a kind of intellectual spotlight for directing researchers to considerations of research design and an interpretation of findings suited to the nature of their health settings (p 1309). The term “heuristic” is used to mean “an approach that focuses one’s attention during
learning, construction, discovery, or problem solving” (VanWynsberghe & Khan, 2007, p 2). Thus, the role of theory can be quite pragmatic in this way. As Yin (2009) points out, “theories can be practical and not just academic” (p. 54). Even so, just how theory can practically succeed in directing researcher decisions concerning the steps in a complex qualitative research process does not appear to have been very well explored. While much qualitative research literature describes ways to design qualitative projects and collect qualitative data, the mechanics of data analysis is generally less well documented (Bradley, Curry & Devers, 2007). This chapter concerns the role of theory in this practical sense and describes its importance in methods and analysis using the example of research into criminal court mental health diversion initiatives in the Canadian Arctic. The impact of theory on researcher decisions affecting the research questions and propositions are discussed in detail elsewhere (Chapter 4; Ferrazzi & Krupa, 2014).

5.4 Applying Theory in a Complex Qualitative Case Study: An Example from Mental Health Court Diversion Research in the Canadian Arctic

The study, for which the present methodological approach applies, is an exploratory look at how the health and justice systems respond to offenders with mental illness in criminal courts in three communities in the Arctic territory of Nunavut. It examines this response from the perspectives of those who work in these systems and of community members for whom these systems are directly relevant. The study asks how these people experience and interpret their current roles when dealing with offenders with mental illness in Arctic criminal courts, why they think they have these experiences now and how they think these experiences could be changed “for the better” down the road. In the absence of any capacity for experimental manipulation or for longitudinal studies of people with mental illness who have direct experience with these
systems, this study instead relies on the experiences and opinions of involved professionals and others regarding what “for the better” might look like (e.g., some criminal court mental health rehabilitation opportunities are better than none, some are better than others and/or more are better than less) using TJ as a guiding theory.

Consequently, the constructivist perspective guiding this Arctic health-and-justice-system inquiry can be thought of as comprising basic characteristics, including beliefs that

1. an understanding of the reality (ontology) of mental health and criminal courts is locally and specifically constructed (or co-constructed) in Arctic communities;
2. knowledge (epistemology) involves findings that are “created”, subjective and may be influenced by a reciprocal sharing of opinions about them; and
3. inquiry (methodology) involves the interpretation and incorporation of varied and opposing points of view (Guba & Lincoln, 2005, p. 198).

Constructivism is also useful in examinations of phenomenon across different disciplines (Denzin & Lincoln, 2005) and is equipped to incorporate complexity.

The purpose of this research is to extend a theoretical and empirical understanding of how criminal courts in remote, mainly Inuit Arctic communities can better address the rehabilitation of offenders with mental illness by exploring the experiences of justice and health professionals, members of community organizations and other key community members in three communities in Nunavut. The study extends and develops recent research that has explored the use of the underlying principles that animate what are known as problem-solving courts in conventional court settings to expand the availability of the problem-solving approach in non-specialized court settings (Farole, Puffett & Rempel, 2007; Farole, Puffett, Rempel, & Byrne, 2004, 2005; Farole, Rempel, Byrne, & Chang, 2008; Porter, Rempel, & Mansky, 2010; Wolf,
Problem-solving courts are a family of courts that have emerged in a variety of legal arenas over the past 30 years to address the individual and social problems that explain criminal behavior (Council of State Governments, 2005; Mirchandani, 2008; Schneider, Bloom & Heerema, 2007) including mental illness.

The choice of methodological theory was, in turn, based on relevant constructivist concepts—concepts such as hermeneutic, relativist and dialectically derived understanding, a capacity for exploring complex phenomena and an applicability across disciplines. A preliminary review of the literature relevant to criminal court mental health diversion initiatives and problem-solving courts revealed these same concepts also aligned with the theoretical principles of a legal theory known as therapeutic jurisprudence (TJ). Peer-reviewed and grey literature was retrieved using subject heading and free-text searches of scholarly databases and other sources for health, law and social science according to an approach and search terms described in Table 5.1, and uncovered literature identifying the key theoretical principles that underlie TJ (e.g., Conference of Chief Justices and Conference of State Courts Administrators, 2000; Winick 2002, 2013). TJ is considered the “philosophic foundation” for problem-solving in criminal courts (Winick, 2013) and sees the law in terms of its therapeutic and counter-therapeutic values to maximize the former and minimize the later while not compromising criminal justice values in the process (Wexler & Winick, 1996; Winick, 2000; Winick, 2013). While most theory used in qualitative research derives from the social sciences, the recruitment of TJ from law and across discipline boundaries is unique.
Table 5.1. The approach used to search scholarly databases and other sources for relevant literature.

In general terms, TJ as a methodology helped to direct and revise the key theory-informed research practices outlined by Gibson and Brown (2009). Table 5.2 describes the
theory’s influence on these five practices with specific reference to this Arctic study. A more detailed picture is outlined in the following sections that explore the role of TJ as a methodological theory in the research design and analysis that directed the inquiry. In particular, there was an examination of the impact of theory on the analytic steps (or levels of analysis; see, for e.g., Figure 5.1) in this study that followed from, and came after research decisions regarding the choice of theory and the subsequent identification of the research questions and propositions (see Ferrazzi & Krupa, 2014). These steps include the methodology (e.g., the rationale for qualitative research), the method (including the study’s units of analysis, type of case study, selection of the case(s), and recruitment) and the organization and interpretation of the findings (including Stage 1 and Stage 2 of the analysis and assessments of the data’s trustworthiness).

Table 5.2. How therapeutic jurisprudence functions as an “heuristic” to guide the five general research practices (Gibson & Brown, 2009) in this qualitative study.

<table>
<thead>
<tr>
<th>Research Practice</th>
<th>Role of Theory</th>
<th>Role of Therapeutic Jurisprudence (in the Arctic Mental Health Court Program Study)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Formulating the Research Questions</td>
<td>Orients the “concepts and analytic focus” that guide “ways of asking questions” for the study (Gibson &amp; Brown, 2009, p. 31).</td>
<td>Research questions require interdisciplinary focus that combines law with considerations of its therapeutic and counter-therapeutic consequences (Wexler &amp; Winick, 1996; Winick, 2000; Winick, 2013). Research questions directed to consider how and why the justice system and the law operates “to improve the psychological and emotional well-being of those affected by the legal process” (Winick et al., 2010, p. 428). See Table 4.2</td>
</tr>
<tr>
<td>2. Engaging with the Literature</td>
<td>Identifies relevant literature which, in turn, forms the context for the research and how it is conducted (Gibson &amp; Brown, 2009).</td>
<td>Used to identify relevant literature from which key theoretical principles could be determined (e.g., Conference of Chief Justices and Conference of State Courts Administrators, 2000; Winick 2002, 2013) as well as goals and/or objectives derived from an understanding of “problem-solving courts” in other jurisdictions (e.g., Farole, Huffett, &amp; Rempel 2005, 2007; Farole, Huffett, Rempel, &amp; Byrne 2005; Farole, Rempel, Byrne, &amp; Chang, 2008; Hora, 2011; James, 2006; Porter, Rempel &amp; Mansky, 2010; Wolf, 2007(b); Wolf, 2008).</td>
</tr>
<tr>
<td>3. Designing the Research</td>
<td>Provides an overall framework for viewing reality which informs the</td>
<td>No statistical means to address therapeutic jurisprudence in this context, so constructivist qualitative approach was taken to incorporate experiences and perspectives of stakeholders (e.g., Denzin</td>
</tr>
</tbody>
</table>
concepts used to define research problem (Silverman, 2010). Influences type of case study, whether single or multiple (Yin, 2003). Affects recruitment of participants, reflecting purposeful sampling to optimally address the research question (Creswell, 2009; Lincoln, 2005; Flick, Kardorff & Steinke, 2004; Merriam, 2009). A multiple-case study involving three cases (occurring in the three separate Arctic communities of Iqaluit, Arviat and Qikiqtarjuaq) was chosen for this research, because of the analytic benefits of exploring more than one health/justice system in this research (e.g., Yin, 2003). The theory-derived framework identified the appropriate categories of participants to participate in semi-structured interviews and focus groups for this research. These comprised health and justice professionals (e.g., judges, prosecutors, defence lawyers, justices of the peace, police officers, probation officers nurses, social workers, wellness workers, and psychiatrists), representatives of community organizations, and community members, namely, caregivers and Inuit elders.

4. Organizing the Data

Literature-derived theoretical principles of therapeutic jurisprudence were used to develop a cascading logical framework (e.g., Cropper, Berg, Culligan & Radstone, 2010) to identify a series of specific research propositions directly relevant to the theory. The theory-based framework with its specific research propositions was used to circumscribe the case study so that it was responsive to the research questions. For the purposes of this study, the unit of analysis was the combined whole comprising the mental health and criminal justice systems within an Arctic community.

5. Analyzing the Data

The theoretical framework was a means for generalizing to new cases by using theory as a “template with which to compare the empirical results of the case study” (Yin, 2003, p. 32-33). A cross-case analysis demonstrated the extent to which findings were replicated between cases and the reason certain cases were predicted to have particular results while other cases were predicted to have contrasting results (Yin, 2009). The identified theory-based principles provided an a priori understanding of three key issues for the research, including remoteness, available resources and Inuit cultural considerations. The theory-derived multiple-case study design helped to achieve what is described by Yin (2009) as replication logic.

5.5 The Methodology

In this study, “[t]heory underpins methodology” (Kelly, 2010, p. 285). That is, TJ was instrumental in directing the choice of methodology to “thematic” qualitative research (Kelly, 2010), because of the need to understand the meanings and processes that affect the response of
Arctic criminal courts to offenders with mental illness in their “naturally occurring” settings (e.g., Silverman, 2010 p 131-132). TJ implies theoretical assumptions about the role of law as a therapeutic agent that are related to the experiences and understanding of justice and health professionals, workers with community organizations as well as other community members regarding the concepts of “mental health and well-being,” “rehabilitation,” and “criminal justice.” In particular, using a qualitative research methodology allowed this study to usefully focus its inquiry on the context and professional environment facing mental health care providers and criminal court professionals working in Arctic communities and on how these environments affect protocols, practice and decision-making regarding offenders with mental illness (e.g., Tripp-Reimer & Doebbling, 2004).

5.6 The Method

By suggesting theoretically-oriented propositions, TJ as a theory was central in the decision to conduct this research using case study as the method. Case study is virtually alone among related qualitative methods for depending upon a preliminary theory (and its propositions) relevant to the topic at the start of any inquiry (Yin, 2009). Further, the central purpose of the inquiry aligned with the essential characteristics of the topic—that the topic would be best addressed by asking “how” and “why” questions, that it could not be experimentally manipulated by researchers, and that it relates to contemporary phenomenon in a real-life context (Yin, 1984, 2009; see earlier section “Theory, Constructivist Qualitative Research and Case Study”). This chapter explains how TJ as theory influenced four of the essential elements of case study design as described by Baxter & Jack (2008), Lauckner, Paterson and Krupa (2012); and Yin (1984, 2003, 2009). These elements are the study’s units of analysis, type of case study, selection of the case(s), and recruitment.
5.6.1 Units of Analysis

TJ as theory was used by this study to identify and place boundaries on the units of analysis, also called “the cases” (Yin, 2009). The theory-based framework with its specific research propositions (e.g., Table 4.3; Appendix G for full study framework) was used to circumscribe the case study so that it was responsive to the research questions. For the purposes of this study, the unit of analysis was the combined whole comprising the mental health and criminal justice systems within an Arctic community. Stake (2005) emphasizes the need for the case to be a well-bounded, specific, complex and functioning entity. Miles and Huberman (1994) similarly describe the case as “a phenomenon of some sort occurring in a bounded context” (p. 25). In this study, the relevant boundaries were restricted by time and place (Creswell, 2003), activity (Stake, 2005), and by definition and context (Miles & Huberman, 1994).

5.6.2 Choosing the Type of Case Study

A multiple-case study involving three cases (occurring in three separate Nunavut communities) was chosen for this research, because of the analytic benefits of exploring multiple cases (Yin, 2003). These benefits are twofold: Analytic findings from the three independent cases are more persuasive than from one case, and arriving at common findings in varied circumstances enhances the external generalizability of the findings as compared to one case (Yin, 2003). Furthermore, the multiple-case study design helped to achieve what is described by Yin (2009) as replication logic. In this study, the theory-derived framework established Yin’s (2009) “conditions” (my propositions; see e.g Table 4.3; and full framework at Appendix G) that helped assess whether the rehabilitation objectives of criminal court mental diversion initiatives could be met in Arctic communities using the theoretical principles of TJ. That is, the theoretical framework was a means for generalizing to new cases (Yin, 2003). This was done by using
theory as a “template with which to compare the empirical results of the case study” (Yin, 2003, p. 32-33). If two or more of the cases supported the notion that the principles suggested by TJ are helpful in delivering rehabilitation-oriented criminal court mental health diversion initiatives for offenders with mental illness in remote, mainly Inuit Arctic communities, replication was considered to have been achieved (Yin, 2003).

5.6.3 Selecting the Cases

TJ as theory was instrumental in the selection of cases. This selection process was guided by the theoretical issues related to the study’s purpose (Yin, 1993), such as how remote geography, resource issues, and Inuit culture influence the application of TJ principles in the context of criminal courts in Arctic communities. In order to dovetail with the rationale for multiple case study research, the cases were selected for their presumed capacity to predict similar results (literal replication) as well as to predict contrasting results for expected reasons (theoretical replication) (Yin, 2003, 2009). In this connection, the selected Arctic communities represent three cases with putatively different resource capacities in the mental health and justice sectors and relative “remoteness.” Iqaluit (pop. 6,699, Statistics Canada, 2011) represented high capacity, Arviat (pop. 1,810, Statistics Canada, 2011) represented medium capacity, and Qikiqtarjuaq (pop. 520, Statistics Canada, 2011) represented low capacity. Initial assumptions about capacity for the purposes of research site selection (the case) were determined on the basis of population size, and the most evident mental health and justice infrastructure (i.e., health clinics, court, and police services). Differences of relative remoteness were based on notions of ease and availability of access.
5.6.7 Recruitment

This study’s TJ/theory-derived framework identified the appropriate categories of participants to participate in semi-structured interviews and focus groups for this research. Recruitment of participants reflected purposeful sampling to optimally address the research question (Creswell, 2009). These comprised health and justice professionals, members of community organizations and other community members. Identifying health and justice professionals for recruitment was, in some instances, self-evident because only one person represented a professional group within the health or justice sector in a particular community. In other circumstances, new participants were recruited as a result of referrals made by other participants within the same or different professional group. Some justice sector participants were known to the researcher and were invited to participate in the study because they had relevant experience with mental health and justice issues in Nunavut. At other times, research assistants identified representatives of community organizations and community members who could contribute meaningfully to answering the research question. A single inclusion criterion was developed:

Participants had to work (paid or voluntary) within the health or justice sector, a community-based program relating to mental health, or be a caregiver or elder with experience with people with mental health concerns within the subject communities.

No other inclusion criteria were imposed in view of the need for data robustness and because the transient nature of the work force in Nunavut meant the criterion was appropriately inclusive. Participants were recruited until the data reached saturation (Creswell, 2013).

In general, justice sector participants included judges, prosecutors, defence lawyers, justices of the peace, court administrators, police officers, probation officers and members of
community justice committees. Health sector participants included nurses, social workers, wellness workers, and psychiatrists, while participants included as community organization members were representatives from community-based wellness programs or representatives from municipal government. Participants listed as other community members comprised Inuit elders and caregivers.

Prior to the recruitment of study participants, the Queen’s University General Research Ethics Board—by means of a full board review—cleared this study for ethical compliance, and the Nunavut Research Institute granted the study a required research license.

5.7 The Findings

TJ as theory also influenced the final level of analysis in the research schematic (Figure 5.1) via its role informing the analysis and the trustworthiness of the research findings. The theory, in this sense, was instrumental in orienting how the data was processed, described, related and interpreted (Gibson & Brown, 2009). For instance, the underlying theoretical principles of TJ, which informed the framework that articulated the research propositions (Table 4.3; and Appendix G), helped in turn to create, label, subdivide data and relate categories, in keeping with the role of theory in data analysis as set out in Gibson & Brown (2009). Thus, this study could exploit a reciprocal relationship between TJ and the data, in so far as the theory was used to analyze data while data offered opportunities to consider the usefulness of the theory (Gibson & Brown, 2009).

In this study, data analysis was conducted in two stages: Stage 1 involved the independent, in-depth analysis of each case, and Stage 2 involved a cross-case analysis aggregating findings across the three individual cases (Yin, 2003). Yin’s (2003) preferred general analytic strategy was employed to link the data to the propositions articulated from the
theoretically derived framework (e.g. Table 4.3; and Appendix G for full framework) at the outset of the study. These same propositions that guided data collection were similarly used to identify relevant data for analysis (Yin, 2003). Preliminary data analysis occurred concurrently with data collection as recommended by Merriam (2009). Issues relevant to the study were identified along the way (Stake, 2005) to help guide the research. The theory, TJ, and the related propositions were similarly important for assessing the trustworthiness of the study’s findings. Discussion of Stage 1, Stage 2 and the Trustworthiness of the data analysis is set out below.
5.7.1 Stage 1: Individual Case Descriptions

Each of the cases in this multiple case study was analyzed independently. The following strategies informed the analysis of data in each case:

- **Coding to link data to theoretically-oriented propositions**: The methodological approach to the code structure in this study integrated data-driven codes with predetermined
theory-driven codes based on the tenets of the study’s governing theory, an approach recognized in the literature (e.g., Fereday and Muir-Cochrane, 2006). For each case, interviews were analyzed using template analysis (King, 2004), a common approach to qualitative data analysis (Crabtree & Miller, 1992) that provides considerable flexibility because it is not prescriptive in nature (King, 2004). The template in this study was a code book developed from the theory (Crabtree & Miller, 1992; Creswell, 2009; DeCuir-Gunby, Marshall, & McCuloch, 2011; see Appendix K for Code book) and the related framework (e.g., Table 4.3; and Appendix G for full study framework). The code book here served to link the data to the theoretically-oriented propositions of the study (Richards & Morse, 2007). These codes served to organize similar or related text and to identify disconfirming evidence (Crabtree & Miller, 1992) with respect to the usefulness of TJ principles as a guide to this study. NVivo 10 qualitative software (QSR International Pty Ltd., 2012) assisted with the categorization process. Similar segments of text from categories were then analyzed for their connections resulting in development of themes (Saldaña, 2013). Effective coding of the data required an understanding of both the theoretical framework guiding this study, and a contextual understanding of the participants and the setting. This informed the decision to engage in single researcher coding, a practice recognized in the literature (Bradley, Curry and Devers, 2007) and used in other indigenous circumpolar studies (e.g., Kral, 2013).

- **Analytic and Methodological Memos:** Analytic memos were used to document and reflect critically upon research assumptions and their role in shaping the research (Mason, 2002) in the context of TJ as the study’s theory. These, along with methodological memos, also helped to reflect upon the coding process and emergent themes (Saldaña, 2013) as
“[t]here is a reciprocal relationship between the development of a coding system and the evolution of understanding a phenomenon” (Weston et al., 2001, p. 397).

5.7.2 Stage 2: Cross-case Analysis

In Stage 2, the themes arising from each case were the subject of cross-case analysis in order to obtain an aggregate, overarching picture (Yin, 2009) of the commonalities and differences in the three cases (Stake, 2006), especially as they relate to the original theoretically-oriented propositions of the study (Yin, 2009). This was done through a cross-case procedure protocol referred to as “Merging Case Findings” as set out by Stake (2006), and was aided by the use of NVivo 10 qualitative software. This approach gives priority to the general over the specific, allowing for analytical generalization while maintaining some of the local variances (Stake, 2006) in the three cases especially in relation to the propositions of the study.

5.8 Trustworthiness of the Data

Qualitative research has constructivist criteria used to distinguish quality of research that broadly speaking, fall under the umbrella of “trustworthiness,” referring to a study’s soundness. These criteria are credibility, transferability, dependability and confirmability (Denzin & Lincoln, 2005). Credibility is dependent on rigor (and includes addressing rival explanations). Transferability, meanwhile, refers to the likelihood that findings have meanings in other similar contexts (Patton, 2002; Yin, 2009). Dependability speaks to the ability of the study to account for variability over time, while confirmability refers to the process of collecting data and arriving at conclusions in a manner that is clear and can be followed by other researchers (Krefting, 1991; Streubert & Carpenter, 1999).

Specific strategies to enhance the study’s trustworthiness include:
Use of Theory: TJ as theory provided this study with the essential theoretical basis for assessing the transferability of the study findings. Case studies rely on analytical generalization (rather than statistical generalization) to generalize findings from a specific case to the broader theory (Yin, 2009) to know if other related cases are likely to reveal similar results. “In other words, a theory about what is being studied—and about whether a single case is a ‘critical’ exemplar of that theory or about why some multiple cases might be expected to be replications and others might not—is essential to case study design and analysis” (Yin, 1999, p. 1213). This study achieved this by using TJ theory as “the domain” in which the results can be considered generalizable and by shoring up this generalization through the replication of the findings in one case study in a second and third case. Replication logic uses cases to either predict similar results (literal replication) or predict contrasting results but for expected reasons (theoretical replication) (Yin, 2003, 2009; see also “Choosing the type of case study” above).

Methodological Coherence: TJ also provided this study with a useful methodological theory to guide a qualitative inquiry at the complex intersection of mental health care and criminal law by providing a framework foundation for directing the study’s research questions, related propositions that focus the analysis, and to link the study’s findings to the initial purpose of the research. In particular, the use of theory helped to identify the methodology and method (including the research design and cases) and illuminate and validate the findings. The study offers a uniquely detailed picture of how theory can function in the methodological sense to provide an “heuristic” for a complicated constructivist qualitative inquiry contributing to the credibility and confirmability of the study.

Results compared to the literature: The results of the study were compared to the literature (Morse, Swanson & Kuzel, 2001) in a manner that revealed a newly understood
relationship (Stake, 2006) between TJ and contemporary scholarly understanding of Inuit mental health. This new connection is an indication that the researcher is “getting the picture right” and constitutes a form of “triangulation across cases” (Stake, 2006, p. 77) contributing to the credibility of the research.

*Multiple sources and methods:* A variety of data collection methods was used that included focus groups, collection of documents (Flick, von Kardorff, & Steinke, 2004) and semi-structured interviews, all with converging lines of inquiry (Yin, 2009) reflecting efforts to triangulate data. By using multiple perspectives, the credibility of the study was enhanced.

*Member-checking:* A protocol was followed in this study requiring member-checks to confirm accuracy and/or seek clarification with respect to intended meaning of the raw data for interviews potentially vulnerable in this regard. These interviews were identified as the few involving field notes, interpreters, and participants who struggled with the English language. A check for the accuracy of raw interview data was not otherwise seen as necessary as interviews were transcribed verbatim by long-time certified court reporters (see Appendices J and F).

*Case study protocol:* The use of a case study protocol (Yin, 1984, 1993, 2009) to guide the data collection, incorporating an overview of the project, the study’s framework and interview questions and field procedures (Yin, 1984, 2009), along with methodological and analytic memos facilitated the development of an audit trail, which contributed to the confirmability of the research.

*Inclusion of thick description:* An overview of the context of this study, including a broad sweeping picture of the health and justice infrastructure of Nunavut, alongside individual case descriptions (communities), was intended to provide the reader with an adequate sense of the cases to allow for naturalistic generalizations (Stake, 1995).
Reflexivity: The importance of authenticity, which includes the perspective, experience, understanding and interpretation brought to the study by the researcher, as well as an appreciation of the perspective of others, is collectively referred to as “reflexivity” (Lincoln and Guba, 1986). Memos were used for this purpose throughout data analysis. Peer consultations with colleagues in the legal sector in Nunavut, with an informal northern Advisory Committee, and an Academic Advisory Committee further promoted reflexivity and thus the credibility of the study.

5.9 Conclusion

This chapter outlines the practical application of a methodological theory as a guide to the approach and analysis of a constructivist qualitative multiple-case study exploring criminal court mental health diversion initiatives in the Canadian Arctic. This example provides an uncommonly detailed examination of how theory works to inform researcher decisions affecting each of the design and analytic levels of analysis necessary to the qualitative research process. In particular, it shows how the legal theory of TJ succeeded in the definitional task of a methodological theory by providing an effective blueprint for a complicated constructivist qualitative inquiry at the nexus of health and law. The theory helped to identify the methodology and method (including the research design and cases) and to illuminate and validate the findings.

TJ is a theory (Birgden, 2004; Birgden, 2008; Birgden & Perlin, 2009; Hora et al., 1999) that has emerged from the discipline of law within the past few decades to focus attention on the therapeutic (and anti-therapeutic) aspects of the law and how it can affect the well-being of individuals (Wexler, 1995; Wexler & Winick, 1996; Winick, 2013). From a legal perspective, TJ provides an “heuristic for better seeing and understanding the law” (Wexler, 1995, p. 221) and
offers a “philosophic foundation” for problem-solving courts and programs aimed at the underlying causes of crime (Winick, 2013) such as criminal court mental health diversion initiatives (Schneider, Bloom & Heerema, 2007). But the legal notion of TJ also provides an “heuristic” in another sense, as a methodological theory, successfully guiding the research decisions regarding each of the levels of analysis that comprised my qualitative case study at the complex intersection of health and law.

For the example provided here, theory yielded useful and important insights into several aspects of the qualitative inquiry into the possibility of criminal court mental health diversion initiatives in Canadian Arctic communities. These insights helped to provide the study with depth and context that illuminated the new ways in which the health and justice systems in Nunavut can improve how they respond to offenders with mental illness.
Chapter 6 – The Relevance of Culture to Therapeutic Jurisprudence in the Context of Offenders with Mental Illness in Arctic Communities
6.1 Abstract

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 Canadian Arctic territory of Nunavut. These initiatives belong to a larger family of courts known as “problem-solving courts” whose philosophic foundation is therapeutic jurisprudence (TJ). Recently, researchers have suggested using underlying “problem-solving court” principles as a means of delivering similar objectives outside of well-resourced, specialized, urban courts. This research explored the potential for delivering the objectives of criminal court mental health diversion to mainly Inuit Arctic communities in Nunavut using TJ and problem-solving court principles. A qualitative multiple case study in the Nunavut communities of Iqaluit, Arviat and Qikitarjuaq involved 55 semi-structured interviews and three focus groups with participants representing four sectors essential to these programs: justice (judges, lawyers, police, etc.), health (psychiatrists, nurses, etc.), community organizations (wellness workers, hamlet officials, etc.) and community members (Inuit elders and caregivers). Interviews revealed 13 key themes relevant to the importance of culture and cultural change in the context of Inuit mental health and criminal justice. These themes, which emerged from discussions about identifying and treating people with mental illness in Nunavut and about collaboration between the court and other sectors in the territory, pose potential problems for expanding the availability of TJ principles in mainly Inuit Arctic communities. As a solution, this study argues for an explicit consideration of the culturally responsive concept of “protective factors” for aboriginal mental health in TJ and problem-solving court initiatives in indigenous northern communities. This research highlights the need for a greater incorporation of contemporary concepts from mental health rehabilitation
science (such as the notion of protective factors) in TJ thinking and in problem-solving courts as a practical response to people with mental illness in conflict with the law.

6.2 Introduction

While criminal court mental health diversion initiatives in large, North American cities seek to keep people with mental illness out of the criminal justice system, these initiatives do not exist in the remote, mainly Inuit communities of the Canadian Arctic territory of Nunavut. This is despite rapid social, economic, environmental and cultural change in the Arctic over the past 50 years that has had an adverse impact on Inuit mental health (MacDonald, Ford, Willox & Ross, 2013; Kral, Idlout, Minore, Dyck, & Kirmayer, 2011) and on increased criminal justice involvement (Royal Commission on Aboriginal Peoples, 1996). Like many other aboriginal groups in Canada, Inuit are disproportionately represented in the Canadian justice system (Office of Correctional Investigator, 2013; Perreault 2009), and the absence of criminal court mental health diversion initiatives may contribute to Inuit people in the territory becoming incarcerated for crimes that have mental illness at their root.

Criminal court mental health diversion initiatives—namely Mental Health Courts and mental health diversion programs—divert people with mental illness in conflict with the law away from prosecution and the possibility of jail and into mental health treatment (Schneider, 2010). These initiatives are built on the premise that untreated mental illness can make individuals more vulnerable to criminal justice involvement (Schneider et al., 2007) and that society is served by identifying and diverting some individuals with mental illness away from the criminal justice system and into the community mental health care system (Petrila & Redlich, 2008; Redlich, 2007; Redlich, Hoover, Summers, & Steadman, 2010; Schneider, 2010; Schneider, Bloom, & Heerema, 2007). Indeed, the emergence of these initiatives is aligned with,
and belongs to, a broader North American movement to develop specialized “problem-solving courts” (including, for example, drug courts and domestic violence courts) intended as a new approach to focus not simply on the legal determination of guilt and innocence, but to also consider the wider, underlying causes of crime (Council of State Governments, 2005; Slinger & Roesch, 2010). The theoretical approach known as therapeutic jurisprudence (TJ), meanwhile, emerged from scholarship to become the “philosophic foundation” for these problem-solving courts (Winick, 2013, p.219), seeking to minimize the law’s anti-therapeutic consequences and maximize its therapeutic value without sacrificing the rule of law or other legal values (Wexler & Winick, 1996). In practice, problem-solving courts typically require dedicated court resources considered essential to the functional delivery of therapeutic objectives (Almquist & Dodd, 2009; Casey & Rottman, 2005; Redlich, Steadman, Monahan, Robbins & Petrila, 2006; Schneider, Bloom, & Heerema, 2007; Thompson, Osher, & Tomasini-Joshi, 2007), but recently researchers have begun exploring whether the underlying principles of these courts could be used in conventional court settings to expand the availability of the problem-solving approach beyond specialized courts (Farole, Puffett, & Rempel, 2005, 2007; Farole, Puffett, Rempel, & Byrne, 2004; Farole, Rempel, Byrne, & Chang, 2008; Wolf, 2007b).

Despite the aim of criminal court mental health diversion initiatives to provide a “rehabilitative response to what would otherwise be criminally sanctioned behaviour” (Schneider, 2010 p. 202) and despite a TJ and problem-solving emphasis on the therapeutic value of law, ideas from mental health rehabilitation (MHR) science about what constitutes the best “rehabilitative response” have not been well-explored in this context. For instance, outcome measures associated with these initiatives have previously focused predominantly on court and criminal justice goals, such as subsequent arrest and days spent in jail (Epperson et al., 2014).
Non-clinical mental health outcomes have received less attention (Martin, Dorken, Wamboldt & Wootten, 2012). If therapeutic outcomes are considered, they are discussed in terms of clinical metrics such as mental health service utilization, substance abuse, etc. (see, for e.g., Frailing, 2010; Hiday & Ray, 2010; O’Keefe, 2006; Steadman et al., 2011; Wolff & Pogozelski, 2005; Moore & Hiday, 2006). Criticism that TJ fails to define what is “therapeutic” in any meaningful way (Roderick & Krumholtz, 2006) is borne out by the limited references to concepts important to contemporary MHR science in TJ and problem-solving-court thinking. Among these key MHR concepts, for example, is the growing recognition that differences in culture affect the personal and social meaning of mental illness (Kirmayer, 1989; Alegria et al., 2010; Kirmayer et al., 2012; Kirmayer, Jarvis, & Guzder, 2014) and mental health recovery (Adeponle, Whitley, & Kirmayer, 2012). Indeed, the responsiveness of TJ and problem-solving courts to differences in culture has been described as being limited by the singularly American “therapeutic culture” that gave rise to them (Nolan, 2009). The origins of TJ thinking, for example, have been linked to an “increasing societal preoccupation with feelings” in the United States since the 1960s (Nolan, 2009, p. 54). Its applicability elsewhere and, in particular, in the context of indigenous cultures has been limited. In one obvious exception, Toki (2010) argues for TJ’s inherent cultural agility in a discussion of Māori culture in New Zealand because it “allows and acknowledges different conceptual frameworks [including] the Māori conceptual framework [which] is at odds with the existing mono-cultural system in New Zealand” (p. 444).

Meanwhile, in Nunavut, Inuit culture remains central: 85 percent of the population is Inuit and more than half use Inuktitut as their dominant language at home (Statistics Canada, 2011; Nunavut Tunngavik, 2008). Remoteness and resource considerations are also endemic: The territory occupies nearly 2 million square kilometres (Richmond, 2009) with a sparse
population of 31,906 people (Statistics Canada, 2011) living in the territorial capital of Iqaluit or one of 25 geographically scattered communities (Nunavut Tunngavik, 2008). Criminal justice in the territory is administered by the Nunavut Court of Justice, which services the territory’s remote communities by a “fly-in” court (including judges, prosecutors, lawyers and court staff, often based in Iqaluit) that visits communities by plane every 6 weeks to 2 years, typically for one to five days (Nunavut Court of Justice, 2013a). Mental health and rehabilitation resources, meanwhile, are generally scarce and frequently inaccessible (Mental Health Commission of Canada, 2012; Nunavut Tunngavik Inc., 2008, 2013, 2014).

This research examined the potential for using the underlying principles of TJ and problem-solving courts to deliver the objectives of criminal court mental health diversion initiatives to Nunavut communities where Inuit culture, remoteness and resource limitations are significant factors. A review of TJ and problem-solving court literature and a multiple case study involving three Nunavut communities were used to explore experiences and opinions relevant to the objectives of these initiatives held by people representing four sectors critical to their delivery: justice, health, community organizations and community members. The aim of this study was to examine how objectives were perceived and to assess the importance and relevance of these objectives, to understand their apparent meaning in this Arctic context, and to examine the utility of TJ principles for improving the criminal justice response to people with mental illness in remote, mainly Inuit communities faced with important resource considerations.

6.3 Methods

For this research, a constructivist, qualitative, multiple-case study was preceded by a literature review as a deductive means to focus the inquiry for semi-structured interviews that were, in turn, analysed to inductively identify key, recurring themes relevant to the study’s
purpose. Data analysis was assisted by the use of NVivo 10 qualitative software (QSR International Pty Ltd., 2012). Full details concerning the methodological theory and methods for this study are available elsewhere (Chapters 3, 4, and 5; also Ferrazzi & Krupa, 2014).

6.3.1 Literature Review and Framework

Peer-reviewed and grey literature were retrieved using subject heading and free-text searches of scholarly databases and other sources for health, law and social science, focusing on TJ, TJ in the context of mental health and criminal courts, and on scholarly explorations of “problem-solving courts” currently operating in other jurisdictions, including considerations of the delivery of “problem-solving” in non-specialized, conventional court settings (see, for e.g., Porter, Rempel & Mansky, 2010; Wolf, 2008). This literature review was used to determine the key theoretical principles that underlie TJ (e.g., Conference of Chief Justices and Conference of State Courts Administrators, 2000; Winick 2002, 2013) as well as identify the main principles derived by other researchers from existing “problem-solving courts” (e.g., Farole, Puffett & Rempel, 2005, 2007; Farole, Rempel, Byrne, & Chang, 2008; Hora, 2011; James, 2006; Porter, Rempel & Mansky, 2010; Wolf, 2007(b); Wolf, 2008). Knowing that TJ, the idea, is the foundation for problem-solving, the practice, (Winick, 2002, 2013), these findings were distilled and consolidated to align the TJ and problem-solving court principles along with the component goals for each principle and component objectives for each goal to create a cascading logical framework (e.g., Cropper et al., 2010). The framework was then used to deductively hone the research questions (see e.g., Table 4.2) and to derive research-question-relevant propositions (e.g., Table 4.3; and Appendix G for full framework). These were considered the best means of meeting the goals that satisfy the three principles and, thus, connecting practical considerations
directly to theory in this assessment of the Arctic potential for an analogous program to existing
criminal court mental health diversion initiatives elsewhere.

6.3.2 Case Selection and Description

Three Nunavut communities were selected to represent three cases with putatively
different health and justice resource capacities and relative “remoteness.” Iqaluit, Arviat and
Qikiqtarjuaq represented high, medium and low resource capacities, respectively. Initial
assumptions about capacity for the purposes of research site selection (the case) were determined
on the basis of population size, and the most evident mental health and justice infrastructure (i.e.,
health clinics and court and police services). Differences of relative remoteness were based on
notions of ease and availability of access. The unit of analysis for this multiple case study was
the combined whole comprising the mental health and criminal justice systems within each
Arctic community.

Iqaluit (pop. 6,699; Statistics Canada, 2011) is the capital of Nunavut and a main
gateway to the Arctic. It is located on Baffin Island in the Eastern Canadian Arctic and is the
base for much of the territory’s health and justice infrastructure. Iqaluit’s Qikiqtani General
Hospital, for example, is an accredited 35-bed acute care facility with 24-hour emergency
services that serve 12 communities across more than one million square kilometers in the
Qikiqtani (Baffin Region) (Department of Health, Government of Nunavut, 2014). Several
community organizations and programs focused on wellness and some traditional counselling
also exist in the city (Iqaluit, 2012). Iqaluit is also the judicial centre for Nunavut with the
Nunavut Court of Justice servicing the territory with a fly-in court circuit model that visits the
territory’s communities at set intervals (Nunavut Court of Justice, 2013a). The headquarters for
the Department of Justice, which provides court services to the Nunavut Court of Justice as well
as probation services throughout the territory, is located there (Department of Justice, Government of Nunavut, 2014). The territory’s policing service, the Royal Canadian Mounted Police, has its headquarters in Iqaluit (Royal Canadian Mounted Police, 2014), and the Nunavut Regional Office for the Public Prosecution Service of Canada, which services the territory, is also based there (Public Prosecution Service of Canada, 2014).

Arviat (pop. 1,810; Statistics Canada, 2011), the second largest community in Nunavut, is located on the west coast of the Hudson Bay and is the most southern mainland community in Nunavut, situated above Manitoba. It has the highest birthrate in Canada and a young population, with 38.5 percentage of the population under the age of 15 (Statistics Canada, 2011). Arviat’s economy is mixed with traditional subsistence activities as well as wage-based work (Aarluk Consulting, Inc., 2011a). Health infrastructure includes a health centre (Department of Health, Government of Nunavut, 2014) staffed by 6 to 8 nurses and small numbers of social service and wellness staff as well as professionals who visit the community on an itinerant basis (Aarluk Consulting, Inc., 2011a; Arviat Health Committee, Arviat Hamlet Council, 2009). Arviat also has community wellness organizations and programs. Arviat’s justice infrastructure includes a 4-member RCMP detachment, a probation officer and a justice of the peace. Criminal court is delivered by fly-in court services that visit Arviat four times a year. A community justice committee deals with diversion from the court where possible (Nunavut Court of Justice, 2014).

Qikiqtarjuaq (pop. 520; Statistics Canada, 2011) is located on an island north of the Arctic Circle near the east coast of Baffin Island in the Davis Strait. This small community (with 29.4 percent of the population under the age of 15; Statistics Canada, 2011) is one of the more traditional communities in Nunavut and many still engage in traditional subsistence activities (Aarluk Consulting, Inc., 2011b). The community’s formal economy, however, has limited
opportunities (Aarluk Consulting, Inc. 2011b). Health infrastructure includes a health centre (Department of Health, Government of Nunavut, 2014) with 2 nurse practitioners (Aarluk Consulting, Inc. 2011c) a social worker and professionals visiting on an itinerant basis. It has few community wellness organizations or programs. Qikitarjuaq’s justice infrastructure includes a two-member RCMP detachment and a justice of the peace. Also included is a fly-in court that services Qikiqtarjuaq 3 times a year, and a community justice committee that deals with diversion from the court (Nunavut Court of Justice, 2014).

6.3.3 Data collection and analytic procedures

Fifty-five semi-structured interviews were conducted in the three participating communities between January and December 2013 during 3 trips each to Iqaluit and Arviat and 2 trips to Qikiqtarjuaq. All interviews but 4 were conducted in person by the researcher (these were conducted by telephone). In 4 of the 55 interviews, 2 participants belonging to the same sector and to the same within-sector group (e.g., nursing, police and elders) asked to be interviewed together. Because of the likelihood of mutual influence of these coupled participants on the focus, topics and issues of interview discussions, these interviews were coded as one. Further, the common community, sectors and within-sector groups of these paired participants meant this choice was considered not to affect results at the community, sector and/or within-sector group levels of analysis. Recruitment of participants reflected purposeful sampling to optimally address the research question (Creswell, 2009) and represented 4 sectors. Participants across all cases comprised 18 justice sector representatives (3 judges, 3 defence lawyers, 4 prosecutors, 1 justice of the peace, 1 court administrator, 4 RCMP police officers, 2 probation officers); 14 from health (8 nurses, 3 social workers, 1 wellness worker, 2 psychiatrists); 13 from community organizations (8 community-based wellness program staff, 2 community justice workers and 3
representatives from municipal government); and 14 representing community members (11 Inuit elders and 3 caregivers). Identifying health and justice professionals for recruitment was, in some instances, self-evident because only one person represented a professional group within the health or justice sector in a particular community. In other circumstances, new participants were recruited as a result of referrals made by other participants within the same or different professional group. Some justice sector participants were known to the researcher and were invited to participate in the study because they had relevant experience with mental health and justice issues in Nunavut. At other times, research assistants identified representatives of community organizations and community members who could contribute meaningfully to answering the research question.

Thirteen interviews in each case involved fly-in or generally centrally based professionals (collectively referred to as “fly-ins”) who serviced the territory at large. Eleven of these interviews involved justice professionals and two involved health professionals. Their interviews were relevant to all three communities and were thus included in consideration of each of the three cases. Accordingly, 26 interviews represented the data for the Iqaluit case while 27 interviews represented data from Arviat and 28 interviews represented data from Qikiqtarjuaq, respectively. Interviews were generally held in community organization facilities, government offices, at the Nunavut Research Institute, or on occasion in peoples’ homes. Additionally, a focus group was held in each of the three communities to discuss topics identified by the researcher from field work as most salient. Focus group participants comprised 3 in Iqaluit, 3 in Arviat and 8 in Qikiqtarjuaq. Participants were long-time residents of their respective communities and were either currently involved in justice initiatives in their community or had been involved in such initiatives. Focus group data for the cases was kept separate from other
interview data for purposes of analysis. Interviews amounted to a total of 71.25 hours, 18 minutes being the minimum and 2.58 hours being the maximum, with the average interview being 1.3 hours. Focus groups amounted to 4.2 hours, each averaging 1.4 hours in length. Interviews were conducted in English with the use of local Inuktitut-speaking interpreters where necessary. Forty-eight interviews were audio-taped and transcribed verbatim by certified court reporters. Seven interviews were recorded using field notes. Member-checking was conducted to confirm accuracy of raw data in specified circumstances (see Appendix J).

Integrated deductive and inductive approach: The cascading logical framework derived from theory guided this study, in a manner similar to approaches identified in the literature (Elo and Kyngäs, 2007) and used in other studies (e.g., Giguere, et. al., 2011). Frameworks allow explorations to benefit from and expand on previous knowledge and are seen as a helpful means for organizing the coding process (Bradley, Curry, and Devers, 2007). This deductive approach was complemented by an inductive process which reflected the experiences of participants vis a vis the study’s framework. The integration of the deductive/inductive approaches was reflected in the coding structure and analysis of this study. This methodological approach, integrating data-driven codes with predetermined theory-driven codes based on the tenets of a particular theory, finds resonance in other studies (e.g., Fereday and Muir-Cochrane, 2006).

Deductive analysis: Initial coding of interview data was assisted by a codebook (DeCuir-Gunby, Marshall, & McCullock, 2011; see Appendix K) that served to categorize the data according to decisions suggested by the study’s literature-informed logical framework (see above; e.g., Table 4.3 and Appendix G for full framework). That is, codes distinguished deductively derived categories of objectives and propositions suggested by the framework as “topics” and “issues” (respectively) arising from interview data. These codes served to organize
similar or related text into these categories and to identify disconfirming evidence (Crabtree & Miller, 1992). In the language of NVivo 10 qualitative software (QSR International Pty Ltd., 2012) topics and issues were called “nodes” and “child nodes,” respectively.

**Inductive analysis:** Similar segments of text within each of the topics and issues (i.e., the framework’s objectives and proposition) were then further explored, ordered and arranged, resulting in the inductive development of sub-categories within these categories. Sub-categories (called “sub-nodes” and “sub-sub-nodes” in the language of NVivo 10 qualitative software) were identified as conversation subjects that arose for discussion by more than one interview (e.g., Kral et al., 2011) within a case (i.e., community) in any of the three cases. The developed sub-categories, in turn, were used to help reveal meaningful themes that run through the data (e.g., Morse, 2008; Saldaña, 2013).

Interviews were coded in their entirety except for some introductory remarks and preliminary, ease-setting conversation unrelated to the subject and content of this study. The total references coded per topics, issues and their sub-categories were identified and converted to percentage of word coverage (e.g., Leung, 2012; Hunt, Rasmussen, & Lamm, 2010; Panuwatwanich & Peansupap, 2013) in order to identify areas of primary relevance to participants with respect to the framework’s topics and issues and to verify researcher impressions from the field in this regard. Data from each case was analyzed independently before a cross-case analysis aggregating findings across the three individual cases to obtain an overarching picture of the commonalities and differences in the three cases (Stake, 2006), including in relation to the propositions of the study (Yin, 2009). Further details of the analysis are available elsewhere (Chapter 4 and 5; see also Ferrazzi & Krupa, 2014).
Several constructivist strategies used in this study to increase trustworthiness and rigour (Patton, 2002) addressed credibility, transferability, dependability and confirmation of the data (Lincoln & Guba, 1986; Denzin & Lincoln, 2005; Krefting, 1991; Streubert & Carpenter, 1999). Efforts to triangulate data, for example, used multiple sources (semi-structured interviews, focus groups, and documents) with lines of converging inquiry (Yin, 2009) and comparison against the literature (Morse, Swanson, & Kuzel, 2001). The study also included multiple perspectives (with participants representing several groups within four different sectors) (Flick, von Kardorff, & Steinke, 2004; Patton, 2002; Yin, 2009); select member-checking (Merriam, 2009), and theory (i.e., TJ) to increase the likelihood that findings would have meaning in other similar situations (Patton, 2002, Yin, 2009). Meanwhile, the potential for the replication of results was served by the selection of multiple cases. The selection was guided by the issues related to the study’s purpose (Yin, 1993), such as how remote geography, resource issues, and Inuit culture influence the application of TJ in the context of criminal courts in Arctic communities. The cases were selected for their presumed capacity to predict similar results (literal replication) as well as to predict contrasting results for expected reasons (theoretical replication) (Yin, 2003, 2009).

6.4 Results

6.4.1 Literature-Derived Principles, Objectives and Propositions

Three central principles of TJ were identified from the literature along with 18 objectives arising from the goals of these principles. The three principles comprise the following: the court must be oriented towards a therapeutic response; problem-solving must involve interdisciplinary/multidisciplinary collaboration; and the therapeutic response does not trump other justice system values such as predictability in the law, due process, and community safety (Conference of Chief Justices and Conference of State Courts Administrators, 2000; Birgden, 2002; Birgden, 2009).
2002; Birgden & Ward, 2003; Hora, Schma & Rosenthal, 1999; Wexler & Winick, 1996; Winick, 2002; Winick, 2013). The 18 objectives identified from the framework are listed in Appendix G (see also Figure 6.1). These 18 objectives provided the basis of the 18 topics explored during the fieldwork interviews of this study. Three propositions were identified as potentially relevant to each of these 18 objectives—constrained resources, remote geography, and Inuit cultural considerations—and these formed the basis of the issues explored within each of the 18 topics during the interviews.

6.4.2 Case 1 – Iqaluit

Of the 18 topics generally canvassed during this study, just 3 dominated interviews with Iqaluit participants (occupying almost two-thirds of all interviews combined; Figure 6.1, blue bars). These 3 were titled Identification, Screening and Assessment (20%, 25 interviews), Treatment and Therapeutic Services (24%, 25 interviews), and Collaboration between Court and Others (Social Services, Health, Community Organizations and Community Members) (20%, 24 interviews). Participant conversations about Identification, Screening and Assessment, for instance, generally dealt with how to determine who would be eligible for potential criminal court mental health diversion programs in Iqaluit as well as how and whether a target group could be readily identified in this criminal justice context. “In some First Nation communities,” said one participant, “mental illness is seen as a different plane of understanding, and some view it as being a profound gift to some. But the reality is: Do we need to define it? Do you need to label it? This is the thing.”

Talk about Treatment and Therapeutic Services, meanwhile, included mainly discussions concerning the most appropriate treatment responses associated with these court initiatives as well as their appropriateness and feasibility in Nunavut communities. “Inuit, as well as First
Nations, all are firm believers in a holistic approach to healing,” said one participant. “There’s no real concept in terms of western healing models of holistic approaches, which is a huge impediment.” Participant conversations about Collaboration between Court and Others included participant impressions about the nature of collaboration between the fly-in criminal court and the services and community groups and members vital for criminal court mental health diversion delivery. “[T]he courts and the community people [need] to respect each other,” said one participant. “The respect and the desire for it to succeed has to be there from both sides. If the desire for it to succeed is not there, of course it would collapse.”

Importantly, as the quotes above illustrate, Inuit culture emerged as the main issue during conversations about all 3 dominant topics in Iqaluit (Figure 6. 2 a, b and c, blue bars). That is, as participants in this community turned their attention to identification, treatment or court collaboration, they typically began to talk about how differences between Inuit and Western cultures would likely play an important role in potential criminal court mental health diversion initiatives in Nunavut. “It’s very important to have that bridge from the Western culture to the Inuit culture, to Inuit Qaujimajatuqangit [traditional knowledge],” said one participant. “If you have a good bridge and you have good communication for the two that’s how I would see it succeeding.” Issues of geographic remoteness or resources were not discussed as often in the contexts of these 3 topics. Meanwhile, conversations about the impact of Inuit culture on the 3 topics typically included discussions about a variety of subjects such as recognizing mental illness, approaches to problem-solving, issues of language, ideas around the role of elders, and others. These subjects were inductively distilled and coded from the interviews until 13 key, recurring themes emerged (Table 6.1). These themes and what participants were saying about them are discussed in full in the Cross Case Results section below.
The general emphasis on the 3 topics, confirmed by the NVivo 10 analysis, was earlier identified during fieldwork as salient and brought to the Iqaluit focus group (see Appendix I) and conversations within this group reflected many of the same sentiments raised during the other Iqaluit interviews and discussed in the Cross Case Results below.

6.4.3 Case 2 – Arviat

Many participant conversations during interviews in Arviat were also devoted to discussing the same 3 topics that dominated in Iqaluit—Identification, Screening and Assessment (21%, 27 interviews); Treatment and Therapeutic Services (19%, 26 interviews); Collaboration between Court and Others (Social Services, Health, Community Organizations and Community Members) (20%, 24 interviews) (Figure 6.1, red bars). Most participants also spoke about these topics in the context of the impact of Inuit culture or of cultural differences between Western views and those of northern residents (Figure 6.2 a, b and c, red bars). Remoteness and resources were discussed less commonly. Because of the similarity in the culture-relevant themes identified as salient to Arviat participants during interviews and those discussed by participants in other communities, these themes are described and treated fully in the Cross Case Results section below.

6.4.4 Case 3 – Qikitarjuaq

The 3 dominant topics during interviews by participants in Qikitarjuaq were the same as those most frequently discussed elsewhere: Identification, Screening and Assessment (20%, 28 interviews); Treatment and Therapeutic Services (20%, 27 interviews); and Collaboration between Court and Others (Social Services, Health, Community Organizations and Community Members) (19%, 22 interviews). Similarly, the impact and relevance of Inuit culture also dominated talk about these topics (Figure 6.2 a, b and c, green bars) while the themes that
emerged from Qikiqtarjuaq interviews were also similar to themes arising from the other cases. These are discussed in the *Cross Case Results* section below.
Figure 6.1. Percentage of Conversations Related to Each Topic for Three Cases.

Topics Legend
A. Identification, screening and assessment
B. Treatment and therapeutic services available to the courts
C. Judge and offender interaction
D. Voluntariness of participation
E. Recidivism as therapeutic indicator
F. Symptoms and psychosocial functioning
G. Education-professionals & stakeholders
H. Collaboration (within justice sector)
I. Collaboration (among social services, health, and community organizations)
J. Collaboration (between Court---and social Services, health and community organizations, and community members,
K. Information sharing
L. Legal incentive
M. Social service & health accountability to court
N. Specific and accepted program
O. Court assessment of social service & health delivery
P. Community responsibility
Q. Court revisits individualized treatment plans
R. Court responsibility for monitoring outcomes
Figure 6.2. Percentage of Conversations Related to Constrained Resources, Inuit Culture or Remote Geography for Top Topics (i.e., Objectives) for Three Cases. a. Identification, Screening and Assessment; b. Treatment and Therapeutic Services; and c. Collaboration between Court and Others (Social Services, Health, Community Organizations and Community Members)

a.

b.

c.
6.4.5 Cross Case Results

Interviews with participants across all 3 communities showed a striking similarity in the amount of conversation devoted to the same 3 topics from among the 18 that were broadly introduced or touched upon as relevant to the research purpose (Figure 6.1). That is, interview participants from all communities appeared generally most interested in talking about identifying the potential target population for a possible criminal court mental health initiative, understanding the effectiveness, appropriateness and feasibility of any associated treatment, and improving collaboration between the court and the non-justice partners necessary to these initiatives. In particular, participants in all cases appeared to consider differences between Inuit and Western culture as more salient to these topics than issues of remoteness or limited resources (Figure 6.2). This was despite variation in population size and putative differences in degrees of geographic isolation and available mental health and justice capacities across the 3 cases. (This similarity persisted even when the fly-in participants were removed from each case during the analysis.)

Importantly, similarities across cases went beyond a shared dominant interest in the issue of Inuit culture within the top topics: 13 key themes were also developed from the most-discussed sub-categories within interview conversations, and these themes recurred across all cases (Table 6.1). For instance, within the topic of Identification, Screening and Assessment, most interviews (in all cases) focused on the problems associated with recognizing mental illness (Iqaluit, 77%, 24 interviews; Arviat 70% 27 interviews; Qikiqtarjuaq 72% 27 interviews) and, in particular, how this recognition is affected by 4 key themes. Five additional themes emerged from interview conversations (in all cases) about the second of the dominant topics, Treatment and Therapeutic Services, and the importance of Inuit culture. And a further four themes were
developed from examining interview conversations (in all cases) concerning cultural issues relevant to *Collaboration between the Court and Others (Social Services, Health, Community Organizations and Community Members)*. These 13 themes in total are discussed in detail below.

Table 6.2 includes interview quotes from the three cases as illustrations.

Table 6.1 The most-discussed sub-categories (i.e., sub-nodes and sub-sub-nodes in the language of *NVivo 10* software) arising from conversations about Inuit culture in the context of the top 3 topics, along with the relative amount of conversation devoted to these sub-categories and the 13 key themes suggested by these discussions.

<table>
<thead>
<tr>
<th>Top Topics and Issues (parent nodes and child nodes derived from literature)</th>
<th>Top sub-node/sub-sub-nodes (emerging from conversations of topics and issues)</th>
<th>Description of reference types coded from interviews and included in sub-nodes or sub-sub-nodes</th>
<th>% of conversation devoted to sub-nodes or sub-sub-nodes (within conversations about child nodes or sub-nodes, respectively)</th>
<th>Themes emerging</th>
</tr>
</thead>
</table>
| **Topic: Identification, Screening and Assessment** | **Sub-node: Recognition of mental illness** | References relate to recognition of mental illness AND references relate to cultural differences in the understanding of mental illness | Iqaluit: 20%  
Arviat: 21%  
Qikiqtarjuaq: 16% | 1. *Culture affects an understanding of the meaning of mental health* |
| Issue: Inuit Culture | **Sub-sub-node: Cultural understanding of mental health** | | | |
| | **Sub-node: Recognition of mental illness** | References relate to recognition of mental illness AND references relate to social tolerance for atypical behavior informed in part by cultural values such as non-interference AND may include references to behavior that exceeds tolerable limits | Iqaluit: 17%  
Arviat: 21%  
Qikiqtarjuaq: 25% | 2. *Cultural and social tolerance permits atypical behaviour up to a high threshold* |
| | **Sub-sub-node: Cultural and social tolerance of atypical behaviour** | | | |
| | **Sub-node: Recognition of mental illness** | References relate to recognition of mental illness AND references relate to the relevant impact of social and cultural change/disruption on identifying groups vulnerable to mental health | Iqaluit: 30%  
Arviat: 14%  
Qikiqtarjuaq: 15% | 3. *The context of cultural change and disruption has an impact on identifying mental illness* |
| | **Sub-sub-node: Impacts of cultural change** | | | |
### Topic: Treatment and Therapeutic Services

#### Issue: Inuit Culture

| Sub-node: Recognition of mental illness | Sub-sub-node: Suicide | References relate to recognition of mental illness AND references relate to suicide AND may include references that relate to suicide as a barometer of the magnitude and seriousness of mental health AND may include references to suicide as a pervasive source of mental stress on communities and families AND may include references to suicide ideation and its relevance to recognition of mental illness | Iqaluit: 21% Arviat: 31% Qikiqtarjuaq: 29% | 4. Suicide and its relevance to the recognition of mental illness |

| Sub-node: The relative roles of traditional and contemporary counselling | References relate to traditional and/or contemporary counselling in mental health rehabilitation AND references relate to the relative roles of these counselling approaches AND may include references to ways to reconcile the two approaches | Iqaluit: 22% Arviat: 23% Qikiqtarjuaq: 23% | 5. Mental health counselling should incorporate both traditional and contemporary (Western) approaches |

<p>| Sub-node: The relevance of cultural transition on treatment and rehabilitation | References relate to the importance of cultural and colonial history in understanding and treating mental health issues AND may include references to the importance of cultural change in social roles and identity on mental health | Iqaluit: 23% Arviat: 9% Qikiqtarjuaq: 9% | 6. Cultural transition and disruption should inform treatment and rehabilitation |</p>
<table>
<thead>
<tr>
<th>Sub-node: The importance of connection to the land and related cultural practices</th>
<th>References relate to connections to the land and related cultural practices AND references relate to the therapeutic value (or lack of value) of these practices on mental health</th>
<th>Iqaluit: 12% Arviat: 8% Qikiqtarjuaq: 8%</th>
<th>7. Going out on the land and related cultural practices are important to mental health</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-node: Stigma</td>
<td>References relate to mental health-related stigma AND references relate to the relationship between stigma and the labelling that is a consequence of attending treatment</td>
<td>Iqaluit: 8% Arviat: 15% Qikiqtarjuaq: 14%</td>
<td>8. Community stigma associated with formal recognition of mental illness is a problem</td>
</tr>
<tr>
<td>Sub-node: Family involvement in treatment</td>
<td>References relate to significance of families and family support in mental health rehabilitation AND may include references to limits to family support for people with mental illness</td>
<td>Iqaluit: 11% Arviat: 15% Qikiqtarjuaq: 17%</td>
<td>9. The role of family is critical to treatment and rehabilitation</td>
</tr>
<tr>
<td>Topic: Collaboration between Court and Others (Social Services, Health, Community Organizations and Community Members)</td>
<td>Sub-node: Approaches to problem-solving</td>
<td>References relate to culturally informed approaches to problem-solving AND references relate to their impact on collaboration AND may include references to the influence of cultural change and disruption on problem-solving roles and expectations</td>
<td>Iqaluit: 36% Arviat: 37% Qikiqtarjuaq: 39%</td>
</tr>
<tr>
<td>Issue: Inuit Culture</td>
<td>Sub-node: Role for elders</td>
<td>References relate to role for elders in the court AND may include references to the role of elders in a complex justice system</td>
<td>Iqaluit: 14% Arviat: 11% Qikiqtarjuaq: 14%</td>
</tr>
<tr>
<td>Sub-node: Perceptions of wrong-doing</td>
<td>References relate to culturally affected perceptions of wrong-doing AND</td>
<td>Iqaluit: 16% Arviat: 14%</td>
<td>12. Different cultural responses to wrong-doing</td>
</tr>
</tbody>
</table>
1. **Culture affects an understanding of the meaning of mental health:** Many of those interviewed for this study (in all 3 cases) raised the spectre of an essential difficulty in identifying people with mental illness for criminal court mental health diversion because contemporary (Western) and Inuit concepts of mental illness are fundamentally different. Several spoke of more holistic concepts of mental well-being (or “mental wellness”) attributed to traditional Inuit culture. Inuit views, for example, were described as less likely than Western approaches to reflect a particular or biological condition and more likely to reference overall well-being, including everything from relationships with the community and the environment to relationships with the spiritual world. Indeed, participant interviews revealed a perceived general reluctance among Inuit to think of mental illness as a condition or characteristic of an individual but rather as something imposed by external imbalances. For instance, some described mental illness as synonymous with what they described as outside causes, such as alcohol, drugs and other social problems that have accompanied colonial cultural upheaval. Meanwhile, other participants suggested that Inuit conceptualization of mental wellness may obscure the identification of serious mental illness from the perspective of Western mental health.
2. Cultural and social tolerance permits atypical behaviour up to a high threshold: Speaking about Inuit culture in the context of identifying people with mental illness, numerous participants (in all three cases) described their perception that Nunavut communities were characterized by a high social tolerance of atypical behaviour. This tolerance, they said, was informed—in part or in the main—by Inuit traditional cultural values of non-interference and forgiveness. The high level of tolerance was described during interviews as a possible complicating factor in the recognition of mental illness because of the suggestion that mental health symptoms must be severe to elicit a family or community response. Some interviews described how behaviour was seen to exceed tolerable limits only when it becomes excessively disruptive or dangerous. Thus, people with mental illness in these communities are unlikely to come to the attention of criminal courts for anything but offences too serious to make most criminal court mental health diversion initiatives appropriate.

3. The context of cultural change and disruption has an impact on identifying mental illness:
Some participants suggested an essential relevance of social and cultural change/disruption in the Arctic in the context of identifying particular population groups vulnerable to mental health issues. Inuit males, for instance, were described by some as the most impacted by recent cultural changes that have accompanied greater exposure to southern culture and technologies. Some noted that for men and boys, cultural changes have meant changed social roles and a loss of identity because of transformed occupations and activities. In many cases, the changes are associated with alcohol and other substance abuse by men, with frequent mental health consequences. Importantly, several participants remarked that cultural change and related historical interactions with outside authorities was also to blame for a belief among some Inuit
that people labelled as having a mental illness risked being removed from the community and their families for treatment elsewhere. Indeed, some pointed out that the practice of removing people with health concerns persists today because of limited resources in northern communities.

4. Suicide and its relevance to recognition of mental illness: In several interviews in all 3 communities, discussions about the recognition of mental illness frequently invoked talk about suicide as a relevant and culture-wide phenomenon. While suicide and suicide ideation was not described by participants as an indicator of mental illness per se, it was nevertheless on participants’ minds as a sort of barometer of the magnitude and seriousness of mental health issues in Nunavut, particularly among males. In some interviews, suicide was discussed in terms of its role as a pervasive source of mental stress on communities and families with potential mental health consequences. Others described large community events designed to address community-wide suicide problems, suggesting the magnitude of suicide as an issue in these Arctic hamlets.

5. Mental health counselling should incorporate both traditional and contemporary (Western) approaches: In all 3 cases, differences between Inuit and Western culture figured prominently in participant conversations about mental health treatment associated with potential criminal court mental health diversion initiatives. In particular, the relative roles of traditional and contemporary (Western) counselling were described during several interviews in ways that revealed possible tensions between them. In particular, traditional Inuit counselling practices were described as involving informal discussions with elders who were generally perceived to have shared values. Meanwhile, some described Western counselling as seen as more foreign in its formal and clinical orientation and therefore less comfortable. While the merits of a
traditional approach dominated community member discussions of the topic, access to Western approaches to counselling was also seen as desirable by some. Several acknowledged a central importance for blending or integrating cultural practices to ensure appropriateness of treatment efforts.

6. Cultural transition and disruption should inform treatment and rehabilitation: Culture’s complicating influence on mental health treatment in the context of criminal justice was also reflected by participant perceptions that cultural change and disruption formed a backdrop that must be recognized in any rehabilitation efforts. Many suggested that rehabilitation interventions should include rehabilitation components that specifically address social and historical events (e.g., cultural disruption following colonialism, settlement, education, etc.) that have adversely impacted Inuit communities.

7. Going out on the land and related cultural practices are important to mental health: Several interview participants (in all communities) who spoke about specific approaches to mental health treatment that could be associated with criminal court mental health diversion initiatives referred to connections to the land and related Inuit cultural practices. In general, these participants suggested that programs providing Inuit with opportunities to get out on the land, to hunt, fish or participate in other traditional Inuit pursuits have positive mental health effects. Others, however, were more circumspect about the relevance of land-based interventions, especially in cases where people have a serious mental illness.

8. Community stigma associated with formal recognition of mental illness is a problem: Among other complicating subjects raised during interviews was the notion of stigma. This frequently
arose in conversations about treatment associated with criminal court mental health diversion initiatives. Many participants suggested that stigma is a common issue for people formally recognized (psychiatrically labelled) as having mental illness in Inuit communities. Some interviews described a fear of being labelled with a mental health diagnosis and suggested that this fear may play a role in preventing some people with mental illness from seeking treatment. That is, enrolling in treatment was perceived as creating the risk that the community will become aware that a person’s mental illness has been formally recognized and labelled.

9. The role of family is critical to treatment and rehabilitation: Participant interviews in all 3 cases suggested that culturally affected perceptions of families and close relationships highlight the importance of family support in any criminal-court-affiliated mental health rehabilitation efforts. In particular, strong familial support was described as critical to maintaining a sense of community inclusion for people with mental illness and to increasing the likelihood of rehabilitative effects from social contact. However, the positive impact of families was also described by some as complicated by a culture-related familial tolerance of varied and atypical behaviour of members. That is, participants noted that tolerance by family members sometimes obscured the recognition of mental illness until a person’s deteriorating mental health seriously disrupted the family itself—a point after which families were described as often inclined to relinquish responsibility altogether (see cultural and social tolerance above).

10. Approaches to problem solving need to reconcile differences in culture: Among the key subjects raised when participants spoke of culture’s impact on collaboration between criminal courts and other sectors (including communities) was the notion of “problem solving.” Interviews in all 3 communities described cultural differences in approaches to problem solving
as problematic for collaboration, especially for collaboration between the courts and community members. Inuit ideas of problem solving, for example, were described as emphasizing consensus and the guidance of traditional knowledge. Many participants expressed recognition of the importance of working with the court to help people with mental illness, but found it difficult to conceptualize how to reconcile traditional approaches to decision making with a hierarchic, adversarial, and increasingly complex justice system that visited communities intermittently. Some suggested that with cultural transition, traditional problem-solving approaches had given way to a tendency for communities to look outward to external agencies for resolution of problems the community can no longer deal with. There was a shared sentiment among many participants that although cultural change had circumscribed traditional approaches to problem solving, these approaches still have a role. Many pointed to local community justice committees as an example. Community justice committees work with people involved in low-level crime to find culturally appropriate and restorative justice solutions and to blend offender accountability with successful reintegration into community life. Some participants, meanwhile, were philosophically opposed to using the court for mental health problem solving.

11. The role for elders in the court and criminal justice system needs greater development:

Conversations about collaboration with the court frequently raised the subject of elder involvement. Interviews in all 3 communities talked about elders in a manner that revealed a central challenge in distinguishing an appropriate role for them in an increasingly complex society with a rights-based, adversarial court orientation. Some participants perceived elders as essential to any criminal justice response to people with mental illness, because they are perceived as pillars of support generally as well as for people with mental health issues. Some
among the elders themselves felt they could speak on behalf of people with mental illness in a justice context. Meanwhile, several participants expressed concern that the role of elders in addressing wrong-doing has become diminished. Others described difficulties associated with finding the appropriate place in the court system for input by elders in dealing with offenders or people with mental illness in conflict with the law.

12. Different cultural responses to wrong-doing require careful consideration: Participants in all 3 cases spoke about the topic of collaboration by describing differences in culturally affected perceptions of wrong-doing and how these may create hurdles for collaborative efforts. Participants often described wrong-doing in terms that emphasised Inuit notions of social harmony, community cohesion, healing and reconciliation. Many contrasted these ideas with the contemporary emphasis on dealing with criminal behaviour through isolation, punishment, and separation from community, approaches many associated with the current justice system.

13. Inuit and Western culture needs to be on equal footing: Conversations about the topic of collaboration also touched frequently upon ideas related to mutual cultural respect. Several participant interviews in all 3 cases remarked on the need for the court to respect the culturally informed input of community members or organizations before any collaboration could be effective. In some instances, participants described an overall perception that the justice system does not adequately consider Inuit culture, and some expressed frustration that Inuit views are not being heard. Discussions of mutual cultural respect were often linked to talk about cultural transition and colonialism. That is, historical interactions and past power imbalances continue to affect issues of respect and trust by the community in the context of the court (see cultural transition and disruption above).
Table 6.2. Quotes from interviews illustrating themes from conversations about Inuit culture in the context of the 3 most discussed topics for all 3 cases.

<table>
<thead>
<tr>
<th>Themes</th>
<th>Illustrative quotes</th>
</tr>
</thead>
</table>
| **1. Culture affects an understanding of the meaning of mental health** | **Iqaluit:** “...growing up in the north you don't see those areas of -- those -- those fields of -- of career work, study. You don't see those. So, there is no local knowledge of what really a psychiatrist can do... In the community, we don’t understand what psychiatry is. We don’t understand mental illness. We don’t—in the English terms—we don’t understand... people can't -- they don't -- they don't recognize it. They don't know what -- what mental illness is.” (justice sector)  

**Arviat:** “So I think people have different definitions maybe of what mental illness is. You know, I don't know, maybe culturally you know, they [Inuit] define mental illness as being different than maybe what we might refer to as, you know, stereotypical mental illness.” (health sector)  

“...from the point of view of strictly the mental issues, it’s probably more difficult for them [Inuit] because I don't think they think in the sense that well, this person has got mental issues so we've got to cut that out and put it on a slab.” (justice sector)  

“...before there were drugs or alcohol involved there were very few mental issues.” (community member)  

**Qikiqtarjuaq:** “…they usually fail to see their symptoms as something that falls under the mental health category.” (health sector)  

“When I started this role and that -- my first priority was into -- it was educating the people that I worked with, my higher-ups, in terms of what actually mental health really is or mental illness, but to recognize that we have a mentally ill population. So, it’s not all wellness. It's not all -- it's all not health. We have -- we have psychiatric patients --- who need psychiatric care.” (health sector)  

“... I can say that drug use has been one of the big problem and issue of really reaching into having the mental illness by having -- for those that are great users of the drugs.” (community member) |
| **2. Cultural and social tolerance permits atypical behaviour up to a high threshold** | **Iqaluit:** “The problem is, in the North, many of these problems have burned, if I can use that term, for years. And everyone knows that someone else is a bit odd and is talking to himself or herself, or doing strange things, and nothing’s ever done--until it’s a crisis when somebody else gets hurt and then the police are involved. Then it comes to the attention of the system...In part, I think it’s a cultural response, too. I mean, in the south, the attitude towards the mentally ill may be very different than what you see in one of our traditional communities. They’re [Inuit] far more tolerant of differences like that.” (justice sector)  

“... [There are] just an overwhelmingly high level of chaotic things happening in people’s houses all the time, and a certain -- I think a really high just tolerance level and low reporting...” (community member) |
level of crazy tantrum, quasi-criminal activity anyway….[B]ehavior that is inappropriate is tolerated by others for a long time or addressed in, in what seem to be quite passive ways. So through shaming, through avoidance, through like, giving the person more space or allowing somebody to just to do their, to exhibit behavior that’s inappropriate longer than I think would be tolerated in similar—in a family in the south. I think part of that is informed by cultural issues—to let people have a high degree of individual autonomy.” Further, “[t]he availability of forgiveness by both offender and victim of any transgression. There’s a sense, a greater sense of the availability of forgiveness… But up to a point: If you throw the soup in grandma’s face, that’s crossed the line and-- you know—-or if you stab somebody or something… then, you cross the line.” (justice sector)

“The moment you talk about diverting anything in Nunavut, what you are talking about is diverting violent offences and sexual offences.” (justice sector)

Arviat:
“The labelling of mental illness is rare here. Mental illness is tolerated more here than in the South: unless it’s tossed in your face, it is ok.” (health sector)

“...I mean there is much more kind of respect for the individual in society here. Like, it’s not my business to judge, you know, you. So, you know, I think you are nuts but that’s not -- I don’t have an opinion on that because it’s none of my business. So there is, I guess society is perhaps much less judgemental so they are not maybe as quick to label people. And you can just be weird, you know. And there’s -- so I may see somebody and say boy that’s a weird guy but a professional might see that and say man, that man has really got you know serious mental health issues.” (community organization)

Qikiqtarjuaq:
“There’s a very high tolerance in -- in the Inuit culture for a lot of odd behaviour or unusual behaviour. There’s an extremely high tolerance…they have a high, high level of tolerance for non-functioning behaviours.” (health sector)

“Inuit culture is hands off –don’t intrude in anyone else’s affairs.” (health sector)

“... [Y]ou would not believe the bizarre behaviour that’s been normalized and accepted.” (health sector)

3. The context of cultural change and disruption has an impact on identifying mental illness

Iqaluit:
“Huge dislocation from their [Inuit] culture and from their traditions in an extremely short period of time” with “structural problems related to the loss of the culture and the role of individuals and gender, sexes in the culture, particularly among the males, I think, who are less successful in adapting to the new situation than the females.” (community organization)

“There’s a reluctance to admit [mental illness], because they don’t want their child leaving for treatment. They’ll do anything in their power to not have their child get on a plane to go somewhere to take foreign meds, to talk to foreign people, where they have no culture, no country food... They are so scared, and they’d rather die: ‘So, yeah, I’m afraid of my son. But it’s me or him, you know. Who’s going to die?’” (justice sector)

“People, I think, are and some of that is related to colonialism.... afraid to contact the authorities because the authorities are unpredictable. And foreign. And powerful. And intimidating. And have not been—not shown themselves to be wholly trustworthy in the
past.” (justice sector)

“I think there’s a huge and growing amount of anger on the part of young men... it's [the result of] the profound impact of cultural change on a society over a short period of time, and a problem with social roles. Suicide is a function of this.” (justice sector)

Arviat:
“But we do have a situation of especially young men who have finished school and then just disappear into their bedrooms or something and we never see them again. And I am concerned about that demographic. ... So they are young 20 or something year olds. I don’t know what is happening there and where that is going to suddenly show up...it’s definitely related to drug use and stuff. And it comes back to -- it’s the men who have lost their identity through this transition in the last thirty years or so and we are yet to see where that is going to go.” (community organization member)

“I talk to clients about, every single client, is whether there’s... there’s a history of alcohol abuse in the family, whether there's residential school in the background, you know, sexual abuse as a child, physical abuse as a child. And it's staggering to me... it's staggering to me the number of times where, you know, there is just really horrific things have happened to that person. And then they have massive substance abuse problems or, you know, mental health issues, or whatever as a result of that.” (justice sector).

Qikiqtarjuaq:
“Huge problem with anger in the North, particularly in young boys—teens to 30’s.” If you get angry, you either punch someone and end up in the justice system which doesn’t have much to offer, or you attempt suicide.” (health sector)

“We see more now today that have disabilities or that are disabled or that have a mental illness. We are living in that today. We see that. Like, back in the days we didn't see it hardly ever... I can say because I have many children and some of my children are affected and are drug users or alcohol users. So those are some things that are making a huge difference.” (community member)

“I talk to clients about, every single client, is whether there’s... there’s a history of alcohol abuse in the family, whether there's residential school in the background, you know, sexual abuse as a child, physical abuse as a child. And it's staggering to me... it's staggering to me the number of times where, you know, there is just really horrific things have happened to that person. And then they have massive substance abuse problems or, you know, mental health issues, or whatever as a result of that.” (justice sector).

4. Suicide and its relevance to the recognition of mental illness

Iqaluit:
“When their friend from their class commits suicide, when their friend's mother commits suicide, and then—or is murdered, or, you know—all these social issues that all go back to mental health. Like, I can, like, say that with so much confidence. All of the things that happen in this jurisdiction go back to mental health.” (justice sector).

“A lot of my clients have huge scars on their necks. ‘I've tried to kill myself two or three times.’ It is -- it is a much more massive problem than anyone would like to admit...[Y]ou hear it in Court. I mean you hear it in the street all the time. People talk about suicide as if it’s an everyday thing.” (justice sector)

“The rate of suicide of young males is staggering in Nunavut. And it’s getting worse. The rate of violence, both sexual violence and domestic violence, is also accelerating. ... There’s a need, I think, on the part of many young Inuit to develop a new identity, particularly for a male—
who is sort of not—they're truly lost.” (justice sector)

**Arviat:**

“But I think suicide here is looked at differently than it is in the rest of Canada... And I know, you know, when my first or second week in the North somebody I had met or somebody I knew I was working with or something committed suicide in Clyde River... And I remember one of his friends saying oh he was so brave....[W]e would perhaps be raised to say that suicide is like the chicken way out. But I don’t think it is necessarily looked at that way here. I mean it’s still just as devastating for the families, of course. But, you know, I think there is a certain sense of that is a way to settle problems...I know from reading Facebook or something that many kids here think about it [suicide] a lot... or death a lot... I guess a lot of people do it, do threaten suicide or supposedly attempt it or whatever as a way of saying look at me, I am hurting here and help me out.” (community organization member)

“[Y]ou cannot live here and not be touched by suicide. And many members of the—of families— have lost loved ones through suicide, and there’s no immediate counseling that’s available to them to help them deal with that loss.” (justice sector)

“I mean there are still kids that, you know, it [suicide] comes up; it’s part of their lives. They don’t know—they feel like they have run out of options and run out of places to go or don’t know how to kind of solve the problems that they face.” (community organization member)

“[T]he grade 12 students, who are more mature and better able to kind of articulate themselves might go to the elementary school and kind of communicate with the younger kids about suicide and about, you know, the impact it has in the community and stuff like that... Usually at the start of the year we talk about suicide and suicide prevention. The Wellness Centre, usually [at] the end of September, has a suicide walk ...” (community organization member)

**Qikiqtarjuaq:**

“Suicides are situational —about relationships, anger and jealousy, as well as, substance abuse.” (health sector)

“...what we chose to do this year was a ... suicide prevention picnic. So, what we did was we got these great big balloons at the airport that they use to check the wind, and we got helium, we took it over there with us. And so, people wrote notes to people who've passed on and then people, if you want—we had a microphone and a speaker, and you could read your letter out loud if you wanted to. You could keep it to yourself. You could show pictures. And—and then, we released the balloons all together. And it was—it was phenomenal. All the balloons stayed together ’til you couldn’t see them anymore. It was amazing. Yeah, it was simply amazing. And everybody was—we had a lot of feedback on how—how people felt about that. Like, releasing—like it felt like they were really releasing, so—it was productive.” (community organization)

5. **Mental health counselling should incorporate both traditional and**

**Iqaluit:**

“But, you know, I think the model that they've approached in the north in particular is not in tune with the aboriginal concepts, and I think that's a huge problem. Inuit, as well as First Nation, all are firm believers in a holistic approach to healing. They recognize that individuals are complex beings, and they may have a spectrum of problems that all tie into each other, all are related to each other, and they must be addressed as a group together --- in order to achieve balance and harmony in one's life.” (justice sector)
“If you are going to have an Inuit person who is mentally ill, you are going to have to be able to blend tradition, our traditional healing and a Westernized healing and hopefully get through to the person that you need both.” (justice sector)

“To be blunt, we are told that you know many diversions consist of referrals where people have been given traditional counselling. Traditional counselling appears to be one or two meetings, where one is told not to do it and to follow better patterns of conduct. For people with substantial mental health issues, with due respect, I don’t see the effectiveness of that.” (justice sector)

“If we were to tackle mental health, that’s the way that I envision it, is taking advantage of both. Both professions because Inuit are very professional in what they do. And also, like I said, if I was going to talk about my deep issues -- -- I think I can best describe those feelings in my own language. And they are so deep and I would want to express to them, not explaining what it is. But rather than speaking to somebody who understands right away what I am talking about. ... But at the same time I would want to speak to a professional psychologist, psychiatrist, whatever. I am just using that as an example. To get the professional help, to get the knowledge that they know that works best...Both of them can -- it can work very well.” (community organization member)

Arviat:
“Most people are not comfortable with counselling and what not, especially Inuit here. They would rather -- they are more comfortable in speaking with elders. Like if I was to take counselling I would rather do it with an elder or my close friend. Rather than anybody from Social Services.” (justice sector)

Qikiqtarjuaq:
“.I think the younger adults like 16, 17 and older I think they tend to respect the elders and would rather -- they are more comfortable with like somebody within their own community than say go and speak to a doctor or somebody, a southern person I guess you could say. “(justice sector)

“The elders are there to do traditional counselling. Most people are comfortable going to an elder to offer support because they know the elder personally or the elder can identify with them on different levels, whether it be cultural levels or language levels. Or you know a value system. “ (health sector)

Iqaluit:
“The Inuit have gone essentially from a nomadic hunting environment to dealing with space-age Internet, satellite TVs, and life in a settlement...We’ve seen it, in the space of three generations, things turn on their head. And mental illness—of course, again, I don’t have statistics to point to it—but it seems to be going through the roof.” (justice sector)

“There has been [sic] some very negative introductions to the different cultures outside of Inuit families, outside of Inuit settings, that were not so positive. And so we have a lot of people that are hurting. ... From what I see, it’s a lot of that [trauma]... that either was passed down from their guardians, their parents and so there is a lot of undealt-with issues.” (community organization)

“... And the problem that has taken 50 or 60 years to develop to the extent that it is and exists
now, layer after layer, generation after generation, is going to take the same time to recover. You can't do it tomorrow.” (community organization member)

Arviat:
“I mean, you still -- we still have a population of people who are suffering from colonization, and suffering, you know, traumatic events in their life, residential schools, and then that gets passed down to their children...” (Health Sector)

Qikiqtarjuaq:
“...I think, to be honest, mental illness is extremely common. Like, I think there’s a lot of -- if you make the umbrella of mental illness include alcoholism and PTSD, and post-colonialist stress, it captures a huge part of the population.” (justice sector)

### 7. Going out on the land and related cultural practices are important to mental health

Iqaluit:
“Well, it’s - of course, traditionally, life on the land was viewed as being very therapeutic for all sorts of ills. And we’ll hear that all the time from the elders in court about the ---- you know, when they lecture the young people. But realistically, if you’re a schizophrenic, and you need certain medications so you’re not psychotic -- sending you out on a -- on the land, I don’t think, is going to really address that... There may be some forms, lesser forms of mental illness that are properly addressed through that as one of a range of therapies. You know, for example, of depression.” (justice sector)

“Well that’s how -- that’s traditionally how you would deal with different behaviour, would be to reconnect with the land or with elders. I think though now that now that we understand the brain more that if there is some sort of chemical imbalance that, along with that traditional healing, I think a person will also need to have treatment with medication... Because I think that if you have a holistic view of okay, I need my medication. I need to be able to talk to Dr. X and I need to be able to talk to -- you know, to whoever the elder is. And I need to be able to go and sit by that rock and just listen to the wind. You know, and hear her for a bit. And then I will be okay.” (justice sector)

“Traditional pursuits are helpful if person is stabilized—need medical treatment in place for a land experience to be successful.” (health sector)

“And for me, personally from my own experience, I have seen how much difference it can make in an individual just to take them out on the land. It is good for them mentally, it is good for them spiritually, it is good for them physically.” (community member)

Arviat:
“ I've had a number of clients, and it's not so much a group thing, but it's more the connection to the land. A number of people have said to me, "I feel connected to the land. I feel, you know, whole when I'm on the land," or, "I feel less clouded or less fuzzy." You know, there's a real sort of a romantic sense of the land and But it's -- it's incredible to listen to. You know, like, it's really sincere, and I don't doubt it for a second. It's -- you know. So, there's a really strong connection there, and I think it's -- it's something that -- I don't know. I guess it's important.” (justice sector)

Qikiqtarjuaq:
“ I think it would be a matter of saying this person take -- hiring an elder, a couple hunters if it's a young boy especially, and say, "Go out on the land. Leave town -- and take him out on the land and hunt and talk and fish and get away from all the emotions of it, and -- and then
somebody can -- can talk to you. And that -- that's counselling right there for -- that's the kind of counselling they need.” (community organization)

“For people with a psychiatric illness, they -- taking them on the land usually isn't going to help them. It might reduce the stress in the community because they're not in there...and programs and all those types of things... is for people with emotional scarring versus mental illness.” (health sector)

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<th>8. Community stigma associated with formal recognition of mental illness is a problem</th>
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<tbody>
<tr>
<td><strong>Iqaluit:</strong></td>
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<tr>
<td>“You know, and how much better the community will be after, you know, we -- we treat these people and we get the help they need rather than just ostracizing them and kicking them out of the community...” (justice sector)</td>
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<tr>
<td>“Large numbers of people with mental illness, and they are marginalized, and disconnected— they are shunned, and banished from communities.” (health sector)</td>
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<td>“For mental illness today I feel they have been shunned.” (community member)</td>
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**Arviat:**

“...But at the end of the day, you know, mental health has a stigma here, a very strong stigma. People do not want to have a mental health diagnosis.” (health sector)

“[T]here's a stigma of people with mental health.” (health sector)

**Qikiqtarjuaq:**

“I think there still is a huge stigma of mental health as something that is unacceptable to people. Again, it is very difficult to find people, showing signs of mental illness (i.e., depression) to see the mental health nurse, or the psychiatrist, because they don’t want to be labelled as ‘crazy.’... There are a lot of patients that could be referred to mental health but they don’t wish to be because of stigma associated with mental health.” (health sector)

“...[S]tigma prevents people from getting treatment. Stigma prevents a person from admitting that they have a mental health problem and that they are in need of some kind of support.” (health sector)

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<th>9. The role of family is critical to treatment and rehabilitation</th>
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<tr>
<td><strong>Iqaluit:</strong></td>
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<tr>
<td>“Mental illness is often -- is often -- the thing -- ‘This guy’s not simply -- we just can't deal with him anymore. We don't have the resources to deal with him, and the Government's not dealing with him, so we're just going to say, 'Go somewhere else.'” And they become wards of society --- in another community. Where -- where they're actually worse off than they were -- would be in their own community. Cause they -- they don't have any family connection anymore.” (community organization)</td>
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<td>“However, she feels that it is very important for people with mental illnesses that are supposed to be -- that are going to court that the family members should be directly involved. To be invited to the courts, to make sure that this individual has the support that he needs or she needs.” (community member)</td>
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<td>“I think that my experience of dealing with the families as -- and victims, and community at large of, like, -- of people who have major mental illness and are now intersecting with the criminal system, -- is that those communities and families and individuals, need specialized...” (community organization)</td>
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technical help. They have exhausted -- they have already exhausted their informal options. Which would include informally interacting with the people who hold positions of trust and leadership in their -- in their cultural community.” (justice sector)

Arviat:
“Well, where I see things go really badly...and maybe you have, as well, where people spike from occasional offending to constant offending is when they have exhausted their family support. I think the one thing that’s unique there is there is no safety net. Here, we’ve got group homes, and boarding homes, and this, and that, and all kinds of things. But in Nunavut, I think there needs to be special attention paid to the family, you know, and their level of fatigue or engagement or how to support them. Because once the family washes their hands of a person, I’ve seen those people’s criminal careers just spike. If you’re an Inuit person with no place in a community or family, you stop caring about everything. and offending no longer matters.” (health sector)

Qikiqtarjuaq:
“Well, okay. One of our biggest problems with our mental health clients, and often -- often, our mental health clients are -- are the problem clients in the community and the ones who are in Justice. When they get sent out, community says and the family says, "We don't want them back." They've burnt out the family. They've burnt out their sources. We don't have the appropriate -- anywhere for the clients to go. Their -- if their family says -- and, you know, we’re not the gatekeeper, also. And we get caught in this call the time where we send, like -- like, a mental health patient sent out on a medevac, for example, for -- they suddenly become agitated, psychotic, whatever it is. Their families say, "We don't want them back," or they’re being discharged from somewhere. "We don't want them back." Well, find alternative housing in Qikiqtarjuaq. It's not there. And any community, it's not there.” (health sector)

Iqaluit:
“There is traditionally a different way of resolving problems, and it was not by turning to a court or to the law to fix the problem.” (justice sector)

“I love the fact that people with mental illnesses, mental issues that are charged and have to go to court is something that needs to be addressed.” (community member)

“So -- but I think that what would happen is it would be up to the community justice committee to determine what needs to be done. Because that’s how it was always -- that’s how traditionally -- what happened was, the community would come together and decide what needed to be done...And then I think that if that mental health committee in the community felt that that was sufficient then the Court would have to accept that.” (justice sector)

“... he feels that it would probably make a difference that there was a form of committee dealing with people with mental health issues. Because in our culture that is how it used to be addressed, was a number of people get together and talk to the person directly. And for the person or for the individual to have a say and be able to be free and talk about whatever.” (community member)

“And it's very important to have that bridge from the western culture to the Inuit culture, to Inuit Qaujimajatuqangit. If you have a good bridge and you have good communication for the two that's how I would see it succeeding.” (community organization)
Arviat:
“Yes, you know, if you've been broken into or you know something like that, you want justice and you want that taken care of. I think in my opinion what it does though it releases the community from having to set their own standards and decide what they believe in. And, you know, what's -- where the line should be drawn or how do we solve our problems without just letting those people do it who show up, without taking people away or something.”
(community organization)

“He is just pointing out that people that end up in Court and jail are those -- generally that they just become worse than the first time they offended and end up going to Court...Like in the case of the Justice Committee they deal with that but on a professional level the mental health issue is pretty complex. And it can be worked out in general because the Inuit understand about mental issues...”
(community member)

Qikiqtarjuaq:
“For some people it's really effective. They do get in trouble once and, you know, you can see that they get emotional during the [justice] committee meeting because I think they see that -- it means more coming from somebody in the community I think than maybe from say a judge from -- that they have never seen before who is saying, you know, you shouldn't be doing this.”
(justice sector)

“I've seen great results from people going through justice committees where the elders are very good and others that work with the elders in the community, as well, like taking them out on the land.”
(justice sector)

“The Inuit think that government agencies should solve problem.”
(health sector)

Iqaluit:
“Elders should be participating in court to support this individual with mental health issues—somebody to speak for that person with mental issues in Court. It is kind of unfortunate that all this Inuit knowledge that can be shared and practised are still locked up in a closet, like not really getting anywhere.”
(community member)

“I think it's getting too complicated for the elders”
(community member).

“But, if they are going to go to court, he feels strongly that the elders should be participating in court to support this individual with mental health issues. Somebody to speak for that person with mental issues in Court.”
(community member)

But it's unfortunate they don't have the privilege to speak on behalf of the individual and how to possibly make recommendations what is best for the individual in court. However, that is not happening and he can’t see that happening any time soon because of the Criminal Code... Everything is like -- there's a block, especially in the court system.”
(community member)

If they want to go -- an Inuit man wants to go against the Inuit people, they know exactly what to use in to do that. They will talk about their rights. I have the rights, rights, rights. Therefore the Inuit elder will back away because that person has the rights. Attitude. And it doesn't -- it doesn't put you together, it separates you...You have to think about it first before you approach that person because of their rights.”
(community member)
Arviat:
“When an elder speaks you will listen. And I found it very beneficial in mediating some issues if there is an elder in the room or at least older generation of the family, to ask them firstly what's the best course of action for their family or for the issues...[O]ver all, an elder in the community they know how to deal with people. And that's all we are doing, is dealing with people who do have a medical condition. ” (justice sector)

Qikiqtarjuaq:
“Well, the problem is -- and I have no problem in the use of elders when dealing with people in their community, generally speaking, I don't. When it comes to mental health, it's -- I think the obvious cases are known by elders and by the people in the community and I think probably are dealt with not scientifically but perhaps adequately for the community.” (justice sector)

“I believe that having an elder, the eldest in the Court, should be really respected and have attend in the Court. Because I can say as growing in the days, the elders used to be very respected. And when they said something to us when we were young, like we would really respect and live the way they want us to live when they were talking to us. So having an elder in the Court should be one of the first priorities to have.” (community member)

Iqaluit:
“You don't use punishment to make the person better. That's very wrong. I mean, if you want to make some changes, that's what the Inuit has always used. Disciplining, use kind words but let them know as well too that they have done something wrong. And that if they keep doing something wrong, this is what it is going to lead to. You know, so for Inuit that is our best tools.” (community member)

“12. different cultural responses to wrong-doing require careful consideration

Arviat:
“I think the older Inuit when they hear somebody has broken a law or done something bad -- their first reaction is always oh, that poor person, you know, what made them do that? So their concept is the healing concept already. Because that's always their first response. Oh, my gosh, I feel so sorry for that person, that criminal who do that....I mean not to say not for the victim as well but what made that person do that? ... But so -- I mean, I think the concept of helping people versus punishing people is very you know much a part of the Inuit culture. How do we help this person become a good person? Whether it's a mental issue or whatever got them there.” (community organization)

“But the criminal justice system is different from the Inuit system. Because the Inuit system, although we are still nomadic in camps, they are -- it was the elders who were the ones to correct the behaviours. And it would be done by like through shaming them or through counseling or like through different things. It wouldn't be through to cut them off from their family and send them away...With colonization everything got flipped upside down. “ (Community organization)

Qikiqtarjuaq:
“And that might even include the offender as part of that group think, not a group aimed at, focused at the offender. But that -- the focus taken away from the person and more on the situation and the actions. Cause that's how Inuit have been traditionally. It -- it was always about the situation. Things were done because of the situation. There was never an internalized thing. ‘Oh, it's your fault because.’ It was, like, survival of the fittest. Like, we had to get along. We had to suppress those inner emotions to deal with the situation. So, if you have something in that group think, where the focus is not on wrong with the -- you know, with someone and more the actions.” (justice sector)

13. Inuit and Western culture needs to be on equal footing

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<tr>
<td>Iqaluit:</td>
<td>“It would take the courts and the community people to respect each other. The respect and the desire for it to succeed has to be there from both sides. If the desire for it to succeed is not there, of course it would collapse and it would not be as strong.” (community organization)</td>
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<tr>
<td>Iqaluit:</td>
<td>“If you want to work with us, you have to be able to believe us and trust us.” (community member)</td>
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<tr>
<td>Arviat:</td>
<td>“Maybe if the Court system, the law Court starts listening to the Inuit and work -- and be able to work very closely and very tightly with the Inuit and law system, like they were on both levels an equal level and working together and become very close.” (community member)</td>
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<td>Qikiqtarjuaq:</td>
<td>“But the judge would -- like would have trust in the justice [committee]. Like talking to the offender at the Court and say this is a serious matter. You have to respect the Justice Committee.” (community organization)</td>
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<tr>
<td>Qikiqtarjuaq:</td>
<td>“So please stop and drop the charges because this has to do with an animal and we are not the owners of the animals. And you are acting out by accusing and saying that these hunters are bad guys on behalf of the animal that they had caught. And this elder said at that time, you know, if you do this anywhere in the area, in communities, you are going to put the people in danger, if you go ahead of charging, accusing the people. He said that at the Court. And then nobody was listening to him or not even respected in the Court. But they were still continuing with using the law, the policy that they had to follow.” (community member)</td>
</tr>
</tbody>
</table>

Overall, the topics of most interest to interview participants across all three cases related to objectives more relevant to the first TJ principle of needing a Therapeutic Response and somewhat less to the TJ principle requiring an Interdisciplinary/Multidisciplinary Approach (Figure 6.3). Objectives relevant to the third TJ principle, which suggests TJ must defer to other legal values, garnered even less interest during interview discussions.
When considering which sectors (justice, health, community organizations or community members) showed the most interest in the top 3 topics, the data varied somewhat across cases but these differences were not profound (Figure 6.3). In Iqaluit, for example, community members spent more time than other sectors talking about court collaboration with others. Some described this as the court’s inability to accommodate a more inclusive approach: “As for myself personally,” said one elder, “you know, it is obvious that things are not going to change in the court system and the settings the way they are right now. So it is kind of hard for me to visualize how we could possibly change it.” In the other cases—Arviat and Qikiqtarjuaq—community members (elders and care givers) shared with community organizations and health sector participants more interest in talking about suicide as a subject relevant to mental health and about the cultural, historical and social considerations that affect the identification of mental illness. Participants in these non-justice sectors spoke often about
the potential culturally related discrepancies in how mental health is understood. “Inuit culture really doesn’t understand mental health in terms of from the biologic level, for sure,” said a health sector participant in Qikitarjuaq. “I think it’s more—I don’t know—spiritual, kind of. There’s still a lot of mythology, I think, around mental illness.” Meanwhile, an Arviat participant said “[s]o people may not know or understand exactly -- like they may not be able to define what a mental illness is and because they can’t define it or understand it completely they can’t recognize it.”

Issues of access to resources and to geographic remoteness—which were anticipated to vary across the three cases—did not dominate in interview discussions of the main 3 topics. Instead, these issues figured more prominently (than Inuit culture) within the far-less discussed topics of Collaboration among Social Services, Health, and Community Organizations and Community Responsibility. This was true for all three cases. Indeed, participants discussing these topics spoke mainly about issues of funding for agencies and organizations and the need for leadership to secure support. And these issues appeared to be of equal concern whether the community was remote Qikiqtarjuaq or the more easily accessed territorial capital of Iqaluit. “I think we have seen many programs that work very successfully,” said one community member in Iqaluit, “but due to financial restraints, they fall and really have had no time to grow and prove themselves. So you, it would take a strong -- a good strong administrator, financial administrator … and sustaining it so that it grows, rather than disappear in a few years.” A health sector participant in Arviat said, “I think [we need] leadership in that sense, when the hamlet makes a big kind of difference when it comes to capacity.”

Focus groups across cases shared the sentiments expressed in other interviews in their respective communities with some variation in emphasis and breadth. For example, in Iqaluit,
focus groups members discussed the vulnerability of some Inuit who may be mistaken by the courts and others to be suffering from mental health issues because of culturally affected aspects of their deportment, including their demeanour, deferential manner, difficulty with language, and limited understanding of the court system. “They might not even have any mental illness,” explained one focus group participant in Iqaluit. “You know, they’ve never been to court, so they just kind of sit there and they bow their head, and they’re not speaking out because they don't know how, or they’re too scared to, or, you know, they’ve been labelled like that for so long that they’re not saying, ‘No, that’s not me.’” In Arviat, focus group comments emphasized the social tolerance for atypical behavior informed in part by cultural values of non-interference. One focus group participant suggested “They don’t bother us, and we don’t bother them.” Meanwhile, another focus group member said, “Like the Inuit way has always been acceptance and …not being judgeful [sic] about it and also about correcting ways.” In Qikiqtarjuaq, the focus group highlighted a deep concern that the court is not the best forum for people with mental illness: “[T]here are some things that need to be changed concerning those that have mental illness or mental issues that have to go to the—that have to go in front of the judge,” said a Qikiqtarjuaq focus group member. “For an example, I am just saying that person has never been in a court or put to court or stand in the court and that person has not had the whole ability to speak right. And that’s an example that those kind of people should be dealt with in a different procedure process and not to go through the court.”

6.5 Discussion

Thirteen themes relevant to the impact of Inuit culture on the potential for criminal court mental health diversion initiatives in Nunavut emerged from interviews as central to the application of TJ thinking in the three communities examined in this study. These themes relate
to a trio of main topics that were first identified from the literature (as among 18 key objectives of TJ) and then, in turn, were shown to dominate conversations with justice, health and community stakeholders in the three cases about the potential for criminal court mental health diversion initiatives in the territory. These topics were identifying mental illness, approaches to treatment and therapeutic services, and collaboration between the court and the other three sectors. Inuit culture (and the related impacts of a colonial past and rapid social and cultural change) was the predominant issue within these central topics whether the interviews concerned Iqaluit, Arviat or Qikiqtarjuaq, despite the differences in population, available health and justice resources and relative remoteness of these communities. In short, expected differences in the way participants from these different communities understand and contemplate the idea of TJ in the Arctic did not (in general) materialize, and the focus on 13 themes relevant to the role and importance of culture as a unique and dominant feature of Arctic circumstances was common to all.

That, of course, could be a hurdle. Culture presents an acknowledged challenge for the TJ and problem-solving court thinking (Nolan, 2009) that animates criminal court mental health diversion initiatives. For example, culture has only recently become an intense focus for mental health researchers, who characterize it as frequently overlooked in understanding the personal and social meaning of mental illness (Alegria, Atkins, Farmer, Slaton, & Stelk, 2010; Kirmayer, 1989; Kirmayer & Bhugra, 2009; Kirmayer et al., 2012; Kirmayer, Jarvis, & Guzder, 2014) and as not well-understood regarding its influence on notions of “recovery” (Kirmayer et al., 2012), the dominant contemporary approach to mental health rehabilitation in the English-speaking world (Slade, Adams, & O’Hagan, 2012). In particular, different cultural viewpoints are increasingly seen as integral to identifying people with mental illness (Alegria et al., 2010;
Kirmayer et al., 2014), to developing effective mental health treatment (Adeponle, Whitley, &
Kirmayer, 2012; Myers, 2010), and to collaboration involving culturally distinct groups in the
creation of important partnerships (LaFromboise, Coleman & Gerton, 1993) and systems. This
focus is critical to TJ-informed criminal court mental health diversion initiatives because the
identification of people with mental illness is an “essential element” of these initiatives
(Thompson et al., 2007, p. 3), effective treatment is central to TJ’s aim of maximizing the law’s
potential for therapeutic outcomes (Wexler & Winick, 1996, Winick, 2013) and collaboration is
part of an integrated interdisciplinary TJ approach (e.g., Freiberg, 2011). Thus, the growing
research into the role of culture in mental health and mental health rehabilitation is both key and
potentially formidable for considerations of these initiatives in the mainly Inuit Arctic. It is not
surprising therefore, that interviews with participants in this research revealed key themes
relevant to the identification and treatment of people with mental illness as well as to
collaboration between the court and others in terms of the complicating impact of Inuit culture.

6.5.1 Culture and Key TJ Objectives

For instance, the four themes developed from interview conversations about how to
identify an appropriate target population for potential criminal court mental health diversion
initiatives (i.e., people with mental illness in conflict with the law) can be considered possibly
confounding for the application of TJ in these Arctic communities in several ways. The first of
these relates to differences between Western concepts of mental illness and the local, more
holistic concepts of mental well-being (or “mental wellness”; Inuit Tapiriit Kanatami, 2007)
revealed in this study. Indeed, many participants in this research spoke of Inuit views as
reflecting what other researchers have noted as a more “relational” understanding of overall
well-being, including healthy interactions with the community, with the physical environment
and/or with the spiritual and cosmological world (Healey, & Tagak, Sr., 2014; Kirmayer, Dandeneau, Marshall, Phillips, & Williamson, 2011). Indeed, the general reluctance revealed in this study to think of mental illness as a condition or feature attributable to an individual but rather as something synonymous with perceived external causes (such as alcohol, drugs and other social problems associated with colonial cultural upheaval) is consistent with the documented Inuit approach that attributes an individual’s behaviour to contextual features rather than ascribing behaviour to a personal characteristic or trait (Kirmayer, Fletcher & Boothroyd, 1997). Importantly, these views may be problematic for the typical reliance on a range of specific diagnoses or categories of diagnoses used to recognize people with mental illness for inclusion in TJ initiatives elsewhere (e.g., Spaulding, Poland, Elbogen & Ritchie, 2000).

A second culturally informed theme, which emerged as potentially complicating the recognition of people with mental illness in Nunavut, related to a perceived high cultural and social tolerance of atypical behaviour in Arctic communities that has been previously noted by other researchers (Kirmayer et al., 1997) and may reflect an ethos of non-interference (Kirmayer et al., 1997) and more traditional inclinations towards forgiveness as a means to maintain community harmony (Kirmayer, Fletcher & Watt, 2009). Kirmayer and colleagues (1997)—like many participants in this study—suggest unusual behaviour exceeds tolerable limits only when it becomes excessively disruptive or dangerous. Thus, people with mental illness in these communities are unlikely to come to the attention of criminal courts for anything but offences too serious to make most criminal court mental health diversion initiatives appropriate. The third theme along this line—relating to participant fears that people labelled as mentally ill risk being taken from the community—also finds support in literature that documents a reluctance by Inuit to seek medical help generally, because of perceptions informed by past experiences of forced
dislocation of Inuit to southern tuberculosis sanatoria and residential schools (Ford, Berrang-Ford, King, & Furgal, 2010; Levy, 2012; Tester and Irniq, 2008). Meanwhile, the relevance of suicide in a mental health context, which was the fourth theme to emerge in relation to the influence of culture on the recognition of people with mental illness, was that despite the pervasiveness of suicide in Inuit communities particularly among males (Chachamovich et. al, 2013; Chachamovich & Tomlinson, 2013; Kral, 2012), suicide (and suicide ideation) is not an indicator for recognizing people with mental illness. While most suicides in the general population are accompanied by at least one mental illness (Stack, 2014), views of suicide in the Arctic appear less likely to perceive mental illness as a primary reason behind the high rates of suicide or suicide ideation in the Far North (Kirmayer, Boothroyd and Hodgins, 1998; Kral 2003, 2012. However, suicide is also seen as a pervasive source of mental stress on communities and families with potential mental health consequences.

Five additional themes that emerged from discussions about culture’s role in mental health treatment and therapeutic services also echo findings from previous research. First, cultural differences in aboriginal—and, in particular, Inuit—mental health treatment approaches have been widely recognized by other researchers (Kirmayer, Simpson and Cargo, 2003; Kirmayer, Whitley, and Fauras, 2009). For instance, some have noted the limited success of Western, professional mental health treatment approaches in indigenous communities because they have “under-valued or conflicted with the meanings and lifestyles of Indigenous peoples” (Kral, 2009, p. 299), while more culturally-sensitive approaches are seen in models that place traditional healers as central, with Western practitioners as secondary helpers (e.g., Wortzman, 2009). The second treatment theme that emerged in this study and that revealed culture’s complicating influence reflected what many authors describe as the need for rehabilitation
interventions to include consideration of the social, historical and other “distinctive forms of adversity” seen as important in indigenous communities (Kirmayer, Whitley, & Fauras, 2009, p. 14).

Third, previous researchers have also emphasized that culture’s role in mental health treatment must include the understanding that connections to the land (and related cultural practices) are vital to indigenous notions of mental health and wellbeing, which emphasize balance and harmony in life (Kirmayer et al., 2009; Kral, 2011), and that an absence of the visual experience of the land is associated with feelings of “distress, disorientation, and anxiety” (Kirmayer, Fletcher & Watt, 2009, p. 295). Yet, as some participants in this study suggest, serious mental illness may pose challenges to the reach of the influence of the land for mental health rehabilitation. Fourth, stigma associated with labelling persons with mental illness, which was discussed in this study as a barrier to treatment, has been recognized as a similar hurdle in previous work revealing the consequences of psychiatric labeling in Inuit communities (Kirmayer et al., 1997).

Fifth, culturally affected perceptions of family and other close relationships have also been recognized by many other researchers as central to cohesive indigenous communities and influential in the social relationships and standing within communities (Walters, Simoni & Evans-Campbell, 2002) critical to mental well-being. In Nunavut, families remain central to Inuit life and sense of well-being despite cultural change (Kral et al., 2011).

Other literature describes perceptions of the relationship between Inuit and Western culture in ways that bear directly on the final four themes that emerge from this research and that reflect culture’s impact on the potential for collaboration between the court and other key mental health diversion initiative stakeholders (such as social services, health, community organizations
and community members). The first of these themes, differences in Inuit versus Western approaches to problem-solving, has been described in previous work documenting a traditional consensus (rather than the contemporary hierarchic) approach to decision-making within Inuit communities. In this approach members work together for the common good—referred to in Inuktitut as piliriqatiniinnngniq (Tagalik, 2012; Healey & Tagak, 2014).

However, some authors note that this traditional approach has given way, in the face of Western influence, to a tendency to defer to the court as an external agent to address problems that the community can no longer deal with such as major criminal offences (Aupilaarjuk et. al., 1999; Aupilaarjuk et. al 2002). Nevertheless, short of these extreme cases, more traditional problem-solving approaches captured in the notion of Inuit Qajimajattuqangit [Inuit traditional knowledge] are still seen as desirable. Inuit Qajimajattuqangit is described as “open and dynamic in nature” (Aupilaarjuk et. al., 2002), comprising a system of knowledge “grounded in this all-encompassing holistic view of an interconnected world—a world that is imbued with and defined through relationship and interactivity. Everything is known by its relationship to everything else—there is a universal wholeness of relationship and no one thing can be separated from the view of the whole” (Tagalik, unpublished ms). Inuit Qajimajattuqangit can be understood as “a means of rationalizing thought and actions, a means of organizing tasks and resources, a means of organizing family and society into coherent wholes” (Tagalik, 2012, p. 1). Inuit Qajimajattuqangit is considered relevant to supporting mental wellness in Inuit communities (Tagalik, 2012) and to solving social problems generally in the Far North (Aupilaarjuk et. al., 2002).

A second theme related to the impact of culture on collaboration is similarly aligned with work by other authors who note difficulties reconciling the traditional “guidance” role of elders
with Western “systems and institutions that are not built around Inuit values and relationships, and consequently do not ‘fit’ with Inuit worldview” including the justice system (Tagalik, 2012). Some researchers describe how many Inuit elders see a pressing need to reshape contemporary institutions to better reflect Inuit Qaujimajatuqangit (Tagalik, 2012). A third theme emerging from related discussions is reflected in previous work that documents how Inuit dealing with wrongdoers were traditionally guided by an emphasis on the maintenance of social harmony and community cohesion (Groarke, 2009, Tagalik, 2012) with a focus on reconciliation and integration of the wrongdoer within the community. This is in contrast to the dynamics of isolation and punishment associated with the contemporary justice system (Aupilaarjuk et. al., 2002, Tagalik, 2012). Groarke (2009), in his review of legal volumes from the Arctic College’s Interviewing Inuit Elders Series, suggests that “[t]he primary means of keeping human behaviour within proper bounds in traditional Inuit society was based on the integration of the offender into the community. The contemporary system of justice individualizes wrong and, therefore, in the traditional view, perpetuates it” (p 797). The fourth theme relevant to the effect of culture on collaboration has also been noted elsewhere as a perceived need for mutual cultural respect between Inuit and Western institutions. LaFromboise and colleagues (1993), for example, suggest that thinking of cultural competence as a “two-way street” is an important step in the development of an effective partnership between minority and majority cultures. Inuit emphasize the need for institutions to take into account Inuit customs and traditions to function satisfactorily (Aupilaarjuk et. al, 2002).

6.5.2 TJ Objectives and Protective Factors

These 13 themes, which suggest Inuit cultural considerations may be central to potential criminal justice efforts to divert people with mental illness away from prosecution and into
treatment in Nunavut communities, pose obvious challenges for expanding TJ and problem-solving court principles in the mainly Inuit Arctic—at least as far as these principles are currently understood. In particular, the results along with the corroborating literature suggest a need to conceptualize the principles of “a therapeutic response” and “an interdisciplinary/multidisciplinary approach” in TJ and problem-solving court thinking in a way that incorporates mental health rehabilitation ideas suitable to the unique cultural and social features of mainly Inuit communities in the Canadian Arctic.

The solution may lie in the explicit consideration of the culturally responsive concept of “protective factors” for Inuit mental health in TJ and problem-solving court initiatives in northern communities. The concept of “protective factors” in the context of Inuit mental health and well-being was proposed in recent decades by Kirmayer, Malus and Boothroyd (1996) to identify key cultural and contextual features of Inuit or indigenous life vital to mental health and mental health rehabilitation. The idea recognizes the effects of colonization, including the disruption of indigenous peoples’ relationship to the land, as determinants of mental health (Kirmayer, Tait, & Simpson, 2009) and health generally (King, Smith, & Gracey, 2009). Since then, many authors have argued that elevated mental health issues in indigenous populations are linked to cultural disruption, acculturation and other social and environmental upheavals that have taken place over the past 50 years (Kirmayer et al., 2009; MacDonald et al., 2013). These facts align with the World Health Organization’s suggestion that mental health for indigenous people exists squarely within their contemporary social, cultural, economic, and political environments (Cohen, 1999). MacDonald and colleagues (2013) describe the concept of protective factors as a strength-based, culturally specific approach to mental health care that shifts the focus from the typical clinical management of deficit-oriented risk factors (substance...
abuse, previous mental disorders, family conflict, etc.) to a focus on cultural and contextual factors that promote positive mental health outcomes. This, in turn, contributes to what many researchers describe as mental health “resilience”—that is, the notion of “a defence mechanism which enables people to thrive in the face of adversity” so that “improving resilience may be an important target for treatment and prophylaxis” (Davydov, Stewart, Ritchie, & Chaudieu, 2010, p. 479; see also Compton, 2010). Resilience, from an indigenous perspective, is characterized by cultural values that have persisted despite profound changes (Kirmayer, Dandeneau, Marshall, Phillips, and Williamson, 2012). In circumpolar contexts, MacDonald and colleagues (2013) characterize resilience as “the ability to adapt to challenging and rapidly changing physical, cultural, political and socio-economic environments, and includes an understanding of the importance of community cohesion, overall health, spiritual traditions and cultural connectivity” (p. 2).

The 13 themes in this study find resonance with protective factors considered relevant to mainly Inuit, as well as indigenous and cross-cultural mental health. Table 6.3 provides examples from the literature of these protective factors (as well as other mental wellness promoting factors not explicitly identified as protective factors that serve the same function). The table aligns the 13 themes arising from interview discussions about the top 3 topics with the protective factors. The table demonstrates that the themes correspond in many respects with protective factors that have been recently identified benchmarks for culturally appropriate approaches to understanding mental health and mental health rehabilitation in indigenous and northern communities. For example, in speaking of approaches to mental health treatment, participants in this study noted the importance of connection to the land and related cultural practices, a theme that resonates with the literature that identifies “traditional knowledge, cultural values, and practice” as a
protective factor promoting mental well-being for Inuit and other circumpolar indigenous people (Healey and Meadows, 2008; Kral et. al., 2011; MacDonald et. al., 2013; Wexler, Joule et. al., 2014). The enhancement of mental well-being through connection to the land can be understood to be derived from sharing this activity with family and from fostering a relationship to the environment---both of which are integral to Indigenous concepts of the person (Kirmayer, 2007; Kirmayer et. al., 2008).

Protective factors can be seen as a way to address the challenges posed to TJ by the study’s 13 themes wherein culture emerged as the issue of greatest interest in relation to the top 3 interview topics discussed by participants. These themes are considered problematic for TJ because they challenge assumptions about the identification of people with mental illness (e.g., Spaulding et al., 2000), about appropriate treatment and about sector collaboration that appear to be not well-examined in TJ and problem-solving court research. The implications in the exercise of aligning the study’s themes with protective factors is that it suggests a clear benefit for the inclusion of mental health rehabilitation scholarship concerning the impacts of culture and cultural ideas to effectively answer issues raised by participants in the consideration of potential criminal court mental health diversion initiatives in Arctic communities. The results of this study are unique in their illustration of an explicit role for MHR science in understanding the application of TJ and problem-solving courts in responding to people with mental illness in conflict with the law. In particular, to my knowledge, these findings suggest for the first time the potential value in acknowledging the therapeutic (and collaborative) benefits of the mental health effects of protective factors in TJ and problem-solving court thinking.
Table 6.3. 13 most-discussed themes relevant to Inuit culture in the context of three dominant interview topics along with some corresponding mental-wellness promoting factors including those explicitly described as “protective factors” from literature.

<table>
<thead>
<tr>
<th>Top three interview topics (i.e., TJ objectives; see Table 3.3)</th>
<th>Top 13 themes emerging from conversations about Inuit culture in the context of each topic</th>
<th>Corresponding mental wellness promoting factors including those explicitly described as protective factors from the literature</th>
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<tbody>
<tr>
<td><strong>Identification, Screening and Assessment</strong></td>
<td><strong>1. Culture affects an understanding of the meaning of mental health</strong></td>
<td>Understanding the role of culture as it affects the personal and social meaning of mental illness (Alegría et al., 2010; Kirmayer, 1989; Kirmayer &amp; Bhugra, 2009; Kirmayer et al., 2012; Kirmayer, Jarvis, &amp; Guzder, 2014): Many world cultures view mental disorders from essentially dissimilar perspectives. Understanding these disparate views can improve whether and how mental illness is detected.</td>
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<td></td>
<td><strong>2. Cultural and social tolerance permits atypical behaviour up to a high threshold</strong></td>
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<td></td>
<td><strong>3. The context of cultural change and disruption has an impact on identifying mental illness</strong></td>
<td>Awareness of impacts of social and cultural change/disruption to indigenous mental health (Bjerregaard &amp; Curtis, 2002; Csonka &amp; Schweitzer, 2004; Kirmayer et al., 2009; Kirmayer, Tait, &amp; Simpson, 2009; MacDonald et al., 2013): Mitigating against a reluctance to identify people with mental illness because of cultural values and colonial history requires an understanding of the magnitude of cultural change and disruption.</td>
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<td></td>
<td><strong>4. Suicide and its relevance to recognition of mental illness</strong></td>
<td>Social support/community networks (identified as strong determinant of indigenous health) (Richmond, Ross &amp; Bernier, 2007; Richmond, Ross &amp; Egeland, 2007): Strong social networks increase likelihood that people with mental illness are recognized. Community-wide limits/standards/expectations to encourage healthy communities (Allen et al., 2006; MacDonald et al., 2013; Mohatt et. al., 2004): The magnitude of suicide can be a community-wide standard of trauma that signals elevated mental health risks.</td>
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<tr>
<td><strong>Treatment and Therapeutic Services</strong></td>
<td><strong>5. Mental health counselling should incorporate both traditional and contemporary (Western) approaches</strong></td>
<td>Having someone to talk to (largely informal but also inclusive of traditional and contemporary counselling) (Kral et al., 2011; MacDonald et al., 2013; Wexler &amp; Goodwin, 2006; Wortzman, 2009): The availability of family, elders and other community members to talk to is seen as a key factor in mental well-being. Social support/community networks (identified as strong determinant of indigenous health) (Richmond, Ross &amp; Bernier, 2007; Richmond, Ross &amp; Egeland, 2007): Strong traditional social networks increase adaptability by providing more decision options when faced with</td>
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challenges.

**Family support/connectedness (powerful dimension of mental wellness and emotional health)** (Cummins, Ireland, Resnick & Blum, 1999; Kral, 2011; Walters, Simoni, & Evans-Campbell, 2002): Well-being is associated with the traditional Inuit experience of spending time with family, talking, sharing food, and experiences on the land.

**Self-reliance (to successfully respond to adversity)** (MacDonald et al., 2013; Wexler, Jernigan et al. 2014; Wexler, Joule et al., 2014): Promoting confidence in one’s resourcefulness in the face of adversity encourages well-being.

**Family history of psychiatric treatment (a beneficial precedent for mental health)** (Kirmayer et al., 1996; MacDonald et al., 2013): Previous experience of family members with mental health treatment can improve treatment responsiveness.

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<th>6. Cultural transition and disruption should inform treatment and rehabilitation</th>
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<tr>
<td><strong>Awareness of impacts social and cultural change/disruption to indigenous mental health</strong> (Bjerregaard &amp; Curtis, 2002; Csonka &amp; Schweitzer, 2004): An understanding of traditions and identities that show indigenous cultures can prosper in contemporary times can lead to resilience in the face of cultural change.</td>
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<tr>
<td><strong>Culture and mental health recovery</strong> (Adeponle, Whitley, &amp; Kirmayer, 2012; Kirmayer &amp; Valaskakis, 2009; Yasui &amp; Dishion, 2007): Cultural values inform meaning of mental health recovery, such as ideas of individual and relational personhood. For aboriginal people, recovery from colonial impact, trauma, and residential schools etc. is seen as relevant.</td>
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<td><strong>Cultural/ethnic identity or affiliation</strong> (Bals, Turi, Skre, &amp; Kvernmo, 2010; MacDonald et al., 2013; Mossakowski, 2003; Shrake &amp; Rhee, 2004; Wakefield &amp; HUDLEY, 2007; Wexler, 2014; Wexler, 2009; Umami-Taylor &amp; Updegraff, 2007; Yasui, Durham &amp; Dishion, 2004): Strong ethnic identity relates to fewer mental health symptoms, protects against maladaptive behavior, and contributes to more positive overall self-concept.</td>
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<th>7. Going out on the land and related cultural practices are important to mental health</th>
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<td><strong>Traditional knowledge, cultural values, and practice</strong> (Healey &amp; Meadows, 2008; Kral et al., 2011; MacDonald et al., 2013; Wexler, Joule et al., 2014): Traditional knowledge and related activities reflect indigenous concepts of the person that are centred on social relations and relationships to the land seen as key to mental well-being.</td>
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<th>8. Community stigma associated with formal recognition of mental illness is a problem</th>
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<tr>
<td><strong>Family history of psychiatric treatment (a beneficial precedent for mental health)</strong> (Kirmayer et al., 1996; MacDonald et al., 2013): Previous experience of family members with mental health treatment can improve treatment responsiveness.</td>
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<th>9. The role of family is critical to treatment and rehabilitation</th>
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<tr>
<td><strong>Protective and safe family environment</strong> (Allen et al., 2006; MacDonald et al., 2013; Mohatt et al., 2004; Wexler, Joule et al., 2014): Providing an environment that is safe and protective improves well-being.</td>
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<tr>
<td><strong>Transmission/communication of behavioural expectations and values in families</strong> (Allen et al., 2006; MacDonald et al., 2013; Mohatt et al., 2004): Encouraging family transmission of traditional values and expectations strengthens a sense of self and well-being.</td>
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<th>Collaboration between Court</th>
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<tr>
<td><strong>10. Approaches to problem-solving need</strong></td>
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</table>
| **Bicultural competence** (LaFromboise et al., 1993): Thinking of cultural competence as a “two-way street”—involving mutual respect—is an
6.6 Conclusion

This study exploring the potential for criminal court mental health diversion initiatives in three Nunavut communities revealed intense interest by members of the justice and health sectors, community organizations and community members in how the unique cultural circumstances of the Arctic affect three key objectives of TJ’s animating principles—*the identification of people with mental illness, appropriate mental health treatment and collaboration between the court and other sectors*. In particular, interview conversations about these topics revealed 13 key themes relevant to the importance of culture and cultural change in the context of Inuit mental health and criminal justice. These, in turn, were described in terms that could be potentially problematic for expanding the availability of TJ principles in mainly Inuit Arctic communities. The research suggests an answer to these potential problems may lie in an essential review of the robustness of current TJ thinking and, in particular, efforts to incorporate useful ideas from the field of MHR science.

The aim of criminal court mental health diversion initiatives is to provide a “rehabilitative response” (Schneider, 2010 p. 202) to people with mental illness in conflict with
the law. The TJ and problem-solving court thinking behind these initiatives, meanwhile, is similarly intended to view the law as a therapeutic agent (Wexler & Winick, 1996). To succeed in these aims, the question of what constitutes an appropriate rehabilitative response requires a thorough integration of contemporary mental health and mental health rehabilitation research—including recent efforts to understand of the role of culture as affecting the personal and social meaning of mental illness and how to respond to it (Kirmayer, 1989; Alegria et al., 2010). In the present study in three mainly Inuit Arctic communities, a consideration of the role of protective factors for indigenous mental health may answer this shortcoming by providing an avenue to address many of the themes that emerged from what occupied the minds of interview participants in discussions about the role of culture. To the knowledge of the author, these results are the first to suggest a potentially important role for the culturally specific mental health concept of protective factors in the context of TJ, problem-solving courts and criminal court mental health diversion initiatives.

The common findings in the varied circumstances of the three cases (three separate Arctic communities) enhance their generalizability (Yin, 2003). The 13 themes reflecting the dominance of Inuit culture as the key issue affecting three main topics discussed by participants were shared across interviews whether in the capital Iqaluit or the smaller hamlets of Arviat and Qikiqtarjuaq. Less attention was paid to issues of geographic remoteness or constrained resources which were anticipated to lead to contrasting results. The replication of findings across cases is useful for its help in identify other cases (Yin, 2003) to which these findings about TJ theory as a means to deliver mental health rehabilitation might be generalized. That is, it is reasonable to consider these results applicable to other mainly Inuit communities in Nunavut and, potentially, in other indigenous communities across the circumpolar North and elsewhere.
While the results of this study suggest the potential value in acknowledging the therapeutic (and collaborative) benefits of the mental health effects of protective factors in TJ and problem-solving court thinking, more research is needed. In particular, further study is required to better understand how to accommodate cultural effects in the identification of mental illness, treatment and collaboration between the court and other sectors within criminal court mental health diversion initiatives. The pursuit of TJ in this cultural context finds support in literature that suggests a conceptual nexus between TJ and indigenous culture in the context of Maori in New Zealand (Toki, 2010). Insights from this study can improve our understanding of TJ in remote and culturally distinct communities and can help to make the health and justice system in the Canadian Arctic more responsive to offenders with mental illness. This research highlights the need for a greater incorporation of contemporary concepts from mental health rehabilitation science, such as the notion of protective factors, in TJ thinking and in problem-solving courts as a practical response to people with mental illness in conflict with the law.
Chapter 7 – Six Dilemmas for Identifying Mental Illness in the Context of Therapeutic Jurisprudence and Criminal Court Mental Health Diversion in Arctic Communities
7.1 Abstract

Criminal court mental health diversion initiatives in North American cities and elsewhere rely on the ability to identify people with mental illness to divert them from prosecution and into treatment. These initiatives, whose philosophic foundation is therapeutic jurisprudence (TJ), aim to reduce numbers of people with mental illness caught in the justice system. This paper explores how to identify people with mental illness in the context of delivering TJ objectives to mainly Inuit Arctic communities in Nunavut where criminal court mental health diversion initiatives do not currently exist. A qualitative multiple case study in the communities of Iqaluit, Arviat and Qikiqtaaluq involved 55 semi-structured interviews and three focus groups with participants representing four sectors essential to these programs: justice (judges, lawyers, police, etc.), health (psychiatrists, nurses, etc.), community organizations (wellness workers, hamlet officials, etc.) and community members (Inuit elders and caregivers). Conversations about identifying people with mental illness in these communities raise 6 dilemmas associated with the topic and were derived from four key themes from these discussions. These suggest an unease concerning the formal identification of persons with mental illness before someone’s behaviour becomes excessively violent or seriously criminal (1) because of its incongruity with Inuit cultural ideas of mental wellness; (2) because of historically informed and current concerns that identified individuals would be removed from the community and their families, (3) because culturally informed beliefs in a therapeutic response to criminal or anti-social behaviour regardless of the presence or absence of diagnosed mental illness, (4) because suicide ideation in the North is not acknowledged as an indicator of mental illness as it is elsewhere, (5) because cultural and social tolerance for atypical behaviour makes early recognition of mental illness unlikely, and (6) because a transgression of community standards grave enough to intersect with the justice
system is often viewed as requiring separation from the community regardless of mental health status. This research reveals that TJ principles requiring the identification of people with mental illness presents problems for importing typical models of criminal court mental health diversion initiatives across cultural boundaries to mainly Inuit Arctic communities. Instead, these results suggest a new approach that delivers a universal therapeutic response in criminal cases in Nunavut, regardless of a mental health diagnosis, needs more study.

7.2 Introduction

Criminal justice mental health diversion initiatives developed over the past few decades in cities in the United States, Canada and elsewhere as a “rehabilitative response to what would otherwise be criminally sanctioned behaviour” (Schneider, 2010 p. 202). Their goal was—and is—to reduce the surging numbers of people with mental illness being incarcerated in prisons or otherwise caught up in the criminal justice system (Schneider, 2010) by identifying and diverting individuals with mental illness away from courts and jails and into the community mental health care system (Petrila & Redlich, 2008; Redlich, 2007; Redlich, Hoover, Summers, & Steadman, 2010; Schneider, 2010; Schneider, Bloom, & Heerema, 2007). These initiatives—namely mental health courts and mental health court diversion programs—aim to treat an offender’s underlying mental illness, improve his or her mental health and, at the same time, secure the long-term safety of the community (Schneider et al., 2007). Many consider the appearance of these initiatives to be part of a broader movement to create a family of what are known as “problem-solving courts” (including drug courts and domestic violence courts) that look beyond the mere legal determination of guilt and innocence to the broad, underlying causes of crime (Council of State Governments, 2005; Slinger & Roesch, 2010). This focus is related to work by several legal academics that acknowledged and highlighted the law’s capacity for having therapeutic or
anti-therapeutic outcomes (e.g., Wexler & Winick, 1996). Thus, these authors began to develop a corresponding legal theoretical approach called therapeutic jurisprudence (TJ), which became the “philosophic foundation” for problem-solving courts generally (Winick, 2013, p.219) and, more specifically, as the theoretical basis for criminal court mental health diversion initiatives (Schneider, 2010).

Identifying who should benefit from criminal justice mental health diversion initiatives is considered an “essential element” of these initiatives (Thompson, Osher & Tomasini-Joshi, 2007, p. 3) and a central “goal” of the problem-solving orientation of problem-solving courts (Porter, Rempel, & Mansky, 2010). In general terms, people in mental health problem-solving courts are there because their untreated mental health problems have some connection to their criminal justice involvement (Schneider, 2010) and they cannot, or do not, otherwise recognize or effectively deal with these problems (Winick, 2013). Early recognition of people with mental illness is considered important to these initiatives to minimize the criminal justice impact and to return people to their communities as quickly as possible (Berman & Fox, 2010). It is also vital for expeditious case processing, and importantly, for an early understanding of a person’s individual situation (Porter et al., 2010). The answer to how and in what circumstances courts identify eligible people with mental illness is most often discussed in terms of the offenses deemed eligible for the target population (Berman & Fox, 2010), and the accused person’s criminal history and willingness to participate (Porter et al., 2010). For instance, people with mental illness who commit minor offenses are often considered the most viable targets of these initiatives, while people facing serious charges are considered less likely to be eligible—although perpetrators of more serious crimes are being considered for diversion with increasing frequency (Redlich et al., 2005). Recently, other authors have turned their attention to the formal
systems and processes involved in the selection of mental health court participants (Wolff, Fabrikant, & Belenko, 2011).

Nevertheless, just how these diversion initiatives determine—from a mental health rehabilitation perspective—which persons suffer from mental illness is far less discussed and, according to some researchers, less tractable in the criminal justice context: “‘Mental illness,’” explain Spaulding, Poland, Elbogen, & Ritchie (2000), framing TJ within psychiatric rehabilitation, “is not a scientific or technical term, but a broad category term, inconsistently applied by various users.” (p. 137). Indeed, the legal and social status of people with mental illness, say these authors, is affected at once by cultural norms, social policy, and the law. Determinations of mental illness often rely on clinical diagnostic categories, but for legal purposes, such as the determination of legal competence, criminal responsibility, etc., these must be joined to some functional criterion, such as the ability to manage one’s affairs or understand the criminality of one’s behaviour (Spaulding et al., 2000). These authors suggest an overreliance on psychiatric diagnoses is “dangerously arbitrary” and can lead to a “simplistic application of a ‘medical model’ of mental illness” (p. 138). A more thorough approach includes a consideration of “key problems” associated with mental illness such as neurological instability and impairments but also the loss of basic skills for personal and social functioning, related environmental problems, demoralization, hopelessness, and dependency (Spaulding et al. 2000, p. 140).

Culture, in particular, has become a recent focus for many researchers exploring the personal and social meaning of mental illness (Alegria, Atkins, Farmer, Slaton, & Stelk, 2010; Kirmayer, 1989; Kirmayer & Bhugra, 2009; Kirmayer et al., 2012; Kirmayer, Jarvis, & Guzder, 2014). Alegria and colleagues (2010), for example, offer a review of several studies that suggest
different world cultures have different views of mental disorders and how it is recognized. They write, “These facts suggest that cultural differences may play a critical role in the individual’s recognition of mental illness and the provider’s detection of the mental illness including the perception and intensity of stigma associated with mental health help-seeking behavior and the understanding of what might be considered mental health disorder requiring appropriate mental health services” (p.49). In Canada, Kirmayer and colleagues (2012) suggest cultural knowledge and identity impact the identification of mental health issues and ultimately the likelihood of rehabilitation. “Culture is the constantly evolving medium through which we articulate our deepest values and greatest aspirations. … Human biology, behavior, and experience are culturally shaped and mental health practice must respond to the resulting diversity” (Kirmayer, Rousseau & Guzder, 2014, p. 1).

Meanwhile, in the Canadian Arctic territory of Nunavut, criminal court mental health diversion initiatives for people with mental illness do not exist—despite crime rates higher than other Canadian provinces and territories (Nunavut Court of Justice, 2013c; Nunavut Tunngavik, 2014) and a well-documented prevalence of factors thought to increase the risk of both mental illness (Senate of Canada Standing Committee on Social Affairs, Science and Technology, 2006) and criminal involvement (Patterson, 2002; Clark, 2011). Nunavut is a vast territory occupying almost 2 million square kilometres (Richmond, 2009) with a sparse population (31,906; Statistics Canada, 2011) living in the territorial capital of Iqaluit or one of 25 geographically scattered and remote communities (Nunavut Tunngavik, 2008). Eighty five percent of the population is Inuit and more than 50 percent use Inuktitut as their dominant language at home (Statistics Canada, 2011; Nunavut Tunngavik, 2008). Rapid social, economic, environmental and cultural change over the past 50 years has had an impact on Inuit mental health (Kral, et. al, 2011; MacDonald,
Ford, Willox & Ross, 2013) and on criminal justice involvement (Royal Commission on Aboriginal Peoples, 1996). Inuit, along with other Aboriginal groups in Canada, are disproportionately represented in Canadian prisons (Office of Correctional Investigator, 2013; Perreault, 2009).

This paper explores how ideas concerning the identification of people with mental illness in Nunavut communities affect the potential for expanding the availability of TJ principles as a problem-solving approach to this group in non-specialized criminal court settings in remote Arctic communities. Previous analysis based on the same multiple case study research in 3 Nunavut communities revealed the identification of people with mental illness was among the most salient topics (i.e., most discussed) during interviews with participants representing the justice, health, community organizations and community members and that the impact of Inuit culture appears to be an essential consideration for any potential criminal court mental health diversion initiatives in the Far North (see Chapter 6). This work looks specifically at interview themes relevant to the identification, assessment and screening of a target group appropriate for these initiatives. It asks how the uniquely Inuit cultural, social and structural context facing the identification of people with mental illness in remote, mainly Inuit Arctic communities might affect the application of TJ principles in this novel context.

7.3 Methods

In this study, a literature review was used first to create a theory-driven and literature-derived framework as an initial deductive guide in this constructivist, qualitative, multiple-case study in 3 Canadian Arctic communities. The important themes in the study were then inductively derived from interviews. Select details about the research methods can be found below at 7.3.2 and more fully in Chapter 6. A complete account of the methodological theory
and general methods for this study are available elsewhere (Chapters 3, 4, and 5; see also Ferrazzi & Krupa, 2014).

7.3.1 Literature Review and Case Selection

A literature review was used to determine key theoretical principles (along with associated goals and objectives) of TJ and problem-solving courts (e.g., Conference of Chief Justices and Conference of State Courts Administrators, 2000; Farole, Huffett & Rempel, 2007; Farole, Huffett, Rempel, & Byrne 2005; Farole, Rempel, Byrne, & Chang, 2008; Hora, 2011; James, 2006; Porter, Rempel & Mansky, 2010; Winick 2002, 2013; Wolf, 2007(b); Wolf, 2008). The review searched for peer-reviewed and grey literature using subject heading and free-text searches of scholarly databases and other sources for health, law and social science, focusing on TJ, TJ in the context of mental health and criminal courts, and on scholarly explorations of “problem-solving courts” currently operating in other jurisdictions, including considerations of the delivery of “problem-solving” in non-specialized, conventional court settings. Details of this exercise are provided elsewhere (Chapters 2 and 5).

Three Nunavut communities were selected to represent three cases in this study. Iqaluit (pop. 6,699; Statistics Canada, 2011) is the capital of Nunavut and the base for much of the territory’s health and justice infrastructure. Iqaluit’s Qikiqtani General Hospital, for example, is an accredited 35-bed acute care facility with 24-hour emergency services (Department of Health, Government of Nunavut, 2014), and several community organizations and programs focused on wellness including some traditional counselling also exist in the city (Iqaluit, 2012). Iqaluit is also the judicial centre for Nunavut and home to the Nunavut Court of Justice and its fly-in court circuit model that services the territory’s communities at set intervals (Nunavut Court of Justice, 2013a). It is also headquarters for territorial policing by the Royal Canadian Mounted Police
(Royal Canadian Mounted Police, 2014) and the territorial Department of Justice, and is the regional office for the Public Prosecution Service of Canada (Public Prosecution Service of Canada, 2014).

*Arviat* (pop. 1, 810; Statistics Canada, 2011) is the second largest community in Nunavut and is located on the west coast of the Hudson Bay. Census data indicates that 38.5 percentage of Arviat’s population is under the age of 15 (Statistics Canada, 2011). Health infrastructure includes a health centre (Department of Health, Government of Nunavut, 2014) staffed by 6 to 8 nurses and small numbers of social service and wellness staff as well as professionals who visit the community on an itinerant basis (Aarluk Consulting, Inc., 2011a; Arviat Health Committee, 2009). Arviat also has community wellness organizations and programs. Arviat’s justice infrastructure includes a four-member RCMP detachment, a probation officer, and a justice of the peace. Criminal court is delivered by fly-in court that visits Arviat four times a year. A community justice committee deals with diversion from the court where possible (Nunavut Court of Justice, 2014).

*Qikiqtarjuaq* (pop. 520; Statistics Canada, 2011), situated on an island north of the Arctic Circle near the east cost of Baffin Island in the Davis Strait, is a young community (29.4 percent are under age 15; Statistics Canada, 2011) but remains one of the more traditional communities in Nunavut with many still engaged in traditional subsistence activities (Aarluk Consulting, Inc., 2011b). Health infrastructure includes a health centre (Department of Health, Government of Nunavut, 2014) with 2 nurse practitioners (Aarluk Consulting, Inc. 2011b) a social worker and professionals visiting on an itinerant basis. Qikitarjuaq’s justice infrastructure includes a two-member RCMP detachment, and a justice of the peace. Also included is a fly-in court that
services Qikiqtarjuaq 3 times a year, and a community justice committee that deals with
diversion from the court (Nunavut Court of Justice, 2014).

7.3.2 Data Collection, Analytic Procedures and Trustworthiness of Data

The multiple case study for this research involved 55 semi-structured interviews and 3
focus groups conducted between January and December 2013 during 3 trips each to Iqaluit and
Arviat and 2 trips to Qikiqtarjuaq. In four of the 55 interviews, 2 participants belonging to the
same sector and profession asked to be interviewed together and for reasons discussed in Chapter
6 these interviews were coded as one. In total, 59 participants comprised representatives from the
justice sector, the health sector, community organizations and community members in each case,
including judges, defence lawyers, prosecutors, justices of the peace, police officers, probation
officers, community justice workers, nurses, psychiatrists, social workers, community wellness
program workers, municipal officials, elders and caregivers. Thirteen interviews in each case
involved fly-in or generally centrally-based professionals (collectively referred to as “fly-ins)
who serviced the territory at large and data from these interviews were relevant to all
communities and were thus included in consideration of each of the three cases. Accordingly, 26
interviews represented the data for Iqaluit case while 27 interviews represented data from Arviat
and 28 interviews represented data from Qikiqtarjuaq.

Initial coding of interview data was assisted by a code book (DeCuir-Gunby, Marshall, &
McCulloch, 2011; see Appendix K) used to categorize the data and developed from TJ theory
and the study’s related literature-informed logical framework (e.g. Table 4.3 and Appendix G for
full framework). The codes were deductively derived from the framework’s topics and issues
(“objectives” and “propositions”). Deductive approaches to code structure have the advantage of
bringing previous knowledge to bear on the inquiry at hand (Bradley, Curry, and Devers, 2007).
This approach was complemented by inductive codes grounded in the data which reflected the experiences of participants vis a vis the study’s framework. This methodological approach, integrating data-driven codes with predetermined theory-driven codes based on the tenets of a particular theory, finds resonance in other studies (e.g., Fereday and Muir-Cochrane, 2006). Coded data identified as references (segments of interview data) in NVivo 10 software (QSR International Pty Ltd., 2012; Kral et al., 2011) were converted to percentage of word coverage (e.g., Hunt, Rasmussen, & Lamm, 2010; Leung, 2012; Panuwatwanich & Peansupap, 2013) to identify areas of primary relevance to participants with respect to the framework’s topics and issues. The volume of data made this an effective approach serving to verify impressions in the field with respect to the relative engagement of participants with the topics and issues introduced by the researcher.

Several constructivist strategies used in this study to increase trustworthiness and rigour (Patton, 2002) addressed credibility, transferability, dependability and confirmation of the data (Denzin & Lincoln, 2005; Krefting, 1991; Lincoln & Guba, 1986; Streubert & Carpenter, 1999). Details concerning the data collection, analysis and trustworthiness of this study are described elsewhere (Chapter 6; and more generally Chapter 5).

Data analysis was assisted by using NVivo 10 qualitative software and identified the most-discussed topics and issues (from the framework) before developing inductively derived categories and sub-categories for revealing key themes that run through the data (e.g. Morse, 2008; Saldana, 2013). Data from each case was analyzed independently before a cross-case analysis aggregating findings across the three individual cases.
7.4 Results

7.4.1 Case 1 – Iqaluit

A fifth of total interview conversations concerning potential criminal court mental health diversion initiatives in Iqaluit related to the one topic category called “Identification, Screening and Assessment.” This much-discussed topic was identified from the theoretically informed framework as one of 18 objectives necessary to 3 key principles of TJ that were distilled during the literature review. Interview discussions deemed to address the topic of Identification, Screening and Assessment included conversations about who would be eligible for a potential criminal court mental health diversion initiative in Iqaluit as well as how and whether a target group could be readily assessed and identified in this criminal justice context.

In particular, most Iqaluit participants talked about this topic in terms of the relevance of Inuit culture to the recognition of mental illness in a criminal justice context (77%, 24 interviews). Participant conversations generally dealt with culture’s complicating influence in the recognition of mental illness and how this might have a bearing on the identification of a target population for criminal court mental health diversion initiatives: “We don’t really understand what mental health is, but yet we see symptoms of something all around us” said one participant. “[T]hey [Inuit] don't recognize it” said another participant, “[t]hey don't know what -- what mental illness is.”

These conversations, in turn, revealed 4 main themes (accounting for more than four-fifths of these discussions): (1) cultural understanding of mental health; (2) the context of cultural change/disruption and its impact on identifying mental illness; (3) suicide and its relevance to the recognition of mental illness; and (4) the cultural and social tolerance of atypical behaviour.
Among these four themes, Iqaluit participants spoke most about the effects of cultural change and cultural disruption on identifying mental illness. For instance, many spoke of reluctance by Inuit residents to identify a community member as suffering from mental illness for fear—fueled by recollections of residential schools and historical responses to tuberculosis as well as an awareness that local mental health resources are few—that labelled individuals will be separated from the community and from family. “Our communities are very holistic,” said a justice sector participant. “They need to see why we’re doing what we’re doing … the whole picture before they buy into it. Especially when you’re an outside kind of entity coming here into our community—like the residential schools, like the TB doctors and nurses that came to take our parents away for TB asylums down south, like any outside entity coming in to diagnose and pull and … People are very, very [reluctant] at first.” “There’s a reluctance to admit [mental illness], because they don’t want their child leaving for treatment,” said one justice sector worker in Iqaluit. “They’ll do anything in their power to not have their child get on a plane to go somewhere to take foreign meds, to talk to foreign people, where they have no culture, no country food… They are so scared, and they’d rather die: ‘So, yeah, I'm afraid of my son. But it’s me or him, you know. Who’s going to die?’” Another Iqaluit participant described it this way: “People, I think, are … afraid to contact the authorities because the authorities are unpredictable. And foreign. And powerful. And intimidating. And have not been—not shown themselves to be wholly trustworthy in the past.”

Meanwhile, Iqaluit focus group members discussed the vulnerability of some Inuit who may be mistaken by the courts and others to be suffering from mental health issues because of culturally affected aspects of their deportment, including their demeanour, deferential manner, difficulty with language, and limited understanding of the court system: “They might not even
have any mental illness... You know, they've never been to court, so they just kind of sit there and they bow their head, and they're not speaking out because they don't know how, or they're too scared to, or, you know, they've been labelled like that for so long that they're not saying, ‘No, that's not me’ maybe.”

7.4.2 Case 2 – Arviat

In Arviat, much of the total interview conversation emphasized the topic of Identification, Screening and Assessment. Like participants in Iqaluit, Arviat participants speaking about this topic highlighted Inuit culture’s effect on the recognition of mental illness (70%, 27 interviews) and 4 related themes. In Arviat, however, talk of suicide and the relevance to the recognition of mental illness emerged as the dominant theme.

Discussions of suicide in this context suggested a general perception in the community that suicide ideation is not an indicator of individual mental illness, but that suicide was often on participants’ minds as a sort of barometer of the general magnitude and seriousness of mental health stress in Nunavut, particularly amongst males. That is, the pervasiveness of suicide was often discussed in terms of the adverse psychological effects and stresses brought on by suicides within the wider community. As one justice participant put it, “[Y]ou cannot live here and not be touched by suicide.” One community organization member in speaking of suicide said “the grade 12 students, who are more mature and better able to kind of articulate themselves, might go to the elementary school and kind of communicate with the younger kids about suicide and about, you know, the impact it has in the community and stuff like that.” Meanwhile, the Arviat focus group discussion reflected the social tolerance for atypical behaviour and cultural values of acceptance and non-interference, referenced in earlier interviews with Arviat participants.
7.4.3 Case 3 – Qikiqtarjuaq

Interviews for the case of Qikiqtarjuaq also revealed the topic of Identification, Screening and Assessment as among the most salient to participants, and this was similarly discussed mainly in terms of Inuit cultural considerations surrounding the recognition of mental illness (72%, 27 interviews). As in the other two cases in this study, 4 identified themes dominated. In Qikiqtarjuaq, however, 2 themes were touched upon most often: suicide and its relevance to recognition of mental illness and the cultural and social tolerance of atypical behaviour. In many respects, these 2 themes were linked by the notion that the decoupling of suicide ideation from mental illness in these communities may also reflect a kind of tolerance. “There’s a very high tolerance in the Inuit culture for a lot of odd behaviour or unusual behaviour,” said one Qikiqtarjuaq health sector worker. Another study participant illustrated the connection with a story:

“I remember talking to a father. His son was hallucinating in his room. He’d been in his room for a year, or so—wouldn’t come out. And in talking to the father, the father said, ‘You know, when I was young, I’d stay in my room for a year.’ It’s like, okay, well really, at what point does it become a problem? … Because now, the father is going by his own experience. … So, as long as the son is in the room, not causing any problems, they can handle it. It’s when the son—when we started getting him help or getting him to the hospital—is when the son’s illness escalated, the behaviours, and people were becoming scared. Then, they came. Then, they were ready to. But it has to get almost to that point where people become afraid. Because [of ] that level of tolerance. Because, you know, you look at our high suicide rates here…”

Meanwhile, the Qikiqtarjuaq focus group emphasized the differential understanding between the community and court concerning whether or not people with mental illness should be before the court, flagging an alternative as desirable: “…those kind of people should be dealt with in a different procedure process and not to go through the court.”
7.4.4 Cross Case Results

In interviews for this study, participants in all 3 cases shared a similar high level of interest in one topic—Identification, Screening and Assessment—from among the 18 that were generally canvassed during discussions. In all cases, the topic occupied about a fifth of total interviews. While the 3 cases in this study—Iqaluit, Arviat and Qikiqtarjuaq—have obvious relative differences in population size as well as differences in geographic remoteness and available mental health and justice resources, the issue of Inuit culture was more salient than either remoteness or resources in conversations of this topic and highlighted cultural issues relevant to the recognition of mental illness.

From these interview discussions, the same four themes emerged in all cases, but the emphasis on each theme varied somewhat between them. Interviews for the case of Iqaluit, for example, emphasized the impact of cultural change/disruption and Arctic colonial history on the recognition of mental illness somewhat more than other cases, while Arviat and Qikiqtarjuaq interviews reflected more upon the themes of the suicide, tolerance of atypical behaviour, and cultural understanding of mental illness for their relevance in recognizing mental illness. However, most striking is the relative similarity for each case in the amount of interview discussion that gave rise to these themes.

In all cases, for example, interview conversations giving rise to the first theme of cultural understanding of mental health occupied almost a fifth of discussions concerned with cultural influences on recognition of mental illness. These often touched on fundamental cultural and even language gaps in describing issues of mental health. “In the community, we don’t understand what psychiatry is,” said one justice participant. “We don’t understand mental illness—in the English terms—we don’t understand.” Most described the need to consider issues
of mental health, especially the concept of mental illness, in terms of broader, more holistic concepts such as mental wellness that are more easily understood but also retain the cultural inclination to resist the view of mental health as something apart from a person’s overall well-being. A justice sector participant put it this way: “[The Inuit] are not labelling it, and they’re unable to label it, because it’s not something—because they don’t know the words. It doesn’t exist in the language.” “Inuit culture really doesn’t understand mental health in terms of from the biologic level, for sure,” said a health sector participant. “I think it’s more—I don’t know—spiritual, kind of. There’s still a lot of mythology, I think, around mental illness …” Another pervasive subject within this theme was a widely perceived link between mental health and contributing factors, including social disadvantage, addictions and abuse. “It’s all inter-related,” said a health sector participant in Iqaluit. “It’s all linked together: the addictions, the abuse, the trauma, the psychosis, [and] the mental health issues.” Indeed, many people in the communities appeared to consider the definition of mental illness as somewhat synonymous with the social problems, such as drinking and drug abuse, attributed to recent changes within their culture and way of life. “Before there were drugs or alcohol involved, there were very few mental issues,” said a community member in Arviat. Several others echoed this thinking.

The second theme of the impact of cultural change and disruption on the recognition of mental illness also emerged from related discussion by participants in all three cases. Two subjects pervaded these discussions. The first was the role of cultural upheaval in increasing the vulnerability to mental health issues among particular populations or groups. One justice sector participant described it this way: “Social roles have also undergone profound change … particularly for a male who is sort of not—they’re truly lost. I think, in part, it’s the profound impact of cultural change on a society over a short period of time, and a problem with social
roles.” The second emphasis relevant to this theme was the apprehension of people in communities to label others as mentally ill because of fears from post-colonial history, compounded by insufficient local resources, that identified individuals will be removed from the community or from their families to a place where resources exist for treatment. “If we identify these people as not being safe in the home, what other resource is available? And if there are really no options, why would they shake up the hornet’s nest?” said one health sector participant in speaking of Qikiqtarjuaq. “The reality of mental health in our territory,” said another justice participant in Iqaluit, “[is] if you have somebody in your family with mental health, they’re leaving the jurisdiction.”

All three cases shared a relatively high interest in discussions pertaining to the third theme of the relevance of suicide on the recognition of mental illness. Indeed, the impact of suicide and the pervasiveness of suicidal thinking was regularly discussed, but not because it was associated with mental illness per se. Instead, interviews revealed that suicide ideation in these Arctic communities does not provide a good indicator that someone has some form of mental illness, such as depression, as it often does in the South. Instead, suicide and suicide ideation by individuals was regularly attributed to other causes, such as a locally influenced perception of suicide as an acceptable coping mechanism. However, suicide was acknowledged as a potential a barometer of the general magnitude and seriousness of mental health issues in Nunavut, particularly amongst males, and because it was seen as a pervasive source of mental stress on communities and families. Suicide is “… absolutely devastating to the families that are affected by it,” said one community organization member in Arviat. As one senior justice member said “… I think there’s a huge and growing amount of anger on the part of young men. Suicide is a function of this. The rate of suicide of young males is staggering in Nunavut. And it’s getting
worse.” One member of the justice sector said “many members of families have lost loved ones through suicide, and there’s no immediate counseling available to them to help them deal with that loss.”

The fourth theme arising from participant interviews across all three cases was the perception of a high cultural and social tolerance of atypical behaviour in these Nunavut communities. This appeared to reflect both an ethos of non-interference in the business and behaviour of others and culturally and socially informed notions of what constitutes a mental-health-related or behavioural problem. “[There are] just overwhelmingly high levels of chaotic things happening in people’s houses all the time,” said one justice sector participant, “and a certain—I think a really high just tolerance level and low reporting level of crazy tantrum, quasi-criminal activity, anyway.” A health sector participant summarized the idea: “Inuit culture is hands off; don’t intrude in anyone else’s affairs.” “To exhibit behavior that’s inappropriate longer than I think would be tolerated in similar---in a family in the south,” remarked a justice sector participant, “I think part of that is informed by cultural issues—to let people have a high degree of individual autonomy.” This idea, said the participant, is further bolstered by “the availability of forgiveness by both offender and victim of any transgression. There’s a sense, a greater sense of the availability of forgiveness… But up to a point: If you throw the soup in grandma’s face, that’s crossed the line and—you know—or, if you stab somebody or something … Then, you cross the line.” That is, unusual behaviour was described by several participants as not considered problematic until it coincided with extraordinary family and community disruption—a point at which the behaviour was most likely to intersect with the criminal justice system. “I think it’s stigma of behaviour over stigma over illness,” said a justice participant in Iqaluit, “and I think that’s important in that they don’t want people to act out violently, but
there’s no stigma about having a mental health issue here.” Another justice sector participant described it this way: “The problem is, in the North, many of these problems have burned, if I can use that term, for years, and everyone knows that someone else is a bit odd and is talking to himself or herself, or doing strange things, and nothing’s ever done—until it’s a crisis when somebody else gets hurt and then the police are involved. Then it comes to the attention of the system.” Indeed, some participants noted that people with mental illness who have demonstrated violent or dangerous behaviour are perceived to be carefully watched by community members and others throughout the territory. “I see that a lot where they will say, you know, ‘He’s different. He’s …’—they don’t have the terminology to describe what is wrong with them—but they say, you know, ‘He’s different’ or ‘He needs looking after’ or ‘He’s to be avoided.’” Another justice sector participant put it this way: “I think if you went to any police officer here and said, ‘Give me the top 10 names of—of people that are causing a problem, that you might think have mental health issues,’ we can name them pretty quickly, especially in the smaller communities.” On the other hand, the Iqaluit focus group members warned about the danger of some people without mental health issues being labelled as having a mental illness by the court because of culturally associated aspects of their demeanour.

7.5 Discussion

While TJ and problem-solving court literature generally does not consider the topic of how to identify people with mental illness very robustly from the perspective of mental health rehabilitation (Spaulding et al., 2000), this study shows it is nevertheless top-of-mind in the contemplation of potential criminal court mental health diversion initiatives in three Canadian Arctic communities. In particular, the TJ-relevant objective of Identification, Screening and Assessment was among the top topics (from among 18) dominating interview discussions with
participants representing the justice sector, health sector, community organizations and community members in Iqaluit, Arviat, and Qikiqtarjuaq. In all cases—and despite differences in community size, remoteness and available resources—the topic focused on the issue of Inuit culture and its effect on the recognition of mental illness within these communities. These discussions emphasized a cultural understanding of mental health; the context of cultural change disruption and its impact on identifying mental illness; suicide and its relevance to the recognition of mental illness; and the cultural and social tolerance of atypical behaviour. In the one example of how the communities differed in their responses, Iqaluit participants appeared more inclined to speak about the impact of cultural disruption on this topic, likely because of a heightened awareness of social and mental health problems in the larger center where many ill or troubled people from outlying communities come for the limited treatment available, or simply because communities are no longer able to deal with them. Arviat and Qikitarjuaq may have been inclined to devote more discussion to suicide in this context because of the relative immensity of suicide events and their potential for greater social impact in smaller Arctic communities. This is a phenomenon that may be understood by reference to research that examines how negative emotional states behave like infectious disease spreading across social networks over long periods (Hill, Rand, Nowak & Christakis, 2010).

In all cases, discussions giving rise to these four themes highlight an underlying unease associated with the formal identification of persons with mental illness in mainly Inuit Arctic communities—a finding that goes to the therapeutic heart of any potential criminal court mental health diversion initiative in Nunavut. This unease appears to arise primarily from cultural (but also social and historical) features unique to these mainly Inuit Arctic communities and notably distinct from the cultural, social and legal context from which TJ and problem-solving court
thinking emerged. Indeed, the four themes arising from interviews in this study suggest that cultural impacts on the recognition of people with mental illness can be thought of as presenting six dilemmas for TJ in this mainly Inuit, Arctic context (Table 7.1). Four of these dilemmas result from cultural differences in understanding mental illness or from a reluctance to identify people with mental illness or acknowledge mental health indicators (such as suicide ideation) before behaviour or criminality has become excessively violent or disruptive to families or the community. Two dilemmas suggest the recognition of mental illness is seen as irrelevant after behaviour has become serious enough to require an intervention by the criminal justice system.

Table 7.1. Four themes emerging from interview discussions of the recognition of people with mental illness in all 3 cases along with the related 6 dilemmas they pose for TJ in the context of mainly Inuit Arctic communities.

<table>
<thead>
<tr>
<th>Themes relevant to the recognition of people with mental illness in the context of potential criminal court mental health diversion initiatives in Nunavut</th>
<th>Six dilemmas for expanding the availability of TJ principles in mainly Inuit Arctic communities revealed by themes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Cultural understanding of mental health</td>
<td>1. Formally identifying people with mental illness is incongruous with more holistic Inuit cultural conceptions of the person and mental wellness, and this is seemingly incompatible with the need to readily identify a target population for potential criminal court mental health diversion initiatives.</td>
</tr>
<tr>
<td>2. The context of cultural change/disruption and its impact on identifying mental illness</td>
<td>2. Historically informed and current ideas create fear that people identified as having mental illness would be removed from the community and their families, suggesting many in these communities would not welcome court initiatives that label people with mental illness.</td>
</tr>
<tr>
<td></td>
<td>3. Culturally informed beliefs recommend a therapeutic response to criminal or anti-social behaviour regardless of the presence or absence of diagnosed mental illness, making court diversion efforts to label people with mental illness appear irrelevant and unnecessary to</td>
</tr>
<tr>
<td>3. Suicide and its relevance to the recognition of mental illness</td>
<td>4. Despite the pervasiveness of suicide in the Arctic, suicide ideation is not perceived in the North as an indicator of mental illness, such as depression, as it is elsewhere, further suggesting a potential that local perceptions of mental illness may be disconnected from those of a potential criminal court mental health diversion initiative.</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>4. The cultural and social tolerance of atypical behaviour</td>
<td>5. Cultural and social tolerance for atypical behaviour makes early recognition of mental illness unlikely so that a target population for criminal court mental health diversion initiatives can not be readily identified.</td>
</tr>
<tr>
<td></td>
<td>6. A transgression of community standards grave enough to intersect with the justice system is often viewed as requiring separation from the community regardless of mental health status, confounding the community rehabilitation emphasis of criminal court mental health diversion initiatives.</td>
</tr>
</tbody>
</table>

The first of these dilemmas emerges from the many discussions of the way the mainly Inuit people of Nunavut communities understand mental health and how their cultural understanding shapes the recognition—or non-recognition—of mental illness in their midst. While indigenous cultures in the circumpolar North are transforming rapidly, many traditional cultural concepts remain acutely relevant (Kirmayer, Fletcher, & Watt, 2009), including Inuit cultural notions of “mental wellness” (Inuit Tapiriit Kanatami, 2007). The Mental Health Commission of Canada, for example, recognizes the Inuit definition of mental wellness as “self-esteem and personal dignity flowing from the presence of harmonious physical, emotional, mental, spiritual wellness and cultural identity” (Mental Health Commission of Canada, 2012). Indeed, many sentiments expressed by participants in this study were consistent with idea that current Inuit concepts of mental health are far more expansive than—and potentially
incommensurable with—the range of specific diagnoses or categories of diagnoses typically used to recognize people with mental illness for inclusion in TJ initiatives elsewhere (e.g., Spaulding et al., 2000).

The Mental Health Commission of Canada (2009), for example, considers mental health problems and illness as comprising “clinically significant patterns of behaviour or emotions that are associated with some level of distress, suffering, or impairment in one or more areas such as school, work, social and family interactions, or the ability to live independently” (p. 9). Yet, this definition may be insufficient to incorporate the “relational” understanding of well-being which the Inuit use to also include healthy interactions with the community as a whole, with the physical environment and/or with the spiritual and cosmological world (Healey, & Tagak, Sr., 2014; Kirmayer, Dandeneau, Marshall, Phillips, & Williamson, 2011). Indeed, many participants in this study expressed the idea that Inuit “don’t know what ‘mental illness means.’” That is, the notion of recognizing people with mental illness in the context of determining a target population for criminal court mental health initiatives appears to demand what Kirmayer et al. (2011) describe as “anthropocentric concepts common to Western traditions” that may not align with Inuit ideas: “In Inuit thought, the person is not at the centre of the universe but only one entity in a world of powerful forces. Inuit seek health through achieving the best balance or equilibrium among the forces in the world around the person” (p. 88). Thus, Inuit participants in this study frequently spoke of mental health problems as synonymous with the alcohol, drugs and other social problems that have accompanied cultural change and cultural disruption. Rehabilitation in this context must be seen as addressing of the gamut of these social, political, structural and economic dimensions first (Adeponle, Whitley, & Kirmayer, 2012).
Among the consequences of this line of thinking is that “wellness and illness are not on a single continuum but have their own qualities” so that people who are ill can nevertheless feel wellbeing while those who lack a sense of wellbeing may have no identifiable illness” (Kirmayer et al., 2009, p. 8). This, in turn, can be confounding to TJ thinking that assumes a more straightforward biomedical and psychiatric focus on discrete illness and on methods for diagnosing specific symptoms and disorders. Also relevant to criminal court mental health initiatives is the concept that Inuit mental wellness extends beyond the individual to include harmony with others and the community (Kirmayer, Fraser, Kirmayer, Fletcher, & Watt, 2009; Fauras, & Whitley, 2009; Kovach, 2009). This notion suggests an important conceptual overlap between Inuit ideas of behaviour betraying mental disorder and behaviour seen as antisocial or even criminal. Indeed, some researchers suggest Inuit ideas may tend toward explaining deviant behavior in moral or religious terms because these causes offer a person a sense of a greater likelihood of recovery and leads to less social avoidance or rejection by others (Kirmayer et al., 1997).

A second dilemma identified from study participant interviews is a perceived reluctance to label mental illness because of historically informed and current concerns that people with mental illness will be removed from the community and their families for treatment elsewhere. This belief appears based on perceptions that effective mental health rehabilitation resources are locally insufficient but also on past experiences within these communities of forced dislocation of Inuit to residential schools or to southern tuberculosis sanatoria (e.g., Bonesteel, 2008). Some researchers consider the latter effect to be especially profound for its potential to discourage indigenous people (including Inuit) from seeking medical treatment generally (Adelson, 2005; Bird, Wiles, Okalik, Kilabuk, & Egeland, 2008; Ford, Berrang-Ford, King, & Furgal, 2010;
Levy, 2012; Minore et al., 2004b; Orr, Martin, Smith, & Guijon, 1994; Tester and Irniq, 2008), including mental health treatment. Further, many suggest historical events such as the forced settlement of Indigenous population, land dispossession, and residential schooling are themselves tied to elevated mental health issues for indigenous and Arctic communities (Kirmayer, Brass & Tait, 2000; Kirmayer, Tait & Simpson, 2009; MacDonald, Ford, Willox and Ross, 2013). This confounding and entrenched line of thinking poses challenges for criminal court mental health diversion initiatives whose intended aim is to reduce the need for prosecution and, especially, for incarceration that could lead to dislocation (i.e., to Iqaluit or elsewhere) in favour of community-based mental health treatment.

Dilemma three emerged in discussions with study participants who described features of Inuit thinking that see no purpose in identifying people with mental illness in a criminal justice context. That’s because Inuit approaches to dealing with deviant or even criminal behaviour are inclined toward a therapeutic response regardless of the presence or absence of diagnosed mental illness. That is, as Kirmayer, Fletcher and Boothroyd (1997) describe, a generalized redemptive worldview exists that encourages people who commit deviant or criminal acts to change and for the community—including the victim—to assist perpetrators in their self-reform to restore community harmony. At the same time, many Inuit may also tend to ascribe moral or religious causes to criminal behaviour, even if mental illness is at the root of this behaviour (Kirmayer, Fletcher & Boothroyd, 1997; Kirmayer et al., 1997) and this may tend to conflate criminal acts and mentally disordered behaviours in the first place. Once a person has transgressed community standards, in other words, the response should be appropriately therapeutic regardless of the cause.
A fourth dilemma emerged during many discussions of the pervasiveness of suicide in the Arctic, which revealed a widespread perception that suicide ideation is not indicator for recognizing people suffering from mental illness in Nunavut communities. It has been suggested that the high rate of suicide among Inuit (Chachamovich et. al, 2013; Chachamovich & Tomlinson, 2013; Kral, 2012) reflects the internalization of the idea of suicide by Inuit through cultural transmission (Kral, 2012). While most suicides in the general population are accompanied by at least one mental illness (Stack, 2014), views of suicide in the Arctic appear less likely to perceive mental illness as a primary reason behind the high rates of suicide or suicide ideation in the Far North. Kral (2003), for example, noted that in two Qikiqtani region communities in Nunavut, problems with romantic relationships were attributed as the single most common precipitating factor for suicide, followed by family problems. While survey data from Northern Quebec analysed by Kirmayer, Boothroyd and Hodgins (1998) noted psychiatric problems along with alcohol abuse were most often associated with suicide in females, suicide among males was perceived as being more strongly correlated with solvent use or serious life events in the past year, such as the death of a loved one or rejection or disapproval from others in the community. Suicide attempts, meanwhile, have even been described as attempts to get attention or remonstrate others (Kirmayer, Fletcher, Corin & Boothroyd, 1997). Yet, while these perceptions exist in Arctic communities, recent research suggests that an association between suicide and mental illness is nevertheless clear in many suicides in the Far North (Chachamovich & Tomlinson, 2013). The apparent differences between perceptions in the Arctic and elsewhere concerning the relevance of suicide or suicide ideation in the recognition of mental illness could complicate a consideration of the factors used to identify a target population for criminal court mental health diversion initiatives in Nunavut.
The fifth dilemma facing TJ in Nunavut arises from a perceived greater tolerance for atypical behaviour in these mainly Inuit communities than in the south. This phenomenon, discussed during many interviews for this research, is described elsewhere: Kirmayer, Fletcher and Boothroyd (1997), for example, suggest “unusual behavior is tolerated, perhaps to a greater degree than in the south, and attempts are made to ignore, minimize, or explain away individuals’ inappropriate or vexatious behavior” (p. 79). Withdrawal, isolation and depression, for example, may be not seen as requiring intervention, in part, because of a general Inuit inclination toward non-interference (Kirmayer et al., 1997). This tolerance may have its origins in more traditional inclinations toward forgiveness as means to maintain community harmony (Kirmayer, Fletcher & Watt, 2009), in the inclination of smaller scale societies to rely on personal knowledge of one another (rather than labeling) and to attribute deviant behavior to contextual factors (Kimayer et al., 1997), and in traditional Inuit values of non-interference that incline people to avoid intruding on anyone who prefers to keep his or her distance (Kirmayer et al., 1997). In some cases in the past, unusual behaviours have been interpreted as the result of shamanic communications or interactions with the spirit world (Kirmayer et al., 1997). Less tolerated, however, is aggressive, threatening and seriously violent behaviour; these acts may constitute a limit on tolerance (Kirmayer et al., 1997; see below).

Finally, the sixth dilemma for Arctic communities identifying people with mental illness in conflict with the law reflects perceptions by some participants that criminal acts serious enough to intersect with the justice system are seen as requiring separation from the community regardless of the mental health status of a perpetrator. That is, the high levels of tolerance for behaviour noted above are nevertheless limited by a threshold. Like many participants in this study, Kirmayer and colleagues (1997) suggest behaviour exceeds tolerable limits when it
becomes excessively disruptive to the community or to families or creates a significant and recurring threat of violence toward community members. “Under these circumstances, the tendency is to bring the troublesome individuals to local legal or medical authorities and ask for him or her to be taken away” (Kirmayer, Fletcher & Boothroyd, 1997, p. 80).

In other words, tolerance may permit people with mental illness in Arctic communities to behave without sanction in a manner that would, in the south, lead to an early involvement of the criminal justice system and, thus, likely diversion into treatment from prosecution for offenses that do not involve violence or serious criminal activity. In contrast, community tolerance in the North may mean people demonstrating deviant behaviour come to the attention of criminal justice authorities only after their actions are too dangerous or otherwise too criminally serious to be eligible for consideration in any typical diversion initiative: “The moment you talk about diverting anything in Nunavut, what you are talking about is diverting violent offences..” said one justice sector participant in this study. Often, as Kirmayer, Fletcher & Boothroyd (1997) suggest, these circumstances are those in which the community wants the individual removed in any case, rather than returned for community-based treatment.

7.6 Conclusion

Criminal court mental health diversion initiatives, such as mental health courts and mental health diversion programs, identify people with mental illness as a first step to diverting them away from prosecution and, instead, to provide them with a more appropriate “rehabilitative response” (Schneider, 2010). The timely identification of people with a mental illness who could be targeted by these initiatives is essential and represents a key objective of the “therapeutic response” principle within the legal theoretical approach known as therapeutic jurisprudence as well as for the family of problem-solving courts to which these initiatives
belong (e.g., Farole, Puffett & Rempel, 2007; Farole, Puffett, Rempel, & Byrne 2005; Farole, Rempel, Byrne, & Chang, 2008; Hora, 2011; James, 2006; Porter, Rempel & Mansky, 2010; Wolf, 2007(b); Wolf, 2008; also see Chapter 2). To date, the question of the identification of people with mental illness in this criminal justice therapeutic context has received much attention for its legal and theoretical implications, including its potential for creating a “segregationist” court system (Kaiser, 2010; Seltzer, 2005; Stefan & Winick, 2005), for issues of voluntariness (Redlich, Hoover, Summers, & Steadman, 2010), for risking institutionalized stigmatization (Kaiser 2010) or paternalism, for its minority rights rather than universalist emphasis (Ferrazzi, Krupa & Lysaght, 2013) or for intruding on civil liberties (see review in Freckelton, 2008). However, from the perspective of a best therapeutic response—that is, using the lens of mental health rehabilitation to ensure effectiveness—the issue of how to identify an appropriate target population for criminal court mental health diversion in the context of TJ is far less examined (Spaulding et al., 2000).

The results from the present research address this issue in the context of mainly Inuit Arctic communities. The findings are cautionary: cultural and historical (or other) considerations that transform or interfere with standard assumptions about the identification of people with mental illness can fundamentally jeopardize the feasibility of TJ and mental health problem-solving court initiatives. In Nunavut’s mainly Inuit communities, for example, a culturally and historically informed inclination encourages tolerance and avoids labelling people with mental illness as long as a person’s behaviour is not too threatening or violent. As a result, people with mental illness in these communities are unlikely to come to the attention of criminal courts for anything but offences too serious to make criminal court mental health diversion initiatives tenable. Meanwhile, perpetrators of more intolerable, violent and serious criminal behaviours
were considered by many participants to warrant the same judicial response—i.e., to be treated therapeutically, but nevertheless removed from the community—whether the person suffers from a mental illness or not. Distinguishing mental health status in these circumstances was thus viewed as often not relevant, and questions about criminal court mental health diversion initiatives were seen as potentially moot.

The implications of these findings are twofold. First, they suggest the critical importance of a more thorough consideration and understanding of essential mental health rehabilitation concepts—including the role of culture, acculturation and history in mental health recognition and treatment—in the interdisciplinary development of TJ or the implementation of problem-solving court initiatives, especially beyond the context of specialized courts in large U.S. urban centres. If TJ is “the use of social science to study the extent to which a legal rule or practice promotes the psychological or physical well-being of the people it affects” (Slobogin, 1996), then it must simultaneously maintain its understanding of contemporary social science to achieve this interdisciplinary end. These results suggest, in other words, that TJ and criminal court mental health diversion initiatives may be best conceptualized in a manner that makes them agile and robust enough to incorporate essential differences in conceptions of mental health rehabilitation (including the recognition of mental illness and its treatment) across cultures and culturally relevant circumstances (e.g., Alegria et al., 2010).

The second implication of these research findings emerges from the uncertainty of many participants concerning the utility of identifying particular groups of people as the sole targets for a therapeutic response within criminal justice system in the context of mainly Inuit Arctic communities. For example, the historical circumstances of past colonialism, displacement, residential schools and acculturation experienced by Canada’s Inuit people was viewed by many
interviewees in a way that recommends the transformation of more typical applications of TJ and mental health problem-solving court thinking in the Far North. Instead, the interviews suggest a possible value in applying a criminal court rehabilitation-oriented approach—albeit circumscribed by other judicial values such as accountability and community safety—that does not require the identification of people with a mental illness but is responsive to criminal cases across Arctic communities generally. This thinking appears aligned with the Supreme Court of Canada’s acknowledgement that the criminal justice relevance of historical and cultural circumstances facing indigenous people should be considered in deciding an appropriate response: “Failing to take [aboriginal] circumstances into account would violate the fundamental principle of sentencing” (R. v. Ipeelee, 2012). Further, the idea of applying therapeutic thinking more broadly to Arctic criminal court operations may also align with a more expansive view of the role of TJ that was originally envisioned by its founding authors, Bruce Winick and David Wexler (2003):

Indeed, the proliferation of different problem solving courts, and the development of various “hybrid” models, suggests to us that the problem solving court movement may actually be a transitional stage in the creation of a judicial system attuned to problem solving, to therapeutic jurisprudence, and to judging with an ethic of care. (p. 87)

This view would also answer concerns by some researchers that applications of TJ, such as criminal court mental health diversion initiatives, may not sufficiently emphasize universalism in their approach to rehabilitation-oriented criminal justice initiatives in the context of people with mental illness (Ferrazzi, Krupa & Lysaght, 2013).

Overall, the questions raised by participants in this research concerning the recognition of people with mental illness for potential criminal court mental health diversion initiatives in the Arctic go to the heart of conventional conceptions of TJ and mental health problem-solving in
North American courtrooms. These questions are not, however, showstoppers: TJ’s essential value is often seen as its capacity to transcend conventional thinking—to “forge new responses to chronic social, human and legal problems ... that have proven resistant to conventional solutions, to broaden the focus of legal proceedings, from simply adjudicating past facts and legal issues to changing the future behaviour of litigants and ensuring the future well-being of communities” (Berman & Feinblatt, 2001, p. 126). In many respects, the views of participants in this study have confirmed its fundamental worth and its alignment with the thinking of many living in mainly Inuit communities who see the need for a more therapeutic response for criminal and deviant behaviour generally. Indeed, a conceptual compatibility between TJ’s emphasis on principles (rather than rules) and the similar approach highlighted by an aboriginal worldview in New Zealand has been described by Toki (2010).

That is, an Inuit view that a therapeutic response should be widely applied appears to correspond with what some legal scholars describe as a growing modern movement toward “an explicitly comprehensive, integrated, humanistic, interdisciplinary, restorative, and often therapeutic approach to law and lawyering” (Daicoff, 2006, p. 1). TJ, as an essential part of this movement, has the potential to transform rather than merely augment an understanding of the justice system (Freiberg, 2011), but to succeed it must respond to a thorough comprehension of what culturally appropriate mental health rehabilitation means beyond large North American cities. Future research should explore the creation of a fluid conception of TJ and its principles—perhaps more in line with the vision of its founders—that can accommodate unique social, historical, geographic and (especially) cultural circumstances such as those encountered in Canadian Arctic communities.
Chapter 8 – General Discussion
8.1 Introduction

This study answered the research question: “How can therapeutic jurisprudence (TJ) as theory elevate and illuminate the practical issues of dealing with offenders with mental illness in criminal courts in remote, resource-constrained, mainly Inuit Arctic communities from the perspectives of health and justice workers, members.” The relevance of this question arises from the over-representation of people with mental illness in the criminal justice system and in Canada’s prison population (Butler & Allnutt, 2003; Ogloff, 2002; Steadman et al., 2009; for Canada, see also Office of the Correctional Investigator, 2010a, 2013) where access to rehabilitation options is limited (Davis et al., 2012). In the past few decades, attempts to answer this challenge has spawned a rehabilitation-focused approach to the law known as therapeutic jurisprudence (TJ) (Wexler & Winick, 1996) along with specialized court programs for people with mental illness in large Canadian centres and elsewhere (Schneider, 2010). TJ, a legal theory, considers the therapeutic and anti-therapeutic consequences of the law and is considered the philosophical foundation for the model of “problem solving” courts (Winick, 2013) including criminal court mental health diversion initiatives such as mental health courts and diversion programs (Schneider, 2010). The aim of these initiatives is to provide a “rehabilitative response to what would otherwise be criminally sanctioned behaviour” (Schneider, 2010 p. 202) by treating the underlying mental illness, improving the mental health of the offender and, at the same time, securing the long-term safety of the community (Schneider, Bloom & Heerema, 2007).

Recently, researchers have explored using the underlying principles that animate problem-solving courts in conventional court settings—rather than relying on the resource-intensive operational elements usually associated with specialty courts—to expand the...
availability of the problem-solving approach (Farole, Puffett & Rempel, 2005, 2007; Farole, Puffett, Rempel, & Byrne, 2004; Farole, Rempel, Byrne, & Chang, 2008; Wolf, 2007b) and to facilitate an improved sharing of available resources within urban contexts (Wolf, 2007b). This research extends a theoretical and empirical understanding of TJ and problem-solving courts and their underlying principles in a remote, cross-cultural, mainly Inuit setting in the Canadian Arctic territory of Nunavut.

In Nunavut, criminal court mental health diversion initiatives do not exist and the capacity of criminal courts to deal with offenders with mental illness is affected by available resources, geographic isolation and cultural considerations. This contributes to accused people in Arctic communities, many of them Inuit, being swept up in the criminal justice system for crimes that have mental illness at their root. This study examined whether the underlying principles of TJ that guide criminal court mental health diversion initiatives elsewhere can be used to achieve their rehabilitative objectives in remote, mainly Inuit communities in Nunavut.

The study’s findings suggest 13 key themes relevant to expanding the availability of TJ principles as a problem-solving approach in non-specialized court settings in remote Arctic communities in Nunavut. These themes emerge from evidence of the importance of culture, cultural change, and Inuit mental health in potential criminal court mental health initiatives for Arctic communities. They relate to the 3 most salient TJ/problem-solving court objectives identified during interviews (identifying mental illness, approaches to treatment and therapeutic services, and collaboration between the court and the other three sectors). Results indicate a resonance between the themes and the culturally responsive MHR concept of “protective factors” in northern, indigenous communities. The study results suggest the essential usefulness of including specific consideration of protective factors from a culturally robust understanding of
mental health recovery and rehabilitation research within the legal theoretical concept of TJ in any effort to deliver court diversion initiatives to improve the criminal justice response to people with mental illness in remote, mainly Inuit Arctic.

8.2 Situating the Findings in a TJ Context

This research demonstrated the usefulness of TJ as a methodological theory at the complex intersection of mental health care and criminal law. An examination of the study’s research sub-questions suggests that a more inclusive, interdisciplinary consideration of contemporary concepts from MHR within TJ and problem-solving court research improve the theoretical and therapeutic validity of TJ and, similarly, fortify related criminal court mental health diversion initiatives for persons with mental illness who might otherwise face prosecution and jail. This research used TJ as a methodological theory to guide decision-making in this empirical study affecting the research questions, propositions, methodology, method and findings. In particular TJ, recruited across discipline boundaries, succeeded in guiding this qualitative inquiry at the complex intersection of mental health and law by providing a framework foundation for directing the study’s research questions and the related propositions that focus the analysis. TJ legal theory also functioned as methodological theory for the purpose of linking the study’s findings to the initial purpose of the research. TJ is the through line in this study—in its interdisciplinary nature and methodological function—providing both overall coherence and context for the study’s findings.

8.3 The Findings

In the context of a qualitative multiple-case study involving three cases (Arctic communities of Arviat, Iqaluit and Qikiqtarjuaq), this study used TJ as an effective
methodological theory to arrive at its research findings. The overall cross-case findings reveal 13 key themes relevant to expanding the availability of TJ principles as a problem-solving approach in non-specialized court settings in remote Arctic communities in Nunavut. These themes emerge from interview data pointing to the importance of culture in potential criminal court mental health initiatives for Arctic communities. The themes relate to 3 objectives from the TJ and problem-solving literature identified as key topics during interviews (identifying mental illness, approaches to treatment and therapeutic services, and collaboration between the court and the other three sectors). These results are unique in their illustration of an explicit role for MHR science in understanding the application of TJ and problem-solving courts in responding to people with mental illness in conflict with the law. In particular, to my knowledge, these findings suggest for the first time the potential value in acknowledging the therapeutic (and collaborative) benefits of the mental health effects of protective factors in TJ and problem-solving court thinking. However, this study suggests that the concept of protective factors is only a potential partial solution to issues raised by participants in this study. Some themes suggest that the TJ objective of identifying people with mental illness raise 6 dilemmas that present a fundamental difficulty that even consideration of protective factors is unlikely to meet. Instead, these results suggest a new approach for delivering an appropriately universal therapeutic response in criminal cases in Nunavut, regardless of a mental health diagnosis, needs more study.

A multiple-case study was chosen for this research because of the analytic benefits associated with exploring multiple cases (Yin, 2003). Common findings in varied circumstances are considered to enhance the generalizability of research results more so than in a single case study (Yin, 2003). In this research, TJ theory and a related literature-derived framework, was used to compare the findings of each of the cases and also served as a means to generalize
findings to new cases. The themes that emerged in the cross-case analysis in relation to the top 3 objectives from the TJ and problem-solving literature focused predominantly on issues of Inuit culture (rather than issues related to geographic remoteness or constrained resources which were anticipated as factors leading to contrasting results—which never materialized). The replication of findings across cases can help identify other cases to which the application of TJ principles as a means to deliver mental health rehabilitation in criminal courts might be generalized. These would reasonably include communities in Nunavut and potentially other indigenous communities in the circumpolar North and elsewhere.

8.4 Limitations of the Research

This dissertation identifies key themes that suggest the importance of culture in relation to three top objectives from the TJ and problem-solving literature which emerged as key topics during interviews (identifying mental illness, approaches to treatment and therapeutic services, and collaboration between the court and the other three sectors). It also reflects a more focused exploration and discussion of some of the themes that relate to one of these 3 topics (identifying mental illness). Time and format circumscribe further data analysis and discussion for the purpose of this dissertation. This study is however, the beginning of an important long-term program of research and the data from this research will support scholarship beyond the scope of this dissertation.

This study was conducted in the context of TJ theory which is the philosophical foundation of problem-solving courts in Canada and elsewhere. A theoretically driven and literature-derived framework guided the study. This approach may be perceived to be limiting for focusing the inquiry more than would have been the case in for example, a grounded theory
approach. On the other hand, using frameworks or models to guide qualitative research from the outset is an identified approach in the literature (Elo and Kyngås, 2007) and used in some studies (e.g., Giguere, et. al., 2011). Frameworks are seen as helpful means for organizing the coding process and allowing explorations to benefit from and expand on previous knowledge (Bradley, Curry, and Devers, 2007). Using the principles of TJ and problem-solving courts provided a logical starting point for this empirical study offering the benefit of previous insights in this field and methodological coherence that served to validate the findings.

This research did not include the perspective and experiences of people with mental illness. This study is a structural first step for developing responses to people with mental illness in criminal court context. The structural focus of the study required foremost the opinions and experiences of those who would be involved in the delivery of criminal court mental health diversion initiatives. While an inclusion of people with mental illness would have added an additional and informative dimension, the feasibility of identifying and speaking to people with mental illness in conflict with the law and constrained time and resources was such that this was not possible.

Further, applying interview content of the 13 fly-ins to all cases (Arviat, Iqaluit and Qikiqtarjuaq) is worthy of consideration in addressing potential limitations. This contingent was comprised of fly-in or generally centrally based professionals in Iqaluit who serviced the territory at large. The rationale for applying their interviews to all cases was premised on the fact that their comments were relevant to all communities. The inclusion of the fly-ins in all cases may be seen as posing a potential limitation in understanding cross-case similarities and differences because of the overlap of content. But after weighing the pros and cons of proceeding
in this manner, a decision to attribute fly-in interviews to each of the three cases was seen as necessary because this contingent represented sectors that were integral to the justice and health picture for each case. Being cognizant of potential frailties posed by this decision, steps were taken in the preliminary analysis to remove the fly-ins at the level of topics and issues with little difference in the results. The pattern to the findings remained the same with respect to the top 3 topics identified in the framework (identifying mental illness, approaches to treatment, and collaboration between the court and the other three sectors) and the dominance in conversations of issues related to Inuit culture (rather than issues related to geographic remoteness or constrained resources).

Finally, the data in this case was coded by a single researcher. This leaves open the potential for criticism for those who see value in the involvement of more than one researcher in this process. Bradley, Curry and Devers (2007) briefly refer to the literature relating to the merits of single vs team-based coding with preferences seemingly explained by philosophical orientation and study context. Of uppermost importance in this study was the need for consistency of coding to provide a better sense of comparability across interviews and cases. Effective coding of the data required an understanding of both the theoretical literature-derived framework guiding this study, and a contextual understanding of the participants and the setting. This informed my decision to engage in single researcher coding (and related analysis), a practice used by notable researchers in other indigenous circumpolar studies (e.g., Kral, 2013; Kral et. al., 2011).

In general, the limitations of this study were offset by the scope and scale of the research project and the demonstrated validity of the findings. As a researcher, I had the unusual privilege
of access to senior justice and health professionals and was in a position to address sectors thoroughly to answer the research questions of this study.

8.5 Implications

By seeking to provide a rehabilitative response to certain criminal behaviours, criminal court mental health diversion initiatives aspire to be interdisciplinary. These initiatives simultaneously consider the criminal law along with psychiatry, psychology and other mental health fields. Nevertheless, efforts to fully understand this therapeutic response through the lens of rehabilitation science, assisted by concepts from contemporary MHR, have not been well developed.

The concept of protective factors as it applies to the culturally specific needs of indigenous people could help inform ideas about what is “therapeutic” in a criminal court mental health response. Inuit in the Canadian Arctic territory of Nunavut, for example, currently do not have access to criminal court mental health diversion initiatives. This research raises the questions of whether an improved understanding of how the concept of protective factors aligns with notions of an appropriate therapeutic response can provide an important tool in efforts to establish initiatives responsive to people with mental illness in the Far North. A greater consideration of culturally robust concepts from MHR in TJ and problem-solving court thinking will improve the theoretical and therapeutic validity of TJ across cultural boundaries.

Finally, this research reveals a fundamental difficulty for importing typical models of criminal court mental health diversion initiatives premised on identifying a target population with mental illness across cultural boundaries to mainly Inuit Arctic communities. Instead, these
results suggest a new approach for delivering an appropriately universal therapeutic response in criminal cases in Nunavut, regardless of a mental health diagnosis, needs more study.

8.6 Future Research

This study looks at MHR concepts within the context of criminal court mental health initiatives that divert people with mental illness from prosecution to treatment. A greater consideration of MHR concepts (particularly as they relate to culture) in TJ and problem-solving-court discourse will improve the theoretical and therapeutic validity of TJ and, similarly, help efforts to effectively implement or evaluate mental health criminal court programs. More research is needed to bridge the interdisciplinary gap between concepts of MHR from rehabilitation science and the legal scholarship and practice that informs criminal justice responses to people with mental illness with due consideration to unique social, historical, geographic and cultural circumstances such as those encountered in Canadian Arctic communities.

8.7 Conclusion

Criminal court mental health diversion initiatives—and the TJ ideas that animate them—are intended as interdisciplinary approaches to providing a rehabilitative response to people with mental illness in conflict with the law. They simultaneously refer to the criminal law along with psychiatry, psychology and other mental health fields. Nevertheless, efforts to fully understand this therapeutic response through the lens of rehabilitation science, assisted by concepts from contemporary MHR, have not been well developed, especially in the context of culture.

In the Canadian Arctic territory of Nunavut, criminal court mental health initiatives do not exist. This research explored the potential for delivering the objectives of criminal court
mental health diversion to remote, mainly Inuit communities using TJ principles. These communities, thousands of kilometres from the large urban American cities where much of TJ thinking was born, have a deep need for an approach that is responsive to people with mental illness in conflict with the law. This study suggests the critical importance of a more thorough consideration and understanding of essential mental health rehabilitation concepts—including the role of culture, acculturation and history in mental health recognition and treatment—in the interdisciplinary development of TJ or the implementation of problem-solving court initiatives. The results suggest that TJ and criminal court mental health diversion initiatives may be best conceptualized in a manner that makes them agile and robust enough to incorporate essential differences in conceptions of mental health rehabilitation across cultures and culturally relevant circumstances. The historical circumstances of past colonialism, displacement, residential schools and acculturation experienced by Canada’s Inuit people was viewed by many participants in a way that recommends the transformation of more typical applications of TJ and mental health problem-solving court thinking in the Far North. Instead, many inclined toward applying a criminal court rehabilitation-oriented approach—albeit circumscribed by other judicial values such as accountability and community safety—that does not require the identification of people with a mental illness but is responsive to criminal cases across Arctic communities generally. The idea of applying therapeutic thinking more broadly to Arctic criminal court operations may align with a more expansive view of the role of TJ that was originally envisioned by its founding authors, Bruce Winick and David Wexler (2003):

Indeed, the proliferation of different problem solving courts, and the development of various “hybrid” models, suggests to us that the problem solving court movement may actually be a transitional stage in the creation of a judicial system attuned to problem solving, to therapeutic jurisprudence, and to judging with an ethic of care. (p. 87)
TJ’s essential value is often seen as its capacity to transcend conventional thinking—to “forge new responses to chronic social, human and legal problems ... that have proven resistant to conventional solutions, to broaden the focus of legal proceedings, from simply adjudicating past facts and legal issues to changing the future behaviour of litigants and ensuring the future well-being of communities” (Berman & Feinblatt, 2001, p. 126). In many respects, the views of participants in this study have confirmed its fundamental worth and its alignment with the thinking of many living in mainly Inuit communities who see the need for a more therapeutic response for criminal and deviant behaviour generally.

Finally, this study is the beginning of an important, long-term program of research that seeks to improve our understanding of the role of mental health rehabilitation science in TJ, while helping people with mental illness in conflict with the law in unique social, historical, geographic and cultural circumstances such as those encountered in Canadian Arctic communities.
References


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http://dx.doi.org/10.3402/ijch.v72i0.21775


www.courtinnovation.org/sites/default/files/BMHCevaluation.pdf


AAAAAQAvUi4gdi4gSXBlZWxlZSwgMjAxMiBTQ0MgMTMsIFsyMDEyXSAxIFMuQy5SLiA0MzMAAAAAAQ


Retrieved on November 19, 2011 from

www.parl.gc.ca/Content/SEN/Committee/391/.../rep02may06-e.htm


Appendix A: Ethics Approval
November 29, 2012

Ms. Priscilla Ferrazzi
Ph.D. Candidate
School of Rehabilitation Therapy
Queen's University
Kingston, ON K7L 3N6

GREB Ref #: GREH-112-12
Title: 'GREH-112-12 Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities'

Dear Ms. Ferrazzi,

The General Research Ethics Board (GREB), by means of a full board review, has cleared your proposal entitled "GREH-112-12 Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities" for ethical compliance with the Tri-Council Guidelines (TCPS) and Queen's ethics policies. In accordance with the Tri-Council Guidelines (article D.1.6) and Senate Terms of Reference (article G), your project has been cleared for one year. At the end of each year, the GREB will ask if your project has been completed and if not, what changes have occurred or will occur in the next year.

You are reminded of your obligation to advise the GREB, with a copy to your unit REB, of any adverse event(s) that occur during this one year period (access this form at https://eresources.queensu.ca/romeo_researcher/ and click Events - GREB Adverse Event Report). An adverse event includes, but is not limited to, a complaint, a change or unexpected event that alters the level of risk for the researcher or participants or situation that requires a substantial change in approach to a participant(s). You are also advised that all adverse events must be reported to the GREB within 48 hours.

You are also reminded that all changes that might affect human participants must be cleared by the GREB. For example you must report changes to the level of risk, applicant characteristics, and implementions of new procedures. To make an amendment, access the application at https://eresources.queensu.ca/romeo_researcher/ and click Events - GREB Amendment to Approved Study Form. These changes will automatically be sent to the Ethics Coordinator, Gail Irving, at the Office of Research Services or irvingg@queensu.ca for further review and clearance by the GREB or GREB Chair.

On behalf of the General Research Ethics Board, I wish you continued success in your research.

Yours sincerely,

Joan Stevenson, PhD
Professor and Chair
General Research Ethics Board

cc: Dr. Terry Krupa, Faculty Supervisor
October 30, 2013

Ms. Priscilla Ferrazzi  
Ph.D. Candidate  
School of Rehabilitation Therapy  
Queen's University  
29 Livingston Ave.  
Kingston, ON, K7L 4L1

GREB Romeo #: 6007496  
Title: "GREH-112-12 Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities"

Dear Ms. Ferrazzi:

The General Research Ethics Board (GREB) has reviewed and approved your request for renewal of ethics clearance for the above-named study. This renewal is valid for one year from November 29, 2013. Prior to the next renewal date you will be sent a reminder memo and the link to ROMEO to renew for another year.

You are reminded of your obligation to advise the GREB of any adverse event(s) that occur during this one year period. An adverse event includes, but is not limited to, a complaint, a change or unexpected event that alters the level of risk for the researcher or participants or situation that requires a substantial change in approach to a participant(s). You are also advised that all adverse events must be reported to the GREB within 48 hours. Report to GREB through either ROMEO Event Report or Adverse Event Report Form at http://www.queensu.ca/oro/researchethics/GeneralREB/forms.html.

You are also reminded that all changes that might affect human participants must be cleared by the GREB. For example you must report changes in study procedures or implementation of new aspects into the study procedures. Your request for protocol changes will be forwarded to the appropriate GREB reviewers and/or the GREB Chair. Please report changes to GREB through either ROMEO Event Reports or the Ethics Change Form at http://www.queensu.ca/oro/researchethics/GeneralREB/forms.html.

On behalf of the General Research Ethics Board, I wish you continued success in your research.

Yours sincerely,

[Signature]

Joan Stevenson, Ph.D.  
Chair  
General Research Ethics Board

c.: Dr. Terry Krupa, Faculty Supervisor
Appendix B: Nunavut Research Licences
SCIENTIFIC RESEARCH LICENSE

LICENSE #: 01 029 12N-M

ISSUED TO: Priscilla Ferrazzi
Faculty of Health Sciences
Queens University
29 Livingstone Avenue
Kingston, Ontario
K7L 4L1 Canada
867 222 6168

TEAM MEMBERS: P. Ferrazzi, T. Krupa

AFFILIATION: Queens University

TITLE: Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities

OBJECTIVES OF RESEARCH:
The purpose of this research is to explore the feasibility of creating specialized mental health criminal court programs that divert offenders with mental illness from the justice system to community treatment in remote Arctic communities affected by scarce resources, geographic isolation, and Inuit cultural considerations. The study’s goal is to identify the principles that guide the specialty “problem-solving” courts that focus on the underlying individual and social causes of crime in many Canadian cities and elsewhere and to determine whether these principles can be used in the absence of the resources usually associated with these courts to deliver “therapeutic jurisprudence” in remote communities in Nunavut.

TERMS & CONDITIONS:

DATA COLLECTION IN NU:
DATES: November 01, 2012-August 01, 2014
LOCATION: Arviat, Iqaluit, Qikiqtarjuaq

Scientific Research License 01 029 12N-M expires on December 31, 2012
Issued at Iqaluit, NU on November 30, 2012

Mary Ellen Thomas
Science Advisor
SCIENTIFIC RESEARCH LICENSE

LICENSE # 01 003 13R-M

ISSUED TO: Priscilla Ferrazzi
Faculty of Health Sciences
Queens University
29 Livingstone Avenue
Kingston, Ontario
K7L 4L1 Canada
867 222 6168

TEAM MEMBERS: P. Ferrazzi, T. Knupa

AFFILIATION: Queens University

TITLE: Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities

OBJECTIVES OF RESEARCH:
The purpose of this research is to explore the feasibility of creating specialized mental health criminal court programs that divert offenders with mental illness from the justice system to community treatment in remote Arctic communities affected by scarce resources, geographic isolation, and Innu cultural considerations. The study’s goal is to identify the principles that guide the specialty “problem-solving” courts that focus on the underlying individual and social causes of crime in many Canadian cities and elsewhere and to determine whether these principles can be used in the absence of the resources usually associated with these courts to deliver “therapeutic jurisprudence” in remote communities in Nunavut.

TERMS & CONDITIONS:

DATA COLLECTION IN NU:
DATES: November 01, 2012-August 01, 2014
LOCATION: Arviat, Iqaluit, Qikiqtaaluk

Scientific Research License 01 003 13R-M expires on December 31, 2013
Issued at Iqaluit, NU on January 21, 2013

Mary Ellen Thomas
Science Advisor
SCIENTIFIC RESEARCH LICENSE

LICENSE # 01 006 14R-M

ISSUED TO: Priscilla Ferrazzi
Faculty of Health Sciences
Queens University
29 Livingston Avenue
Kingston, Ontario
K7L 4L1 Canada

TEAM MEMBERS: P. Ferrazzi, T. Krupa

AFFILIATION: Queens University

TITLE: Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities

OBJECTIVES OF RESEARCH: The purpose of this research is to explore the feasibility of creating specialized mental health criminal court programs that divert offenders with mental illness from the justice system to community treatment in remote Arctic communities affected by scarce resources, geographic isolation, and Inuit cultural considerations. The study’s goal is to identify the principles that guide the specialty “problem-solving” courts that focus on the underlying individual and social causes of crime in many Canadian cities and elsewhere and to determine whether these principles can be used in the absence of the resources usually associated with these courts to deliver “therapeutic jurisprudence” in remote communities in Nunavut.

TERMS & CONDITIONS:

DATA COLLECTION IN NU:
DATES: November 01, 2012-August 01, 2014
LOCATION: Arviat, Iqaluit, Qikiqtarjuaq

Scientific Research License 01 006 14R-M expires on December 31, 2014
Issued at Iqaluit, NU on January 10, 2014

Mary Ellen Thomas
Science Advisor
Appendix C: Information and Consent Forms
Letter of Information for Professionals

Letter of Information
Study title: “Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities”

This research is being conducted by Priscilla Ferrazzi LL.B., LL.M. under the supervision of Dr. Terry Krupa in the Ph.D. Rehabilitation Science Program, School of Rehabilitation Therapy, Faculty of Health Sciences at Queen’s University in Kingston, Ontario.

What is this study about? The purpose of this research is to explore the feasibility of creating specialized mental health criminal court programs that divert offenders with mental illness from the justice system to community treatment in remote Arctic communities affected by scarce resources, geographic isolation, and Inuit cultural considerations. The study’s goal is to identify the principles that guide the specialty “problem-solving” courts that focus on the underlying individual and social causes of crime in many Canadian cities and elsewhere and to determine whether these principles can be used in the absence of the resources usually associated with these courts to deliver “therapeutic jurisprudence” in remote communities in Nunavut. Therapeutic jurisprudence is an approach to criminal justice that provides mental health rehabilitation while enhancing community safety. The study will require at least 2 visits to your community, each approximately a week long. There are no known physical or economic risks associated with this study. Foreseeable psychological or social risks associated with this study relate to potential loss of confidentiality. Loss of confidentiality is however, unlikely to happen given the steps outlined below that will be taken to keep your identity and other information confidential. Any harm that would flow from a loss of confidentiality would be minor in nature given the types of questions that will be posed. The anticipated benefit of this study is that it will contribute to existing research about rehabilitation science, therapeutic jurisprudence, and “problem solving” courts. It is also anticipated that this study will create both a theoretical foundation and practical target indicators that can be used to inform future criminal court initiatives in the Canadian Arctic that respond to the needs of people with mental illness in remote, mainly Inuit communities while enhancing community safety.

Is my participation voluntary? Yes. Although it be would be greatly appreciated if you would answer all questions as openly as possible, you should not feel obliged to answer any questions that makes you feel uncomfortable. You should know that I am both an academic researcher and an occasional prosecutor for the Public Prosecution Service of Canada in Nunavut. This study does not have anything to do with my prosecution work. You should not feel that you must participate or answer questions in this study because of my role as a prosecutor. You may also withdraw (stop taking part) at any time by telling the researcher you wish to withdraw or by providing a written note indicating you wish to withdraw. Responses provided before withdrawal will be destroyed unless you indicate that you would like your responses to form part of the study.

What will happen to my responses? Your responses to questions will be given in individual
1-2 hour interviews and/or in a group setting referred to as a focus group that will also be 1-2 hours in duration. Every effort will be made to keep your identity and responses confidential. However, since your community is small, others may be able to identify you on the basis of references you make. Please keep this in mind in deciding what to tell me. If you participate in a focus group, I undertake to safeguard the confidentiality of the discussion. I will ask the other members of the focus group to keep the identity and responses of all members confidential, but I cannot guarantee that they will do so. Also, in some cases, an interpreter will be used and will be required to sign a Confidentiality Agreement undertaking to not to reveal in any way to any person other than the researcher any information from interviews and focus groups learned through interpretation services including the identity of participants. Your responses will be audio-recorded and sent electronically to a transcriber in a manner that is encrypted and password protected. The transcriber will be required to also sign a Confidentiality Agreement undertaking to keep the information from interviews and focus groups confidential, including the identity of participants, and also undertaking to destroy all audio-recordings once the transcriptions have been completed. Transcribers will also be required to destroy transcriptions once copies have been provided to the researcher. Similarly, all research assistants/staff will be required to sign a Confidentiality Agreement undertaking to keep all information and identity of participants confidential. Responses from interviews and focus groups that are kept on my computer will be password protected and encrypted. Audio-recordings of your responses and transcripts of the audio-recordings will be kept for 7 years in a locked cabinet where only my academic supervisor and I will have access. Please note that responses from interviews and focus groups may be published in professional journals or presented at conferences, but any such presentations will be of general findings and will never breach individual confidentiality. Should you be interested, you are entitled to a copy of the findings.

**Will I be compensated for my participation?** No, unless you are an elder sharing traditional knowledge in which case you will be paid $40.00 an hour for your time. Coffee, tea and a light snack will be provided.

**What if I have concerns?** Any questions about study participation may be directed to Priscilla Ferrazzi at Priscilla.Ferrazzi@queensu.ca or 867-222-6168 (cell) or her Academic Supervisor, Dr. Terry Krupa at krupat@queensu.ca or 613-522-6236.

This study has been reviewed by the Queen’s University General Review Ethics Board (GREB). GREB is responsible for ensuring that participants are informed of the risks associated with research, and that participants are free to decide if participation is right for them. Queen’s University has granted clearance to this study according to recommended principles of Canadian ethics guidelines, and Queen’s University policies. Any ethical concerns about the study may be directed to Chair of the General Research Ethics Board at chair.GREB@queensu.ca or 613-533-6081. This study has also been given a research licence by the Nunavut Research Institute.
Letter of Consent for Professionals

Consent Form

“Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities”

Name (please print clearly): ______________________________________

1. I have read the Letter of Information and have had any questions answered to my satisfaction.

2. I understand that I will be participating in the study called “Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities” and I have been fully informed of the goal of the project being conducted. I understand this goal and consent to being interviewed for the study. I understand that this means that I will be asked to answer a number of questions in a 1-2 hour individual interview and/or in a group setting referred to as a focus group also 1-2 hours in duration.

3. I understand that steps will be undertaken to ensure that my identity and responses to questions given in individual interviews and/or a focus group will be kept confidential.

4. I understand that my participation in this study is voluntary and I may withdraw (stop taking part) at any time.

5. I understand that Priscilla Ferrazzi, the person conducting this study, is both an academic researcher and an occasional prosecutor for the Public Prosecution Service of Canada in Nunavut. I understand that this study does not have anything to do with Priscilla Ferrazzi’s prosecution work. I understand that there is no obligation to participate or answer questions in this study because of Priscilla Ferrazzi’s role as prosecutor.

6. I understand that only researchers involved in this study will have access to my responses. These researchers are Priscilla Ferrazzi, her Academic Supervisor Dr. Terry Krupa, and Research Assistants. Although interpreters and transcribers will also have access to your responses, this will be for a limited period, and they will be required to sign Confidentiality Agreements. In the case of transcribers, they will be required to destroy audio-tapes and transcripts in their possession once copies of transcripts are provided to the researcher. The responses may also be published in professional journals or presented at conferences, but any such presentations will be of general findings and will never breach individual confidentiality. Should you be interested, you are entitled to a copy of the findings.

7. I understand that I will be given a copy of my signed consent form for my records.

8. I am aware that if I have any questions, concerns, or complaints, I may contact Priscilla Ferrazzi (867-222-6168 cell) Priscilla.Ferrazzi@queensu.ca 29 Livingston Avenue, Kingston, ON K7L 4L1; Academic Supervisor, Dr. Terry Krupa (613-522-6236)
I have read the above statements and freely consent to participate in this research:

Printed Name: ___________________________ Signature: _______________________

Date of Consent (d/m/y): ______________

I have discussed this study in detail with the participant. I believe the participant understands what is involved in this study.

Researcher’s Signature:____________ Researcher’s Name:____________ Date:____________
Letter of Information for Community Members

**Study title:** “Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities”

This research is being done by Priscilla Ferrazzi LL.B., LL.M. under the supervision of Dr. Terry Krupa in the Ph.D. Rehabilitation Science Program, School of Rehabilitation Therapy, Faculty of Health Sciences at Queen’s University in Kingston, Ontario.

**What is this study about?** This study looks at how criminal courts can better help people with mental illness by moving them out of the criminal court and jail system and into community treatment instead. In many Canadian cities and in other parts of the world, this is done through special courts and programs especially created for people with mental illness. These are called Mental Health Courts and diversion programs, and they help people with mental illness to avoid getting in trouble with the law in the future by helping them to get well, to make better choices, to stop drinking and taking drugs, and to live healthier lives. But Mental Health Courts and diversion programs do not exist in the Arctic. This research looks at how to bring the benefits of Mental Health Courts and diversion programs to communities in Nunavut that do not have the specially trained judges and lawyers, staff, experts, and social service workers who are usually found in these special courts in the south. The study examines how this can be done in Arctic communities that do not have as much money or as many experts as southern communities, that are often far away from other places, and that are made up of mainly Inuit people familiar with Inuit culture.

The study will involve at least 2 visits to your community. Each visit will last a week. People who are asked to help in this study will be asked questions, and how each person answers these questions will be kept secret. Instead, their answers will be used to learn about the best ways to deal with people with mental illness in conflict with the law, and the names of people who provided the answers will not be included in the study when it is written up. Nothing else is needed for the study. People who help with the study will not face any risk of being hurt by the study or any risk of paying or losing money as a result of the study.

Some people might worry about the risk that the answers they give in the study might not be kept secret. Sometimes people may not want the answers they give to be known to others in the community. This could happen, but the risk of this is very small because of the steps taken to keep your name and answers secret. These steps are described below. Meanwhile, the questions and answers in this study are not looking for personal information, and are not the kind that are likely to embarrass or upset anyone if others knew about them.

**Do I have to help in this study?** No. If you choose to answer questions for this study, you are a volunteer. That means, you do not have to answer any question if you don’t want to. Although it be would be helpful if you answer all questions as openly as possible, you should not feel you have to answer any question that makes you feel uncomfortable. You should know that I (the person running this study) am a PhD student from a university, and I am also a prosecuting lawyer who prosecutes criminal cases for the Public Prosecution Service of Canada in Nunavut.
This study does not have anything to do with my prosecution work. You should not feel that you must participate or answer questions in this study because of my role as a prosecutor. You may also stop at any time by telling the researcher you want to stop or by writing a note that says you want to stop. Answers you gave me before your decision to stop will be destroyed unless you tell me that I can use your answers in the study.

What will happen to my answers? You will be asked to answer to questions alone during a meeting with me that will last for 1-2 hours. Some people may also be asked to answer questions as part of a group meeting that will also be 1-2 hours long. Every effort will be made to keep your name and answers secret. However, since your community is small, others may be able to figure out who you are based on the things you talk about. Please keep this in mind in deciding what to tell me. If you participate in a group meeting, I will do my best to keep what you say a secret, and I will ask the other members of the group to keep the name and answers of all group members secret as well. I will ask members of a group to sign a “Confidentiality Agreement” that says they won’t share what they learned in the focus group. These steps will help keep your name and what you say secret, but they will not always work. Also, in some cases, a person who can translate Inuktitut into English language (an interpreter) will be used and will have to sign a Confidentiality Agreement promising to not share in any way to any person other than the researcher any information from interviews and focus groups. Your answers will also be tape-recorded and sent electronically to a person who will type out what you said in the recording (a transcriber). The tape-recording will be sent in a way that is secure so that people other than the transcriber will not be able to get access to the tape-recording or the typed out answers and conversations. The transcriber will have to also sign a Confidentiality Agreement promising to keep the information from interviews and focus groups secret, including the names of those answering questions, and also promising to destroy all tape-recordings once they are written out. Transcribers will also be required to destroy copies other than those provided to the researcher. Similarly, all research assistants/staff will have to sign a Confidentiality Agreement promising to keep all information and identity of participants secret. Answers from one-on-one meetings and from groups that are kept on my computer will be secure so others can’t access the information shared by you. Tape-recordings of your responses and transcripts of the tape-recordings will be kept for 7 years in a locked cabinet where only my academic supervisor and I will have access. Please note that while the answers you give during one-on-one meetings or in groups may be published in professional journals or presented at conferences, your name will never be used and no information will be included that will let people know who you are. Any such presentations will be of general findings. Should you be interested, you are entitled to a copy of the findings.

Will I be paid for my help answering questions for this study? No, unless you are an elder sharing traditional knowledge in which case you will be paid $40.00 an hour for your time. Coffee, tea and a light snack will be provided.

What if I have concerns? Any questions about study participation may be directed to Priscilla Ferrazzi at Priscilla.Ferrazzi@queensu.ca or 867-222-6168 (cell) or her Academic Supervisor, Dr. Terry Krupa at krupat@queensu.a or 613-522-6236.
This study has been reviewed by the Queen’s University General Review Ethics Board (GREB). GREB is responsible for making sure people who participate are informed of the risks that accompany the research, and that participants are free to decide if participation is right for them. Any ethical concerns about the study may be directed to Chair of the General Research Ethics Board at chair.GREB@queensu.ca or 613-533-6081.
Letter of Consent for Community Members

“Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities”

Name (please print clearly): ____________________________________________

1. I have read the Letter of Information and have had any questions answered to my satisfaction.

2. I understand that I will be participating in the study called “Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities” and I have been fully informed of the goal of the project being conducted. I understand this goal and consent to being interviewed for the study. I understand that this means that I will be asked to answer a number of questions in a 1-2 hour individual interview and/or in a group setting referred to as a focus group also 1-2 hours in duration.

3. I understand that steps will be undertaken to ensure that my identity and responses to questions given in individual interviews and/or a focus group will be kept confidential.

4. I understand that my participation in this study is voluntary and I may withdraw (stop taking part) at any time.

5. I understand that Priscilla Ferrazzi, the person conducting this study, is both an academic researcher and an occasional prosecutor for the Public Prosecution Service of Canada in Nunavut. I understand that this study does not have anything to do with Priscilla Ferrazzi’s prosecution work. I understand that there is no obligation to participate or answer questions in this study because of Priscilla Ferrazzi’s role as prosecutor.

6. I understand that only researchers involved in this study will have access to my responses. These researchers are Priscilla Ferrazzi, her Academic Supervisor Dr. Terry Krupa, and Research Assistants. Although interpreters and transcribers will also have access to your responses, this will be for a limited period, and they will be required to sign Confidentiality Agreements. In the case of transcribers, they will be required to destroy audio-tapes and transcripts in their possession once copies of transcripts are provided to the researcher. The responses may also be published in professional journals or presented at conferences, but any such presentations will be of general findings and will never breach individual confidentiality. Should you be interested, you are entitled to a copy of the findings.

7. I understand that I will be given a copy of my signed consent form for my records.
8. I am aware that if I have any questions, concerns, or complaints, I may contact Priscilla Ferrazzi (867-222-6168 cell) Priscilla.Ferrazzi@queensu.ca 29 Livingston Avenue, Kingston, ON K7L 4L1; Academic Supervisor, Dr. Terry Krupa (613-522-6236) krupat@queensu.ca; Vice-Dean (Health Sciences) Director of School of Rehabilitation Therapy, Faculty of Health Sciences, Marcia Finlayson (613-533-2576) Marcia.finlayson@queensu.ca, or Joan Stevenson, the Chair of the General Research Ethics Board (613-533-6081) or chair.GREB@queensu.ca at Queen’s University.

I have read the above statements and freely consent to participate in this research:

Printed Name: ___________________________ Signature: _______________________

Date of Consent (d/m/y): ________________

I have discussed this study in detail with the participant. I believe the participant understands what is involved in this study.

Researcher’s Signature: ___________ Researcher’s Name: ______________________
Letter of Information for Community Members (Inuktitut)

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Letter of Consent for Community Members (Inuktitut)


نوراً: ________________ إعفاء: ________________

أعلاه: ________________ إعفاء: ________________
Oral Consent

“Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities”

Priscilla Ferrazzi LL.B., LL.M., Rehabilitation Science Program, School of Rehabilitation Therapy, Faculty of Health Sciences Queen’s University at Kingston Kingston, Ontario K7L 3N6 Priscilla.Ferrazzi@queensu.ca (cell: 867-222-6168) (November 25, 2012)

TAPE RECORDER OFF:

1. Good afternoon. My name is Priscilla Ferrazzi. I am a researcher from Queen’s University. I would like to interview you, if you are willing.

2. The purpose of my research study is to help find ways to improve the criminal justice system for people with mental illnesses in remote arctic communities.

3. Do you have any questions about this study before I remind you of a couple of things? (Yes/No = answer as asked)

4. First, I want you to know that I am both an academic researcher and an occasional prosecutor for the Public Prosecution Service of Canada in Nunavut. However, this study does NOT have anything to do with my prosecution work so please do not feel pressured to participate. I will not ask nor answer any questions related to specific individuals. This interview is about finding better ways to help people with mental illnesses in the north.

5. This interview/focus group could take 1-2 hours and your participation is voluntary. You may withdraw at any time without giving a reason and I will not persuade you to continue. You can withdraw just by telling me you wish to stop and I’ll remove our conversation. (Cannot do this in a focus group as easily).

6. (Interview) = I will protect your identity and keep your answers confidential. (FOCUS Group) = I will protect your identity, keep your answers confidential and ask others to do the same. Please be aware that I will ask our interpreter and transcriber to sign confidentiality agreements as well, so no one will know your responses to these questions unless you tell them.

7. I will be tape recording our conversation to help me with my research. It will not be used for any other purpose and I will erase our conversation after it has been copied into a secure computer. Is this ok with you? (If they say NO, ask if you can use pen/paper to record the interview.)

8. Any further information you would like before we begin? Yes/No

9. I am turning on the tape recorder now. TURN ON RECORDER: Are you okay with beginning the interview now? Yes/No (= consent)

START OF INTERVIEW: I am currently in X community in Nunavut on date/time. Can you please tell me your name? Can you spell your name for me? Thanks

QUESTION #1 …
AFTER INTERVIEW. Thank you. Before you leave, please let me remind you that you are welcome to contact me or my academic authorities directly any time for any reason. Their names and address are on the Letter of Information. I will also leave my contact information with <name a trusted community member (**NOTE)> so you can reach me through him/her if you wish. Please do not hesitate if you have anything more you wish to add or any concerns. All right?
Focus Group Confidentiality Agreement

Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities

Priscilla Ferrazzi LL.B., LL.M., Rehabilitation Science Program, School of Rehabilitation Therapy, Faculty of Health Sciences Queen’s University at Kingston, Kingston, Ontario K7L 3N6, Priscilla.Ferrazzi@queensu.ca (867-222-6168) (November 16, 2012)

The nature of sharing information through group interviews means that I will be able to identify other participants of the group interviews.

By signing this letter of agreement, I am indicating that I agree to maintain confidentiality of the identity of all participants, the information shared, and the context (e.g., the location where the participant is employed) in any communication I have with others. I understand the steps being taken in this study to protect my own confidentiality.

Please sign one copy of this Letter of Agreement. Retain a copy for your records.

__________________________________________
Participant (print)

A. Identification and Signature Indicating Agreement

Name: ________________________________________________

Email: ________________________________________________

Telephone: ___________________________________________

Mailing Address: _________________________________________

Signature: ______________________________________________

Please retain a copy of this agreement for your records and provide one to the Researcher.

Should you require further information please feel free to contact me at Priscilla.Ferrazzi@queensu.ca or (cell) 867-222-6168, or at the School of Rehabilitation Therapy, Faculty of Health Sciences, Queen’s University, 31 George St., Kingston, K7L 3N6, (613) 533-6103. For questions, concerns or complaints about the research ethics of this study, contact Vice-Dean (Health Sciences) Director of School of Rehabilitation Therapy, Faculty of Health Sciences, Marcia Finlayson (613-533-2576) Marcia.finlayson@queensu.ca, or Joan Stevenson, the Chair of the General Research Ethics Board (613-533-6081) or chair.GREB@queensu.ca at Queen’s University.
Appendix D: Recruitment Letter
SAMPLE RECRUITMENT LETTER

(for Hamlet/Municipality, Government of Nunavut, Public Prosecution Service of Canada, RCMP, Legal Services Board, Community Mental Health Services)

Tina Hartman
Executive Director
Legal Services Board of Nunavut
Gjoa Haven, NU
XOB 1JO

Dear Ms. Hartman,

I write in relation to a study I am conducting in Nunavut relating to mental health and criminal justice. I am interested in interviewing a number of lawyers working for the Legal Services Board (LSB) of Nunavut. I write to explain the purpose and objectives of the study and to seek your consent to approach lawyers employed by the LSB to inquire if they might be interested in participating in this study. For your reference, please find attached a Letter of Information and Consent Form that will be provided to lawyers participating in this study.

The purpose of this research is to explore the feasibility of creating specialized mental health criminal court programs that divert offenders with mental illness from the justice system to community treatment in remote Arctic communities affected by scarce resources, geographic isolation, and Inuit cultural considerations. The study’s goal is to identify the principles that guide the specialty “problem-solving” courts that focus on the underlying individual and social causes of crime in many Canadian cities and elsewhere and to determine whether these principles can be used in the absence of the resources usually associated with these courts to deliver “therapeutic jurisprudence” in remote communities in Nunavut. Therapeutic jurisprudence is an approach to criminal justice that provides mental health rehabilitation while enhancing community safety. The proposed research has three objectives:

1. to identify principles of problem-solving courts necessary to provide therapeutic jurisprudence and to identify the particular goals of each principle;
2. to determine whether and how the goals of the problem-solving principles necessary for therapeutic jurisprudence could be met in remote, mainly Inuit Arctic communities by meeting objectives that take into account available resources, geographic isolation, and Inuit cultural considerations; and
3. to develop indicators that could be used as practical tools to determine whether or not problem-solving goals are achieved in a future program to deliver therapeutic jurisprudence in the Arctic.

One of the anticipated benefits of this study is that it will create both a theoretical foundation and practical target indicators that can be used to inform future criminal court initiatives in the Canadian Arctic that respond to the needs of people with mental illness in remote, mainly Inuit communities while enhancing community safety.

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This study has been granted clearance according to the recommended principles of Canadian ethics guidelines, and Queen’s policies and a licence from the Nunavut Research Institute. The study will begin in January 2013 in Nunavut. I would be most appreciative if you could indicate whether you would be agreeable to having me approach some of the lawyers with the LSB to inquire whether they might be interested in participating in this study.

Should you have any questions, please do not hesitate to contact me at Priscilla.Ferrazzi@queensu.ca, (cell) 867-222-6168 or at 29 Livingston Avenue, Kingston, ON, K7L 4L1.

Thank you for your consideration of the foregoing.

Sincerely yours,

Priscilla Ferrazzi LLB, LLM, PhD Candidate
Appendix E: Confidentiality Agreements
Confidentiality Agreement for Interpreters

Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities

Interpreter Confidentiality Agreement

Priscilla Ferrazzi LL.B., LL.M., Rehabilitation Science Program, School of Rehabilitation Therapy, Faculty of Health Sciences
Queen’s University at Kingston
Kingston, Ontario K7L 3N6
Priscilla.Ferrazzi@queensu.ca (cell: 867-222-6168)
October 20, 2012

I have read and retained the Letter of Information concerning the research “Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities” being conducted by Priscilla Ferrazzi. In my role as interpreter for the researcher, I understand the nature of the study and requirements for confidentiality. I have had all of my questions concerning the nature of the study and my role as interpreter answered to my satisfaction.

B. Maintaining Confidentiality

I agree not to reveal in any way to any person other than the researcher any data gathered for the study by means of my services as interpreter. This includes participant identify and responses given in interviews and focus group discussions.

C. Acknowledgement of My Services as Interpreter

I understand that the researcher will acknowledge the use of my services in any reporting on the research. I have indicated below whether I wish that acknowledgement to be anonymous or whether it may recognize me by name.

___ I do no wish my name to be associated with the acknowledgement of the use of an interpreter in data gathering for the research.

OR

___ I agree that the researcher may associate my name with the acknowledgement of the use of an interpreter in data gathering for the research.

D. Identification and Signature Indicating Agreement

Name: ____________________________________________

Email: ____________________________________________

Telephone: _________________________________________

Mailing Address: _____________________________________

Signature: __________________________________________
Should you require further information please feel free to contact me at Priscilla.Ferrazzi@queensu.ca or (cell) 867-222-6168, or at the School of Rehabilitation Therapy, Faculty of Health Sciences, Queen’s University, 31 George St., Kingston, K7L 3N6, (613) 533-6103. For questions, concerns or complaints about the research ethics of this study, contact Vice-Dean (Health Sciences) Director of School of Rehabilitation Therapy, Faculty of Health Sciences, Marcia Finlayson (613-533-2576) Marcia.finlayson@queensu.ca, or Joan Stevenson, the Chair of the General Research Ethics Board (613-533-6081) or chair.GREB@queensu.ca at Queen’s University.
Confidentiality Agreement for Transcribers

Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities

Transcriber Confidentiality Agreement

Priscilla Ferrazzi LL.B., LL.M., Rehabilitation Science Program, School of Rehabilitation Therapy, Faculty of Health Sciences

Queen’s University at Kingston
Kingston, Ontario K7L 3N6
Priscilla.Ferrazzi@queensu.ca (867-222-6168)

October 20, 2012

I have read and retained the Letter of Information concerning the research “Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities” being conducted by Priscilla Ferrazzi. In my role as transcriber for the researcher, I understand the nature of the study and requirements for confidentiality. I have had all of my questions concerning the nature of the study and my role as transcriber answered to my satisfaction.

A. Maintaining Confidentiality

   I agree not to reveal in any way to any person other than the researcher any data gathered for the study by means of my services as transcriber. This includes participant identify and responses given in interviews and focus group discussions.
   
   I agree to use an encryption and password protected format to transfer audio-recordings and transcriptions of audio-recordings to the researcher in order to secure confidentiality of this information.
   
   I agree to destroy all audio-recordings once transcriptions have been completed and provided to the researcher.
   
   I agree to destroy all transcriptions once they have been provided to the researcher.

B. Acknowledgement of My Services as Transcriber

   I understand that the researcher will acknowledge the use of my services in any reporting on the research. I have indicated below whether I wish that acknowledgement to be anonymous or whether it may recognize me by name.

   ___ I do no wish my name to be associated with the acknowledgement of the use of a transcriber in data gathering for the research.
   
   OR
   
   ___ I agree that the researcher may associate my name with the acknowledgement of the use of a transcriber in data gathering for the research.

C. Identification and Signature Indicating Agreement

   Name: ________________________________________________
   
   Email: ________________________________________________

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Telephone: ___________________________________________

Mailing Address: _____________________________________________________

Signature: ____________________________________________________________

Please retain a copy of this agreement for your records and provide one to the Researcher.
Should you require further information please feel free to contact me at Priscilla.Ferrazzi@queensu.ca or (cell) 867-222-6168, or at the School of Rehabilitation Therapy, Faculty of Health Sciences, Queen’s University, 31 George St., Kingston, K7L 3N6, (613) 533-6103. For questions, concerns or complaints about the research ethics of this study, contact Vice-Dean (Health Sciences) Director of School of Rehabilitation Therapy, Faculty of Health Sciences, Marcia Finlayson (613-533-2576) Marcia.finlayson@queensu.ca, or Joan Stevenson, the Chair of the General Research Ethics Board (613-533-6081) or chair.GREB@queensu.ca at Queen’s University.
Confidentiality Agreement for Research Assistants/Student Staff/Local Hire

Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities Confidentiality Agreement for Research Assistant/Student/Staff/ Local Hire
Priscilla Ferrazzi LL.B., LL.M., Rehabilitation Science Program, School of Rehabilitation Therapy, Faculty of Health Sciences
Queen’s University at Kingston
Kingston, Ontario K7L 3N6
Priscilla.Ferrazzi@queensu.ca (cell: 867-222-6168)
October 20, 2012

Research Assistant/Student/Staff/Local Hire:

I acknowledge that Queen's University at Kingston (hereinafter called "Queen’s") has in its possession, and with the authority to disclose, in confidence, certain information ("Confidential Information") relating to a specific study being conducted by Priscilla Ferrazzi ("Researcher") in the field of Rehabilitation Science and Criminal Justice. I understand the study to be entitled: “Improving Criminal Justice for People with Mental Illness in Remote Arctic Communities”. Confidential Information includes, without limitation, documents, data and information concerning the study including participant identity and responses to interviews and focus group discussions.

The Confidential Information will be given to me in order to perform duties as a research assistant/student/staff/local hire (the “Work”) related to the Researcher’s study. In consideration of working on this study, I agree that I will keep in confidence and trust all Confidential Information and will not directly or indirectly use the Confidential Information, nor disclose any Confidential Information to any person or entity, except in the course of performing duties assigned with respect to the study. I agree that I shall be free to use information that:

- is known to me prior to the receipt of the said Confidential Information from Queen's as evidenced by written documentation;
- lawfully is or becomes public knowledge through no default of this Agreement;
- is provided to me by any third party with a bona fide right to do so;
- is approved for release by written permission of the Vice Principal (Research) of Queen's University

Upon the termination of the Work, I undertake to return all Confidential Information pertaining thereto which has been provided by Queen's and all copies thereof or to destroy the same at the option of Queen's.

This agreement is to be effective upon the date of signing, and shall be interpreted and construed in accordance with laws of the Province of Ontario, Canada.

By: ____________________________
Dated at ________________ this ______ day of ________________, 2013.

Witness: _______________________________

Please retain a copy of this agreement for your records and provide one to the Researcher.

Should you require further information please feel free to contact me at Priscilla.Ferrazzi@queensu.ca or (cell) 867-222-6168, or at the School of Rehabilitation Therapy, Faculty of Health Sciences, Queen’s University, 31 George St., Kingston, K7L 3N6, (613) 533-6103. For questions, concerns or complaints about the research ethics of this study, contact Vice-Dean (Health Sciences) Director of School of Rehabilitation Therapy, Faculty of Health Sciences, Marcia Finlayson (613-533-2576) Marcia.finlayson@queensu.ca, or Joan Stevenson, the Chair of the General Research Ethics Board (613-533-6081) or chair.GREB@queensu.ca at Queen’s University.
Appendix F: Certification of Transcribers
Certification of Transcribers

Introduction
This research benefited from the expertise of team of four long-time certified court reporters (transcribers) who work for the Nunavut Court of Justice (Ferrazzi, 2014). This team was known to the researcher from prior prosecution work in courts in Nunavut. Court Reporters graduate after a period of monitored practicum with a degree from a technical institute. Professionally, court reporters work in a highly vigilant and exacting court environment. This team of court reporters is familiar with Arctic communities and the social, cultural, and geographic context of this study. Their task in this study was to transcribe, verbatim, all audio-taped individual interviews (48) and focus group discussions (3).

Certification and Trustworthiness in Accuracy of Data
The expertise of the court reporters, in combination with the researcher’s familiarity with the substantive content of interviews, were considered sufficient indicia of reliability and “trustworthiness” to not require member-checks for accuracy in the transcription of participant interviews (see Appendix J for Member-check protocol).

Certification Profile of Transcribers
Dawna Bilko is a certified court reporter with 21 years of experience in Alberta and 12 years of experience in Nunavut. In addition to official court reporter status in Nunavut and Alberta, she is a sworn Special Examiner and also holds an appointment with the Privy Council as a Tax Court Registrar. In addition to professional court reporting for the Nunavut Court of Justice and for Mental Health Act hearings, Dawna has travelled with representatives of the Federal Government transcribing interviews under the Residential School Board Assessment and Resolution process.

Linda Potyok is a certified court reporter with a total of 31 years of experience transcribing for courts in British Columbia, and internationally. Linda has been a court reporter for the Nunavut Court of Justice for 2 years.

Valerie O’Doherty has been a certified court reporter for a total of 36 years in Ontario and 2 years in Nunavut. She has been a court reporter for Ontario courts, the Federal Tax Court, the Law Society of Upper Canada (disciplinary hearings), and the Nunavut Court of Justice.

Vivian Goneau has been a certified court reporter in Ontario for 35 years. She has worked for courts in Toronto, for the Judicial Review Board, and Justices of the Peace Review Board. Vivian has been transcribing for the Nunavut Court of Justice for the past 5 years.

References

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Appendix G: Study Framework
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<th>Principles of therapeutic jurisprudence</th>
<th>Aligned principles of problem-solving courts</th>
<th>Goals of each problem-solving court principle</th>
<th>Objectives (to achieve each goal)</th>
<th>Research Propositions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Therapeutic response</td>
<td>Problem-solving orientation</td>
<td>Early identification, screening and assessment of persons with mental health issues</td>
<td>Early identification and screening of persons with mental health issues for eligibility for court mental health program and assessment using valid screening technique to determine psychosocial needs</td>
<td>Remote geography of Arctic communities affect mental health identification, screening and assessment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Individualized treatment/therapeutic intervention plan</td>
<td>Court links individuals to appropriate treatment and therapeutic services</td>
<td>Constrained resources of Arctic communities affect mental health identification, screening and assessment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Judicial interaction with offender</td>
<td>Judge interacts with offender for effective behaviour modification</td>
<td>Inuit cultural considerations in Arctic communities affect the capacity for courts to link individuals to appropriate treatment and therapeutic services</td>
</tr>
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<td></td>
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</tbody>
</table>

Remote geography of Arctic communities affect the capacity for courts to link individuals to appropriate treatment and therapeutic services

Constrained resources of Arctic communities affect the capacity for courts to link individuals to appropriate treatment and therapeutic services

Inuit cultural considerations in Arctic communities affect the capacity for courts to link individuals to appropriate treatment and therapeutic services

Remote geography of Arctic communities affect the ability of judges to interact with offenders to promote effective behavior modification

Constrained resources of Arctic communities affect the ability of judges to interact with offenders to promote effective behavior modification

Remote geography of Arctic communities affect the ability of judges to interact with offenders to promote effective behavior modification
Inuit cultural considerations in Arctic communities affect the ability of judges to interact with offenders to promote effective behavior modification.

<table>
<thead>
<tr>
<th>Focus on Outcomes</th>
<th>Persons with mental illness voluntarily remain in court mental health program</th>
<th>Remote geography of Arctic communities affect whether persons with mental illness voluntarily remain in court mental health program</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Constrained resources of Arctic communities affect whether persons with mental illness voluntarily remain in court mental health program</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inuit cultural considerations in Arctic communities affect whether persons with mental illness voluntarily remain in court mental health program</td>
</tr>
<tr>
<td>Court focuses on whether people with mental illness in the program reoffend (recidivism) and/or whether they reoffend after program completion (recidivism here is a measure of therapeutic outcome)</td>
<td>Remote geography of Arctic communities affect the court’s ability to track whether people with mental illness in the program are reoffending during and/or after program completion</td>
<td>Constrained resources of Arctic communities affect the court’s ability to track whether people with mental illness in the program are reoffending during and/or after program completion</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inuit cultural considerations in Arctic communities affect the court’s ability to track whether people with mental illness in the program are reoffending during and/or after program completion</td>
</tr>
<tr>
<td>Court focuses on reduced mental illness symptoms and increased psycho-social functioning during and after the program</td>
<td>Remote geography of Arctic communities affect the capacity of the court to focus on whether people with mental illness have reduced symptoms and increased psycho-social functioning during and after the program</td>
<td></td>
</tr>
<tr>
<td>Program</td>
<td>Constrained resources of Arctic communities affect the capacity of the court to focus on whether people with mental illness have reduced symptoms and increased psycho-social functioning during and after the program.</td>
<td></td>
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</tr>
<tr>
<td>Justice, health and community stakeholders become educated in mental health issues and relationship to criminal justice involvement</td>
<td>Inuit cultural considerations in Arctic communities affect the capacity of the court to focus on whether people with mental illness have reduced symptoms and increased psycho-social functioning during and after the program.</td>
<td></td>
</tr>
<tr>
<td>Remote geography of Arctic communities affect the ability of Justice, health and community stakeholders to become educated in mental health issues and relationship to criminal justice involvement</td>
<td>Constrained resources of Arctic communities affect the ability of Justice, health and community stakeholders to become educated in mental health issues and relationship to criminal justice involvement.</td>
<td></td>
</tr>
<tr>
<td>Inuit cultural considerations in Arctic communities affect the ability of Justice professionals to collaborate on court policies and case-level decisions and case review meetings.</td>
<td>Remote geography of Arctic communities affect the ability of Justice professionals to collaborate on court policies and case-level decisions and case review meetings.</td>
<td></td>
</tr>
<tr>
<td>Constrained resources of Arctic communities affect the ability of Justice professionals to collaborate on court policies and case-level decisions and case review meetings.</td>
<td>Inuit cultural considerations in Arctic communities affect the ability of Justice professionals to collaborate on court policies and case-level decisions and case review meetings.</td>
<td></td>
</tr>
<tr>
<td>Justice professionals collaborate on court policies and case-level decisions and case review meetings</td>
<td>Remote geography of Arctic communities affect the ability of Justice professionals to collaborate on court policies and case-level decisions and case review meetings.</td>
<td></td>
</tr>
<tr>
<td>Remote geography of Arctic communities affect the ability of Justice professionals to collaborate on court policies and case-level decisions and case review meetings</td>
<td>Inuit cultural considerations in Arctic communities affect the ability of Justice professionals to collaborate on court policies and case-level decisions and case review meetings.</td>
<td></td>
</tr>
</tbody>
</table>

**Interdisciplinary/Multidisciplinary Collaboration among relevant sectors**

- Multidisciplinary/Interdisciplinary Collaboration among justice system professionals and between relevant sectors.
<table>
<thead>
<tr>
<th>Collaboration among social service/health providers and community-based organizations</th>
<th>Social service/health providers and community-based organizations collaborate to provide treatment services for people with mental illness</th>
<th>Remote geography of Arctic communities affect the ability of Social service/health providers and community-based organizations to collaborate to provide treatment services for people with mental illness</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Constrained resources of Arctic communities affect the ability of Social service/health providers and community-based organizations to collaborate to provide treatment services for people with mental illness</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inuit cultural considerations in Arctic communities affect the ability of Social service/health providers and community-based organizations to collaborate to provide treatment services for people with mental illness</td>
</tr>
<tr>
<td>Court and social service/health providers and community-based organizations collaborate to identify, screen and assess people with mental illness and to track progress/compliance with treatment/therapeutic intervention plan.</td>
<td>Court and social service/health providers and community-based organizations collaborate to identify, screen and assess people with mental illness and to track progress/compliance with treatment/therapeutic intervention plan.</td>
<td>Remote geography of Arctic communities affect the ability of Court and social service/health providers and community-based organizations collaboration to identify, screen and assess people with mental illness and to track progress/compliance with treatment/therapeutic intervention plan.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Constrained resources of Arctic communities affect the ability of Court and social service/health providers and community-based organizations collaboration to identify, screen and assess people with mental illness and to track progress/compliance with treatment/therapeutic intervention plan.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inuit cultural considerations in Arctic communities affect the ability of Court and social service/health providers and community-based organizations collaboration to identify, screen and assess people with mental illness and to track progress/compliance with treatment/therapeutic intervention plan.</td>
</tr>
<tr>
<td>Information sharing among and between sectors</td>
<td>Information sharing among and between sectors to promote continuity of care and appropriate levels of supervision</td>
<td>Community-based organizations collaborate to identify, screen and assess people with mental illness and to track progress/compliance with treatment/therapeutic intervention plan.</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Does not trump other values</td>
<td>Accountability Offender accountability</td>
<td>Legal incentive to complete court mental health program (non-completion has negative legal consequences)</td>
</tr>
<tr>
<td>Social service/health provider accountability</td>
<td>Social service/health providers accurately and regularly inform court of person’s progress</td>
<td>Remote geography of Arctic communities affect the capacity of Social service/health providers to accurately and regularly inform court of person’s progress</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inuit cultural considerations in Arctic communities affect the legal incentive for offenders to complete court mental health program</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Constrained resources of Arctic communities affect the capacity of Social service/health providers to accurately and regularly inform court of person’s progress</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inuit cultural considerations in Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Remote geography of Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Constrained resources of Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inuit cultural considerations in Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision</td>
</tr>
</tbody>
</table>

- Remote geography of Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision.
- Constrained resources of Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision.
- Inuit cultural considerations in Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision.
- Remote geography of Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision.
- Constrained resources of Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision.
- Inuit cultural considerations in Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision.
- Remote geography of Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision.
- Constrained resources of Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision.
- Inuit cultural considerations in Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision.
- Remote geography of Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision.
- Constrained resources of Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision.
- Inuit cultural considerations in Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision.
<table>
<thead>
<tr>
<th>Social Service/health providers use a specific and accepted (generally and locally) program that is known to be effective</th>
<th>Remote geography of Arctic communities affect the capacity of Social Service/health providers to use a specific and accepted (generally and locally) program that is known to be effective</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constrained resources of Arctic communities affect the capacity of Social Service/health providers to use a specific and accepted (generally and locally) program that is known to be effective</td>
<td>Inuit cultural considerations in Arctic communities affect the capacity of Social Service/health providers to use a specific and accepted (generally and locally) program that is known to be effective</td>
</tr>
<tr>
<td>Court assesses social service/health delivery</td>
<td>Remote geography of Arctic communities affect the ability of the Court to assess social service/health delivery</td>
</tr>
<tr>
<td>Constrained resources of Arctic communities affect the ability of the Court to assess social service/health delivery</td>
<td>Inuit cultural considerations in Arctic communities affect the ability of the Court to assess social service/health delivery</td>
</tr>
<tr>
<td>Community responsibility</td>
<td>Actively engaging community members in identifying, prioritizing and solving local problems</td>
</tr>
<tr>
<td>Constrained resources of Arctic communities affect the capacity of communities to actively participate in identifying, prioritizing and solving local problems</td>
<td>Inuit cultural considerations in Arctic communities affect the capacity of communities to actively participate in identifying, prioritizing and solving local problems</td>
</tr>
<tr>
<td>Inuit cultural considerations in Arctic communities affect the capacity of communities to actively participate in identifying, prioritizing and solving local problems</td>
<td></td>
</tr>
<tr>
<td>Court accountability</td>
<td>Court revisits treatment/therapeutic intervention plan based on progress/compliance using clinical, non-clinical and other relevant indicators</td>
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</tr>
<tr>
<td></td>
<td>Constrained resources of Arctic communities affect the Court’s ability to revisit individualized treatment plans/therapeutic intervention plan based on progress/compliance using clinical, non-clinical and other relevant indicators</td>
</tr>
<tr>
<td>Court monitors outcomes of mental health programs (overall responsibility to ensure others accountable—cognizant of community safety)</td>
<td>Remote geography of Arctic communities affect the capacity of the Court to monitor outcomes of court mental health programs</td>
</tr>
<tr>
<td></td>
<td>Inuit cultural considerations in Arctic communities affect the capacity of the Court to monitor outcomes of court mental health programs</td>
</tr>
</tbody>
</table>
Appendix H: Interview Questions
Contextualizing the Interview Questions

The interview questions were based on the study’s logical cascading framework (e.g., Cropper, Berg, Culligan & Radstone, 2010) representing the context of the interview questions for this study (an example is at Table 4.3; for complete framework see Appendix G). The framework used existing literature to distill the fundamental and general principles of therapeutic jurisprudence (TJ) (Appendix G, Column 1) that underlie criminal court mental health diversion initiatives currently found in large North American cities and elsewhere. The TJ principles were aligned with the principles of problem-solving courts (Appendix G, Column 2; see Chapter 4). Although criminal court mental health diversion initiatives are variable in their structure and implementation across many jurisdictions, the three principles listed here represent what appears to be common and essential to the operation of all (see Chapter 4). The literature review was then used to describe each of these principles according to their common goals (Appendix G, Column 3) and, further, according to the objectives (Appendix G, Column 4) of each of these goals. In this way, the review of the literature provided a cascade of general-to-more-specific requirements of criminal court mental health diversion initiatives. Satisfying the objectives, therefore, meant satisfying the goals of each principle in the context of mainly Inuit Arctic communities.

Thus, TJ as the methodological theory provided the “concepts and analytic focus” used in this study to guide “ways of asking questions” (Gibson & Brown, 2009, p. 31; see Chapter 4). The purpose of the interview questions was to elicit information that informed whether these identified objectives (Appendix G, Column 4) could be met in the context of three Nunavut communities of putatively different capacities determined by i) constrained local resources, ii) remote geography, and iii) Inuit cultural considerations (Appendix G, Column 5). The
information needed for Columns 5 to answer the objectives of each principle was described in the form of research propositions. These propositions served as a guide to the kinds of information sought during interviews. The interview questions were general enough to elicit a full account from participants within a one-hour interview. They also allowed for more specific probing to ensure adequate information to satisfy an assessment of whether objectives could be met and what changes would contribute to them being met in the future. The general research questions are set out in the Table below.

Table for Appendix G. Questions used to elicit the general narrative intended to address the objectives of TJ and problem-solving court principles.

<table>
<thead>
<tr>
<th>Principle A—Problem-solving orientation</th>
<th>Principle B—Collaboration</th>
<th>Principle C—Accountability</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Tell me about your role when someone with a mental illness is arrested for a crime and is told to go to court? (What are the main things you do and what are you expected to do?)</td>
<td>9. Tell me about who else is involved in your work when you are responding to a person with a mental illness who has been arrested for a crime. (Do you share this work with anyone or any organization other than your own? If so, who do you share this work with?)</td>
<td>14. How does what you do help a person with a mental illness who has been arrested for a crime? (How do you or your supervisors know it is helpful?)</td>
</tr>
<tr>
<td>2. How do you know/first learn when a person in court has a mental illness? How do Inuit people recognize when a person has a mental illness?</td>
<td>10. Is it difficult or easy to work with people with other organizations or in other groups in this work? Why?</td>
<td>15. How do you know the person is doing what you told them to do?</td>
</tr>
<tr>
<td>3. Do you need special expertise to identify, screen and assess people with mental illness? Is that expertise locally available or does remoteness make access to this expertise difficult? Do community members have a role? How? Do you have visiting professionals? Why are they</td>
<td>11. Do you share information with other organizations? How is this done?</td>
<td>16. Would there be resources available to report mental health treatment progress to the court if criminal court mental health diversion initiatives were in place? If yes, what are they?</td>
</tr>
</tbody>
</table>
|                                  | 12. What are the barriers/opportunities for collaboration? How could collaboration be improved? | 17. Are there community characteristics (geographic remoteness,
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>needed? Would remote technologies help?</td>
<td></td>
</tr>
<tr>
<td>4. What are the main considerations that affect the understanding of mental illness in this community?</td>
<td></td>
</tr>
<tr>
<td>5. Is treatment progress affected by local understanding of mental illness, by remoteness, by available resources, or by other factors. If so, how?</td>
<td></td>
</tr>
<tr>
<td>6. What programs do you have in your community to help people with mental illness?</td>
<td></td>
</tr>
<tr>
<td>7. Is it possible here to track re-arrest and conviction rates of people who might complete a possible therapeutic program? Is reoffending a good measure of therapeutic outcome?</td>
<td></td>
</tr>
<tr>
<td>8. How could the Court keep abreast of therapeutic progress and outcomes if a criminal court mental health diversion initiative was in place?</td>
<td></td>
</tr>
<tr>
<td>13. What are the greatest influences affecting collaboration? (For instance, do available resources, remoteness or culture play a role?)</td>
<td></td>
</tr>
<tr>
<td>18. Could the court keep track and reward people for compliance or discourage non-compliance with treatment? How?</td>
<td></td>
</tr>
<tr>
<td>19. Is there a way for the court to oversee and ensure Social Service/Health Providers are licenced, using effective methods for treatment, and good practices in delivery of services?</td>
<td></td>
</tr>
<tr>
<td>20. Is there a way to engage communities in identifying, prioritizing and solving local problems? How can this be done?</td>
<td></td>
</tr>
<tr>
<td>21. How could the Court track the outcomes of a criminal court mental health diversion initiative?</td>
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</table>
Appendix I: Topic Guide for Focus Group Discussions
Topic Guide

Purpose
Focus groups were used as a qualitative research method for gathering data to answer the research questions in this study. These guided group discussions were used to generate a rich understanding of participants’ experiences and beliefs. In addition to drawing on the key strengths shared by all qualitative methods of exploration and discovery, context and depth, and interpretation, focus groups added the strength brought to bear in collecting qualitative data through group discussion (Morgan, 1998).

Process
The focus group process involved developing a topic guide, planning, implementation, and analysis of the data generated.

Topic Identification
The topic guide reflected emerging themes from individual interviews in each of the three respective cases (Arviat, Iqaluit, and Qikiqtarjuaq). These themes were identified by the researcher as the salient topics from participant interviews. The topics related to the theoretical framework that guided this study (see Table 4.3; and Appendix G for full framework). The identified for each community are as follows:

Iqaluit
1. Understanding how communities and sectors define and identify what constitutes mental illness in a predominantly Inuit context
2. Understanding contemporary and Inuit conceptions of mental health rehabilitation
3. Assessing capacity for community support of mental health criminal court programs
4. Understanding the features of inter-sectoral collaboration to support mental health problem-solving in Arctic criminal court

Arviat
1. Understanding how communities define and identify what constitutes mental illness in a predominantly Inuit context
2. Understanding contemporary and Inuit conceptions of mental health rehabilitation
3. Assessing capacity for community support of mental health criminal court programs

Qikiqtarjuaq
1. Understanding how communities define and identify what constitutes mental illness in a predominantly Inuit context
2. Assessing capacity for community support of mental health criminal court programs

References

Appendix J: Member-check Protocol
Member-Check Protocol

Purpose
The purpose of member-checking in this study is to enhance trustworthiness of the raw data by confirming accuracy of information shared in specified circumstances that present potential vulnerability in this regard.

Identified Circumstances for Member-checking
The member-check protocol is aimed at three circumstances of potential vulnerability, namely, where:

1) Field notes were taken instead of audio-recording the interview;
2) Participants are unilingual and spoke Inuktitut with an interpreter;
3) Participants spoke some English but were predominantly Inuktitut-speaking and chose to speak primarily in Inuktitut with an interpreter; and
4) Participants struggled with English but nevertheless chose to speak in English without an interpreter.

Re: 1) Field Notes
The protocol for this study makes audio-recording of participant interviews the general rule. In exceptional circumstances, where requested by participants, field notes rather than audio-recording can be used to document information shared in interviews. The protocol requires member-checking in the following circumstances: Participants had limited time and were multi-tasking in a busy environment that had the potential to pose distractions for both participant and researcher; and 2) Participants spoke English but struggled to find words to communicate some ideas. To ensure accuracy of raw data, the protocol requires that field notes be transcribed and transcriptions be sent to participants to review and edit if necessary.

Re: 2) Unilingual Participants with Aid of an Interpreter
The rationale for member-checking accuracy of data in circumstances where unilingual participants spoke with the aid of an Interpreter is to clarify meaning in language so as to better understand ideas conveyed by participants. The protocol requires that interviews be summarized to capture the ideas shared using words that are best aligned with study. The protocol requires that these summaries be delivered to participants to review through consecutive interpretation with the researcher, participant and interpreter present. Alternatively, the protocol allows for review of summaries with the aid of an interpreter without the researcher present. This latter option is responsive to the realities of Arctic weather which can pose a barrier to return travel by researcher to study sites (communities).

Re: 3) Predominantly Inuktitut-speaking Participants with Aid of an Interpreter
The rationale for member-checking the accuracy of data in circumstances where participants spoke some English but were predominantly Inuktitut-speaking and chose to speak primarily in Inuktitut with the aid of an interpreter are to clarify meaning in language so as to better
understand the ideas conveyed by participants. The member-checking process is the same as that used with unilingual participants who have the aid of an interpreter.

Re: 4) Participants who Struggled with English but declined Aid of an Interpreter
The rationale for member-checking the accuracy of the data in circumstances where participants struggled with English but nevertheless chose to speak in English without the aid of an interpreter, is to ensure that English words and phrases chosen by participant accurately conveyed the ideas intended. In order to confirm this, the protocol requires that interviews be summarized to capture ideas shared in words best aligned with the study. The protocol requires that summaries be delivered to participants by an interpreter and participants be given the option of having the English summary interpreted to them in Inuktitut.

Re: 5) An Exception to Member-check Protocol: Audio-taped Interviews
Subject to 2), 3) and 4), audio-taped interviews were not subject to member-checking to confirm accuracy of data because of circumstances that enhanced their trustworthiness: 1) they were transcribed verbatim by long-time certified court transcribers from the Nunavut Court of Justice (see Appendix F for transcriber certification); and 2) the researcher was sufficiently familiar with the data (having conducted all interviews), to recognize errors of any consequence in transcription.

Conclusion
The implementation of the member-check protocol in this study enhanced the trustworthiness of the raw data by confirming accuracy of information shared in specified circumstances of potential vulnerability in this regard.
Appendix K: Code Book
Code Book

Purpose

Coding of data using a qualitative software program was a means to verify the researcher’s impressions from the field and from engagement with the data. A code book was used to facilitate effective categorization of voluminous amounts of data for the purpose of helping the researcher discern, among other things, themes running through the data.

Coding and Literature-derived Framework

The methodological approach to the code structure in this study integrated data-driven codes with predetermined theory-driven codes based on the tenets of the study’s governing theory, an approach recognized in the literature (e.g., Fereday and Muir-Cochrane, 2006). Initial coding of interview data was assisted by a codebook (DeCuir-Gunby, Marshall, & McCuloch, 2011) that was informed TJ theory and a related literature-derived framework; see Appendix G for Framework). The code book reflects those codes that were deductively derived from the framework’s objectives and propositions (“topics” and “issues”). This deductive approach to code structure has the advantage of bringing previous knowledge to bear on the inquiry at hand (Bradley, Curry, and Devers, 2007). This approach was complemented by inductive codes grounded in the data which reflected the experiences of participants vis a vis the study’s framework. In the language of NVivo 10 qualitative software (QSR International Pty Ltd., 2012) objectives and propositions were called “parent nodes” and “child nodes,” respectively (see code book below). These codes served to organize similar or related text into these categories (Crabtree & Miller, 1992) and comprise the code book below. This code book was further developed in the NVivo 10 software program so that similar segments of text within the
framework’s objectives and propositions were then further ordered and arranged resulting in the identification of sub-categories within these categories. These inductively derived sub-categories (called “sub-nodes” and “sub-sub-nodes” in the language of NVivo 10 software) were defined as subjects discussed by more than one interview (e.g., Kral et al., 2011) within a case (i.e., community) in any of the three cases. These sub-categories, in turn, helped to reveal the meaningful themes that run through the data (e.g., Morse, 2008; Saldaña, 2013).

Literature-derived Framework in NVivo 10 Qualitative Software Language

- **Parent Node:** Identification, screening and assessment
  [Objective: Early identification and screening of persons with mental health issues for eligibility for court mental health program and assessment using valid screening technique to determine psychosocial needs]

  - **Child Node:** Remote Geography
    [Related Research Proposition: remote geography in Arctic communities affect the capacity for mental health identification, screening, and assessment]
    - Coded for text relevant to the following concepts: remoteness, isolation, geography, identification, recognition, screening, assessment, and diagnosis of mental illness

  - **Child Node:** Constrained resources
    [Related Research Proposition: Constrained resources of Arctic communities affect the capacity for mental health identification, screening, and assessment]
    - Coded for text relevant to the following concepts: scarce or constrained resources, identification, recognition, screening, assessment, and diagnosis of mental illness

  - **Child Node:** Inuit culture

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[Related Research Proposition: Inuit cultural considerations in Arctic communities affect the capacity for mental health identification, screening, and assessment]

➢ Coded for text relevant to the following concepts: culture, identification, recognition, screening, assessment, and diagnosis of mental illness

• **Parent Node**: Treatment and therapeutic services
  [Objective: Court links individuals to appropriate treatment and therapeutic services]

  o **Child Node**: Remote Geography
    [Related Research Proposition: Remote geography in Arctic communities affect the capacity for courts to link individuals to appropriate treatment and therapeutic services]

      ➢ Coded for text relevant to the following concepts: Remoteness, isolation, geography, treatment, therapeutic services and interventions

  o **Child Node**: Constrained Resources
    [Related Research Proposition: Constrained resources of Arctic communities affect the capacity for courts to link individuals to appropriate treatment and therapeutic services]

      ➢ Coded for text relevant to the following concepts: scarce or constrained resources, treatment, therapeutic services and interventions

  o **Child Node**: Inuit Culture
    [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the capacity for courts to link individuals to appropriate treatment and therapeutic services]

      ➢ Coded for text relevant to the following concepts: culture, treatment, therapeutic services and interventions

• **Parent Node**: Judge/Offender interaction
  [Objective: Judge interacts with offender for effective behaviour modification]
- **Parent Node: Voluntariness**  
  [Objective: Persons with mental illness voluntarily remain in court mental health program]

- **Child Node: Remote Geography**  
  [Related Research Proposal: Remote geography in Arctic communities affect whether persons with mental illness voluntarily remain in court mental health program]

  - Coded for text relevant to the following concepts: remoteness, isolation, geography, retention, and voluntariness

- **Child Node: Constrained Resources**  
  [Related Research Proposal: Constrained resources of Arctic communities affect whether persons with mental illness voluntarily remain in court mental health program]

  - Coded for text relevant to the following concepts: remote geography, isolation, geography, interaction, behaviour modification and pro-social influence

- **Child Node: Inuit Cultural**  
  [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the ability of judges to interact with offenders to promote effective behaviour modification]

  - Coded for text relevant to the following concepts: culture, interaction, behaviour modification and pro-social influence
➢ Coded for text relevant to the following concepts: scarce or constrained resources, retention, and voluntariness

- **Child Node: Inuit Culture**
  [Related Research Proposition: Inuit cultural considerations in Arctic communities affect whether persons with mental illness voluntarily remain in court mental health program]

  ➢ Coded for text relevant to the following concepts: culture, retention, and voluntariness

- **Parent Node: Recidivism**
  [Objective: Court focuses on whether people with mental illness in the program reoffend (recidivism) and/or whether they reoffend after program completion]

  - **Child Node: Remote Geography**
    [Related Research Proposal: Remote geography in Arctic communities affect the capacity of the court to track whether people with mental illness in the program are reoffending during and/or after program completion]

    ➢ Coded for text relevant to the following concepts: remoteness, isolation, geography, and reoffending

  - **Child Node: Constrained Resources**
    [Related Research Proposition: Constrained resources of Arctic communities affect the capacity of the court to track whether people with mental illness in the program are reoffending during and/or after program completion]

    ➢ Coded for text relevant to the following concepts: scarce or constrained resources, and reoffending

  - **Child Node: Inuit Culture**
    [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the capacity of the court to track whether people with mental illness in the program are reoffending during and/or after program completion]

    ➢ Coded for text relevant to the following concepts: culture and reoffending

- **Parent Node: Symptoms and Psychosocial Functioning**
  [Objective: Court focuses on reduced mental illness symptoms and increased psychosocial functioning during and after the program]
- **Child Node: Remote Geography**  
  [Related Research Proposition: Remote geography in Arctic communities affect the capacity of the court to focus on whether people with mental illness have reduced symptoms and increased psychosocial functioning during and after program]

  - Coded for text relevant to the following concepts: remoteness, isolation, geography, psychosocial functioning and recovery from mental illness

- **Child Node: Constrained Resources**  
  [Related Research Proposition: Constrained resources of Arctic communities affect the capacity of the court to focus on whether people with mental illness have reduced symptoms and increased psychosocial functioning during and after program]

  - Coded for text relevant to the following concepts: scarce or constrained resources, psychosocial functioning and recovery from mental illness

- **Child Node: Inuit Culture**  
  [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the capacity of the court to focus on whether people with mental illness have reduced symptoms and increased psychosocial functioning during and after program]

  - Coded for text relevant to the following concepts: culture, symptoms of mental illness, psychosocial functioning and recovery from mental illness

- **Parent Node: Education of Professionals and Stakeholders**  
  [Objective: Justice, health and community stakeholders become educated in mental health issues and relationship to criminal justice involvement]

  - **Child Node: Remote Geography**  
    [Related Research Proposition: Remote geography in Arctic communities affect the ability of Justice, health and community stakeholders to become educated in mental health issues and relationship to criminal justice]

    - Coded for text relevant to the following concepts: remoteness, isolation, geography, education, and training

  - **Child Node: Constrained Resources**  
    [Related Research Proposition: Constrained resources in Arctic communities affect the ability of Justice, health and community stakeholders to become educated in mental health issues and relationship to criminal justice]
stakeholders to become educated in mental health issues and relationship to criminal justice]

➢ Coded for text relevant to the following concepts: scarce or constrained resources, education, and training

○ **Child Node: Inuit Culture**
  [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the ability of Justice, health and community stakeholders to become educated in mental health issues and relationship to criminal justice]

    ➢ Coded for text relevant to the following concepts: culture, education, and training

- **Parent Node: Collaboration (within Justice Sector)**
  [Objective: Justice professionals collaborate on court policies and case-level decisions and case review meetings]

  ○ **Child Node: Remote Geography**
    [Related Research Proposition: Remote geography in Arctic communities affect the ability of justice professionals to collaborate on court policies and case-level decisions and case review meetings]

    ➢ Coded for text relevant to the following concepts: remoteness, isolation, geography, court policies, review of criminal cases and decision making

  ○ **Child Node: Constrained Resources**
    [Related Research Proposition: Constrained resources of Arctic communities affect the ability of justice professionals to collaborate amongst themselves on court policies and case-level decisions and case review meetings]

    ➢ Coded for text relevant to the following concepts: scarce or constrained resources, court policies, review of criminal cases and decision making

  ○ **Child Node: Inuit Culture**
    [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the ability of justice professionals to collaborate on court policies and case-level decisions and case review meetings]
- Parent Node: Collaboration (among Social Services, health and community organizations)
  [Objective: Social service/health providers and community-based organizations collaborate to provide treatment services for people with mental illness]
  - Child Node: Remote Geography
    [Related Research Proposition: Remote geography in Arctic communities affect the ability of Social service/health providers and community-based organizations to collaborate to provide treatment services for people with mental illness]
    - Coded for text relevant to the following concepts: remoteness, isolation, geography, and collaboration in providing treatment services
  - Child Node: Constrained Resources
    [Related Research Proposition: Constrained resources of Arctic communities affect the ability of Social service/health providers and community-based organizations to collaborate to provide treatment services for people with mental illness]
    - Coded for text relevant to the following concepts: scarce or constrained resources, and collaboration in providing treatment services
  - Child Node: Inuit Culture
    [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the ability of Social service/health providers and community-based organizations to collaborate to provide treatment services for people with mental illness]
    - Coded for text relevant to the following concepts: culture, and collaboration in providing treatment services

- Parent Node: Collaboration (between Court and Social Services, health and community organizations)
  [Objective: Court and social service/health providers and community-based organizations collaborate to identify, screen and assess people with mental illness and to track progress/compliance with treatment/therapeutic intervention plan]
  - Child Node: Remote Geography
[Related Research Proposition: Remote geography in Arctic communities affect the ability of Court and social service/health providers and community-based organizations to collaborate to identify, screen and assess people with mental illness and to track progress/compliance with treatment/therapeutic intervention plan]

- Coded for text relevant to the following concepts: remoteness, isolation, geography, and collaboration identifying, screening, and assessing mental illness

- **Child Node: Constrained Resources**
  [Related Research Proposition: Constrained resources of Arctic communities affect the ability of Court and social service/health providers and community-based organizations to collaborate to identify, screen and assess people with mental illness and to track progress/compliance with treatment/therapeutic intervention plan]

  - Coded for text relevant to the following concepts: scarce or constrained resources, geography, and court collaboration with others in identifying, screening, and assessing mental illness

- **Child Node: Inuit Culture**
  [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the ability of Court and social service/health providers and community-based organizations to collaborate to identify, screen and assess people with mental illness and to track progress/compliance with treatment/therapeutic intervention plan]

  - Coded for text relevant to the following concepts: culture, and court collaboration with others in identifying, screening, and assessing mental illness

- **Parent Node: Information Sharing**
  [Objective: Information sharing among and between sectors to promote continuity of care and appropriate levels of supervision]

  - **Child Node: Remote Geography**
    [Related to Research Proposition: Remote geography in Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision]

    - Coded for text relevant to the following concepts: remoteness, isolation, geography, and sharing of information

  - **Child Node: Constrained Resources**
[Related to Research Proposition: Constrained resources of Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision]

- Coded for text relevant to the following concepts: scarce or constrained resources, and sharing of information

  - **Child Node: Inuit Culture**
    [Related to Research Proposition: Inuit cultural considerations in Arctic communities affect information sharing among and between sectors to promote continuity of care and appropriate levels of supervision]

    - Coded for text relevant to the following concepts: culture, and sharing of information

- **Parent Node: Legal Incentive**
  [Objective: Legal incentive to complete court mental health program (non-completion has negative legal consequences)]

  - **Child Node: Remote Geography**
    [Related Research Proposition: Remote geography in Arctic communities affect the legal incentive for offenders to complete court mental health program]

    - Coded for text relevant to the following concepts: remoteness, isolation, geography, and legal incentives as an approach to compliance with mental health treatment

  - **Child Node: Constrained Resources**
    [Related Research Proposition: Constrained resources of Arctic communities affect the legal incentive for offenders to complete court mental health program]

    - Coded for text relevant to the following concepts: scarce or constrained resources, and legal incentives as an approach to compliance with mental health treatment

  - **Child Node: Inuit cultural considerations in Arctic communities affect the legal incentive for offenders to complete court mental health program**

    - Coded for text relevant to the following concepts: culture, and legal incentives as an approach to compliance with mental health treatment
• **Parent Node:** Social Service/Health Accountability to Court  
[Objective: Social service/health providers accurately and regularly inform court of person’s progress]
  
  o **Child Node:** Remote Geography  
  [Related Research Proposition: Remote geography in Arctic communities affect the capacity of social services/health providers to accurately and regularly inform court of person’s progress]
    
    ➢ Coded for text relevant to the following concepts: remoteness, isolation, geography, and accountability of others to court

  o **Child Node:** Constrained Resources  
  [Related Research Proposition: Constrained resources of Arctic communities affect the capacity of social services/health providers to accurately and regularly inform court of person’s progress]
    
    ➢ Coded for text relevant to the following concepts: scarce or constrained resources, and accountability of others to court

  o **Child Node:** Inuit Culture  
  [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the capacity of social services/health providers to accurately and regularly inform court of person’s progress]
    
    ➢ Coded for text relevant to the following concepts: culture, and accountability of others to court

• **Parent Node:** Specific and Accepted Program  
[Objective: Social Service/health providers use a specific and accepted (generally and locally) program that is known to be effective]
  
  o **Child Node:** Remote Geography  
  [Related Research Proposition: Remote geography in Arctic communities affect the capacity of social services/health providers to use a specific and accepted (generally and locally) program that is known to be effective]
    
    ➢ Coded for text relevant to the following concepts: remoteness, isolation, geography, specified and generally accepted programs

  o **Child Node:** Constrained Resources  
  [Related Research Proposition: Constrained resources of Arctic communities affect the capacity of social services/health providers to use a specific and accepted (generally and locally) program that is known to be effective]
Coded for text relevant to the following concepts: scarce or constrained resources, and specified and generally accepted programs

- **Child Node: Inuit Culture**  
  [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the capacity of social services/health providers to use a specific and accepted (generally and locally) program that is known to be effective]

  - Coded for text relevant to the following concepts: culture, and specified and generally accepted programs

- **Parent Node: Court Assessment of Social Service & Health Delivery**  
  [General Objective: Court assesses social service & health delivery]

  - **Child Node: Remote Geography**  
    [Related Research Proposition: Remote geography in Arctic communities affect the capacity of the Court to assess social service/health delivery]

    - Coded for text relevant to the following concepts: remoteness, isolation, geography, and quality assessment of social service/health delivery

  - **Child Node: Constrained Resources**  
    [Related Research Proposition: Constrained resources of Arctic communities affect the capacity of the Court to assess social service/health delivery]

    - Coded for text relevant to the following concepts: scarce and constrained resources, and quality assessment of social service/health delivery

  - **Child Node: Inuit Culture**  
    [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the capacity of the Court to assess social service/health delivery]

    - Coded for text relevant to the following concepts: culture, and quality assessment of social service/health delivery

- **Parent Node: Community Engagement**  
  [Objective: Actively engaging community members in identifying, prioritizing and solving local problems]

  - **Child Node: Remote Geography**
[Related Research Proposition: Remote geography in Arctic communities affect the capacity of communities to actively participate in identifying, prioritizing and solving local problems]

- Coded for text relevant to the following concepts: remoteness, isolation, geography, and capacity to problem solve

  o **Child Node**: Constrained Resources
    [Related to Research Proposition: Constrained resources of Arctic communities affect the capacity of communities to actively participate in identifying, prioritizing and solving local problems]
    
    - Coded for text relevant to the following concepts: scarce or constrained resources, and capacity to problem solve

  o **Child Node**: Inuit Culture
    [Related to Research Proposition: Inuit cultural considerations in Arctic communities affect the capacity of communities to actively participate in identifying, prioritizing and solving local problems]
    
    - Coded for text relevant to the following concepts: scarce or constrained resources, and capacity to problem solve

- **Parent Node**: Court and Individualized Treatment Plans
  [Objective: Court revisits treatment/therapeutic intervention plan based on progress/compliance using clinical, non-clinical and other relevant indicators]

  o **Child Node**: Remote Geography
    [Related to Research Proposition: Remote geography in Arctic communities affect the capacity of the Court to revisit individualized treatment plans/therapeutic intervention plan based on progress/compliance using clinical, nonclinical and other relevant indicators]
    
    - Coded for text relevant to the following concepts: remoteness, isolation, geography, and capacity for court responsiveness to individual needs

  o **Child Node**: Constrained Resources
    [Related Research Proposition: Constrained resources in Arctic communities affect the capacity of the Court to revisit individualized treatment plans/therapeutic intervention plan based on progress/compliance using clinical, nonclinical and other relevant indicators]
Coded for text relevant to the following concepts: scarce or constrained resources, and capacity for court responsiveness to individual needs

- **Child Node: Inuit Culture**
  [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the capacity of the Court to revisit individualized treatment plans/therapeutic intervention plan based on progress/compliance using clinical, nonclinical and other relevant indicators]

  ➢ Coded for text relevant to the following concepts: scarce or constrained resources, and capacity for court responsiveness to individual needs

- **Parent Node: Monitoring Outcomes**
  [Objective: Court monitors outcomes of mental health programs]

  - **Child Node: Remote Geography**
    Remote geography in Arctic communities affect the capacity of the Court to monitor outcomes of court mental health programs

    ➢ Coded for text relevant to the following concepts: remoteness, isolation, geography, and monitoring capacity of court

  - **Child Node: Constrained Resources**
    [Related Research Proposition: Constrained resources of Arctic communities affect the capacity of the Court to monitor outcomes of court mental health programs]

    ➢ Coded for text relevant to the following concepts: remoteness, isolation, geography, and monitoring capacity of court

  - **Child Node: Inuit Culture**
    [Related Research Proposition: Inuit cultural considerations in Arctic communities affect the capacity of the Court to monitor outcomes of court mental health programs]

    ➢ Coded for text relevant to the following concepts: culture, and monitoring capacity of court
Appendix L: Example of Data Base Search Terms for Literature Review
Search for: 4 and 13
Results: 4

Database: PsycINFO <1806 to October Week 2 2014> Search Strategy:

therapeutic jurisprudence.mp. (269)
mental health court*.mp. (192)
problem-solving court*.mp. (68)
1 or 2 or 3 (475)
"recovery (disorders)"/ (9422)
recovery model*.mp. (314)
recovery approach*.mp. (98)
recovery principle*.mp. (70)
recovery philosophy.mp. (23)
recovery paradigm*.mp. (70)
recovery movement*.mp. (145)
recovery vision*.mp. (21)
5 or 6 or 7 or 8 or 9 or 10 or 11 or 12 (9813)
4 and 13 (4)
Search for: 4 and 5
Results: 1

Database: PsycINFO <1806 to October Week 2 2014> Search Strategy:

1. therapeutic jurisprudence.mp. (269)
2. mental health court*.mp. (192)
3. problem-solving court*.mp. (68)
4. 1 or 2 or 3 (475)
5. protective factors/ (3157)
6. 4 and 5 (1)
Search for: 4 and 5

Results: 11

Database: PsycINFO <1806 to October Week 2 2014> Search Strategy:

1 therapeutic jurisprudence.mp. (269)
2 forensic mental health.mp. (832)
3 forensic psychiatry/ (3590)
4 1 or 2 or 3 (4374)
5 protective factors/ (3157)
6 4 and 5 (11)

**********************************
Search for: limit 7 to "0830 systematic review"

Results: 2

Database: PsycINFO <1806 to October Week 2 2014> Search Strategy:

1  exp mental health/ (42773)
2  recovery model*.mp. (314)
3  "recovery (disorders)"/ (9422)
4  recovery approach*.mp. (98)
5  recovery principle*.mp. (70)
6  2 or 3 or 4 or 5 (9680)
7  1 and 6 (375)
8  limit 7 to "0830 systematic review" (2)
Appendix M: Knowledge Translation Plan
Knowledge Translation Plan Activities

In the context of health research, knowledge translation is defined as “a dynamic and iterative process that includes synthesis, dissemination, exchange and ethically-sound application of knowledge to improve the health of Canadians, provide more effective health services and products and strengthen the health care system” (CIHR, 2014). Knowledge translation will ensure the findings from this research inform and encourage future work relating to criminal court mental health diversion initiatives in Arctic communities. Knowledge Translation will follow Tri-Council Policy Statement on Ethical Conduct of Research Involving Humans (TCPS 2), including Chapter 9: Research Involving the First Nations, Inuit and Metis Peoples of Canada and research policy statements from leading national indigenous organizations. Dissemination will not include information identifying participants.

Knowledge produced from this research will be shared and disseminated in a manner and to audiences aligned with the following three key goals:

1. To influence legislation and policy
2. To influence administration and management
3. To influence implementation and practice

The following general activities will comprise the Knowledge Translation Plan for this research with details reflected in Table 1 below:

1) Social media strategy: A plain language website to keep the public and scientific community abreast of developments in this research www.NunvautMentalHealthCourts.wordpress.com;

2) Community consultations: this includes presentations to hamlets, focus groups, and establishing an informal local advisory committee that include community knowledge users.

4) Seminars and workshops: these are more formal venues for sharing knowledge and exploring how knowledge can inform administration, management, implementation and practice of mental health court programs;

5) Policy briefs and project reports: these can be used to make knowledge generated by this research accessible to policy makers and organizational stakeholders;

7) Conference presentations: Knowledge from this project will be shared through conference presentations including the International Polar Year Conference 2012, XXXIII Congress of the International Academy of Law and Mental Health, Amsterdam 2013, the 2014 International Congress of Arctic Social Sciences (ICASS) VIII, and the 16th International Congress on Circumpolar Health in 2015.

8) Peer-reviewed publications: Peer-reviewed publications in both health and law journals will widen access to research by scientific community and provide support for policy development.
Table 1 Knowledge Translation Activities
(adapted from CIHR http://www.cihr-irsc.gc.ca/e/45321.html)

<table>
<thead>
<tr>
<th></th>
<th>#1 Administrative &amp; Management</th>
<th>#2 Legislative &amp; Policy</th>
<th>#3 Implementation &amp; Practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal</td>
<td>• Inform mental health and justice sectors, and community organizations of benefits of mental health intervention</td>
<td>• Increase awareness and knowledge among policy stakeholders • Influence shared funding models to support multi-sector mental health intervention</td>
<td>• Support the development of mental health court programs • Encourage collaboration between justice and health sectors</td>
</tr>
<tr>
<td>Audience</td>
<td>• Indigenous and Northern Communities • Social media</td>
<td>• Policy analysts • Territorial/provincial/federal government • Inuit Regional Associations • Research funders</td>
<td>• Health, mental health and community service providers, and health trainees • Judiciary, Justice professionals-prosecutors and lawyers, articling students, court workers, RCMP, and community justice committees</td>
</tr>
<tr>
<td>Expertise</td>
<td>• Community Engagement • Interdisciplinary expertise in law and mental health • Social media</td>
<td>• Advocacy • Health and justice system engagement • Networking</td>
<td>• Curriculum development • Professional training • Health and justice system engagement</td>
</tr>
<tr>
<td>Strategies (activities)</td>
<td>• Community Presentations • Project Reports • Seminars and workshops • Social Media Strategy</td>
<td>• Policy Briefs and reports • Conference Presentations • Seminars and workshops • Peer reviewed publications</td>
<td>• Presentations • Seminars and workshops</td>
</tr>
<tr>
<td>Feasibility</td>
<td>• Knowledge users invested from outset • KT funding proposals submitted to funders who financially supported earlier stages of study</td>
<td>• Knowledge users invested from outset • KT funding proposals submitted to funders who financially supported earlier stages of study</td>
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</tbody>
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