

Running head: INFLUENCE OF RACE AND GENDER ON DIVERSION

“We Need to Understand Their Background, Their Circumstances and Their Plights and Try to Assist Them”: A Critical Examination of the Influence of Race and Gender on Diversion to Mental Health

Court

By

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Abstract

Both people of colour and offenders with mental illness are overrepresented within the criminal justice system. With all these overrepresentations, it is imaginable that there is an overlap of racialized offenders with mental illnesses. Diversion strategies are used as alternatives that divert accused persons away from incarceration and towards treatment and support services. One such alternative is problem-solving courts, which were developed to treat offenders with special needs, as opposed to traditional prosecution. The literature that discusses how diversionary alternatives, such as mental health courts, is silent when discussing how race may influence access to diversion for people of colour. Additionally, intersectionality has shown how social constructs work together to define experiences for each individual, yet diversion also fails to take this into consideration. Using the theoretical frameworks of critical race theory and intersectionality, I explore the influence that race and gender have on diversion to mental health court. My study is conducted through semi-structured interviews with the Nova Scotia Mental Health Court team members. Additionally, I carried out an observation of both the pre-court team meetings and the court proceedings to contextualize the responses of participants. Data were analyzed using thematic analysis which produced three overarching themes: Diversity and Visibility, Accessibility, and Power. The findings implicated that race was influential in diversion; however, it appears to stem from referrals, rather than screenings for eligibility within the court. Additionally, gender was perceived as having less influence on diversion to the court.

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Introduction

People with mental illness are overrepresented in the criminal justice system due to factors such as deinstitutionalization, criminalization and stigma (Livingston, 2016). Diversion strategies emerged as a response to dealing with offenders that have specific needs, such as adults with severe mental illness, that are overrepresented in incarceration (DeMatteo et al., 2013). Problem-solving courts, such as mental health courts, are one such strategy that aims to address this overrepresentation of offenders with mental illness and divert them to community-based treatment rather than incarceration.

According to the 2016 census of Canada, Black people make up 3.5% of the Canadian population; however, they account for 10% of the federal prison population. It is widely known that Black individuals are often also overrepresented in the criminal justice system, but do they also suffer with mental illness? Furthermore, if the former proves to be true, are they often diverted to community-based treatment rather than being incarcerated?

There are conflicting ideas concerning mental illness and race, and common narratives regarding mental illness and crime. The most common narratives that stand out seem to be those that describe the reasons a mass shooter would choose to take the lives of countless individuals with whom they have no personal connection to. Interestingly, the people at the centre of these narratives are more often than not, White. The question then remains, why is it that persons of colour are seldom associated with mental illness?

Existing literature has described how mental illness transitioned from an issue of health to an issue of crime. Deinstitutionalization has shifted the way in which persons receive treatment. As a result, people with mental illness were arrested and jailed as a method of control. Livingston (2016) discussed the existing myths that surround the relationship between mental illness, crime and violence,

which includes that mental illnesses are a predictor for future crime and violence. People with mental illness are indeed at an increased risk for crime and violence, however, it is largely due to the fact that they are often marginalized members of society. In fact, Markowitz (2011) discussed the public's perception of mental illness and stated that the public often associates mental illness with danger, violence and unpredictable behaviours. These perceptions further marginalize people with mental illness and, in turn, expose them to criminality (Livingston, 2016).

Utilizing the framework of critical race theory, I examine whether or not race is an influential factor in determining a person's access to diversionary alternatives. Additionally, considering that men and women both experience things differently, I use the framework of intersectionality to discover how the constructs of race and gender work together to influence diversion. My thesis begins by examining the existing literature regarding mental illness, diversion, and race and gender. Following the literature review, I discuss the aforementioned frameworks, to lay the theoretical groundwork of my research. I then state the existing problem found within the literature and describe my aim to address the problem. Following this, I describe the methodological approach I take to address the problem and make my academic contribution. I then describe the limitations to my research. Following this discussion, I analyse and discuss the findings of my research, connecting them to the information found in my literature review and my theoretical frameworks. Lastly I conclude my study in order to reiterate my findings and offer any recommendations that have emerged.

Literature Review

This literature review discusses academic thought and research in the examination of the influence of race and gender on diversion for people with mental illness. In order to fully understand the role these factors play in diversion it is necessary to first define mental illness, understand diversion and diversionary strategies, and discover the influence gender and race has on a diagnosis of mental illness and diversion to community-based alternatives. The literature specifically targets each category aforementioned, however, it important to note that there is not a wide variety of literature that collectively incorporates all themes.

Mental Illness

Definition. There is often difficulty in defining and understanding mental illness. In fact, early research has shown that when persons were asked, at that time, about their understanding of mental illness, they responded using terminology such as “deranged” or “out of one’s mind” (Markowitz, 2011). Thankfully, the world has evolved, and society has become more enlightened and educated on mental illness. Markowitz (2011) states that when the public was asked more recently how they would define mental illness, they responded with answers that were more closely related to disorders such as anxiety and depression.

For the purpose of this research, the definition of mental illness will be discussed in the legal context to examine how the condition of a person’s mental health are considered and classified in the determination of whether or not they should be diverted from standard prosecution. Walvisch (2017) discusses the definition of mental disorder in the legal context. The author refers to the two main psychiatric manuals, the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) and the International Classification of Diseases and Related Health Problems (ICD-10), to argue that these

definitions, when used in legal contexts, present themselves as problematic (Walvisch, 2017). They may become lost in translation from clinical to legal contexts (Walvisch, 2017).

Definitions of mental disorders share common features including: the dysfunction being located within the individual and that the disorder is not a matter of social deviance or a conflict between the individual and the society (Walvisch, 2017). Both manuals aim to differentiate persons who suffer from mental disorders from persons who are simply just 'bad' individuals; Additionally, both manuals aim to differentiate conditions which are considered to be personal dysfunctions from social behaviours that may be considered socially deviant by some persons within society but are not regarded as mental disorders (Walvisch, 2017). This is especially significant for my research because people of colour may be overlooked as having a mental illness, due to the fact that society has been taught to believe that their behaviour is as a result of deviance rather than illness. Ambiguity lies within the definitions of mental disorders; within legal contexts, the definitions provide no guidance for persons who wish to comprehend whether or not particular conditions should be regarded as a mental disorder (Walvisch, 2017). Therefore, unfortunately, the definitions are often unsuitable for use in legal context (Walvisch, 2017).

The complexity of the definitions for mental disorders make it increasingly difficult to figure out, in legal terms, what exactly should be classified as a mental disorder, how a person's mental health is relevant within legal context, and why a person's mental state should be taken into account within that context (Walvisch, 2017). There are many reasons that mental illness may become lost in translation within legal contexts. In fact, some scholars have suggested that there is a colour-blindness in the application of law that is problematic. The problem lies within the failure of the law to consider social inequalities that have arisen due to external factors such as systemic racism. These external factors may place certain groups of society, such as minorities, at a predisposition for criminality.

While no one is above the law, and everyone is subject to the law, it is important to realize that some groups may be criminalized due to cultural differences, pre-existing stereotypes, and biases that the law does not take into account.

Race and Mental Illness. A 1990 General Social Survey (GSS) conducted in the United States of America on public perceptions of violence indicated that people were more likely to associate violent behaviours with Hispanics and African Americans (Hicks, 2004). At the time, it had not been tested whether or not psychologists or forensic psychiatrists were immune to prejudicial perceptions due to the fact that they were trained individuals (Hick, 2004). An expert on dangerousness and mental illness once linked the increase of crime to “feral youngsters” most of whom were Black (Hicks, 2004). The use of this type of terminology may contribute to fears directed towards marginalized individuals due to the fact that it reinforces stereotyping (Hicks 2004). In other words, people from marginalized communities are often labelled due to their perceived dangerousness. Stereotyping is a factor that allows racism to thrive within the discipline of psychiatry (Fernando, 2012). In fact, colonialism plays a significant role in the racist nature of psychiatry (Fernando, 2012). The diagnosis of mental illness in Black people is rooted within slavery, where slaves were labeled as having “drapetomania” if they rejected the idea of being enslaved (Kanani, 2011; Fernando, 2012). Additionally, some American psychiatrists believed that Black Americans were more susceptible to mental illness once they were set free (Fernando, 2012). Psychiatry was used as a tool to discipline and maintain social order within minority groups (Kanani, 2011; Fernando, 2012). African American men are over represented in the categories that are associated with incompetence, such as schizophrenia, need for treatment and denial of mental illness (Hicks, 2004). Hicks (2004) states that there is speculation that members of marginalized communities are more likely perceived as irrational, leading to their opinions being disregarded or overlooked by mental health workers, lawyers and judges. Given this fact, psychiatrists

should recognize the hesitance of racialized individuals toward mental health may be grounded in historical experiences and cultural perceptions rather than a lack knowledge (Hicks, 2004). Psychiatry has been used to institutionalize and incarcerate marginalized groups by perpetuating highly disturbing stereotypical attitudes toward racialized persons (Kanani, 2011).

Keating (2016) applied critical race theory and intersectionality as frameworks to examine race, madness and dangerousness. According to Keating (2016), mental health social work has not paid enough attention to the exploration of the intersections of race and madness and how medicalized approaches to madness have not helped racialized groups. Racialized groups have had negative experiences that have impacted their help-seeking and access to effective treatment (Keating, 2016). Keating (2016) uses two case studies in order to put into perspective the stereotype of big, Black and dangerous. These case studies involve two different Black men who were diagnosed with mental illnesses and how perceptions about dangerousness and the risk they posed to society influenced their treatment by perpetuating stereotypical attitudes (Keating, 2016). Seclusion and medication seemed to be common responses rather than simply trying to understand why the men were angry or aggressive (Keating, 2016). These examples were used by Keating (2016) to demonstrate how constructs, such as Black, dangerous, and mad, work together to elicit violent or exclusionary responses, such as restraint and forcible treatment, that disregard and silence individuals. Frameworks such as critical race theory, intersectionality, and whiteness, according to Keating (2016), aid in the magnification of racialized experiences of madness by highlighting how racism can lead to trauma and compromise clinical processes (e.g. diagnosis) Keating (2016) concludes that, if mental health social work continues to ignore the intersections of race, madness and dangerousness, it will continue to reinforce and sustain the racial inequalities relevant for mental health treatment (Keating, 2016).

Cause of Overrepresentation of People with Mental Illness

Deinstitutionalization. In order to understand how mental illness seemingly moved from an issue of health to an issue of crime, one must start at the roots of deinstitutionalization. Deinstitutionalization was due a number of factors, such as, shifts in ideology pertaining to where a person should be treated, how they should be treated, and under what circumstances they should receive treatment (Talbot, 2004). According to Talbot (2004), this shift led to many people who were residing in public psychiatric facilities being discharged. As a result, a large number of persons who were experiencing psychiatric symptoms were left on the street, and thousands of others were discharged into nursing homes (Talbot, 2004). Eventually, hospitals and other facilities began to take on the care of these individuals, and, unfortunately, their efforts proved futile as persons were not receiving adequate follow up care, ultimately being admitted and readmitted over and over again (Talbot, 2004). Markowitz (2011) notes that early research has discussed and linked the interdependency of the mental health and criminal justice systems. Simply put, both systems rely on each other due to the overrepresentation of offenders with mental illness. He goes on to state that, since deinstitutionalization has occurred, prisons and jails have taken over the role once held by psychiatric facilities and have now become institutions of social control for people with mental illness (Markowitz, 2011).

Studies have examined the frequency of people with mental illness with prior admission into a psychiatric facility being arrested, jailed and imprisoned, both before and after deinstitutionalization (Markowitz, 2011). These studies suggest that there has been an overall increase in the percentage of inmates who have experienced psychiatric hospitalization, which has led to the conclusion that people with mental illness are indeed overrepresented in the criminal justice system (Markowitz, 2011). In

fact, according Simpson, McMaster and Cohen (2013), the rates of serious mental illness within the Canadian prison population are approximately three times higher than that of the general population.

There are screening procedures that are sometimes available within correctional facilities that are aimed at determining the needs of offenders, however, a lack of these screening procedures coupled with inadequate staff training, often leads to incarcerated people with mental illness not receiving adequate treatment (Markowitz, 2011). These offenders are also less likely to be granted bail, and more likely to be victims of abuse perpetrated by correctional staff and other inmates (Markowitz, 2011; Simpson, McMaster & Cohen, 2013). Ultimately, correctional facilities serve as unsuitable alternatives to psychiatric hospitals (Markowitz, 2011). It important to note that many correctional facilities do provide mental health treatment, however, it is reported that inmates with serious mental illness may choose not to access them (Simpson, McMaster & Cohen, 2013). Reasons for this refusal may include their background, as minorities tend to have negative attitudes toward mental illness, and concerns about their reputation (Simpson, McMaster & Cohen, 2013).

Diversion

According to DeMatteo, LaDuke, Locklair, and Heilbrun (2013), diversion refers to the shift in the way the criminal justice system deals with offenders that have specific needs, such as drug involved offenders and adults with severe mental illness. Instead of using a one size fits all approach, these interventions target the specific risk factors that contribute to criminal behaviour and several of these practices have a great deal of empirical support (DeMatteo et al., 2013). Several factors have contributed to the development of these community-based alternatives, including the recognition that the standard process employed by criminal justice system was ineffective in achieving positive outcomes for certain types of offenders (DeMatteo et al., 2013). In other words, rather than focus on rehabilitation, the criminal justice system is focused on retribution. Therefore, offenders in dire need of

treatment often go unnoticed and untreated while incarcerated. There are a number of diversionary alternatives that are available for offenders with special needs both before penetration into the criminal justice system and after. The Sequential Intercept Model is a framework that describes the various levels of access to diversion.

The Sequential Intercept Model. The Sequential Intercept Model is a useful framework for understanding and organizing the various ranges of community-based alternatives to prosecution (DeMatteo et al., 2013). The Sequential Intercept Model entails five points at which the standard justice process can be interrupted to provide quite a different experience and procedure for the individual (DeMatteo et al., 2013). The five points are as follows: (1) law enforcement and emergency services, (2) post arrest, (3) post initial hearings, (4) re-entry, and (5) community corrections and community support (DeMatteo et al., 2013).

The first intercept occurs at the initial contact the individual has with the criminal justice system, namely the initial interaction with police officers or first responders (DeMatteo et al., 2013). The main goal of first intercept is to keep individuals from penetrating the criminal justice system by providing treatment for individuals who commit minor offences as a result of mental disorders (DeMatteo et al., 2013). The second intercept essentially occurs after the offender has been arrested (DeMatteo et al., 2013). Despite the fact that, at this stage, the person has already penetrated the criminal justice system, there are several options for diverting these offenders away from standard prosecution (DeMatteo et al., 2013). An example of one such option, mentioned by DeMatteo et al. (2013) is a specialized form of probation offered by some jurisdictions, which involves providing appropriately targeted interventions aimed at addressing the needs of offenders. The third intercept occurs after the initial court hearing (DeMatteo et al., 2013). This is where diversion from standard prosecution to problem-solving courts, such as mental health courts, takes place (DeMatteo et al.,

2013). The fourth and fifth intercepts do not focus on diversion as they occur late in the criminal justice process (DeMatteo et al., 2013). The fourth intercept mainly focuses on applying community-based interventions that facilitate the successful re-entry of a person into the community after being released from incarceration or detention (DeMatteo et al., 2013). Lastly, the fifth intercept describes how community corrections, like specialized probation or parole, can be used with offenders with severe mental illness (DeMatteo et al., 2013). For my thesis, specific attention will be paid to intercept three in which the process of diversion to problem solving courts, such as mental health courts, occurs.

Problem-Solving Courts

Problem-solving courts are one of the strategies available at intercept three of the Sequential Intercept Model. Problem-solving courts focus on reducing recidivism, rather than punishment, by employing the court's authority to hold offenders accountable while offering community-based treatment as a positive alternative that will encourage change (Ray & Dollar, 2013). In 1989, the first problem-solving court, a drug court, was developed in Dade County, Florida as a local response to the increasing number of drug-involved offenders (DeMatteo et al., 2013). The local courts recognized that the traditional response, when used in these drug-related offences, barely reduced the use of drugs or the recidivism of drug-involved offenders (DeMatteo et al., 2013). Thus, rather than simply punishing offenders, the drug courts addressed the underlying causes of offender behaviour by providing alternatives that were delivered under close judicial supervision (DeMatteo et al., 2013). Problem-solving courts have specialized dockets that consist of offenders with special needs which are met by service providers (Schneider, 2017). The services often include medical and therapeutic services and supports, social services and personal assistance with daily stressors, such as money management and employment (Schneider, 2017). Studies conducted on drug courts found that they were effective, thus

leading to the development of other problem-solving courts, such as mental health court (DeMatteo et al., 2013; Wolff, Fabrikant, & Belenko, 2011).

Mental Health Courts. For the past 50 years, a major problem in criminal justice system has been the overrepresentation of offenders with mental illness (Han & Redlich, 2018). The criminal justice system is not ideal or equipped to handle these offenders (Han & Redlich, 2018). Thus, the creation of mental health courts was a response to this problem (Han & Redlich, 2018). Mental health courts are problem-solving courts that were developed to divert offenders with mental illness away from a cycle of arrest, incarceration and release, and connect them with community-based treatment (Ray & Dollar, 2013). The mental health court has a selected docket and a team of professionals who decide which cases are accepted into the court (Ray & Dollar, 2013). Similar to other problem-solving courts, mental health courts are accessed at intercept three, post initial hearing, of the Sequential Intercept Model after the individual has penetrated the criminal justice system.

The use of mental health courts has increased, with over 300 mental health courts in operation in the United States of America alone (Ray & Dollar, 2013). Though they have existed for some time in the United States, they began appearing in Canada around 1990s (“Mental Health Court Report”, 2014). In fact, the first mental health court in Canada opened in 1998 in Ontario (Schneider, 2017). Mental health courts do not all follow one set model, however, they share similar characteristics, which include specialized dockets for the defendants with mental illnesses and specialized teams often comprised of a judge, prosecutors, defence attorneys and a mental health representative (Wolff, Fabrikant, & Belenko, 2011; Schneider, 2017). These courts vary regarding the severity of mental illness required for admission and the seriousness of the offences that they will accept (Wolf, Fabrikant, & Belenko, 2011). Some mental health courts only accept mental illness that are serious, chronic and persistent, while other courts accept a wider variety of mental disorders (Wolff, Fabrikant,

& Belenko, 2011). Likewise, while many mental health courts may only consider defendants with non-violent criminal charges, some courts may accept violent charges and felonies (Wolff, Fabrikant, & Belenko, 2011).

Research has shown that mental health courts are beneficial and effective. In fact, graduates of diversionary programs, such as mental health courts, reoffend less (Edgely, 2014; Schneider, 2017). Additionally, in cases when they do reoffend, the offences tend to be less violent (Schneider, 2017). A recent study also suggested that mental health courts significantly reduce recidivism as in comparison to the traditional court system (Schneider, 2017). The graduates of mental health court also show more promise in their ability to consistently maintain housing, employment and health care (Schneider, 2017). They also have little to no new contact with police after going through the mental health court (Schneider, 2017).

Mental health courts do not function similarly to traditional courts, rather they operate on the principles of therapeutic jurisprudence which suggests that, if the law is used in ways which motivate offenders to make meaningful and positive changes in their lives, it can have a positive psychological result (Ray & Dollar, 2013). In other words, rather than simply using the law to control offender behaviour, mental health courts allow the use of law to aid in the rehabilitation of offenders so that they desire to change. In order for a defendant to appear in mental health court, they tend to be referred by either a lawyer, family member, judge, service provider, police officer or jail personnel (Wolff, Fabrikant, & Belenko, 2011). Once a defendant has been referred to mental health court, decisions are made to determine admission to the court (Wolff, Fabrikant, & Belenko, 2011). This decision-making process varies, considering that it involves multiple parties which represent varying interests (Wolff, Fabrikant, & Belenko 2011). The selection process and the factors that influence it are highly pertinent

for the current study given that the selection process is the main point of entry into the mental health court. This is likely where bias may occur.

Selection Process. According to Wolff, Fabrikant, & Belenko (2011), there has been little research done on mental health courts in regard to their processes of selection. Thus, they developed a model that describes the selection process used by mental health courts to determine admission (Wolff, Fabrikant, & Belenko, 2011). The model involves three stages: initial screening, assessment eligibility screening, and evaluation eligibility screening (Wolff, Fabrikant, & Belenko, 2011).

During the initial screening, the defendants with mental illnesses are filtered to determine their eligibility as potential clients for the court (Wolff, Fabrikant, & Belenko, 2011). This stage has two filtering agents, namely, the district attorney and the mental health court team director, coordinator or supervisor (Wolff, Fabrikant, & Belenko, 2011). These agents have two primary functions which involve centrally referring all clients for initial consideration and performing an initial eligibility screening which considers whether the clients referred are appropriate for the court (Wolff, Fabrikant, & Belenko, 2011).

During the second stage, the assessment eligibility screening is conducted by the mental health court team (Wolff, Fabrikant, & Belenko, 2011). This focuses on determining and assessing mental health issues along with related criminal history (Wolff, Fabrikant, & Belenko, 2011). Some mental health court teams having an intricate and evolved selection process which facilitates the communication among the various team members (Wolff, Fabrikant, & Belenko, 2011). All mental health courts have eligibility criteria related to mental disorders (Wolff, Fabrikant, & Belenko, 2011). They generally do not consider paraphilic disorders, such as pedophilia, and some courts may accept substance-related illness. Additionally, the defendant's criminal justice status, including their current charges and history of charges, is taken into consideration to determine overall eligibility (Wolff,

Fabrikant, & Belenko, 2011). Simply put, courts want to ensure that a person, once accepted into the court, is manageable, thus they consider the charge that has led them to the mental health court and their criminal history to determine a person's level of risk. Once a case has been reviewed completely, it is considered for admission by the mental health court team (Wolff, Fabrikant, & Belenko, 2011).

During the evaluation eligibility screening, which is the last stage detailed by the authors, a decision is made by mental health court team and the client before the final approval and admission into the mental health court (Wolff, Fabrikant, & Belenko, 2011). Some judges have a first meeting with the client before granting acceptance because the judge reserves the right to deny access to the court despite the decision of the mental health court team members (Wolff, Fabrikant, & Belenko, 2011). Additionally, clients who are approved also have the right to refuse to participate in mental health court and can be sent back to traditional court processing (Wolff, Fabrikant, & Belenko, 2011).

Factors Influencing Admission to Mental Health Court. Using the above model, Luskin and Ray (2015) examine the possible selection bias of mental health courts. The authors also utilize the MacArthur mental health court study to determine the factors that predict whether a defendant is selected to participate in mental health court (Luskin & Ray, 2015). Luskin and Ray (2015) discuss a number of limitations, including the fact that their study is limited to one mental health court and, thus, cannot account for the variability in other mental health courts. Overall, they found that the selection of defendants is related to two questions: (a) the likelihood of success within the program, and (b) the extent to which the defendant should be held culpable (Luskin & Ray, 2015). Interestingly, although the statute under which mental health courts were established allows prosecutors to divert cases where mental illness is a factor in the commission of the crime, it does not give clear guidelines as to what factors should be considered in this determination (Luskin & Ray, 2015).

The authors mention that studies have shown a defendant's likelihood of selection for mental health court is decreased if they: have a history of felonies, are male, and are charged with an offence against a person (Luskin & Ray, 2015). Additionally, younger female defendants were more likely to be accepted into mental health court in comparison to older females (Luskin & Ray, 2015). Also, having a more severe mental illness increased the defendant's chances of being accepted into the mental health court (Luskin & Ray, 2015).

Luskin and Ray's (2015) findings were consistent with that of Wolff, Fabrikant, & Belenko (2011). The main finding was that mental health court defendants were more likely to be diagnosed with schizophrenia or bipolar disorder and reported not using illegal drugs (Luskin & Ray, 2015). It was found that there was a low probability an individual in the mental health group within their study was diagnosed with depression (Luskin & Ray, 2015). This shows that, although major depression is one of the qualifying diagnoses of mental health courts, it appears as though it is treated differently than schizophrenia and bipolar disorder (Luskin & Ray, 2015). Perhaps, mental health court team members either believe that schizophrenia is more likely to diminish culpability, or the members do not have a clear understanding about how depression may contribute to criminality (Luskin & Ray, 2015). It seems as though a more severe diagnosis strengthens the perception that the mental illness contributed to the criminal behaviour (Luskin & Ray, 2015). Additionally, defendants who appear to be poor candidates for mental health court may be accepted based on the appearance of their symptoms or their motivation to change (Luskin & Ray, 2015). In other words, the mental health court may accept a person whose mental illness appears to be treatable and is willing to put in the work towards successful completion of the program (Luskin & Ray, 2015).

Luskin and Ray (2015) also discuss criminal history pertaining to admission to mental health court. They state that the presence of a warrant decreases the likelihood of acceptance into mental

health courts, due to the fact that it indicates that the defendant has missed a court date (Luskin & Ray, 2015). With this in mind, the mental health court teams' willingness to accept a defendant with a warrant may decrease, as it raises doubt that the defendant will be able to comply with the requirement of the mental health court to attend all court meetings (Luskin & Ray, 2015). In addition, the presence of a warrant suggests criminality rather than illness and, as a result, may deem the defendant ineligible for the treatment that would be available via the mental health court (Luskin & Ray, 2015).

Lastly, the role of substance use varies by court. Substance use may be less likely to affect a decision in a mental health court whose target population is defendants with dual diagnoses; However, some courts exclude defendants with substance abuse disorders (Luskin & Ray, 2015).

Race, Gender, and Diversion. Less attention has been paid to racial bias in instruments that are used to identify people in need of further mental assessments while incarcerated, which would lead to treatment and diversion (Prins et al., 2012). Cultural differences determine an individual's definition of mental illness, evaluation of mental illness and help-seeking (Prins et al., 2012). Different cultures may have various ideas about mental illness that may reinforce negative attitudes about diagnosis and treatment; thus, it is more difficult to measure the experiences of mental illness for racialized people among diverse groups (Prins et al., 2012). Additionally, factors such as race could affect the way the screening instruments, such as the Brief Jail Mental Health Screen (BJMHS), are administered due to unwanted stereotyping of different races and ethnicities (Prins et al., 2012). In fact, there is an uneven performance of the BJMHS across racial groups that appears to be as a result of differences in prior use of mental health services (Prins et al., 2012). Unclear differences in how the symptoms occur for racialized people account for the lack of prior use of mental health services. (Prins et al., 2012). The lack of positive screenings may be linked to racialized people being less likely to receive diversion alternatives to incarceration.

Ray and Dollar (2013) observed a mental health court's team meeting in order to understand their decision-making process. They found that, in cases where the defendant was a female, their non-compliance was contextualized in a way that diminished their culpability (Ray & Dollar, 2013). The authors noted that team members learned personal information about the defendants during their time in the program. Perhaps, the frequency of this contextualization stems from women being more open than men to sharing personal information and not due to any sort of benevolence or prejudice held by the team members of the mental health court (Ray & Dollar, 2013). Additionally, it was found that White females were less likely to be terminated from the mental health court in comparison to non-White males and females and White males (Ray & Dollar, 2013). Also, non-White males were 5.25 times more likely to be terminated from the program compared to White females (Ray & Dollar, 2013). Ray and Dollar (2013) suggest that mental health court team members rely on their perceptions which are tied to cultural ideas about race and gender (e.g. stereotypes) when assessing culpability and dangerousness of the offenders (Ray & Dollar, 2013). Stereotyping may be rooted within the decision-making process of mental health court, although it does not appear to be blatant or deliberate.

Theoretical Framework

Critical Race Theory

Critical race theory is a movement created by a collection of activists and scholars who were engaged in studying and transforming the relationship among race, racism and power (Delgado & Stefancic, 2007). Critical race theory emerged in the late 1960s and early 1970s when a number of legal professionals realized that the civil rights era had stalled (Delgado & Stefancic, 2007). This was a fresh approach to deal with new types of systemic racism that were developing, and a society that was seemingly tired of hearing about race (Delgado & Stefancic, 2007). Although critical race theory considers many of the same issues that conventional civil rights and ethnic studies do, it also questions

the foundation of liberal order (Delgado & Stefancic, 2007). This includes equality theory, legal reasoning, enlightenment rationalism and neutral principals of constitutional law (Delgado & Stefancic, 2007).

Critical race theory operates under five tenets. First, the normalcy of racism acknowledges that racism is not unique or abnormal, but rather a common experience for most people of colour within everyday society (Delgado & Stefancic, 2007). This normalcy makes racism often easy to miss and hard to address, and any issues that demand colour-blind treatment will only resolve the most blatant forms of it (Delgado & Stefancic, 2007). Second, interest convergence alludes to the fact that civil rights legislation was more beneficial to White elites than to people of colour (Delgado & Stefancic, 2007). The best example of this was given by Derrick Bell in 1980, when he put forward the hypothesis that the landmark case of *Brown v. Board of Education* may have resulted from self-interest of elite Whites who wanted to project a warm-hearted image of the United States which would be opposite to the nature of the Soviet Union in order to gain favour with the third world which consisted of mostly Black, Brown or Asian (Delgado & Stefancic, 2007). Third, the social construction of race indicates that races are simply categories that society creates for a particular purpose, rather than something that is genetic or biological (Delgado & Stefancic, 2007). Additionally, differential racialization brings to the forefront how the dominant actors in society racialized different groups at different times depending on necessity (Delgado & Stefancic, 2007). For example, during World War II, there was great disfavor of the Japanese and many of them were subjected to harsh treatment; but, this has since shifted, and now Asians are seen as the “model minority” because of their low crime rates, supposedly close-knit families and their abilities in science and mathematics (Delgado & Stefancic, 2007). Also, stereotypes of racialized groups shift over time (Delgado & Stefancic, 2007). For example, Blacks were seen as simple, happy go-lucky and content servers to their masters’ needs during slavery. However, after

society shifted and they were freed, Black people were unanimously seen as menacing and brutish (Delgado & Stefancic, 2007).

The fourth tenet of critical race theory is its critique of liberalism. There are many issues surrounding the notions of colour-blindness and equal opportunities for all; critical scholars believe that racism is not an accident and that ignorance will not decrease with education or stronger enforcement (Delgado & Stefancic, 2007). In fact, it can be said that this colour-blindness causes bigger issues, such as covertly racist policies being ignored and continuing to further marginalize already marginalized individuals (Delgado & Stefancic, 2007). Lastly, the tenet of counter-storytelling is based on the belief that there is a need to develop a voice of colour (Delgado & Stefancic, 2007). There are many that still consider the mindset of the majority to be an obstacle of racial reform (Delgado & Stefancic, 2007). In other words, the narratives regarding the marginalized experiences of racialized people are not created independently of the community who has marginalized them.

In the context of crime and criminal justice, critical thinkers question why there is an overrepresentation of racialized individuals within prison (Delgado & Stefancic, 2007). Most people, however, do not see this as problematic and take it at face value that persons within prison have committed a crime and are incarcerated as a response to their crimes (Delgado & Stefancic, 2007). This fails to realize that certain behaviours are defined as threatening and enable the belief that Blacks, and Latino's are more dangerous than Whites (Delgado & Stefancic, 2007). Additionally, society has constructed stereotypes for Black, Latino, Asian and Indigenous offenders and have assigned roles for each such as "the sneak", "the mugger", and "the drunk" to name a few (Delgado & Stefancic, 2007). Critical race theory provides a new lens and a new perspective for systematizing the search for knowledge, avoiding the easy answers, and paying attention to social constructions while focusing on

the factors underlying race and racism, challenging us to push past the normalcy of it (Delgado & Stefancic, 2007).

The literature on mental health courts does not consider how the tenets of critical race theory may be applicable in the discussion of diversion to mental health court. While they do talk about disparities within the courts, they do not mention the potential cause of these disparities. Thus, the current study will utilize this framework in order to examine how these factors may influence diversion.

Intersectionality

Intersectionality arose in the 1960s as a response to second wave feminism. During that time, women of colour began to realize that they were unable to identify with the arguments that were being put forward for equality, as the arguments were mainly centred around the experiences of White women. Black women faced other types of discrimination on the basis that they were not only women, but Black as well. The term intersectionality was later coined by Kimberle Crenshaw (1989). Crenshaw (1989) argues that Black women are often excluded from the discourses surrounding both feminism and antiracist politics, due to the fact that both experiences are not accurate representation or reflect how race and gender interact. Because the experience of Black women is unique due to the fact that they are both Black and women, any analysis that does not consider how the constructs of gender and race intersect does not sufficiently address the plight of a Black woman (Crenshaw, 1989). While Black women experience discrimination in ways that are both similar to Black men and White women, they also face intersecting oppression from the combined effects of both racism and sexism (Crenshaw, 1989).

Crenshaw (1989) argues that both the courts and feminist civil right thinkers treat Black women in ways that undermine and ignore the uniqueness and complexities of their situation and often center their experiences to the larger classes of women and Blacks. Additionally, Black women's experiences are either placed collectively within the experiences of either group or regarded as too different which then allows their race or gender to place their needs and perspectives at the margins of both feminist and Black liberation movements (Crenshaw, 1989). Crenshaw (1989) notes that, in order for any real efforts to be made in the goal of liberating Black people, theories and strategies used to describe the needs of the Black community must also include analyses of sexism and patriarchy. She goes on to say that, in order for feminism to successfully prevail, they must incorporate analyses of racism (Crenshaw, 1989). In other words, if both feminist and anti-racist movements fail to capture the experiences and needs of all genders and races that are contained within each group, they do not accomplish their goal of anti-discrimination; thus, they must consider the social constructs that may differentiate the experiences of each individual in order to prevail. Neither Black liberationist politics nor feminist theory should deny the differing experiences of the very people who they claim as their members (Crenshaw, 1989).

Wade and Rochlen (2013) discuss masculinity, identity, and the health and well-being of African American men. The authors theorize the ways in which Black men negotiate their masculinity in a sociopolitical environment (Wade & Rochlen, 2013). Racism has been found to have had psychological consequences for men of colour (Wade & Rochlen, 2013). In fact, Black men are often arrested, tried and sentenced at a higher rate than their White counterparts (Ferber, 2007). Today, Black men between the ages of 18 and 39 can expect to have a brush with the criminal justice system at some point within their lives (Ferber, 2007).

Black men express masculinity differently than White men (Wade and Rochlen, 2013). Men of different races and reference groups have varying experiences as it pertains to the masculine role (Wade & Rochlen, 2013). For Black men, their peer group consist of men who have responded to a racist society through hyper-masculinity and misogynistic adaptations (Wade & Rochlen, 2013). These include norms of selfish attitudes, anti-femininity and aggressive ways of resolving disputes (Wade & Rochlen, 2013). Research conducted on African American men have found that they often define manhood in traditional terms of the male role, which places importance on providing for their families, aggression, competitiveness and ambition (Wade & Rochlen, 2013). Studies have also found that manhood can also be defined by Black men in non-traditional terms, including self-determinism and accountability, family and pride (Wade & Rochlen, 2013). These ideas of manhood for Black men may affect their disclosure of mental illness and help-seeking.

It is important to note the stereotypes that are associated with Black men as they possibly form the basis for the lack of diversion. Ferber (2007) discusses Black masculinity in relation to sports. Depictions of Black athletes reinforce hierarchal structures by cementing stereotypical attitudes about their animalistic behaviours while emphasizing their sexuality, physical power, and aggressiveness (Ferber, 2007). Additionally, it is believed that Black men are inherently talented at athletic activities due to myths which claim that they have more natural athletic abilities (Ferber, 2007). While Black athletes are indeed successful, their success in the athletic arena does little to actually undermine systemic racism within and beyond sports (Ferber, 2007). Although the talents of Black men are often attributed to nature, their White counterparts' abilities are associated with attributes such as intelligence, strategic preparation and good organization (Ferber, 2007). These stereotypes that exist within the world of sports can also be placed in the context of Black men and the criminal justice system. Often times, people associate aggressive behaviours and physical power with Black men, thus

believing that they are inherently predisposed to being violent (Ferber, 2007). It is possible that, due to pre-existing stereotypes that surround certain races and cultures, individuals who are responsible for identifying and referring individuals who are suitable for diversion overlook certain individuals because they may associate their actions to their “nature” rather than possible instances of mental illness. The literature on mental health courts is silent when discussing how race and cultural differences may affect a person’s eligibility for mental health court. Thus, the current study will examine whether race and gender influence diversion to mental health court.

Problem statement

While some scholars discuss the complexities of race or gender as it pertains to perceptions of mental illness and diversion strategies, they tend to discuss either race or gender separately. Additionally, some articles address neither of the two constructs suggesting that all members of society, regardless of race or gender, experience and receive access to mental health services in the same way. They present access to diversionary alternatives as “colour-blind”. This colour-blindness refers to the idea that every individual has equal opportunities and similar experiences regardless of race. However, history has shown that this colour-blindness is problematic since it leads people to believe that racism and discrimination are issues of the past and that everyone has now been leveled onto the same playing field (Ferber, 2007). This ignores the on-going presence of racism that is often systemic and covert, making it hard to detect. It is important to understand the influence of race and how it may intersect with gender in diversion since people of colour may be overlooked for diversionary alternatives due to stereotypical attitudes towards certain races and cultural practices. Unfortunately, the gap in literature lies within this failure to include intersectionality as a framework in research to examine how gender and race interact and affect diversion strategies.

Research Question and Objective

The current study addresses the research question of “How does gender and race influence diversion to mental health courts?” I aim to fill the gap previously discussed by discovering how race and gender may determine whether or not a person is deemed eligible for mental health diversion and receives access to mental health courts. I also aim to explore the persistence of racism and how it influences diversion for people of colour to mental health court. Special attention will be paid to understanding the influence of gender and race on diversion to mental health court for Black men, due to the complexities of Black masculinity.

Research Methods

I employed qualitative research methods for this study. Qualitative research refers to the meanings, concepts, definitions, characteristics, metaphors, symbols and descriptions of things (Lune and Berg, 2016). Qualitative research helps to understand meanings people give to events (Lune and Berg, 2016). Unlike quantitative research which generates numerical data, qualitative research emphasizes inductive reasoning and case study analyses (Plays and Aitchison, 2008). Qualitative research methods allow researchers to explore new ideas that may emerge due to the uniqueness of each participant (Palys & Aitchison, 2008). Data collection in the current study used both interactive, in the form of semi-structured interviews, and observational, in the form of complete observation, methods.

Participants

The Nova Scotia Mental Health Court is comprised of two teams: the core team which makes the initial decisions such as admission, and the wider team which consists of service providers and support services. For the purpose of this research, members of the core team were interviewed. The

Nova Scotia Mental Health Court core team consists of a judge, two court clerks, three clinicians, one representative from Nova Scotia Brotherhood, one Nova Scotia Legal Aid Defense Attorney, one addictions specialist, one probation officer, one forensic psychologist, one provincial crown attorney and one federal crown attorney. Additionally, there is one representative from Mi'kmaq Legal Support Network and two Veterans' Affairs case workers when needed.

The eligibility criteria for study participants were core team members who had been involved with the Nova Scotia Mental Health Court for at least three months. This time frame was chosen because I believe that three months is a reasonable amount of time for someone to be exposed to, and be generally knowledgeable about, the structure and functionality of court.

I accumulated participants for my study by using purposive sampling, which is a non-probability sample that is selected based on the characteristics of the population and the objective of the study. I applied to the Saint Mary's University Research Ethics Board for approval to conduct the present study. After receiving approval, I sent out an email to a member of the Nova Scotia Mental Health Court core team. Attached to the email was a copy of the research ad (see Appendix A), which had the aforementioned eligibility criteria along with the aim and purpose of the study. I asked the team member to circulate the email only to the core team members. I only had approximately two weeks to recruit participants for the study. I received responses from three team members indicating they were interested in participating in the study. I set up convenient meeting times for each participant and was able to conduct each interview within one week. While the participants had similar racial and gender backgrounds, their time with the court and their ethnicities were different.

Context/Site

The Nova Scotia Mental Health Court was launched on November 5th, 2009 and had an inaugural docket of five people (“Mental Health Court Report”, 2014). Since then, the docket has grown considerably and has helped to divert accused persons with mental illness away from traditional prosecution and toward mental health services (“Mental Health Court Report”, 2014). The goal of the Nova Scotia Mental Health Court is to treat Nova Scotians with mental illness who have committed crimes with fairness and compassion, while aiding them to improve their mental conditions (“Mental Health Court Report”, 2014). The participants are able to work along with the team members of the court in order to identify their areas of need and prepare a plan of support to address these needs (“Mental Health Court Report”, 2014).

The Nova Scotia Mental Health Court operates on the corner stones of responsibility and accountability (“Mental Health Court Report”, 2014). While a guilty plea is not always required, participants of the court must accept responsibility for their actions (“Mental Health Court Report”, 2014). Participants are held responsible and accountable for their actions in different ways, which are determined based on their individual circumstances and the offence (“Mental Health Court Report”, 2014). In many cases, the participants are expected to simply admit responsibility for what they have done and agree to comply with the program requirements (“Mental Health Court Report”, 2014). There are some instances, however, where a participant may be required to admit guilt by entering a guilty plea before they can be admitted into the mental health court. This is likely due to the nature of the offence committed. Additionally, there are special cases and circumstances in which the team members agree to accept a participant after sentencing, in which case they would follow them in the community up until the completion of their sentence (“Mental Health Court Report”, 2014).

The Nova Scotia Mental Health Court has two sessions. First, the pre-court meetings which take place on Thursday mornings. These meetings, held by the core team members, are where eligibility and admission are discussed. The team members also discuss compliance and progress of participants and make decisions about their participation within the program. On Thursday afternoons, the court sessions are held where the participants that were discussed in the mornings then appear before the judge. Within the court session, participants may graduate, be reprimanded for their non-compliance, or congratulated on their progress thus far. Both sessions were necessary to observe for context.

There is a screening process that is done by the court to ensure that the participants meet the eligibility criteria (“Mental Health Court Report”, 2014). There are certain legal and medical criteria that must be met for an individual to be deemed eligible for the court (“Mental Health Court Report”, 2014). First, the individual must be charged with an offence under the *Criminal Code of Canada* or the *Controlled Drugs and Substances Act* (“Mental Health Court Report”, 2014). The offence must also be within the jurisdiction of the Provincial Court (“Mental Health Court Report”, 2014). The case must have either been committed in the Halifax Regional Municipality (HRM) or has been transferred there from another area in the province due to a substantial connection to the HRM, whether they live or have treatment providers in HRM (“Mental Health Court Report”, 2014). Second, the individual must have a mental disorder that is a recognized, serious, and persistent mental illness (“Mental Health Court Report”, 2014). Some examples of these include, but are not limited to, schizophrenia, bipolar disorders and major depression (“Mental Health Court Report”, 2014). Individuals with developmental delay, acquired brain injury or head trauma are considered on a case-by-case basis (“Mental Health Court Report”, 2014). Also, an individual with a concurring mental health and substance use disorders will be considered if the primary disorder is the mental disorder (“Mental Health Court Report”, 2014).

Third, the mental illness must be related to the commission of the offence (“Mental Health Court Report”, 2014). There must be a reasonable probability that the mental illness significantly contributed to the commission of the crime (“Mental Health Court Report”, 2014). Fourth, the individual who is referred to the court must voluntarily participate in the program (“Mental Health Court Report”, 2014). The individual is required to voluntarily undergo a screening assessment that will determine whether a mental disorder exists and the effect of this disorder on the commission of the offence. Additionally, individuals accepted into the program must voluntarily agree to comply with the conditions enforced by the court and the treatment recommendations made by the team members and service providers (“Mental Health Court Report”, 2014). Fifth, as aforementioned, the individuals must be held accountable and accept responsibility for the act or omission with which they were charged (“Mental Health Court Report”, 2014). Lastly, the Crown Attorney of the court must agree to the participation of the accused individual in the court (“Mental Health Court Report”, 2014).

There is a considerable amount of discretion that is held by the team members of the Mental Health Court. This suggests that it is possible that the team members may rely on their preconceptions and beliefs when making a decision about eligibility. Thus, it is possible that, as humans, they may have biases that could cloud their judgement toward particular groups of individuals. This is not to discredit or assume that the team members are biased, but rather to reinforce the fact that human beings often are unable to relate to experiences that differ from their own.

Interactive Method

My research incorporated both interactive and observational methods. Interactive methods bring the researcher in close contact with the participant to explore issues and develop possible solutions to the issues at hand. The interactive method utilized for this research was semi-structured, face-to-face interviews. These are one-on-one conversations between an interviewer and interviewee where

questions are asked and answered. This allowed for a more intimate connection between me and my participants (Palys & Atchison, 2008). The interviews in my study were conducted at the offices of each participant and lasted approximately one hour each.

The interviews consisted of questions related to the referral process and eligibility criteria, gender disparities, and racial disparities (see Appendix C). I began each interview by first giving each participant a consent form to sign, which held information about the purpose of the study and the role of each participant (see Appendix B). Each participant within the study was labeled with codes (CHT-1, CHT-2, CHT-3) in order to maintain confidentiality and anonymity as promised in the consent form. The responses for each interview were audio recorded to ensure that I fully captured the responses of each participant. Additionally, I periodically summarized the responses of each participant on paper, in case the audio recording failed. After the interviews, each participant was presented with a feedback letter (see Appendix D) I transcribed each interview verbatim with the exclusion of pauses and speech disfluencies (uh's, umh's and hmm's). The transcribed interviews were then analyzed using thematic analysis.

Observational Method

In addition to the interviews, I observed both the mental health court team member meetings and the court sessions. Both team member meeting and court session take place at the Nova Scotia Mental Health Court in Dartmouth, Nova Scotia. I observed one team member meeting and one court session. The team member meeting was approximately four hours in length and I observed from beginning to end. Similarly, the court session was approximately four hours in length, however I only observed for about three hours.

This is an unobtrusive method due to the fact that I had no involvement and the events occurred as they normally would. According Kellehear (1993), unobtrusive methods tend to assess actual behaviour rather than self-reported behaviour. Additionally, they are both generally safe for both the researcher and the participants involved (Kellehear, 1993). It is important to note, however, that my presence at the meeting could have caused a change in the behaviours in the team members. They were made aware that I was in attendance to observe the proceedings for my thesis, and the judge, being aware of the racial component of my thesis, took the time to inform me of the racial background of court participants when necessary. While I am thankful as this was extremely helpful for context, I imagine that this is not something that is usually done at a team meeting. Thus, it is possible that my presence affected the behaviour of other team-members as well.

Observing both the mental health court team member meeting and the court session allowed me to get holistic view of the proceedings and participants of the court as well as increased my understanding of the operation of the court. It was necessary to observe both environments in order to contextualize the responses of the participants. Palys and Atchison (2008) state that observations are incomplete until notes have been taken. While observing the both events, I took field notes, which are personal documents with a crucial role of representing the raw data on which the analysis will be based (Palys & Atchison, 2008). The field notes were also analysed using thematic analysis.

Thematic Analysis

A thematic analysis is a qualitative method that is used in identifying, analyzing and reporting patterns which minimally organizes and describes your data set in detail (Braun & Clarke, 2006). While thematic analysis is a widely used method, there is no clear agreement on what exactly it is and how it should be conducted (Braun & Clarke, 2006). It is also often viewed as a poorly branded

method, due to the fact that it does not appear to exist as a named analysis in the same way as other methods, such as narrative analysis (Braun & Clarke, 2006).

Braun and Clarke (2006) detailed six steps to thematic analysis, which I utilized to aid with my analysis. First, I familiarized myself with the data by listening to the recordings fully then by transcribing them. After I transcribed the data, I read the transcripts a few times and noted any codes, themes, or ideas that stood out initially. My first two participants were well versed with the court due to their years of experiences and were able to provide a lot of insight on the problems they observed and tried to remedy over the years. My last participant was newer to the court and with this in mind, the responses of my first two participants aided me in prompting responses and ideas from the last participant.

Next, I generated the initial codes and definitions for each code to aid my analysis. Initially, I generated twelve initial codes from my first interview, and as I reviewed the other transcripts, I was able to see an overlap of codes from the second and third interviews. There were new ideas that emerged from the second and third interviews, but the majority of the codes were consistent across each interview. During this process, I was also able to generate initial meanings for each code.

After, I reviewed all initial codes and generated three overarching themes from the overlapping codes. The three overarching themes were diversity and visibility, accessibility, and power. In addition to the overarching themes, I generated eight subthemes. I then reviewed each theme and subtheme against the data to ensure that the data supported the theoretical perspective. Once I was satisfied, I began the process of naming and defining the themes and subthemes.

Lastly, I produced a report, using only the most relevant and compelling data provided from both interviews and observations. This was a particularly difficult step considering that so much of the

data piqued my interest. I was able to narrow down the most important aspects of the data that would thoroughly answer my research question and provide valuable insight. A complete list of the themes, subthemes, definitions of themes and subthemes and supporting quotes are available in the Appendix E.

Scope and Limitations

The goal of the current study was to examine the influence of gender and race on diversion to mental health court. While doing primary research, by interviewing persons who form an integral part of the decision-making process for admission to mental health court was helpful to understand the determination eligibility and admission, it also came with a few limitations.

First, although the population of study, the Nova Scotia Mental Health Court team members, were not a vulnerable population, I did apply to the Saint Mary's University Research Ethics Board for approval. With interviews, there is often a concern for the lack of anonymity, which may hinder the responses of the study participants because there is no expectation of privacy. The participants would then be cautious of their answers to ensure that they receive little to no negative consequences. I wanted to ensure the comfort of my participants, as well as, allow them to voice their honest opinion without fear of possible judgement. The research ethics board helped me to ensure confidentiality for my participants.

Second, due to the limited time I had available for the study, my recruitment efforts were only able to accumulate three participants for the study. If the recruitment process was a bit longer, perhaps I would have been able to accumulate more participants. While three participants are sufficient, the ideas and thoughts may not be generalizable to the overall views of the entire mental health court team. Additionally, I was only able to perform one observation with the time I had. This is a limitation

because one observation is generally not ideal for drawing conclusions about the participants and procedures of the mental health court. Thus, any conclusions made will potentially be biased due to the fact that it stems from having observed the meetings and the court sessions on only one occasion. Similarly, this study was conducted at one mental health court. Mental health courts do not all follow one standard framework, thus, the composition and eligibility criteria of each court differs. This means that my results may only be applicable to the Nova Scotia Mental Health Court.

Third, the composition of my study also poses a limitation. It is important to note that all the participants self-identified as White women. This will affect the findings pertaining to systemic racism. It is difficult to see and understand the experience of others with different social locations. Of course, considering that the study participants have actively been involved with vulnerable populations, it is imaginable that they understand the intricacies of systemic racism; however, having participants of various racial and gender identities may have enhanced the depth of the findings related to racial and gender disparities that exist within the court. The study, therefore, may be biased as it only contains responses and ideas from one racial and gender identity group. Additionally, considering that my study also paid special attention to understanding the experiences of Black men within the mental health and criminal justice systems, it would have been interesting to hear the views of at least one Black man. I had difficulty in applying intersectionality to the data as the participants were not able to identify with the intersectional experiences of Black men with health care. This also made me wonder if my identity as a Black, International female student also helped to shape the data. Nonetheless, I was able to locate intersectionality within the participants and used the framework to identify how the participants intersectional experiences shaped decision-making.

Although these are limitations to the current study, I am confident that the information presented will be able to address the issues at hand and possibly offer insight on whether gender or race

could possibly influence diversion, and if so, what can possibly be done in the future to improve the current circumstances.

Results

This section describes the themes and subthemes that I produced using thematic analysis. Supporting quotes are provided along with the information that was gathered from my observation of the team member meetings and the court session. From the interviews and field notes, three overarching themes were developed. They are as follows: diversity and visibility, accessibility and power. Within each overarching theme, there were three subthemes. A table can be found in Appendix E that describes all themes and subthemes along with supporting quotes.

The first theme, diversity and visibility, describes the various views and the composition of the mental health court team. This includes the visible differences of the team members, diverse cultural differences of both the study participants and the participants of the court, and the diverse referral process. The second theme, accessibility, describes the access or the lack thereof, to mental health court. Within this theme, participants discussed programming availability for potential participants of the court. This includes how risk assessments influence admission to programming, how the mental health court aids access to programming, and the attitudes of potential participants towards court. The last theme, power, describes the dynamics of Nova Scotia Mental Health Court as described by participants. This includes the awareness of the team members concerning participant complexities and differences, and their ability to use discretion.

Theme 1: Diversity and Visibility

Participants of the study stressed the diversified environment of the mental health court. They described the various components of the court in ways that suggest that there is a great deal of variety within the program, and therefore, that it is effective in meeting the target populations. One participant mentioned that they realized soon after working with the court that, while racialized individuals were overrepresented within the criminal justice system, it was not the same within the mental health court which they identified as a problem. They also stressed the importance of having team members who are of different racial and gender identities, with one participant stating, “the visibility piece really helps [because] it’s good for them to be able to see someone that looks like them.” Additionally, the participants spoke about the importance of having a diversified team, as team perspectives affect the way the court functions. Often times, they have to make informed decisions based on the information that is presented to them and it helps to have different perspectives. Some of the participants relayed that their life experiences were diverse even though their skin colour was the same. They spoke about their diversity in terms of life and work experiences, such as working in both the public and private sectors of the criminal justice system. The diverse nature of the mental health court was highlighted by the study participants as a strength that enabled them to make better and more informed decisions.

Subtheme 1a: Referral Source. This subtheme describes how participants of the mental health court first come into contact with this diversionary alternative. All of the participants of the study agreed that the process of referral is quite diverse. One participant said, “it’s a diverse referral process. So, there can be self-referrals, referrals by police, by judges, by lawyers, by family members by clinicians, by members of the community.” Here, the participant explained that there is not a strict criterion for how an individual can be connected to the mental health court as they can be referred by just about anyone who has the belief that there may be a connection between their offence and the

crime committed. While referrals can come from “a variety of sources” it is important to note that one participant stated, “the referrals coming through, generally come from legal aid.” This shows that while referrals can be made by both legal professionals and lay people, the majority of referrals originate from members of the legal community. This subtheme is connected to the current study as referrals are the gateway to accessing mental health court. Without a referral, potential participants do not have access to this diversionary alternative. Thus, it is integral to analyze the “diverse” nature of referral sources.

Subtheme 1b: Team Composition. This subtheme describes the composition of the mental health court team as described by the participants. Specifically, this incorporates the diverse aspects: gender, race, background, and life experiences. The participants described how their experiences in life, along with their racial and gender identity, shaped their perspectives and decisions. One participant said: “I have been fortunate to have all these various experiences that lead me to the place I am.” For this participant, life experience had influenced their decision-making process. In other words, they are able to make informed decisions because of the life experiences that they have had. Another participant reported: “I do have some shared experiences with immigrants.” This suggests that the participant is able to identify with a minority group in a way that possibly influences the way they evaluate individuals who may have a shared history. In addition, one participant highlighted the various personality types present on the team that also helps to influence decision-making: “just by nature of people, some people are more passive, and some are more extroverted.”

The participants also discussed visible aspects of team composition that they believed benefited their decision-making. One participant stated, “we have two judges...one who is Black.” This shows that while positions of power are often held by people with privilege, the Mental Health Court values having an integral member of the team who is also racialized. A participant emphasized that,

“it’s good for them to see someone that looks like them.” Which highlighted the importance of visible diversity on the team. In addition to race, the team members also described the gender composition of the team. Having both men and women on the team allowed the team members to understand the experiences of the men and women who participated in the mental health court.

Interestingly, although the participants reported the diversity of the team members, not only with background and life experiences, but also with visibility, it is important to note that, during my observation of the team member meetings, I did not observe this diverse composition. To elaborate, on my day in attendance, the team members present were all female and visibly White. This highlights that, while there are members of the team who are male and racialized, that was not reflected on the day of my observation, showing that there are days when the court operates without racial or gender diversity.

Subtheme 1c: Cultural Differences. Throughout the study, the participants emphasized that something they tried to keep in mind is that cultural differences may be present among potential participants of the mental health court. One participant noted:

“It became clear to me that one of the reasons, I think the primary reason, is that there was no diagnosis. The reason that there was no diagnosis was because, due to intergenerational systemic racism, segments of the population do not and have not accessed the health care system, because the health care system has not been able to respond to the needs of those population or there is a mistrust/distrust. So, people, especially with mental illness choose not to access the system when they are already marginalized and racialized.”

The participant believed that racialized individuals have not been visible within the mental health court due to external factors causing them to resist the further marginalizing effects of the health care system

and mental illnesses. Furthermore, the participants spoke about systemic biases affecting racialized groups and its effect on their access to the services. One participant stated, “We see an African Nova Scotian male go before the [traditional] court and the assumption is that he is pro-criminal and probably involved in gangs.” This highlighted how stereotypical views may still be prevalent within the traditional court system and affect opportunities for referral to diversionary alternatives.

The participants also described other factors that should be taken into consideration for racialized and Indigenous offenders such as “intergenerational trauma” and “residential schooling”. Additionally, the everyday stressors that are experienced by racialized individuals must be acknowledged. This includes racialized individuals not “receiving the same opportunities that are afforded to mainstream members.” In other words, people of colour are often disadvantaged due to various factors, such as social location. Thus, they often do not have access to basic necessities, such as suitable housing. Additionally, racialized people do not have access to resources that would possibly allow them to take advantage of diversionary alternatives as was noted by one participant: “I cannot think of a time that any of these private lawyers had a Black client, male or female.” I interpreted this as indicating that Black individuals who often come in contact with the criminal justice system cannot afford the legal representation of private lawyers. This highlights that the quality legal representation may affect diversion.

Participants also discussed the differences of accessing the system for men and women. One participant described that women often are the caretakers of the home. Considering that, at times, the mental health court program requires participants to live away from home for a period time to complete the program, this may have a negative effect on the participation of women. The participant stated, “For men it’s easier because they do not necessarily have child care responsibilities.” The participant

then went further to say that this does not mean that men do not have to take care of the children, but historically, and sometimes culturally, this has been the role of women.

A participant highlighted that the cultural differences within Canada itself also should be taken into consideration. Canada is often seen as a multicultural society considering its willingness to welcome immigrants. That being said, it is important to take into consideration how diverse cultural practices may inform beliefs about participating in the mental health court. The participant described the prevalent use of medication to treat illness within Canada, adding that the court also followed a medical model. Some cultural beliefs may support practices that do not include the use of prescription medication. In fact, many believe that the best healing is done holistically. The participant spoke about the importance of keeping this in mind when designing programming for potential participants of the mental health court.

Theme 2: Accessibility

This theme describes access to the mental health court. The participants discussed the ways in which they try to increase the accessibility of the program. They discussed how they tried to ensure that persons within the community are aware of their existence. They often do this by writing literature, doing interviews, and engaging with social media, in order to reach a broad range of individuals. Additionally, they have included other programs in the mental health court to ensure that persons who may not necessarily be eligible for the mental health court program may still have a chance to receive diversionary alternatives to connect them to services. One participant stated: “I think we are really good with connecting them with services,” highlighting the success they have had thus far in meeting the needs of participants. Furthermore, the mental health court has expanded their service provision since they began ten years ago. One participant spoke about service availability in the community for people with borderline personality disorders allowed the court to improve its accessibility: “During the first

five years, we did not take on a lot of borderline personality disorders [...] because there we're no program services available.”

Subtheme 2a: Risk Assessment. Within this subtheme, the participants referred to the process by which they determine the manageability of potential participants of the mental health court. In the beginning of the mental health court, the team did not assess risk, which has now been implemented due to the realization that risk management was an integral component to the success of the program. One participant stated, “We need to be satisfied that we can manage the risk.” This highlighted how integral risk assessment is to a person’s acceptance into the program. Failure to attend to risk puts the programs integrity at risk and jeopardizes the opportunity for other persons who may be eligible. The participants described alternative programs that have been developed to provide treatment and support services to people perceived to be ineligible for the mental health court. One of these alternative programs will be discussed in the next subtheme. Considering the discretionary powers held by the team members of the court, it is important to locate how risk assessment may relate to bias. The issue of whether stereotypical attitudes present within the criminal justice system may reinforce beliefs that racialized people are unmanageable due to their perceived ‘violent nature’, required further investigation.

Subtheme 2b: Accommodation. This subtheme refers to the steps taken by the team members to increase access to programming. Many people are referred to the mental health court but are not eligible to participate in the program. The court team also recognized that certain racialized groups were overrepresented in the criminal justice system yet underrepresented within the mental health court. They realized that external factors, such as intergenerational trauma and systemic racism, played a role in this. To address this problem, they created a program under the umbrella of the mental health court to accommodate racialized individuals who were in need of treatment but not necessarily eligible

for the mental health court program. In addition to this, the court has made new partnerships to reach the wider community. One participant stated: “We now have a partnership with Nova Scotia Brotherhood...who is able to reach out in particular to African Nova Scotian males.” This partnership likely arose from a need to ensure that African Nova Scotian men were able to access diversion, when applicable. Likewise, the court also now has representation from Mi’kmaq Legal Support Network to accommodate Indigenous participants. Furthermore, the services to which they connect individuals, address needs beyond mental illness, such as instances of domestic violence. Participants described how they connect individuals to support services, such as “E Fry”, to address the unique needs and circumstances of the mental health court participants.

The participants also described how they try to work with community partners to make full use of the services they make available to the participants of the court. One participant stated: “Every month we try to invite one of our community partners so that we can understand more about what they do,” highlighting that the team actively makes the necessary connections that will advance the goals of the court.

Subtheme 2c: Willingness and Hesitance. This subtheme describes the attitudes of potential participants of the Nova Scotia Mental Health Court. The participants stressed the notion that the program is voluntary. This means that, even if an individual has been deemed eligible for participation, in the end, it is ultimately the individual’s decision, whether or not to participate. Although the majority of individuals are willing to voluntarily agree to participate in programming, some people are hesitant or reluctant. One participant stated: “The motivation and willingness has to be on their part.” This highlights that the court cannot force a participant to engage with the support and treatment services that they have provided; rather, the participant must desire it and actively work towards using the support services and receiving the treatment.

Willingness and hesitance can be located within a person's life experiences and background. People may be hesitant to access the mental health court based on their experiences with the criminal justice system. It is important to understand how a person's attitude may also hinder their access to diversion to mental health court, considering that it is a voluntary program. This subtheme raises important questions about whether people of colour refuse to access diversion because they do not desire to participate due to their beliefs and attitudes towards mental illness.

Theme 3: Power

This theme describes the dynamics of the Nova Scotia Mental Health Court team members. While all participants have an equal say and vote when determining eligibility, there are some members on the team that possess more power. The judge, for instance, holds the power to make the final decision about a person's eligibility for the court, despite the votes of the other team members. Likewise, the Crown Attorney, holds the power of veto in which they are able to decide whether or not to accept a referral. This shows that, indeed, there is a hierarchy, even though the participants did not believe that the power is distributed unevenly throughout the team. Other than those powers, there are members of the team who have the power to reach populations that their fellow colleagues may not. One participant noted that some team members are "able to build a relationship with African Nova Scotian men." This is significant because this is a hard to reach population. Thus, some team members have a special power of making connections that other team members do not. The clinicians also possess a level of power as they are responsible for performing the screenings that aid in the determination of eligibility and service needs. One participant noted "With screenings we are able to identify where the needs are." The way in which power is distributed within the team raises important questions about the use of discretion and the potential influence of implicit bias.

Subtheme 3a: Awareness. This subtheme describes the level of awareness about biases and potential shortcomings of the court. The participants were generally open about the prevalence of bias within the criminal justice system as a whole, and how it trickles down to the mental health court. One participant stated, “There are some within the criminal justice system that are very comfortable with our Eurocentric adversarial process.” This highlights the knowledge the participant has regarding the colonial attitude of the criminal justice system, and how this “colonial attitude” reinforces systemic biases that may affect the mental health court. The creation of the Judicial Monitoring Program emerged as a response to the fact that the racial composition of the mental health court did not match the criminal justice system. Interestingly, the participants advised me that, although there are White individuals in the Judicial Monitoring Program, most of the participants are racialized. One participant noted: “I’m not sure how well that [race] has been documented, but there is a need,” highlighting the need to better assess the racial composition and needs of mental health court participants.

The participants were aware of their potential shortcomings: “We all have our own inherent biases.” While the participants did believe that their system for determining eligibility and providing services was effective in meeting the needs of all participants of the court, they also agreed that there was room for improvement, and they were eager to continue to improve the conditions of the court. Given this heightened awareness of biases and systemic racism, the participants shared that the court has tried to make special consideration for racialized people to ensure they are not overlooked. One participant stated that “If I had two files that were identical in every way, but one person was White and one person was Indigenous or African Nova Scotian, I would consider them differently.” Some participants mentioned that they would, perhaps, give more consideration to minorities due to the barriers to mental health services that they often experience.

Subtheme 3b: Discretion. This subtheme describes the discretion by the team members as it pertains determining eligibility to the mental health court. There are times when discretion played less of a role because there is a clear connection to a person's offending and their mental illness. However, there are times when the connection was unclear, and team members must utilize their discretion to come to a decision. Participants described how, most times, they were able to reach a consensus and agree; however, there were times when a consensus could not be reached. At that point, the judge will be called upon to listen to both sides of the argument and use their discretion to make a final decision. These situations of unclarity are when biases can leak in.

The participants also described how clinicians have a responsibility to screen potential participants and "take into consideration" where a person is at and where they need to be met. Forensic psychologists can be consulted to assist with determining eligibility. The weight of this information is important to recognize, since methods and tools used to assess eligibility have the potential to be biased. While the participants have tried their best to use their life experiences in positive ways to inform their opinions, they acknowledge the possibility for subconscious bias to influence their decisions.

Discussion

The objective of this research was to examine the influence of race and gender on diversion to mental health court. With the use of interviews and an observation I set out to discover if these factors affected whether people receive diversionary alternatives. I performed a thematic analysis that identified three themes that emerged from the data. Within this section I will discuss the connection to the literature and implications of the research.

Influence of Race

It was clear during the interview process that all participants were aware of the fact that the racial and gender composition of the incarcerated population did not match the characteristics of the mental health court. The court set out to understand why this was occurring, although they had an idea that it had something to do with systemic racism, intergenerational trauma, and an overall lack of education within the criminal justice system. As a result, they strived to diversify both the participants of the mental health court, along with the team members who make the decisions. The participants noted the representation of the African Nova Scotian community and the strides made towards including representation from the Indigenous community. The participants seemed encouraged by these additions, since they realized that people's decisions are often informed by their own perceptions and life experiences.

Although the study participants have been trained to be advocates, often times, it is difficult for people to see past their own biases. One of the tenants of critical race theory emphasizes racism as normalcy which is simply that racism is only the most recognizable in blatant form (Delgado & Stefancic, 2007). This simply means implicit biases, such as a belief that certain members of society are inherently violent, can be grounded in racist ideology and missed because it is the normalized view held by the majority of the society. The participants of this study highlighted their own unique experiences which added to the diversity of the court. This can be tied into intersectionality as they conveyed that, contrary to popular belief, having the same racial identity as someone does not mean that your experiences are the same; there are also other differences (e.g., cultural) that may be at play. Culture was recognized as an important factor in the court that needs to be considered especially in systems that operate in "colour-blind" and culture blind ways. The mental health court, however, has taken steps to mitigate their colour and culture blindness by diversifying their team and services. Being

aware of the views and experiences of racialized people is important for increasing access to mental health court, and for people to succeed.

With this recognition that people's life experiences or intergenerational experiences will shape how the criminal justice system responds to them, the mental health court strives to create a balance. Some of the steps taken to achieve this balance include the creation of programs under the umbrella of the mental health court in order to meet the needs of particular communities that were not accessing the mental health court. While many people are not eligible to participate in the mental health court, many of them have received treatment and support services under the Judicial Monitoring Program. This program was created as a response to the realization that there were not many racialized individuals within the mental health court. This program follows individuals within the community and ensures that they receive the necessary treatment and support services for a period of twelve months. Upon the successful completion of the program, the charges against the individual are dropped. The participants noted that while White people are also in the Judicial Monitoring Program, most of the participants are racialized.

While the participants accept that the racial disparities within the court could be due to biases among team members, they stress that racialized people may not be receiving access to diversion because they are not being referred. They described a referral process that is very diverse in terms of the referral sources. In accordance with the five-year report, it is clear that, while the referral process is diverse, the types of individuals referred are not, with more White persons being referred than non-White people. The participants attribute this to the lack of education, and perhaps bias, among the people making the referrals. One participant noted that the majority of referrals are from legal aid which suggests that many of the persons who are involved with the criminal justice system are from a lower socio-economic background and are represented by potentially overworked public defence

lawyers. Racialized people involved with the criminal justice system may not have access to resources that would allow them to seek private counsel. While legal aid may do its best, it is imaginable that their caseload hinders them from going the extra step for every client. This may contribute to people of colour not being referred as often to mental health court.

In addition to this, self-referrals and referrals by family or members of the community may not be effective simply because people may not be aware of the court's existence, or they may have beliefs that create reluctance to engage with the mental health court. There are many communities in Canada that are predominantly Black or Indigenous that may have no idea about alternatives, such as the mental health court, in which they can receive treatment and support for issues they may not even be aware that they have. I, as an International Black female student, had no knowledge of this court's existence prior to my thesis. Thus, this could also contribute to the lack of referrals being made for persons of colour.

As aforementioned, I also conducted an observation in which I observed both the pre-court meeting and the court session. I noted a few things that I found to be particularly interesting. While the participants did inform me of the visibly diverse nature of their team meetings, all of the team members present were all visibly White. This shows that, while racialized people are on the team, they are not always present, which could possibly affect any decisions made on the day that they are absent. I also observed that there are some members of the team were more vocal than others. Although participants attributed this to different personalities' it also signals issues of power. While the power dynamics were framed as being equal, a more expressive individual who feels privileged and empowered to voice their opinions may have more influence on a decision. I did observe however, that all team members were particularly respectful of each other's opinions, and, although the judge has more decision-making powers, she appeared to be interested in the opinions of all members of the team.

Influence of Gender

While the participants acknowledged that race influenced access to diversion, they were not so sure that gender also played a role. In fact, many of the participants stated that the gender distribution of the court matched what would be found in prison. While this is true, there were some things that stood out to me and suggested that gender may have an influence on diversion. Firstly, the participants described that, sometimes with programs, such as their Court Drug Monitoring Treatment Program, there is a requirement that the individual remove themselves from their home and live elsewhere for a period of time. One participant mentioned that this is easier for men than women because of gender roles. As a result of not wanting to leave their children behind, even though it is for the benefit of both themselves and their families, a woman may reconsider. Additionally, housing is less available for women than men; this could mean that a woman may not be eligible for treatment simply because there is no space. These gendered issues are something to think about as they likely influence access to diversion.

On the day that I was present at the court, contrary to the low percentage of females that were reported in the five-year report, there were quite a few women in attendance—more than I was expecting. This may signal a shift from the time when the five-year evaluation was completed as was suggested by a participant who stated, “I believe that the numbers in the ten-year report will be significantly different.” In addition to this, during the pre-court meetings I observed, the team members present were all White women. While intersectionality tells us that all women do not have the same experiences (Crenshaw, 1989), it is imaginable that there are some shared experiences that inform their decisions collectively. Thus, given that there were no male or racialized team members present that day, they were missing particular perspectives on the team. I was unable to assess whether this affected decisions to be made about eligibility, but it may be an area in need of attention.

Diversion for Black men. In discussing Black men, the participants often had a difficult time relating to the intergenerational and life experiences that may influence diversion for Black men to the mental health court. While one participant did explain that they are not especially familiar with how racism has affected Black men in the court, they did explain that they have received education on their plights from their partnership with Nova Scotia Brotherhood. This initiative has allowed them to understand the broad experiences of Black men. I do believe this training is important, especially because the team composition is mostly White. This education may be helpful especially on days when a racialized male perspective may be absent, allowing the team members to make informed decisions.

During my observation, it became quite clear to me that there were few Black men in the program. I only observed two Black men at the court that day. Therefore, while the court is working to improve accessibility, it is evident that there still is some ways to go. During the pre-court meeting, I was alerted to the race of the individuals when necessary, and there were quite a few Black persons on the docket; however, it became evident at the court meeting, that the majority of these people were female. This led me to wonder about why Black men may be less likely to access the court than White men or Black women. One participant informed me that they do not take clients who are accused of murder. Ferber (2007) discussed how masculinity for Black men has historically been linked to their animalistic nature. This animalistic nature can also be likened to violence, as some animals are known to be aggressive in nature. Thus, perhaps the types of crimes that are usually committed by Black men are not eligible to receive diversion, leading them to remain in the traditional court system whether having a mental illness caused this crime or not. Additionally, the court also does not take on substance-related illness which could also be a barrier if many Black men also partake in substance abuse. These potential issues require further study. It might also be seen that Black men are less open to help-seeking. Wade and Rochlen (2013) indicate that manhood for Black men can be defined in non-

traditional terms which includes pride and family. Simply put, Black men can be prideful and their ability to provide for their families determines who they are as a man. Additionally, racialized men's notions of manhood are located within personal attributes, such as self-reliance and toughness (Livingston et al., 2018). Thus, they are hesitant to seek help because they believe mental illness affects their ability to provide for others, diminishing their manhood (Livingston et al., 2018). With this in mind, it is reasonable to believe that Black men might refuse help-seeking because their pride does not allow them to admit that they may be sick and in need. Additionally, they may view being sick as a factor that could affect their ability to provide for their families and, thus, reject the idea of even having a mental illness. Perhaps future research should shine a light on the unique barriers Black men face in relation to accessing the mental health court.

Conclusion

The results of the study suggest that it is possible for race and gender to influence diversion to mental health court. This, however, can be both positive and negative. The participants were aware of systemic biases that are often prevalent within the criminal justice system. With this in mind, they have taken the steps to give more consideration to racialized and marginalized individuals. While this is a noble step to take, it was evident that the larger problem likely stems from the referral process. The mental health court does what it can once individuals have been referred; but, they can only work with who has been referred. Learning more about what happens at the point of referral is an important next step. The diversity of the team composition could be improved, ensuring that, at any given time, they are representing different racial and gender identities. This study found some signs that gender can influence diversion to mental health court, including access to the court and availability of resources. This topic would be interesting to study more in-depth.

The findings also indicate that Black men have yet to properly penetrate the mental health court as per my observation. It is not often clear to the team members why Black men may not necessarily be receiving referrals; however, they have taken steps to increase their understanding of this particular groups plights and experiences. The participants of this study have delighted in their fairly new partnership with Nova Scotia Brotherhood, which has allowed them to connect with the African Nova Scotian community. I believe that the steps in resolving any disparity include becoming aware of its existence, acknowledging that it is a problem and then taking steps to mitigate the issues. I believe that the Nova Scotia Mental Health Court, has taken important steps in the right direction, and will continue to progress in order to ensure that particular groups are not left out.

Alas, there is still ways to go in improving access to services for racialized and marginalized persons. While the implications of this research have highlighted the efforts of the Nova Scotia Mental Health Court, the participants themselves also acknowledge the work to be done. Hopefully, this research has provided insight into ways in which the efforts of the mental health court may advance and better meet the needs of its target population.

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Appendix B: Informed Consent Form**INFORMED CONSENT FORM****A Critical Examination of the Influence of Race and Gender on Diversion to Mental Health Court
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INODUCTION

My name is Ariann Greenidge, a fourth year Criminology student at the Saint Mary's University. As a part of my honour's thesis, I will be conducting research under the supervision of Dr. Jamie Livingston.

You are being invited to participate in this research project. Participation is voluntary and it is your decision whether to participate or not.

Before you make your decision, it is important that you know and understand the purpose of this study, the possible risks of participating and the possible benefits you may receive. This informed consent form will explain the details of the study.

Please read through this consent form carefully. You may take as much time as you like. You also have the option of taking it home and reading it if you would like to. Make a note of anything you not understand or would like further clarification about.

PURPOSE OF THIS RESEARCH

The purpose of this research is to investigate the influence that race and gender may have on diversion to mental health courts. It is known that people of colour make up less than half of the Canadian population, however they are over represented within the criminal justice system.

Additionally, people with mental illness are also over-represented within the criminal justice system. With all these over-represented populations, it is imaginable that there would be some overlap of non-White offenders who also have a mental illness. Given this, the study would like to explore the degree to which people of colour may be underrepresented in the mental health court and possibly determine how and why?

INVITATION TO PARTICIPATE

You are eligible to participate in this study if you are a core team member of the Nova Scotia Mental Health Court, who has worked along with the court for at least three (3) months.

WHAT WILL I BE ASKED TO DO?

You will be asked to participate in an interview, during which you will be asked questions pertaining to the mental health court. These questions will generally be centered around eligibility criteria and gender and racial disparities. The interview will be audio recorded. If you are uncomfortable with being audio recorded, you may opt out of this interview without penalty.

You will take part in one interview that will last up to one (1) hour. You can choose a public location for the interview (e.g. Tim Hortons) or if you would like, the interview can also take place at the Nova Scotia Mental Health Court. The study will take place from March 11th, 2019 to April 1st, 2019

WHAT ARE THE POTENTIAL BENEFITS OF THIS RESEARCH?

The potential benefits of this research are that the findings may reveal information that could help the program develop in a way that better meets the needs of people of colour. Additionally, the study may increase the understanding of potential systemic biases and racism within the criminal justice system.

WHAT ARE THE POTENTIAL RISKS FOR ME?

The potential risks you will face as a result of this research are minimal. Based on the answers you give to the questions you are asked in the interview; you may feel conflicted about any decisions that you have made in the past pertaining to the denial of entry of people of colour into the mental health court. Perhaps you may believe that you have unconsciously stereotyped or have been biased in the past and this may cause you to feel guilty.

Additionally, there is a risk that you may say things that are negative about the mental health court and this could affect your relationship with the court or have job related outcomes. In order to mitigate these risks, I will strive to ensure that your identity remains anonymous and I will seek your permission for any quotes I desire to use. However, it is important that you note that this study has a relatively small sample size, therefore anonymity cannot be guaranteed. In order to minimize this risk, I will provide you a copy of any direct quotes I use in the findings to ensure that you are comfortable. If you do not wish to be direct quoted, the quote will not be used per your request.

WHAT WILL BE DONE WITH MY INFORMATION?

There will be information collected that will be directly identifying such as your name, your role, your gender and your race. Directly identifying information will only be accessible by the principal investigator and the faculty supervisor.

The data collected in the research will be stored on the secure server of the Saint Mary's University by the principal investigator. The data will remain on the server until the principal investigator loses access to the server upon graduation in May 2019. The personally identifying information that is collected will be stored separately from interview answers in order to ensure that your identity remains anonymous. Your name and personal information will not be used in the final report.

Once all the data are collected and analyzed for this study, I plan on sharing the information with the research community through my undergraduate honour's thesis. The thesis will be available online through the repository of the Saint Mary's University.

When the thesis has been completed and marked, approximately by May 2019, if you so choose, I will email you a copy of it so that you may have the results.

HOW CAN I WITHDRAW FROM THIS STUDY?

You are free to withdraw from this research study at any time without penalty. During the interview, if there are questions that are uncomfortable that you do not wish to answer you will be asked whether you wish to just skip that particular question and move on to another or whether you would like to end the interview all together. If you choose to end the interview, you will be asked whether or not you would like your data to be removed from the research. Data may be removed up until the findings have been published (e.g. in a Thesis).

HOW CAN I GET MORE INFORMATION?

If there are any additional questions you may have regarding this study or you need further clarification on anything that has been said in this consent form, feel free to contact Ariann Greenidge at ariann.greenidge@smu.ca or Dr. Jamie Livingston at jamie.livingston@smu.ca or 902-491-6258

Certification

The Saint Mary's University Research Ethics Board has reviewed this research. If you have any questions or concerns about ethical matters or would like to discuss your rights as a research participant, you may contact the Chair of the Research Ethics Board at ethics@smu.ca or (902) 420-5728.

Signature of Agreement:

A Critical Examination of the Influence of Race and Gender on Diversion to Mental Health Court.

I understand what this study is about, appreciate the risks and benefits, and that by consenting I agree to take part in this research study and do not waive any rights to legal recourse in the event of research-related harm.

I understand that my participation is voluntary and that I can end my participation at any time without penalty.

I have had adequate time to think about the research study and have had the opportunity to ask questions.

Participant

Signature : _____ Name (Printed) : _____

Date : _____

(Day/Month/Year)

Principal Investigator

Signature : _____ Name (Printed) : _____

Date : _____

(Day/Month/Year)

Please keep one copy of this form for your own records

Appendix C: Interview Guide

Interview Questions

Interviewee - _____

The First series of questions I will ask you pertain to your personal information that will help me to understand a little more about you.

- Personal Information:
 - a. What is your gender identity? _____
 - b. What race do you identify as? _____
 - c. How long have you worked with the Nova Scotia Provincial Mental Health Court Program? _____
 - d. What is your role within the Mental Health Court Program? _____

The Next Series of questions are regarding the referral process.

- Referral
 - a. How do referrals happen?

These questions will now be geared towards the admission process to help me further understand the intricacies of it.

- Eligibility Criteria
 - a. Can you tell me about the current process of the mental health court when deciding who is accepted?
 Probes:
 Team Composition, Power distribution, Selection (who), reaching of decisions.

- b. Do you see any potential biases that may be involved in determining eligibility?
 Probes:

Stereotyping, preferential treatment towards a particular group.

- c. How effective to you believe this admission process in identifying candidates who are in need of treatment

These series of questions are centered around racial disparities within the court. I am hoping to find out your thoughts and what you think could be a remedy to these problems.

- Racial Disparities

- a. The five-year evaluation report states that approximately 85% of persons referred to the court are Caucasian while 16% are non-White. Can you tell me what you think the reason for this may be?

- b. The five-year evaluation report for the mental health court says that approximately 88% of persons admitted to the court are Caucasian while approximate 12% of persons are non-White. Can you tell me some ways that the court could improve on the number of non-white persons admitted?

- c. Can you offer any insight on what you think the court could do to better meet the needs of non-White persons within the justice system?

These questions are specifically geared towards gender disparities as it pertains to referral and admission of males and females. I am hoping to learn more about whether gender is influential in admission to the program.

- Gender Disparities

- a. According to the five-year evaluation report of the mental health court program 63.8% of persons referred to the court are male, while 36.3% are female. What can you tell me about the greater proportion of referrals for males versus females?

- b. According to the five-year evaluation report of the mental health court, 65.4% of persons admitted are male while 34.6% are female. Can you tell me about the seemingly large influx of males?

- c. How effective is the mental health court in meeting the needs of both males and females within the program?

Probes: Families, jobs, domestic violence

These questions are specifically geared toward Black men. I am hoping to understand more this racial group's existence within the program.

- Black Men

- a. Can you tell me about the men who identify as Black within the program?

Probes: Openness about mental illness, compliance, desire to be in the program

- b. Going back to the statistics in the five-year report, 85% of persons referred is Caucasian and 63.8% are male, it is safe to assume that majority of the males referred are Caucasian. Can you tell me why you believe Black men may not be receiving more referrals?

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- c. How can the court improve in a way that allows them to better meet the needs of Black men with mental illness within the criminal justice system?
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Appendix D: Feedback Letter**FEEDBACK LETTER****A Critical Examination of the Influence of Gender and Race on Diversion to Mental Health Court.**

SMU REB File # 19-065

Principal Investigator

Ariann Greenidge
Saint Mary's University
Criminology
923 Robie Street, Halifax, N.S;
Email: ariann.greenidge@smu.ca

Faculty Supervisor

Dr. James Livingston
Saint Mary's University
Criminology
923 Robie Street, Halifax, N.S
Phone: (902) 491-6258
Email: jamie.livingston@smu.ca

I would like to thank you for your participation in this study.

As a reminder, the purpose of this study is to investigate the influence that race and gender may have on diversion to mental health courts. It is known that racialized individuals make up less than half of the Canadian population, however they are over represented within the criminal justice system. Additionally, people with mental illness are also over-represented within the criminal justice system. With all these over-represented populations, it is imaginable that there would be some overlap of racialized offenders who also have a mental illness.

The data collected during interviews will contribute to a better understanding of the plight of racialized individuals and perhaps an increased understanding the issues that are still present within the criminal justice system.

Please remember that any data pertaining to you as an individual participant will be kept confidential and your identity will remain anonymous. Once all the data are collected and analyzed for this project, I plan on sharing this information with the research community through my honours thesis.

If you are interested in receiving more information regarding the results of this study, or if you have any questions or concerns, please contact me at either email address listed at the top of the page.

If you would like a summary of the results, please let me know by providing me with your email address. When the study is completed, I will send it to you. The study is expected to be completed by May 2019.

Appendix E: Description of themes and Subthemes

Themes and Subthemes	Description	Supporting Quotes
<p>1) Diversity & Visibility</p>	<p>This theme includes the description of ideas and composition of the Nova Scotia Mental Health Court Team as perceived and discussed by the participants. This also includes the lack of diversity.</p>	<p><i>“... although the indigenous and African Nova Scotian Population are overrepresented in the court system and in our jail’s we’re not seeing them in the mental health court program...”</i></p> <p><i>“...I’ve worked with the poor, the mentally ill and the drug addicted...”</i></p> <p><i>“..it also helps that we now have a number of racialized judges in our courts...”</i></p> <p><i>“...during our first five years, we did not take on a lot of borderline personality disorders...”</i></p> <p><i>“we had a clinician that was African Nova Scotian...”</i></p> <p><i>“...the visibility piece really helps.”</i></p> <p><i>“...we take everything from a \$5 dollar shoplifting to attempted murder.”</i></p> <p><i>“the barrister society has added some encouraging elements so people from other backgrounds go into law...”</i></p> <p><i>“...less diverse in the workplace...”</i></p>

		<p><i>“we have marguerite center where the females can go...”</i></p> <p><i>“...male or a female, everybody’s views and everybody’s choices are individual...”</i></p>
<p>a. Referrals</p>	<p>This subtheme describes the description of how participants of the mental health court first come in contact with the diversionary program.</p>	<p><i>“It’s a diverse referral process. So, there can be self-referrals, referrals by police, by judges, by family members, by lawyers, by clinicians, members of the community...”</i></p> <p><i>“...people are referred by a variety of sources.”</i></p> <p><i>“A referral can happen from a number of different ways...”</i></p> <p><i>...referrals generally come from legal aid...</i></p>

<p>b. Team Composition</p>	<p>This subtheme describes the composition of the nova scotia mental health court team and describes the diverse aspects of gender, race, background and life experiences.</p>	<p><i>“I worked at legal aid...”</i></p> <p><i>“...I’ve been fortunate to have all these various experiences that lead me to the place I am”</i></p> <p><i>“...now have a partnership with Nova Scotia Brotherhood...”</i></p> <p><i>“I don’t come from a marginalized community...”</i></p> <p><i>“...Mi’kmaq legal services...”</i></p> <p><i>“we have two judges...one who is black...”</i></p> <p><i>“... we had no representation from people who had mental health issues or had been through the court process and we now have several...”</i></p> <p><i>“... I think it is important to have males on the team...”</i></p> <p><i>“...one of our clinicians is male...”</i></p> <p><i>“...different views...”</i></p> <p><i>“... I do have some shared experiences with immigrants...”</i></p> <p><i>“it’s good for them to be able to see someone that looks like them...”</i></p>
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<p>c. Cultural Differences</p>	<p>This subtheme describes the differences in participant and team member background and cultural practices that may or may not act as barriers to diversion.</p>	<p><i>“...just by nature of people, some people are more introverted, and some are more extroverted...”</i></p> <p><i>“...due to historic and intergenerational trauma...”</i></p> <p><i>“...racialized and marginalized...”</i></p> <p><i>“...intergenerational system racism...”</i></p> <p><i>“...residential schools...”</i></p> <p><i>“...abuse...”</i></p> <p><i>“I grew up in a working-class family...”</i></p> <p><i>“...everyday stressors..”</i></p> <p><i>“...trusting...”</i></p> <p><i>“...the assumption is that they are pro-criminal, probably involved in gangs..”</i></p> <p><i>“...the education they received in school was not the same opportunities that are afforded mainstream members...”</i></p> <p><i>“...immigrants...”</i></p> <p><i>“...for men it’s easier because they do not necessarily have child care responsibilities...”</i></p>
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		<p><i>“...I cannot think of a time that any of these private lawyers had a black client, male or female...”</i></p> <p><i>“...there are cultural things that we don’t know...”</i></p> <p><i>“...in Canada, they medicate everything...”</i></p> <p><i>..he said I’m involved because black men won’t go to the doctor...</i></p> <p><i>“...they won’t talk about their issues, but neither will a lot of white men, so I think it is a male-female divide in that way...”</i></p> <p><i>...generational...</i></p> <p><i>“..has less to do with a person’s culture or background..”</i></p> <p><i>“...historic and intergenerational systemic racism”</i></p> <p><i>“...has not had contact with the system in the past..”</i></p> <p><i>“..Need to be better educated and informed on cultural diversity, cultural competence and cultural humility..”</i></p>
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<p>2) Accessibility</p>	<p>This theme describes the access or lack thereof that participants have to services via the Nova Scotia Mental Health Court as described by the participants.</p>	<p><i>“...Access to judicial monitoring.”</i></p> <p><i>“during the first five years, we did not take on a lot of borderline personality disorders...”</i></p> <p><i>“...I think we’re really good with connecting them with services...”</i></p> <p><i>“...we don’t assist directly, but we connect them with services...”</i></p>
<p>a. Risk Assessment</p>	<p>This refers to the process that the team members conduct in order to determine the manageability of potential participants of programming.</p>	<p><i>“we need to be satisfied that we can manage the risk...”</i></p> <p><i>“...there are times when someone has committed a serious offence, they are unwilling to take medication and at risk of committing further offences...”</i></p> <p><i>“In the beginning, we did not assess risk...”</i></p> <p><i>“...if we cannot manage someone’s risk in the community, we put our whole program in jeopardy and integrity...”</i></p> <p><i>“...if we don’t know what’s going on, we can’t help you...”</i></p> <p><i>“...they’re the ones we feel that we can help...”</i></p>

		<p><i>“...we take into consideration the level of risk...”</i></p>
<p>b. Accommodation</p>	<p>This subtheme refers to the steps taken by the court team members to increase awareness of the court’s existence and access to programing as described by the participants.</p>	<p><i>“...every month we try to invite one of our community partners so that we can understand more about what they do...”</i></p> <p><i>“...we’ll try to connect them with the mental health community ...”</i></p> <p><i>“...we created another little program under the umbrella of the mental health court called the Judicial Monitoring Program...”</i></p> <p><i>“we now have a partnership with Nova Scotia Brotherhood...who is able to reach out in particular to African Nova Scotian males...”</i></p> <p><i>“...there is now a borderline personality clinic...”</i></p> <p><i>“...we would try to connect a woman with E Fry...”</i></p>
<p>c. Willingness & Hesitance</p>	<p>This subtheme describes the attitudes of potential participants of the Nova Scotia Mental Health Court as described by the participants.</p>	<p><i>“...willing to commit...”</i></p> <p><i>“...don’t want a person to go through the mental health court...”</i></p>

		<p><i>“...I don’t want medication...”</i></p> <p><i>“...the program is voluntary...”</i></p> <p><i>“...the motivation and willingness has to be on their part.”</i></p>
3) Power	This theme describes the dynamics of the composition of the Nova Scotia Mental Health Court as described by the participants.	<p><i>“...able to build a relationship with them...”</i></p> <p><i>“when we do a screening process we are able to identify where the needs are...”</i></p>
a. Awareness	This subtheme describes the awareness or lack thereof, of participants in the discussion of biases and potential pitfalls of programming.	<p><i>“...although the African Nova Scotian and Indigenous populations are overrepresented in the court system and in our jails, we’re not seeing them in the mental health court? – why is that?”</i></p> <p><i>“...has not always been documented, but there is a need.”</i></p> <p><i>“...there are some within the criminal justice system that are very comfortable with our Eurocentric adversarial process...”</i></p> <p><i>“...If I had two files that were identical in every way but one person was white and the</i></p>

		<p><i>other was indigenous or African Nova Scotian, I would consider them differently. ”</i></p> <p><i>“ ...we would give more consideration to minorities... ”</i></p> <p><i>“ ...I guess its biased on the parts of usually defence counsel... ”</i></p> <p><i>“ ...we have two judges who are very aware... ”</i></p> <p><i>“ ...we all have our own inherent biases... ”</i></p> <p><i>“I think it’s very effective”</i></p> <p><i>“I think it’s working the way it functions, however there is always room for improvement”</i></p> <p><i>“I’m not sure there are any reasons on our part... ”</i></p>
<p>b. Discretion</p>	<p>This subtheme describes the power possessed by key players of programming as it pertains to decision making as describes by participants.</p>	<p><i>“ ...we may disagree, but we respect each other’s opinions ”</i></p> <p><i>“ ...determine whether or not they can provide us an opinion... ”</i></p> <p><i>“ ...they take into consideration... ”</i></p> <p><i>“ ...when we’re assessing the situations ”</i></p>

		<p><i>“...you have to look at where they are...”</i></p>
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Appendix F: Certificate of Research Clearance



RESEARCH
ETHICS BOARD

T: 902.420.6728
F: 902.420.6772
ethics@smu.ca

CERTIFICATE OF RESEARCH ETHICS CLEARANCE

This is to certify that the Research Ethics Board has examined the research proposal:

SMU REB Registration Number:	19-065
Title of Research Project:	A Critical Examination of the Influence of Gender and Race on Diversion to Mental Health Court.
Faculty, Department:	Arts, Criminology
Faculty Supervisor:	Dr. Jamie Livingston
Student Investigator:	Ariann Greenidge

and concludes that in all respects the proposed project meets appropriate standards of ethical clearance and is in accordance with the Tri-Council Policy Statement: Ethical Conduct of Research Involving Humans (TCPS 2) and Saint Mary's University relevant policies.

Clearance Period: March 9, 2019 – March 9, 2020*

CONTINUING REVIEW REPORTING REQUIREMENTS

ADVERSE EVENT
Adverse Event Report: <http://www.smu.ca/academic/reb/forms.html>
Adverse events must be immediately reported (no later than 1 business day).
SMU REB Adverse Event Policy: <http://www.smu.ca/academic/reb/policies.html>

MODIFICATION
FORM 2: <http://www.smu.ca/academic/reb/forms.html>
Research ethics approval must be requested and obtained prior to implementing any changes or additions to the initial submission, consent form/script or supporting documents.

YEARLY RENEWAL*
FORM 3: <http://www.smu.ca/academic/reb/forms.html>
Research ethics approval is granted for **one year only**. If the research continues, researchers can request an extension one month before ethics approval expires.

CLOSURE
FORM 5: <http://www.smu.ca/academic/reb/forms.html>
The completion of the research must be reported.

*Please note that if your research approval expires, no activity on the project is permitted until the research ethics clearance is renewed. Failure to hold a valid SMU REB Certificate of Research Ethics Clearance or Continuation may result in the delay, suspension or loss of funding as required by the federal granting Councils.

On behalf of the Saint Mary's University Research Ethics Board, I wish you success in your research.



Dr. Veronica Stinson
Chair, Research Ethics Board
Saint Mary's University