

RE-CLAIMING JUSTICE

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RE-CLAIMING JUSTICE AND COMMUNITY: THE COMMUNITY COUNCIL
PROJECT OF TORONTO

By
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Abstract

Aboriginal peoples, particularly urban Aboriginal peoples, are discriminated against and over-represented throughout the Canadian Criminal justice system. I review specific colonial and postcolonial actions that lead to Aboriginal over-representation and explore how the diversion program of the Community Council Project (CCP) provides justice for the Aboriginal peoples of Toronto. This research aims to investigate the under-researched intersection between alternative justice practice, individual and community healing, and identity in an *urban* Aboriginal community. The CCP appropriates a non-Aboriginal diversion format and combines it with culture-specific Aboriginal restorative justice traditions, and pan-Aboriginal discourse, to assist clients in the process of healing. This research illustrates how community based justice restores and/or transforms the identity of Aboriginal clients. I indicate how individuals are healed, and how they are reintegrated into the Aboriginal community of Toronto. Subsequently, I discuss how healthy individual and community identities can be fostered through CCP justice philosophy and practice. Finally, I delineate the role of the CCP in how Aboriginal "community" is conceived of and practiced in Toronto. In so doing I offer a new perspective on the concept of community creation in Toronto. This ethnography encompasses issues of crime causation, indigenous justice knowledge and practice; healing; tradition and culture change; personal and community ownership and empowerment; self-government and community constitution, and legal pluralism. Therefore, it contributes to, and expands, the boundaries of current Aboriginal, anthropological and criminological knowledge about alternative justice.

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Chapter One

Introduction

For many years, we have relied on the formal justice system to deal with the problem of crime. Community members have been discouraged from participating in their own protection and have had little say in the services they received. After the victim called the police dispatcher, the police would arrive to take care of the problem in their own way, and if an arrest was made case processing was left in the hands of the formal justice system. Many of those found guilty by the court were removed from the community and sent away to jail. Professionals have controlled each step in the system leaving victims and other community members with little involvement.... Most people have come to accept this as the only way of dealing with crime, however, many of those most familiar with the system believe it has failed them (Clairmont and Linden 1997:3).

The Anishinabe way of expressing the concept of justice is gwaik/minodjiwi/dibaakonagwin (literally, "right, and respectful/judgement"). ... Th[e] quest [for justice] is governed by integrity, humility and respect. Justice is the pursuit of a true judgement required to re-establish equilibrium and harmony in relationships, family and society – a judgement which is gwaik: straight and honest, while at the same time being minidjiwin: respectful of the integrity of all persons, both the wronged and the wrongdoer (Dumont 1993: 69).

Justice by and for Aboriginal peoples is a central concern for many Aboriginal peoples, legislators, justice professionals and academics. Research has revealed that Aboriginal peoples are over-represented in Canadian prisons (Jackson 1988; RCAP 1993; 1996a, b, c; Gosse et.al. 1994; Monture-Angus 1994, 1995, 1999; Ponting and Kiely 1997; Minister of Indian Affairs and Northern Development 1997; LaPrairie 1998; Warry 1998; Rudin 1999; Proulx 2000). This research indicates that the causes of Aboriginal over-representation are frequently framed in terms of culture clash or

structural/environmental factors such as unequal access to resources, employment and welfare dependency. Incarceration is seen as a dehumanizing sanction that is ineffective in rehabilitating offenders and preventing recidivism. Moreover, this research suggests that Aboriginal peoples are discriminated against throughout the criminal justice system. Further, several authors have pointed to the need for culturally appropriate, community-based alternatives to provide equitable and relevant justice for some Aboriginal peoples (Clairmont and Linden 1997; Stuart 1997; Rudin 1999).

In response to these concerns, governments and Aboriginal communities have initiated alternative justice projects. They range in type, objectives and goals. Some are “Crown-controlled, offense-based programs” such as first offense diversion programs (Rudin 1999: 298). The principal aims of these programs are to ensure that individuals charged with minor offenses are removed from the courts “in a manner generally acceptable to all parties” and to “give first-time offenders a break” (ibid.).

Others are “community-controlled offender-based programs” that reject retributive justice and focus on restorative justice. The aims in these programs are to “relocate the practice of justice into the community,” to actively involve victims, offenders and their community in the criminal justice process and to focus on the source of the problem not just on the crime (Rudin 1999: 300-301). Various approaches are used but all are, ideally, chosen to address needs and objectives specific to the community. Mediation and victim-offender mediation programs (VORPs) are two principal forms of the community-controlled responses. Aboriginal justice programs also fall into this

category. Justice committees, Elders panels, holistic circle healing¹ and diversion programs such as the Community Council Project of Toronto (CCP) are just a sampling of the types of programs being used in Aboriginal communities. The CCP, unlike state controlled diversion that limits the types of eligible offenses and limits access to first-time offenders, is accessible to repeat offenders and “no offenses are inherently ineligible for diversion” (Rudin 1999: 305).

The third type of justice response is “brokered programs” (Rudin 1999: 306-7). Police and Crown attorneys use “outside agencies to assist with the diversion of offenders who might require more assistance than they can and should provide themselves, but who, nevertheless, are not perceived to present a threat to society at large and thus might otherwise be eligible for diversion” (ibid.). Before charging an offender the police determine which outside agency can best help construct an alternative disposition.

¹ The word healing can mean different things depending upon the context it is used in. It can be a key metaphor in political discourse surrounding the drive to self-government. Healing has also become a metaphor used by the colonized to generate decolonizing strategies, identities and goals Gattermann (1999: 1). Warry (1998: 211-213) provides a good discussion of the potentials and problems involved in individual and community healing and cultural revitalization. It can also be a term used by social action agencies to describe what they do to help Aboriginal clients in holistic ways. Agencies, Elders and justice workers may use the Medicine Wheel philosophy of healing in whole or in part. I follow Durst (2000: 53-56) in his conception of healing. Durst maintains that “the word ‘healing’ comes from the same roots as ‘whole’ and ‘holiness.’ The interdependence of holiness and wholeness are essential to healing in Native traditions. The holiness of healing is manifested in the journey towards a wholeness of spirit and an attempt to incorporate this wholeness of spirit into the person, family, the community and its surrounding land. The balance of each direction [in the use of the Medicine Wheel] and its interconnectedness among the elements creates *good health*: the self. If one area is neglected or affected in a negative way (unbalanced), the other elements (directions) are also affected. An unbalancing of Self may be caused by the neglect or negative experiences in one of the four directions. ...Healing is a process. The healing process requires time and patience. Each person’s journey is unique. Each person must find his/her balance. (ibid.)” Traditional healing is also a means of reconciling wrongs within a person or a community. Healing is a broad notion that encompasses restorative justice. The commission of a crime indicates a lack of spiritual balance within the person, and the healing process is intended to restore this balance by uniting the four elements of the person: the Spiritual, Emotional, Physical and Mental (Clairmont and Linden 1997: 44).

They then refer the offender to that agency and, upon satisfactory completion of the agency disposition, charges are not laid. Crown attorneys use a post-charge form of brokering (*ibid.*).

Sentencing circles are another form of alternative justice being used today. Initiated by judges or requested by concerned parties in remote Aboriginal communities, the aim of sentencing circles are to avoid the use of incarceration that removes community members to distant jails. They also seek to involve the community in creating dispositions for the offender that satisfy the victim and the community. Justice proceeds in a somewhat culturally appropriate² fashion and utilizes the circle format in which all parties have a chance to speak about the crime, the offender and their affects on the victim and community. The circle assists the judge in creating a suitable disposition. However, the judge, still governed by sentencing criteria enshrined in the Criminal Code, makes the final decision on what the disposition shall be. Sentencing circles blend state control with community control and, therefore, should be seen as a separate form of alternative justice from those discussed above (Rudin 1997: 311).

Family group conferences (FGCs) are another emerging form of alternative justice. FGCs are a process where trained facilitators bring together the offender, his/her supporters and family, and the victim, his/her supporters and family in deciding the resolution of a criminal incident. All participation is voluntary. The offender must admit to the offense. Participants discuss how they and others have been harmed by the offense

² “Culturally appropriate refers to the current socio-political and cultural realities faced by members of particular racial, ethnic and cultural groups in specific locations” (Rudin 1999:310).

and how that harm might be repaired (Fercello and Umbreit 1998). Once the discussions have ended, a disposition is created which usually involves voluntary agreed upon restitution. In many, but not all FGCs, the police or school authorities may be directly involved in the conference. State involvement and lesser levels of community ownership and involvement make FGCs a separate form of alternative justice than the community-based alternative justice discussed above.

In Aboriginal contexts, the foregoing issues, concerns and programs are linked to debates over self-determination and self-government in justice. Some Aboriginal peoples and legislators wish to retain close links to the formal justice system (RCAP 1993; 1996 a, b, c; Gosse et.al. 1994; Hoyle 1995; Warry 1998), while others see alternative dispute resolution³ as another form of colonialism and want completely separate justice systems (Monture-Angus 1994). Others see current justice programs that are linked to the formal system as building capacity for eventual self-government in justice (RCAP 1996a; Warry 1998; Proulx 1997, 2000). Debates also occur over the equity and productivity of Crown-controlled alternative justice programs versus community-controlled programs (Rudin 1999: 298-303, 315). In the movement toward the use of culturally appropriate, restorative, alternative programs for Aboriginal peoples, Aboriginal women express concerns about gender discrimination by Aboriginal men who control these justice programs (Nahanee 1993; LaRocque 1993, 1997; Crnkovich 1996). Equality of access by

³ Alternative dispute resolution is a broad-based movement. It includes such processes as bargaining, negotiation, arbitration, mediation, conciliation and diversion. ... The goals of the 'alternative' movement are: a. to relieve court congestion, as well as undue cost and delay; b. to enhance community involvement in the dispute resolution process; c. to facilitate access to justice; and, d. to provide more 'effective' dispute resolution (Monture-Angus 1994b 131-132).

non-Aboriginals to Aboriginal alternative justice programs has also been challenged in the courts (R v Willocks 1994). Roberts and LaPrairie (1996) and LaPrairie (1995, 1998) criticize claims made by proponents of some Aboriginal alternative justice programs of wide-ranging program success at reducing recidivism and saving the taxpayers money. Finally, state commitment to alternative justice and the funding practices of alternative justice programs have been criticized as being insufficient and destructive to the long-term well-being and effectiveness of these programs (Hazlehurst and Hazlehurst in RCAP 1996: 295; Rudin 1999: 315).

In past decades there has been a large migration of Aboriginal peoples off the reserves into the cities bringing with them a legacy of poor education, unemployment, alcoholism and family violence (LaPrairie 1994). These problems, combined with over-policing, court insensitivity to the above issues, and problems with sentencing philosophy and practice (Quigley 1994), have led to the imprisonment of large numbers of urban Aboriginals in provincial and federal penal institutions. Recently, governments and Aboriginal organizations have come together to address the problem of justice for urban Aboriginals using diversion programs to provide culturally appropriate justice for urban offenders. However, the need for, and utility of, community approaches to justice within an urban environment has been little studied to this point (LaPrairie 1994). My research provides data to help fill this gap.

My research is firmly situated within the foregoing Aboriginal alternative justice context. I provide in-depth ethnographic description and analysis of one of the longest running and most successful Aboriginal justice programs. In so doing I furnish first-hand

experiences and knowledge about the intricacies of a community initiated and operated diversion program. This ethnography goes beyond the bounds of a program evaluation that merely documents how efficiently and effectively the program deals with program goals and objectives. It speaks to the larger issues, consequences and products of the program that ramify into the Aboriginal community of Toronto and beyond. This ethnography encompasses issues of crime causation, indigenous justice knowledge and practice; healing; tradition and culture change; personal and community ownership and empowerment; self-government and community constitution, among others. As such this ethnography contributes to current Aboriginal, anthropological and criminological knowledge about alternative justice but also expands the boundaries of that knowledge.

Research Goals

My purpose in this dissertation is investigate the under-researched intersection between alternative justice practice, individual and community healing and identity in an *urban* Aboriginal community. I illustrate Aboriginal concepts and practices of justice and how they are practiced in an urban context to provide culturally sensitive justice for Aboriginal peoples. I examine how the justice philosophy and practices of the Community Council Project (CCP) are a locus and nexus wherein individual Aboriginal criminogenic behaviors are understood. I indicate how individuals are put on the path to healing leading to socially acceptable behaviours and reintegration into the Aboriginal community of Toronto. I discuss how healthy individual and community identities can be fostered through the justice philosophy and practice of the CCP. I show the specific ways in which clients are restored or transformed through the CCP process. Finally, I delineate

the role of the CCP in how Aboriginal “community” is conceived of and practiced in Toronto. All in all, my aim is enable others to comprehend how the CCP process works, why it works, when it does not work and why, from the standpoint of Aboriginal peoples who have experienced CCP diversion.

Throughout this dissertation I compare the quality and practices of justice arising out of the CCP process with that of the formal justice system. Some may say that this comparison is an unfair one. They may justifiably ask: how can the mainstream system, which is overburdened and under-resourced when dealing with all criminal cases (including murder), be expected to perform as humanely as a small diversion program that only deals with a limited set of less serious offenses? (It should also be recognized that this small diversion program is also overburdened and under-resourced.) I recognize that scale is an issue. I realize that my comparison is between different systems dealing with different resources and with different cases. Nonetheless, I aim to display the discrimination and injustice that Aboriginal people in Toronto daily confront in the formal justice system. Thus, it is necessary to compare the treatment of Aboriginal peoples in the two systems. To truly see just how different and effective the CCP process is I need to provide a model to write against. I do this to show weaknesses and destructive elements within the formal justice system and to outline the lessons that can be learned from alternative justice.

The Community Council Project.

Research for this dissertation with the Community Council Project of Aboriginal Legal Services of Toronto proceeded over one year. Aboriginal Legal Services of

Toronto (ALST) is an agency that operates a legal clinic for Aboriginal people and a Native Courtworker Program. The Community Council Project is administered by ALST. However, decision-making concerning the CCP operates through the Community Council Advisory Committee that is made up of members of the CCP. The CCP is an urban diversion program for adult Aboriginal offenders (Moyer and Axon 1993). It diverts Aboriginal offenders from the formal justice system into a culturally appropriate process. The CCP process concerns itself with the underlying causes of the crime and seeks to heal and rehabilitate offenders' (hereafter clients⁴). It is intended to serve as a meaningful community-based alternative to the present justice system for the estimated 60-85,000⁵ Aboriginal people in Toronto. The Community Council, made up of a part-time program director, a coordinator, a full time case worker (added since my fieldwork ended), and volunteer members of the Aboriginal community at large, determines appropriate dispositions for Aboriginal people charged with a variety of criminal offenses. The CCP operates under a protocol, negotiated with the Toronto Crown Attorney's office and ALST about the operation of the CCP. The protocol outlines the types of eligible offenses, selection of eligible offenders, and the role of the Ontario Crown Attorneys in this process among other elements (See Appendix A). Chapter four gives a brief history of the origins, pre-implementation planning and implementation of the CCP.

⁴ Rudin, the CCP Program Director (personal communication June 30), discusses the nomenclature shift from "offender" to "client", "Initially we did refer to our clients as offenders, but after a short time, someone - probably Patti (Program Coordinator) - pointed out that using that sort of term stigmatized the people quite severely. We certainly didn't view them as offenders, we viewed them as people, and so we felt the better term to use to describe them was 'clients.'" The avoidance of stigmatization is one of the aims of diversion. The many aims of diversion are discussed at length in chapter four.

⁵ See chapter six for a discussion of this population estimate.

Field Setting and Description of Consultants

The CCP, at the time of my research, was located on Spadina Avenue just off Queen Street West in the heart of Toronto⁶. The CCP used this space to conduct hearings, post-disposition supervision and administration. At any given time Aboriginal peoples from all over Toronto could be found preparing for, or waiting for hearings, consulting with coordinator Patti McDonald on their dispositions and utilizing the free publications about community events and available social services. Appointments were used to regulate the flow of clients but people also felt free to drop in and consult with members of the CCP. The atmosphere was casual, friendly and without any of the formal trappings found in lawyers' offices that separate the client from the legal professional. The council hearing room was small containing a circular table, chairs and an abalone shell used in smudging ceremonies⁷.

My total sample of case files, interviews and hearings attended was one hundred-fifteen. Over the course of my fieldwork I interviewed or observed sixty-eight consultants made up of council members, clients, CCP staff, social service agency members, Crown Attorneys and Duty Counsels. Out of the sixty-eight consultants, nineteen clients were male and thirteen were female. I also witnessed sixteen client hearings. Clients ranged in age from fourteen to the mid-forties. Only one client was a young offender and he was diverted at the behest of the Crown attorney's office despite the fact that the CCP is an

⁶ Since my research the CCP has moved to #803 415 Yonge Street, M5B 2C7 in Toronto. This new location places them closer to the heart of downtown Toronto and makes the CCP even more accessible to clients.

⁷ See chapter four for a discussion on smudging.

adult diversion program. I have used client and council member names with quotes and descriptions when I was given permission. Otherwise I use invented initials to differentiate consultants and to assure readers that the views expressed in consultant quotes come from many different consultants and not always the same three or four.

The CCP must report program statistics to their federal and provincial justice partners. Appendix D is one such report. It shows that the CCP has diverted 657 clients on a total of 1258 charges since program inception. Appendix D shows how that, with the exception of 1994/95, the numbers of cases that the CCP has dealt with has risen. Appendix D provides the types, numbers and percentages of each offence that the CCP dealt with in 2000/01 and from the inception of the program. Failure To Appear/Failure To Comply offenses come before the council most often, followed by theft, mischief, prostitution and assault. Offence totals since program inception provided in Appendix D also show how the CCP has expanded the types and seriousness of cases it can handle over time. This is indicative of trends in alternative justice. Most initiatives begin by processing less serious charges as directed by their protocols. Over time, as programs prove themselves to themselves and to their formal justice protocol partners, the types of offences accepted for diversion can become more serious. Prior to their experience with the CCP process, thirty of the thirty-two clients that I interviewed had serious substance abuse problems, had negative experiences with adoption or family violence and had not completed high-school. These same thirty clients were also repeat offenders and had long histories of involvement with the justice system as juveniles. Only two clients had no prior involvement with the justice system. Clients, prior to their CCP experience, had

little if any knowledge of their various cultures and of the Aboriginal community of Toronto. Patti McDonald assisted in choosing clients to interview and which hearings to observe due to the difficulties in locating clients, confidentiality issues and concerns over client wellbeing. A larger discussion of the consultant selection process and client representativeness can be found in chapter four.

I interviewed twenty-two council members and observed various combinations of this group in action during the sixteen council hearings. Twelve council members were female and ten were male. Their ages ranged from the mid-twenties to mid-sixties. Most of the council members had prior substance abuse problems and negative experiences with the formal justice system. Council members were employed in a variety of occupations from heading an arts organization to managing a legal office, but most worked with Aboriginal social action agencies as employees or as volunteers. The majority of the council members were long-term experienced volunteers at the CCP; only two had recently become council members.

Two key consultants were CCP program director Jonathan Rudin and coordinator Patti McDonald. Jonathan Rudin successfully persuaded the CCP Advisory Committee to grant me research access to the CCP. I formally interviewed him three times and have made inquiries of him via e-mail and telephone countless times. It should be noted that Mr. Rudin is not an Aboriginal person. I wish to make it clear that I do not think that being a non-Aboriginal outsider somehow disqualifies him from being an authority on Aboriginal peoples “doing it their way.” Mr. Rudin’s role as an “authority” about the CCP arises from his observations on how such alternative justice processes work, not

from being the person who somehow developed or created such systems. His role in the CCP process has been, and continues to be, that of a bridge or facilitator between the predominantly non-Aboriginal legal establishment and the CCP. As a lawyer, he speaks the language of other lawyers and is able, when necessary, to help Aboriginal stakeholders understand the positions of lawyers and judges. Mr. Rudin's work as director has always been undertaken in equal partnership with Aboriginal stakeholders as reflected by his role in the Birch Island meeting and his intermediary role in negotiating the protocol with the Crown Attorneys. Moreover, he works closely with the CCP Community Advisory Committee and Aboriginal staff. This ensures that he does not impose his will on the organization. Mr. Rudin himself recognizes that his occupation of this position is "a historical anomaly" because "if the program were starting up today, then I'm sure an Aboriginal person would be hired to do the job that I'm doing" (Rudin personal communication 2001). Finally, I believe that Mr. Rudin's continued role as program director reflects the CCP's appreciation of his past work and trust and confidence in his future work.

Patti McDonald, an Odawa, was formally interviewed twice and I have also had numerous e-mail and telephone consultations with her. Mr. Rudin and Ms. McDonald's insider knowledge of the CCP history, process, clients and Aboriginal and restorative justice, plus their extensive knowledge of the formal justice system and its stakeholders made them invaluable sources of information.

I also interviewed three Aboriginal court workers. All three courtworkers were in their early twenties and thirties. Each was trained through the CCP and all were

experienced courtworkers. I observed them as they searched for, located and communicated with potential clients in the cells and courts of the Old City Hall and College Park courthouses. I watched the courtworkers interview potential clients and observed them as they consulted with duty counsel and assistant Crown Attorneys in court hallways. All in all the courtworkers were invaluable in explaining and demonstrating the pre-intake and pre-hearing selection elements of the CCP process.

Three senior Crown Attorneys and one senior duty counsel (government lawyer) were also interviewed. These Crown Attorneys all have had extensive experience diverting Aboriginal offenders to the CCP. Speaking from the perspective of the formal justice system, Crown information provided a useful counter-balance to the CCP consultants, particularly courtworkers. I was able to understand the province of Ontario's rationale for participation in this program, the problems and concerns of Crown Attorney participation, and what they saw as the potential of the CCP program. The Duty Counsel consultant provided a public defender perspective of the CCP process. This consultant's perspective provided a useful counter-balance to the public prosecutor perspective.

I interviewed four members of Aboriginal social action agencies to whom the CCP refers clients for post-disposition counseling, substance abuse counseling, anger management, health issues and community service. These consultants worked at Council Fire, the east-end drop-in center for Aboriginal peoples, Native Child and Family Services, Two-Spirited People of the First Nations and Anishnawbe Health. Each was in their mid-thirties to early forties and each was highly experienced in their particular agency and knowledgeable of the problems Aboriginal peoples face with the criminal

justice system. These consultants provided information on their roles in the CCP process, client participation and compliance with its dispositions and the particular struggles and rewards of doing this work.

Finally, I interviewed two policy analysts from the Aboriginal Issues Group in the Ontario Ministry of the Attorney General. I also interviewed a regional representative of the Aboriginal Justice Directorate (Ottawa). The two provincial civil servants oversee the implementation, evaluation and provincial funding administration for Aboriginal justice in Ontario. The CCP is one of the programs in their jurisdiction. The federal civil servant was responsible for the regional implementation and evaluation of the federal Aboriginal Justice Strategy and was the federal government's representative in the tripartite funding of the CCP. These three individuals provided insider knowledge of the provincial and federal policies regarding Aboriginal justice generally and the CCP specifically.

Research Methods.

My principal research methods were research into the CCP case files from 1995 to 2000, interviewing, observations of formal court proceedings and CCP client hearings. The archival research was used to understand the types of cases and clients diverted, the circumstances surrounding the offenses that led to diversion, the dispositions given to clients, client compliance to dispositions and whether clients re-offended after participation in the CCP process. I was also able to monitor changes over time in the program. Appendix D is an example of these types of information. All of this information *primarily* assisted me in identifying potential clients for interviews and in creating interview schedules. I also use historical and socio-economic and colonial analysis to

help understand the exigencies that Aboriginal peoples faced in the past and continue to face, in similar or altered forms, today.

Semi-structured and unstructured interviewing was a major methodological tool used in this project. Interviewing clients helped me to understand their life histories and circumstances that led to offending. Moreover, these interviews enabled me to elicit consultants' experiential knowledge of the formal system and the diversion process. Council member, CCP staff and social action agency interviews added to and counter-balanced client views. They also provided information on process objectives, goals and daily operation. I use extensive quotes by all consultants to ensure that my assessment of diversion contains the voices of Aboriginal peoples not merely the voice of the assessor⁸. It is only in this way that a more comprehensive understanding of diversion and its effects can be elucidated.

Observation of formal courtroom proceedings and CCP hearings were also central research methods. I spent numerous days over the course of my fieldwork observing bail hearings and guilty pleas⁹ in Toronto courtrooms.

⁸ I recognize the issues of ethnographic authority can be raised here. I acknowledge that I am choosing which voices are heard and the context in which they are presented and, therefore, control the representation of these "Aboriginal voices." Nonetheless, I maintain that the voices of consultants still convey an immediacy of experience that paraphrasing inhibits. I think that readers acquire a clearer, more emotionally and intellectually powerful understanding of the issues facing Aboriginal peoples in Toronto when they are presented in their own words with as little authorial interference or mediation as possible.

⁹ According to Patti McDonald, very few Aboriginal people actually make it to trial. She offers these reasons: "In my experience Aboriginal people, for the most part, aren't what you'd call career criminals. They are damaged individuals who are dealing with the realities of their existence and many are coping with their pasts by using drugs and alcohol. Jonathan has a great way of summing this up when he says that these people don't commit their offenses and have their slips while abusing substances in the privacy of their own homes. They commit their offenses and have their setbacks quite publicly. As a result there are often witnesses to their crimes, whether it be the police or the general public. The reality of this is

My aim was to understand how this process worked and to ascertain whether criticisms that formal court proceedings were culturally inappropriate, procedurally insensitive and discriminatory toward Aboriginal peoples were justified (R v Moses 1992: Ross 1992; RCAP 1996 a). Chapter three provides an extensive discussion of my conclusions and those of other researchers on these problems. In order to understand what clients go through and what council members do throughout the CCP process I witnessed sixteen council hearings. Council hearings are occasions where clients accept responsibility for their criminal actions, confront themselves and begin their healing process with the assistance of volunteer council members and where dispositions are given to the client. This is the heart of the CCP process. A discussion of the particular methodological problems I encountered in observing council hearings is provided in chapter four.

I used Nud*ist 4.0 computer software to assist in analyzing fieldwork data. I used Nud*ist to organize and code my data into nodes containing similar types of content. I then analyzed the content of the nodes and looked for anomalies, relationships and indicators of CCP program strengths and weaknesses as well as those of the formal justice system. I was also able to easily compare semi-structured interview responses among clients and council members. These comparisons, indicators and relationships were instrumental in building theories about the oppression, discrimination and unjust treatment that some Aboriginal peoples in Toronto are subjected to by the formal system.

that, for many of the people we work with, they are in fact guilty of what they are charged with and there is no point in taking a matter to trial.”

They also helped me to understand how the CCP process ameliorates or counteracts these problems as it helps clients to heal themselves.

I also used discourse analysis to analyze my data. I follow Valentine's (1995: 6-7) understanding of discourse as both social action and social practice. I also follow Abu-Lughod and Lutz (1990 in Valentine 1995: 7) in understanding discourse as:

a concept that recognizes that what people say... is inseparable from and interpenetrated with changing power relations in social life. There is double movement implied in this notion. First, social and political life is seen to be a product of interactions among individuals whose practices are informed by available discourses; second, language and culture are ... understood as part of social and political life.

I used these ideas as a basis for engaging with the data. By analyzing the content of what both Aboriginal and non-Aboriginal peoples say I was able to identify the interpretative repertoires underpinning what they say and, more importantly, what they do. For example, analyzing non-Aboriginal stereotypes about Aboriginal peoples leads to an understanding of how some Canadian governments and publics treat Aboriginal peoples socially, legally and politically. These views also affect how justice personnel treat Aboriginal peoples who commit crimes. I also use discourse analysis to analyze how negative stereotypes have been internalized by the CCP clients. These interpretations also inform my analysis of Aboriginal community identity politics and discussions of "tradition"¹⁰.

¹⁰ Confusion over the meaning of tradition is a major problem. Non-Aboriginals mistakenly believe that it is past customs "(particular cultural practices)" (Warry 1998: 174) from pre-colonial times that are being revived without reference to historical and cultural change. Rather, it is "tradition (the appeal to values and actions that sustain customs and provide continuity to a social group over time)" (ibid.) that is being revived in new contexts after years of oppression. Tradition is contingent upon the particular culture and the history of change that the culture has undergone. There is not one tradition but many across "Indian

Finally, through discourse analysis I was able to assess whether the CCP, which “talks the talk” of Aboriginal restorative justice, actually “walks the walk.” I give substance to these claims in chapters two, three and four.

Guide to the Dissertation and Theory.

Chapter two describes the various colonial and postcolonial projects that have negatively affected the lived experience of Aboriginal peoples. I discuss the system of normalized discursive and practical discrimination that clients continue to be subjected to over the course of their lives and how this has destroyed personal, family and community identities over generations. I link this set of negative of power relations and experiences to a discussion of the causes of over-representation in jails and prisons for Toronto’s Aboriginal peoples. I outline why understanding this context is central to grasping how urban Aboriginal peoples experience the imposition of colonial and postcolonial power/ knowledge in their daily lives and how it leads to their involvement with the formal justice system.

In chapter two I utilize Thomas’ (1994) theory of “colonial projects” to illustrate that there is not one colonial project but many. I outline the various colonial actors and processes that operated and operate throughout Canada. I use Foucault’s (1972; 1977)

country” in North America. Some traditions blend or can become the regnant model that is practiced within a particular context as I show within Toronto. This view of tradition may be in accord with the “incorporative” function of tradition that Raymond Williams (1981: 115) discusses in terms of “selective traditions”. A selective tradition is “an intentionally selective version of a shaping past and a pre-shaped present, which is then powerfully operative in the process of social and cultural definition and identification” (ibid.: 115). In this view tradition is not seen as a “relatively inert” remnant of the “surviving past” but, rather as an “actively shaping force” where “a version of the past is used to ratify the present and to indicate directions for the future...” (ibid.: 115-6). I am using the term *emically*, that is, in terms of what stakeholders believe is traditional based upon their understandings of their cultural traditions.

theories on discourse and on the interaction of power/knowledge in the production and reproduction of subjectivities and in the normalization of modes of thought and practice to further deconstruct these various colonial and postcolonial projects. I also use relevant criminological theory on crime causation and on the management of criminogenic behaviors (Canadian Centre for Justice Statistics 1997; Akers 1999).

Chapter three gives voice to client and council member experiences with various colonial and postcolonial projects. Clients and council members discuss how they and previous generations were damaged through residential school experiences, involvement with the child welfare system, and the education system among others. They also discuss how the damage caused by these experiences led to their involvement with the criminal justice system. Ethnographic evidence is presented that supports the charges made by Aboriginal peoples and academics about the systemic discrimination that Aboriginal peoples are subjected to in the criminal justice system. I outline the set of racist interpretative repertoires, deriving from the colonial period and continuing today, that underpins these discriminatory practices. In particular, I focus on how non-Aboriginal negative stereotypes about Aboriginal peoples are a factor leading to social exclusion, identity confusion, denial of Aboriginal identity and criminal behaviour.

In chapter three, client and council member testimony on their specific experiences with colonial and postcolonial projects are framed through various, but related, theoretical approaches. Foucault's (1972; 1977) theories on programs, strategies and technologies of power are used to frame residential school, child welfare and educational policies and practices that caused intergenerational damage to many of

Toronto's Aboriginal peoples. I also use stereotype theory (Peterson and Sisson-Runyan: 1993 and Adams 1989:18) plus Wetherell and Potter's (1992) theory of "interpretative repertoires," to discuss the role of stereotypes in the social exclusion of many Aboriginal peoples. Through the use of these theoretical approaches and my analysis of client and council member discourse, I aim to reveal the larger discourses and processes operating upon clients that underpin criminal behaviour and discriminatory practices on the part of the criminal justice system¹¹.

Chapters four, five and six outline the agency of individuals, the CCP and other social action agencies in restoring and transforming clients and the re-appropriating of the power to define and practice justice and community. Chapter four outlines the ideals of diversion as conceived by justice professionals. Subsequently, the majority of this chapter shows how the CCP has "appropriated" this justice practice and philosophy, re-interpreted it and re-played it in an Aboriginal key (Merry 2000). A historical sketch is provided of the origins and evolution of the CCP through community interaction with the provincial government and through the hard work of concerned Aboriginal peoples in Toronto. I give the contours of the founding conversations and controversies that shaped the CCP. I then describe and analyze an ideal CCP hearing and outline an actual case study of a CCP hearing that I witnessed. In so doing I examine how one community of urban Aboriginal peoples are "doing it their way" through an alternative justice initiative

¹¹ It should be noted that not all Aboriginal peoples are affected by these discourses in the same way. Indeed some have never been caught up or negatively affected by them. It should also be noted that the structural discrimination resulting from all of the above is not total and inescapable.

based upon Aboriginal understandings of justice. In this chapter I present an ethnographic representation of Aboriginal peoples re-claiming justice for themselves and enabling the "production" of culture at the local level in an urban context (ibid.).

Chapter four is viewed through the lens of restorative justice theory and practice. After discussing diversion theory as conceived and practiced by non-Aboriginals, I privilege indigenous restorative justice theory and practice. I outline how the ideals of family, relationships and community are central to Aboriginal justice. Shifting, and sometimes politically contentious, pan-Aboriginal¹² understandings of justice and the practice of "healing" are given shape through the case study. Using the work of Johnson (1986/87: 55) and Engle-Merry (2000: 30) on "cultural production," I focus on the productive power of the CCP process in contrast to the repressive power of the formal justice system. I suggest that this productive power is a key to understanding cultural transformation (Engle-Merry 2000: 206).

Chapter five focuses on the value that clients have derived from the CCP process. Clients explain how their lives have become meaningful through a process that restored or transformed them from unhealthy, irresponsible, disconnected individuals into healthy, responsible individuals who have the potential to participate in Toronto's Aboriginal community. This discourse illustrates the link between the creation of meaning in the everyday lives of clients and how it leads to a clearer understanding of personal and

¹² When I use the term pan-Aboriginal I refer to how Aboriginal peoples who lack Aboriginal identity may be choosing to take up, utilize, participate in or mobilize cultural resources from a variety of Aboriginal cultural sources to constitute or reconstitute their personal or community identities. Aboriginal peoples who do this take the best of what they experience from many cultures but that mixture does not make them pan-Aboriginal but more positively native.

community responsibility and identity. Subsequently, I outline the theoretical and practical significance of CCP community justice for Aboriginal peoples, anthropology and the formal justice system. Throughout this chapter I concentrate on the role of the CCP justice process in meaning creation, identity creation and healing at both the individual and community level. The central aim in this chapter is to give shape to the CCP's role in the connection between justice practices, healing and identity.

Chapter five introduces a distinction between restorative and transformative justice that specifies the diverse starting points from which healing begins and its individually specific outcomes. Client, council member and social action agency member testimony in this chapter provides first person understandings of culture specific and pan-Aboriginal healing praxis. Coates' (1999: 25) three level identity schema is then used to link the creation of meaning in client's everyday lives with the re-appropriation of the power to define individual and community identity. I link the foregoing discussion on restoration, transformation and identity to the distinction between *self-government* and *self-governance*. I maintain that Aboriginal individuals must first learn about themselves as individuals, and learn to govern themselves, before they can become involved in wider social and community relationships. This discussion is connected to how the CCP process helps clients understand and cope with the "processes of subjectification made possible (and plausible) through stereotypical discourse" (Bhabha 1990: 71). The CCP process gives clients the capacity to see through discourses that "function[] to reproduce and circulate colonial ideology, effectively contributing to the notion [that clients are] the controlled and subjected 'other'..." (ibid.). Throughout this chapter I aim to show how the

CCP healing process is “a vehicle for generating meaning, identity and strength both at the level of the individual and the community” (Gattermann 1999: 1).

Chapter six begins with a discussion of how older conceptions of community comprised of “shared values, shared identity and thus shared culture... mapped literally onto the concept of locality” are no longer useful to define community, particularly in urban contexts (Marcus 1994: 46). I then outline how Aboriginal community identities in Toronto coalesce at many different sites and under different circumstances (Marcus 1994:47). However, I maintain that Aboriginal community in Toronto, unlike other cities, is founded upon the Aboriginal social action agencies’ reaction to social problems and needs facing Aboriginal peoples. I describe how the synergy between the various social action agencies aids in the creation of shared identity, codes of conduct and solidarity while demonstrating, for community members, community agency. The remainder of chapter six outlines the specific ways in which the CCP is currently a focal point of this synergy.

Chapter six samples a number of theoretical approaches for re-thinking community, particularly in an urban context. Marcus (1994: 46-47) provides a template to criticize earlier community theories and to point to new directions for understanding community. Weibel-Orlando (1991) sees community as structured around agencies dealing with Aboriginal social problems and through the use of pan-Aboriginality as a strategy through which to build community identity. These are community concepts that I utilize in the Toronto context. Using the work of Lustiger-Thaler (1994) I contribute to new ways of thinking about community "in-the-making" through the "enabling entities"

of Aboriginal social action agencies. The CCP is an “enabling entity” through which individual and community identities coalesce through “needs satisfaction” in a multitude of different circumstances (ibid.).

I contend that the CCP is a central location and process to be used to understand community building discourse, controversies and practices as they evolve to meet changing circumstances in Toronto. Moreover, I suggest that this research into processes of community constitution by Aboriginal social action agencies such as the CCP offers a useful path on which to continue to re-conceptualize and understand “the process of dispersed identity construction” and community in urban contexts (Marcus 1994:46).

Concepts of Justice and Legal Pluralism

The capacity to deliver justice is a central issue in this thesis. Aboriginal peoples consistently and explicitly relate how there is no “connection between the requirements of justice and the ways we respond to crime” (Law Commission of Canada 1999: 19). How this connection is made depends largely upon the definition of “justice.” Justice can be defined as

... achieving a situation in which the conduct or actions of individuals is considered to be fair, right and appropriate for the given circumstances. Justice reflects our sense of right and wrong. Our sense of justice is called into question when our understanding of what is right is offended and is restored when wrongs are addressed (Law Commission of Canada 1999: 17).

Justice can be delivered in various ways. It can take the form of revenge, “an individual response to harm [where]...the imposition of harm equivalent to the original harm is imposed” on the offender by the victim (ibid.). Justice can be defined as retribution where “wrongdoers receive their moral deserts” for offending against

community standards. This state-controlled form of revenge tries to restore the balance between victims and offenders in a less emotional, more rational, proportional and, supposedly, more impartial manner. Justice can also be defined and delivered through punishments that “maximize social utility” (Law Commission of Canada 1999: 21). The aim is to create just dispositions that incapacitate, and sometimes rehabilitate, the wrongdoer while deterring others from committing crimes. “Justice can also be understood solely in procedural terms: regardless of the substantive outcome of their case, people want to be treated fairly by judges” (ibid.). Procedural justice “affirms that people are concerned with fairness, honesty and respect for rights in decision making...regardless of factors such as social standing, age, gender and ethnicity” (ibid.). I present evidence to show how procedural justice, as it is applied to many Aboriginal peoples in Toronto, is not impartial, fair and respectful of rights. Instead the formal system ignores many of the rights of these offenders or discriminates against them based upon their social standing and ethnicity.

The definition of justice that is utilized in this dissertation is “justice as lived experience” (Law Commission of Canada 1999: 22-23). This form of justice

... involves a search for the truth in the eyes of those most immediately involved in a conflict. This means no more than that they ought to be provided the opportunity to give their version of what happened, to explain their intentions and provide reasons for their behaviour in a language and manner to which they are accustomed. However much abstract ‘truth’ may rest on an objective set of facts and principals, the search for justice as lived experience is a process of negotiation and agreement between parties to a conflict. By searching for truth in this sense, parties are better able to comprehend each other’s position. In turn, this encourages a better understanding of their own behaviour (ibid.)

This form of justice allows participants “the opportunity to vent their anger in constructive ways” and “to show wrong doers that their behaviour has consequences and to encourage them to accept responsibility for their actions” (ibid.). As I illustrate in chapter four, justice as lived experience does have a procedural dimension. Unlike the procedural justice of the formal system, however, justice as lived experience is “capable of adapting to account for the context and the specific characteristics of the wrongdoer or those who were harmed” beyond the formal system’s use of mitigating and aggravating circumstances (ibid.). This dissertation examines how the alternative justice of the CCP re-establishes and re-creates the connection between the requirements of justice and the ways we respond to crime for some Aboriginal peoples in Toronto through justice as lived experience. My thesis, then, is a contribution to this emerging understanding of justice as lived experience and its practice.

Throughout this dissertation I write against legal centralism. Legal centralism has been described as an ideology wherein state law is the only legitimate law within the territory that encompasses the state. It is uniform for all persons and all other forms of law and/or normative orderings whether indigenous, ethnic, religious, economic or institutional in nature are hierarchically subordinate to it. Legal centralism’s ideological assumptions describe how the world ought to be and “how it actually and even necessarily is” (Griffiths 1986: 3). Hence, jurists and the public understand that justice is a concept inseparable from and unrealizable without law and the concept of law is inseparable from that of the political state (Macdonald 1993: 235-236). Jurists believe that fidelity to the rules laid down by the official legal system is the only guarantee of

impartiality. A rigorous adjudicative due process controlled by legal professionals trained in state law is seen as the only path to equality of access to legal institutions generating justice (ibid.). I seek to change such attitudes.

The CCP is emblematic of the condition in which a population observes more than one body of law, that is, legal pluralism (Woodman 1998). I valorize Aboriginal knowledge, traditions, and epistemologies about justice throughout this dissertation. I place them on a par with non-Aboriginal theory and epistemology about justice and law. Further, I maintain that the culturally different conceptions and practices of justice used by Toronto's Aboriginal peoples are a new way to understand and practice justice within and outside of the overarching Canadian Criminal justice system. They also allow outsiders to understand how pluralist approaches to justice offer encapsulated or marginalized populations opportunities to have their justice norms, values and legal practices recognized and valorized. My analysis, then, contributes to our understanding of legal pluralism by documenting how different forms of justice/law philosophy and practice exist within Canada. I contribute "to understanding the implications of introducing new types of knowledge...into the criminal justice system" (Law Commission of Canada 1999: 35). I aim to help destabilize legal centralist interpretative repertoires thereby leading to the acceptance of legal pluralist practices. My analysis, like the evaluation by Campbell (2000), points to how effectively and equitably culturally appropriate alternative justice mechanisms can provide justice for those not well served by the formal justice system. These results can be used to stimulate further debate and action in the pluralist field of alternative justice and reform in the formal system.

Specifically, I hope to provide persuasive evidence for shifting the status of the CCP from merely an experimental "initiative" to a permanent, and adequately funded, institution within an expanding legal pluralist landscape.

I conclude this dissertation with a number of proposals and contentions about the philosophy and practices of the CCP. I propose that the CCP program ameliorates the injustice that some Aboriginal offenders face in the Canadian criminal justice system. I also contend that CCP provides justice that is relevant to the needs of urban Aboriginal offenders. It assists clients to move from states of internalized colonial and postcolonial oppression and disconnection toward freedom and connection. The CCP helps clients confront the problems resulting from having their identities defined by others. In so doing it aids clients in reclaiming the power to define themselves. Through this process clients come to understand their individual and cultural identities. They also come to understand their place in the Aboriginal community of Toronto. The CCP takes in clients who have committed crimes due to their limited capacity to cope with the social adversity they are confronted with daily, who have poor self-images and who have problems with family and community relationships. The CCP then builds client capacities to cope with these issues so they can begin to make changes in themselves. This leads to the ability to live responsible lives. Clients learn the skills to avoid a return to crime and learn to live the "right way." My dissertation, then, documents the movement from imbalance to balance; from disempowerment to empowerment; from doing it "their" way to doing it "our" way.

Chapter Two

The Colonial and Postcolonial Context

In 1996 the Royal Commission on Aboriginal Peoples concluded that the processes that negatively effects Aboriginal peoples in Canada are colonialism, systemic racism, and social and economic exclusion. These have resulted in individual, family and community dysfunction and Aboriginal over-involvement with the Canadian justice system (1996a). In this chapter I begin with a focus on the colonial projects whose aim was to civilize, control and assimilate Aboriginal peoples. I discuss how government, churches and Canadian publics applied these projects through the reserve system, various permutations of the Indian Act, enfranchisement policies and practice, residential schools, economic policies leading to dependency and eventual urban migration from reserves, and through the systematic use of stereotypes. These historical wrongs must be understood in order to comprehend the present. Therefore, I will focus on how these historical wrongs continue to shape the lives of Aboriginal peoples in the post-colonial period. I maintain that these colonial practices continue, or have been transformed into other forms of postcolonial practice that continue, to impact on many of Toronto's Aboriginal peoples underpinning the problems that they confront in their daily lives. I suggest that this oppression leads to social exclusion and Aboriginal over-representation in the criminal justice system.

In the next chapter I will show, using client, council and agency member voices, how the postcolonial context continues to exert control over client's physical, emotional,

intellectual and spiritual lives in this post-colonial period. In a subsequent chapter, I will frame how CCP breaks this cycle of oppression and despair

Colonialism

Before proceeding I outline my understanding of colonialism and postcolonialism. The term colonialism denotes the “specific form[s] of cultural exploitation that developed with the expansion of Europe over the last four hundred years” (Ashcroft et. al. 1998: 45). Colonialism is not, however, a form of power that is unified, coherent and centralized. Rather, colonial power is "... dispersed constellations of unequal relationships, discursively constituted in social 'fields of force'" (Scott 1989:93; Foucault 1990: 92-96). Aboriginal peoples are not, in every instance, robbed of personal, familial and community agency by a monolithic form of colonialism. As Scott notes, there is room within colonial processes and structures

...for a concept of human agency as the attempt (at least partially rational) to construct an identity, a life, a set of relationships, a society within certain limits with language --- conceptual language that at once sets boundaries and contains the possibilities for negation, resistance, reinterpretation, the play of metaphoric invention and imagination (Scott 1989: 93) (my italics).

Moreover, I do not want readers to conclude that those touched by colonialism are only those who are living on the street. Jonathan Rudin, the Program Director of ALST, who has written about colonialism (1993; 1999), and worked extensively with urban

Aboriginal peoples comments on who was affected by colonialism:

With specific reference to Council clients - not all live on the street - though many have for some period of time. Some have never lived on the streets; they appear to be products of nice middle-class homes. Yet they too get in trouble with the law. How are we to understand this? Some of it may just be the way kids experiment with things. But for most, the impact of colonialism on their life is every bit as real as it is for those living on the street. *The impact may be*

internalized in a different manner, but it is there nonetheless. I think all the Aboriginal staff at ALST has experienced and attempted to deal as well as they can individually with the impact of colonialism on their lives. The impact has not always led to brushes with the law, but it has had its very real impacts. It causes real stresses and strains on their daily lives. [There are] Aboriginal people who are not so visibly impacted by colonialism - those who do not live on the street - [yet they] still feel its impact in their lives and those impacts may well be the only way to understand why they come before the Council. (my italics)

There are many different forms of colonialism that operate within diverse domains, affecting different actors differently as they act according to their specific needs and practices (Merry 2000: 11-19, 28-32; Thomas 1994: 2-3). I follow Thomas (1994: 105) in understanding colonialism as "colonial projects". A colonial project is "a socially transformative endeavor that is localized, politicized and partial, yet also engendered by longer historical developments and ways of narrating them" (ibid.). These projects are lived differently depending upon the contingencies of time and location. Some Aboriginal peoples were affected to a lesser or greater degree than others depending on where they were located and when they were contacted¹³. Finally, I argue that these colonial transformative projects are *incomplete* with regard to Aboriginal peoples. Colonialism continues to negatively affect Aboriginal peoples in Canada.

¹³ Rudin gives an example of this: "Aboriginal peoples in the North, even northern Ontario, did not even see white people in any real sense until the mid-twentieth century in some cases. The building of the Alaska highway was thus a real disaster for many First Nations in Northern BC. The differing time of contact had an effect on the impact of colonialism, but I think it is difficult to find an Aboriginal group that was not truly oppressed by colonialism. When compared to the extinction of the Beothuks I suppose you could say that all other Aboriginal people experienced a less oppressive type of colonialism, but that seems to be splitting hairs at the awful end of the scale". Morrison and Wilson (1995) give extensive evidence on how Aboriginal peoples were differentially affected by colonialism by diverse colonial actors over time across Canada.

I will illustrate the difficulty of understanding many Aboriginal peoples' lives without considering the colonial¹⁴ process, its antecedents and its consequences and its post-colonial permutations. In this chapter I discuss the particular long-term results of the imposition of colonial and post-colonial power/knowledge¹⁵ on Aboriginal peoples.

Postcolonialism

I follow Ashcroft et al. (1995) and define postcolonialism as:

...both the material [and symbolic] effects of colonization and the huge diversity of everyday and sometimes hidden responses to it throughout the world. We use the term 'postcolonial' to represent *the continuing process[es]* of imperial suppressions and exchanges throughout the diverse range of societies, their institutions and their discursive practices. Because the imperial process[es] work *through* as well as *upon* individuals and societies 'post-colonial' theory rejects the egregious classification of 'First' and 'Third' world and contests the lingering fallacy that the post-colonial is somehow synonymous with the economically 'underdeveloped' (ibid.: 3). ...*Moreover, postcolonialism is not simply a kind of post-modernism with politics ---it is a sustained attention to the imperial process[es] in colonial and neo-colonial societies, an examination of the strategies to subvert the actual material and discursive effects of that process* (ibid.: 117). (my italics)

The term postcolonial has been mistakenly used to suggest that colonialism has ended throughout the world (McClintock 1992; Shohat 1992). I take issue with this view, as does Ashcroft et.al. (1995) when they state:

¹⁴ It should be noted that some Aboriginal people have a clear understanding of the terms colonialism and postcolonialism and how they affect their daily lives. Other Aboriginal peoples may not really understand colonialism and use the term colonialism as a blanket term to describe the cause of the host of problems they face in their daily lives. They may not be aware of how, for example, colonial discourse has been theorized to cause the colonized to see themselves as the colonizer constructs them (Ashcroft et. al. 1998:42). However, their firsthand experiences of how many have come to hate themselves or only see themselves as somehow less than non-Aboriginals, legitimately enables them to use the term colonialism whether they understand colonial or post-colonial theory or not.

¹⁵ Foucault (1980: 52) is clear "The exercise of power perpetually creates knowledge and, conversely, knowledge constantly induces the effects of power". There is no line drawn between knowledge and power. Foucault continues "Knowledge and power are integrated with one another ... It is

All post-colonial societies are still subject in one way or another to overt or subtle forms of neo-colonial domination and independence has not solved this problem. The development of new elites within independent societies, often buttressed by neo-colonial institutions; the development of internal divisions based on racial, linguistic or religious discriminations; the continuing unequal treatment of indigenous peoples in settler/invaser societies - all these testify to the fact that postcolonialism is a continuing process of resistance and reconstruction. This does not imply that post-colonial practices are seamless or homogenous but indicates the impossibility of dealing with any part of the colonial process without considering its antecedents and consequences (ibid.) (my italics).

McClintock (1992: 89) defines Canada as a break-away settler colony that ha[s] "...not undergone decolonization nor, ...[is it] likely to in the near future." Throughout this dissertation I will present consultant evidence that Aboriginal peoples "are still subject in one way or another to overt or subtle forms of neo-colonial domination" (ibid.). "The term 'neo-colonial,' like the 'post-colonial' also suggests continuities and discontinuities, but its emphasis is on the new modes and forms of the old colonialist practices, not on a beyond colonialism" (Shohat 1992: 106). I will now discuss the negative effects of colonialism on some Aboriginal peoples and new modes and forms of post-colonial oppression.

Colonial Actors and Their Projects.

The Royal Commission on Donald Marshall Jr. (1989) and Kaiser (1992: 66) conclude that the problems Aboriginal peoples experience with the criminal justice system are a product of colonialism. Rudin (1993: 41-42) specifies the roots of colonialism, its motivations and the various colonial actors:

not possible for power to be exercised without knowledge, it is impossible for knowledge not to engender power."

Colonialism has its roots in the desire to suppress or destroy a distinct and different society and force its members to bend to the will of the dominant culture. Whether motivated by noble or impure thoughts, explorers, missionaries, Indian agents, teachers, government bureaucrats and Members of Parliament have all engaged in the process of colonialism of Canada's Native peoples.

Over time federal governments of both liberal and conservative stripes and their agents have been the main colonial actors that have oppressed Aboriginal peoples across Canada. Policies and laws designed to segregate, control, manage and then to assimilate Aboriginal peoples were applied to Aboriginal peoples. The use of law and legal practices by colonizers in projects to "civilize" indigenous peoples is a central feature of various colonial projects worldwide¹⁶. The creation of the reserve system in the 1880's was a major step in dealing with the "Indian problem" as conceived by the politicians of the day. Satzewich and Wotherspoon (2000: 28) describe government aims beyond providing "homelands" upon which to allow Aboriginal peoples to continue to engage in traditional hunting and gathering practices:

For government authorities, however, reserves were intended to be sites for the creation of *certain forms of subjectivity*, that is, reserves were to be locations at which Indian people would be re-socialized (Tobias 1987). The project of re-socialization has been more particularly framed in terms of Christianization and the assimilation of Indian people. (my italics)

Over time state policy, therefore, "focused on instilling Anglo-Canadian citizenship by eliminating Indianness" (McGillivray and Comaskey 1999: 41). Judge Sinclair (1997: 6), Canada's first Aboriginal judge and one of the co-chairs of the Manitoba Justice Inquiry quotes John A. Macdonald as saying, "Ultimately, within a few generations there

will no longer be any Indian reserves, there will no longer be any Indians and, therefore, there will no longer be any Indian problem.” This aim continued to underpin non-Aboriginal policy in many different forms.

The Indian Act¹⁷ was central to this project as it defined and controlled who Aboriginals were, where they could live, where they could travel (the pass system), their political¹⁸ and social organization, and their religious beliefs and practices. The issue of defining who was, and who was not, an Indian person¹⁹ is central to both the Indian Act and Enfranchisement Acts. The RCAP (1996c <http://www.indigenous.bc.ca/rcap.htm>: Volume 4 Chapter 7) briefly discusses the status/non-status issue and enfranchisement²⁰ in these terms

Federal legislation has divided the Indian population into legal categories with different rights and restrictions. Status Indians are those registered under the *Indian Act*. The *Act* sets out a complex system for registering Indians.

¹⁶ See Engle-Merry 2000 for a detailed description of how laws and legal practices were used to "civilize" Hawaiians.

¹⁷ “The aim of the Act was to systematize the disparate legislation covering Indian people. There were three central elements of the Indian Act in 1876. 1) it defined who was an Indian; 2) it provided for the protection of Indian lands; 3) and it provided for a concentration of authority over Indian people... (Satzewich and Wotherspoon (2000: 30).

¹⁸ “The Enfranchisement Acts of 1868 and 1869, particularly the second one, were designed to break down tribal forms of government on the grounds they were “irresponsible” (Dickason 1992: 259-60). Euro-Canadian political forms were seen as the only responsible form of government in keeping with evolutionary developmental interpretative repertoires of the time. “The elective system, not traditional among Amerindians, had met with considerable resistance from some groups; the government’s goal was administrative uniformity, but it also wanted to hasten assimilation by eliminating tribal systems” (ibid.: 284). This was another move to eliminate Indianness as traditional political arrangements that varied across Canada were subordinated to elected band councils.

¹⁹ An Indian “was defined as any male person of Indian blood reputed to belong to a particular band, any child of such person and any woman who is or was lawfully married to such a person” (Ponting 1986: 21).

²⁰ Many Indians have Indian ancestry and cultural affiliation but are not registered as Indians under the *Indian Act*. Some people were never registered because they lived in remote areas or were absent from their communities during registration. Others involuntarily or voluntarily lost their status through the process of enfranchisement. In exchange for surrendering their status, these individuals received voting and other rights of Canadian citizenship. Some Aboriginal people simply refused to register.

Definitions have shifted according to revisions of the *Indian Act*, and have been based on various criteria including blood quantum requirements, kinship, style of life, and membership in a charter group. Status Indians are entitled to band membership, residence on reserves, tax exemptions, treaty rights, and special federal programs. ... Non-status: Many Indians have Indian ancestry and cultural affiliation but are not registered as Indians under the *Indian Act*.

In the early 1920's, if a status Aboriginal person received a university education, lived off-reserve or lived outside of the country for five years or more they could lose their status because the government considered them to be assimilated (Satzewich and Wotherspoon 2000: 30). Some Aboriginal peoples were forced to give up their rights to identify as Aboriginal people to obtain certain non-Aboriginal rights (education, drinking rights). In essence the Canadian government cleaved off one group of Aboriginal people because they were no longer treating them with the same rights as other Aboriginal peoples. Section 12 (1) (b)²¹ of the Indian Act was an enfranchisement method, but also a covert method of reducing the numbers of status Indians, thereby reducing federal expenditures on Aboriginal peoples while moving to assimilate them²². This government 'power to define' was to have intergenerational implications in the post-colonial era, especially for urban Aboriginal peoples as I discuss below.

The government also used the law in diverse domains to further their projects. In the 19th century the colonial legal assault on non-Aboriginal culture operated through

²¹ "Basically, this section of the Indian Act provided for the loss of Indian status if an Indian woman married a non-Indian man" (Satzewich and Wotherspoon (2000: 30).

²² See Jamieson (1978: 38) for a more detailed discussion of the three government convictions behind the legislation. See also Furniss (1992:23) for how "The enfranchisement program, quite literally, was devised for the purpose of eradicating Indians from Canadian society" and making him/her over into a European Canadian.

outlawing redistributive and political gatherings such as the potlatch and religious ceremonies such as the Sun Dance and sweat lodges (Sinclair 1997: 7-8). Jackson states (1988: 218)

Indian Agents armed with the power of law, took such extreme forms as criminalizing central Indian institutions such as the Potlatch and Sundance, and systematically undermined the foundations of many Native communities. The Native people of Canada have, over the course of the last two centuries, been moved to the margins of their own territories and of our 'just' society. *This process of dispossession and marginalization has carried with it enormous costs of which crime and alcoholism are but two items on a long list...*(my italics).

Urban Aboriginal consultants attest to the intergenerational consequences of these laws throughout this dissertation. When Aboriginal peoples tried to utilize the courts to fight the above laws the government maintained that "...no Indian could go to court and sue the government of Canada unless they got the permission of the government" (Sinclair 1997: 8). Sinclair discusses the laws used to control Aboriginal peoples economically:

They passed laws, for example, that said Indian people living on reserves were incapable of entering into contracts, were incapable legally of selling anything they produced, anything they manufactured, anything they discovered²³.

These laws, and later permutations of these laws, as I discuss in a later chapter on urban community, have relevance to why urban Aboriginal peoples did not have the economic wherewithal to set up spatially based communities within cities.

²³ If they had minerals or resources in their community they could exploit, they were forbidden by law from selling or leasing those resources unless the government gave its consent. Part of that was the government believed they were inferior and incapable of contracting. Another part of it was the government had a deliberate policy that it did not want Aboriginal communities of this country to flourish economically. They did not want Aboriginal communities to become self-sufficient and stable. They wanted Aboriginal people to assimilate, to leave their communities and integrate with the rest of society (Sinclair 1997: 6).

Education was another site of colonial control and oppression. In 1879 the McDonald government's new education policy became a "three step process towards Indian assimilation" which entailed using

...boarding schools for the young [to] remove traditional native cultural attributes from the child and provide habituation into the dominant culture; industrial schools would provide further character formation and controlled work-training skills for older children who were to be integrated into agricultural work and labour force positions; and day schools would signify the complete assimilation of natives into Euro-Canadian cultural and employment patterns (Satzewich and Wotherspoon 2000: 120).

Later the government, assisted by various missionaries and churches, passed laws initiating the residential school system. Residential schools are emblematic of the "post 1850's focus on childhood as the primary site of citizenship and normalization [which] offered a solution to the 'Indian problem'" (McGillivray 1997a, b). This education system was designed to devalue Aboriginal culture and to write non-Aboriginal culture onto the supposedly clean slate of Aboriginal children (ibid.). It was also designed to remove children from Aboriginal families that did not fit the Euro-Canadian ideal as Furniss (1992: 27) illustrates in her quote from the Superintendent of Indian Affairs in 1889:

[It] disassociates the Indian child from the deleterious home influences to which he would otherwise be subjected. It reclaims him from the uncivilized state in which he has been brought up.

The government also "quietly passed an amendment to the Indian Act empowering Indian Agents to remove any school-age child from his home to fill the residential schools" (Furniss 1992:28). When Aboriginal peoples protested against this destructive form of education and tried to get their children out of this institutional situation the "...the

government passed a law that said Indian people could not do that” (Sinclair 1997: 7). It became an offence for any Indian parent to interfere with the education of their child who was taken and placed in a residential school (ibid.). These children were robbed of family and parental role models due to their enforced segregation. The residential school system created a cycle of dysfunction where these children "did not learn how to be caring parents (or responsible self-governing adults) [and] their children in turn learned dysfunctional parenting patterns" (Monture-Angus 1999: 23).

The residential school experience, then, is instrumental in shaping the contemporary identities of CCP clients. Irresponsible and dysfunctional parenting resulting from the residential school experience continues to cause dysfunction today leading to involvement with the child welfare system. Children are taken away from parents because of abuse or neglect. Parenting problems also lead to involvement with the criminal justice system as both parents and children commit crimes against each other and the public at large (McGillivray and Comaskey 1999; Monture-Angus 1999; Alfred 1999; Adams 1995).

In the post WWII era, government continued to focus on Aboriginal children through educational and child welfare policies²⁴. This culminated in the *60's sweep* as it is known in Aboriginal communities. The sweep is considered by Aboriginal peoples to

²⁴ The provinces and federal government recognized appalling reserve living conditions and the family life of Aboriginal children. Rather than cooperating to correct reserve conditions to help children, the provinces and the federal government removed many Aboriginal children from their families and adopted them out to non-Aboriginal parents. "Social workers with a mandate to seek out and provide assistance to 'problem' families, and possessed by a reformist zeal, engaged in what would become in some communities nearly a wholesale removal of children from their family environments" (Satzewich and Wotherspoon 2000: 88).

be racist, blatantly assimilationist and destructive to Aboriginal individual and community identities and culture over generations. Provincial child welfare systems, backed up by the courts, consistently justified the removal of Aboriginal children and their non-Aboriginal adoptions through a precedent created in *Racine v. Woods* (1983). Here Madame Justice Bertha Wilson of the Supreme Court of Canada said, “The law no longer treats children as the property of those who gave them birth but focuses on *what is in their interests*” (ibid.; Monture-Angus 1995: 199). These *interests* were invariably defined by non-Aboriginal values about child rearing that ignored Aboriginal norms and family arrangements (Monture-Angus 1999; 1995). Monture-Angus discusses numerous cases where judges and welfare systems ordered inter-racial adoptions despite Aboriginal complaints that the children’s cultural background, heritage and identities would be destroyed (ibid.). Once again children were subject to cultural devaluation and assimilation to remove Indianness. The consequences of the “large-scale apprehension of Indian Children and their subsequent placement into care” and adoptions are outlined by Satzewich and Wotherspoon (2000: 92) as

...perpetuated emotional suffering and sometimes physical abuse of children; frequent movement between placement settings, particularly among foster homes and institutional care, created a sense of abandonment and an unstable climate for personal development; and the symptoms generated by family breakdown for children and parents alike, including personality disorders, substance abuse, violent behaviour, and criminal activity, became, in turn, the foundation for the recurrence of these phenomena from generation to generation.

In this and later chapters clients and council members attest to how the residential schools and adoption were factors in their criminal behaviour and involvement with the justice system.

While governments tend to be the central actors in these colonial projects, it would be a mistake to suggest that their approaches were unified, coherent and centralized (Furniss 1992: 17). Over time different actors within governments pursued culturally destructive and assimilationist policies to greater or lesser degrees. At times the application of these policies was localized, politicized and partial. Often government ideology and desires dovetailed with the desires of churches, economic interests and local constituents who pursued religious, ideological and economic agendas of their own. Moreover, Canadian courts, caught up and complicit in colonial discourse²⁵ or social 'fields of force' enforced these policies and desires as various actors presented them with disputes to resolve. The combined force of the Indian Acts, assimilationist laws and policies such as reserve policy, Enfranchisement Acts and education and child welfare laws are an example of how the specific knowledge, disciplines and values of dominant culture were imposed on the dominated culture (Foucault 1972; 1977). It is also an example of how colonial discourse and practice constituted subjectivities and "organized social existence and social reproduction" (Ashcroft et. al. 1998:42; Foucault 1972; 1977).

The Federal Government has acknowledged the oppression of colonial history and treatment of Aboriginal peoples

²⁵ "Discourse, as Foucault theorizes it, is a system of statements within which the world can be known. It is the system by which the dominant groups in society constitute the field of truth by imposing specific knowledges, disciplines and values upon dominated groups. As a social formation it works to constitute reality not only for the objects it appears to represent but also for the subjects who form the community on which it depends. Consequently, colonial discourse is the complex of signs and practices that organize social existence and social reproduction within colonial relationships. ...[It is] thus a system of statements made about colonies and colonized peoples, about colonizing powers and about the relationship between the two. It is the system of knowledge and beliefs about the world within which the

Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country, we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self-sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the result of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations (Minister of Indian Affairs and Northern Development 1997: 2).

This “recognition” and “acknowledgement” is clearly not an apology. This is typical of government statements “describing” past actions. It is written in such a way as to appear to accept responsibility yet also constructed to avoid liability for “past” colonial wrongs. I suggest that this type of statement is a technology of power used to continue to control the constitution of the postcolonial field of truth. I will now show how the effects of colonialism continue to ramify into the present day leading to Aboriginal over-involvement with the justice system and systemic discrimination against Aboriginal peoples.

Postcolonial Actors and Their Projects.

The residential schools have been closed. I see them as a bridge between the colonial and postcolonial. The decline of the residential schools, beginning with the Indian Act revision of 1951 to the last residential school closing in the 1980's, saw a shift from assimilationist discourse and practice toward vocational training, day schools on reserves and “integrated schooling in the public school system” (Furniss 1992:29-30). However,

acts of colonization take place. Although it is generated within the society and cultures of the colonizers, it

the intergenerational effects of the residential schools, “high rates of alcoholism, suicide, the loss of language, low self-esteem and pride, the breakdown of families, the loss of parenting skills, dependency on others and the loss of initiative,” continue to plague many Aboriginal individuals and communities (Furniss 1992: 31).

Moreover, the predation by lawyers upon residential school victims seeking legal redress for the wrongs committed against them in residential schools across Canada is a new form of postcolonial victimization (O’Hara 2000: 20-21). Many Aboriginal communities are now beset with lawyers and legal firms seeking to enrich themselves through representing residential school plaintiffs. Lawyers have been accused of “swooping in” on survivors in the race to make money” (ibid.). Aggressive solicitation by lawyers including “cold calls” where Aboriginal residential school students are asked “if they had been abused” without any preamble or warning trigger memories that some Aboriginal people would prefer to put behind them or forget (Tibbetts 2000: A1). This is a second postcolonial consequence of the residential schools.

Finally, some Aboriginal peoples believe that the residential school ideology and practice has simply shifted sites or was grafted onto the existing prison system. They believe that the prisons now perform the function of the residential schools:

Today, the residential schools are closed. However, large numbers of Aboriginal children and youth are receiving an ‘education’ of a very questionable kind within the European institution of the prison. And within these institutions, many of the same tools of colonization and assimilation exist. (Mallea 2000: 26).

becomes that discourse with which the colonized come to see themselves... (Ashcroft et. al. 1998:42)

Mallea continues to say that for a large segment of the population, due to over-representation, “jail becomes a substitute for school. And like the schools of yesteryear, it becomes an instrument for deracination, abuse and assimilation” (Mallea 2000: 27).

Mallea goes on to discuss the parallels between prisons and residential schools:

European culture dominates in the prison system and there is racism among the staff...Prisons provide the same extreme form of isolation which was experienced by children in the residential schools...One program called Teen Challenge is now operating within some Manitoba prisons. Teen Challenge is a drug rehabilitation program based on fundamentalist Christianity. It bans the practice of Native spirituality within the program and preaches that such spirituality (according to one young graduate) is the occult (Mallea 2000: 27-58).

A counter-hegemonic discourse about the long-term consequences of the residential schools, however, maintains that these schools had “positive consequences --- that schools stimulated cultural resistance, fostered pan-Indian identity and culture, and laid the groundwork for much of the contemporary Indian rights movements...” (Furniss 1992: 32). Furniss maintains that the claim that the residential schools stimulated cultural resistance is really nothing more than a revisionist method of saying that “the schools weren’t that bad” (ibid.). She makes an argument that this message “... serves to draw attention away from the more important issue of the general structure of Indian-government relations” that allowed the residential schools to arise (ibid.). Throughout this dissertation I outline my view of the colonial discourse that underpinned the general structure of Indian-government relations and the residential schools. My fieldwork in Toronto indicates an overwhelming set of negative consequences arising from this colonial discourse and practice that continues to negatively affect Aboriginal peoples

who come to the CCP. Therefore, I concur with Furniss' assessment of the counter-hegemonic discourse about the residential schools.

Education for Aboriginal peoples, by and large, has not undergone decolonization²⁶.

Battiste (2000:192) discusses how some gains have been made in Aboriginal education that

help them to participate in Canadian society, but it has not empowered Aboriginal identity by promoting an understanding of Aboriginal worldviews, languages and knowledge. The lack of a clear, comprehensive and consistent policy about Aboriginal consciousness has resulted in modern educational acts that suppress these integral cultures and identities. Most public schools in Canada today do not have coherent plans about how teachers and students can know Aboriginal thought and apply it in current educational processes.

I suggest that this is one cause of significant cultural dislocation and identity problems for urban Aboriginal students. The Royal Commission on Aboriginal Peoples (1996c Volume 4 Chapter 7: 534) states

In the urban schools attended by Aboriginal children, there is little opportunity to learn, study or even play with classmates in Aboriginal languages. Statistics on language loss among the current generation of Aboriginal children attest to the relentless eradication of Aboriginal languages. Curricula seldom include the history of Aboriginal peoples.

Urban Aboriginal people comment negatively on their public school experience. Urban Aboriginal students "often face chronic problems such as discrimination and lack of appropriate services" leading to high dropout rates as opposed to non-Aboriginal students (ibid.). The lack of support and resources for urban students, I maintain, is a significant

²⁶ Since the 1970s effort was made to decolonize Aboriginal education through devolution of control to band-controlled schooling resulting in more Aboriginal children remaining in school and achieving higher levels of education. However, Aboriginal control of education has problems with chronic under-funding, shortages of teachers and political in-fighting over curricula (Satzewich and Wotherspoon 2000: 132).

problem resulting from the federal government's unwillingness to support non-status and status Aboriginals living off-reserve due to the Indian Act and constitutional jurisdictional disputes with the provinces over responsibilities to Aboriginal peoples²⁷. I see these issues as part of a continuing project to deprive certain groups of their Aboriginal rights in order to cleave off portions of the Aboriginal population and to treat them as if they are the same as other non-Aboriginal Canadians.

Child welfare also remains a major concern for Aboriginal peoples in the postcolonial period. For example, although fifteen years ago Ontario opened Native run child welfare agencies in the north "to stop the heart-rending removal of children from the only culture they have ever known, the system is breaking down" (Philip 2001: A14). New child-welfare legislation in Ontario moved away from the preservation of the family to the protection of the child. This shift is also occurring in other provinces. In Ontario this has resulted in the removal of children from their families in northern reserve communities. The children are then "shipped thousands of kilometers away from their home to foster care in the foreign territory of urbanized Southern Ontario" (ibid.). Ostensibly, children are being protected from poverty, poor housing and abuse

²⁷ The issue of responsibility affects matters of jurisdiction, access to services and programs, and financing. Section 91(24) of the *Constitution Act, 1867* confers jurisdiction over "Indians, and Lands reserved for the Indians" on the federal government. This has given the federal government exclusive legislative jurisdiction over treaties and reserves, and wide authority over the lives of Aboriginal peoples. However, the federal government has chosen to limit its responsibility. The application of special federal laws and programs are limited to those defined as status Indians in the Indian Act. The provinces have argued that they have no special responsibility for Aboriginal people. Aside from some special programs aimed at all Aboriginal peoples, provincial governments have generally treated status Indians and non-status Indians as part of the general provincial population for the funding and provision of services (RCAP (1996c Volume 4 Chapter 7: 539-545).

(themselves the result of government and corporate economic policies and neglect).

Aboriginal leaders have stated that they do not want their children moved away and have asked for their own Child Welfare agencies. However, these requests have fallen on deaf ears leading some to say that this new child protection trend “marks an uneasy step backwards to a bleak era known as the sixties scoop...” (ibid.).

Even though the worst excesses of the 60’s sweep are over, Aboriginal child welfare still operates to devalue Aboriginal culture and creates the conditions that cause Aboriginal children to be ashamed of their cultural distinctiveness. Yvon Dumont President of the Manitoba Metis Federation (Winnipeg) speaking to the Royal Commission on Aboriginal Peoples (1996c Volume 4 Chapter 7: 528) discusses this problem in the Métis context but it also is completely relevant to the Aboriginal context:

Almost all Métis children in the care of non-Aboriginal agencies are in the care of non-Métis families. The children are raised without contact or access to their language and culture. They are raised in a society that devalues their identity as Métis people and they learn to hide and be ashamed of their cultural distinctiveness. Most are forever lost to the Métis Nation.

In the next chapter one client discusses her educational experience and how it has a negative impact on accepting her Aboriginal heritage. Other clients discuss their shame over being Aboriginal and their subsequent denial of their Aboriginality because of the non-Aboriginal devaluation of Aboriginal identity. I maintain that some of the internalization of negative non-Aboriginal stereotypes of Aboriginals has its genesis in the current education and child welfare systems.

The Indian Act, although amended to remove the most racist and oppressive sections, continues to define and control Aboriginal peoples. Bill C-31 may have

overturned section 12(1) (b) allowing Aboriginal women who married out to non-Aboriginal men to register their children, but it still denies them the right to register their grandchildren (Monture-Angus 1999: 142). Interestingly, “Indian men who marry out do not suffer this same encumbrance (because their wives acquire Indian status, that is, they become legal Indians” (ibid.). Female consultants in Toronto told me that, despite Bill C-31 and because of Indian Act imposed band council government, that they are unable to access their band’s resources or claim them for their grandchildren. Hence, the gender inequality that has characterized the Indian Act over time still rules despite reforms.

The status versus non-status divide and intergovernmental debates over who bears responsibility for which Aboriginal group intersects with postcolonial economic realities. In the post-fur trade period the reserves were used to re-socialize Aboriginal peoples creating new subjectivities based upon Christian doctrine and assimilationist colonial discourse (Tobias 1987). This has given way to projects of corporate and government reserve economic exploitation resulting in reserve economic dependency (Fridieres 2000: 215-219). A by-product of this project is Aboriginal urban migration.

Fridieres (2000: 215-219) discusses government and corporate economic policies that create and maintain dependency on Aboriginal reserves and that foster urban migration. Investment policies founded upon the unstated goal of draining any economic surplus deriving from investment in reserves is one process of structural distortion that fosters dependency ²⁸ (Fridieres 2000: 217). The geographic separation of reserves and a

²⁸ Satzewich and Wotherspoon (2000: 37-40) discusses the “contradiction between the representation of business (for-example, resource extraction corporations) and Aboriginal interests” in the Department of

non-centralized system of political representation make it “nearly impossible for individual band councils to cope with the negotiating power of national and international corporations as well as the domestic monolithic bureaucratic structures” (ibid.). A second strategy leading to dependency and migration for segments of the reserve population is for “capital investors to establish a common interest between themselves and the Aboriginal elite” (ibid.: 217-218). Aboriginal elite control of resources and programs backed up by capital investors has led to a “two-tiered class system” where the elite and their set of kin and family relations are *haves* and those outside of that sphere of relations are the *have-nots*. This leads to community tension and fragmentation. Finally, the lack of sustained opportunities to earn wages in the new reserve economies has led, in many instances, to welfare dependency, urban migration and, for many newly urbanized Aboriginal peoples, continued welfare dependency. These processes of reserve exploitation and structural distortion have caused many Aboriginal peoples to be pulled to the cities in search of better economic and employment opportunities. Additionally, many people were pushed from the reserve due to economic and political factionalism (LaPrairie 1994) or patterns of substance abuse and intimate violence resulting from the state of dependency and hopelessness found on many reserves (McGillivray and

Indian and Northern Affairs (DIAND). DIAND must encourage and control resource exploitation while also representing the interests of Aboriginal stakeholders. Satzewich and Wotherspoon demonstrate how these two aims continually conflict depending upon the aims of the government of the day. In many cases the resource exploitation interests win out over representing the interests of Aboriginal peoples.

Comaskey 1999). I show how the colonial and postcolonial context creates the conditions that can foster criminal behavior²⁹.

Over-representation and Explanations for It³⁰.

Over-representation of Aboriginal peoples in prisons and over-involvement in other areas of justice processing are two of the central problems confronting Aboriginal peoples today. Major studies such as the Law Reform Commission of Canada (1991), Manitoba's Aboriginal Justice Inquiry (AJI) (1991) and the Royal Commission on Aboriginal Peoples (RCAP: 1996) "all found discrimination against Aboriginal people in criminal justice and massive over-representation of Aboriginal peoples in carceral institutions" (McGillivray and Comaskey 1999:17). While Aboriginal peoples make up only 3% of Canada's total population "they account for 12% of federal admissions (1989-94 average) and 20% of provincial admissions" (LaPrairie 1996a in Ponting and Kiely 1997: 154-155)³¹. In BC, Alberta, Saskatchewan, Manitoba and Ontario on average

²⁹ "Within the criminological community, there does not exist any one paradigm that is accepted as the definitive explanation for crime and delinquency. Most experts would agree, however, that the risk of deviance and victimization varies according to certain circumstances, personality factors, and social conditions in which people find themselves. By pinpointing the various factors that contribute to crime, we can more fully understand the phenomenon and its relationship to other social problems" (Canadian Centre for Justice Statistics. 1997: 45). Criminological theories on crime causation have evolved and, to an extent, merged over time. " Explanations for crime causation generally fall into two camps: one focuses on the prior experiences and motivations of the actor (positivist theories), the other on the environmental conditions that are necessary for crimes to occur (classical theories). Examples of positivist theories include those centering on biological or genetic predisposition, mental illness, alcoholism and drug abuse, and personality and behavioural disorders. By contrast, classical theories are concerned with opportunity, social disorganization, social control, and social learning. According to the latter perspective, crime is a normal reaction to abnormal conditions in a person's environment. More recently, theorists have aimed at integrating the two perspectives for more general theories of behavior" (ibid.: 45-46). I think that greater weight should be given to classical theory within the integration of the above two perspectives.

³⁰ Parts of this discussion were previously published in Proulx, Craig. 2000. "Current Directions in Aboriginal Law/justice in Canada." In *The Canadian Journal of Native Studies*. Vol. 20, No. 2 2000.

³¹ Over the last few decades, Aboriginal representation within the judicial system has increased and continues to grow. Aboriginal offenders are more likely to serve their sentence in a correctional institution

“Aboriginal rates of incarceration are 8.28 times higher than non-Aboriginal rates”

(Ponting and Kiely 1997: 156). Aboriginal peoples are arrested at a greater rate (up to 29 times) than non-Aboriginals (Smandych et. al. 1995: 250-251). Indigenous women are over-represented in police and prison statistics compared to non-Aboriginal women and this is increasing. There is a higher rate of recidivism among Aboriginal groups.

Aboriginal youth are being arrested earlier than non-Aboriginal youth (ibid.).

Additionally, research indicates that the majority of Aboriginal inmates were incarcerated for urban rather than for rural crimes as had been previously thought (LaPrairie 1994: 15).

Explanations for over-representation vary. I suggest that colonial and postcolonial projects affecting cultural devaluation, and personal, social and economic distortion, are major forces leading to over-representation. Criminological theories³² suggest that

rather than in the community. The Aboriginal prison population is also considered to be an underestimate of the true number of Aboriginal offenders incarcerated in Canada because some inmates do not identify themselves as Aboriginal upon entry into a provincial or federal institution. (Canadian Criminal Justice Association: May 2000)

³² Akers (1999: 119-120) summarizes the basic ideas in Anomie/Strain theory as an approach which applies Durkhiem's term anomie "a state of normlessness or lack of social regulation in modern society as one condition that promotes higher rates of suicide" to the condition of modern industrial societies. Akers continues "... an integrated society maintains a balance between social structure (approved social means) and culture (approved goals). Anomie is the form that societal malintegration takes when there is a dissociation between valued cultural ends and legitimate means to those ends." The Canadian Centre for Justice Statistics (1997: 47) defines social control, social disorganization theories: "Social control theories focus on the ways in which formal and informal social controls influence law breaking. The police, courts and other authorities constitute formal social control, while informal types include respectability, status, reputation, and concern about the good opinion of others. Deviance is explained by an absence of social control. Informal social control varies directly with social integration. Socially integrated people are those who are embedded in family, community, religious and employment networks. They tend to have multiple connections and attachments to significant others who are conformists, and to conventional pursuits, such as work, education and leisure activities. Social disorganization theory can be characterized in this manner. "At the community level, a number of factors can weaken social bonds and may have an effect on rates of crime and delinquency. Highly stratified, densely populated and heterogeneous communities can enhance feelings of isolation and contribute to social breakdown. In communities with rapid migration and

conformity to societal norms and laws requires social order, stability and integration while disorder and malintegration are conducive to crime and deviance (Akers 1999: 133). I suggest that these theories aid in describing Aboriginal experiences within the colonial and postcolonial context. Urban Aboriginal offenders tend not “to be socially integrated people who are embedded in family, community, religious and employment networks” (The Canadian Centre for Justice Statistics 1997: 47). Nor do they “tend to have multiple connections and attachments to significant others who are conformists, and to conventional pursuits, such as work, education and leisure activities” (ibid.). This lack of integration and role models can lead to a lack of social control and to criminal behavior. Moreover, the “highly stratified, densely populated and heterogeneous” nature of Toronto “can enhance feelings of isolation and contribute to social breakdown” (Sacco and Kennedy, 1994: 48). This is especially so in cases where individuals have recently migrated to the city from reserves and “friendship and family ties are often weak or missing” (ibid.). The informal social controls of friendship and family are weakened and this lack of informal social control can lead to crime and delinquency.

The colonial and postcolonial context, as Aboriginal peoples attest in the next chapter, has destroyed Aboriginal social orders, stability and cultural integration leading to a disjunction between ends and means within Aboriginal cultures resulting in crime and social disorder. Assimilationist social policy and laws, coupled with culturally different judicial philosophies and practices, are central to this process (Sinclair 1997).

immigration, friendship and family ties are often weak or missing with the result that informal social controls are weakened (Sacco and Kennedy, 1994: 48).

The retributive ways in which the postcolonial Canadian criminal justice system has reacted to Aboriginal crime and social disorder are also central to over-representation. These agency-robbing (Bhattacharyya 1995: 61) laws and policies have, over time, created powerlessness, despair, disillusion and social disorganization among Aboriginal peoples leading to increasing levels of Aboriginal crime and subsequent incarceration (RCAP 1996a).

A second explanation for over-representation focuses on the underlying structural inequities in Canadian society. Drawing on criminological studies from the U. S. A., Australia and New Zealand and comparing them to Canada, LaPrairie states “that those most likely to be represented in prison populations come from the most disadvantaged segments of society” (1994: 12-13). Moreover, LaPrairie (1995: xvi-xvii, 1995: 529) thinks that who controls the justice system is less important than changing the socio-economic and demographic circumstances that force people into criminal behavior in the first place. LaPrairie (1994: 76-78) also cautions that there is not equality of victimization in the commission of crime, judicial processing and over-representation. Working in Edmonton, Regina, Toronto and Montreal, LaPrairie provides evidence of social stratification among urban Aboriginals and shows that some inner city urban Aboriginals are more likely to offend, be processed and sent to prison than less economically challenged urban Aboriginals. Indeed, LaPrairie (1994: 13) surveying cross-cultural criminological evidence states that “cultural and socio-economic marginality ... are often interchangeable”. Finally, Depew (1996: 31-32) suggests that there need to be a greater focus on “the genesis of justice problems and responses that are nested within ... wider

political, economic and social structures”.

I do not dispute the need to consider structural variables when examining the over-representation of Aboriginal peoples in the criminal justice system. Yet both of the above researchers agree that these structural problems are largely class based (LaPrairie 1995: 526; 1994: xiv) or based on internal reserve Aboriginal political favoritism and factionalization (Depew 1994: 36). I think that these approaches minimize the colonial origins of class formation, internal favoritism and factionalization. Analysis should not elide the causative effects of colonial and postcolonial projects that restrain Aboriginal economic participation in Canada’s economy. There is a distinctive set of historical processes that have affected Aboriginal peoples differently than non-Aboriginal peoples or ethnic groups in Canada³³ leading to poor education, lack of access to employment, poverty, social dislocation and crime for Aboriginal peoples. Quigley (1994: 272) discusses the pros and cons of economic/structural causes for over-representation concluding that "...poverty alone could not explain why the incarceration rate for Aboriginal people is between four and six times the rate for non-Aboriginal people".

RCAP (1996a: 46) says that the socio-economic structural explanation:

...is a significant contributor to the high incidence of Aboriginal crime and over-representation in the justice system. We believe, however, that a further level of understanding is required beyond the acknowledgement of the role played by the debilitating social conditions in the creation and perpetuation of Aboriginal crime. We are persuaded that this further understanding comes from integrating the cultural and socio-economic explanation for over-representation

³³ While ethnic groups in Canada have suffered racial, cultural and economic discrimination they have not faced the long-term state driven oppression that Aboriginal peoples have faced. Ethnic groups did not suffer through extensive land loss, reserve segregation (save WW II Japanese internment camps), residential schools and the 60’s sweep. Nor are ethnic groups over-represented in Canadian prisons to the degree that Aboriginal peoples continue to be represented.

with broader historical and political analysis. We have concluded that over-representation is linked directly to the particular and distinctive historical and political processes that have made Aboriginal people poor beyond poverty.

Even the Solicitor General of Canada (2000) recognizes that economic causation does not sufficiently explain Aboriginal crime and victimization rates:

These facts also illustrate the persistent nature of these negative lifestyles and they raise questions regarding how and *why some patterns of behaviour endure*. Most attempts to isolate causative agents of violence and other forms of victimization in Aboriginal populations tend to focus on the status of the community and per capita income of its members, and the lack of education and professional training. These issues are important because lack of education and poverty are risk factors that are often associated with, or that can lead to, further violence in and outside the home. *They are not, however, the sole risk factors and economic adjustment is not necessarily the panacea to the complex problems of violence in Aboriginal communities.* (my italics)

For Rudin and many of the consultants I interviewed, colonialism is at the core of their marginalization and oppression. Rudin's experience with Aboriginal clients, council members and Elders from various different Aboriginal cultures has shown him that colonialism is at the "heart" of the matter "because it explains why people are where they are". Other researchers agree that Aboriginal peoples are "where they are" as the result of colonialism and its effects on both Aboriginal and non-Aboriginal peoples (Henderson 2000; Alfred 1999; Monture-Angus 1999, RCAP 1996a 46-48; Turpel 1993: 167; Finkler 1992; Jackson 1988: 6-7). The "environmental factors"³⁴ that circumscribe many Aboriginal peoples lives leading to crime and victimization can be used as indicators of the negative effects of colonialism (Canadian Centre for Justice Statistics 1997: 2, 67-68).

³⁴ Environmental factors are measures of the social conditions that have been identified by criminologists and other social and legal experts as influencing crime and victimization. ... Environmental factors range from conventional measures like poverty, unemployment and literacy to less conventional

See Appendix C for a list of these environmental factors and their effects (ibid.).

Another area that socio-economic analysis does not sufficiently explain is colonial civilizing discourse and its continuing postcolonial relevance. Alfred (1999); Monture-Angus (1999) and Ponting and Kiely (1997: 164) document this colonial discourse and outline its substance wherein Aboriginal peoples are conceived of as dirty, lazy, and incapable of functioning without the paternal and superior hand of non-Aboriginals. Aboriginal peoples are also portrayed as being *sick* due to their various addictions and overall poor health. As a result they are seen to be *dependent* upon *superior* non-Aboriginal financial, social and medical resources and systems. These taken-for-granted and normalized colonial attitudes and practices still control how non-Aboriginals view and treat Aboriginals (Hazlehurst 1995) and they are a major “part of a chain linking oppression and self-destruction” (RCAP 1993: 53). Within this civilizing discourse there is selective or preferential blindness over the problems that Aboriginal peoples face and an unwillingness to accept responsibility by Canadian publics for their continuing role in the perpetuation of those problems.

Throughout this chapter I have outlined the particular colonial and postcolonial projects and actors that have oppressed Aboriginal peoples in Canada. My aim has been to sketch the historical, political, legal and social context that has led to cultural and social disintegration, and eventual over-representation in Canadian prisons, for many Aboriginal peoples.

measures like housing cost and type, the extent of flexible work arrangements, behavioral problems of children at school, pre-natal care, and the availability of shelters for battered women.

In the next chapter I examine how these colonial and postcolonial projects remain central to the lived experience of Aboriginal peoples in Toronto. That is, Aboriginal people in Toronto will document how colonial and postcolonial discourse and practice continues to define and circumscribe their lives, shape their identities and leads to involvement with the formal justice system.

Chapter Three

The Lived Experience of CCP Clients and Council Members

People in the non-native community mak[e] decisions of how we should live and the way we should live in their community. They've always wanted us to live in a non-native way. We have our own ways of thinking, our own ways of living, our own traditions. They forced us to go into residential schools and didn't allow us to speak our own language. (CCP client A.B.)

In order to understand the lived experience of CCP clients and council members it is necessary to begin with their childhood family experience. Clients and council members pointed to how childhood experiences were shaped by colonial and postcolonial policies and actions that affected their parents' generation. The residential school and adoption experience is where most consultants began when they tried to explain who they are and how they got here. Council member Barbara Gajic discusses how the residential schools and adoptions began the cycle of family dysfunction that is part of the experience of clients:

Because you have to realize from residential school, foster homes, and things like that, respect for women was not greatly known. Because I mean we were put into residential schools, the women were denied what their caring or their proper call was in the family because once in residential school that was automatically wiped out. So when they went back to the rez to go back to the family they didn't know nothing. They didn't know that they were supposed to help their mothers and their grandmothers, or even their fathers and grandfathers. They didn't know that anymore. They were taken away at the age of 6 and 7, and they come back at 14. What do you expect? So you're going to have one thing – no love. And another thing, no caring and no understanding of each other. *So that's why when we see these clients come in. ... I find with our clients mostly are street people, are drug abusers, alcohol, they're from foster*

homes, they're from residential schools or products from residential schools, like their parents, their grandparents. (my italics)

This explanation points to how some Aboriginal individuals lost parenting skills, the ability to connect in healthy relationships, and the ability to care about and understand each other through the languages by which these healthy experiences could be communicated and passed on to others.

Client William Brant attests to the continuing negative effects of residential schools on his family life, how it led to substance abuse and criminal behaviour:.

Well I come from a very dysfunctional family. My mother went to residential school until the age of 14. My father came from a dysfunctional family as well. They got together, had me, carried on and had seven more children. She had no idea on how to be a mother, and he had no idea how to be a father. I drank the first time when I was 13 years old, and then continued drinking heavily right through my teens and into my 20s. I thought I would mature out but the alcohol problem got worse and worse.... I would never ever have been in any trouble at all if I hadn't been drinking. That's what got me here actually.

Of course, Aboriginal peoples do not all agree that they have been victimized by residential schools. Here is one female council member's (A.C.) view:

The other thing, of course is, there's kind of a victimization that people accept. Well because of the residential and the inter-generational impact. I hear these phrases bandied about and I think what nonsense. Why don't we just get on with being decent human beings, being good sons and daughters, good parents, good friends. Why don't we just get on with it. But inherent in all of that is the feeling that Indians really aren't quite up to snuff. Quite frankly I feel that if you take that point of view you're just acquiescing with the very thing that you say you're trying to fight. Or that ought not to be there that you're trying to eradicate. I don't buy that at all. I don't buy the point of view Indians are inferior in any way, and I just have lived my life believing that I could accomplish anything and that I was capable of making good choices and bad choices like anyone else in the world. ... And I did go to residential school. I don't know. People really jumped on the bandwagon about this. I hate to see it. I'm sorry to see it because I think that as long as we carry on like that none of us has to take any responsibility at all for the stuff that we do because 'after all we are the victims of the residential schools'. And I think that healing is taking

responsibility saying 'I'm a whole person and I can choose to do this or I can choose to do that. I'm not a kid with choices thrust upon me'. And I wish it would stop and I wish that the people who are perpetrating it would cease and I wish that people would be given the green light to live their lives.

Some Aboriginal peoples came through residential schools unharmed. They are responsible and self-reliant and expect others to be so or to learn to be so.

However, for many Aboriginal clients and their parents, the residential school syndrome is real and has intergenerational effects. The syndrome and its effects have also become a catch all discourse describing the impact of colonialism as well as a symbol for anti-colonial discourse. Foot (2001: A1, A9) quotes John Siebert, the United Church's former program officer of human rights and Aboriginal justice, as saying that "The residential schools have become a proxy war for a whole range of problems that aboriginal communities have, that have their origin not with the schools," he says, "but with Indians' interaction with mainstream society." I agree that "Indians interaction with the mainstream society" is a central concern. Furniss (1992: 106-7) clearly outlines policies of "benevolent paternalism³⁵" that underpins Aboriginal peoples "unique structural relationship with the federal government" and churches:

The larger problem is not that the Indian residential school system existed, or that its effects have been good or bad, but that certain groups in society have presumed to know what is in Native peoples' best interests, and that these groups have held, and continue to hold, the power and authority to interfere in

³⁵ Furniss (1992: 106-7) says that benevolent paternalism has "two fundamental tenets by which the church and government justified their involvement in, and control over, Native peoples' lives. The first was the racist belief that Native people were child-like and inherently incapable of making responsible decisions and managing their own lives. The second was the belief that Euro-Canadian society had the responsibility, indeed the burden, to take care of Native people and to raise them to the level of 'civilization' enjoyed by Europeans. Underlying this second belief was the conviction that the church and the government were acting as paternalistic benefactors with only the Natives' best interests at heart.

Native peoples' lives and enforce conditions that Native people oppose (ibid.: 35).

To my mind, the program of power³⁶ can be differentiated from the technologies of power, but the residential school technology of power and its real effects must not be minimized. That is, social scientists must investigate through archival work and interviews, how residential school discourse is being mobilized by interested actors in the definition or redefinition of social realities. However, the documented long term effects of the use of residential schools for particular Aboriginal individuals and communities must not be ignored during the effort to re-interpret residential school experiences.

Childhood problems resulting from parental involvement in residential schools are important, but so too are the effects of adoption and foster homes. Abuses suffered within the child welfare system were cited as the source of underlying unresolved problems from childhood. They are the prime movers in crime causation according to most consultants. Campbell (2000: 24-26), who evaluated the CCP for the provincial Attorney General, also suggests a relationship between childhood/family life backgrounds, child welfare and involvement with the law.

More than half of these clients had lived in a foster home, in a home where there was physical, sexual or emotional abuse or had experienced transiency in their living situations. ... Almost three-quarters had been charged with an

³⁶ Gledhill (1994: 148) discusses how Foucault (1979) drew "...our attention to the emergence of a whole series of discourses designed to construct programs for re-shaping society. Foucault distinguishes between what he terms 'strategies', 'technologies' and 'programs' of power. Programs of power define a domain of social reality to be turned into an object or rational knowledge, intervened in and made functional. Technologies of power are techniques and practices for the disciplining, surveillance, administration and the shaping of individuals. Programs define forms of knowledge and discourses about objects of knowledge. Technologies are apparatuses of power designed to implement that knowledge. Strategies of power are what agencies do in practice in exercising power and operationalizing programs and technologies."

offense before they were 18 years old, most of these were property offenses. One third had spent time in custody before the age of 18, primarily in group home or a juvenile prison. Among the interviewed clients, five experienced their first criminal conviction at 15 years of age or younger, six at the age of 16 or 17 and the remaining 11 between 18 and 32 years. Only two had not spent time in custody before becoming involved with CCP. Others had been in custody for a total of one day to four years, although the majority (16 of 22) had been imprisoned for 12 months or less altogether. Sixteen respondents had also been on probation previously. The estimated total length of time they had been on probation ranged from one month to 17 years altogether (26).

A younger female council member (A.D.) expands on how dysfunctional families psychologically and physically abused clients:

They're a human being and who was there for them when they were a little kid? Who was there and intervened when they were a little kid? And that can apply to sexual assault, sexual abuse. It can apply to the little kid that was hit with an ironing cord when they were a little kid. Well what do you do to a little kid when they grow up knowing violence all the time? That's what their life consists of, that what their reality consists of is violence and anger.

This violence and anger can manifest itself in any number of ways; most commonly it emerges in forms of substance and sexual abuse. Nearly every client and many council members have been addicted to alcohol and/or drugs at some point in their lives. Client James Schell discussed how familial sexual abuse is common for most street people. He discussed how substance abuse is "a way of letting go of the past to be able to live right here and now, and that's the way we found the easiest to do it was to get stoned, get drunk and get high." It is during these episodes of substance abuse, as client William Brant discussed above, that much of the crime committed by Toronto's Aboriginal peoples takes place. Crime also takes place in order obtain funds to purchase alcohol and drugs. While examining CCP's case files going back to the beginning of the program I found that substance abuse was involved in the majority of offences leading to diversion. In

almost every client hearing I witnessed, substance abuse played a central role in the commission of the crime. My total sample of case files, interviews and hearings attended was 115 of which 89 sources (77%) said that their crimes were committed while under the influence of drugs or alcohol³⁷. Campbell (2000: 22) also found that "close to 60%" of her 1995-97 client cohort sample "had substance abuse problems, most of those with alcohol." Here Campbell is referring to substance abuse demographics.

Many clients say that alcohol and drugs caused them to commit crimes. I argue that substance abuse should not be viewed as the reason for crime. Council member testimony and hearing actions suggest, that substance abuse should be seen as an indicator of deeper problems resulting from cycles of family dysfunction whose genesis can be found in the above colonial and postcolonial discourse and practice. I maintain that there is a cycle affecting the lives of most CCP clients, which feeds back on itself creating a seemingly inescapable round of social dysfunction. This cycle does not operate the same for all

³⁷ For our statistical purposes, we look at two different issues relating to substance abuse. In the *demographic statistics* - which are tabulated only once per person diverted to the Council (in other words a person diverted 5 times has their demographic statistics only counted once) when we inquire about substance abuse we are looking at whether or not the person has a substance abuse problem. In the *case statistics* - where data from every case is counted - when we speak about substance abuse it is whether the specific offence was committed while the person was drunk or stoned. For example, a person could break a window while drunk - in terms of case statistics - this would be classified as a substance abuse case. At the pre-hearing interview with the Courtworker however the person might indicate that they really don't drink much at all and so they would say that they did not have a substance abuse problem. In the demographic statistics then the person would not be listed as having a substance abuse problem (this statistic is usually drawn from the pre-hearing interview and thus refers to the sense the person diverted has of their substance abuse issues). On the other hand, if we divert a person for prostitution, the offence is not generally seen as a substance abuse case, but more often than not the prostitute has a drug problem and indicates this during the interview. Thus as a case it would not be recorded as substance abuse related but in the demographic statistics the person would be listed as having a substance abuse problem (Rudin personal communication 2001).

individuals or to the same degree in every instance. However, most consultants said that they had traumatic underlying and unresolved childhood, family and child welfare issues. Indeed, previous research in Toronto supports my conclusions on the initial cause of this cycle. La Prairie (1994: 93-94) says, "research identifies childhood experiences as an important factor in the plight of the most disadvantaged native people in the inner city." These underlying childhood, family and child welfare issues led to addictions of various types. These underpinning issues and resultant addictions manifest themselves in criminal activity. This criminal activity results in further personal and community disintegration. As I will discuss below, the CCP enters the cycle at this point to delve into the symptoms and underlying problems and create the possibilities for personal and community transformation and to help the client heal him/herself.

Most CCP clients, however, are only dimly aware of this cycle. Few could clearly articulate how they went through the links in this chain until they had gone through the CCP hearings and attended counseling as part of their decisions. Wanda Whitebird at Anishnawbe Health says one reason most of the clients act out is because they have no control over their lives. "They are acting out issues, or they are acting out behaviour that they have seen all their lives." Whitebird believes that "no one has ever presented a lot of these people alternative behaviours so they act on what they know." In one sense it is a way of asserting control "and sometimes that's the only control they do have" [because] no one has ever given them a break (ibid.). Judge Sinclair (1997: 12) agrees when he says,

The reality in my view, is that for most Aboriginal people, criminality is often a forced state of existence, criminality is often a direct result of their [offenders] inability to function as individuals, as human beings in society.

Hence, the powerlessness many clients feel due to being caught up in the above cycle is transformed into power through the "acting out" of crime. Whitebird asserts that committing crimes may be the only way for some of these clients to send a message, however transient and contradictory, to the state³⁸. Clients may gain a measure of agency as they commit everyday acts of resistance to state control, neglect and public racism (Scott 1985). These crimes may be the client's small attempts to destabilize their overall practical and discursive subjectification and subordination to the power/knowledge nexus that disempowers them.

I will now show how the powerlessness clients felt due to the social exclusion, brought on by the continuing application of colonial power/knowledge, is central to crime causation. This is evident in the system of normalized discursive discrimination that clients have been subjected to over their lives.

Clients and Stereotypes

Stereotypes are mental images that filter how we "see" (Peterson and Sisson Runyan: 1993: 20-21). In this regard they are "composite images that attribute ---often incorrectly and always too generally --- certain characteristics to whole groups of people" (ibid.). Stereotypes allow one group to see another as "they want or expect to see them, not necessarily as they are" (ibid.). Stereotypes encourage us to oversimplify and ignore

complexity and contradictions that might prompt us to challenge the status quo. Through using stereotypes people believe "that particular behaviors are timeless and inevitable" (ibid.). Stereotypes provide "unquestioned categories and connections" and, therefore, they can "mask actual relationships and in effect 'excuse' discrimination." For example, "high unemployment among African-Americans is often 'explained' by the stereotype of their being lazy and irresponsible" (ibid.). Stereotypes also have a political function "because they both reproduce and naturalize (de-politicize) unequal power relations."

Stereotypes also

naturalize inequalities by presenting subordinated groups negatively. *When members of such groups internalize oppressive stereotypes, they hold themselves --- rather than social structures --- responsible for undesirable outcomes. ...Those who believe they are acting out the inevitable are, in effect, reconciled to discriminatory treatment (ibid.) (my italics).*

This internalization process has affected CCP clients in many different ways as I discuss below. Following Bhabha (1994: 66) I also see stereotypes as one of the major discursive strategies³⁹ used in the colonial projects discussed above.

³⁸ It is possible that they are not sending a 'message' at all. They may only be thinking about personal interest and profit. However, even if they are only interested in profit they are still showing agency as they seek to control their own lives.

³⁹ Colonial discourse and stereotypes are "...an apparatus of power that turns on the recognition and disavowal of racial/cultural/historical differences. Its predominant strategic function is the creation of a space for a 'subject peoples' through the production of knowledges in terms of which surveillance is exercised ...It seeks authorization for its strategies by the production of knowledges of colonizer and colonized which are stereotypical but anti-thetically evaluated. *The objective of colonial discourse is to construe the colonized as a population of degenerate types on the basis of racial origin, in order to justify conquest and to establish systems of administration and instruction.* Despite the play of power within colonial discourse and the shifting positionalities of its subjects (for example, effects of class, gender, ideology, different social formations, varied systems of colonization and so on), I am referring to a form of governmentality that in marking out a 'subject nation', appropriates, directs and dominates its various spheres of activity. Therefore, despite the 'play' in the colonial system which is crucial to the exercise of power, colonial discourse produces the colonized as a social reality which is at once and 'other' and yet entirely knowable and visible" (Bhabha 1994: 70). (my italics)

Stereotypes arising out of the various projects that comprised the Canadian colonial and postcolonial experience continue to psychologically damage, marginalize and oppress many of the Aboriginal peoples of Toronto. These stereotypes are part of a systematic set of discourses and practices developed over time. Indeed, as George (1995: 429 citing Hall 1981: 31) states "we cannot speak of stereotypes without speaking of ideology and because 'ideologies do not consist of isolated and separate concepts, but in the articulation of different elements into a distinctive chain of meanings.'..." Hence, we have to understand stereotypical images used against Aboriginals by non-Aboriginals "...through 'the terrain of past articulations' (Hall 1981:34) of such ideological mechanisms as politics, history and education policies" (George 1995: 429). It is necessary, then, to interrogate the past articulations of colonial projects and understand how stereotypes are part of an ideology that is, consciously or unconsciously normalized and used to exclude Aboriginal peoples. Adams (1989:18) discusses a process whereby non-Aboriginals come to "believe the images and myths portrayed by their own society as factual." Adams quotes Miller (1971:104) to make his case:

...people, having no other views placed before them and being unable to investigate, to research, or to construct a theory of relations between advanced and backward peoples, have no other choice than to follow similar thought and to accept the actions of those governing the relations between European peoples and the colonies by patently false, but nevertheless dominating ideas⁴⁰.

⁴⁰ To qualify, non-Aboriginals do not always, in every instance, have "no other views." Nor are they always "unable" to find the resources and will to investigate or "construct a theory of relations" between purportedly "advanced and backward peoples." The hegemony of "the dominating ideas" of colonialists never completely dominates any group all of the time (Gramsci 1971: 12). Indeed there may be competing hegemonies operating at any given moment within a set of social relations whose ideas some individuals may take up and put down as their personal demands (ibid.).

Consultants assert that many, if not a majority, of non-Aboriginal peoples are shaped by dominating ideas fostered during colonialism. These "ideas" are used to exclude Aboriginal peoples from access to the "good life" that non-Aboriginals enjoyed and currently enjoy. Each stereotype has a complete colonial discursive foundation underpinning it. These stereotypes refer to specific bodily, temporal or labor characteristics that are integral elements of colonial civilizing discourse.

Many consultants described how they had been called "dirty Indian" or told to "take a bath" by non-Aboriginals even though they considered themselves to be clean. Even I was caught up in this stereotype. I asked Wanda Whitebird whether CCP clients should be considered successful if they begin to attend to personal hygiene (cleanliness) as part of their healing process. She explained to me why it was a bad way to discuss client success:

I would never use the term clean. Just my little idiosyncrasies because they used to call us dirty little Indians in residential school. Ok, so they say that about us all the time. We do this soap thing on how somebody looks and how we're supposed to dress and we're supposed to wear our hair. So for me never do I say a person looks clean. For me that's important because when they used to call us dirty little Indians and say we were never going to be anything else, and that our homes are dirty. Well water was free and we're not dirty. And it's not about whether we got cleaned up or not. I've seen a lot of dirty white folks out there after a day at the beach, right? So for me clean is just an idiosyncrasy that I have a real major problem with because of all of us being called that. So if a person on the street has no access to showers finds a better way to access those showers in which to keep him or herself clean, then that's a success. But if that person has no access to showers or whatever, then you can't say that there was no success.

Another marker of the continuing processes of subjectification arising out of civilizing-based disciplinary modes is that a person must not be lazy. Rather, s/he must be industrious and efficient no matter how tedious or monotonous the job is that s/he is

required to do. It is also important that s/he have some sort of job, no matter how demeaning, in order to qualify as industrious and civilized and, therefore, fit to be included in non-Aboriginal society (Merry 2000). S/he must also be on time for the job. For example, on the construction job sites and in cocktail bars where I have worked at over the years, the stereotype that Indians are lazy, show up late and leave early was regularly expressed by co-workers and customers. Yet, as client Wilkenson states below, "laziness" has to be understood in its proper context particularly when this stereotype arises in the justice system. Wilkinson says:

Maybe the court should understand that a lot of problems don't just stem from natives being lazy. Half the kids, well pretty much all the kids that I work with, are guys my age they all have alcohol problems because of alcoholic parents that has been passed on to the generations now. Adoptions, abuses, residential schools. It goes on. It's just not natives being lazy. I mean every race has lazy people. Every race has their criminals. It's like people saying all the blacks are crack heads. People say all the natives are alcoholics. Sorry it's just not that way. I think courts should look at that a little differently too. The courts should come down for a couple of days and just hang out with the native community and maybe then the judge would have a whole different perspective on the way things are and the way things have been⁴¹.

In a subsequent section I will discuss how courts ignore the colonial and post-colonial context leading to the commission of crimes. I will also outline client dissatisfaction with this situation.

⁴¹ Adams (1989: 11) discusses his experience with laziness stereotypes: It was clear to me that white bosses were using these stereotypes of drunkenness and laziness as excuses to exploit half-breeds. By classifying us as inferior workers, they could get their work done more cheaply. Native workers are invariably treated in this discriminatory way: branded with the same racial stereotypes --- late for work, absent after payday, unreliable on the job --- they are then forced to accept poorer wages. In my youth I never solved the puzzle of racism in employment, but today it is clear to me that racism is a product of economics.

Finally, "the drunken Indian" is another stereotype that is pervasive in Canada (Maracle 1993). Non-Aboriginal interactional ethics that state that individuals must be abstemious and not drink in public are used to negatively stigmatize Aboriginal peoples. Guillemin (1975) discusses the public performances of Micmacs in Boston who socialize and the risks they take through alcohol. She also discusses the dominant society's point of view on drinking as an action to be undertaken in private or in controlled situations with approving and participating friends:

Since the police and other keepers of the peace in urban and reservation areas have the same values as the rulers of American society, they perceive public inebriation as an ultimate degradation, a fall from civilization. They judge Indians who drink publicly even more harshly than the individual white, because Indians as a group seem to have been born uncivilized with no shame about their categorical degradation (191-195).

This same judgement continues to be made of Toronto's Aboriginal peoples. Consultant Bernard Robinson points to the pervasiveness of the "drunken Indian" stereotype:

The drunken Indian is ten feet tall, but a sober one is invisible. No one notices all the ones that they pass that are on their way to work, on their way home, on their way to committees, whatever. No one notices those ones, but everybody notices the one that is drunk on the street.

Additionally, many non-Aboriginals that I have known characterize Aboriginal peoples as "chugs" in reference to their stereotypical state of drunkenness. They use a particular voice to imitate the way Aboriginals speak. The voice is that of a slurring and mumbling drunkard. It is the voice of someone who cannot speak in a socially acceptable or *civilized* manner. I should point out that the usage of the term "chug" and the vocal parodying is not confined to older, poorly educated non-Aboriginals. I have heard educated non-Aboriginals, who consistently claim to be non-racist, use these terms in

front of me expecting that I too am complicit in these attitudes and practices. Hence, non-Aboriginal treatment of sober Aboriginals as inevitably and shamefully drunk and, therefore, somehow uncivilized, is an example of how colonial ideology continues operating in the postcolonial world.

These stereotypes all comprise the interpretative repertoires⁴² underpinning the systemic racism that permeates non-Aboriginal society. They are "forms of disciplinary power relying on normalization, the production of personhood and the discipline of the body" (Fitzgerald 1992: 128 in Merry 2000: 72; see also Foucault 1979: 136-140, 151-156, 184, 208-210). These normalized stereotypes are forms of discipline that operate throughout Canadian society. They are part of the covert micro-technologies of power that are used to oppress Aboriginal peoples (Foucault 1979: 26, 208-210). I suggest that the non-Aboriginal multi-sited civilizing project is a program of power that has been applied to Aboriginal peoples and that stereotypes are the techniques of power used to discipline and shape both Aboriginal and non-Aboriginal peoples. In other words, when non-Aboriginals use stereotypes they are constructing Aboriginal peoples and themselves in a way that allows non-Aboriginals to marginalize, subjugate and oppress Aboriginal peoples.

⁴² Wetherell and Potter (1992: 90) provide a useful conceptual tool to understand the "implementation of discourses in the [following] actual settings". They define these interpretative repertoires as: "discernible clusters of terms, descriptions and figures of speech often assembled around metaphors or vivid images... we can talk of these things as systems of signification and as the building blocks used for manufacturing versions of actions, self and social structures in talk. They are some of the resources for making evaluations, constructing factual versions and performing particular actions. Interpretative repertoires are pre-eminently a way of understanding the *content* of discourse and how that content is organized."

Throughout the foregoing I showed how racist disciplinary discourses and practices are normalized in everyday public life. I now discuss how Aboriginal individuals and peoples construct their identities, how non-Aboriginal peoples construct these identities and how these constructions operate within a system of differences based upon stereotypes. Povinelli (1999:27-28) discusses how identity creation, maintenance and change is not simple a matter of personal or cultural choice. Rather, Povinelli, citing Lee (1993: 414-415), says that

indigenous subjectivity, or other social subjectivities, [are] a passionate attachment to a point in a formally coordinated system or the regimentation of ongoing semiotic practices --- as people, consciously or unconsciously, articulating gaps and differences in an unfolding relational network itself part of the 'historical reality of intertextual, multimedia and multimediated public space'.

Indigenous social subjects, non-Aboriginal media and other publics define identities within the above historically constituted public space. This space has been, more often than not, defined through the semiotic practices of non-Aboriginal politicians and the media. Aboriginal peoples, as discussed here and in the subsequent chapter on community, have not had the power to define themselves within this public space (Monture-Angus 1999).

This is not to say that Aboriginal peoples never define themselves or that they do not influence media portrayals of themselves. Clearly Aboriginal peoples are becoming more successful at gaining access to the media and defining themselves within it. Aboriginal individuals are:

...not simply determined and dominated by the ideological pressures of any overarching discourse or ideology but [are] also the agent[s] of a certain *discernment*. A person is not simply an *actor* who follows ideological scripts,

but is also an *agent* who reads them in order to insert him/herself into them --- or not (Smith 1988:xxxiv-xxxv cited in George 1995: 447).

Some Aboriginal peoples are becoming adept at taking the images and stereotypes used against them and contesting or flipping them around to make statements of personal identity. Smoke Signals (1998), the first feature film entirely made by Aboriginal people, is one example of Aboriginal people taking control over the power of media. Aboriginal characters use non-Aboriginal representations of Aboriginal identity as a backdrop to *act against* and resolve personal and cultural identity issues. This re-presentation entails the recognition of, and defiance to, the processes of subjectification based on stereotypes.

I am simply suggesting how stereotypes negatively influence identity creation, internalization, and public perceptions within the above historical reality of intertextual, multimedia and multimediated public space. Client Jimi LeGarde points to client dissatisfaction with how the media defines Aboriginal peoples:

That's the media for you, they twist everything around. They should see it from their closed mindedness. They haven't lived on the streets, they don't know what it's like. The media has a lot to do with how they stereotype anybody.

Many consultants maintain that if non-Aboriginals actually came to see how Aboriginal peoples live that these stereotypes could be eliminated. But merely witnessing this marginalization will not be enough. There must be a thoroughgoing, conscious re-examination of the disciplinary discourses and practices that each of us carries as a result of our socialization into this set of social relations. Monture-Angus (1999) suggests that non-Aboriginal peoples must decolonize their minds by honestly examining the words used to describe their relationship with Aboriginal peoples in order to create a healthier society for all peoples. A major part of this program of decolonization will be exposing

how stereotypes deriving from colonial civilizing discourse continue to enable the social exclusion of Aboriginal peoples in the post-colonial era.

Throughout my time in Toronto the theme of "grieving and loss" over the results of these subjectification processes was pervasive. Clients and council members grieved over the loss of their identities as they fell prey to the colonialist and postcolonialist power to define the content of their subjectivities. They also grieved over the loss of agency as they accepted and lived the identities imposed upon them⁴³

One female council member (A.E.) spoke of how he denied or refused to accept his Aboriginal identity:

I'm First Nations descent, and there's like a lot of folks like myself. I, for the longest time, would not identify myself as First Nations just because of the attitude in non-native society. Which is if you do that, if you identify yourself as one of them you hang out on street corners and drink or you do this or that. So I wasn't willing to do that.

Another male council member (A.F.) discusses why he denied his Aboriginal identity:

My father comes from Cape Croaker, my mother comes from Timmins. My father was a vet. That older generation literally had his culture beat out of him. He was extremely ashamed to be a native man. He wanted us to do anything but recognize our native heritage and he was very, very clear. The message was very clear. He would say these words "you look white, be white, this is a dead culture". He was really clear about that. And he is right, I do pass for white unless I'm in a really, really, really white crowd you may notice I look a little different.

⁴³ Franz Fanon (1968:18) described the results of colonial processes of subjectification in other parts of the world that are relevant to Aboriginal peoples: "[colonized people are] every people in whose soul an inferiority complex has been created by the death and burial of its local cultural originality... [which] finds itself face to face with the language of the civilizing nation; that is, with the culture of the mother country. The colonized is elevated above his jungle status in proportion to his adoption of the mother country's cultural standards. He becomes white as he renounces his blackness, his jungle".

These consultants spent their lives denying their Aboriginality and "passing" as non-Aboriginal. Consultants grew up thinking that to be an Indian was to be lazy, unambitious, incompetent, dirty, drunken, sexually promiscuous, violent and abusive. As adults they continued to believe these images. It was also difficult for these consultants to find Aboriginal role models that countered these images (LaPrairie 1994: 37). Ponting and Kiely (1997: 171) discuss how Aboriginal parents "...who lack a positive self-identity engage in behavior which embarrasses, abuses or endangers their children, thereby depriving the children of positive parental role models and diminishing their children's own sense of self-worth (1997: 171). These parents grew up being negatively positioned and "subject-ed" through the exercise of non-Aboriginal cultural power to define (George 1995: 442). Processes of subjectification involving residential schools, forced adoptions, child welfare, current education policy and practices and stereotypes by non-Aboriginals were powerful tools in forcing Aboriginal peoples to experience themselves as 'Other' (ibid.). Children internalized these unhealthy images because those were the stereotypical images (Ponting and Kiely 1997:169) that were promoted by non-Aboriginal society and the examples provided by their parents. Council member Bernard Robinson summarizes how this is manifested in CCP clients:

A lot of them don't want to be native. They have those usual stereotypes of native people ingrained in them. When I was a boy and someone said doctor or lawyer or policeman or whatever, in my mind there would be a picture of a white person. That kind of thing. And that's like a powerful, powerful thing if you really think about it because even if that little picture flashed for second that tells me that I'm not good enough to be that, right. ... So these people are coming in and I know I'm not the rare exception, I know these people have these same kind of pictures in their minds and even probably even more so because of proof being where they are now. ... And those are the kind of stereotype images that these people grew up with.

This "internalizing process" wherein the colonized internalize the negative images of the colonizers about the colonized leading them into "self-hatred" is one of the most difficult to overcome (Alfred 1999: 34; Ponting and Kiely 1997: 171).

McGillivray and Comaskey (1999: 25-26), using the work of Caudill (1997), discuss how this internalizing process proceeds from a psychological perspective:

Subjectivity is the constitution of the self by the other. This idealized image or subject is the subject of law. Socialization into the dominant ideology is explained by unconscious processes in the subject. The rational, autonomous, choosing self, supposed by law, is decentered and split. For Aboriginal peoples in daily life, as victims of violence or as its instigators, as subjects of law, extremes of otherness profoundly condition subjectivity.

Council member (A.F.) gives a clear impression of this de-centering and splitting process:

To me the source of distress is always the split between what we think we should be and what we actually are, or what society thinks we should be and who we actually are. I think we all, regardless of our race, feel that kind of distress. Native people feel it probably more generally speaking than most people because the stereotypes, both the romantic stereotype and the negative stereotype is so extreme for our people and it's really, really different than who we are. Truth is we're not a very romantic people. Truth is we're not all drunks and alcoholics and sexual abusers and petty criminals. But this is who we're taught to be. And so we end up with this horrible split culturally speaking between the drunk on the street corner and Dances with Wolves. Where do we fall between that really? Let's try and find a little bit of reality. So I think there's a terrible split culturally speaking. And many individuals that come to us are terribly split just from their own lifestyle. People have been abused, almost invariably they've been abused. The vast majority are drinkers and addicts and alcoholics. They have those inner psychic splits as well that they have to deal with, as well as the external cultural pressures. (my italics)

McGillivray and Comaskey (1999: 25-26) discuss these external cultural pressures. They show how Aboriginal peoples have subconsciously judged themselves against the standards of white society and internalized the White Ideal. Adams defines this White

Ideal as the standards, judgements, expectations and portrayals of the dominant white world (1989: 144-149). Hence, laws and policies of assimilation plus the overall non-Aboriginal discrimination against Aboriginals in the work place, the streets and through the media were, and are, effective in forestalling the creation of, or destroying, healthy Aboriginal identities. Many of the clients I interviewed cite this internalizing process as a prime mover in their social dysfunction and disconnection from the Aboriginal community. Without healthy personal identities and role models it is difficult to see themselves in a positive light. LaRocque (1993: 74) maintains that "the damage [done by internalization] has been extensive and the problem of internalization does still exist." She asserts that "understanding the complex workings of the internalization process may be the key to the beginnings of understanding the behaviour of the oppressed and the oppressive in our communities" (ibid.: 74).

Life on the Street.

The legacies of the colonial project, plus postcolonial stereotypes and their internalization, have caused many clients to retreat to the street. The mental, spiritual, emotional, physical, sexual and linguistic abuse that almost all street people suffer in their own homes is another major reason people are on the street. James Schell, a younger client who is now well down his healing path, says that, for most street people, "going home is not an option" because they would only be subjected to the same abuses yet again.

Schell said that these abused people find an alternative family or community on the street: "I mean everybody kind of takes care of each other" because the street is "a

dangerous place". He described a form of street eldering where older street people take care of the younger and more naïve ones to help them avoid the dangers of the street. Schell also describes how the street cannot be understood as being the same everywhere. Different street locations have different ethos and practices. Schell said that the area around Yonge street was more of a "selfish taker place" whereas around Queen St. West there was more of a community. But despite all of this talk of community and relationships he is clear that it was all fueled by:

Drugs. Drugs. I'd be stoned most of the time, and that just seemed to be where the drugs were and why not just hang out where the drugs are. [Schell reiterated that drug use] ... was just the way of letting go of the past to be able to live here right now, and that's the way that we find the easiest to do it was to get stoned, get drunk, get high.

However, drug use was only an indicator of the deeper problems resulting from the dysfunctional cycle leading to crime.

The street is a different experience for different people. There are the elements of prior physical, sexual, religious and verbal abuse leading to substance abuse.

Impermanence and danger are common to all. However, there is also a situational and individual element to street life. Clients discussed the major or minor events in their lives that nudged them down the path toward street life. Client (B.C.), a thirty year old father, asserted that he gave up caring for and about himself, and eventually ended up living in parks and under bridges, because his relationship with his wife ended. Another client's (B.D.) path to the street started with being discovered smoking a joint in the YWCA. She was thrown out of the YMCA. She then moved through successive couches in friend's apartments. When she had run out of friends willing to shelter her, and without money for

rent, this client ended up on a park bench in mid-winter. She survived by working as a prostitute. A third client discusses how he repeatedly ended up on the street over the years: "Pretty well it's I get drunk I don't pay my rent. I use the rent money for drinking ... then I get tired of the streets." After he "gets tired of the street" he would use a disability cheque to get off the street for a time but then the drinking would take over again and the cycle would start anew.

Clients discussed two types of common experiences common to street life. First, for some clients, life on the street led to intentional criminal behavior. Criminal behavior resulted simply from the need to get food and survive. For others the need for drugs and alcohol forced them to commit crimes. Still others fell in with groups of similarly situated people who formed their own social units to commit crimes. Second, substance-abusing clients often blacked out and during these periods often unknowingly committing crimes⁴⁴. These crimes, more often than not, were public mischief violations and resultant failure to appear (FTA) or failure to comply (FTC) violations. However, a few blacked out clients committed some serious offenses. Both of these types of experiences led to involvement with the criminal justice system. This in itself is a standard feature of street life.

⁴⁴ Patti McDonald says, "We've had clients have been charged with an offense and during the time of the offense they may have been very drunk and blacked out during the incident. The client may not be able to remember the incident, there may not necessarily be any eyewitnesses, but the client will assume that they are responsible because they were arrested and it might have been a behaviour that they have engaged in previously. They make a logical inference as to their responsibility." I recognize that the courts rarely accept "blacking out" due to substance abuse as a mitigating factor in sentencing. I am simply pointing out that clients can often be massively intoxicated when they commit crimes. Appendix D, in the case information, shows that 68.70% of all the clients commit offenses under the influence of alcohol or drugs.

Clients and the Justice System.

When these Aboriginal offenders entered the criminal justice system they confronted a system based on colonial Euro-Canadian laws and practices that were procedurally strange to them (RCAP 1996a). Legal notions of uniformity and equality, culture-bound judicial discretion, coupled with sentencing practices that have not taken into account the special circumstances of Aboriginal peoples, all discriminated against Aboriginal peoples leading to over-representation (Proulx 1997; RCAP 1996a; Quigley 1994; Ross 1996 and 1992; R. v Moses 1992). While the justice system continues to maintain that there is one set of justice principals and practices equally and uniformly applied to all, research has suggested that this is not the case (ibid.). These legal philosophies and practices, deriving from the colonial era and continuing today, have led to over-representation and the failure of the justice system for most Aboriginal peoples. I will now present client experiences, which illustrate this failure within Toronto.

Clients and the Police.

The police are usually the first element of the justice system to contact clients. Clients repeatedly described Toronto police discrimination against them⁴⁵.

⁴⁵ The Report of the Commission on Systemic Racism in the Ontario Criminal Justice System stated "After presenting our findings on public perceptions and recommendations on community policing, we turn to specific practices that have eroded confidence in the police amongst members of black and other racialized communities. First we look at a police practice that has probably done more than any other to exacerbate tensions and fuel mistrust - exercise of the discretion to stop people in cars and on foot. Findings from the Commission's public survey about the number and the nature of stops lend considerable weight to community concerns that this discretion is exercised in a racially discriminatory manner (Report of the Commission on Systemic Racism in the Ontario Criminal Justice System. 1995. <http://www.yorku.ca/faculty/osgoode/offline/owp/racism/contents.htm> Chapter 10).

Consultants discussed how they were charged with offenses simply because they were Aboriginal. For example, one council member (A.G.) talked about a buddy who was walking down the street with a screwdriver. "The cops pulled him over and charged him with possession of burglary tools. He said he was going to plead guilty so the cops wouldn't trump up more charges and frame him with them". I can only assume the police logic⁴⁶ in this case is that if he has a screwdriver he must be going to commit a crime. In the end he did plead guilty and was given probation. Police racism is a possible reason for such a pre-emptive action. Another reason is that there is a presumption of guilt simply because Aboriginal peoples are seen to be more prone to criminality and, hence, are over-policed⁴⁷.

Still other clients talked of how they were physically brutalized and tortured by the police. Numerous instances of police beatings in the back of cruisers, police "smacking my head against the wall in the investigation room" and torture through the excessive use of handcuffs were cited by clients. Client (B.E.), an older man who was well weathered from life on the street, said:

⁴⁶ I attempted to interview Toronto police over the space of the last six months of my fieldwork. The Aboriginal Peace Keeping Unit contacted a sample of police officers that had experience with Aboriginal offenders and diversion in downtown Toronto. I was given permission to interview these officers by then Chief of Police Boothby. Despite repeated efforts to contact these individuals over the course of months, no officer responded to my requests. Hence, there are no police responses to the serious charges made by Aboriginal clients against Toronto police.

⁴⁷ Quigley (1994 273) discusses how police use race as an indicator for patrols, arrests, detentions etc. He also discusses the "self-fulfilling prophecy" of over-policing: "patrols in areas frequented by the groups that they believe are involved with crimes will undoubtedly discover some criminality; when more police are assigned to detachments where there is a high Aboriginal population, their added presence will most assuredly detect more criminal activity". The Solicitor General of Canada (2000) gives a more sanitized version of over-policing: "The higher incidence of off-reserve crime may also be due to *different policing methods and practices of reporting crime* and victimization in urban centres" (my italics).

They took me to the police station. I was laying down on the floor, they said “come on its time to go,” and they had the cell open. “I said I’m not going nowhere.” They had the handcuffs on me from behind; I was laying on my stomach. Two of them picked me up and grabbed me and picked me up by the handcuffs so they broke the left arm.

Beatings or other forms of intimidation may be acceptable practice for some Toronto police. My characterization of these practices as torture is not mere polemics. I concur with consultants who described this as torture particularly when considering the United Nations definition of torture.⁴⁸

Clients also cited excessive use of strip searches as a major abuse. Clients were subjected to multiple strip searches even though they had come into contact with no other human beings from the time they were arrested and were never out of the sight of the police at any time. Client (B.F.), a street-wise young adult, describes his experience:

Too many strip-searches for one thing. Once they’ve got you confined and you’re locked up, they strip search you at the one precinct. And then they might take you to another precinct for some reason which happened to me like paper mix up and they ended taking me from one precinct to another instead of straight to the holding centre, jail, and then they strip search you there. It’s the same cops, you’re handcuffed, nobody has come up to you, no strangers come up to you slip anything or drugs or weapons or anything, so there’s no way you could have got anything and yet they strip search you again. Just totally make an idiot out of you for doing it. Then they take you into jail and they strip search once or twice in there too.

I ask: In the jail?

In the jail, yes. More than once. Twice in the jail. You’re already in the facility and you’re getting strip searched twice in there so you might get strip searched four or five times. This is even before you go to court. This is just to get in the jail you’re getting strip searched four times which is crazy, it’s repetitious.

There have been a lot of complaints about that from people too.

⁴⁸ "Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the investigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed or intimidating him or other persons". (Millet 1994: 3 cites from the United Nations Declaration on the protection of all persons from torture, December 9, 1975, Article 1)

CCP coordinator Patti McDonald daily sees and hears the results of police discrimination.

She describes the injustices Aboriginal peoples face at the hands of the police:

Many of the Aboriginal people we see and work with are homeless or marginally housed. They are on the street, in the parks and in public places and the acts that they engage in are very visible to the police. Additionally, they look Native. Everybody knows who the Native street people are, they stand out. Certain areas of Toronto have a stronger police presence and as a result any activity that is going on is likely to be observed. *It may not necessarily be that Aboriginal people are committing more crimes than another group, but by the mere fact that they are in public, they stand out and there is a stronger police presence means there is a greater likelihood of them being arrested. Upon arrest Aboriginal people are more likely to be held in custody for a bail hearing. Even if they have an address, they don't have a criminal record and their offense is relatively minor. The police will often report that a person has no fixed address and no ties to the community and that they have an alcohol problem. This justifies them in holding the person. Despite the fact that the accused person may be living with relatives, they may be working or in school and they are a recovering alcoholic. They are still made to look a lot worse than their actual circumstances are. The systemic racism in the whole arrest and court procedure is well documented and well known.* Over the many years I have worked at ALST I have seen many Aboriginal men who have sustained injuries while in police custody. These men have come to our office after being released from custody at court having bruises from batons across their backs, their eyes are swollen shut and their faces are cut and swollen. One man I know of lost an eye while in police custody. He had been drinking, got himself arrested (and at the time of the initial arrest he had good eyesight) but at some point while in police custody sustained enough injury that he completely lost one eye and had severe damage done to the other eye. Certainly not all police beat up Aboriginal people and they don't specifically target Aboriginal people but since I only work with Aboriginal people who are getting arrested, I can assure you that this is something that is not uncommon (my italics).

These are the common experiences of clients with the police. To be fair, however, when I asked consultants whether other poor non-Aboriginals faced the same police treatment, many said “yes”. Some clients maintained that, if a non-Aboriginal is poor and hanging out in a high crime area, they are as likely to be arrested and treated the same as an Aboriginal person. Hence, class just as much as ethnicity is a factor in police

discrimination. These same clients also said that a lot of violence against offenders is a result of “mouthing off and resisting arrest”. They suggested that “if you treat the police with respect then they would do the same for you”. Some of the clients and council members were very understanding of the stresses that the police operate under daily. Client (B.G.) said, "Its different with every cop. They're people doing a really shitty job, and I don't wish that job on anybody. I wouldn't want to wake up in that world every day." Council member (A.F.) was sensitive to the dilemma the police are in:

They were enraged by what they had to go through, how they were treated. They were treated, most often than not, as the enemy even when you were trying to help somebody there was a sense of sometimes helplessness on the part. This is what this cop was telling me. And he was absolutely enraged and he would carry that rage around all the time, and that there were definitely times when he would snap. He would do something inappropriate and feel bad about it afterwards but think in that moment I had to do something, I was just enraged. You know this is the same feeling that a lot of Aboriginal people have talked about. That feeling of rage. That feeling of helplessness. It's almost like the same situation but one has power and the other doesn't. So what's my impression of the police? I do believe the police are abusive. I do believe the police are often insensitive to Aboriginal people and Aboriginal cultures. I do believe that they often may be racist. I do believe that considering their job it may be terrible and inappropriate, but it's kind of understandable sometimes.

Despite this empathy for the police, most clients and council members believed that Aboriginal peoples are discriminated against and treated differently than non-Aboriginals by the police. The racism, stereotypical thinking and physical/mental/spiritual/emotional abuse and torture by the police are seen as endemic. The excessive use of strip searches violates the well being of Aboriginal offenders. Aboriginal knowledge that they are more likely to be picked up for a crime than non-Aboriginals is a form of mental abuse. These treatment inequalities by police exact a strong toll upon Aboriginal people in Toronto. Moreover, attempts by the police to be more culturally sensitive are described as just

another "more clever" way of concealing their racism and abuses of power. The powerlessness of Aboriginal peoples in the face of the power of the police is a consistent theme throughout the above discourse.

Clients and the Courts.

Once an Aboriginal offender has reached the court the effects of police discrimination continue to ramify within the courts. The fact that the police refuse to release many Aboriginal peoples from the station through Form 10 releases has far-reaching effects. Once again Patti McDonald describes these effects:

When our people get to court, and I think it's sort of, I don't know what the stat is, but it's a proven thing that if you're seen by a judge in custody you're likely to get a harsher sentence as opposed to somebody whose out of custody appearing in court⁴⁹. Discrimination, things like that. Quite often the police will write, they have what's called a show cause sheet, that they give to the Crown and then the Crown reads it. The Crown refers to it very quickly for a very brief synopsis of the person and why they should be released or shouldn't be released filled with all kinds of derogatory, stereotypical comments. It's a Native Canadian, alcoholic living on the street kind of thing. Sometimes it's not true. They may be native; they may have an alcohol issue. Maybe they just fell off the wagon and ended up on the streets for a couple of days. Other ones are fine. Those kinds of things don't get considered. The cops are trying to make these things look as bad as possible so the person doesn't get released.

Legal representation is another major problem for Aboriginal offenders once they are in the court system. Many clients described the poor legal representation they

⁴⁹ The 1995 the Report of the Commission on systemic racism in the Ontario criminal justice system states: "Consistent with the findings of many sentencing studies, the analysis revealed a strong relationship between imprisonment before trial and after conviction, regardless of race. We found that 81% of convicted men who had been denied bail compared with 63% of those ordered released at a bail hearing and 16% of those released by the police, received a prison sentence..." (275). Moreover, RCAP (1996a: 45) states that "Pre-trial detention, once imposed, has a number of effects. It creates additional pressure to plead guilty in order to get the matter over with, it limits the accused's ability to marshal resources, whether financial of community, to put before the court a community-based sentencing plan, and it therefore increases the likelihood of a sentence of imprisonment."

received from lawyers they retained and from duty counsels. Clients said that many lawyers were "only in it for the money" and that they advise their clients to plead guilty so that they will get paid quickly for doing very little work representing the client's interests. Council member Arlene Bush gives evidence of this:

It's easy money. Because they get paid from Legal Aid and it's like snap, snap, snap. They pick their clients up in the cells and they're like plead guilty, sign your name on the Legal Aid paper. They get paid. They don't care. They don't even have to work for it. They just go in and say "oh my client pleads guilty", and they don't even work for it. And they make what \$300, \$400 for that just to stand there and say my client pleads guilty and that's it. And the guy probably doesn't even remember his name.

While there is ample anecdotal evidence for this practice by lawyers I acquire no statistics on this abuse from the Law Society or Legal Aid. Records are not kept of the ratio of guilty pleas to time in court. However, even without statistics, anecdotal evidence indicates widespread mistrust and suspicion of lawyers by Aboriginal peoples. When I discussed this case with a Duty Counsel I was given some clarification on this type of practice. First, the Duty Counsel was clear that it is private bar lawyers who charge on a per case basis. Duty Counsels get paid a flat rate no matter how many cases they handle. Second, in the majority of cases, these private lawyers are conscientious and do a proper job researching the case, getting disclosure, and making sure that the Crown's case is strong enough to go to trial. However, there are "some sleeze-bags in the system" who hang around the court preying upon Aboriginal offenders who oftentimes have little money for proper representation and who are in custody for minor offenses. Prior to recent changes, these private bar lawyers were commonly known as "Dumptrucks"

because they did not properly investigate the case and pleaded out⁵⁰ literally hundreds of cases without going to trial⁵¹. This is the sort of lawyer that many Aboriginal clients interviewed for this study have encountered. McDonald puts the problems with legal representation into clearer focus and how Native Courtworkers alleviate some of these problems "The problems with duty counsel and defense counsel, they often just meet their clients just before they're going into court." Judge Sinclair (1994: 174) agrees with this assessment and with the following statements on Aboriginal peoples pleading guilty.

Patti McDonald continues

The clients aren't getting great representation as well. Because we have no control in the court system, we tend to be fairly easily pushed and manipulated through the system. I think it's really lucky that we have court workers. Court workers can jump in and grab somebody and even though sometimes our court workers may be manipulating the system and ordering a client what to do, they're being ordered what to do in their best interest. Whereas when the court worker is not involved you've got everybody else telling the person what to do and how to do it. So the person has no control, and Aboriginal people are often pleading guilty right away but nobody is taking the time to find out if they have a defense. Let's just plead and get it over with. Our notion of responsibility versus the court's notion of guilt are two different things so often it's interpreted that if a person says I am responsible, the courts mean that as being guilty and you convictions, off to jail you go. You get more jail sentences. Over representation in jails is well documented.

Sinclair also discusses how the courts require Aboriginal peoples "to act in ways contrary to their most basic beliefs" and how this is "not only a potential infringement of their

⁵⁰ Sometimes it makes sense to plead out a case. For example, if an offender is in custody for a minor offense and must remain there while the case is prepared, it makes sense to plead out. This enables the offender to get out of custody for a charge that, in many cases, would have brought a fine rather than incarceration. Hence, the offender is spared pre-trial custody that can sometimes continue for months as cases are remanded or set over.

⁵¹ Recent changes to the administration of Legal Aid over the past decade now pay private bar lawyers by time spent in court. In the past private bar lawyers could charge Legal Aid for the number of cases that they worked on. For example, pleading 20 cases a day could make a "dumptruck" a sizable

rights; it is also, potentially, a deeply discriminatory act" (ibid.: 184). I must point out, however, that the Head of Duty Counsels for Toronto and the three senior Crown Attorneys that I interviewed all recognized the abuses and weaknesses of the current system. Attempts have been made to correct these problems. Crowns and Duty Counsels attempt, despite incredibly busy workloads, to take cultural sensitivity training. They have also utilized the information packages that the CCP has sent them. Finally, they are trying to improve their relations with Native Courtworkers. My limited time with Crowns and Duty Counsels made it difficult for a clear assessment of their success in implementing these changes.

Clients and Judges.

The problems that Aboriginal peoples face when they go before judges are well documented in the literature on Aboriginal justice (Monture-Angus 1999; Warry 1998: 171; Proulx 1997; The Report of the Commission on Systematic Racism in the Ontario Justice System 1995; Opekokew 1994; Quigley 1994; Sinclair 1994; Ross 1992). Clients in Toronto provided evidence of this in an urban context. The first major problem that Aboriginal offenders face is that the courts operate under an interpretative repertoire that all offenders must be treated equally. The cherished ideal of the equality of all before the law is often cited as a reason why Aboriginal people are to be treated the same as any other person who comes before the court. But this idea of equality as sameness results in systemic discrimination which

amount of money. These new changes are successfully combating this abuse according to the duty counsel consultant.

... involves the concept that the application of uniform standards, common rules, and treatment of people who are not the same constitutes a form of discrimination. It means that in treating unlike people alike, adverse consequences, hardship or injustice may result ... The reasons may be geographic, economic or cultural" (The Alberta Task Force Report 1991:46).

This understanding of 'equality' ignores the fact that

all individuals are not equal in Canadian society; there is a hierarchy of privilege that has been created precisely because of this concept of equality. Moreover, if equality is the goal, what or who is the benchmark of that equality -- the white English speaking Christian male? Must we all be equal to this standard? (Turpel 1993b: 136)

Quigley points out how this ideal breaks down in fine option programs: "Few would contest that a fine of \$1000.00 is much less punishment to a rich person than to an unemployed person" (1994:276). Aboriginal offenders often face this sort of "equality". In the above instance most Aboriginal people are sent to jail for non-payment of their fines (ibid.) while non-Aboriginals, who have access to jobs and resources largely unavailable to Aboriginal offenders will be able to pay the fine and go free. RCAP (1996a: 45) states:

But imprisonment for fine default is only the most obvious example of systemic discrimination built on socio-economic deprivation. As the Aboriginal Justice Inquiry of Manitoba found, Aboriginal people are more likely to be denied bail and therefore subject to pre-trial detention.

The second major concern is during sentencing⁵² when mitigating and aggravating circumstances are supposed to be considered. Clients said that non-Aboriginal judges'

⁵² Canadian law has traditionally given wide scope to judicial discretion at sentencing. The Criminal Code provides a skeletal framework, supplemented by judgments of appeal courts that sketch an approach to sentencing or specify factors to be considered. *But primary responsibility for interpreting and applying the guidelines to each case remains with the sentencing judge.* (my italics) The judge is expected to balance competing goals of punishment - such as deterrence, rehabilitation and denunciation - and to consider a

cultural and personal pre-bench and bench life experiences were so different from client's experiences that the judges could not, or would not, understand the life context of these clients⁵³. An egregious example of the lack judges' cultural knowledge and stereotypical thinking about the life context of Aboriginal peoples occurred in the family division of the Quebec Supreme Court. Five Aboriginal groups attempted to have Mr. Justice Frank Barakett

"...removed from the bench for alleged racial and cultural bias against a Mi'kmaq woman who was seeking custody of her twin daughters" (Canadian Press in Globe and Mail 2000: A9). The basis of the request for removal was: Two complaints involve the judge remarking the woman could put her children on heroin to make them happy, and saying they'd been 'brainwashed away from the real world into a childlike myth of Pow Wows and rituals' (ibid.).

Client (B.H.), a 30 year old male, gave his impression of how judges' lack of knowledge about Aboriginal cultures and pre-bench/bench life experience experiences affect how

variety of factors pertaining to the convicted person and the offence. A frequently cited decision of the Manitoba Court of Appeal lists seven key factors:

- * degree of premeditation
- * circumstances of the offence, i.e., the manner in which it was committed, the amount of violence involved, any use of an offensive weapon, and the degree of active participation by each offender
- * gravity of the crime, indicated by the maximum punishment provided by statute
- * attitude of the offender after commission of the crime, which indicates the degree of criminality and throws some light on the participant's character
- * offender's previous criminal record, if any
- * offender's age, mode of life, character and personality
- * any pre-sentence or probation official's report, or any mitigating or other circumstance. (The Report of the Commission on Systematic Racism in the Ontario Justice System 1995: Chapter 8)

⁵³ See Proulx (2000) and Omatsu (1997) for discussions on how the interpretative repertoires arising out of the pre-bench experiences of judges constitute their subjectivities (Scott 1992). This in turn affects judicial decision making when dealing with offenders whose cultural and colonial context differs from their own. Additionally these unique circumstances were, until new legislated sentencing instructions in *R v Gladue*, beyond judicial notice. Hence, many judges could not or would not understand the colonial context that is causative in Aboriginal criminal offenses. Some judges such as Barry Stuart in the Yukon, Heino Lilles in Yukon and David Cole in Toronto use their judicial discretion to take these mitigating factors into account. However, even these judges are somewhat limited by overarching uniformity in sentencing requirements deriving from *R v Sandercock*. [1985] 22 C.C.C. (3rd) (Alta. C.A.). See Proulx (1997: 25-29) for a detailed discussion of uniformity and disparity in sentencing.

judges see client contexts: "... I know that the person that's sitting up on a bench, they paid a lot of money to go to school and they've had their mind set put in a certain way and they see things in a certain way...". The Report of the Commission on Systematic Racism in the Ontario Justice System (1995) was also concerned about judge's pre-bench experiences and how they could color the ways judges might understand offender life contexts:

The complex mix of personal beliefs of judges, competing goals of sentencing, imprecise standards and inadequate information about how others apply standards undermine consistency in sentencing. This tendency is exacerbated by a powerful tradition of individualized sentencing that purports to allow the punishment to fit the offender as well as the crime. According to this tradition, offenders who commit similar offences in similar circumstances need not receive the same sentences if they differ in ways perceived to be relevant (my italics). Thus a convicted person, who can demonstrate mitigating factors such as a steady employment record and good character witnesses, may be less likely to receive a prison sentence than someone convicted of the same offence who lacks these advantages.
(<http://www.yorku.ca/faculty/osgoode/offline/owp/racism/contents.htm>).

The question of how judges determine what is *relevant* when they do not have sufficient information on the Aboriginal colonial and postcolonial context that affects Aboriginal lives is crucial. Many judges did not understand what it was like to suffer within the colonial and postcolonial context described throughout this and the preceding chapter. Two male clients attested to how the context of the crime is not sufficiently delved into by judges:

That's been my experience that judges in the main system just kind of hand out your sentence and give you a little lecture about why stealing is wrong or why drugs are wrong or lecture you about whatever. They never really ask you why you did the crime or what caused you to drive drunk or whatever it was. They don't care about what it is that leads up to it. (B.I)

least prospects of the same, are much less likely to be sent to jail for offenses that are borderline imprisonment offenses. The unemployed, transients, the poorly educated are all better candidates for imprisonment. When the social, political and economic aspects of our society place Aboriginal people disproportionately within the ranks of the latter, our society literally sentences more of them to jail. This is systemic discrimination. (1994: 275-276)

The Report of the Commission on Systematic Racism in the Ontario Justice System

(1995) also recognized this problem saying:

What are the implications of the individualized approach for the fundamental principle of equality, especially racial equality? The answer largely depends on what factors are viewed as sufficient to justify a less serious sentence. If, for example, the courts consistently restrict mitigation to factors such as steady employment that may indirectly discriminate against black and other racialized accused, then the individualized approach may result in inequality in sentencing outcomes
(<http://www.yorku.ca/faculty/osgoode/offline/owp/racism/contents.htm>).

The above contextual problems were exacerbated by commonplace courtroom procedure. Clients were almost never allowed to speak to the judge on their own behalf.

A younger male client (B.K.) described his experience with the court:

The judge and the court don't even really address you. That's basically your choice to say guilty or not guilty. Unless they're doing something like a big murder trial or something, you don't really get much of a chance to speak at all on a small charge. You don't get a chance to say anything.

Inevitably their lawyers instructed these clients to "be quiet and allow me to do the talking". A middle aged male client (B.L) discusses his feelings about, and the consequences of, this common legal practice:

Duty counsel gets up, says. "sit down, shut up, you're going to make it worse". I figure if I tell the judge instead of having some imbecile talk to him. Half of these guys they give you the wrong information half the time anyway, if I could sit down and talk to him, now I'm not even a lawyer, but I think if I talked for myself it looks better. I always told duty counsel, they ask me questions I'll tell them. Ok just sit down. I don't know if the judges get mad at that or what but I think he should respect me a little bit more than having to talk through

somebody. I think you feel an admission of guilt if you've got to talk through somebody.

I recognize that lawyers prefer to limit client addresses to the court in order to avoid having the client incriminate him/herself. However, I suggest that lawyers should take more time to listen to what a client might want to say to a judge before automatically muzzling him/her. Clients I spoke with said that this rarely occurred. (the CCP, on the other hand, demands that clients describe their context and give their reasons for getting into trouble. This is one of the strengths of the CCP approach as I indicate in a later chapter.)

The judges and lawyers also talk amongst themselves in a manner largely incomprehensible (use of legalese) and inaudible to the client. In courtroom observations that I undertook I sat in the front row of the spectator seats. I could rarely hear what was being said because the judges and lawyers spoke so quickly and quietly among themselves. Offenders in the docket are located a similar distance from the judge and lawyers. I can only assume that they had similar difficulties hearing the proceedings. Hence clients are abandoned in an intimidating environment under the control of people who may not care about them or actively discriminate against them, and who are using procedures they do not understand. Judge Barry Stuart in *R v. Moses* (1992) pointed out how this state of courtroom affairs discriminated against Aboriginal peoples. Eight years later after RCAP (1996a) and new legislated sentencing guidelines, Aboriginal peoples in Toronto courts still confront these problems. Colonial and postcolonial interpretative repertoires, and legal practices based upon them, still oppress Aboriginal offenders. The above problems with clients and the justice system are a major rationale behind new

approaches using restorative justice as a corrective. CCP practices, as I will demonstrate in the next chapter, correct these problems by delving into the colonial context that affects client's lives.

Clients and Jail and Prison.

Doing time in prison is another element in the lives of many of the clients I interviewed. Client Frank Desmoulin discusses his prison experience. His emotions and thoughts are good example of how many clients felt and thought about their experiences. He shows how prison does not deter, rehabilitate or prevent recidivism:

I say I could go do the 2 months or 3 months or whatever they would hand me, and just ignore them and just say come back and be the same person. Well I would be in a far off worse situation then because I'm the same old unchanged person that I was when I went in, I'm still the same. Even perhaps more bitter that I have to serve some time and I come out and saying well I had to pay the price for these things that I have done, which I should never have done. What I should have got the amount of time I got for it therefore I'll go do it again because you're bitter and you hate it. I mean there's hate inside of you because you felt injustice was done. ...they would have incarcerated me for a few months or however long. I would only become stale and more hardened towards the law or authority. I'd just become a bitter. It causes you just to go even deeper because you're just locked in there all day long and you have to listen to all the negativity that goes on in there, the fear of living among those kind of people, wondering what you life is going to become, who cares. You lose hope. Your spark to live is gone, the flames are dying down. And you come out there you're colder than before you went in each time. You're getting colder each time....

One of the main misconceptions that people who have not been imprisoned have about incarceration is that it is a horrible experience and that is not easy to "do time".

Rudin points out that most Aboriginal offenders have a different view of these purported aspects of deterrence:

First of all the assumption is ... that it is difficult to do time. That's the assumption. And certainly speaking to many of our clients it is not difficult to

do time. It's difficult for people who haven't done time to imagine doing time. Those of us who have been fortunate never to be in jail say 'boy being in jail must really suck, that would be awful, that would be really difficult.' But for people who have been in jail fairly regularly, it's not hard. It can be a very easy process, particularly if you're not doing time in the pen; you're doing 4 or 6 months somewhere. That's not difficult at least according to many of the clients we see. It's easy, it's a routine, and as people say I can do it standing on my head. It's not hard. In fact what can be much more difficult is doing the work necessary to confront themselves. I mean if you're an alcoholic or drug addict you can get alcohol and drugs in jail. It's not as though there's any magical system that stops that. People don't dry out in jail. In that sense the assumption that doing time is difficult is in of itself wrong. I think that's the flaw right from the beginning.

Throughout my interviews' clients and council members related prison experience after prison experience. Most were sent to prison for "penny-ante crimes"⁵⁴ that they did not feel justified a prison sentence. Bernard Robinson echoes what most clients and council members said about these penny ante crimes. He says that a lot of clients that

...come through shouldn't even be in the justice system in the first place but they're pushed through because of the Crown Attorneys, the attitudes of the cops at the time, whatever. And they're in the system they'll get a record for no reason.

Clients did not fear being sent to jail or prison and some actually welcomed it during the cold winter months. Many of the clients, apart from those involved in Native Brotherhoods, said that jail or prison did little for them. They did not heal them of the underlying causes of the offense and, in some cases, even if they wanted to heal themselves there was little access to rehabilitative programs. Indeed, most of the clients who had been inside said that they ended up being better criminals because they were

⁵⁴ Some of these petty ante crimes include minor shoplifting, public intoxication and loitering. One council member said, "I think the formal justice system it's pretty rigid and not very understanding of Aboriginal people. Some of the people that I know they've gone to jail for stupid *petty crimes* where maybe they shouldn't have gone to jail or they should have gotten probation or things like that."

involvement in the justice system. I examined how the justice system is an integral part of the colonial/postcolonial context and how it exacerbates rather than stops this cycle. This colonial/postcolonial context, and the cycle of despair and dysfunction it continues to produce, has operated undisturbed for years. However, in the ~
 affairs finally began to be addressed through the CCP diversion program.

The CCP is a new force in the client context. The following chapter discusses the CCP's philosophy, history and organization. I specify how the CCP is a sensible and successful alternative to the problems and issues discussed in this chapter. I discuss precisely how this is achieved by using a case study of a CCP hearing. I will break the hearing down into its constituent parts to demonstrate how the CCP helps clients to help themselves and become healed community members. In conjunction with client and council member interviews I illustrate how individual and community capacity is renewed or created, how agency is reborn and community integration achieved. I argue that, just as colonialism/postcolonialism negatively affects the identities and actions of Aboriginal clients, CCP hearings positively affect them. In so doing I outline the relationship between healing, justice practices, self-identity and community identity. I show how individuals are transformed from colonized and dysfunctional individuals in the city. I further demonstrate how they are transformed into healed and responsible community members through the justice/law practices of the CCP.

Chapter Four

The Community Council Project: The New Context.

The CCP is a post-charge diversion program. Nuffield (1997: 1) broadly defines diversion as:

...meaning the avoidance of full prosecution through a screening process which occurs after the laying of a charge, as well as process, which occurs prior to the laying of the charge and the avoidance of more intrusive measures (such as imprisonment or parole revocation) following conviction.

The CCP is a post-charge rather than pre-charge form of diversion. At its most basic level the CCP is currently designed to keep Aboriginal adult offenders from further involvement with the justice system¹. Appendix A outlines the ideal of how the CCP diversion works, the roles of its members and its philosophies on justice for Aboriginal peoples.

I consider the CCP to be part of the restorative and/or transformative approach to justice. This approach rejects the formal system's adversarial, retributive approach and concerns itself with "the broader relationship between offender, victim and the community" (Bazemore and Umbreit 1994: 13-14 quoted in Hahn 1998: 133-4).

¹ Nuffield (1997: 1 using Palmer 1979: 14) says that over the years five goals for diversion evolved: "(1) avoidance of negative labeling and stigmatization, (2) reduction of unnecessary social control and coercion, (3) reduction of recidivism, (4) provision of services (assistance) and (5) reduction of justice system cost". Other analysts have added or elaborated, pointing to the objectives of reversing the uneven imposition of serious sanctions onto those already socially disadvantaged, avoidance of the harsh and criminogenic impacts of prison in particular, informing and providing a range of alternatives for decision-makers to choose from, providing more satisfying justice for victims and communities and dealing with the social, economic and personal factors associated with crime, in preference to the often punitively-oriented alternative" The CCP, as will be shown, focuses more on some of these aims than others.

Crime is “more than simply law breaking --- or a violation of government authority” that can be deterred or treated individually. Instead the focus in criminal behavior is on “the injury to the victims⁵⁶, communities and offenders” (ibid.). The offender must understand, accept responsibility for and attempt to make restitution to the victims (the CCP does not always require restitution.) and the community for his/her crimes. In addition, the community becomes “involved in supporting victims holding offenders accountable and providing opportunities for offenders to reintegrate into the community” (Carey 1996: 153 in Hahn 1998: 135).

Restorative justice is intimately tied to the political goals of self-determination and self-government for some Aboriginal peoples (Hoyle 1995: 146). Many Aboriginal peoples reject colonialist non-Aboriginal retributive justice and its reliance on incarceration (Monture-Angus 1999, Green 1999, RCAP 1996a, Gosse et. al. 1994). Restorative justice provides a mode to de-colonize justice for these Aboriginal peoples. They want to move away from abstract, rationalistic and universalistic theories of justice in the Eurocentric tradition toward defining justice in terms of “their awareness of their knowledge, traditions and values” (Henderson 1995: 2). This form of justice is about “re-

social, economic and personal factors associated with crime, in preference to the often punitively-oriented alternative” The CCP, as will be shown, focuses more on some of these aims than others.

⁵⁶ CCP Coordinator McDonald says: “The CCP's experience is that most victims do not wish to attend hearings and confront the client. The CCP does not discourage victim participation; it cannot force a victim to attend, but the CCP does give full support to any victim who wishes it. ...Quite often the Council members look out for the victim's interest. They'll put themselves in that position and get their concern across to them. Victim input in the cases that I've seen has been really effective. But because most of our victims are random victims they're not interested in attending”. Therefore, CCP diversion is slightly different in terms of some restorative justice aims. It should be noted, however, that not all restorative justice programs must be run like Victim Offender Reconciliation Programs (VORPs) that have a focus on victim offender activity. Please see Appendix A section seven for how victim participation is dealt with in the protocol.

learning how we are supposed to be” and re-learning “our traditional responsibilities” after years of colonial oppression in foster care, residential schools, under the Indian Act and the Criminal Code (Monture-Angus 1995: 5). It is conceived of as “healing” because social disorder and crime are seen as illnesses to the spiritual, emotional, physical and mental well-being of individuals and the community that must be treated through traditional means (Lee 1996; Warry 1998: 188-195). Part of this process involves reconciling the accused with his or her conscience through counseling by Elders or other community members. It involves reconciling with the individual or family who has been wronged through offender acceptance of responsibility and restitution. It empowers individuals and assists in re-claiming community ownership of justice (LaPrairie 1995: 533; LaPrairie and Diamond 1992). Overall, then, restorative justice involves the reclamation of justice responsibility from the non-Aboriginal system.

A central thrust of community restorative justice is the reclamation and re-application of “traditional” justice philosophies and practices that were lost due to the imposition of the non-Aboriginal justice system⁵⁷. Pre-colonial traditional forms of dispute resolution ranging from confession, compensation and reconciliation mediated by Elders (Hoyle 1995: 146) to banishment (Warry 1998: 175) are all being resurrected and

⁵⁷ The revival of the Gitksan Wet’suwet’en clan-based potlatch/feast justice system (Green 1998: 145; RCAP 1996A: 4; Hoyle 1995: 154) or the five tiered Longhouse justice system of the Mohawks at Kahnawake are both examples of Aboriginal peoples “taking their traditions and attempting to revitalize them in a modern justice system” (Dickson-Gilmore 1997: 48-51).

incorporated in different new justice⁵⁸ contexts by various Aboriginal peoples. However, the CCP maintains that it does not valorize any one tradition. Nor does it focus exclusively on traditional forms of healing. Rather it situationally assesses a client's needs and desires before attempting to use any form of traditional counseling in conjunction with current counseling forms.

A Brief History

The CCP arose through the effort of a small group of Aboriginal community members, respected Elders and non-Aboriginal activists in cooperation with various levels of government. They recognized the serious problem of over-representation of Aboriginal peoples in prisons. They saw that the use of punishment (incarceration) was not working to stop crime and rehabilitate offenders. They also recognized that the formal system discriminated against Aboriginal offenders in the ways described in the previous chapter. Specifically, they wanted to address these issues in Toronto's Aboriginal community. In so doing they wanted to "do it our way" and control how justice was meted out to Toronto's Aboriginal peoples.

Jonathan Rudin discusses the early actors and processes involved in the emergence of the CCP:

One of the first board members of the organization was a fellow named Mark Stevenson, who worked for the Ontario Native Affairs Secretariat, in 1990 when I was at Aboriginal Legal Services when it was still part of the Native Canadian Centre. Mark was on the founding board. Mark became aware of the

⁵⁸ LaPrairie (1998: 77 n 2) uses (Boutelier 1996: 7) who discusses various definitions of "new" justice such as "'communitarian justice', 'informal justice', 'reconciliation', 'relational justice' and 'reparative justice'. Some of these alternatives have been initiated by institutions in the area of social policy. Others by the criminal justice system itself".

fact that the province had funded or was in the process of funding Aboriginal justice projects, and in fact it funded two projects -- one in Sandy Lake and the other in Attawapiskat. *And so he came to a board meeting and said " you know they shouldn't just be funding things up north, they should be funding things in the city as well."* So the board decided it would be a good idea to develop an alternative justice proposal. So I wrote a proposal. Mark took a look at it, and we submitted it to the Ministry of Attorney General. At the time it was the Liberal government. Ian Scott was the Minister of the Attorney General and also was responsible for native issues. And they had no process at the time for handling these things so it landed on someone's desk at the Ministry and got passed around and that's how it started... (my italics)

The CCP was funded in 1991 by the Ontario government⁵⁹ after which point, according to Rudin, organizational momentum picked up.

The CCP then developed the protocol with provincial Crown Attorneys "that allowed the Native community of Toronto to take a measure of control over the manner in which the criminal justice system deals with Native offenders" (see Appendix A: 1). At that time the Native Canadian Centre brought together over twenty Elders, traditional teachers and faith keepers who were respected by Aboriginal people from various communities in Ontario. In July of 1991 these "guides" gathered at the Native Canadian Center. Jonathan Rudin asked that the CCP be one of the topics put on the agenda.

Jonathan Rudin went

...to ask them if this was a good idea and if we should keep on going and how we should do it. It was open at that meeting, as at all the others, to have them say "no, its not the right time," or whatever, and that would have been it. They didn't say that, however they did recommend that I go away for a number of days with Elders, teachers and faith keepers and discuss the specific questions I had in more detail. This is how Birch Island came about.

⁵⁹ The CCP has varied from \$100,000 per year down to \$80,000 and up to \$160,000 this year.

It is clear from this statement, that from the very beginning, the CCP fully consulted with community members about the desirability and feasibility of initiating this diversion program.

The next major organizational component was the Birch Island retreat. This retreat with Ontario Elders and traditional teachers was crucial because it was there that the CCP's founding philosophical precepts were first elucidated. (See Appendix B for a copy of the Birch Island Protocol). Rudin discusses protocol's role at the CCP:

And the other thing is that it was designed to give us guidance. It wasn't designed to set a blueprint. The questions that I asked would help us set it up. It wasn't to give us the rules just to give us guiding principals. And when we have had problems, we have over the years had occasional issues that we can't answer and we can't figure out from the Birch Island document what to do. We go to Elders and ask for more guidance. We say, look here's what we're struggling with. If at some point we're asked to rethink one of the principals of Birch Island then we'll do that.

This shows that the CCP is flexible in its approach to the philosophy of justice. It also indicates that the CCP does not slavishly adhere to legal precedent (Monture-Angus 1999) or forms of static ritualistic procedure. It has the ability to quickly change as circumstances dictate. Specific evidence for this flexibility will be presented when I examine case studies of client hearings. What needs to be made clear here is that the Birch Island retreat and its resultant protocol used the wisdom of the aforementioned Elders, traditional teachers and faith keepers to help guide the building of the CCP. In this regard these wisdoms are types of traditional capacity. These capacities can be defined as traditional philosophies such as kindness, respect for oneself and for one's community, respect for personal autonomy as well as patience and flexibility in helping others to understand and achieve these values and abilities. These wisdoms were used to

build new capacities⁶⁰ into a new context. This is important in two ways. It is an example of how Aboriginal peoples are using their traditions in a concrete way within new justice. Finally, it shows how bridges can be built between the past and the present and between Aboriginal and non-Aboriginal justice as Aboriginal traditions are wedded to diversion to produce new justice procedures.

The Birch Island retreat was followed by community meetings comprised of Aboriginal agency stakeholders and concerned Aboriginal citizens. I quote Rudin at length here because this shows some of the central community debates that occurred before the CCP could begin operation. Rudin continues:

After writing the Birch Island document, we then had two community meetings. Community meetings are difficult to do. *What we did was essentially use the network of social service agencies in Toronto as surrogates in some ways for the community because these were people who had looked at these issues and were really concerned.* We had two meetings of that group to say, "here's what we're doing and should we do this at all and if so what are the concerns." My recollections of the community meetings were that I sort of partly expected people to go WOW this is fantastic. But the reaction was very serious. ... *There was I think a real sense of responsibility. If the community is going to take this stuff on then the community is responsible not only to the Aboriginal community but to the wider community because these people aren't going to be dealt with in the way they would otherwise be dealt with.* We had two community meetings.... And then the other community discussion was the first Community Council members when we had the first meeting of Community Council for potential Community Council members. *That was sort of the final community meeting where we said to these people who had been nominated, not by us but by agencies "here's what we're doing, are you willing to go ahead?". Had they said no, there wouldn't have been a Community Council.* And frankly I wasn't

⁶⁰ Capacity building can be defined in many ways depending on the context it is used in. Capacity building can involve the revitalization of cultures through the inculcation or re-inculcation of culture specific or pan-Aboriginal traditions and customs. It can be defined as giving clients the resources for individual self-actualization and community relationships. In other contexts it can be defined in terms of structural changes such as "learning and fostering communication skills [and] ways of enhancing public participation in decision-making" (Warry 1998: 225). Capacity building also involves building human resources through the training of frontline workers in administration, technology and research techniques.

sure till the end of that meeting if there was going to be a Community Council. There were a lot of significant issues discussed, some ideas changed. It was a very serious process. (my italics).

Embedded within this statement are a number of issues discussed later in this dissertation.

Aboriginal social action agencies have formed the basis of community in Toronto. The leadership and input of social service agency members in the origins of the CCP qualify them as organic intellectuals as is discussed in a subsequent chapter on community. The issue of community responsibility for the CCP was a major founding concern.

Another significant issue that arose at these meetings relates to what the Council was to do with clients who did not comply with their decision. Rudin relates the how this issue was addressed:

At the first community meeting the issue of non-compliance was raised. One of the participants suggested that, following traditional ways, if a person who did not comply with a Council decision would be banished from the community⁶¹. This would mean that they would not be served by other Aboriginal organizations. We discussed this and then at the next meeting it was raised again and the consensus clearly was, banishment might have worked in the past, but our clients have already suffered enough banishment in their lives and doing so again in the name of non-compliance with the Council would be a big mistake. As a result, this idea was dropped. The issue came up again at the meeting of first Council members and they too were adamant that they opposed totally the idea of banishing in way someone who did not comply with the Council's decisions (Personal communication 2000).

While the Council is based in various culturally contingent traditional understandings, it is clear from the above consensus, that those understandings must be

⁶¹ Banishment in traditional times was, according to Patti McDonald, always decided on a case-by-case basis. What was appropriate for one person might not be appropriate for another person. Hence, banishment was never a uniform application. Rudin states that there was no "blind application of the modern three strikes you are out policy."

made relevant to the community that is being served, in this case, Toronto. Additionally, the above quote demonstrates how "traditions" were debated within the community context. When a *traditional* response to social disorder was proposed to deal with *current* social disorder, community members recognized that social change had made the application of banishment unworkable. Furthermore, the participants recognized how much further damage could be caused by applying a traditional remedy simply because it was traditional. This shows that Aboriginal peoples live very much in the here and now and not, as George and Saunders (1995) indicate that some non-Aboriginals believe, in a romanticized static past. On the other hand, it is also important to recognize how *traditional* decision-making forms involving *consensus* function in new contexts. Finally, non-Aboriginal critics of new justice must accept that Aboriginal communities not only have the ability to debate compliance issues and practices, they also have the will and strength to apply them. Declaring non-complying clients ineligible for further diversion and bringing clients back for re-hearings are how the CCP deals with compliance issues. Declaring non-complying clients ineligible for diversion is rarely used because of the high level of compliance 78.96% (see Appendix D and my concluding Chapter). Hence, non-Aboriginals need not worry about the capacity of this Aboriginal community's to administer and manage justice compliance.

This brief history points to issues that need to be recognized by non-Aboriginal critics and justice personnel as well as by other Aboriginal communities seeking to start their own new justice alternatives. Successful justice initiatives require long and extensive pre-implementation planning through community needs assessment and

community participation (Clairmont and Linden 1997). Community ownership is also central to program success. Direct impositions by outsiders and demands for program standardization and uniformity of practice can doom a community program before it starts operation. Both the Birch Island retreat and the early organizational meetings separate the CCP from other diversion projects. While government was involved in providing the legal legitimation of the CCP, it was the Aboriginal community who were the agents who did the real work. The community constituted the philosophical and practical foundation of justice for Toronto's Aboriginal peoples. Local Aboriginal social service agencies had a central role in this process. Moreover, it was the community's choice as to whether the CCP would even proceed. There was little external imposition upon this process by government seeking to impose a preferred model. Local Aboriginal peoples took the initiative to build this justice process and, apart from funding issues and the role of Crowns in diversion consent, have complete ownership of it. Therefore, from the very beginning, the CCP has been legitimized by respected Aboriginal Elders, activists and community leaders who understand community needs, objectives and capacities.

Community needs and capacities are taken care of within the current organizational structure of the CCP. There is a board of directors made up of community members and social service agency members. Jonathan Rudin is the director of the CCP while Patti McDonald is the coordinator. Rudin functions as a liaison between government funders and the public while McDonald coordinates the day-to-day administrative operation of the CCP including client supervision and maintenance of client files. However, both

Rudin and McDonald are flexible and will, if the occasion requires it, assume each other's responsibilities. Both Rudin and McDonald supervise the work of the Native Courtworkers who operate in the formal system locating Aboriginal offenders, ascertaining if they are eligible for diversion and interacting with Crown counsel in the process of diverting clients to the CCP. Finally, there are the volunteer council members who actually sit in the hearings and help the clients in whatever manner they can. This small staff and set of volunteers are all that stands between the status quo of the formal justice system and the Aboriginal clients.

The New Context

In previous chapters I outlined the colonial processes, actors and the post-colonial context that discriminate against Aboriginal peoples leading to personal and community dysfunction and involvement with the formal justice system. I illustrated how the justice system exacerbates discrimination against Aboriginal peoples and creates the conditions for further individual dysfunction thereby failing to give justice to both individuals and Toronto's Aboriginal community. I now outline how the Aboriginal community of Toronto resists the status quo of the formal system as it takes control of justice for its people by "doing it our way". In what follows I deconstruct ideal and real community council hearings in order to demonstrate the specific philosophies and practices used to deal with, heal, restore or transform Aboriginal offenders. In so doing I outline how the CCP "appropriates" a non-Aboriginal form of justice practice and plays it in a different key through the use of Aboriginal justice praxis (Johnson 1986/87: 55; Engle-Merry 2000: 30). I also sketch how the CCP enables "cultural production" as the CCP utilizes a

“stock of already existing cultural elements drawn from the reservoirs of lived culture or from the already public fields of discourse” to do its justice work (Engle-Merry 2000: 30). The results of this cultural appropriation and production are more explicitly illustrated in chapters five and six.

A Representational Issue

Before proceeding, a representational issue needs to be clarified. I do not present a series of actual cases. Rather, I have constructed an ideal process from a series of nineteen council hearings that I witnessed and from council member interviews. In this process I draw primarily on council member articulations of what they do within hearings. I then present an actual case. The client’s first name has been changed and last name excised to protect his identity. I reconstruct Bill's hearing, and combine it with Bill’s impressions of his hearing from a post-hearing interview. My analysis of the case is embedded within the reconstruction. These are my best representations of the process as derived from different cases that I have seen.

This representational strategy was necessitated by the limitations placed upon my methods. As part of my hearing access agreement with the CCP, I was not allowed to tape record or take notes of any hearing as it proceeded. As will become clear, clients are emotionally "opened up" and reveal themselves in emotionally charged ways. The CCP was rightly concerned that the presence of a tape recorder or the sight of an anthropologist hurriedly scribbling notes would inhibit both the clients and council members natural responses thereby making the hearing less effective. Additionally, the CCP was worried about client confidentiality.

I overcame these limitations by training my memory to retain ever-greater amounts of hearing dialogue and observations as hearings proceeded. I also trained myself to quickly summarize a detailed account of each hearing into a tape recorder immediately after each hearing. I made extensive fieldnotes of what occurred in each hearing. Additionally, I bracketed my reconstructed records of hearings with tape-recorded interviews with clients whose hearings I witnessed. I also used post-hearing exchanges with the council members involved with the hearing to clarify what I saw and heard. Finally, I use other hearings, council member, client and CCP staff interviews comparatively in order to ensure that the representation of the hearing below illustrates, not only situational difference, but also overall similarity to other hearings.

During this process I discovered how most hearings have a fluid order and procedure. Analysis of fieldnotes, tape transcripts and interviews revealed that, although the hearings can be broken down into discrete parts, this is a process that changes situationally depending upon client context and cooperation and the composition of the council on any given day. I attempt to capture these contingencies despite their organization into a generic or ideal process and a specific client case study.

Client Hearings: The CCP Process Revealed.

There is an informal beginning to hearings. The client has not yet entered the room. The volunteer council members assemble at the offices of ALST and, while eating a meal provided by the CCP, participate in pre-hearing review of the CCP client case files for each client scheduled that day. Concurrently, the council members discuss what they may already know about this client, prior and current client charges and police versions

of the circumstances of the crime provided through Canadian Police Information Computer (CPIC). Program staff also gives council members relevant information acquired through native courtworkers and other Aboriginal agencies. During this stage the project coordinator will also be informing clients what will happen to them in the hearing. The project coordinator also addresses any concerns the client may have over the unknowns in the process. If this is a re-hearing council members review the files of the previous hearing conditions. The client is then brought into the council room and the hearing begins

The hearing can, but does not necessarily always, open with a smudge. Smudging is a purification ritual involving the burning of medicines (sweetgrass, cedar, tobacco or sage) in an abalone shell. Circle participants waft the smoke over themselves. Clients are given the choice as to whether they will smudge or not. Introductions follow the smudge. Council members may give the client a small biography of themselves, their experiences with the justice system, the reasons they became involved with the justice system and their current jobs and place within the Aboriginal community of Toronto. The client is then asked to introduce him/herself and to talk a little bit about his/her background. Occasionally client relatives and other concerned client supporters make presentations to the council on the client's behalf.

It is at this point that the council members, through ever more personal and intensive questioning, *open up* the client. This opening up phase is central to the entire CCP process. The client, his/her offence and the circumstances leading up to the offense are deconstructed and laid open to both client and council member understanding. When

this process has been completed to the satisfaction of each council member, whether in a spoken statement or through some non-verbal agreement among the council members, the client is then *closed down*. Clients are asked "What will you do?" to help yourself. This part of the process is equally important to client and council members. Clients, moreover, are not allowed to leave their hearing without first being *put back together* or reconstructed. Once this has been achieved the council members ask if anyone has anything more to add. If the answer is "no" then the client is asked to wait outside of the council room while the council members come to a decision as to what is to be done for the client.

There is then a pre-decision discussion by the council members. The council members review what happened during the hearing. The Council reviews and assesses the client's statements. Among other things, issues of client truthfulness, responsibility, capacity to handle decision conditions and compliance with them are reviewed. The council members also discuss the types, feasibility and length of conditions that they may wish to give the client. The idea here is to find a decision that does not in itself create the conditions for client failure. The Council focuses on conditions that are *do-able*. In some hearings the program coordinator will be asked to join these deliberations in order to clarify whether what council members are proposing conforms to the protocol and with inter-agency capacities and agreements. Sometimes the coordinator's extensive knowledge of the Aboriginal community, a knowledge that some council members do not have, is required to craft the decision. However, the council members have the final word in this stage. Upon finalization of the conditions, the coordinator is given the conditions

to type up on official CCP forms. The client is called back into the council room when this is completed.

A council member then reads the decision out loud to the client. The client is asked if s/he understands the conditions. If s/he does not understand, the Council offers the client the opportunity to say so or to make statements as to why s/he may disagree with the conditions. If the client agrees with the decision then the client is given two copies of the decision to sign. The client takes one copy and the other is retained by the CCP in the client's file. At this point the client may be asked if s/he wished to say anything more and the client will, or will not, speak as they see fit. Finally, the council members thank the client for having the courage to come to the hearing and offer encouragement to help the client see his/her potential. The hearing will sometimes end with a handshake or a hug depending upon the client and council member. The client then leaves and the hearing is at an end.

At the end of the hearing the council members may, or may not, informally discuss the client and his chances of completing his/her decision. Council members can also discuss techniques that were used effectively or ineffectively within the hearing. Council member concerns over potential client actions directed toward the council members can also be discussed. Here naive anthropologists can be educated by council members about what just happened in the hearing and what did not. When these conversations end the next client hearing, should there be one, is prepared for and the hearing cycle starts anew.

The CCP Ideal

I organize this discussion of the *ideal* CCP process using the above informal process as a model. Here I emphasize the role of the council members in the hearing process by focusing on their understanding of its aims and on the practices they use to accomplish them. I discuss what is ideally supposed to happen in each phase of the hearing through a critical examination of the philosophies and practices that are designed to draw out and heal clients. When relevant I contrast how the CCP operates in each phase with how the formal criminal justice system operates. My goal is to give a clear understanding of the aims and methods of the CCP process. I also aim to demonstrate the *flexibility of this process in how it helps clients diagnose and help themselves with the guidance of council members*. In so doing I examine “justice as lived experience” in action as the CCP process addresses some of the individual and community justice problems and concerns discussed in the previous chapter.

There are a number of procedural issues that were decided during the CCP's organizational period. One is the determination of which client should have his or her hearing first. Clients have to wait their turn on a first-come, first-serve basis. This can result in annoying delays and some bad feelings toward the council. However, all clients interviewed said these delays are nothing compared to the constant remands over a period of months characteristic of the formal justice system.

In order to truly understand the CCP process it is necessary to appreciate that a client who has successfully completed multiple diversions but re-offended is not discriminated against. These clients are not labeled as recidivists and are not given increasingly punitive

sentences as they sometimes are in the formal system. Most CCP members believe that it is futile to expect clients to immediately and/or completely stop criminal behavior just because clients go to court or come before the council. Therefore, the CCP incorporates traditional teachings that maintain *it takes a long time for a person to heal* him/herself. Clients must be allowed to progress at their own pace. Council members know that many clients will relapse or *fall off their healing path* on more than one occasion. Hence, many council members subscribe to a *success by inches* philosophy wherein they recognize that clients may commit another crime. This is a process of incremental improvement that must be positively reinforced rather than more severely punished. Hence, council members, by and large, do not negatively label and stigmatize clients who re-offend. Instead they patiently and positively re-address the circumstances that continue to trouble the individual in order to help them back onto their healing path.

As noted above, in the earlier phases of a hearing the Council members read over the CPIC and synopsis, discuss the client's CCP file which includes prior offences, the current charge, the number and context of previous diversions and how far the client has come with compliance to previous council decisions. After the client context is understood, the council members sometimes choose a hearing leader. If no other issues are raised the client is asked to enter the room and take his or her place in the circle. The client is offered the opportunity to smudge.

Two issues must be discussed here. First, smudging is a form of purification in preparation for free and open exchange within the council circle. (A.H), a sixty-five year

old female council member and (A.I) a middle-aged council members explain why they smudge before a hearing:

The reason we are smudging is to get the negative energy out of the room. We are showing that everyone who is here is well meaning and trying to help each other.

The reason we are smudging here is to purify ourselves. Each of us will feel clean and pure and be able to speak the truth here.

Smudging is offered to clients but it is never forced upon them even if council members have strong traditional views. The CCP's operating philosophy does not valorize any one set of Aboriginal cultural beliefs and it will not force clients to partake in any traditional practices if they do not wish. Nor is any pressure applied to find out the client's reason for refusing. When I interviewed council members and clients I asked what some of the reasons for refusing to smudge might be. The main reason was that many urban clients have little or no knowledge of their cultures. Many clients expressed fear of being forced to participate in some "bizarre" ritual that they did not understand. On the other hand, some clients did have a firm understanding of their particular cultural practices. These chose not to smudge because they had recently abused alcohol and drugs. This abuse makes using the medicines inappropriate at that time. Finally, some clients are Christian and object to involving themselves in practices unsanctioned by their religion. The CCP's smudging philosophy, therefore, respects cultural difference, client context and agency.

There is also a second issue here that speaks to how a minority of council members feel and think about the emergence of new pan-Aboriginal spirituality. Council members who refuse to smudge should be understood in this context. Some council members expressed a dis/ease with some of the traditional practices now being used at all

Aboriginal events. They were critical of the blurring of cultural boundaries and practices as various Aboriginal peoples tried to re-constitute their "culture" by appropriating and combining traditional practices from across north America. These views may be seen as part of a backlash among some Aboriginal peoples against the "new traditionalism" or against the misuse of traditional practices by people who do not do them "right" or for the right reasons. The refusal to smudge reveals a wider controversial political discourse now coursing through Aboriginal North America. However, the fact that any council member *can* refuse in the CCP context, and is not ostracized for it, illustrates that CCP's cultural policy applies to council members as well as clients. One of the central strengths of the CCP approach, then, is its pluralistic approach to justice practice.

After smudging is completed or turned down the introductory phase of the hearing begins. As discussed above the council members each in turn introduce themselves. In hearings a common element in introductions is for a council member to say:

In this program 'We do it our way to help our people.' We are all volunteers here and all attempting to help our people in a way that the mainstream system cannot help our people. We are doing it ourselves. (A.H.)

This statement serves notice to the client that s/he can expect an experience tailored to, at the very least on a minimal cultural level, his/her Aboriginality. In this regard council members are there to help "our people." The term *volunteers* alerts the client that these people are here because they want to be here. They are not here as part of a professional system that is paid for its ability to translate laws and procedures mandated by precedent. Rather, this statement conveys the message that council members are volunteers as part of their *responsibility* to the community. This responsibility discourse foreshadows larger

discussions of responsibility that the Council members will have with clients later in the hearings. It sets the client up, whether consciously or unconsciously, to begin to realize that s/he has a responsibility not only to him/herself but also to the community. Finally, the idea that "we are doing it ourselves" signals that Aboriginal peoples can have agency. This foreshadows the intention of the council members to help the client gain or re-gain his/her sense of personal control. Their ability to "do it ourselves" previews the healthy role modeling that is to be offered to the client throughout the process. Client interviews revealed that, not only did clients feel reassured and comforted by this introductory procedure, they suggested that this procedure began the process of personal and, in some instances, cultural introspection that was to continue throughout the hearing.

Another introductory statement illustrates concretely how the CCP process is different from the mainstream system:

We are all volunteers here. We are not here to judge you; we are here to make you whole. It's a talking circle where we come to help you deal with this in a good way. We volunteered to come and help you become whole again. (A.J.)

Clients described how relieved they were when they heard that they would not be judged as in the formal system. Client (B.F.) said:

I felt a little bit more at ease. I knew they were just totally out to ... you know like a regular court you don't know. If the judge is in a bad mood, he's just going to throw the book at you. That's the way it is. I just feel there's a little bit more sense of ... they mention 'hey we care, we've got feelings too, we're not just emotionalist people. We are not just going to throw the book at you'. So that to me there's a difference there.

The phrase that "we are here to make you whole", alerts the client that they will be treated more holistically and compassionately than in the formal system. The client sees

that it is not just his or her offense (act) that is the focus.

The focus of the formal system is the criminal act and a measured response to that act. While some sentences may deal with helping psychologically disturbed offenders acquire psychotherapeutic help, most sentences only address a very narrow context. Mitigating circumstances do affect the calculation of severity of the sanction applied. But the investigation of those mitigating circumstances in pre-trial hearings and in psychiatric assessments does not probe to the same depth that the CCP process does. In the formal system there is a concentration on *product*, that is, a focus on the crime and producing a retributive sentence suited to the crime and sentencing doctrine. The CCP, on the other hand, concentrates more on the *process*. Even though the CCP crafts a disposition that the client must adhere to, the CCP's central focus is on understanding the circumstances leading to the crime, its effects on victims, the client, and his or her relationships and, most importantly, on restoring and/or transforming the client from the negative effects of these problems.

It is the entirety of the person and his/her context that is the focus and not just the act that must be punished. The client is not stigmatized as in the formal system. Instead the client is seen as a person who needs help to get back on a proper path without labeling them as somehow evil and deviant. Council member Ivy Chaske outlines how process is valorized over product and how this contrasts with the approach of the formal system:

... I believe that the Community Council is an integral piece of the reclamation of those things that help us become balanced human beings. The people who are treated with kindness and fairness, if they've never known kindness and fairness in their lives, we'll honour those people who treat them with kindness and fairness ... And kindness and compassion also comes with responsibility and integrity in terms of the people who sit on that Council. Yeah we might feel

really badly about what happened in someone's life. But we also have a greater responsibility to remember that those people have also caused the same kind of harm that was done to them and that somewhere along the line somebody needs to stop all of this harm that's happening. And so we have a greater responsibility than the individual and the victim. We have a responsibility to our people to start changing the ways in which we deal with things within our community and that our involvement in the Community Council is an integral part of that in terms of how we handle things and how we deal with things. And often it would be much easier to say well you know somebody did this, let's send him off for so many hours of community work. That's not what it's about. That's what the system does. You do your crime, this is what you people usually get, although we'll give you – if you used to get 2 years and there's some extenuating circumstances, we'll give them 18 months or we'll give him a year. That's not what happens at Community Council. And I'm really glad that we've not gotten into what have other people done the same situation. You can't ask that question because our people believe that each human being is sacred and each human being has a special purpose in this world, so there's a great belief in the rights of the individual which is counterbalanced by the rights of the community. And so we can't treat each individual person in the same way. You can have two people who have exactly the same background, who have exactly the same everything, but their purpose on this earth is different. So how can you treat them the same? How can you treat them in the same way that the other guy was treated when that charge was exactly the same thing? You can't because then you would not be honouring that person's individuality, their purpose for being on this earth, and the gifts that they bring to this earth. So it's those kinds of things that I'm glad the Community Council has never gotten into where we say oh well this is a standard thing that we do with a person who does this kind of thing. If I did something I would expect the Community Council to deal with me much more harshly then they would deal with someone else who did the same thing. Because I have a greater knowledge then a lot of the people who come before the Community Council, therefore that greater knowledge holds to me a greater accountability.

Chaske's statement gives substance to the claims made in an earlier chapter. Her words show how the CCP process recognizes the problems of inter-generational abuses brought on by social exclusion and systematic discrimination. Chaske's remarks and the opening remarks of the council demonstrate how the CCP deals with this process on an individual and community level. It is clear that there is not a standardized or uniform calculus for judging the acts of clients. The focus of investigation is on understanding the

process through which the client arrived at this place on his/her path. Its aim is to find a "good way" to bring the client back to health in the physical, mental, emotional and spiritual domains and, thereby, "help you become whole again". It works to heal the worst exigencies of the client context outlined in the previous chapter. In discussing justice as healing as a source for community healing and how it contrasts to the formal system's approach Warry (1998: 256) says:

However ideal, such a philosophical system is inherently constructive and constitutive in its orientation because it emphasizes personal development and mental health rather than deviance or criminality.

The Council's opening words, then, while seeming to be merely introductory, sets the stage for a set of complex interactions through a deceptively simple set of introductory statements. This phase of the CCP process, then, has a dual purpose. On the surface it works to relax and reassure nervous clients while on a deeper conscious and/or subconscious level it begins the process of capacity building and agency creation and indicates Aboriginal ownership of the process.

Once the introductions are completed the council members ask the client to give his/her version of the crime in question. Council members ask for the client side of the story in order to see whether it agrees with the Crown synopsis of the events. This synopsis is derived from the "brief" which is provided to the Courtworkers by the Crown. There are two reasons for this. First, the actual synopsis is constructed around police notes that are based on the versions of victims, witnesses and the accused. This information is later summarized by secretaries from police notes and entered into the forms that council members have given to them before the hearing. Coordinator Patti

McDonald points out a serious problem with this process. The final version of the synopsis ends up being distilled into "common theme" from all of the above sources by people who did not even see the event. Sometimes synopses are also filled with "discriminatory remarks". Hence, the veracity of the synopsis and its subtext are often of questionable value in understanding the circumstances of the crime. McDonald says that council members are encouraged to use synopsis very critically and "only as a guide to get the ball rolling". Second, comparing the synopsis and client versions can alert council members to clients who are attempting to *scam* them by giving radically different versions of events despite previously accepting responsibility for the act in order to be allowed to be diverted. Should this occur council members realize that the work of opening up this client will be doubly difficult. Hence, this part of the process functions to not only to ascertain basic contextual facts but it also serves to interrogate the sources of those facts before the council members proceed. If there is a significant amount of bias in the synopsis as well as divergence in terms of actual events then council members know that the charges themselves must be viewed in a very critical light. On the other hand, if the client presents a radically different view of events then the council members know that they have to be careful in simply accepting what the client says as fact.

Opening up the client.

This is where the main work of the council members takes place. Council members reassure the client about the confidentiality of the process by saying to the client "Whatever is said here, stays here." Statements of this sort continue to build an

atmosphere of trust between council members and clients. In a post-hearing interview

Lorre describes the opening up stage:

I don't have a plan. I don't have sort of some intellectual plan that's formulated. But one thing that I do is really I'm friendly. I smile with my eyes. I make jokes. I can make self-deprecating jokes. I will, not as a schtick, but somehow 'look we're on the same level'. So what I want people to feel is that here I am, just another person, an Indian person who wants to listen and help out if I can. Because I'd want the same done for me. *And I think that that's what makes people open up. Occasionally sometimes you ask a tough question.* You have to say were you drinking at the time and they sometimes well how many? How many beers? And you're asking very direct questions. *But I don't do that in the first minute ... that's not the first thing out of ... I want them to feel that I'm ok with everything.* Whatever goes on the table. I'm ok and I just want to hear the story and see if we can get at the root of the issue. I think people do open up (my italics).

The main tools that council members use are listening and asking questions in order to see how clients respond. Throughout this stage, but particularly at the beginning of it, non-invasive, open-ended questions are used to ease the client into what can sometimes be a physically and emotionally draining process.

Council members also spend a great deal of time paraphrasing and reflecting the client's feelings and meanings back to the client in order to ensure effective communication. This type of communication is also facilitated by the non-hierarchical seating arrangement where council members and client sit in a circle. This enables all parties to see each other's body language. This is also central to effective communication. Council members assume postures of involvement. They keep their bodies in open

positions rather than closed ones⁶². Eye contact is maintained with the client if the client seems able to sustain such contact:

I know why, the eye contact. When our clients are [opening up] I know by the eye contact. When they start talking you know who it is that they're meeting the eye contact and you know that you've opened up a channel because they look at you and talk to you and answer questions, or tell you about something. (A.K.)

On the other hand, some council members will sit back and remain quiet for the initial part of the hearing:

You get a feel from the clients. There are some clients that as soon as they walk in they're totally 'I'm sorry, I'm sorry, I knew I was wrong'. You know that they know what they did is wrong and they're willing to do anything to try and fix it. And then there's some guys that come walking in and they just sit there. They don't say nothing. And that's when you have to ask them questions and try to get them to talk. And that's when I sit back and watch because some of them aren't very happy about being here. I've heard that some can get rude and start swearing at you. I've never had that happen to me. I've been lucky so far. (A.J)

Council members' personal experiences begin to be revealed during this phase. Most clients I interviewed valued council members using their personal experience. It helped clients relate on a personal level with the council members. Clients saw that council members had "walked the walk" and, therefore, the council members had the legitimate right to "talk the talk". Client (B.M.), a thirty something male, gives an indication of this:

The way that they can relate to anything that you have to say. Everybody that sits in on the hearings can relate to what you've gone through whether it's been on the streets, whether it's prostitution, drugs, alcohol, being abused as a child, horrendous school stories – they've heard it all, they've seen it all, and they have all been there. That I think is very helpful.

⁶² These effective communication techniques arise from diverse sources. The ethic of respectful listening (Ross 1992) is socialized into Aboriginal children from an early age. Many council members have taught themselves the values and practices of effective communication. More importantly, the CCP runs yearly retreats wherein council members are taught how to communicate under challenging and stressful circumstances particularly in the opening up phase.

Another client (B.N.) contrasts council's use of personal experience with the formal system:

Well on a personal level they talk to you personally. They all give a little experience too. I got relaxed with them and started talking about myself. They would pipe up here and there, and just go on some of their personal experience too. I mean when you talk to the courts, the judge doesn't go into personal stories and personal experience and sort of relate with you. That was really important to me.

This use of experience also alerts clients to the possibility of healthier role models:

And also they came back from, the people that were in my circle any way, I could tell they were boozers. Well they told me they were boozers before and that alcohol had ruined their life. And to see them in that position and helping other people, it just made me strive to be like them, to quit the drugs, the alcohol, and to really help the community in any way.

In providing clients role models, council member experience shows the clients that they are not alone, that nothing is out of their grasp and that they can succeed.

It is noteworthy that there is no established order of precedence for speaking among the council members. Each council member delves until s/he has made the point that s/he wanted to make, runs out of steam, gets frustrated or allows another council member to pick up his/her point. Often, as shown below, there is a shift in subject as another council member tries to get at the issues from another direction. Throughout the hearing council members, without the aid of a talking stick or stone, speak in an orderly fashion. The collective speech of the council members, as will become evident, builds to a consensus wherein the diverse strains of questioning narrow down to the heart of the matter. Ideally, at this point, clients have a difficult time trying to avoid recognizing their problem or accepting responsibility for it.

During the opening-up phase council members may inquire about, for example, substance abuse issues, family, relationship and support group issues, housing, employment and educational status and cultural knowledge and practices. Sensitive and respectful inquiries into any or all of these areas opens up the client to reveal any underlying issues that may have resulted in the criminal offence or that may be causing the personal problems leading to social isolation or exclusion. Council member Martin John discusses the intentions behind these questions:

So those are things that you're trying to ascertain during the course of your Council is to find out you've done something but there must be some reason why you done that. If you're involved in the sex trade, that might be self-respect issues or self-esteem issues or they may have a problem with a drug. *There's something back buried in there that you're trying to find out and once in awhile you get lucky and you'll get that out of them.* Sometimes you don't. Depends on how open and how much integrity they see in this process. ...*I think a lot of it is cause and effect.* You're trying to figure out if this person has any support systems in the city, whether they're here by themselves and they don't have any contact with the native community, whether the opportunity is there for them. And in the hard things you're trying to figure out whether they can afford to eat and maybe that's why they're stealing. Maybe they've got some real history of something that they're trying to forget and maybe that's why they're selling drugs or selling themselves or whatever. *I think you're really trying to get to the cause of why, and if you're doing a really good Council and you open this client up then usually that will come out.* (my italics)

Decision conditions are subsequently based upon clients' answers to these queries and on council member impressions and interpretations of these answers.

An example of how, and to what depth, council members delve into in family background and current state of the family is illustrative. Council members try to determine if the home life is abusive in any way because this may be at the heart of the client's problems. They also look for substance abuse issues or legacies of intergenerational abuse in the home that may lead to the abuse of the client or the client's

abusive behaviour. If the client is female the council will delve into her relationship with her husband and children to see if any issues there may be having repercussions that negatively affect the client. If the client is male they will focus on his relationship with his wife and children. In one hearing the council members spent a significant portion of the hearing discussing a female client's legal options for dealing with her husband's violent behaviour. They also offered the client their knowledge of the community resources available for child support. As a baseline, however, the council attempts to discern the type and extent of support systems available to the client. If the client does not have a healthy, functional support system, or has any of the above problems his/her home life, then this alerts the council to create conditions that will address these problems.

Council member Jackie Jocko-Alton discusses what the council members do in this questioning phase, their aims and concerns for the client, client reactions to this delving and how this contrasts with the formal system:

It's very important. You have a person sitting in front of you and you ask them questions and you can see them do everything in their might to not cry or show any emotions. When I see this I'll ask different questions and I'll not come back to that same question. A lot of them will break and say I have never had anybody ask me how I feel about anything and particularly in a court room. Nobody cares. A lot of them have admitted they had some big wonderful stories to tell us and found out they didn't have to tell us the stories. We say "Just tell us how you are". That's important because they have to be allowed to be human. It's like me going into the jails. As I tell them for a couple of hours each week you're allowed to be you.... And in Council to me it's very, very important, and it's very, very important for them to learn. A lot of them don't know the difference between I love you but I don't like you. It's ok not to like someone and not feel guilty about it and not feel resentful about it. They've never been told that it's ok for them and they're allowed to do that. They're allowed these feelings and to release themselves and to release others.... It takes time. It takes a lot of patience and a lot of hammering.

Sometimes clients do not react well to this personal probing into their past. Council member Barbara Gajic talks about clients who will not open up:

And then you have clients that will not open up, and you have to really work on them. You have to start picking on them slowly, but you keep bouncing back and forth till finally you hit a little hole and then you can get in.

Jackie Jocko-Alton discusses what she does in this instance:

...If they don't persist in doing it or someone is sort of bouncing around, myself, I'll have them come back every week if I have to if they don't want to answer. Enough game playing, enough blaming or saying can't remember, can't do this. You know. You know so just sit down, take the time, and we're willing to go work it through with you. But don't tell me you don't know because you do know.

Council members have to be very careful in opening up clients. Jackie Jocko-Alton discusses the care the council takes due to the fragile nature of many of the clients:

...but I respect everyone that comes into the Council because they're human beings and some of them are very, very weak and don't even realize their own potential. And they've never been given a chance to realize their own potential. Because when they've tried they've got into whatever takes them down again. I've never ever, I don't think I ever have given up on anybody.

Hence, council members must be vigilant so that they do not set off triggers that will cause the client to close down before s/he can be helped to see his or her underlying problems. Council members must also be vigilant of their own well being in this process.

Barbara Gajic discusses these issues:

...when the client brings something in and then that could just trigger something. Sometimes it triggers it in me then I go home crying because I can't figure out what caused me to cry. Because maybe we probed too much and it hit me too in a way that I was trying to cover it so nobody knew about it. So I'd go home and cry and then they'll say well maybe that was meant to be. They say you're your own analyst sometimes too. But you have to be very careful when you have a client, you cannot step on their toes because they can close up right fast on you.

Hence, council members have to rely on their "gut instincts" and their experience to know what to say and when to say it so that the clients will open up and remain open. However, the council members, as Jackie Jocko-Alton indicates, do not just acquiesce or give up when a client becomes difficult. Rather, they tenaciously forge ahead while respecting client limits.

At some point in each hearing there is a moment where the council members shift from attempting to determine the underlying cause of the offense to attempting to find out what the client will do to help him or herself. This betwixt and between transitional moment is crucial for *closing down* the client. Council members never knowingly allow a client to leave a hearing while s/he is in an emotionally or psychologically vulnerable state. Rather, they try to make the client at ease with him or herself.

To close them you have to make sure that they're ok with what they've been talking about. We get them to go back over some of the issues. Like if you're watching them, you're able to see which ones are really personal issues for them that they had difficulty dealing with. So you've got to go back to those particular issues to make sure that they're ok with them. If you're not comfortable with how they're reacting, like you wouldn't let someone leave here who is in tears, you just keep working with them until they're ok with what they've been talking about. And part of the ordering in that particular case would be to direct them to somebody who can deal with that particular issue. So you close them for that day but you make sure that they're open to going to a counselor ASAP, like immediately to deal with that. You don't let someone leave that's not closed. You can't. It's not responsible. (A.E.)

One way of achieving this is to "ask them to make suggestions as to what we feel would help them." Council member (A.L.) a thirty-three year old male, describes this part of the process:

Well that question is brought to the client. We ask him that question -- 'what do you think a good decision would be?' And they might say 'well I think

community hours, that's about it'. If we know that they need or if they suggest they would like to go for counseling or treatment at a certain place ... if they would come to Pedabun Lodge and they suggested that, it's not going to be an easy ride for them.

The council offers the client the opportunity to give his or her input into the decision. This gives the client a sense of agency because s/he recognizes that s/he really does have the capacity to learn how to change. It gives them a sense of pride and self-worth because they are taking control of themselves. Council members say this enables clients "to dream again" of achievable goals now and in the future. This is combined with council member suggestions of places to go for help and of people who can assist the client achieve his or her goals. In turn, this also creates links back into the community as clients come to understand where they can go for help and which community members and resources they can utilize. It is only when the client is closed down and has some understanding of what s/he should require of him or herself that the council moves to craft the council decision.

The pre-decision discussion gives insight into issues that arose in the hearing. These issues are brought back up to be dissected again. This is a standard feature of council hearings. Council member Bernard Robinson gives a detailed description of how this occurs and what the aims of this part of the process are:

Basically what we do is we just air or bring out what we saw, what we thought. We had a little question on a certain answer that the client had and so we bring it out and everybody else will give their viewpoint on it. And I think it's a really good process because then at that stage no matter how bad the client was or whatever, how disruptive or arrogant or nasty the client was towards us, and that happens, at that point everybody is like 'what can we do to help this client'. So it eventually comes in. It's like, in the end it comes into a little coherent circle where it says what can we do to help, what does this client need, and what will this client accept because that's very important too. We can recommend

treatment, we can recommend a counselor – will the client do it, or are we just spitting in the wind? So at that point I think everybody just gets together and finds what will the client do, what's best for this client, what can we recommend. And a lot of times we'll rather than an order that they have to do something we strongly recommend that they do see a counselor, go to treatment, whatever, that kind of stuff.

The factors that go into a decision demonstrate the holistic, politically and culturally sensitive nature of the CCP process as council member Martin John indicates:

Well there's a number of factors involved. If there are things that are easy to remedy like asking this person to see an elder or stabilize their living arrangements or get training, those are fairly easy things to do. I think it's the other things where maybe somebody is a sex trade and they have a crack problem, in order to get them to change their lifestyle it's going to require a lot, a lot of work and a lot of follow-up. You can ask them to go to a treatment program but I think there are situations where you almost wish you had somebody who could just stay with them for 4, 5, or 6 months or whatever and make sure they're not slipping. We have knowledge of resources in a community, we have knowledge of Elders and circles and training programs. Whether it's just telling the person to make restitution or whatever, just so there's some money coming out of their pockets it might be a deterrent for them next time or whatever. It's difficult sometimes when the issues are really deep and there's others issues about their self-esteem and identity problems. Those are hard ones. We have to really try to do things that they'll be able to do first of all because you can't tell them to start going to sweats if they're having problems just living day to day. They don't have money for TTC. You ask them to go there and there and do this and that and start visiting Elders. I think you have to be cognizant of the fact that people have problems. It's not necessarily easy for them but things they can do and that they're able to do and you're not giving up too many things that they just maybe financially can't do or maybe they're not really spiritually or culturally ready for. We are setting them up to succeed. If somebody is not interested in the culture you don't start forcing them to do things like going to sweats or things like that. You're trying give them things that they can work on to build their life back up to where you'd like to see them. Maybe your expectations are higher than theirs or lower than theirs. You're trying to do things that are realistic for the person and hopefully they'll be able to handle.

The above council member describes the in-depth and sensitive thought processes that go into the client decisions. Moreover, his words illustrate how different the "sentencing"

process is compared to the formal system. The current circumstances and needs of the client, plus his or her future potential, are taken into account along with community resources. Concerted effort is made not to impose conditions that are culturally irrelevant. There is a real concern to craft decisions that will help the client succeed. Consideration of this wider ambit of factors in the CCP process, therefore, outstrips the formal system's limited inquiries into the mitigating and aggravating affecting offender sentencing.

This process varies depending on the make up of the council. An older male council member (A.M.) discusses how pre-disposition discussion can be different:

Sometimes it depends on the make-up of the councilors. Some councilors are stronger than others and they can convince the other Council members we should do this and this. Or there'll be options put out on the table and then you'll try to narrow it down to things you think the client can do. So there's a lot of different approaches to doing that. Sometimes it's just the fact that you're hearing things from this person. While they're talking you're mentally making notes on well let's see Native Women has a program on Saturdays. Maybe this person can utilize that and that will lead them to being involved in the community and hopefully that will lead them to maybe exploring their culture or looking for their birth family or things like that. Ideally you're trying to give them an opportunity to fix whatever is wrong.

The amount of influence a strong council member can bring to bear within the opening up stage and in the decision stages is significant. In these cases a strong council member's powers of persuasion does have a convincing effect. Yet in all council hearings that I witnessed strong council members gave way to the consensus of the circle and did not attempt to impose their will upon the final decision.

The final decision is normally the least confrontational phase of the hearing. However, sometimes the client has reservations about the decision. This may result in an attempt to convince the client of its particular relevance and applicability to him or her. A

council member in her mid-twenties (A.N.), points out why the council might attempt to persuade a client to accept a decision:

It's pretty much whatever the individual has done and is willing to do. The Council can't force any client to do anything. A client could walk in and say you know what, I don't want to do anything, any of this, fuck you all, I'm out of here.

However, the council is also clear that, should a client refuse to comply, s/he will lose the privilege of re-entering the program if they re-offend:

The only I guess real repercussion he has is that he can't come back to the Council for another chance at diversion because he didn't comply with the first decision. But that's pretty much the only thing that we can do to him. It's not like we will throw the charges back at court or whatever. That's not going to happen. But he just won't be able to come back again if he gets in trouble again. And that's enough to get him thinking. Usually is. Usually is because the Council's decisions are not all that hard, pretty basic. They're pretty basic to a person wanting to help themselves. If you've got somebody who is willing to go to treatment, go to AA, try and take parenting classes, then that's half the battle, if they're willing to try. (A.N.)

Normally the person accepts the council decision. In most hearings that I witnessed the clients were relieved and grateful for the decision that they received because they wanted to help themselves or the council had prepared the way for the client to come to that understanding for themselves.

The acceptance of the council decision ends the formal hearing. However, many council members spoke of how they physically express closure. Most council members get up and shake hands with the client, or if there are no more hearings that day, will sometimes go out and have a smoke with the client. Jackie Jocko-Alton discusses how she likes to conclude a hearing:

Once they realize that it's ok and then you say to them before I leave here I want to give you a hug because I like to be hugged. I have never had anyone

ever refuse. That's good because they're willing to give and to receive a hug, and to me that's more important because they're starting to heal. They're starting to heal and they don't even know it themselves. And they will carry that little bit with them and they go wherever they've suggested themselves to go because we try not to tell them they have to do this.

These physical acts of closure further differentiate the CCP process from that of the formal system. In the formal justice processing system, sentencing abruptly ends the contact between judge and accused. The client is simply given a sentence with little personal contact, or encouragement from, the judge. Sometimes the client is removed by bailiffs to begin a prison sentence. The formal system maintains a physical distance created by status distinctions, the need to appear impartial and dignified, the need to adhere to professional standards of behavior and by the need to separate the punished from the punishers. Conversely, in the CCP process, through informal physical interactions, the client is treated as a human being of equal social status⁶³ with the council members. There is no need to uphold professional behavioural etiquettes. The CCP recognizes that respect is more important than dignity and that rehabilitation more important than punishment. Hence, when a client is closed, the client leaves with his or her humanity intact or with his or her human potential firmly foregrounded.

⁶³ I recognize that this "equality" may seem problematic in that the council members do have the legitimate right to make authoritative statements that affect or alter the client's life. However, this ability to affect or alter is accepted when the client enters the program. Most clients more readily accept the legitimacy of council members who begin the process by showing and telling the client that they have walked the walk than that of judges who think, live and work in a world largely inaccessible and foreign to clients. Finally, clients know that the council members cannot send them to jail. This is a further leveling mechanism that creates a sense of, if not actual, equality.

Bill's Hearing: Case Study and Analysis

I now describe and analyze an actual hearing that I witnessed. This case *juxtaposes a real case with the ideal process*. The aim is to reflect the client's perception of the process. I want to focus on the client's views of the opening up process, the client's intransigence in the face of the council and the council's reaction. I focus on the client's views of the CCP process versus client views of the formal system. This case provides client impressions of how council members actually apply the above ideal philosophies and practices.

There were three experienced council members in this hearing. Lorre is a 42 year-old Mohawk council member. John is a 38 year-old Mohawk council member. Terry is a 38 year-old Ojibwe council member.

I have changed the client's name because I do not wish to re-victimize the client by revealing his name to Toronto's Aboriginal community. The client, Bill, is a powerfully built 32 year-old Aboriginal male who did not specify any cultural identity at the hearing or in my subsequent interview with him. I first encountered Bill as he waited to begin his hearing. Each time he showed his irritation at being made to wait. This escalated to angry under-the-breath asides directed at me saying, "What's with these people? How long are they going to take? Jesus, these people!"

During the course of the pre-hearing the following information about Bill was revealed. Bill was charged with assault and illegal entry of premises. Bill had a lot of prior arrests for theft but never for assault. This was the second time he had been diverted. He had successfully completed all of the conditions of his first decision. Anger

management was the major condition in the first diversion decision. The council members discussed how the anger management condition of the first diversion did not seem to be effective. Subsequently, the council members decided who among their number would lead the hearing on this day. Lorre was chosen. Bill was then brought into the council room and the hearing commenced.

John began the hearing by asking Bill "Would you like to smudge before we begin?" Bill said, "yes". Lorre asked, "Who would like to lead the smudge? I don't want to do it." Terry, therefore, led the smudge.

Bill described how he felt going into his first hearing:

I wasn't intimidated. I was more frightened. Child frightened. Oh wow, butterflies in the stomach. But I was more comfortable than standing in court.

In this case, because of prior experience with diversion, Bill was not nervous or apprehensive:

I was confident. I knew what to expect. I knew people wouldn't...I wasn't thinking that they would be sympathetic to it, I figured they would have read it and kind of asked themselves the same questions that I was asking myself.

The respect that clients are treated with by the council members, coupled with the knowledge that they will not be imprisoned for their offence, makes them less worried and fearsome about a subsequent diversion. Moreover, as the above quote indicates, client foreknowledge of the process makes them begin to ask questions of themselves before entering the council room. Clients can begin working on themselves before the introductory phase of the hearing.

In this hearing the council members provided little introductory detail about themselves. Instead they moved right to describing the aims of the hearing:

In this program 'We do it our way to help our people.' We are all volunteers here and all attempting to help our people in a way that the mainstream system cannot help our people. We are doing it ourselves.

After this introductory phase the council members promptly began to question Bill. John said, "So what happened that night? Tell us why you got charged." Bill replied,

I went out with my friends to a nightclub in the basement of a building. There was also some sort of school on the upper floors of the place. My buddies got rowdy so they cut us off and told us to get out. We went outside to smoke a joint and I realized that I left my jacket inside the club. So I went around to the front of the building to speak to the manager about getting my jacket back. The bouncer said, 'No you can't go back in to get it'. I tried to reason with the bouncer. I said that I would just go in and get it and come right back out. But the bouncer wouldn't have it. He grabbed me by my shirt so I pushed back to get him off me. They called the cops and cops charged me with assault and illegal entry. When the cops searched us they found a bit of pot on Rick. So they charged Rick with possession.

Opening Bill

It is at this point that the council members begin the process of opening up Bill. This is the most difficult and emotionally trying but rewarding phase of the hearing.

Lorre asked, "Were you drinking before the offense?". Bill said, "Just a couple, but Rick was pretty drunk before we left for the club so I went along to make sure he would be all right. I only drink socially now. I don't drink to get drunk. I realized awhile ago that I did not like the way it made me feel. It messes me up. I like the path I'm on now and drinking interferes with it. Same with pot." Lorre then said, "This problem with the jacket ... it wasn't really just about the jacket was it? It was more about what...?" When Bill did not reply Lorre said, "You know what it's really about, it's about how this person pushed your buttons, how you lost control and committed an assault."

A pivotal point has already been reached in this hearing. Lorre moves quickly from a question that is commonly asked in most hearings to question the precipitating factor for the offense. Knowing that the client has had problems with self-control in the past, Lorre exposes the issue without delay. Bill immediately reacts by trying to minimize his loss of self-control. He denies that he has a problem and attempts to manipulate the council members. He interrupts the council members and cuts them off as they try to make him face this issue. Bill minimizes what he did while, at the same time, tries to demonstrate to the council member audience just how much control he did have over himself. Essentially, he deflects attention from the seriousness of what he had done. He makes it seem as if it was not really a serious assault. Then he resorts to strategies of rationalization and justification. Bill points out how reasonable his request to get his jacket was. He says "there was a foot of new snow on the ground and it was cold". But the bouncer said, "I don't care". Bill is clear, "Hey, I didn't start it. He grabbed me first. I asked him a bunch of times to let me go but he wouldn't so I grabbed him to get him off of me". At this point Bill reverts back to strategies of denial and minimization saying, "We didn't really fight we just sort of grabbed each other. It wasn't really an assault at all." Lorre replies "You could have easily ran away". Bill retorts, "Sure I could have but bad things can happen when you turn your back on someone."

One issue is of note here. Client barriers of denial and strategies of minimization and manipulation are common to many hearings. This is the location from which council members often have to begin to work to open up the client. Council members use strategies of their own to get the client to recognize that s/he is closed off to healing.

Lorre, above, uses a strategy of pointing out other options for Bill to consider. In so doing she offers him a way to consider an alternative view of the issue without him feeling that he is being attacked or coerced into it. Moreover, she does not explicitly challenge his attempts at manipulation through diverting the issue. Bill is thereby left with a certain space where, it is hoped, that he will begin to really delve into himself. This is a common strategy throughout the hearings that I witnessed.

Bill says, "Sure I could have walked away but I didn't really want to leave a \$200 jacket behind." Lorre continues to try to get the client to see that his justifications for grabbing the bouncer are not really good excuses for resorting to violence. She says, "There are better ways to do things and this is not the way to deal with them. You need to have more self-control." Bill is not really listening. He is focused more on his justification for using violence saying:

It coulda been a lot worse. I could have popped him right then and there but I didn't. I didn't start feedin it to him. I'm better than that. I've learned since my last hearing that violence is not the way to go. I knew that four years ago before I went through my first diversion that I would have just started feedin it to him. I would have let him have it because he was in my way and he was pissing me off. Besides the types of things that the bouncer was doing to me would have made anyone crazy. Every person, even you council members have probably run into a situation where you lose it because you are facing such stupidity. You might have acted the same way I did. All I wanted was my jacket but this guy wouldn't let me have it. He was just being a prick.

Lorre is not about to be deflected from her main point, "Violence of any sort under any circumstances is unacceptable."

Two factors are noteworthy here. Bill is clearly demonstrating that, despite his new offence, he has learned from his previous diversion. Bill outlines the change that has taken place between the first and second hearings. He does not immediately "start feedin

it to him" as he would have before the first diversion. Bill explicitly discusses what he has learned about himself and the steps taken to implement that learning. While he has not conquered his problems with anger he has taken steps to change his responses to his anger. This incremental change illustrates the "success by inches" approach that the CCP advocates and practices. Certainly Bill has committed another crime, on first glance a more serious crime than the one he was first diverted for, but he has changed one element of his philosophy and practice. Rather than punching the bouncer out, as he would have done in the past, he "merely" grabs him and wrestles around with the bouncer. However, later in the hearing, the council members continue to work on this change through discussions of what constitutes a serious assault.

The second noteworthy element is the patience of the council members. It would be easy to simply stop this barrage of self-justification. Council members also let pass the obvious manipulative ploy where Bill says "...you might have acted the same way I did." The point here, as I understand it, is to really try to listen to the client's side of the story. Council members are prepared to extend their acceptance of client ploys to great lengths in order to get, and keep, the client talking. A strong premature challenge of the client at this point might result in the client closing him/herself off. Client obstinance resulting in a refusal to participate and engage the issues is to be avoided at all costs.

John then spoke. John is looking at the synopsis trying to ascertain whether the police and Bill's version of events converged or diverged. Bill was charged with illegally entering the premises. In this case there was a school on the top floor of the building and the nightclub was located in the basement. In order to get into the club you had to go

downstairs and go through two holding areas before you actually got into the bar. Bill says "I was only at the top of the stairs to the basement at the front of the building. I wasn't really in the bar at all. So the charge of illegal entry was ridiculous". There is a give and take between Bill and the council members as to how premises were defined. Eventually Lorre, confronting Bill's attempt to minimize the illegal entry charge and manipulate the council's view of its seriousness, says: "They usually consider the whole building as the premises and not just the bar in the building".

Bill, in a later interview, commented on the types and intent of questions council members ask and how they contrast with questions asked by probation officers:

...Very good questions because they tried to get to the situation and the person and how you react. So it's pretty good. I mean you sit in front of a probation officer it's all the same. They read out of a script I think, and they write down your answers and you're on a point system. You're not on a point system here.

Terry asks Bill, "Tell me what you think a simple assault is". Bill vacillates, starts to give the criminal code definition but quickly switches to how he saw assault. Bill says, "You know this charge was really a ridiculous charge. It was really not important. It shouldn't even have gone this far. I even thought about going to court and pleading guilty in order to get this out of the way. Any judge would have just tossed this out." When the council members did not respond to this Bill starts to define what a minor assault was. He says a minor assault, "Was when you didn't hurt each other. You didn't use a weapon. One person touched the other who did not want to be touched and, therefore, that would make it a minor assault." Terry immediately replies "You need to understand that no assault is a minor assault; all assaults are serious charges. You have to be prepared to take responsibility for that." Throughout this exchange Bill would not admit that what he had

done was a serious crime. He says, "Look I accept responsibility for grabbing and pushing this guy. But I don't understand why this should have gone this far." Terry continues to push the issue saying, "It's not just what you think is serious, it's what everybody else thinks is serious."

At this point Bill is fully opened to the council's questions. He engages the issues even though he is becoming frustrated. The council members are now trying to get Bill to see the source of his denial. Through prodding him to define the distinction between "less serious" and "serious" they lead him to see the contradictions in his view of the assault. They move him away from an egoistic standard toward a community standard. They direct him to look at his responsibility in a wider and more socially acceptable manner. In this regard the council is not only working toward changing an individual's methods of thinking, discernment and ethics; they are also moving him toward a more concrete understanding of community, his place in it and his responsibility to it. It is not only what you think; "it's what everyone else thinks is serious".

The last exchange also begins to reveal Bill's nascent resistance to the train of council questions. Indeed, in a subsequent interview with Bill, the sources of his resistance were made clear. I asked Bill, "Did your experience in the hearing change your mind about the seriousness of the offence that you committed? Do you now see any type of assault as a serious crime against another person?" Bill replied:

Yes and no. Depending on the severity. Putting your hands on somebody is not an assault. It's unfortunate that's how it is. But unless you're actually striking somebody physically and hurting them, I think that's what you would call an assault.

Even after the hearing it is clear that Bill is still clinging to his interpretation of what is "serious". However, Bill's continued resistance weeks after the hearing should not be seen as a "failure" of the CCP process. Once again I refer to the healing philosophy of the CCP. It takes time to heal. The CCP does not expect overnight success. It values long-term change that lasts rather than quick fixes. Bill had yet to complete his new conditions when I interviewed him. It is possible that, upon completion, his resistance will have lessened or disappeared and he will have changed his views.

Once again there is a strategic shift in topic and approach in order to defuse Bill's resistance. Lorre asks, "What do you do with your time? Bill answers, "I work two jobs at A and P as a stock person and a customer service person. I work seven days a week between these two jobs. It's not the best of jobs but it's not the worst of jobs. I really don't have time for anything else except my girlfriend." Lorre replies, "At least you get up and go to work everyday. That's a really good thing! The quality of the job is less important than the fact that you work hard at it."

This shift to employment issues does to two things. First, it shows the council that the client is responsible enough to hold a steady job. This alerts the council to the fact that the client does have the capacity to recognize responsibility and demonstrates that the client's life is not completely dysfunctional. The fact that he is in a relationship gives further evidence that council does have some skills to work with as they try to help him to help himself. The use of employment here is not the same as the formal system's use of employment as a culturally biased aggravating or mitigating factor used to increase or lessen the degree of severity of sanction. Rather, employment is a diagnostic tool used to

create personally relevant healing conditions. Second, it shows that, even though the council is pulling apart Bill on one set of issues, they build him up on another set by pointing out the good things that he does. This is an important part of the CCP process. It is not enough to simply criticize, label and stigmatize as in the formal system. The CCP approach attempts to recognize and build capacity whenever the opportunity presents itself.

Lorre asks, "How far did you go in school?" Bill replies, "I wasn't an A student but I wasn't a D student either. I am two credits short of grade twelve. I don't have grade twelve but I can get those two credits just by going to a guidance counselor." Lorre asks, "Why haven't you done that yet?" Bill replies, "I don't have the time. I'm working all the time." Lorre continues, "How did you get along in school?" He says,

I didn't like school. I don't like authority figures. They were a real problem for me. I was always getting into trouble with them so I didn't go to school most of the time. I only went when I knew they would be doing review classes. I got thrown out of a lot of schools for trouble with teachers and attendance. So I would just go to another school when I got thrown out and stay until they threw me out. Eventually I only had two credits left but I said to hell with it, let's just go get a job. So I did.

Inquiries into the employment and education background are fairly standard in all hearings. They help the council assess the client's current state and give possible directions toward creating meaningful decision conditions for each client. What is notable in this last education exchange is that it reveals one of the main problems underpinning Bill's anger. The CCP's process reveals that Bill does not like authority figures. This point is particularly relevant to the crime under consideration but it is also extremely pertinent to the rest of the interactions within this hearing. It becomes increasingly apparent, as the

hearing progresses, that Bill has significant issues with the authority of Terry who tenaciously forces Bill to focus on his lack of self-control and on the seriousness of his assault. The way that he treats Terry betrays a definite lack of respect for authority figures. His constant interruptions and "I already know that attitude" to whatever Terry says really demonstrates his disrespect for Terry's authority. This culminates when Terry pointed out, "You know the bouncer at the club was very definitely an authority figure that you did not handle very well. You reacted badly and assaulted the man".

In a later interview I asked Bill about how he felt about the council members as authority figures who were using their authority to help him change himself. Bill replied:

It didn't bother me in a sense because no matter wherever you go there's somebody who is superior, somebody who has more life lessons and experiences and things, and you've got to take it for what it's worth. What I have a hard time dealing with is people who have not been through the same thing as I have telling me what I should do, ok. That pisses me off because you're not me, I'm not you, you can't read my mind, I can't read yours unless there's something you're not telling me I'm going to react to do things different than you. Everybody is different. That's what my problem is.

Bill's indignance over people who have "more life lessons and experiences" and are telling him what to do even though they have not had his experience is one of the barriers that the council did not overcome in the hearing. This may be because, in this hearing, none of the council members offered personal experiences with assault.

Hence, if there was a weakness in this hearing, from Bill's perspective, it was the fact that none of the council members had, or offered, the experiences that Bill could recognize as legitimately relevant to his experience. Bill's quote above indicates this problem. But it should also be noted that the lack of similar council personal experience would not be problematic for other clients. Most clients I interviewed cited other council

member strengths, beyond personal experience, that helped them.

Terry discusses the conditions of his last council decision. In his last decision one main condition was for Bill to go to anger management classes. Terry asks, "Why didn't you continue with this condition?" Bill replies, "I went to anger management but only as a one-on-one thing. I didn't like the group classes. The groups held me back. I did do a couple of the group classes and I thought that I could help them because I had already come so far in individual classes". Once again Bill is exhibiting an egoistic lack of respect for the opinions and positions of others. Group work may have in fact "held him back" but Terry does not seem to think so. Terry continues, "So you find it difficult co-operating with others? Do you really think that you know enough about yourself to help others?" At this point Bill is becoming increasingly agitated with Terry as she continues to force the issue of self-control. There is a struggle between Terry and Bill. Terry refuses to accept the barriers that Bill continually erects and Bill refuses to open himself to his self-control issues. Terry, sensing that she is about to lose Bill, completely shifts the focus once again.

Terry asks him, "Have you done much around the Native community? How involved are you with your culture?" This was a sequence that was very fractured. Bill does not really address the cultural question at all. Rather, he talks of all the different Native agencies he had been around like Anishnawbe Health, Council Fire, and Obansawin Leasing. He adds, "I like to go to Pow Wows but I have such bad relations with people in the community that I spend a lot of time avoiding people rather than meeting people" He clearly was uncomfortable discussing cultural issues.

When this approach yields little, Terry tries a different approach to the above contested issues. Terry asks, "Have you ever gone to other types of counseling?" Bill replies, "I've been in counseling in one form or another for my entire life. When I was a kid I went to play therapy and as a teenager I went to adolescent counseling. The teenage counseling place eventually said 'You can go because we can't help you with your problems anymore'. They said I was ok". Terry asks, "Would you be willing to go to counseling in the future?" Bill vacillates and appears to be rather unenthusiastic about counseling. In a later interview I asked Bill why he resisted more counseling

Like I said that was the one thing I didn't understand and I kept repeating myself and repeating myself, not to get out of it, but just to let them know it's not something that I particularly enjoy. I'm an adult now. I've done my growing. I have somebody that I talk to all the time. I feel more comfortable now. I don't want to go see somebody new. And it will take me 10 months just to get comfortable with the person and just when I'm starting to make goals I know I'm going to stop going. Do you know what I mean? I'm not going to pursue it to see somebody if I don't have to.

It is noteworthy that Bill does not feel that he has to grow anymore. This is part of the attitude that permeated all of his responses to the council. Throughout the hearing he continued to maintain that he has already done the work on himself to improve himself. He continually minimized the fact of his assault and refused to address it as an indicator that he still needs help. His own resources were, to the council members, clearly insufficient. On the other hand, Bill raises an issue that other clients raised. Being shifted from one counselor or agency to another is unsettling and sometimes destructive to processes already in place or goals already achieved. If a client has already experienced this problem it is likely to make him or her resistant to further change in this domain.

John shifts the topic saying, "Do you know how lucky you are to only get these two charges? It could easily have been a possession charge and a more serious assault charge. It could have been a lot worse" Bill retorts. "I don't see it that way. I didn't really hurt the guy and I wouldn't have got a possession charge because it wasn't my dope". As I looked around the council table and it was clear that the council was becoming increasingly frustrated with Bill's continual glib denials and Bill's attempts to remain in control of the situation.

Terry asks, "What did you think was going to happen in this hearing when you came here today?" Bill answers, "I thought that everyone was going to recognize that this was not a serious charge. I thought that the hearing would be mellow and easy and wouldn't have serious consequences". Terry and Lorre exchange an exasperated look. They did not think that way at all. They took it very seriously. But rather than let their exasperation overwhelm them Terry shifts to a new route.

Terry inquires, "What's your home life like?" Bill replies, "It couldn't be better. I live with my mother, two brothers and grandfather." Terry asks, "What about your father?" Bill answers, "My father died when I was four." Terry says, "So your mother raised you. You realize that she is an authority figure. How do you get on with her?" Bill, bristling at the authority figure reference, snaps, "Like any other kid. I listen most of the time. Nowadays I listen a bit more because she has been through this stuff and her experience can help me. When I was in high school I didn't listen so much. I pretty much did what I wanted. Curfews didn't really phase me so my Mom just let them slide."

John asks, "What will you do to help yourself?" Bill does not reply. Terry asks, "Would you consider trying to work on your self control problem in anger management?" Bill, in a very non-committal manner said, "I suppose..." Lorre picks up on this, "What so you mean 'you suppose'? Don't you want to try and better yourself?" Bill says, "Sure I do..." When it became apparent that Bill was not going to say anything more Terry asks, "So if you do, then what will you do?" Bill replies, "I guess I could work on that..." John asks, "What do you mean 'that'?" Bill replies, "Well...counseling, like you said. I could try that again." Terry asks, "So you think that will work for you even though you said you didn't think it would before?" Bill replies, "If you think it will then I'll try again." Terry retorts, "It's important that *you* think it can help you better yourself." Both John and Lorre agree with this sentiment. Lorre, sensing that an impasse had been reached asks the council, "Does anyone else have anything they want to ask or say? The council shake their heads and say "no". Lorre asks Bill if he had anything more to say. Bill replies, "no". Lorre asks Bill to leave the room explaining that the council needs to discuss their options for Bill. Bill leaves the room.

It should be noted that even when the council was trying to get Bill's input into creating council conditions, Bill continued to resist. Despite this resistance and council member frustration, however, they still offered Bill a chance to play an active role in his own healing. This is a major contrast with cases that I witnessed in the formal court. In these cases judges would not accept the kind of attitude displayed by Bill in this hearing. It would have been read as a personal affront to the court rather than as a barrier that need to be worked through. Although the council members were frustrated, felt manipulated

and disrespected they did not allow their status as council members to get in the way of the real focus of helping the client. The fact that Bill did not take full advantage of this opportunity is less important than the fact that he was given the opportunity. This is a central and re-integrative feature of the CCP process. It offers the client access to the decision-making process without intermediaries such as lawyers and, as such, differentiates it from the formal system's practice.

The Pre-decision Council Member Discussion

After Bill left the room Lorre suddenly lowered her voice saying, "The door is open. I don't want him to hear me." Terry jokingly joins in "Yeah he might come in and beat us up! He's a big guy you know." Lorre re-focuses saying, "He sure has a temper, doesn't he? Terry agreeing says, "This guy is a real manipulator! He fiddles with the facts so he looks right as rain. I mean he is totally in denial and won't even think about changing. I think he was trying to manipulate us into giving him easy conditions. " John agrees, "We are dealing with someone with an anger management and self-control problem". Lorre says, "I think he needs more counseling". Terry agrees, "So do I. He can't control himself when the going gets tough and when we tell him so he denies it. He needs a lot more counseling". Lorre continues, "He really needs more support than he is getting from his family and friends so more counseling would be a good thing for that too". The council then turned to determining the most suitable counselor for Bill. Lorre asks, "What about Cyndy Baskin?" John suggests, "Maybe a male counselor would be better....?" Terry jokes, "What he really needs is a female counselor to set him straight." Every one chuckled at the joke. John continuing, "I see that he knows Patti (the CCP

coordinator). Maybe she knows someone good for him." Both Lorre and Terry think that this is a good idea. The council agrees to ask Patti find the proper counselor for Bill. John asks, "So how long should we make it?" The council members then discussed the time period for the decision. Terry says, "He needs a more supportive structure over a longer period than what he has with the job and girlfriend". John asks, "So we should make it a little longer, eh?" Terry agrees, "I think so. "How about making it ten months? It's sort of like a school year". John reminds them, "Don't forget that he's gotta work". Lorre says, "Well he's got Tuesday and Thursday mornings off so he could squeeze in an hour meeting before going to work." Terry asks, "So...what? Do we give him ten months on those days? Is that what we're saying here?" Both Lorre and John agree. John adds, "I think he should also get in touch with Patti once a week to tell her how he's doing. We should keep an eye on him." Terry asks, "Do you think he'll do what we ask? I mean he doesn't think much of counseling." John replies, "Well, we gotta try. Maybe it will work this time. Besides he respects Patti so maybe that will help if Patti says 'Try this person...'" There was then a lull in the conversation. When no one else spoke, Terry asks, "Do we want him to do anything else?" Both Lorre and John say, "No."

Since there were no more conditions they called the coordinator to come in, get their decision and to type up the official copies. After a short wait the official copies of the decision were brought back into the room. The council looked them over to see if everything was in order. Once they were satisfied Bill was called back into the council room.

In Bill's pre-decision discussion, the council members get right to "the little question" of Bill's denial of his problem with anger and his attempts at manipulation. Despite Bill's manipulative and arrogant behaviour towards the council members they still strive to help him. They do take into account his reluctance about counseling. Even though the council members fear that they might "just be spitting into the wind" they are prepared to let him work through this again. They try to create the best decision possible for him, given his resistance, and ask him to see a counselor again. Each council member gives his or her input until a consensus is reached.

This pre-decision discussion also illustrates another important element in the CCP process. When the council members were unsure as to whom to recommend as a counselor for Bill they looked to the coordinator for assistance. Patti's prior relationship with Bill through the first diversion is being utilized to find the best counselor for this client. The council does not indiscriminately pick just any counselor. Recognizing their limitations they get help. However, there are other reasons for this caution in choosing counselors according to Jonathan Rudin:

Council members rarely recommend specific counselors or specific programs to clients. There are a number of reasons for this. One is that a specific counselor or program may not have the space for the client. If that occurs we do not want the client to think that he or she has been rejected and is now getting second-best treatment. In order to be respectful of other organizations and individuals, we can't fill up their calendars with appointments for our clients ahead of their particular priorities. As well, particular clients have particular needs and particular programs and counselors have particular skills. For this reason, we have found it better to leave the actual determination of what program and what counselor to Patti to discuss with the client. In addition, sometimes the particular program a client starts with does not work out, for whatever reason. If that occurs, the client, with Patti, will choose a suitable alternative. The point of the Council process is to help the client find the path he or she needs to be on.

The particular details of how to get on the path, etc., is not the responsibility of the Council.

Hence, the decision to let Patti choose the proper counselor, points to the CCP consideration and respect for the particular needs and well-being of the client, community service organizations and for the counselors themselves. It also demonstrates, once more, the flexibility of the CCP process. The CCP changes the client's program if it is not working out. There are always alternatives to be considered and used throughout the CCP process. Clients pointed out that the formal system does not have, or chooses not to use, alternatives when it is clear that its dispositions are not working for the client. I never once heard any client who was imprisoned say that the state came to him/her and asked him or her if incarceration was working for them. I have never heard of the state subsequently trying to rectify this error. Even probation officers, according to clients that I interviewed, were reluctant to change court ordered dispositions in order to help the client into a more relevant program. The CCP has the capacity and will to change when circumstances dictate.

Overall, when the pre-decision discussion is deconstructed, it reveals a process that operates in multiple ways. It is not simply a consideration of the immediate needs of one person. Rather, decisions made here ramify over time and space for all those who have been, are and will be involved in the process. It is a culmination but also a beginning.

The Decision.

Lorre reads the council's decision to Bill:

You are to attend counseling once a week for ten months. You must contact Patti McDonald after September 13 for a referral to a suitable counselor. You are also to maintain contact with Patti McDonald during this ten-month period

and let her know how you are doing. You must inform CCP of any change of address. If you have any questions please contact Patti McDonald or Jonathan Rudin. If you do not follow the decision of the community council you will be asked to re-appear before the council. If you still do not comply with the council decision you will not be allowed into the community council if you are arrested again.

Lorre asks Bill, "Do you understand this decision?" Bill replies, "Yes. I do." Lorre asks, "Do you agree with these conditions?" His body language and overall demeanor made it clear that he was not pleased with the decision. He sat back and fidgeted, looked anywhere but at the council members. He played with his hat and had a fixed expression on his face that did not hide his displeasure. Bill says, "I don't think I need counseling". At this point the council members tried to convince Bill, who was clearly unhappy with the decision, of the usefulness of the counseling condition for him. Lorre explains,

Look we know that you've been through a lot of counseling. We know that you've already done a lot of work on yourself through counseling. But we still think that there is more that you can do to help yourself. You must understand that this is not counseling because there is something totally wrong with you. This is not the case. You work hard and steadily plus you have a good brain on your shoulders and you have a girlfriend. But what you need is someone to help you take care of this anger. You need someone you can just talk to and whom can be your friend and support to you not just someone who is going to tell you what is wrong with you. Look I went through counseling twice. Once when I was young and then later in life when I felt I needed some support.

Terry and John reiterate that this condition was in his best interest. Bill continues to look skeptical but nonetheless signed the decision saying, "Alright I accept this." It was clear that he really did not. His attitude betrayed his words. Lorre, recognizing this says, "What we're trying to do in this council is not to punish you but to make sure that you never come back here for an assault charge ever again." John agrees, "This isn't an insult, but

we hope we never have to see you again." Bill nods his head and gives a small smile. All the council members shook his hand, wished him luck and allowed him to go.

Post-hearing Issues.

Immediately after the hearing Bill told me what he liked about the CCP diversion. He really believed in the program because, unlike the courts, "The council members were like people you met everyday. They were like your friends and that made it really easy to talk to them. You could never feel that way in the courts". When I thanked him for allowing me to witness his diversion he said, "No problem. It's important that other people find out about this." He continued,

This is a really good program. It keeps a lot of people out of jail and it saves a lot of money for the courts. So it's really important that other people should find out about this stuff. It's good that this program is still here to help me with this new charge and to help others. If I had gone to court I would have got a fine or suspended sentence. I would also have had a record.

Nonetheless Bill did have some criticisms of the process. In a later interview with Bill I asked him about how he was treated in the hearing. I asked Bill if he felt lectured by the council he said "No, not really." However, he did take issue with the council's attempts to get him to better himself:

I think the hardest thing that I took was them asking me how can I better myself. They made me very hesitant. I felt like saying these things that wouldn't be appropriate because they don't really know me and they don't know the lengths that I've come. I'm not as messed up as I used to be. I wasn't bettering myself. I can't just say to them look I know there's nothing wrong with me because that's wrong. I know that I was wrong. I took, like I said, what they said to me at face value. Whether I choose to use what they say is an individual basis what I'm going to do. That's the only problem.

Bill, despite the fact that he said that he did not feel lectured made this comment; "A lot of the questions bugged me." He was angry about the way he was interrogated about the

seriousness of the crime of assault. He did not think that the council members really tried to answer his question, "What would you have done in my situation". I then asked him whether he was so angry that he told the council members only what they wanted to hear.

Bill replied:

No. I was talking to them, this is how it is. I'm not going to hide anything from them. This is how it is. I didn't like what they had to say. I wanted to tell one of them, I'm not going to say which one it is, I wanted to tell her to fuck off, get out, I don't even want to listen to you. Because she had nothing to offer me. I had more offer to me from the other two individuals then this one kept asking me the same question over and over and over. Like is this the only thing that you know to ask? I think that was wrong. I know they need three people. If I ever have another one [diversion], I don't want her sitting in because I didn't get anything out of her useful.

I asked Bill why he accepted the counseling condition; "Did you accept it just to get out of the council room?"

It wasn't to get out of here. It's something they asked me to do. Something that I am going to do to work out whatever they think that I need to work out. And if nothing comes of it, nothing comes of it. But this is their decision and it has to be met.

All of these comments point to Bill's continuing denial of his problem and his recognition that, regardless of his position, he will meet the conditions. Taken in tandem with the council member ideal hearing above, they also give explicit client testimony about the tenaciousness of the council members in trying to help a client take responsibility for his crime and for healing himself. Clients are not "getting off easy" in this Aboriginal justice alternative. They are being forced to confront themselves in ways that they are almost

never forced to do in the formal system⁶⁴. Bill was clear about this in his interview:

If you're getting off too easy you're just putting them in the system and forgetting about them. Actually making somebody deal with what they have to deal with, it's harder a lot of times because most people aren't ready to deal with whatever demons or things they might have. This is kind of helping me anyway. I can't speak for other people.

Bill's criticisms above are also useful in giving council members feedback on how their hearing practices can affect clients. One of the issues raised by council members in prior interviews related to the CCP restriction on council members communicating with clients after a hearing. Council members said that they did not get enough feedback from the clients. Nor could they keep close tabs on a client's progress due to the restriction. This hearing and Bill's post-hearing comments, then, serve a dual purpose. The hearing and Bill's comments gives council members a document to analyze the effects of their strategies on clients, it gives council members client feedback that they cannot normally receive and it alerts them to how the client is doing with his or her decision. This case can also serve to educate outsiders and insiders about the strengths and weaknesses of the CCP process.

⁶⁴ For people who have not "walked this path" it is sometimes difficult to see how "confronting yourself" could be more difficult than going to jail, yet this is exactly what clients maintain. Clients repeatedly asserted that they can "do the time" in jail "standing on their heads" (Rudin personal communication 2000). There is little incentive to try and confront the issues that caused them to be in jail in the first place and few programs that address these issues once in jail. They go, do the time and come out to continue with the same behaviours that got them into trouble in the first place. Going through the CCP forces them to confront the issues that cause the behaviours. I have witnessed tough, belligerent and street-wise clients break down during hearings. They expose their inner workings in ways they have never done before. It is not easy to tell strangers your most deeply hidden problems and fears. Once clients take the responsibility to do this for themselves, they have to face up to themselves and their weaknesses. Jail, contrary to prison industry claims and public conceptions, does not require acceptance of responsibility or facing up to yourself; it only requires one's time.

By the end of our interview, despite Bill's resistance to the counseling condition, he said, "I accept it. Hopefully it will help me out". He was also clear that this was better than any sentence he might receive in the formal justice system, "Oh it's better than any sentence that I could have got. I could have gone to jail for this." Similar sentiments were expressed by all of the other clients.

Concluding Remarks

I chose Bill's hearing in order to show the continuing resistance of a client to council member techniques and decision conditions. In most of the other hearings I witnessed, clients accepted the council decision without visible distaste or complaint. Through this hearing I wanted to show the internal struggle that clients engage in as they move through the CCP process. It would have been too easy to use a hearing where the client did not question the process and simply accepted what happened to him or her. My intention was not to provide a picture of a process that was uncontested by the client. I think that it is useful to see how well the CCP operates under conditions of adversity. This indicates that the CCP is not a static, precedent-driven exercise that simply processes clients like a sausage machine grinding out the same type of sausage over and over. Rather, it demonstrates that the CCP adapts to contingencies without losing sight of its underlying philosophy and normal everyday practices. This hearing also illustrates how council members have to sometimes struggle to get the client to accept change.

In this chapter I discussed the ideals of diversion as conceived by justice professionals. I then gave a historical sketch of how the CCP came into being and how it evolved through community interaction with the provincial government and through the

hard work of concerned Aboriginal peoples in Toronto. I gave the contours of the founding conversations and controversies that shaped the CCP. Subsequently, the description and analysis of an ideal and real CCP hearing was intended to show how one community of urban Aboriginal peoples are "doing it their way" through an alternative justice initiative based upon Aboriginal understandings of justice. I illustrated the philosophies and practices that the CCP uses to deal with the underlying causes of criminal acts rather than simply the act itself. The case study revealed the struggles of clients coming to terms with their act and themselves. It illustrated the flexibility and sensitivity of a process that easily moved from the ideal to the real depending upon different contingencies. The ideal and case study served to contrast the practices of the CCP with those of the formal system from the standpoint of clients and council members who have experienced both approaches. This chapter's intention was to present an ethnographic representation of Aboriginal people re-claiming justice for themselves at the local level in an urban context. The analysis of the ideal hearing and Bill's hearing provides justice professionals, academics and Aboriginal peoples outside of the CCP an understanding of the ideal and real within the CCP process.

Chapter Five

Cultural Transformation Through Justice Practice.

In this chapter I focus on the value that clients have derived from the CCP process. I discuss the restorative or transformative power of justice practices at the local level. I profile how clients have been restored or transformed in a myriad of ways. In so doing I illustrate the link between the creation of meaning in the everyday lives of clients leading to a clearer understanding of personal and community responsibility and identity. Subsequently, I outline the theoretical and practical significance of the CCP community justice for Aboriginal peoples, anthropology and the formal justice system. Throughout this chapter I concentrate on the role of the CCP justice process in meaning creation, identity creation and healing at both the individual and community level.

Client Views On Their Personal Restoration or Transformation.

The ethnographic description and analysis of a council hearing presented in the previous chapter outlines a process that can vary widely in relation to client needs. I now focus on the value that *clients* derive from the CCP process. In what follows clients explain how their lives have become meaningful through a process that restored or transformed them from unhealthy, irresponsible, disconnected individuals into relatively healthy, responsible individuals who participate in, Toronto's Aboriginal community.

The CCP deals with a range of clients whose class, gender, social and cultural backgrounds vary widely. For this reason, I make a distinction between restorative and transformative justice. Restorative justice implies that a client had lived in a condition where s/he had, at one time, been physically, emotionally, mentally and spiritually whole. S/he was competent and confident and had strong capacities to deal with the exigencies of daily life. Restorative justice further implies a past state of personal agency that was somehow lost. These clients have had prior positive life experiences. They have had healthy family, cultural, community, educational, employment and financial backgrounds. Many of these clients, however, lost control over some or all of these through family breakdown, substance abuse, “hanging out with the wrong crowd,” losing their jobs and a host of other negative experiences. These clients are restored to past states of capacity, competence and agency. They are also restored to family and community relationships that fell apart due to the crime that the client had committed.

Yet for many clients who come through the CCP these previous healthy states may never have existed. They may have never experienced these valued personal states. Hence, there has never been anything to *restore*. Therefore, I think that *transformative* justice is a more descriptive term to discuss what happens with *these* clients. It can be used to describe how people are transformed from what they have been and currently are. Transformative does not assume a prior ideal state to be returned to, rather, it deals directly with the state of the individual as the individual is found. Many of the individuals who come to the CCP have never known a healthy personal life. Unhealthy environments, abusive relationships, social exclusion and systemic discrimination have

shaped them. They have little to be *restored to*; they only have something to be *transformed from* and *into*.

I now review how the CCP, in its restorative and transformative modes, helps clients stop negative behaviours and helps them to create new coping skills that give clients a sense of agency and personal and community respect. All of the following client testimony results from a series of interview questions designed to find out what client lives were like before the CCP and the ways in which client lives have changed due to the CCP process.

The CCP has restored or transformed different clients along many distinct axes. Since most new justice initiatives were created to reduce Aboriginal over-representation in the justice system, I offer one client's (B.N.) testimony on how the CCP process has kept him out of jail:

I think if I went through the courts I'd probably be in jail right now. Not a lot of progress and it wouldn't have solved anything. *With the way I went through the native diversion program, I got to talk to a counselor, I talk[ed] to a few Elders after the incident even though they weren't from m[y] [culture] but I still respect what they have to say. Everything that happened was good.* If I went through the court system I could be sitting in jail right now and when I get out, nothing. I just wasted a year of nothing. Nobody helped me the whole time I was in there. If anything it makes you harder and keeps you like pushing people away that want to help. So I think that aspect the diversion program does a helluva lot that way. *But it's in with yourself if you want be helped.* ... I am really, really thankful that the diversion program helped me from my charges. (my italics)

This client outlines how the CCP depends upon the willingness of clients to want to find new meanings and practices to help themselves. Change starts within the individual not through external coercive means. The CCP may help clients to come to this recognition but it is the client who must take responsibility to act on this understanding.

Only then does referral to counseling and Elders become relevant and useful in providing the missing tools for clients to realize their healing goals.

However, staying out of jail is not enough for many clients. They do not want to re-offend. Yet, the formal system, in part, sets up the conditions for recidivism through its over-use of prison for “penny ante offenses” (see below). The formal system also sets up the conditions for recidivism because of its insensitivity to client needs through lack of rehabilitative programs in general, a lack of programs that focus on specific individual problems and a lack of culturally appropriate rehabilitative programs. “Nothing works” philosophies about rehabilitation and “get tough” approaches to crime and incarceration (Hahn 1998: 3-4) sow the seeds of bitterness and hate that can lead to re-offending. Many clients pointed to these issues as exacerbating their extant problems. Alternatively, the CCP hearings craft rehabilitative approaches that are arrived at in conjunction with clients and are, therefore, meaningful and readily available to clients. Client (B.N.) states:

I could go do the 2 months or 3 months [in jail] or whatever they would hand me, and just ignore them and just say come back and be the same person. Well I would be in a far off worse situation then because I’m the same old unchanged person that I was when I went in, I’m still the same. Even perhaps more bitter that I have to serve some time and I come out and saying well I had to pay the price for these things that I have done, which I should never have done. What I should have got the amount of time I got for it therefore I’ll go do it again because you’re bitter and you hate it. I mean there’s hate inside of you because you felt injustice was done. I mean I only got 6 months for the item I took [a cup from a corner store sidewalk display.] *but whereas coming to this program it’s more helpful for me, I could straighten out and I could become useful to the community.* (my italics)

Client (B.F.) claims the CCP was a life-saving experience:

Yeah they worked with me to find where my problems lay and what might help and why it would help. It did help eventually. I’m sitting here still. I didn’t think I was going to make it this far. In fact I thought I was going to be dead

somewhere because of my drinking problem or my criminal activities. I thought, sooner or later my time was coming up. Everybody predicted I would be gone by the time I was 21. I'm 22 now but ... Yeah, definitely. *This has been interesting. Like I mean even looking back in my mind now thinking the first time I had diversion man I didn't know where the fuck I was. I had no idea. Didn't know what was going on. Was violent. Hateful. Spiteful. Angry. And the booze and the drugs, instability. And I look now and I'm like wow. This last charge that I had was, I split up from a 4 year relationship and I just thought fuck what do I do now? Next thing was 'ah just go kill yourself slowly. Just go and use until you die'. And it was like those words never actually formed but it was like how I felt – yeah I'm just going to keep doing these drugs until I die. If I had kept going it wouldn't have taken much longer. ...It's just a sign I suppose or 'this is your last fucking chance don't screw this up'.* (my italics)

The CCP also helps substance abusing clients learn or re-learn healthy social relations, respect and accountability after years of abuse and, in some cases, dysfunctional street life. Client (B.N.) discusses how the CCP helped him:

Like within the last 6 months I've been doing a lot of volunteer work, I'm not hanging out on the streets, I've got places to live. So that's been a big help to me. And I'm learning how to be able to go to the store or to the shopping mall to pay for things that I need or I want rather than just taking something from the store. That's a price ... I mean the man running a market is losing. So I recognize how would I feel if somebody comes and was taking my goods and going selling them. *So it's learning how to relate and to understand what I'm really doing. And that alcohol has driven me down to this and I don't have to go on. So it's better to work through this program and it benefits me more. So it's not that I was getting off easy, it's learning to work within myself to be able to understand, that I want to enjoy my life and that we have to abide by what is right – honesty, what is justice – you have to live by that way. And you get all this through the Council and some of the agencies that they're involved in. It's coming out of a warped way of thinking because of alcohol have driven you down to that warped way of thinking, and bringing you back out and understanding and say look I don't want to go to jail, I don't want to have a policeman put me in a police car. When I don't do anything wrong, then there's no need for them to bother me and I could go out and enjoy myself. I could walk through the mall with some money and pay for what I want, and if I don't have the money I still could go in and enjoy walking through the mall but not buy anything. So within my conscience it's clear that I say if I take this, I'm wronging to myself and also to the law and there's a price to pay.* (my italics)

Both of the above clients discuss their progression from states of isolation, anti-social thought and behaviour to meaningful addiction free lives where they are able to recognize and participate in healthy relationships.

Many clients talk about the difference in focus between the CCP and the formal justice system. Campbell (2000: 41-42), who conducted a program evaluation of the CCP, summarizes fourteen ways in which the CCP helped clients more than the formal system. Most of these have already been discussed in previous chapters. The Council's decision dealt with the root causes of the client's criminal behaviour. A client thinks serving jail time would have only made him bitter. Another client maintained that the Community Council has given him the motivations to turn his life around. Other clients said that the Council gave her/him a 'sentence' which taught him/her a lesson and that, if it were not for the CCP, he/she would likely have re-offended. Yet another client said that in all the times she has been to court they have never taken her situation and circumstances into account and that going to court would have likely resulted in a prison sentence. Another client commented on the lack of rehabilitation in prison saying that it is very easy to get drugs in prison and he would never have been able to deal with his substance abuse problem. Finally, clients liked the fact that the Council's decisions are not focused on punishment, but rather on healing (ibid.).

Additionally, instead of stigmatizing offenders and labeling them as bad or evil as can happen in the formal system, the CCP helps clients to a healthier vision of themselves. One client (B.M.) talks about how the CCP focuses on the positive and not the negative in people:

That basically they're trying to bring out the good traits out of me instead of always coming out with the negative traits. That's why I think the program has helped me change. They didn't make me change. Everything comes within me, not them...

Part of emphasizing the good traits in a client involves getting clients to relinquish less healthy ways of thinking. Clients come to recognize that attitudes, which may have served them well in terms of street survival, also got them into trouble with the law.

Client (B.O), a thirty-two year old male who has been repeatedly incarcerated for violent crimes, describes how his thinking has changed:

Major thing is looking at things as though I'm not always right and that's a big step for me because I've always had to be right to be safe from people. Yeah that's something I carried for a long time. I had to be right, I had to be. And I've been letting that go because how can I learn anything if I'm always fucking right? I learn things by being wrong. And yet it's a humbling, red faced and embarrassed thing that happens but it's neat because I can look back on it and go yeah I learned something. Made me feel a little bit shorter for a little while but that's ok....

Simply convincing a client to move away from negative influences also helps to change a client's thinking about crime and his or her life. Client (B.P.), a male his mid-thirties, speaks to this change of thinking:

I never really wanted to re-offend. It was always the situations that I was around. My particular neighbourhood is all criminal activity there. The whole neighbourhood is one big operation. It's funny to say but once you're on the inside track of it, you could be at home and you'll get somebody coming by at 3:00 in the morning just asking you if they could put something here or put something there. It ranges from the old guys who are like 80 years old right down to the young punks who are only 12 years old. Everybody is some sort of criminal in their own way. That's why that neighbourhood flows so well. ... That's why I moved. I'm happy at Nishnawbe Homes. I'm far away from the neighbourhood. I'm not the key player in the scene anymore....

Throughout this chapter clients outline how they have gotten into crisis and come into conflict with the law. The CCP then enters the clients' lives as a form of intervention

where clients are diverted out of the justice system and the possibility of incarceration is removed. The CCP's intervention with the formal justice system distinguishes it from other institutionally based self-help programs because it immediately removes an external barrier to recovery through its justice practices. This intervention then further enables personal recovery through the CCP hearing practices and decision conditions that help clients to help themselves.

One of the ways that the CCP helps clients to help themselves is by showing clients that they need to want to change the way they think and live. Council members present their personal experience with social alienation, compulsion, substance and sexual abuse, violence and personal degradation to the client. They tell the client how they managed to work on themselves to discover how to become spiritually, emotionally, physically and mentally whole. Council members show clients who used to be whole how to get back to being whole again. They offer themselves as healed and healing role models. They help the client understand and accept that change is possible and desirable. Client (B.F.) testifies to how he learned to transform his compulsive ways of thinking and acting as a result the role modeling presented to him in hearings. He also maintains that it helped him re-gain personal agency. He says

I'm a lot clearer in my mind. I see things a lot differently now. The violence is gone. The anger. The obsession to use drugs is gone. Compulsive actions on that are gone. *It's because of these meetings here.* Yeah it's definitely changed..... The pain of that has kind of abated. It doesn't hurt as much. It still bothers my mind. My diseased thinking, if you want to call it that, my compulsive thoughts. I pray about it. It's not a good thing to obsess all that stuff so I just kind of have to let it go. But yeah the violence is gone, the anger is gone. Drugs, that's what led to all those things, are gone. (my italics)

When a client makes the above connections, internalizes this new mind-set, applies it to his/her life, and maintains this as a philosophy for a new way of life s/he takes responsibility for, and control over, his/her life. This inculcation or reclamation of personal responsibility and agency is pivotal to the CCP's transformative and restorative process. Central to this process is getting clients to focus on the positive in themselves and in others and not on the negative. Client (B.N.) states:

I've had this place I'm living at now for almost a year and I get along with everybody in the house where I am. We're all friends and neighbours. I've got a more positive outlook on life. I don't think it's like gloom and doom no more like what it was. For all you know it's going to happen next year. I feel like I've got some kind of foundation now. I've got somewhat of a better outlook.

Campbell (2000: 42) outlines the ways in which CCP has helped clients change their lives. Clients now stay out of trouble, clean up their act and became more accountable for their actions. Clients are now taking control of their lives and look at things more positively while learning to keep stronger values. The CCP process gave clients a feeling of self worth. Finally, the CCP has taught clients how to be polite and treat others with respect (ibid.).

Client (B.F.) illustrates that this process is a daily struggle. However, he also shows that by working for yourself you can achieve the above changes:

According to my teachings, according the Anishnawbe way, everybody has a right to their voice. Everybody has a right to be heard. Out of respect you've got to listen to them ... you might learn something. That's what's happening now. Like everything that I worked so hard for is working out this year. I still feel alone. I feel sad still. I feel angry sometimes. Sometimes I laugh. It took me a long time to laugh and smile. See it took lots of hard work on my end, not their end. I didn't do it for the Council out there. I didn't do it for the judges, lawyers, psychiatrists, anybody. I had to change within. And that's what our teachings talk about. ... You got a problem, try and change it into a positive. See that is all new for me. I'm trying to learn new ... coping skills instead of

reverting back to old behaviours of drinking 40 pounders, drinking myself to death, or trying to commit suicide. With my decision, that's what has happened. That's why, like I told you, I'm half way at the bridge now. I start school September 7th, upgrading. And that's a challenge for me, the discipline and responsibility.

The CCP inculcates a sense of a client's potential and helps clients find strategies and locations in which to actualize this potential. Client (B.M.) discusses how he internalized these ideas and acted upon them:

...Diversion did give me the motivation. Not only that but the options of my future job prospects down at the agency, and the diversion gave me a way to see that even with these criminal charges I can still get that job that I want even if it might take a little while and a lot of work. If I just knuckle down and start doing it I can do it. That's what I've been working on for the last year or so.

Once clients "knuckle down" and work on themselves through complying with their council decision they have a sense of personal change and accomplishment. Client (B.O.), who had been intolerant, extremely violent and self-destructive discusses his post-CCP changes:

With this last charge I feel like a sense of accomplishment, because I can look back a few years and say yeah I'm a lot different than I was, and I look at people differently than I used to. I treat them differently and myself differently and I intend on improving that. Being virtuous I think would be the word – being kind, being tolerant or patient, and stuff like that. It has to do with many things. This is just one of them, and it's a major one though because these are my roots right? These are my Elders. This is where I learn things.

Another client (B.P) outlines how complying with the CCP conditions created stability in his life. He talks about how he now has the respect of others. A second client (B.Q.), a twenty-nine year old male, then discusses how a job garnered through complying with CCP conditions has given his life stability.

Yeah but you're not really getting that respect. I mean they respect me because I'm the only one out of them now with a proper job who has an apartment. We

always had lots of money but none of us could ever ... it was quick money. Quick money comes and goes just as quickly. Spend it like the mob we would but we didn't have the backing at the time. They all bounced from apartment to apartment. Binge to binge. That's their lifestyle and I was going that way, but I don't do that anymore. I've got my apartment, I've got a stable job now. It's time for me to get settled down. ... One of my recommendations was look into Anishnawbe Homes as I said. I'm living there now. I've been there about a year. As soon as I got a stable place to live in, that stable sort of rent structure paying rent again, and getting myself back into work regularly. I've got a regular life now again. It's not as exciting as it used to be. I mean it's not a fly by the seat of your pants but it's definitely less stressful for me.

I got to feel a lot better about myself and I did some things that I had to do. Basically I got into one trouble and when I got into trouble was my first time into diversion. I had lost my job and I was out of work. I was doing things to try to make money when I lost my job. I couldn't find a job. Who and what would hire somebody that stole from their employer? And I lost my job some time in February and I guess it was about 6 months or 5 months later I came through the system and went into diversion. One of the things that they sent me to was to seek employment and I had to go to Miziwe Biik, which is a native employment centre. I went there and, lo and behold, I got a job the first day that I went there. And I've been at this job now since it's been a year and a half at this job that I got through all this.

CCP practices also begins the process of creating stability in some client's family lives.

Client (B.R.) a twenty-five year old woman, discusses the stability in her life resulting from the CCP process:

I'm a better mother. Because of not doing drugs and stuff, I'm more there for my daughter. I'm battling custody right now against her father. I think he has more respect for me now than he did then. We can get along better now. Sure we still have our squabbles, we're not together, but we can sit down and talk like civil parents instead of always yelling at each other on the phone. Him not getting in touch with me or him coming to get me off the street corner and dragging me. I'm not into that stuff no more. I don't associate with people that use crack cocaine no more. I still live in the area where I used to smoke it but I haven't got the cravings for it yet. I think my life has really changed. A lot of people notice it. Before I was skinny. Now I got my weight on me. I feel better about myself. I feel clean and everything.

Creating the conditions for client stability also yields a further benefit. It proves that life does not have to be a daily grind of substance abuse, family breakdown, violence, crime, and, in some cases, homelessness. The CCP gives clients a base from which to plan for the future. The future may be unclear but changes made now indicate that the future will not be like the past as client (B.D.) states:

When I was younger my friends used to have this running joke which was Judy will never live to be 30. I'm 28 now. I don't know where I'm going to be in 2 years. I don't know where I'm going to be in 10 years. But I know that where I will be is not where I am today and that was not where I was 2 years ago. So it can only get better from here. There's no way that I'm going to let it get worse.

Campbell (2000: 42-43) summarizes the types of future plans that clients made after CCP involvement:

[Clients would] like to find employment, go to college or university, resolve family problems, travel, remain employed, move out of Toronto, work with youth in the Aboriginal community, be more involved in the Aboriginal community.

The foregoing has indicated the myriad of ways that clients say they have restored or transformed themselves. However, one transformation or restoration common to all of the above and central to many client and community futures has not yet been made explicit. I will now discuss how the CCP process assists in the constitution or reconstitution of individual and community identity.

Identity Restoration or Transformation.

As I have previously argued in chapter two, the ramifying intergenerational effects of assimilationist policies, and laws and practices have made defining Aboriginal identity problematic for Aboriginal peoples.

Additionally, forced adoptions and the residential schools, prison life, economic marginalization and social exclusion have made "the biggest question in life, 'Who am I?'" for many Aboriginal peoples (Sinclair 1997: 3). Sinclair sees "...Our inability to find out who we are [as the] the great dilemma we face" (ibid.:11). Aboriginal peoples continue to face major barriers in resolving this dilemma. Coates (1999: 25) discusses the various ways Aboriginal identity has been defined by colonizers, academics and media in Canada. He also describes the aims of these representations. Coates maintains that, from colonial times to today, "...the "Indian" was defined in ways that both explained the nature of indigenous life in terms that Europeans could comprehend, and rationalized the occupation and confiscation of their traditional lands" (ibid.: 25). This "social construct" of the "Indian" continues to be "sustained by the dominant society" through the system of stereotypes that I discussed in chapter two. These stereotypes continue to define Aboriginal peoples on the basis of non-Aboriginal terms and continue to be a force for Aboriginal social, economic and political exclusion. Moreover, as I have argued, there is a pervasive *blame the victim mentality*⁶⁵ among non-Aboriginal peoples that contributes to this internalization process. Judge Sinclair (1994b 21-22) outlines the basis of this mentality:

⁶⁵ Not all Aboriginal peoples are "victims." Aboriginal peoples rightly dislike being relegated to this generalized category. As I, and consultants in chapter six discuss, many Aboriginal people lead socially and economically successful lives unaffected by the definitions of the dominant society. Some use their success to help less fortunate Aboriginal peoples. However, my field research in the domain of criminal justice in Toronto indicated that clients were oppressed by the definitions of the dominant society. They were victimized and were also blamed for being victims by non-Aboriginal justice professionals. Yet even these "victims" have fought back. I assert that the healing work of individuals as they go through the CCP process and work with Aboriginal social action agencies is a form of agency wherein those most affected by the definitions of the dominant society claim or re-claim the power to define themselves. These clients,

Many times I have heard non-Aboriginal people ask: 'What is it about Aboriginal people that causes them to behave like that?' Such a question clearly suggests that "the problem" lies with the Aboriginal person or community. Almost invariably, that type of question has led to the conclusion that the Aboriginal person or community must change to fit in better with the standards of conduct that are expected in Euro-Canadian society.

Many clients believe that the only successful and useful identities available to them were those based on non-Aboriginal identity and roles. As a result many clients denied their Aboriginal heritage and cultural identities in order to fit into non-Aboriginal society.

One of the central ways "... in which indigenous people assert meaning, dignity and resilience or resistance" is in the constitution and reconstitution of identity (Knauff 1996: 133-134). Coates describes how Aboriginal peoples are "reject[ing] imposed or legal definitions of identity", such as those imposed through civilizing discourse, democratic racism and the Indian Act, through acquiring or re-acquiring identity on several levels (1999: 36). According to Coates, the first level of identity is "...intensely personal and requires the First Nations person to see themselves as an indigenous individual." The second level "...involves the effort to establish a connection between the individual and the cultural or political group." The third level of identity involves "...indigenous peoples readily identify[ing] with other First Nations in Canada, often even if they are facing difficulties at the local level." Coates maintains that "The multiple levels of identification provide First Nations people with a broad sense of belonging and common cause, albeit with the potential for conflict over identification within specific groups" (ibid.). Coates' three level model outlining the development of identity starting at

with the help of the CCP, teach themselves how not to be victimized and how not to define themselves as

the local individual level and culminating at the First Nations level, has much in common with my ideas on *self*-government. Aboriginal individuals must first learn about themselves, and learn to govern themselves, before they can become involved in wider social and community relationships.

The CCP process helps clients learn to deal with the identities that they have grown up with, offers assistance in healing or changing those identities and helps clients learn about their cultural identities if they so wish. The CCP is particularly effective in helping to create or re-create identity in accordance with Coates' first "intensely personal" level of identity. I will now present a summary of the above clients' transformative process in order to present an ideal type. This characterization simplifies a complex therapeutic process and makes a difficult, confusing and agonizing process seem very easy. It is not simple or easy. However, I want to encapsulate central points in the transformations of various clients to illustrate how the first level of identity creation or *self*-government proceeds.

By "looking into themselves" to see how they must and can change, clients begin to see alternative versions *of* and *for* themselves that they could not, or would not, see in their previous incarnations. Recognizing that they do not want to be "the same old unchanged person" is the beginning of the restorative or transformative process. Through "taking responsibility" for themselves and their actions after years of avoiding responsibility, they begin to build a healthy basis for a new identity. "Learning how to relate and understand what I'm really doing" is the personal confrontation all clients must

victims.

undertake. Clients learn that they are “not always fucking right” and are “humbled” by this process. While they may “feel shorter for a little while” they gradually begin to make changes that help with their personal growth. Additionally, realizing that “this is your last fucking chance” provides extra impetus and urgency to the quest to be successful. However, it is not only a case of recognizing the negative in oneself that is crucial in this journey; it is also clients realizing that they really do have “good traits”. Moreover, seeing healthy role models, emulating them and internalizing their ways of thinking and acting helps clients throw off negative personal images. Clients no longer cultivate that “criminal image” and get away from being “key players in the scene.” All of the above gives clients “some kind of foundation” upon which to build or re-build new identities. Clients are then able to find or create “their own voice” and learn to respect other voices. They also begin to feel a sense of personal agency and look forward to a better future. All of these discoveries and transformations create a sense of “stability” where before there was only instability in client thought processes and daily lives.

Breaking down and healing the negative images of Aboriginal peoples that have been internalized as elements of individual identity is also central to the restoration or transformation of identity. Council member (A.F.) discusses how individual, community and cultural identities are split and how the CCP seeks to heal that split:

To me the source of distress is always the split between what we think we should be and what we actually are, or what society thinks we should be and who we actually are. I think we all, regardless of our race, feel that kind of distress. *Native people feel it probably more generally speaking than most people because the stereotypes, both the romantic stereotype and the negative stereotype is so extreme for our people and it's really, really different than who we are.* Truth is we're not a very romantic people. Truth is we're not all drunks and alcoholics and sexual abusers and petty criminals. *But this is who we're*

taught to be. And so we end up with this horrible split culturally speaking between the drunk on the street corner and Dances with Wolves. Where do we fall between that really? Let's try and find a little bit of reality. So I think there's a terrible split culturally speaking. And many individuals that come to us are terribly split just from their own lifestyle. People have been abused, almost invariably they've been abused. The vast majority are drinkers and addicts and alcoholics. They have those inner psychic splits as well that they have to deal with, as well as the external cultural pressures. (my italics)

Client (B.R) discusses how she came to internalize negative traits and how she came to understand that this is not what Aboriginal identity really is:

Who I used to think it was is not who I think it is today. I used to think a lot like a white person that Indians were drunks. And yet you know what, there are a few of them but that's nothing. That's not who the natives are. It's taken me a long time to realize that. When I was in grade 3, I had this white school teacher talk about Indians and I jumped and I said 'well you know what, I'm an Indian and I don't do this and I don't do that so I don't know why you're saying that sort of thing'. Because I mean I had a lot of balls when I was 8 years old. I got kicked out of class for that. She slapped me across the face. My dad asked me what happened. *And after that I wouldn't tell anybody that I was native because I thought it was this shameful ...* But now, I don't know how I think of them because I've met enough natives to know that they're not all dirty little drunkards sitting on the corner. I know that for a fact. I don't know how I think of them, and I think I probably fit in somewhere but I'm just not sure where. (my italics)

The CCP, in conjunction with other social action agencies, works to break down internalized stereotypes, heal individuals and, in so doing, provide the resources for the restoration or transformation of personal identity. The CCP process helps clients understand and cope with the "processes of subjectification made possible (and plausible) through stereotypical discourse" (Bhabha 1990: 71). The CCP process gives clients the capacity to see through discourses that "function[] to reproduce and circulate colonial ideology, effectively contributing to the notion [that clients are] the controlled and subjected 'other'..." (ibid.). Clients learn to throw off the identities imposed upon them

and connect or re-connect to identity elements of their own choosing. Here is the point where both the first and second levels of Coates (1999:36) identity schema merge. Once individuals are on the healing path and the basis for new personal identities created, clients can then begin to situate themselves in multiplex relationships that, in turn, add further substance and variety to their identities. For example, clients can start to understand and choose to be involved in Aboriginal cultural identities denied to them by external forces, their family or by themselves.

(A.O), a male council member who had a serious substance abuse problem, lost his family because of it, and was ostracized by almost everyone he knew, discusses how the CCP links individual healing and identity to connection to the community:

...Yes, there is something definitely about restoring a person's sense of connection. Normally within themselves I think that's more a healing process. But for me I think it's really more of a getting stronger sense of connection with your community. For me it's always been community. Get this person back involved in the healthier aspects of our community so that can reinforce their sense of being. A true native person, a true native people don't lead lives of assault and robbery and all of that. It's not a part of our tradition.... Yeah I want these people to feel more connected with their cultural identity. I want these people to be more connected with who they are today.

Many clients attested to how the CCP has helped them connect to community and cultural identity. Client (B.R.) discusses how she is becoming aware of her Aboriginal heritage after being adopted-out to non-Aboriginal parents early in her life:

I'm more aware of myself as a native person than I was before because I never really met natives before. ... It's still hard because I really don't consider myself native. I grew up in an Irish household. St. Patrick's Day is New Year's for me. It's a big day. It's like wow. I still feel divided. It's difficult but I'm learning. I'm learning more and more to appreciate my native heritage.

Client (B.T.), who was not raised “traditionally” and who was uncomfortable with her native identity, discusses how compliance with her CCP decision has changed the way she feels about these issues:

Yeah. I wasn't raised traditionally in the native way. I was raised the white way. My father's white. Well, he left. My mother raised us all alone. She was raised on a reserve. She knew how to speak it, understand it, but she never taught any of us kids. So I thought of this as a way for me to get involved in the native community like understand it more. Because I'm proud of my native heritage. Sometimes I guess I get mad at my mom for not raising us traditionally. But I'm glad now like I'm slowly learning the ways. Native organizations I find are like really friendly. They help you. I feel more comfortable in native community. When I did another job placement I did it at Council Fire and I felt like right comfortable other than like if I was at another place. I don't know. I'm not racist. Native people just make me feel more comfortable and friendly.

Client (B.N.) discusses his personal experiences with identity loss and how the CCP program helps clients back to their Aboriginal cultural identity and a new appreciation of community.

Basically I just want to speak on behalf of especially the younger people coming through, like young teenagers who might be coming through diversion. *I think it's very important they have a program like this because they're learning the culture. They're learning to work with the community to know that if they get remorse for committing the crime or getting into trouble that they can make amends in a positive aspect rather than just going to jail and sitting with a bunch of miserable people in there.* A lot of the people in jail, they're already plotting their next crime before they get out because they don't care if they go to jail for that. See so you don't have the thing where you're learning how to change how not to get into trouble again. And jail, it's more of a negative drawing influence in jail *whereas through the diversion program people can learn to connect with the community. [They can] learn better connectedness and sanctity of life, and try to integrate into the community where they're not getting into trouble and stuff or they're not all depressed where they're going to go out and think about suicide.* Because look at all these, where is that Labrador over there? All the little kids are all committing suicide. So apparently the people over there that are living there, now this is just my personal opinion, they might have been mentally abused themselves. Like the older people there. And so they're so cold and disconnected they don't know how to reach out to the younger generation to make them feel that they're a

community where they have something to live for and then they just say well what's the point, I just might as well end it. It's like a chain reaction. *Just like the native schools where the people were hurt. They might have hurting in them and then it might go down in their children.* Like my mother, she didn't go right through a residential school, but she was in the tail end of it too. When she was on a reserve she was forbidden to speak Ojibwe. That's almost as bad as a residential school, same difference. And if they tried to speak native, she was hit with a stick on the tips of her hands. She was really treated bad so she ran away from school and then she just used to stay home and not go to school. Then she finally left the reserve because of ... I guess that's why there was a lot of alcoholism as far as them ... Like she was left for days at a time in the house. I think that's because of the thing *where they were trying to take the culture away.* Then the people were lost because they said well if we're not supposed to have our culture, then we're totally confused. *It's like they lost their identity and they didn't know how to act after that. So to me the diversion thing is a way to get the people back into finding their cultural identity. That kind of makes them more of a whole person.* (my italics).

This client points to how the CCP program assists clients in learning their culture, connecting them to the Aboriginal community of Toronto and internalizing positive ways of thinking about themselves and their relationships with others. The CCP helps clients become whole persons as they go through the CCP process.

Client (B.F.), who had already worked hard to find his cultural identity, agreed that the CCP is a central site in Toronto for helping people find and understand their cultural identities. He said:

I wasn't raised in the culture at all. I was born and raised in Toronto and I've spoken English my whole life. *Everything that I found out about my culture I found out on my own – well not on my own, but by myself. I learned it from other people but it's me that has had to do the investigating and finding out the learning. Going to places where the teachings are taught. And this is one of the places.* I don't know, it's ... When I was 18, 19, was when I started checking things out about myself because these things they were already inside of me, it's just a matter of finding other people that already knew these things and just bring them out in myself. *And this is definitely one of the places, definitely. And it's a needed thing.* (my italics)

“Finding other people who already know these things” to help clarify and solidify “these things that were already inside of me” generally means “going to the places where the teachings are taught” and this requires connecting with the Aboriginal community of Toronto. As I discuss in the following chapter, this means going to the social action agencies that currently constitute the basis of community in Toronto. Council member (A.L.) discusses the link between self-identity and community that can result from the CCP process:

...let's just take an example, you can have someone that was born and raised in Toronto, didn't have a lot of self-identity, self-awareness, or a connection with the native community within this area. And I'm not going to deny that it may happen, but all of a sudden they may find themselves before the Community Council for whatever reason, and that's all fine and great. That may be no fault of their own and nobody really takes that tack and you know you should have done this, you should have done this. *But I really do think that if that was the case then it's important again for the Community Council to say look we care about you, we care about what happens to you, and there's a different way out there, and if you have the need to talk to somebody we can help you do that, we can help you connect somehow.* And I guess before I think a lot of, even taking my own family as an example, but a lot of where you get lost is because you don't feel a part of something. Take the gang issue or whatever, and other people, whether it be Asian gangs or Hispanic gangs, become a part of something and then they feel like this is something I'm going to devote my life to no matter how dangerous it is now. *I think to a lesser degree if you can get people to pull into a community and say this necessarily is not your Band, this is not your nation, but if you take what you can out of it and maybe hopefully you'll learn more about yourself and be able to deal better with yourself. I think that's the importance of it.* (my italics)

This council member alludes to how the CCP does create a sense of belonging to a community for the first time. He gives part of the underlying CCP philosophy that shows clients the different ways to connect to relationships in a socially responsible manner. This quote also indicates how urban Aboriginal peoples can begin to think of themselves as members of a community beyond, or without, Band or Nation affiliation. As I discuss

in the following chapter, this is one of the ways in which the CCP assists in “making” community in Toronto. The CCP also restores a healed individual to a community. Client (B.R.) supports this contention:

I think it's healing the community by working with them. See before when I first took the diversion, I took it like a joke. You know, yeah it's going to get me out of jail, this and that. Now it's like completely straight, turned around my whole life. I want to work. I have a daughter that is turning seven and I was addicted to drugs. I was addicted to crack cocaine for 11 years. I went to a native treatment centre because that was one of my conditions and I've been clean for about 8 months now. And I feel great because I'm doing different courses, working now. It's just great. I feel better about myself. I think it works.

Client (B.N.) discusses his life on the street and how he was never part of any community because of his unhealthy identity and socially unacceptable actions deriving from his unhealthy identity. He then discusses how that has changed due to the CCP. This response derived from my question⁶⁶ "Tell me about your place in the community." He replied:

Not necessarily Aboriginal very much so because I am an Aboriginal no matter where I go. The community I'm involved with, I feel I'm a good Canadian citizen. I'm involved with different cultural people, that's fine. And I can feel a part with them and I can feel a good neighbour to them and I can be honest with them and they can enjoy my company. I enjoy their's. They don't look down on me and say 'oh he's a drunk on the street'. They knew I come from there but they see me now. They respect me the way I am now, *a changed person*. The joyful man, the peaceful man, the happy man. They don't look at me as an angry, drunk on the street, dirty looking and all he wants is money, and all he wants to do is fight, and all he wants to do is [be] greedy. People don't shy away from me or walk away from me no more. That hurts when you're on the street and you're trying to be a friend to somebody and you get him to walk away. Well what's the matter with me? But you understand now what they see. It's not the person that you truly are. It's all the garbage that you're carrying around with you that they don't want a part of. So I recognize that now. ... So

⁶⁶ Please see Appendix E for a sample of client and council member interview questions.

after you get rid a lot of this garbage you begin to be the true you, that you that you truly are and you begin to respect people and respect yourself.

Client (B.U.), a male in his mid-twenties, discusses the wider connections he has made with the Aboriginal community of Toronto as a result of his CCP experience. He also discusses what he learned about being Aboriginal:

I've made contacts with people, Two Spirited People of the First Nations. I'm a member there. And I'm a fundraiser there and I'm a fundraiser for the Centre for Indigenous Theatre. I just connected with a lot of different groups in the Toronto area [that] I didn't know there was before. So only good things have happened since I've been here. [CCP gave me] an eye opener towards the native community. I learned more about my native culture than what I grew up in and what I thought of back when about being native.

Some clients learn to give back to their community through their CCP experience. They act as role models for others who find themselves in trouble. As they do so their personal and community identities become more solidified. Client (B.F.) attests to this:

I think the biggest thing for me through the whole experience is trying to help people. Trying to help my friends, people that I work with that are native, and trying to be more of a role model to them and trying to help them. My experience, it was like I went to hell and came back, so therefore I have a story I can say 'I've been there I went through hell, I've been dragged through the coals, I've been there, I understand sort of thing'. So it made me open up as far as what I could do for people because I understand. I'm just really lucky I got a second chance because I'm willing to ... and it's not that I feel sorry for myself, it's just that I'm lucky. I'm lucky and I want to help other people trying to direct them on the right path and trying to help them instead of letting people take advantage. My girlfriend, for example, she's going through the same thing but not exactly, probably in a similar way. I always tell her 'I've been there, I've done that. I've been there, you don't need that. Nobody deserves to go through that'. So that's the way it helped me.

These last quotes illustrate how the CCP process informally ramifies into the community. Clients come to realize that there is a community that has helped them and that they can join and contribute to it. These contributions may be as simple as living

companionably with others in routine daily activities without violence or joining personal interest or advocacy groups. Or these contributions can go further as clients who have turned their lives around through the CCP process become conscious of others in need and help these others onto "the right path". However, the superficiality or in-depth nature of community involvement is less important than the new found ability to feel a part of something larger than oneself. The above outlines how the CCP helps create or re-create identity at Coates' second level. The CCP informally involves itself in "the effort to establish a connection between the individual and the cultural or political group" (1999: 36).

There is, then, a palpable sense of responsibility among council members to help clients connect to community and cultural identity as Council member Ivy Chaske points out:

So I have an obligation to the community as well. I have an obligation to act in the interest of the community. I think that that's one of the things that we have lost in our community is that we do have a responsibility to our community and we've lost it through our disconnectedness from our community in each other. But on a more intuitive subconscious level I believe that it still exists. I really believe that. *And that it's really important for us to reclaim that from within ourselves and reclaim it from those things that have happened to us where we've lost it. And so the reclamation of those things that helped keep our community stable will allow us to build a stronger community because the reclamation, not just of that, but many of the ways in which we work through things will allow an opportunity for a healthy community to emerge.* I really believe it. So that means that we'll have things like Community Council where we're dealing with issues that were never a part of who we are in the same way, but to be able to understand that underlying all of the things that we do are some very fundamental teachings about who we are as a people. (my italics)

This quote illustrates the base from which client responsibility, reclamation and connectedness arises. It also points to a set of "fundamental teachings about who we are

as a people” that are used in the creation or re-creation of client and community identity.

How these fundamental teachings are used in identity creation, however, can create controversy as I discuss below.

Pan-Aboriginal Identity and Healing

Identity creation is rarely a simple process. Coates maintains that “the multiple levels of identification provide First Nations people with a broad sense of belonging and common cause, albeit with the potential for conflict over identification within specific groups” (ibid.). As I will show below there is controversy about the types of tools the CCP uses to deal with cultural identity. However, from the very beginning the CCP attempted to forestall this controversy as Rudin states:

There is a concern I think or a desire at the Council to see people take responsibility for what they do and to start the healing issues, but beyond that *there is no one way to do any of those things*. For example, someone comes to the Council and is a born again Christian. If they’re a born again Christian and that’s working for them, then it doesn’t matter what the Council members might think ... *What matters is that it’s working for that person, and it’s not for anyone in the Council to say you can’t do this. Now that’s the perspective that the Council takes, and it’s partly because it’s an incredibly diverse group*. People come from all over. People come from all traditions. People come from everywhere. I know other programs in other places have much more overt, and this is not a problem, they have much more overt [aims]... what the purpose of this is to go back to our traditions and to come into the program you have to accept our traditions or be willing to. And that’s fine for those communities, but it was never thought that this would be done here. (my italics)

On the whole, client evidence supported the above official policy. The CCP does not require that clients change their spiritual identity to heal and build Aboriginal identity.

However, the CCP may not be able to dictate this policy to the counselors that clients are referred to as part of their decisions. I found, on one hand, that certain council and agency members subtly and situationally promoted the healing and identity tools of their

own cultures. Lakota stories and interactional ethics were used in some instances while Anishnawbe or Mohawk philosophy and stories were used in other instances. This is not surprising, as council members will use what they know has worked for them to help clients heal. On the other hand, often clients were informally presented with a menu of Aboriginal cultural identity choices from which to choose during the course of a single hearing. It was made easier to choose cultural tools relevant to healing at the intensely personal level and to choose particular cultural approaches within which to discover and connect to community. Frequently this means that pan-Aboriginal resources are used. Hence, pan-Aboriginality is *one* way of countering cultural identity loss. Pan-Aboriginality is a means of creating Aboriginal identity through pragmatically “appropriating” useful cultural resources from a range of Aboriginal cultures (Johnson 1986/87: 55; Engle-Merry 2000: 30). These cultural resources are then “re-played in another key” that are useful for creating identity, in this case, in an urban context, (ibid.).

Using pan-Aboriginal cultural resources as opposed to culturally specific resources, as I discuss in greater detail in the following chapter, can create controversy among council members in healing and identity work. What is most relevant for outsiders to understand is that the use of pan-Aboriginal resources in the CCP context should not be seen as “...demonstrat[ing] the failure of indigenous cultures to survive in the contemporary world (Coates 1999: 35). As (Clifford 1988: 15) says, “It is easier to register the loss of traditional orders [as the West has and continues to do] than to perceive the emergence of new ones”. To avoid the continuing problem of registering loss and to be able to understand and accept emergence, it is necessary to understand that

culture and identity are inventive and mobile. They need not take root in ancestral plots; they live by pollination and by historical transplanting" (Clifford 1988: 15).

Therefore, I think it is crucial to understand that, the CCP's informal use of pan-Aboriginal experience "...more properly demonstrates the flexibility and persistence of indigenous cultural determination" than cultural dilution or loss (Coates 1999: 35). Rudin encapsulates this logic:

What the Council is about is the Aboriginal community taking control but not imposing or suggesting that there is a way of doing things... There is no one tradition. Many of the people who are traditional were born in different traditions and follow others. So there is no specific push for a specific way of doing things. It's about healing, it's about letting people take responsibility for that and where that path takes them will be where that path takes them. And as long as they're on that path, that's all that matters.

Hence, the CCP pragmatically uses whatever tools are at its disposal, whether culture specific or pan-Aboriginal to help clients find and assert meaning in their lives and shape identity. Client (B.N.) discusses the identity transformation that occurred within him.

Yeah, yeah that was very important because that's why I learned really about the smudging and all that too. Because when I worked for Spirit of the People that's what we did almost every day, smudge. So I got used to that because I was raised in the city. My father was from the States. Part of the time I lived in the States. I didn't have too much cultural there. Because in the city they don't ... they had a cultural centre but it wasn't really as strong as far as every day cultural programs. They must have maybe a dance once a month or something there. So it wasn't like a daily kind of way. They didn't have a Canadian Native Centre there either where I could go there and sit around and drink coffee and meet people and talk to them about culture. *So I was void of culture. I didn't know what native culture was. All I know was basically hearsay so I didn't know nothing about hunting or none of that stuff. Now I know. I meet people that are hunters. They bring back moose and stuff. I didn't know anything. I knew zilch about native culture. So I've learned quite a bit.* I don't think I would have done it at such an intense level because when I was there it's like I was told to be there and then it's like I was looking for a positive direction *and*

when I came here [CCP] they helped me find that positive direction. Because when a person is in a state of confusion they don't know which way they're going to turn. They might decide to go and try seek help. They just might get into worse problems one after the other. (my italics)

This client is representative of many clients who I interviewed and whose hearings I witnessed. Clients made different healing journeys depending upon their background and needs. The CCP helped those, who were unaware of their Aboriginal identity or who had denied their Aboriginal identity, to find the appropriate cultural resources for their situations and, subsequently, to heal and mould their personal identities. Equipped with these nascent new identities, clients were enabled to create or re-create healthy relationships or community connections. This, in turn, led to a clearer understanding and acceptance of, and participation in, community identities. I suggest the forgoing client and council member voices testify to the CCP's success in healing clients and helping to create or re-create identity along multiple axes. Healing emphasizes "moving from within. It starts with the individual and expands into the family and finally to the community; balance and wholeness, mind, body, soul connection, all are equal ..."

(Wastasecott 2000: 133-134). Healing processes stress: "people getting involved with the community; trust, caring and sharing; positive parenting; good teachings; openness, communication; not being ashamed; taking responsibility, and having clear expectations" (ibid.). The CCP healing process is, then, "a vehicle for generating meaning, identity and strength both at the level of the individual and the community" (Gattermann 1999: 1).

Throughout the first part of this chapter I have discussed what the CCP hearings accomplish in terms of healing, identity restructuring, reintegrating clients back into the Aboriginal community and helping to generate meaning in client lives. It should be noted

that hearings begin the client's journey by making the client aware of what work they need to do on themselves. Subsequently, the counseling received at other agencies and from Elders, plus community service experiences, as directed by the CCP dispositions, play a significant role in achieving the above goals. These support, enhance and solidify the CCP hearing objectives over the long term. However, it would be a mistake to say that the role of the CCP ends when the client leaves the hearing with his or her disposition. The CCP is extensively involved in post-disposition supervision through calling clients to find out if they are complying and bringing them back for re-hearings if it is found that they are not complying. Special hearings, discussed below, are another way that the CCP continues to be involved with the above objectives. Finally, clients often come back to the CCP offices to talk about their progress and to get advice on the challenges they face in completing the work on themselves. Hence, even after the hearings and after other agencies or Elders take over the process of helping the client to work on him/herself, the CCP continues to be a major force in the longer-term processes that the client must undertake.

Legislative, Judicial and Anthropological Discourses and Practices: Context, Healing, Meaning, and Identity.

Recently the Federal government has made significant changes in how Aboriginal individuals and communities are to be treated in the justice system in Part XXIII of the Criminal Code. For example, legislative changes to sentencing philosophy and practice in s.718.2(e) of the Criminal Code of Canada:

The Supreme Court of Canada [Present were Lamer C.J. and L'Heureux-Dubé, Gonthier, Cory, Iacobucci, Bastarache and Binnie JJ.] made these decisions in

R. v. Gladue, (1999b paragraph 32-33). Section 718.2 (e) mandatorily requires sentencing judges to consider all available sanctions other than imprisonment and to pay particular attention to the circumstances of Aboriginal offenders. Additionally, section 12 of the Interpretation Act [sees] the purpose of the enactment new Part XXIII of the Criminal Code to be remedial⁶⁷ in nature, and requires that all of the provisions of XIII, including s.718.2(e), be given a fair, large and liberal construction and interpretation in attaining that remedial objective. ... "In our view, s.718.2(e) is more than simply a re-affirmation of existing sentencing principals. The remedial component of the provision consists not only in the fact that it codifies a principal of sentencing, but, far more importantly, in its direction to sentencing judges to undertake the process of sentencing Aboriginal offenders differently, in order to endeavour to achieve a truly fit and proper sentence in the particular case. It should be said that the words of s.718.2(e) do not alter the fundamental duty of the sentencing judge to impose a sentence that is fit for the offence and the offender. For example, as we will discuss below, it will generally be the case as a practical matter that particularly violent and serious offences will result in imprisonment for Aboriginal offenders as often as for non-Aboriginal offenders. What s.718.2(e) does alter is the met analysis which each sentencing judge must use in determining the nature of fit sentence for an Aboriginal offender. In our view, the scheme of Part XXIII of the Criminal Code, the context underlying the enactment of s.718.2(e), and the legislative history of the provision all support an interpretation of s.718.2(e) as having his important remedial purpose" (R. v. Gladue, [1999b] 2 C.N.L.R. 252).

A second example is the Supreme Court instructions to lower court judges to take judicial notice of the unique circumstances of Aboriginal offenders in R v Gladue (1999b):

In sentencing an aboriginal offender, the judge must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection. In order to undertake these considerations the sentencing judge will require information pertaining to the accused. Judges may take judicial notice of the

⁶⁷ In the case the Court said 718.2 (e) and more broadly all of sentencing reforms in Bill C-41 were remedial. What that means is that they were seen by the court not as a restatement of how sentencing had been done, but rather ushering in a new direction for sentencing. Remedial legislation is legislation that signifies a new way of approaching an issue that has a particular legal and legislative history. By declaring the law to be remedial the court is saying that Parliament has decided to take a fresh look at the whole area and thus all bets are off in terms of the ways these issues were viewed in the past (Rudin personal communication 2001)

broad systemic and background factors affecting aboriginal people, and of the priority given in aboriginal cultures to a restorative approach to sentencing.

R v Gladue is also central to how legislative sentencing instructions to judges are actually applied. The Supreme Court also created precedents for the use of culturally appropriate alternative justice approaches, whenever possible, to deal with the unique circumstances of Aboriginal offenders. The Supreme Court said,

By means of s. 718.2(e), sentencing judges have been provided with a degree of flexibility and discretion to consider in appropriate circumstances alternative sentences to incarceration which are appropriate for the aboriginal offender and community and yet comply with the mandated principals and purpose of sentencing. In this way, effect may be given to the aboriginal emphasis upon healing and restoration of both the victim and the offender (R. v. Gladue, [1999] 2 C.N.L.R. 252 Paragraph 81).

Mary Ellen Turpel-Lafond (1999), a recently appointed Aboriginal judge, outlines the significance of Gladue:

The Gladue decision is an important watershed in Canadian criminal law. The interpretation of section 718.2(e) of the Criminal Code by the Supreme Court of Canada clarified that this provision is remedial in nature and not merely a codification of existing law and practice. In so construing the provision, the Court clearly endorsed the notion of restorative justice and a sentencing regime *which is to pay fidelity to "healing" as a normative value. Healing is an Aboriginal justice principal which is slowly becoming merged into Canadian criminal law through the practice of circle sentencing and community-based diversion programs. The Gladue decision has brought the notion of healing into mainstream as a principal which a judge must weight in every case of an Aboriginal person, in order to build a bridge between their unique personal and community background experiences and criminal justice*⁶⁸ (my italics).

The above quotes on new sentencing philosophies and practices indicates how the formal system is attempting to respond to Aboriginal and academic discussions of over-

⁶⁸ See Rudin (1999b) and Proulx (2000) for discussions of concerns and criticisms arising out of R v Gladue (1999b).

representation. The formal system has begun the tortuous process of re-evaluating the ways it generates meaning and deals with culturally different contexts. It has begun to appropriate of Aboriginal ideas of healing and ideas and practices of alternative and restorative justice.

Just as the use of some alternative measures in the formal system relies upon the judicial discretion of judges and the discretion of Crowns, the creation and operation of alternative justice initiatives relies on the discretion of governments and their representatives in the judiciary. One major reason is that “there is little explicit constitutional basis for most Aboriginal justice initiatives” (Clairmont And Linden 1997: 57). Ultimately, therefore, alternative programs such as the CCP owe their existence to the discretionary aspect of the Canada's criminal justice system. Rudin (1999a: 213-4) makes this clear:

All diversion and sentencing initiatives are local in nature and all rely on the goodwill of local justice personnel, and usually on funding from federal and/or provincial sources. Because they exist in the spaces and margins within the criminal justice system, they tend to reflect the scope local non-Aboriginal justice personnel are prepared to permit for innovative approaches to justice.

Despite this marginality, and whether initiated by government or communities, the use of various alternative justice mechanisms has increased over the past decade (Proulx 2000). Various academics and justice professionals have discussed how these new justice initiatives are embedded in local social contexts, the role they play in providing justice and healing and their role in individual and community transformation (Proulx 2000; Warry 1998; Green 1998; LaPrairie 1998; Stuart 1997; Sivell-Ferri 1997; Ross 1996; Ryan 1995; Ross 1992). The CCP, despite the restrictions placed upon it by local

non-Aboriginal justice personnel, is firmly embedded in local contexts, and plays a central role in justice as healing, restoration or transformation and individual and community identity formation.

The above legislative changes are examples of lawmakers and justice professionals reacting to the realities of Aboriginal over-representation and to new understandings of unique Aboriginal social contexts leading to justice reform in both formal and informal spheres. Judge Turpel-Lafond (1999), points out:

The decision in Gladue explicitly builds upon over a decade of intense scrutiny of the criminal justice system and its impact on Aboriginal peoples of Canada, including the thorough analyses of situation by the Royal Commission on Aboriginal Peoples, the Law Reform Commission of Canada, and the Manitoba Aboriginal Justice Inquiry.

This movement is part of an on-going process, partly state driven and partly community driven, "to seek new concepts of law and new approaches to law reform" in order to counter injustice and create just communities (Law Commission of Canada 2001).

Legal anthropology has been involved with understanding many of the above issues. A survey by Worby and Rutherford (1997: 65) of recent legal anthropology "...explores how the social identities that law creates, invokes and animates are reinterpreted in the practices of everyday life and in situations of social control." Moreover, Merry (2000: 17-18) shows how

The anthropology of law has increasingly focused on the cultural significance of law on the intimate linkages between legal conceptions and the surrounding cultural fabric. *This cultural approach foregrounds the importance of discourse and meaning-making within the courts and other legal arenas. ...* At the same time, *these local practices* define what the law is and shape local legal consciousness (my italics).

Hence, this strain of legal anthropology concentrates on how law and justice practices affect everyday life and are, in turn, affected by everyday life and local practices. The focus is on law and informal justice practices' productive power rather than on its repressive power. This is a key to understanding cultural transformation (Merry 2000: 206).

Other anthropologists have focused on how meaning is asserted. Watson (1991:76) gives attention to the problems "judges", and "anthropologists" face in trying to arrive at "a definitive account or determinative meaning" when confronted with how "meaning is invariably context-dependent" and, therefore, "contingent". Even when a particular meaning becomes generally accepted it is still open to "contestation" by political groups, through identity politics or the revision of history among others (Barth 1994: 358-359). Meanings can also be contingent and contestable under conditions of oppression and suffering (Scheper-Hughes 1992: 529-530) as well as under conditions of renewal, revival, re-invention, "emergence" (Clifford 1988: 15), change (Barth 1994: 358-359; Knaft 1996: 133-134) and diversity (Barth 1993: 96-97). Knaft (1996: 66) suggests that one of the main issues that anthropologists should be re-engaging themselves with is "How do people assert meaning?" Anthropologists must understand and analyze "...the ways in which indigenous people assert meaning, dignity and resilience or resistance" (Knaft 1996: 133-134) while confronting problems originating externally and internally and resultant changes.

All of these anthropological ideas on the assertion of meaning are relevant to the Toronto context. Clients, council members and agency members are currently trying to

find and assert meaning in the context of justice discourse and practice. They are trying to cope with the oppression and suffering that accrues from a justice system that operates under a retributive philosophy. They are coping with practitioners who understand justice, daily practices and interactional ethics differently than do many Aboriginal peoples. Council members and clients are trying to create their sense of meaning and their sense of self as they live through this context of domination, injustice, affliction, contingency and change. There is not, however, only one path to cope with these concerns. Rather, there is contestation within Aboriginal communities, across Aboriginal cultures and across genders as to which sets of Aboriginal philosophies and practices should empower new justice for Aboriginal peoples (LaRocque 1997; Monture-Angus 1994; Nahanee 1993). There is diversity in approaches as to which Aboriginal knowledges will be used to address the above issues and who will legitimately represent the interests of Aboriginal individuals and communities. All of these issues and controversies are relevant in the pursuit of meaning that helps to shape identities at individual and community levels.

Throughout this dissertation, CCP staff, council member and client voices have illustrated how meanings are emerging and being asserted through the CCP process and how these meanings are transforming some of Toronto's Aboriginal peoples. In this chapter I examined how CCP practice offers anthropologists a lens through which to see and understand how some Aboriginal peoples in Toronto assert meaning under the above conditions. I continue to illustrate this by examining how CCP justice practices heal and

create meaning for Aboriginal individuals and community and, in so doing transforms them.

Transformation: Connecting *Self*-government, Healing and Identity.

In chapter two I discussed how many Aboriginal peoples were forced, although some willingly chose, to embrace the ways of knowing and living imposed by various colonizers and their colonizing projects. This continues today through neo-colonialism, capitalist relations of production and economic policies that create dependency and make it extremely difficult for Aboriginal peoples to control their own lives (Frideres 2000: 215-219). As a result many Aboriginal peoples have lost, and continue to lose, the power to define who and what they were and are as individuals, as communities, as cultures and as nations. Chapter two outlined how the understandings and practices that gave their lives *meaning* were stripped away, in some instances made illegal, driven underground and marginalized as assimilationist non-Aboriginal understandings and practices became predominant (ibid.: 208). Additionally, as Monture-Angus (1999: 42-43) makes clear, Aboriginal peoples have been “exclud[ed] from systems which have determined the meaning of concepts such as justice, sovereignty and rights”.

Therefore, some Aboriginal commentators (Alfred 1999; Battiste 2000), as a precondition to a reconciliation or a new relationship with non-Aboriginal peoples, are demanding “to share the definitional power that creates legitimacy whereby words and phrases gain their accepted legitimacy” (Monture-Angus 1999: 42-43). Aboriginal peoples want the Canadian State and publics to understand that there are different ways of knowing, traditions and practices other than taken-for-granted Western philosophies

and practices (Alfred 1999: 62; Little Bear 2000: 77-85). Aboriginal peoples want non-Aboriginal “epistemic violence” to end (Spivak 1988: 126). Aboriginal epistemologies and practices should no longer be discredited while those of non-Aboriginal peoples are valorized as the only “civilized” or “progressive” means of living and producing meaning (Duran and Duran 2000: 96). Hence, Aboriginal peoples want pluralistic approaches to meaning and practice within any new relationship through non-Aboriginal recognition of both. That is, non-Aboriginal acceptance, valorization and willingness to participate with Aboriginal peoples in the implementation of indigenous knowledge, science, education and justice to name but a few. These are critical components in Aboriginal sovereignty and self-government discourses. They link to control over information and the definition of knowledge as a prerequisite to self-government.

I think that *self*-government is a central requirement that must be satisfied before the larger social, political and legal goals of *self-government* can be realized. Individuals have to be able to govern themselves before they can participate in self-government. There must be a personalized understanding by an individual of themselves, their Aboriginal identity and place in Aboriginal communities that then empowers the understanding of larger processes. That is, the power to define must be reclaimed at the individual level in order to build capacity for larger social, political and legal struggles. The constitution and reconstitution of healthy individuals who are able to define or re-define themselves and function within multiplex relationships is a crucial pre-condition to the larger goals of *self-government*. Actors such as these will be able to effectively participate, if they so choose, in the revitalization and operation of larger self-governing

structures and practices. Research in rural Aboriginal communities shows the “natural link between individual growth and the slow transformation of their communities.”

Individual transformation almost always precedes community transformation (Warry 1998: 207). Warry shows how individual healing occurs naturally or through the proactive work of band council staff (ibid.). I think that many urban Aboriginal individuals follow this same path with the help of the CCP and the social action agencies of Toronto. I maintain that the CCP process enables the local constitution and re-constitution of meaning and self-definition at the individual level and, concurrently or subsequently, gives meaning and shape to wider relationships for these individuals. In turn these individuals can become aware of, and participate in, Aboriginal community within Toronto. Therefore, the CCP process helps individuals find meaning in their lives, and through healthy relationships with others, creates capacity for future agency in the struggle for self-government.

The Intersection of Justice Practices, Identity and Healing and Its Relevance to Government, The Formal Justice System and Anthropology.

Bill’s case study in the previous chapter indicates how the justice practices of the CCP opens up clients, gives new meaning to client lives and enables clients to see themselves in a healthier more socially connected light. Throughout this chapter, I have focused on how meaning was asserted and identity shaped as clients moved from crisis and conflict with the law through CCP intervention to personal recovery. I have used client and council member voices to discuss how all of these concerns are addressed within the CCP process. I profiled how clients themselves believed that they were restored or transformed along multiple axes leading to new individual and community

identities. Throughout I have focused on the myriad of ways through which the CCP helps clients to assert meaning, dignity and resilience while confronting problems originating externally and internally. Finally, I have foreshadowed how the CCP creates or re-creates connections to healthier relationships and community within Toronto. In the next chapter I expand upon these ideas within the context of the delineating how community is being grown, constituted, and maintained in Toronto through CCP justice practices and inter-agency connections.

In this chapter I also focused on some of the theoretical and practical concerns within government legislation, judicial practices and in anthropological research. The focus in all of these domains was on the social context in which law and justice arises and how it changes due to the actions of local actors as they address these issues in their everyday lives. There was a concentration on creating or healing communities through the use of law and justice practices. The CCP justice process arose in, and is firmly situated in, the social context of the Aboriginal community of Toronto. It is also linked, through protocol agreements and funding arrangements, to the local, regional and national formal justice system. However, the CCP should be viewed as a local effort to redress injustice and to create justice practices suited to the needs of local Aboriginal peoples and the social problems and contingencies they face in their everyday lives. Whether addressing the larger issues facing Aboriginal peoples in Toronto such as over-representation, colonialism and structural and cultural discrimination or simply helping one-time offenders deal with their minor slips off the proper path, the CCP helps give meaning to clients' lives while healing, restoring or transforming and shaping identities.

All of these CCP aims and achievements demonstrate why the CCP is an important site for legislative, judicial and anthropological concern and research. Most importantly, however, CCP is central to Aboriginal individuals and the Aboriginal community of Toronto.

I have presented evidence throughout this chapter of how CCP administrators and council members want to achieve justice and help their people to help themselves by “doing it our way.” Client and council member experiences were presented to illustrate how the CCP process helped clients avoid prison, heal themselves of pressing personal and social problems, create stability in their lives and create or re-create individual and community identities. The restorative or transformative CCP process helps clients find meaning in their lives and helps clients define themselves in healthier ways. This, then, is the CCP’s role in the connection between justice practices, healing and identity.

Chapter 6

Community “in-the-making”

The term "community" has been used throughout this dissertation. I have alluded to community healing, creation and capacity building. However, I have yet to discuss how "community" is being defined and practiced by the Aboriginal peoples of Toronto. Here I discuss the problems and potentials with these definitions and practices. I aim to help outsiders realize that there is an Aboriginal "community" of Toronto and not just a number of fragmented social atoms¹ individually confronting the exigencies of urban existence. I situate the CCP in its larger urban Aboriginal community context. More importantly, I show how Aboriginal peoples are defining and practicing community for themselves despite the continued colonial power to define community held by outsiders. The following also indicates how this research contributes to urban anthropology.

Re-Thinking Community

In the past, anthropologists recognizing the fragmented, amorphous and heterogeneous populations of large cities, used a community studies approach in cities. Restricting the venue of research to slums, gangs or ethnic minorities allowed

¹ Emile Durkheim, Ferdinand Tönnies, Louis Wirth and the Chicago school of sociology provided urban research with its earliest conceptual tools and debates. Tönnies (1963) and Durkheim (1951) fathered the pathological view of the city by valorizing intimate rural social relations over anomic impersonal urban relations. Wirth, using relationships between numbers of populations, density of settlement and heterogeneity of urban groups, saw urban interaction as face to face. However, unlike the collective security and control of rural primary relations, urban life was characterized by “impersonal, superficial, transitory, segmental” and secondary relations (1938: 12-13 in Basham 1978: 10-11). The Chicago school

anthropologists to continue research under the assumption that these sites were “analogous to the small rural villages” that they knew and to investigate them in a similar fashion (Foster and Kemper 1974: 8). Territorially bounded distinctive urban villages with local institutions such as taverns, pool halls, schools and laundromats were investigated using the concept of community as bounded, spatially located, and homogenous (Knox 1987: 70). Studying a bounded community within a city allowed an anthropologist to “generalize more readily about the community than [s]he could in a participant-observation study of the entire city” (Basham 1978: 314). Hence, the community studies approach “permitted the anthropologist to adapt his/[her] techniques to an urban area with a minimum of alteration” (ibid.).

Recently the community concept has been problematized. Researchers have shown that the classic concept of community ---“shared sense of values, shared identity and thus shared culture... [with] connotations of solidity and homogeneity” ... “mapped literally onto the concept of locality” no longer served to analyze community in urban contexts (Marcus 1994: 46; see also Appadurai 1991:191; Wellman 1979: 1202). Clifford (1988: 13) maintained that “spatial identity is increasingly problematic” when confronting “new forms of dwelling and circulating.” This is especially so in cities and across borders. Marcus (1994: 46) thinks that older conceptions of community mapped on to concepts of locality need to be replaced

by the idea that the situated production of identity --- of a person, or a group, or even a whole society --- does not depend alone, or even always primarily, on

also saw the city as a pathological place of social disorganization and social problems in comparison with “Rousseauian romantic rural society” (Uzzell and Provencher 1976: 29, 32, 34).

the observable, concentrated activities within a particular locale. The identity of anyone or any group is produced simultaneously in many different locales of activity, by many different agents, for many different purposes. One's identity in terms of where one lives --- among one's neighbours, friends, relatives or strangers --- is only one social context, and perhaps not the most important one, in which identity is shaped. It is this dispersed identity construction --- mobile, related representations in many different places of differing character --- that must be grasped as social facts.

Marcus suggests, in this context of "parallel processing ... of identity at many sites," that anthropologists should concern themselves with four questions:

(1) Which identities coalesce and under what circumstances? (2) Which become defining or dominant and for how long? (3) How does the play of unintended consequences affect the outcome in the coalescence of a salient identity in this space of the multiple construction and dispersed control of a person's or group's identities? (4) What is the nature of the politics by which identity at and across any site is controlled? (Marcus 1994: 47)

Anthropology has re-thought many of its notions of space, place and their relation to identity and community. This is due to recent anthropological theorizing about the artificiality and permeability of boundaries and borders (Gupta and Ferguson 1992) plus deterritorialization⁷⁰ in a globally connected world continually in "flux" (Appadurai 1991). Community is no longer seen as a literal entity that is impermeable, territorially and/or ethnically defined. Rather, it is seen as imagined or remembered (Gupta and Ferguson 1992: 10-11), or affected by and connected to, global political and economic forces. Yet these theories have tended to bypass too quickly the question "of what people are actually doing, how they are talking to and reacting with people on their city

⁷⁰ Deterritorialization refers to how production, communities, politics and identities become detached from local places. Deterritorialization is also used to describe the displacement of identities, persons and meanings that is endemic to the postmodern world system. Gilles Deleuze and Felix Guattari (1986) use this term to "locate this moment of alienation and exile in modern language and literature" (Kaplan 1987:188).

block, on the shop floor, next in the bus line” (Amit-Talai and Lustiger-Thaler 1994: 123). I concur with Amit-Talai and Lustiger-Thaler that what must be focused on in this condition of flux and spatial ambiguity is peoples’ organizational responses to this condition more than the condition itself (ibid.: 124). I will now give a sampling of how community has recently been analyzed to capture people’s everyday organizational responses to spatial ambiguity and community identity construction.

Guillemen (1975: 72), working with Boston Micmacs, recognized the need to move away from the identification of community with “geographic stability.” Therefore, she used patterns of social and communicational network analysis⁷¹ to address the issue of community among a dispersed urban Aboriginal population. Wellman (1999: 98), a sociologist using network analysis cites two Toronto community studies asserts that, “People are not wrapped up in traditional densely-knit, tightly-bound communities but are floating in sparsely-knit, loosely-bounded, frequently changing networks”. He found that “variation in the composition and structure of these community networks is more complex than the traditional Tönniesian⁷² dichotomy of communal versus contractual organization” (ibid.).

Weibel-Orlando (1991), an anthropologist working with Indians in Los Angeles,

⁷¹ Mitchell (1987) used network analysis to “abstract those aspects of interpersonal relations which cut across institutions and boundaries of aggregated concepts such as neighborhood, workplace, kinship or class” (Rogers and Vertovec 1995: 15). Therefore, network analysis has been used to challenge the notion of the impermeability of boundaries among subcultures within cities (ibid.: 19). Sally Engle-Merry (1981) also used network analysis in her study of ethnic group responses to danger within their community.

⁷² Models of community, particularly those popularized by (Tönnies in Lipset 1971: 316) (*gemeinschaft to gesellschaft*), and Durkheim (in Lukes 1973) (mechanical to organic solidarity), structured early anthropological thinking on community. Both saw spatially bounded communities with close personal

shows how Indian community is “fluid” and constituted in multiple ways at multiple sites as Indians move across Los Angeles. Community for Weibel-Orlando is understood as

a field, resource and arena for social action defined by individual and collective rights of participation and responsibilities for its continuance (292).
 [Community is located in] “a collection of complementary, indigenous institutions and interactive organizations with specific agenda and personnel, the vitality of which transcends individual institutional involvements...” (293).
 [Community is also constituted in] an annual calendar of social events, rituals and stages on which cultural dramas are played out for their symbolic content and enculturational properties [and] provides other venues for the expression of community... The cultural arenas are the contexts in which community statuses and roles are enacted and empowered (293)

Weibel-Orlando’s theory of community being structured around agencies dealing with Aboriginal social problems is a community concept that I utilize in the Toronto context. Moreover, she also discusses how Los Angeles Indians, who have diverse cultural backgrounds and no spatial community, use pan-Aboriginality as a strategy through which to build community identity (Weibel-Orlando 1991: 60). Event-based ways of constituting community plus pan-Aboriginal community identity strategy will also be discussed in the Toronto context.

Rhoda H. Halperin (1998) analyzed a community’s struggle to keep community and revitalize it in a fight with developers who wanted to gentrify their Cincinnati neighbourhood. Halperin (1998: 2) argues for a re-defining of community

...not as a geographical and bounded place, not even as a network of roads, rivers, dwellings, geographical features, not even as a network of defined and linked relationships. Rather, community is a dynamic, contentious and changing process that plays out as a series of everyday practices by people who have or have had some link to the East End.

and familial social bonds moving toward increasing social division and disintegration due to steady progress toward industrial modernization.

Here community is constituted by everyday practices of East Enders embedded in East End structures such as “the extended family, the church and the neighbourhood as a place that confers working-class identity” (ibid.). The practices of maintaining these institutions define and unite diverse East Enders and this multi-sited project “takes priority over all others.” Halperin discusses how community capacity building in the fight against developers is a force for building community identity and solidarity. Scherzer (1999), a historian reviewing Halperin’s ethnography, situates Halperin’s definition of community:

Other scholars of community will recognize how her work fits squarely into newer scholarship on aspatial community embedded in social networks as well as the “community saved”⁷³ model of sociologists like Barry Wellman with its stress on the continuing vitality of urban community.

This practice-based approach has relevance to how the everyday justice practices of CCP and Aboriginal agencies in Toronto help “make” community *for and with* Aboriginal offenders who go through the CCP process.

These are other ways of thinking about community in a fragmented world in flux. The rejection of bounded community studies can also be seen in the study non-spatially located discursive communities (Rapport 1994: 152) and urban “pathways” (Amit-Talai 1994: 183-184). Rapport (1994) interested in mapping how social relations are

⁷³ Wellman (1979:1204-5) says that “The community lost argument holds many urban phenomena to be concrete and concentrated manifestations of industrial bureaucratic societies. It contends that the division of labor in these societies has attenuated communal solidarity. Primary relationships in the city now are ‘impersonal, transitory and segmental’ (Wirth 1938:2). Instead of being incorporated into a single solidary community, urbanites are seen as limited members of multiple social networks sparsely knit and loosely bounded.” The community saved model, on the other hand, contends “that neighbourhood solidarities have continued to flourish in the industrial bureaucratic system. The Saved argument asserts that such communal solidarities have persisted because of their continued efficacy in providing support and

maintained in fragmented urban contexts. He uses “catchwords... understood as words or phrases taken up and repeated so that in a particular social environment they become not merely commonplace but stereotypical, and not merely popular but emblematic” to trace social relations. Using covert participant observation, he analyzed conversations in detox centers and pubs in St. John’s, Newfoundland. He demonstrated how catchwords demarcated “phraseological communities” that can be seen as distinct from other communities in the city due to their use of particular catchwords over and above the in-common phraseological repertoire of the entirety of St. John’s (ibid.: 152).

Amit-Talai (1995: 184) builds on the practice-based approach of Finnegan (1989) as a “useful alternative to conceptualizing social relations” in the city. Moving away from, but when necessary still accommodating localized communities and social groupings, Amit-Talai combines individual creativity and everyday resistances, the roles different people play in different spheres of life and how these play into collective representations “to yield a rich and complex concept of pathways” (ibid.: 188). In using pathways she is interested in analyzing “people’s tactical use of space, time and social roles to organize their involvement’s and relationships in the city” (ibid.). These pathways link the different domains of city life and allow us to “conceptualize the potential dispersal of an individual’s activities and relationships across urban space and time” (ibid.). Analysts can examine how people can be involved in different kinds of

sociability, communal desires for social control and ecological sorting into homogenous residential and work areas” Wellman (1979:1204-5).

relationships, some formal, anonymous or involving some community, at different stopping-off points on these urban pathways (ibid.).

The foregoing, then, is a sampling of how community theory has recently been re-thought. In what follows I contribute to new ways of thinking about community. During this discussion I use interview material with Aboriginal consultants who defined Aboriginal community in Toronto according to what they see, where they go and what they do in their daily lives. I examine the content of the "symbolic boundaries" through which inclusion and exclusion proceeds and how some Aboriginal peoples contest them as they define community (Cohen 1985). I argue that CCP is a representative nexus and locus wherein identity and practice merge to create and sustain community. Finally, I discuss how I think the Aboriginal community of Toronto can be understood and analyzed by social scientists. In this way I hope to provide a definition of Aboriginal community that is meaningful to Aboriginal peoples in Toronto as well as to non-Aboriginal scholars.

Definitional Quandaries.

Defining "Aboriginal" community is problematic for three reasons. First, Toronto's Aboriginal peoples find it difficult to explicitly define their community. Many Aboriginal clients of the CCP do not know anything about the "community" in Toronto. They are unaware of the inter-linked set of community services, arts organizations and events that comprise the Aboriginal community of Toronto. Even the social service agency members who understand this set of community connections have difficulty in giving an inclusive

definition of community. Nonetheless, attempts are being made to delineate how community exists in Toronto. CCP council member Ivy Chaske says

I mean people say there are thousands of Indian people in Toronto, but we are still a community whether we know each other or not. There is still a connectedness that we have whether we're able to acknowledge or articulate it or not, and so that it exists within this city. We just haven't found a way to articulate it in a way and we may never will. It doesn't mean that we all sit together and we all agree on everything. It means that we are a community, all of the good and the bad, we are a community. And so for me the Community Council a piece of it, ... it's the community piece of it that's important because if one looks at what community means, it means that we are all a part of what this thing is. When we have that understanding then we're able to do the things that we do in the Community Council.

Second, the power to define Aboriginal identity and community has not been in the hands of Aboriginal peoples due to historically and geographically specific colonial discourses and practices. Legislation by various levels of government and permutations of the Indian Act have defined who and what Aboriginal peoples and communities were, and are, today (Alfred 1999; McGillivray and Comaskey 1999: 22-53; Monture-Angus 1999; Sinclair 1997). Outsider power to define the community is repugnant to many Aboriginal peoples in Toronto. Moreover, consultants also decried how some social scientists and non-Aboriginal publics deny that an Aboriginal community exists. For example, some social scientists as will be shown below, do not even think that there is a real functioning Aboriginal community in Toronto. For them there are only dysfunctional or marginalized Aboriginal individuals who, if they are linked at all, are caught up in the same class system that binds non-Aboriginal peoples. Additionally, the media and the general public as has been outlined in a previous chapter, define Aboriginal peoples

through a racist disciplinary discourse of stereotypes that denies the agency of Aboriginal peoples to integrate into a community.

Finally, community is defined by State systems, agencies and funding practices.

Community council member Ivy Chaske says that today,

Community is defined for us by outside society whether it's the justice system, whether it's the Child Welfare agency, whether it's the addictions foundation, whether it's the government --- federal, provincial or municipal ---we are defined by outside forces as to who community is. And a lot of us have bought into that definition of community.

Government funding practices are emblematic of how “outside society” defines

Aboriginal community:

...funding is usually short term, most projects financed on a pilot project basis with little hope of permanent funding. Submissions to funders often must be altered from the original design of the community in order to meet arbitrary government criteria. Government funding policies vary not only from one level of government to another, but from department to department, and division to division. Some federal departments will only consider programs designed and implemented for all Native people, while others will only fund programs specific to status Indians. "Some provinces and territories provide special funding to Native groups to operate in criminal justice matters; other prefer to offer funding through general programs; some provide very limited funding for any community involvement." Report of the Task Force on the Role of the Private Sector in Criminal Justice, Community Involvement in Criminal Justice (Ottawa: Minister of Supply and Services, Canada, 1977), Volume I, p 82. Even those who are persistent enough to wend their way through the funding maze must wait for months, and even years, for a response to their submission (Jefferson 1994).

CCP council members and other agency members repeatedly described the disintegrating nature of the funding process to me. Even though one agency has a mandate to deal with a particular social problem, government will fund another agency to deal with the same problem. This means that funding is split and neither agency can do the job as well as before. Agencies begin to compete for a greater share of these limited funds. Aboriginal

consultants say that government “confetti-based” (Hazlehurst and Hazlehurst. 1995) funding approaches, leading to duplication of services, competition for funds between Aboriginal agencies, political in-fighting over funds and breakdowns in service provision, continues to control how community can be defined by controlling funding. Social service agencies currently are central to the constitution of Aboriginal community in Toronto. By controlling which agencies are funded and for what purposes, governments can control the aims and shape of the community through social service agencies. Other Aboriginal agency members I interviewed were also critical of Aboriginal agencies. They charged that some agency members employed to garner funds from the government are guilty of shortsightedness and self-interest. These Aboriginal critics did not question the “traditionality” of the agency members in charge of funding. Rather, they decried the disintegrating consequences for the community when an agency, intentionally or unintentionally, won funding that should have gone to a pre-existing program at another agency.

While interviewing federal and provincial funders I looked for, but did not find, evidence that government confetti-based funding was a conscious colonial strategy. I was keen to make a case for continued state exploitation of Aboriginal peoples. My idealistic desire to reveal hidden power relations blinded me to a more pragmatic possibility. Warry (2000: personal communication) suggests that these funding practices are the result of government compartmentalization. Here a wide number of government departments fund in response to numerous agency applications. As government funding policy is made in relative departmental isolation there are bound to be mistakes, oversights and duplication.

Moreover, the government continues distributing money so as not to offend various segments of the Aboriginal community while poorly funded agencies leap at the chance for new program dollars. When viewed in terms of Marcus' four questions for community identity constitution listed above, funding mistakes resulting from departmental isolation can be seen as an "unintended consequence" that "affect[s] the outcome in the coalescence of a salient identity..." (1994: 47). Nonetheless, this negative dynamic between government and agencies shapes the aims and contour of the community (ibid.).

Aboriginal people in Toronto daily feel the real consequences of government's continuing power to define what Aboriginal community is and can be through funding practices. Ivy Chaske says "If you look at how many of those places are funded by government dollars then I have to say that our community is defined by government dollars". However, Ivy Chaske, as will be shown below, also believes that Aboriginal people are in the process of re-claiming their own visions of community despite government funding issues. Notwithstanding the role of agencies in this negative funding dynamic, Ivy Chaske believes that the agencies are central to this reclamation project. Agencies, particularly the CCP, are the sites where the community "fire gets lit."

The third problem with defining urban Aboriginal community is that discussions of it take a back seat to those of reserve community⁷⁴. Reserve community is still the model of community most used to discuss what community is and can be. In Aboriginal justice discourse, for example, there is a continued "nostalgia" for reserve communities

that are static and locked into a communal and egalitarian ethos which social, economic and political change has rendered obsolete (Depew 1996: 28; LaPrairie 1995: 524). Rudin states that federal policy on urban Aboriginal community is sorely circumscribed due to its understanding of community situated on reserves. He discusses how this policy is a barrier to urban community development:

From a political view government policy plays a big role here. The federal government really does not recognize urban Aboriginal communities as communities in the same way they recognize the rez. In fact, the government really insists on putting Aboriginal people in First Nation groupings (those that have such affiliations) is based on a notion that communities are not allowed to evolve once a treaty or a rez was established. In many ways the dynamic realities of Aboriginal people are unrecognized by the feds which makes it difficult for newer, urban communities to develop the cohesion and the resources they need. If a status Indian who lives in Toronto [s/he] must always look to the rez as the source of Aboriginal rights. [Hence] the ability of the person's real home, the city, to meet their needs as an Aboriginal person is limited. (ibid.)

The issue of government responsibility to status Aboriginal peoples provides a path to circumvent non-status Aboriginal peoples' concerns. Warry (personal communication 2000) says that "from the federal government's perspective their responsibility for status Indians provides them with the perfect excuse to limit involvement (and financial commitments) to off-reserve peoples."

Additionally, discussions of urban communities in social science and in Aboriginal writing are thin because so little research has been done in the cities. In most treatments of Aboriginal community, there is only a token discussion on how results found in reserve communities could apply to urban Aboriginal communities. Monture-Angus

(1999); Alfred (1999); Warry (1998); Ross (1996, 1992) focus almost exclusively on reserve communities while offering only minimal discussion of the issues and problems facing urban Aboriginal peoples. One exception is Peters (1995:95) who discusses the strengths and weaknesses of models for "community of interest" and "neighbourhood" urban self-government practice. Bobiwash (1997: 84-94) also examines the potentials and problems facing Aboriginal urban self-government and the politics of self-determination in Toronto.

LaPrairie (1994) is a further, but controversial, exception to this work. LaPrairie is concerned with establishing a separation of urban Aboriginal peoples into a three-tiered class based typology or continuum. Aboriginal consultants who had read LaPrairie's Seen But Not Heard, were highly critical of her inability to see an Aboriginal community in Toronto due to her concern with demonstrating social and economic inequality among urban Aboriginal populations. Consultants took exception to her portrayal of Aboriginal peoples as little more than class separated individuals without personal agency or a sense of community. Rudin criticizes LaPrairie (a sociologist) and Julian Roberts, (a law Professor, a sometime collaborator with LaPrairie, and a noted critic of sentencing theory and practice), for their community myopia:

I don't think that they understand Aboriginal people and Aboriginal communities, and I think they fall victim occasionally to the notion that Aboriginal people who are entitled to Aboriginal rights or Aboriginal consideration are those people that are seen to be Aboriginal. ... Most of the people we deal with are Aboriginal but do not identify. If you ask them they don't think they're part of an Aboriginal community, which I think for LaPrairie and Roberts is significant. And they would say well you see they don't even think they're part of an Aboriginal community therefore they don't need these sorts of programs. They sort of assume that Aboriginal justice programs are only applicable to Aboriginal people who already identify

themselves who are part of an Aboriginal community. And when they look at communities that often appear very dysfunctional like the inner city in Toronto, they'll say well this isn't really a community, these are just a bunch of people who have real serious problems but there's no notion of community. ... I think that's often what the image is ... that there is no community here. This isn't a community it's a bunch of individuals who happen to be Aboriginal.

LaPrairie's (1994) aim was to show that Aboriginal peoples cannot be analyzed as a group undifferentiated by class and social stratification. Her aim was not to find links for community but to show how differences in economic status and levels of victimization differentially affect urban Aboriginal peoples. Nonetheless, the above consultant took issue with LaPrairie's and Roberts' requirement that Aboriginal individuals be fully aware of their personal Aboriginal identities before they can be aware of, and participate in, an Aboriginal community. There must be a fully-fledged and conscious Aboriginal community identity before "community" can even be said to exist. These requirements seem to place the community cart before the horse. They miss the agency of Toronto's Aboriginal peoples reacting to the contingencies of urban life as they continually create and re-create community responses to those contingencies. This chapter corrects these deficiencies as I demonstrate how community is always "in the making" by Aboriginal social service agencies (Lustiger-Thaler 1994).

Problems with Spatial Community Definitions

Diverse Aboriginal cultures and traditions exist within the confines of the greater metropolitan area of Toronto. Unlike certain ethnic groups in Toronto, Aboriginal peoples do not have a specific neighbourhood identified as their own. Consultants repeatedly said there is no geographic or symbolic space such as Chinatown or Little Italy for Aboriginal peoples in Toronto.

There are a number of possible reasons for this lack of spatial identity. Spatial community may not have developed because the geographical locale may have existed elsewhere. The reserve may still have served as community for many Aboriginal peoples. Alternatively, Aboriginal peoples have only recently moved in considerable numbers to the city. As I discussed in an earlier chapter, Aboriginal peoples were pulled to the city in search of jobs or pushed from the reserve due to economic and political factionalism (LaPrairie 1994) or patterns of intimate violence (McGillivray and Comaskey 1999). Aboriginal peoples went where the jobs were or avoided contact with the urban representatives of reserve families who oppressed them and/or violated them.

Once in the city, Aboriginal peoples continued to confront colonialist discourse and practice that promoted the idea that "Aboriginal peoples were inherently inferior and needed to be brought up to a state of civilization [that was] more advanced" (Sinclair 1997: 6). Laws stating that Aboriginal peoples "were incapable of entering into contracts" and laws forbidding Aboriginal peoples from "selling or leasing" resources were part of "a deliberate policy" designed by government to stop Aboriginal communities from flourishing (ibid.). Systemic discrimination in the labor market continues to affect the ability of urban Aboriginal peoples to build spatially based community:

Crucial to an understanding of systemic racism is the notion of the *web of institutional interdependencies*. ... The web of institutional interdependencies involves racial controls and differentiation in one institutional sector, such as the real estate market, fitting together to feed or reinforce distinctions in other institutional sectors, such as schools and the labor market (Baron 1969). Thus it is highly significant that, in a survey done by their own trade association, 92% of all personal officers surveyed admitted to racial discrimination in hiring and promotion. Significantly, a 1992 survey of persons who graduated from universities and community colleges in 1990 found that Aboriginal graduates from community colleges had a significantly higher unemployment rate than the

total community college graduating class (22% vs., 13%) When racism is so pronounced in such a pivotal institution as the labor market, its effects will be felt across a broad range of other spheres of daily life. For instance, a First Nation individual refused a job that is appropriate to his/her level of training and education, *will be excluded thereby from certain urban real estate markets*. That, in turn, will probably determine the school which his/her children attend and the probability that they will graduate from university, which, of course affects their job prospects. Thus, Canadians will often be relieved of having to make an explicitly racist choice (e.g., against those children) because it is made for them earlier in a chain of institutional linkages (Ponting and Kiely 1997:167). (my italics)

The above laws coupled with systemic discrimination in the labor market have, over time, made it nearly impossible for Aboriginal peoples in Toronto to acquire geographic community by accretion. Additionally, there is no "First Peoples Town" because of the lack of Aboriginal businesses wherein Aboriginal peoples could spend and keep their money within a community. Community Council member Martin John says

We make a dollar and it goes to Loblaws and it leaves our economy. If we had our own stores and businesses we could make that dollar work for us. But it leaves our community and it's gone.

Another possible reason for the lack of spatial identity is the absence of spatially located religious institutions. First Peoples' spiritual beliefs and practices are, by and large, not institutionally organized and geographically localized into churches in the way religions of some ethnic groups are. Moreover, Aboriginal spirituality was until recently actively suppressed by the Western religious and governmental policies of assimilation. The suppression of potlatch ceremonies and hamatsa dancing on the West coast (Macnair 1995: 598-9), the Sun Dance on the prairies (Dickason 1992: 286-7), sweat lodges and the Midewiwin (Warry 1998: 114-115) and the continued harassment of incarcerated Aboriginal peoples seeking to practice their own religions within Canadian prisons

(Waldram 1997) are examples of policies and actions that have exerted assimilationist pressure over the years. Due to this assimilationist thrust many urban Aboriginal peoples had difficulty finding spiritual practitioners or locations where spiritual practices were conducted within Toronto or outside of its limits. Hence, there was little possibility of developing an institutional religious base around which to coalesce within a particular geographic space. It is unclear whether Aboriginal peoples would have developed such an institutional base even if they had the opportunity to do so.

Despite the lack of spatially locatable community in Toronto, Aboriginal consultants say that community does indeed exist. Community council member Barbara Gajic says, "We are slowly learning to be a community again despite being scattered all over Toronto." She added, "Native people don't have to have to stick together. We always seem to come together. I mean something happens. It's just like we're all together for something." I will now discuss the various ways in which Aboriginal peoples "come together" for various reasons and at different times to conceive of and practice community.

Conceiving and Practicing Community.

The imposition of labels and definitions of identity on indigenous people has been a *central feature of the colonization process from the start*. Thus another fundamental task facing Native communities is to overcome the racial, territorial and 'status' divisions that have become features of the political landscape. ...The practice of dividing Native people according to their status in the colonial law opposes the basic tenets of all indigenous philosophies. The extent to which these divisions continue to characterize Native communities indicates how deeply people have internalized this colonial mindset (Alfred 1999:84).

In an earlier chapter I discussed the specific colonial processes that have destroyed Aboriginal personal and community identities in Canada (Alfred 1999; Monture-Angus 1999; McGillivray and Comaskey 1999; Sinclair 1997). I also examined how stereotypes arising out of the various colonial projects that comprised the Canadian colonial experience were internalized and continue to psychologically damage, marginalize and oppress the Aboriginal peoples of Toronto. I outlined how the resultant dysfunctional cycle leads to criminal behaviour and how discriminatory actions by the formal justice system exacerbates these problems. Many of the clients I interviewed cited this process as a prime mover in their social dysfunction and disconnection from the Aboriginal community. Without healthy personal identities and role models it was difficult to see themselves as a community. Personal survival became more important than community identity. Aboriginal peoples had to fight to merely maintain who they were in the face of enormous odds, council member (A.F.) relates:

And growing up when I'd look at Elders and when I look at other Aboriginal people, what I often see is the struggles that happened and that are still happening for different reasons. But the struggles that happened say a 100 years ago, 50 years ago, 200 hundred years ago, we're all here because we had somebody who was strong enough to either challenge or to persevere or to just flat out hide and be able to live and exist and continue. *And so when I see the community that's what I see.* I see we're all people that aren't supposed to be here and we're here. And that's a strength for me because no matter what problems a community has, no matter what problems individuals have, *we're all here because we were able to hold on to something.* Had things been different or had things been, in some cases according to plan, we wouldn't be here. (my italics)

Survival and resistance, then, are lived reality and potent symbols for (A.F.). Survival and resistance are central symbols in personal identity. But, more importantly, this "in-common" (Lustiger-Thaler 1994:23) experience links individuals into a community of

survivors. By virtue of surviving the above colonial processes and resisting current neo-colonial social and economic exclusions, an Aboriginal person can claim to be a member of the Aboriginal community of Toronto. Social service agencies as will be shown below, are central to survival of, and in, community in Toronto.

Self-identification is also one of the principal ways that Aboriginal peoples in Toronto define community. For some, the disintegrating effects of external definitions based on the status/non-status divide are less salient in the city. Community council member Barbara Gajic says that [on the reserve] "If you have a card you are loved; if you don't have a card you're nobody. In the city you don't need a card to prove you are Native. You just are if you identify as Native." Many CCP members and clients expressed the same sentiments on community membership criteria. Council member (A.D.) encapsulated this logic saying they include: "...anybody who self-identifies whether it be Métis, Inuit, status or non-status, it doesn't matter. People who self-identify as being Native, to me, in my mind, belong to the Aboriginal community." Council member Bernard Robinson qualified this sentiment saying "everybody who identifies as native, that "is" native, is part of the community". This is one of the problems with self-identification as a marker Aboriginal identity and community membership. Many Toronto Aboriginal community members are uncomfortable with the number of "wannabes" and "Grey Owls" that have "infiltrated" or been accepted into the community. They are torn between following the Creator's *original instructions* which allow all peoples to be included no matter what their race and the need to exclude those wannabes who pay lip service to community ideals of sharing and caring while "playing"

some New Age traditional role. Some community members have problems with "pure self-identification and acting the part, however diligent the research or skillful the act" (Alfred 1999: 85) as a sufficient condition for community membership. Despite these concerns, self-identification is one of the principal, although contested, modes of community creation.

These statements have significant implications for emergent understandings of community particularly with regard to Marcus' (1994:47) fourth question about identity constitution. Marcus asks, "What is the nature of the politics by which identity at and across any site is controlled?" Self-identification as criteria for membership of the Aboriginal community of Toronto is first and foremost an assertion of individual agency. An individual cites his or her difference from the encapsulating urban populations and asserts his or her relationship with other Aboriginal individuals as part of a community. S/he may do this through accepting his/her Aboriginality on his/her terms after years of denial based upon negative internalized colonial images of what an Aboriginal person is or should be. S/he may also do this on the basis of blood quantum. S/he may also claim affiliation through membership in a particular cultural tradition or through understanding of, and relation to, pan-Aboriginal discourse and practice.

Yet to be *accepted* as a member of a community, a self-identifying individual must establish his or her credibility in the eyes of established community members. This is where politics of control of identity becomes problematic as Bernard Robinson indicates above. Identity politics will also become apparent below in a description of a CCP Advisory Board meeting. Who among Aboriginal individuals, in a culturally diverse

and geographically separated urban domain, can legitimately set the criteria for community membership? What sets of beliefs, practices and institutions will become acceptable sites of cohesion? What symbols can be agreed upon to rally solidarity around? Which of these general criteria for community identity will be most salient in defining identity and for how long (Marcus 1994:47)? These are questions that must be resolved by Aboriginal peoples as they continually make and re-make their community. In what follows, I outline how some of these questions are being thought through and addressed by Aboriginal agency members and clients.

To understand self-identity, then, it is important to understand the spiritual, symbolic and discursive properties that some use to construct both personal and community identity. Many consultants said that leading a "traditional" life and following the "spiritual teachings" of Creation solidified their personal identities within the disintegrating environs of Toronto. The discourse and practice of revival, renewal, reinvention and re-inculcation of traditional spiritual culture is what links many individuals into the Aboriginal community. CCP member Todd Solomon put it succinctly:

When I think of native community...I think in terms of spirituality. Somebody had told me once and I believe that this is true that our culture and our spirituality are interchangeable. They're the same thing. So I would tend to think of the native community as those people who are following our cultural ways to some extent in their lives. If you embrace those principals even if they're not actually dancing the dances and singing the songs, they just have that in their heart and they're doing their best to pay attention to the values of our spiritual ways. To me that is the key. And that's true even when I'm not in the city.

Over time it became clear to me that the model of Aboriginal culture as described by Todd Solomon above was based on revitalized Ojibwe traditions and spirituality updated to deal with the new contingencies of urban life⁷⁵. Cyndy Baskin, a self-described cultural therapist to whom the CCP refers clients, profiles her understanding of the predominance of Anishnawbe culture in Toronto:

When I came here and I was just beginning to get involved with people here --- teachers, Elders, that kind of thing, the community --- *basically I was told this is an Ojibwe territory and if you want to be involved in the community then you kind of do it our way*. And quite frankly that was very acceptable to me. I was welcomed with open arms as far as I'm concerned in terms of my own learning and so I follow that quite strictly. Now I understand of course in Toronto we've got all the nations possible living here. But when I meet with people that's what I tell them. I tell them this is my understanding of how I'm supposed to do my work, and this is pretty much how I do it. We can go with that or you can choose not to be very involved in it or I'll take your lead – it's kind of like that. But I find most people that I see are ok with that. (my italics)

Apart from this explicit statement of the predominance of Anishnawbe discourse and practice, the recognition of the diversity of Aboriginal nations and tolerance for difference is important. There are significant differences in systems of knowledge and understanding, law and government between the urban representatives of various First Nations. Despite the Anishnawbe predominance, the discourse and practice of other First Peoples is an accepted and valued resource. Pan-Aboriginal discourse and practice, then, is central to Aboriginal community in Toronto. My research has shown that, by and large, cultural differences are put aside because the Aboriginal people of Toronto recognize that "these distinct systems of knowledge do form into a common pattern with shared

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For *one* interpretation of Ojibwe traditions and spirituality see Johnston 1976.

concepts and beliefs" (Monture-Angus 1999: 22). Cyndy Baskin's view is representative of many Aboriginal community members in Toronto:

The other part of it is personally I find both here and in everywhere that I've traveled in North America that we all have the same foundation. And as long as we stick with the foundation, we're going to be ok. It's the details of the specifics that we differ in terms of rituals and ceremonies and things like that. And that isn't really where I go to. I just want to look at the base and let's work from there. And I find when I do that, that it just works really well. It works really well. And I don't get into we have to walk left, not right, in the circle. You know what I mean, it doesn't matter.

However, there is internal community contestation over which culture-specific or pan-Aboriginal approaches should be utilized in certain situations. I will briefly discuss one instance of this contestation. It directed me to issues of legitimacy, community membership criteria and the role of pan-Aboriginality in community constitution. It also illustrates how the above questions on spirituality and traditions play out within the community.

I attended a CCP Advisory Council meeting where yearly progress was updated and new programs outlined. One of the new programs discussed was Dodem Kanobsa; a lodge built within the local Department of Indian Affairs and Northern Development (DIAND) offices. Aboriginal Elders are available there to consult with DIAND office staff and with the community-at-large in Toronto. The representative of Dodem Kanobsa offered to help coordinate these Elders for participation in CCP hearings. This met with general approbation. However, council member Bernard Robinson found fault with this proposal. He asked if there would be Anishnawbe Elders provided for Anishnawbe clients and if Mohawk Elders would be provided for Mohawk clients. He was told that when possible that would happen but overall there could be no guarantees. Bernard

specific problems saying, "We have to treat people differently depending on where they come from and not be like the white man."

I discussed this meeting because I think it illustrates the philosophical resources as well as the pragmatic concerns that currently structure community. This meeting shows the debates about how the Aboriginal community defines itself in the face of the disconnection that exists in some quarters of Aboriginal Toronto. The debate within this meeting clearly demonstrates community recognition of the need to nurture an inclusive approach to Aboriginal culture and community rather than destabilizing it with constant ideological or cultural bickering. But it also speaks to fears of the erosion of particular Aboriginal identities and practices, as pragmatic pan-Aboriginal approaches appear poised to homogenize distinctiveness.

The above debates also make it clear that the CCP reflects, respects and encourages differences. Jonathan Rudin, explicitly states that

The CCP does not deal in any specific ideology or tradition nor does it force a particular ideology on anyone. We do not talk about the CCP as traditional because we recognize that culture changes and evolves. With all the changes that have happened to Aboriginal peoples the CCP has developed processes that are going to work for marginalized, displaced and incredibly damaged individuals.

As I have discussed in previous chapters, these processes utilize whatever tools are necessary to achieve these ends. In so doing, different identities are valorized, created or healed, and community built. Self-identification and pan-Aboriginality are two tools used in these processes but they do not define the CCP process.

The controversy over self-identification and pan-Aboriginality is unlikely to be resolved soon. This should not trouble anyone because it reveals a robust contestation

within the internal power to define. This controversy also points to how "group identity varies over time and place" and how it is contingent on where participants are situated and who is asking the questions (Alfred 1999: 85). The controversy also speaks to which identity criteria are being defined as acceptable under what political circumstances (Marcus 1994: 47). But, most importantly, the above controversy demonstrates how self-identification and pan-Aboriginality are *currently* central to the emergence of Aboriginal community in Toronto. This current construction of community points to the contingency in how community defines itself and how community is practiced. These issues will be examined below in a discussion of community as process, as always "in the making" (Lustiger-Thaler 1994: 21).

Discursive Community.

Community council member Barb Harris says that the Toronto Aboriginal community is a "small community, a native network" while CCP member Frances Sanderson calls it "a small town" within a huge city. But, interestingly, the size of Toronto is not a barrier to community integration nor is the fact that community members are diverse and scattered over Toronto. Council member Michele Murphy says,

It's surprising because they say that there are about 60-80,000 people in Toronto. I don't know whether there is or not. But I know that in certain situations, because I stand in the area of leadership, *we know everything pretty much there is to know about each other, and if we're so scattered how come we know so much?* We know things before the police do. We know about things. *I would define the community*; it's hard to explain because we don't live together. We don't live in a little pocket. *It's not a geographical community*. It's more of a ... it's so hard to explain. *It's on another level. It's the communication on the verbal. It's the communication between beliefs*. There are a couple hundred people that I would know really well and usually bump into them two or three times because you all end up gravitating to some event or some function. And I guess it's the organizations, the events, and the functions that bring us together

and that's what our community is. And it's very large. *Like the geographical area is very large, but the actual community can be contacted within hours.* It's amazing. [my italics]

Despite social service agencies being central to community, as will be shown below, the above voices indicate that communication over the length and breadth of Toronto links community. Murphy's comments point to how community identity can be discursively "...produced simultaneously in many different locales of activity, by many different agents, for many different purposes" (Marcus 1994: 46). Community news and gossip flows freely across the "moccasin telegraph" linking networks of friends, business and agency associates. Moreover, through this "communication between beliefs" diverse underpinning philosophies of community are continually exchanged, discussed and contested. It also enables community members to define and gossip about themselves without external controls. As Michele Murphy's comment "We know things before the police do," indicates these communicative practices illustrate that there is a discursive community that operates concurrently with, and about, other constitutive community elements.

It would be interesting to know whether this form of communication functions as an informal social control mechanism in the way gossip on reserves exerts normative conforming pressures (Ross 1992: 10). I will give one example of this in the city. I have witnessed how council members in re-hearings have used community information about backsliding clients to confront them on why they have not complied with council decisions. In a sense the council members are demonstrating to the clients that it is difficult to escape notice even in a large geographic space. Eventually someone in the

community will see what the client is doing and that person will tell someone else who may casually inform a council member. Therefore, in a narrow sense, communication about clients and how that information is used in re-hearings, points to how normative control can be exerted through discursive community networks in the city.

Hence, communication contributes to community identity production, maintenance and normative control. The “situated production of identity,” in this context “does not depend alone, or even always, primarily, on the observable, concentrated activities within a particular locale” (Marcus 1994:46). Not only does communication link far-flung members, but it may also exert pressures for social conformity to community norms, ideals and practices. It is also a pathway through which non-Aboriginal community and institutional pressures are discussed in advance of non-Aboriginal knowledge. This communicative intelligence about external pressures may protect the Aboriginal community from external interference and disintegration. “Making” (Lustiger-Thaler 1994:21) and maintaining community through communication between agency members over the breadth of Toronto is, therefore, a salient feature of the process of community constitution in Toronto.

Organizations and Events Constitute Community.

Michelle Murphy also points to other domains of community constitution: “And I guess it’s the organizations, the events, and the functions that bring us together and that’s what our community is.” Council member Sandra Laronde, the director of Native Women in the Arts and a performer within the native community, criticizes the idea that it is only the attention to social problems that structures community. She recognizes that social

service agencies are central to community but is saddened that dysfunction defines community. She says the arts community, though "elitist", helps to constitute Aboriginal community through theatre, music, art and dancing. It counters dysfunction with healthier images of Aboriginal peoples. It tells Aboriginal stories that emphasize the creativity of, and the potential in, the community. Actor Gary Farmer and playwright Thomson Highway were repeatedly mentioned by numerous consultants as examples of this creativity and potential. They are role models for the community. Hence, the Toronto arts community through its practices and role models helps to create and nurture community. It is also a prime force for communication about community as it was in the past, is now and how it could be in the future.

Events and functions also constitute and integrate community. Sunrise Ceremonies, Pow Wows, Elders gatherings, conferences with representatives of indigenous peoples from other parts of the world and feasts bring Aboriginal peoples from all over Toronto together. The arts and events bring out not only those who are part of the social service capacity building and role model nexus but also those who do not utilize those resources. I will discuss this further below. What is most important, however, is that the arts, events and functions all promote Aboriginal identity, distinctiveness and potential. They are structures that alert both internal participants and outsiders that community is tangible and real. They are evidence of agency beyond the social service capacity building and role model nexus and evidence of connections and relationships, constituting, creating and maintaining Aboriginal community. The important role of the arts, events and

functions in the constitution of community has been discussed in other Aboriginal communities such as Los Angeles

...an annual calendar of social events, rituals and stages on which cultural dramas are played out for their symbolic content and enculturational properties [and] provides other venues for the expression of community... (Weibel-Orlando 1991:293).

Arts, events and functions, then, become potent symbols showing Aboriginal peoples how Aboriginal peoples are constantly making and re-making themselves and community within Toronto.

Responding to Social Problems Defines Community.

However, many of these consultants still point to the social service agencies as the nexus and locus of community in Toronto. Jonathan Rudin gives a comprehensive and comparative explanation of why and how this is so:

I think the community exists in a number of different ways. In some ways the Aboriginal community in Toronto is defined, and this isn't the greatest aspect of it, but in some ways it's defined by its problems in a way that other communities are not as defined. ... *The Aboriginal community to some extent in Toronto has evolved partly in response to specific problems* (my italics).

Rudin does not discount or devalue the role of Aboriginal theatre, arts and events in community constitution. However, he indicates that this "constellation" is not yet large enough to completely define community or delineate its practices. Whereas the social service agency constellation is large enough to define community as each agency attends to some community function or problem. Central agencies in this constellation include Native Child and Family Services which has services for youth issues, child welfare and programs for mothers and families, for victims of violence, for victims of sexual assault and incest. They have also started a program for men dealing with residential school

issues. Aboriginal Legal Services/CCP handles justice and legal representation.

Anishnawbe Health deals with physical and mental health in both Western and traditional ways, offers traditional counseling and operates Street Patrol. Nishnawbe Homes has housing and co-ordinates housing and placement. Other Aboriginal housing providers in Toronto are Gabriel Dumont Non-Profit Homes and Wigwamen. Council Fire handles street drop-in, food services, and the Out Of The Cold program in the winter and Birds of a Feather alcohol counseling. Spirit of the People is designed to work with offenders who have been released from jail. Anduhyaun is a women's shelter that offers second stage housing at Neekanan, but Anduhyaun also offers crisis counseling to men and women. Two Spirited People of the First Nations works for gay people through AIDS awareness programs and other related activity. The Native Canadian Centre of Toronto (NCCT) operates as a clearing-house, conference center and meeting place for any Aboriginal person who wishes to go there. NCCT also has an extensive seniors program (in association with Wigwamen who are next door) and a youth program. NCCT is the west-end drop-in. Council Fire is the east-end drop-in. There is also the Native Women's Resource Centre. Looking at the range of services offered provides a comprehensive view of the Toronto community being organized around solving social problems. Council member Frances Sanderson encapsulates this understanding of community:

So we have an agency for everything. And by having that in place gives native people in Toronto a really good social network of support to help them through. So we're still nurturing or still close together and we still provide whether they're Dene, from the West Coast, Bellacoola, Salish, or whether they're from northern Ontario the Cree, whether they're Inuit from Baffin Island. I mean they could be from anywhere from the States. We have some Cherokee and Apache that come up as well. So we are here to deal with all of that and all of those issues.

Rudin also discusses how Toronto social service agencies and community have developed differently than those in Vancouver, Regina and Winnipeg. These urban Aboriginal communities have nearby First Nations and Métis organizations "exerting a strong presence" on the urban communities. These First Nations and organizations "have a large say in the development of the other services of the community." Toronto, on the other hand, has no strong representative "political presence" exerting its influence on social services. Rudin describes how Toronto has evolved on a completely different model:

The model in Toronto is that it's for Aboriginal people who respond to particular issues by creating agencies that address those issues. And that's a different form of community. It's a different way in which community has evolved. As I said it doesn't conform to the way Aboriginal communities have evolved in other urban centres which makes it different. It doesn't make it wrong, but it makes it very different.

This also indicates, as will be discussed below, how community is contingent and varies over time and place. CCP member Pat Turner believes this social services based model began its development with the Indian Club in the 1950's. Sanderson and Howard-Bobiwash (1997) also provide historical evidence of the role of the Indian Club as the progenitor of the various social services in Toronto. Consultant Frances Sanderson, a CCP member and Executive Director of Nishnawbe Homes, says that the agencies are "the heart of the Native community ... keeping the blood pumping, keeping the interest alive and the people afloat." Ivy Chaske decries how government controls community definition through agency funding, nonetheless says "agencies provide structure where there is no structure." She also points to the agency's role in the revitalization of

Aboriginal identity and culture saying they are "the place where the fire begins to burn, where the fire gets lit."

Many CCP clients agree that the social service agencies are where the fire gets lit. One client said that agencies are "like a foundation. It's a good place to begin and it's a good place the people know they can rely on and base their strength upon. It's the people being the people and sharing themselves. To me that's the thing that make us the people." Other clients describe the agencies as the "glue" that hold the community together. They provide the place to strengthen individuals and to create relationships as Jimi Legarde says

I think it's just, like Anishnawbe Health just went through a lot of changes. I guess people like me and other people that go there help too like say on Monday night circle tonight a lot of people go there. I think that's where the glue comes from the community, not just these people like taking a stand for us kind of stuff. But I think it's the people themselves that come in that make it stronger, not just one person. Like, there's a team over there. You have to get through responsibilities and stuff like that for when native people come to you in pieces and stuff like that. That makes it stronger I think.

Client Patricia Stevens says that the agencies are "great for people that don't live on reserves" because "we have some place to turn to."

Some community members are also critical of this social service agency vision and practice of community. Bobiwash (1997: 85) is critical of social service agencies saying, "They are all a part of a strategy of crisis intervention which, while necessary, works to marginalize and further disenfranchise the majority of Native people in the city from involvement in civic life and political processes." Ivy Chaske recognizes the current importance of agencies to the community and its sense of itself. She also fears that community members have become too reliant on agencies and will become more so in

the future. Dysfunction and dependency are not a solid long-term foundation upon which to base community. She has a vision of community that is not "just about provision of service" to dysfunctional individuals. Rather it is about developing economic self-sufficiency through Aboriginal businesses servicing Aboriginals, where Aboriginal money stays in the Aboriginal community. CCP member Todd Solomon also sees the definition of community based on social service agencies as the spiritual center of our community as "wrong, wrong, wrong" and a "sad view." He thinks that other communities such as the Jewish community are not solely based on dysfunction so "why should ours be that way?" On the other hand he recognizes "that maybe it needs to be that way for our communities right now⁷⁶."

More fundamental, though, is the issue of how non-dysfunctional Aboriginal peoples can be part of a community based on social service agencies. Bobiwash (1997:85) says that "Aboriginal people in crisis in Toronto represent only about 18%⁷⁷ of the total Aboriginal population" while "the other 82% of Aboriginal people in the city are primarily working poor who constitute a silent majority within the urban polity." LaPrairie (1994) found evidence of social stratification within Toronto's Aboriginal

⁷⁶ I am uncomfortable with this representation of Aboriginal agencies. The assumption that social service agencies can only be described through a medicalized model dealing only with dysfunction and dependency is erroneous. Social service agencies, as I show below, have a more constructive role in capacity building and in the creation of personal and community agency.

⁷⁷ When I asked other consultants about this figure I was, once again, faced with the controversy over the numbers of Aboriginal peoples in Toronto. However, Jonathan Rudin gave the best answer to this 18% figure. There are all sorts of different estimates of Aboriginal people in Toronto and also of Aboriginal people in crisis. If the 18% figure is correct and Toronto has 60,000 Aboriginal people then that would mean that there were 10,800 Aboriginal people in crisis. This may not be far off because estimates of the Aboriginal homeless population in Toronto are quite high ...

community. LaPrairie's "Outer"⁷⁸ Aboriginal group comprised a significant number of Aboriginal people who did not use the social service agencies because they are economically and socially adept. Council member (A.P.) gives his perspective of this class system:

There's almost a class system now in the Aboriginal community. We have the people, I guess if I can say (not politically correct but), people who are living on the street. Then we have people doing the 9:00-5:00, people who are successful – lawyers and bankers – and they've adapted and done well for themselves.

(A.P.) says that this successful group has little reason to use the social service agencies. One may, therefore, legitimately ask how this 82% of working poor and this upper class are part of the social agency "community". France Sanderson gives the clearest answers to this question:

By nature of their heritage they're included. They're included in our numbers. They're included in our stats. They're included as Aboriginal people in Toronto. *They may not need us. It's not important that only the people that need us are part of the community because there is such a large part of the community that needs help. That's why we are here. That's why it's important.* But there are just as many I'm sure of people who don't need the help and they are just as important too. You can't have everybody being ill or needing healing or else you've got a pretty sick community. So I mean there are good blood cells and the bad blood cells. *We help the bad ones become good ones. And so use those ones that are out in the community that you know – the bankers, the corporate people – they're role models.* They are people you can hold up and say here's somebody whose made something of themselves. Here is somebody who has stayed on the path. Here is somebody who has learned how to work the system, who knows how to do these things. And you use them as role models. So they are important. *Every organization in this city has in their pocket a group of people that are not in the community, who are not on a healing path,*

⁷⁸ LaPrairie (1994: 39) discusses her three levels of stratification in Toronto: "...people were designated according to certain criteria. Those who were selected at the street level (in soup kitchens, shelters, drop-ins and on the street) and had addresses in the inner city, were designated Inner 1; those selected through social and justice agencies were designated Inner 2; and those with an address outside the inner city were designated Outer." LaPrairie found that the Inner 1 group was the most disadvantaged and had the most criminal charges followed by the Inner 2 and Outer groups (1994: 55).

who don't take part in agencies' functions and programs, but who are Aboriginal. There are many lawyers and insurance people. There are teachers. There are all these people that are out there that I know about. They don't show up at the Canadian Native Centre for one of their feasts or at ALST at their healing circles or at their feasts or Aboriginal health, Anishnawbe Health place. But they're still there. And I use them as role models. When I'm talking to people I introduce them, I network. Some of our people that are on healing paths if they need a job or something, I push them that way. Maybe they can get into a professional career, maybe they can get some type of mentorship, some training, some help, a voice, someone to talk to. I hold them up as examples, as role models, and so they are important. They may not be part of our social service system, but they are important because that side of being Aboriginal is important too. The person who is holding down a job, who has a \$350,000 house, who is not living on welfare in a shelter, there are both sides and so they are as important and so I use them too. They are out there and they are part of the community but in a different way. (my italics)

Sanderson, then, offers a useful thumbnail sketch of how the non-dysfunctional are part of the social agency-based community that has been outlined above. Sanderson's organic model of community points to how the "good blood cells", though less visible than the "bad blood cells", play a subtle role within the community. They supply leadership, finances and are role models for less fortunate community members. These role models, then, can be seen as one of "various elements of this process of dispersed identity construction" through which Aboriginal individual and community identity is shaped in Toronto (Marcus 1994: 46).

However, before too readily accepting this social service agency model of community some precautions should be taken. It is important to note that above CCP members are firmly situated within the social service agencies. They are frontline workers who, whether they claim it or not, are leaders within an elite group within the Aboriginal community of Toronto. CCP member Bernard Robinson says that of Toronto's estimated 60,000 Aboriginal peoples there are only about "500 to a couple of

1000 at most" that are active in the social service community. I do not find this small number problematic. It is not the numbers of Aboriginal agency members that are salient but the disproportionate effect they exert on the definition of community. A relatively small number of Toronto's Aboriginal people *may* see themselves as *the* community by virtue of their interlocking work as frontline agency members. One CCP member recognizes this saying "I think the staff and management of native social service agencies self proclaim themselves as the leaders of the community."

Clearly, the power to define community controlled by this agency elite needs to be interrogated. Is there a sense of community beyond this elite group and the Aboriginal peoples who are serviced by the agencies? Who shapes community if anyone consciously shapes it? One of the problems with my small agency-based sample is that I did not have access to Aboriginal "outsiders" who could offer alternative views of community.

LaPrairie (1994: 33, 38), on the other hand, interviewed a larger sample of Toronto's Aboriginal peoples and talked to outsiders. She found an undercurrent of dissatisfaction with the social service agencies. LaPrairie showed that some Aboriginal peoples find "nothing for them there" at agencies or that the agencies were "too far away" to impact on their lives (ibid.: 33). One Métis person stated "If you are not in the 'in' native group, no point in going to the friendship centre" while another stated "People who don't drink think they're better than those who drink" (ibid.: 33). Hence, some people felt "...alienated from urban Aboriginal services such as friendship centres and see themselves as marginalized in those places as well" (ibid.: 38). These voices indicate that there are other subordinated or marginalized views of community that need to be

represented beyond agency elite views. I am not suggesting that the definition of community offered by social service agents is merely the image that a powerful elite wishes to force into public consciousness. I am suggesting that more and wider research must be conducted to determine how much the social agency elite's power to define actually constitutes and structures community in Toronto.

Conversely, there is another way to interpret the issue of the power to define held by agency members. They could be framed as "organic intellectuals" (Gramsci 1971:10; see also Simon 1982: 99-101; Knauf 1996: 202). In Gramsci's view of the unequal and unstable nature of hegemony there is a time for the direct confrontation in the "war of maneuver" (Gramsci 1971: 238). Despite a few violent confrontations Aboriginal peoples have not yet chosen to pursue this form of emancipatory conflict. By and large they have engaged in indirect agitation and consciousness raising through what Gramsci calls "the war of position" (ibid.: 238; see also Knauf 1996 269-270; Simon 1982: 27-28).

Throughout the war of position there are individuals who must attempt to raise the consciousness of the dominated masses despite their unwillingness due to co-optation and internalized colonial consciousness. In a very real sense Aboriginal peoples are fighting a war of position to gain self-determination from the non-Aboriginal state. One area where this is most visible is in the attempt to re-constitute community after years of state led destruction and disintegration of Aboriginal community. Agency-based Aboriginal peoples may be seen as the organic intellectuals who lead the struggle to determine the philosophy and shape of their communities. They are raising consciousness and creating capacity for the time when the general urban population will be ready to freely and

consciously participate in community. By helping individuals to heal themselves, to govern themselves and then participate in community they help build capacity for self-*government*. While they may be criticized for elitism as they are above, they are nonetheless the main force for community within Toronto.

The issue of role models, controversy over the role of agencies by marginalized Aboriginal peoples and issues of organic leadership of agency members in the struggle to shape community are central to re-thinking community. Community can no longer be seen as being comprised of a localized set of values that are homogenously adhered to by all members of the community. Often community is represented differently and contested depending upon economic, social and cultural variables. Nor is community identity production, in every instance, limited to explicitly defined community actors, roles and political leadership. Community identity emerges from agency use of the practices of seemingly invisible role models operating in different professions and at different locales. Community identity also emerges from “the active participation in practical life” of agency members as “constructor[s], organizer[s], ‘permanent persuader[s]’” (Gramsci 1971:10) in a war of position whose objectives evolve to meet changing circumstances and whose battlefield constantly shifts locations as new contingencies arise.

The CCP Builds Community.

Throughout this dissertation I profiled how the council members work to help clients understand, take responsibility for, and start to heal their social dysfunction and to recognize and act upon their potential. Now, using client statements, I show how these council members acquaint clients with the possibility of community and then start them

down the path to community integration.

During hearings it became clear to me that many Aboriginal clients are not “plugged-in” to the moccasin telegraph as are agency members. This may be the result of recent arrival in the city, of a denial of Aboriginality leading to a refusal to acknowledge or utilize Aboriginal resources in the city, or simply a lack of interest or need. Many clients stated that they were unaware of Toronto's existing Aboriginal community resources or did not know how to access them if they did. One traditionally inclined client thought that he had to return to reserve Elders in order to get traditional counseling. But CCP member Jackie Jocko-Alton said,

You don't have to go to your community or to a reserve to get this kind of help. You know that there are people who can help you in Toronto. You can see Elders here. You can go to Anishnawbe Health to see Elders. You can see Elders at the Native Center.

In the same hearing CCP member Derrick Bressette said, "it's interesting that people who live in the city don't have any idea about how it is possible to see Elders and do traditional things in town." Both of these council members then spent a long time giving this client information on where he could go for traditional counseling within Toronto's Aboriginal community. I witnessed another hearing where the client was truly amazed at how large the community is and how much the council members know about it. She asked, "How do you know all this?" CCP member Barbara Gajic replied, "It's because I work in the community and have been doing so for a long time. You could find out about this as well. You just have to go out into the community and do some volunteer work." Gajic then outlined many of the places the client could go to in order to learn about and participate in the community. The above demonstrates that there are people who don't

know about the nature of their own community in Toronto and how the CCP helps them understand and locate community. Council member Barbara Harris explicitly stated this to me when I was confused one day:

You're missing connectivity to a community and what may be important to people's lives. *They may not see how they fit into things until they come to the Community Council and then someone says "look we care about you, I think you should go talk to this person."* This person says look I think we're having the ceremony on this day and you might want to come. That person goes to the ceremony and then they learn that their lives should be lived differently. I think that's important. (my italics)

The manner through which clients "who don't have any idea" about Aboriginal community or do "not see how they fit into things" come to understand and join this community is important. In a very real sense some of these clients discover community through "the play of unintended consequences" (Marcus 1994: 47). They may not have intended to commit an offense and, subsequently, find themselves at the CCP. They may not even have been looking for community in any conscious manner. However, the consequence, for some of these clients, is that they discover community and join it through the CCP and the other Aboriginal agencies that they are referred to as part of their decision conditions. Throughout this process council members raise community awareness and consciousness. They offer resources and processes for discovering and re-discovering community. Hence, the CCP is a site where clients can get connected and re-connected into their community. This process is also central to the "making" of Aboriginal community in Toronto.

Even when clients are given knowledge of community resources and processes, fear is a barrier to using this knowledge for some clients. In one hearing, despite all the efforts

of council members to reassure him about the friendliness of the community, the client was terrified when they asked him about doing community work as part of his decision. One council member asked, "Are you interested in doing any kind of volunteer work?" The client replied, "Yeah, but I tell you right now that I'm scared. I've never done anything in the Native community so I'm scared about what I might have to do. But I'm willing to try it." The council members then spent a long time finding out why he was terrified. This client was afraid of going out into the community because he felt his ignorance about his culture and community made him a less authentic and real Aboriginal person. He feared being ostracized or ridiculed because of his lack of knowledge. There are additional client fears about community participation. Some clients actually fear that they will have to take part in "some bizarre traditional ritual" when they are sent into the community. Still others who are Christian fear being forced to abandon their religion because of community pressure.

I witnessed how council members assuaged these fears. They showed these clients how they were still Aboriginal peoples and part of the community despite having little awareness of their culture. Self-identification, as discussed above, was enough. Clients were told that they only have to participate in the community to the level they feel comfortable. No sarcasm, criticism or coercion was applied to make them into "traditional" community members. Client Jimi Legarde says that the council members take great pains to make clients feel comfortable and safe in hearings and with their decisions. However, if the client was willing and interested in learning what the

traditional community is all about then the council members assisted them to the level of assistance requested.

On the other hand, some clients were actively seeking to join the Aboriginal community. Frank Desmoulin knew what the CCP program was about and said

I felt by asking for the program and getting accepted is a chance to show what resources we have out there in the community that I could use to change my ways, my behavior, my ways of doing things and getting myself straightened out, to better myself and to become a better citizen. To improve my way of life.

Client Jamie Schell agreed. He added that there are street communities that exist in various areas of Toronto. Older street people take care of younger ones while trying to minimize the dangers of street life. Despite exploitation there is a sense of we-feeling in these street communities. But these communities are not healthy communities because they are centered on "drugs, drugs, drugs". The community promoted by the council members was, for Jamie Schell, a healthier⁷⁹ community. The earlier case study shows that council members offer alternatives and resources, both instrumental and symbolic, which can be utilized to improve the quality of client's lives while raising community consciousness and reassuring clients about the nature of their membership and participation in community.

⁷⁹ The concept of a healthy community will vary over time and place and who is defining it. My fieldwork data indicates that a very broad definition of a healthy community would be one where there is little family violence, childhood abuse, sexual abuse and substance abuse. It would be a safe place with adequate housing, recreation, education, justice and health care providers. Many consultants said that it should be a place of empowerment rather than dis-empowerment. They also suggested that it should be self-reliant in addressing its own needs and capacities. Other consultants thought that a healthy community should be based upon traditional cultural teachings and values. Some consultants said that a healthy community would also be one that was self-governing but also maintained connections to outside infrastructure and resources.

One of the issues LaPrairie (1994) said was a real problem for "Inner City One" Aboriginal peoples in Toronto was the lack of healthy community role models. CCP members provide these needed models. I have found, just as Weibel-Orlando (1991) found in the Los Angeles Indian community, that volunteer work really is a marker of community. It is also a marker of status within the community. During the introductions in every hearing the volunteer nature of the council member role and each Council member's volunteer history is recited. Each client can then see the Council members as legitimate and authentic community members who are, therefore, qualified to help them. This continues when council members give testimonials of past personal experiences with street life and disconnection, how they found community and what it did for them. Clients see that council members have *walked the walk* and, therefore, clients listen and learn when council members *talk the talk*. The path to community is laid out for clients. Clients must learn how to walk that path themselves and this can take time. CCP co-ordinator Patti McDonald says that the CCP and the wider community are patient because "it takes some people two or three times before they [clients] recognize what community is and then become integrated into it." Nonetheless, during this process it is the council members and the social service agency members that provide the role models for, and connections into, the Aboriginal community of Toronto.

The organic intellectuals at the CCP also create and reinforce community through

special hearings⁸⁰. Through special hearings council members go beyond the call of established CCP duty to help clients. These special hearings are a spontaneous invention by some council members who recognize that some clients need more help from the community than others. They demonstrate community concern for the clients as council members attempt to connect or re-connect them to healthy relationships within the community. During the Advisory Council annual meeting Jonathan Rudin took time to praise the community building elements of special hearings:

It's great that these special hearings were just started by the Council members without any outside direction. It's a spontaneous thing. Even though we've had more hearings this year than we've ever had before, Council members are still finding new ways to help the community. It's a new thing that I think is very good.

Special hearings, then, provide further evidence of how council members help demonstrate community commitment and leadership in a tangible manner.

Finally, the CCP serves as a site for community discovery and renewal for the council members themselves. Council members come from diverse Nations, organizational backgrounds and geographic locations. Frances Sanderson told me that the CCP is a place where council members meet new frontline workers and renew old acquaintances. New ideas and strategies for the community are laid out, exchanged and discussed as new combinations of council members work council hearings. Current

⁸⁰ Special hearings attempt to deal with clients who have gone through hearings and, sometimes, re-hearings. They are called by council members and the program coordinator whenever either of these parties thinks that a client is in severe crisis and is in need of special attention. For example, if a client is consciously or unconsciously acting out in a manner that is destructive to the client, then a special hearing is called to address this problem before it gets worse. Clients agree to come and, of the special hearings I have discussed with Patti McDonald, agree to do what the council members suggest.

community events and actions are also rehashed. Hence, the CCP is a nexus for old and new relationships and well as a locus for collective community strategizing and planning.

Community In-The-Making.

Despite the above criticisms, the foregoing indicates that the address to social problems is the most visible means of understanding Toronto's community. Social service agencies organize responses to social problems through, and in spite of, government funding controls. In so doing they enable dysfunctional individuals and connect them to a community identity based on healing and potential building. Indeed, Campbell (2000: 15-16) provides more evidence of how social service organizations, specifically the CCP, enable, connect, heal and build potential for Aboriginal clients. Her data from interviewed clients show clients' changes in involvement with the native community after their experience with CCP.

Almost three-quarters of these clients said that they have more involvement with the Native community including more native friends, more contacts with Aboriginal organizations and more participation in community activities. Among the reported changes in clients' involvement with the Aboriginal community are: Client is learning more about his/her culture (times 4 out of 22 clients); Client now treats members of the Aboriginal community with more respect than he/she used to (times 3). Has become more aware of what is going on in the community (times 1); Client is learning to speak his/her Native language (times 1); Client is going to University and working towards a degree in Native Studies (times 1); Client had become more involved in the community for "healing" purposes (times 1); Client volunteers with Aboriginal organizations (times 1)

Campbell then lists 17 types of community activities that the respondents had been involved in the past year such as attending pow-wows, Aboriginal feasts, sweat lodges, healing circles and involvement in Street Patrol and Elders conferences to name but a few (ibid.: 16). The CCP also helps give or return a greater degree of responsibility to the

Aboriginal community. In a previous chapter I show, through the analysis of client reaction to council hearings and dispositions, that clients learn or re-learn individual, and subsequently, community responsibility. Campbell (2000: 46) also found "indirect" evidence that the program does "return a greater degree of responsibility to the Aboriginal community." She also states that "The extent to which Aboriginal services and organizations are relied upon for the program's clients also demonstrates the community's acceptance of responsibility for its members" (ibid.:46). Hence, the enabling and capacity-building response by Aboriginal social service agencies to Aboriginal social problems is currently the central force for community creation and maintenance in Toronto.

Lustiger-Thaler (1994: 22-23) offers the idea of a community as "*enabling entities* ...straddling the boundaries of civil society, and what in earlier times was more broadly called 'political society' or the realm of activity and discourse in and around state largesse". This enabling concept of community allows for

a fuller portrait of the complex practices that Others (other communities) express through the regulatory environment sustained by local, provincial and federal governments. In short, state largesse as 'political society' is something we all have in common. This takes nothing away from the affective element of community sentiment, but simply attests to the institutional complexity of their context. (ibid.: 23)

The concept of enabling entities provides a way to understand and specify the institutional contexts, whether governmental or Aboriginal, which are involved in the negotiation and re-negotiation of community within the city. Aboriginal social service agencies are the "enabling entities" that deal with the state and individuals. As a result the

social service agencies and their practices currently constitute a significant but contested site for the investigation of Aboriginal community identity.

This chapter outlines the symbolic, instrumental or practical ways in which community is constituted around solving the social problems that Aboriginal peoples face daily in Toronto. Social service agencies are the main locus and nexus of community and agency members are the organic intellectuals central to community development. The CCP and its members are but one example of this process. Ivy Chaske describes the CCP as "the place where the fire gets lit" and a "community seed." Throughout this dissertation I have shown how the CCP lights the fire and plants the seed. I will now speak about this in terms of recent community development discourse.

Bhattacharyya (1995) proposes that, in order to create a more intellectually satisfying definition of community development, we must invent a more rigorous definition of community. He suggests that "solidarity" has been a central element of many earlier community definitions. He appropriates this and redefines solidarity as two central elements: "shared identity and a code of conduct" (61). Bhattacharyya believes that defining community in this way "serves to bound the concept in a distinctive and intrinsic manner" (ibid.).

I suggest that Toronto's social service agencies inculcate this shared sense of Aboriginal identity. The social service agencies accomplish this despite the cultural diversity of Aboriginal Toronto. Foundational precepts and symbols of North American Aboriginality are at the base of this shared sense of identity. Moreover, as has been shown above, agencies do so by promoting a code of conduct based on caring, sharing,

kindness, honesty, bravery, trust and respect plus a holistic view of individual and community health that encompasses the mental, emotional, spiritual and physical well-being of both. Awareness of this shared sense of community identity is the seed that is planted. New individual and community codes of conduct comprise the fire that is being lit. The principal way in which this is accomplished is through providing resources and role models which demonstrate that agency is possible for even the most marginal and dysfunctional person.

Bhattacharyya (1995) discusses how "agency" is the second goal of community development (ibid.). He defines agency as "...the capacity to create, reproduce, change and live according to their own meaning systems, [with] the powers effectively to define themselves as opposed to being defined by others" (ibid.). This accords with calls by Aboriginal activists and academics demanding the right to live according to their own meaning systems and demands for the re-appropriation of the power to define themselves in order to heal their communities (Alfred 1999; Monture-Angus 1999; Sinclair 1997). Bhattacharyya continues saying that, "The value premise of community development is that people have the right to agency, and the distinctive purpose of community development is to safeguard, and where impaired or lost, to reconstruct it" (ibid.). I have delineated how the social service enabling entities, in particular CCP, give disconnected Aboriginal peoples the above capacities. Agency organic intellectuals are safeguarding nascent community agency. They are also reconstructing it within clients in whom agency has been lost or impaired.

The CCP and the social service agencies fight against the erosion of solidarity and

agency in their community. This erosion has been caused and is proceeding through various forms of colonial and post-colonial power/knowledge. One way to understand this power/knowledge is to specify how it has robbed communities of agency. As I discussed in earlier chapters, "agency-robbing knowledges" (Bhattacharyya 1995: 61) are wide ranging operating through many different actors and across many different sites. Aboriginal communities are robbed of agency as colonized peoples' philosophies and practices are denigrated and excluded from policy and practice and as the "civilized" philosophies and practices of the colonizers are consciously or subconsciously imposed upon the colonized. (ibid.) The imposition of Western criminal justice and the active eradication or exclusion of indigenous justice is an example of how non-Aboriginal ways of knowing and practice are used to rob Aboriginal peoples of the right to define and govern themselves according to their own culturally relevant needs and desires. Other examples include the suppression of indigenous languages and educational practices through residential schools. Current education practices rob Aboriginal peoples of agency through government mandated curricula which discounts or ignores the history and culture of Aboriginal peoples while emphasizing non-Aboriginal colonial history and culture (Battiste 2000). Forced adoption and child welfare policies that neglect Aboriginal child rearing and family philosophies while continuing to place Aboriginal children in non-Aboriginal care (McGillivray and Comaskey 1999) are further examples of how Aboriginal knowledges are denigrated or destroyed. These "agency-robbing" knowledges and practices have particular relevance to Aboriginal community. Over time they have destroyed or prevented the creation of a shared identity and a code of conduct

necessary for community integration. Therefore, they have obstructed the creation of Aboriginal community in Toronto. In this and preceding chapters I have shown how the CCP is "agency-giving" (Bhattacharyya 1995: 61). The CCP enables the creation of solidarity and codes of conduct through justice practices that "do it our way" and through decision conditions given to clients during hearings that foster healing and assist in creating or re-creating Aboriginal identity.

I have also indicated how the Aboriginal community cannot be spatially defined. Rather, Toronto's Aboriginal community is defined primarily through the enabling practices of Aboriginal social action agencies. I do not claim that there is some agency master plan that particular community leaders follow to constitute this community. While de-colonization of Aboriginal minds, healing, creating capacity and enabling potential are central to community development, no single power centre promulgates this as *the* plan. On its most basic level Toronto's Aboriginal community must be seen as a dynamic, contentious, and changing *process* operating at multiple agency sites and ramifying into Aboriginal Toronto. Lustiger-Thaler's (1994) model of community provides a way to understand how this is happening. He sees communities as:

...ongoing quests for collective praxis and association, ways of becoming and knowing. They are socially constructed 'intended moments'. These moments take many collective shapes and representations directed toward building a series of routinized human attachments and presences between actors and the institutions of their making. (20)

Lustiger Thaler theorizes community from the ground up through community action organizations. Community is best seen as "in the making" through everyday activity and is "tied to the unfolding of discursive and social practices through intricate networks that

attempt to reconcile public-spiritedness with moral and ethical concerns” (Lustiger-Thaler 1994: 21). From this view, “community emerges as an affective patterning of social practices closely tied to people’s on-going desires for collective exchanges and need-satisfaction, therefore, it is always ‘in the making’” (ibid.). Ivy Chaske sums up CCP's place within this process:

And so for me the Community Council is a piece of it. You’re right it’s the community piece of it that’s important because if one looks at what community means, it means that we are all a part of what this thing is and when we have that understanding then we’re able to do the things that we do in the Community Council. The Community Council then becomes an integral part of the larger circle that is community. So the Community Council is sitting here and something else is sitting there but they’re all in the circle and equally important within that circle. So yeah in the larger context of community definitely this is a part of that.

I have indicated how the social service agencies enable and satisfy the on-going quest of Toronto's Aboriginal peoples for collective praxis and association, ways of becoming and knowing. These agencies build routinized human attachments for disconnected, dysfunctional and marginalized Aboriginal peoples. But they also provide connection and purpose to agency members. Solidarity results from these attachments and connections. Relationships and connection are made through intricate networks that attempt to reconcile public spiritedness with moral, ethical and spiritual concerns. I have shown how the CCP helps build new codes of conduct and agency among clients. The social practices of these agencies, particularly in the case of the CCP, are closely tied to people's ongoing desires for collective exchanges and need-satisfaction. I have also shown how clients themselves want to be productive community members and how

agencies enable them to satisfy this need by connecting them to sites where satisfaction may be obtained.

At the beginning of this chapter I outlined how older conceptions of community comprised of “shared values, shared identity and thus shared culture... mapped literally onto the concept of locality” were no longer useful to define community, particularly in urban contexts (Marcus 1994: 46). Earlier versions of community that valorized unshifting spatial parameters or identities using sets of markers (kinship, religious affiliation) do not deal well with change and flux in individuals and institutions. Nor do they give sufficient weight to the day-to-day practices of community (Halperin 1998). These earlier ideas on community identity cannot capture how personal or group identities are produced simultaneously in different places, by different agents with differing purposes and through different activities (Marcus 1994:46). Moreover, older community concepts really do not capture how community that is geographically dispersed can act as “a field, resource and arena for social action” (Wiebel-Orlando 1991: 292).

In the remainder of this chapter I sketched the various ways in through which Aboriginal community identities coalesce at many different sites different and under circumstances (Marcus 1994:47). I discussed how Aboriginal individuals use their survival as Aboriginal persons after years of assimilationist policies and practices as a potent symbol in community constitution. I outlined how self-identification as an Aboriginal person and community member is one method of community identity coalescence. Leading a traditional life by following the spiritual teachings of Creation at

various locations and with various spiritual leaders is another way that individuals identify themselves as community members. Their participation in the revival, renewal, reinvention and re-inculcation of traditional spiritual approaches to culture is a source of solidarity and agency that builds community. When culture specific approaches to this process of renewal are unavailable, some individuals find community within pan-Aboriginal discourse and practice. All of these resources are used at different times and places by different Aboriginal actors as they seek to enter into, build and maintain community.

However, community identity in Toronto is not built “in the classic sense of shared values” that is accepted by every community member in every instance (Marcus 1994: 46). My earlier discussion of controversies over community membership criteria such as self-identification and pan-Aboriginal practices versus specific cultural practices profiles how community is not being built without contestation. The politics of delineating which identity criteria and tools are to be valorized and chosen to be definitive of community plus who has the power to “control” that choice “across any site” (ibid.: 47), illustrates the problem with defining community as shared values. Moreover, these politics also point to how community identity can change as certain community definitions become “dominant” for a time and then lose their force or persuasiveness depending upon “the play of unintended consequences” (ibid.). For example, a lack of Elders who can give culturally specific teachings can result in the valorization and use of pan-Aboriginal identity resources and practices.

I also alluded to how community is constituted discursively through the moccasin telegraph. Spatial referents for defining community miss this very important form of community coalescence across geographically separated space. On the other hand space and place do play a minor role in community identity through Aboriginal events such as pow wows and Aboriginal arts events and theatre. In Toronto, as in Los Angeles, community is constituted through “an annual calendar of social events, rituals and stages on which cultural dramas are played out for their symbolic content and enculturational properties [and these] provide other venues for the expression of community” (Wiebel-Orlando 1991: 293).

At the present time, however, the Aboriginal social action agencies’ reaction to social problems and needs facing Aboriginal peoples throughout Toronto is the predominant force for community definition, participation and maintenance. I have outlined how the synergy between the various social action agencies aids in the creation of shared identity, codes of conduct and solidarity while demonstrating, for community members, community agency. The CCP is currently a focal point of this synergy. As I have discussed throughout this chapter the CCP process lights the community fire for clients, council members and other agency members. The CCP hearings, post-disposition supervision and hearing decision referrals help “make” community in the manner suggested by Lustiger-Thaler (1994). The CCP is an “enabling entity” through which individual and community identities coalesce through “needs satisfaction” in a multitude of different circumstances (ibid.). The CCP and social action agencies enable *self*-government for troubled individuals. In so doing the CCP and social action agencies help

some of these clients create or recreate relationships with other Aboriginal peoples in Toronto and reconnects them to visions and practices of Aboriginal identity and community. Some of these clients go on to work in the community thereby building community capacity. This community work by clients, agencies and the CCP, then, is a base from which to work toward *self-government*. The capacity-building mission of these agencies ideally suits them for a role spearheading urban *self-government*. The CCP and social action agencies may, therefore, be instrumental in deciding on governance for urban Aboriginal peoples (Warry 2001: personal communication). They understand who urban Aboriginal peoples are, urban Aboriginal peoples' spread throughout Toronto, and their needs and aspirations. They have the needed economic and political expertise plus nascent infrastructure around which *self-government* may coalesce.

The CCP is a central location to be used to understand community building discourse, controversies and practices as they evolve to meet changing circumstances in Toronto. Therefore, I believe that this research into the 'in-the-making' processes of community constitution of Aboriginal social action agencies such as the CCP offers a useful path on which to continue to re-conceptualize and understand "the process of dispersed identity construction" and community in urban contexts (Marcus 1994:46).

Chapter Seven

Summary and Conclusions

This dissertation interrogated the under-researched intersection between alternative justice practice, individual and community healing and identity in an *urban* Aboriginal community. Specifically, I discussed how the justice philosophy and practices of the Community Council Project are a locus and nexus wherein Aboriginal criminogenic behaviors are understood and individuals begin to heal leading to socially acceptable behaviours and reintegration into the nascent Aboriginal community of Toronto. A number of key processes or continua propel this project. There is movement from injustice to justice; from oppression and disconnection toward freedom and connection; from being defined by others to reclaiming the power to define. There is also movement from minimal individual and community identity to identity in both domains; from limited capacity to capacity building to capacity; from crime to living the “right way”; from disempowerment to empowerment; from doing it “their” way to doing it “our” way. At the very core of these movements are the philosophies and practices of reclaiming responsibility and relationships.

Justice and law, on the most basic level, are about relationships. They bind together people of similar and disparate beliefs and interests. On one hand, informal normative understandings bind individuals to community relationships within cultures and communities. On the other hand, diverse interests, philosophies and cultural practices

can separate peoples. Ideally, law moves people to a common ground by providing formal rules to protect difference but also to ameliorate the worst excesses of difference thereby “building social solidarity” (Cotterrell 1995: 249). This solidarity becomes the basis for satisfactory relationships. The “social values” that underpin concepts of justice and “procedural elements in law”, while differing cross-culturally, seek to foster personal and community responsibility and maintain right relations (Cotterrell 1995: 157).

Monture-Angus asserts that “maintaining good relationships is at the heart of “fulfilling your responsibilities as a human being” (1999: 160). At a CCP honouring ceremony for clients Elder Vern Harper and council member Ivy Chaske eloquently spoke on the subject of *all my relations* as a way in which many Anishnawbe peoples have conceived of living and working together in the past and today. A good life, respectfully lived is holistically based upon the seven grandfathers of caring, sharing, kindness, honesty, respect, bravery and courage (Benton-Banai 1979: 64; Dumont 1993: 44-45). Individuals and communities have the responsibility to attempt, to the best of their abilities, to live these core values. These values are also central to achieving self-government. Monture-Angus maintains that “self-government is really very simple to attain”. All it requires is “living your responsibilities to your relations [and] accepting responsibility” (1999: 160-161). I understand this to mean taking responsibility for one’s own actions, the consequences of those actions and how they affect others and their actions in a constant feedback loop. This is at the heart of all my relations and self-government. Monture-Angus continues:

If enough people take it upon themselves to do this kind of thinking (that is, how do I fix it?) then Aboriginal justice would be upon us. Aboriginal justice...

will come when we start to take responsibility and care of our relations (ibid.: 161).

“All my relations,” then, is a way of encapsulating the complex teachings surrounding the Medicine Wheel and a way of encapsulating a pan-Aboriginal ideal (Bopp et. al. 1984: 32-54). In essence, “all my relations,” like the Dene phrase “Doing things the right way” (Ryan 1995), speaks to the need for appropriate behaviour in the intersection between individuals and community. This, in turn, relates values to interaction and interaction to justice and law.

This dissertation has illustrated how the values of responsibility to all my relations were suppressed or lost at individual and community levels. I outlined how these values are revived and restored locally through the philosophies and practices of the CCP. The CCP is, first and foremost, a site and process for healing and building relationships. The CCP is part of the restorative justice and community corrections movement which seeks to “help reintegrate victims and offenders” and “rebuild communities that may have been weakened by crime and other social ills” (Linden and Clairmont 1998: 5). The CCP is an alternative to the formal system which “needlessly disempowers parties, families and communities” (Stuart 1996: 193). The formal system “robs communities of an invaluable building block; active involvement in constructively resolving conflict” (ibid.). The CCP, on the other hand, reclaims community involvement in resolving conflict and rebuilding relationships. I discussed the specific ways in which the CCP addresses the disconnection that exists in Toronto for some Aboriginal peoples and how the CCP reconnects these people to themselves and others in relationships.

This dissertation surveyed the various colonial and postcolonial projects and their

programs and technologies of power that have negatively affected the lived experience of Aboriginal peoples. The aim was to show the wide ranging consequences of the social exclusion of urban Aboriginal peoples within a Canadian society which purports to include all peoples equally in its vision and practice of the good life. I sketched the historical, political, legal and social context resulting in the Aboriginal loss of the power to define themselves as individuals and cultures leading to social disintegration, and eventual Aboriginal over-representation in Canadian prisons. My analysis takes into account economic, and structural causation as reasons for over-representation. However, the distinctive set of historical processes that underpin over-representation are more important factors in crime causation and over-incarceration than the *epiphenomenon* of poverty and class marginalization caused by this destructive set of historical processes. My analysis emphasizes the integration of historical, social, legal and political analyses of colonialism and postcolonialism, as opposed to cultural and socio-economic explanations for over-representation for some of Toronto's Aboriginal peoples. My analysis, therefore, enhances Aboriginal, academic and justice professional perspectives on the causes of Aboriginal over-representation in the criminal justice system.

One of the central lacunae in Aboriginal justice literature is research into how urban Aboriginal peoples experience the imposition of colonial and postcolonial power/knowledge in their daily lives and how it leads to their involvement with the formal justice system. I outline the negative experiences that mold daily life by specifying the intergenerational results of colonialism and postcolonialism from the standpoint of Aboriginal clients, council members and agency members. First person testimony of

negative lived experiences beginning with childhood and parenting, residential schools, adoptions, child welfare and education are cited as the sources of social adversity leading to family breakdown, disintegration of relationships, street life, and crime. The system of normalized discursive and practical discrimination that clients continue to be subjected to over the course of their lives is cited as having destroyed personal, family and community identities. CCP consultants and I argue that these childhood, family and later adult experiences involving the foregoing, disconnect personal and community responsibilities and identities. This disconnection initiates dysfunctional thinking that can lead to criminal activities. Criminal activity, then, results in further personal and community disintegration. Hence, even before clients reach the justice system, significant obstacles to living life according to the precepts of “all my relations” block their paths.

Subsequently, the discriminatory treatment that the formal justice system metes out to clients leads to further disconnection. I outline client experiences with the criminal justice system. This ethnographic evidence supports the charges that Aboriginal peoples and academics have made about the systemic discrimination that Aboriginal peoples are subjected to in the criminal justice system. Underpinning these discriminatory practices is a set of racist interpretative repertoires deriving from the colonial period and continuing today through policies, laws and legal practices. Five years after RCAP (1996) and Parliament’s acknowledgement of the disproportionate involvement of Aboriginal Canadians with our justice system little has changed. Despite legislated sentencing guidelines in 1996 (Bill C-41 and particularly section 718.2 (e) of the Criminal Code) (Daubney and Perry 1999: 35); Aboriginal peoples in Toronto still confront these

problems. I maintain that, despite RCAP and sentencing reforms Aboriginal peoples in Toronto are still subjected to discrimination. Colonial and postcolonial interpretative repertoires and legal practices based upon them, plus discrimination throughout the formal justice system still oppress Aboriginal offenders.

My call for the de-colonization of non-Aboriginal minds in order to create the atmosphere for a healthier relationship with Aboriginal peoples may seem idealistic. However, I submit that one of the central practices in this program of decolonization will be exposing how stereotypes deriving from colonial civilizing discourse continue to enable the social exclusion of Aboriginal peoples. Social science can help expose these discourses and practices over the long-term and aid in de-colonization. The ethnographic materials presented here can be used to understand the discriminatory mind-set that continues to disempower Aboriginal peoples. De-colonization also requires justice professionals to make greater efforts to practice non-discriminatory justice for Aboriginal peoples. It can also help formal justice personnel understand the specific discriminatory practices that Aboriginal peoples are subjected to within the “justice” system. Lastly, this dissertation provides examples of how an alternative system such as the CCP can successfully provide culturally appropriate and fair justice for Aboriginal clients. Success is the best teacher. One approach to de-colonization for justice stakeholders and Canadian publics is recognizing the CCP’s success and changing personal and cultural views and practice based upon that recognition.

The CCP directly confronts the colonial and postcolonial context that is at the heart of the problems that its clients face in Toronto. While the CCP is a diversion

program; it is also much more. It is more than a social control program. Not only does it successfully achieve most of the diversion goals as set out in criminological literature (Nuffield 1997: 1); it achieves a host of other objectives specific to the needs of Aboriginal individuals and Toronto's Aboriginal community. These achievements derive from an extensive and intensive pre-implementation process wherein community needs, capacities and goals were assessed and program objectives were developed. It is at this developmental stage that many restorative alternative justice initiatives sow the seeds for failure because of a lack of pre-implementation planning and organization (Linden and Clairmont 1998). I maintain that the operational success of the CCP is partly grounded in the thoroughness of their pre-implementation and program planning.

The CCP "did it our way" and, as a result, has become an ideal model for other Aboriginal organizations seeking to provide alternative justice for their communities. I interrogated the ideal versus the real of "doing it our way." After a juxtaposition of interviews outlining the CCP ideal and a deconstruction of a case history, I conclude that the theory and practice of the CCP are closely in tune. CCP philosophies and practices indicate that the Aboriginal community does indeed know best how to reach native offenders. The CCP succeeds in addressing the underlying causes of the crime rather than the symptoms of the crime in order to more effectively heal clients. It helps clients to help themselves. More importantly, it also does so by sensitively and situationally using culture specific and pan-Aboriginal traditions and practices to understand and heal the underlying causes of client criminal behaviours. The ideals of responsibility, reconnection to relationships and respect that motivate the CCP program staff and

volunteer council members are clearly understood by clients as they are practiced within hearings and post-disposition supervision. Finally, the CCP adheres to its established protocol with the Toronto Crown Attorney's office.

I realize that that the CCP is not perfect. Some clients have not completed their dispositions and some have re-offended. Appendix D shows that 396 (68.87%) clients completed their dispositions out of a total of 575 clients. Appendix D also counts partial completions 58 (10.09%). Hence, 454 (78.96%) clients completed or partially completed their dispositions. Moreover, in every year save 1997/98, the level of compliance is three times the level of non-compliance. These numbers support my contentions on the efficacy and transformative power of the CCP.

However, there are clients whose files are closed because they do not show up for their hearings, for showing up but not doing their disposition and for missing re-hearings called to deal with their non-compliance. Once their case is closed it means that they can't have a matter diverted if they are arrested again. A "no" for further diversion eligibility is entered into their file. On the surface it would appear that they have been cut off from the services of the CCP. This is not the case. At the CCP a client can always come back to finish the work that they started with the CCP. The CCP is always prepared to move a client from a "no" to a "yes". The fact that a client is listed as non-complied does not mean that the client is forever branded as non-complied. If a client indicates to the CCP that they are willing to do the work on the disposition, then the CCP will re-activate his or her file. The CCP will then work with the person until they comply. Even if a person has not complied and has no interest in complying they can still utilize all the

other services that the CCP and ALST offer. Hence, the CCP does not abandon clients for non-compliance. Instead, if the client is willing, the CCP continues to work on the client's behalf and toward the client's restoration or transformation.

My search of CCP files that record recidivism shows that of fifteen clients only four re-offended. Of seventeen clients who responded to whether they had re-offended after diversion, eleven re-offended and six did not. Other research on CCP client recidivism has shown that the CCP program does reduce recidivism. Campbell (2000: 44) discussed whether the CCP program reduced recidivism among its clients. She found that

Almost the same number of individuals who had been convicted of offences in the two years prior to their program involvement with the CCP had convictions registered against them following the program. Approximately 15% of the clients included in this evaluation had prior convictions but none in the post-program period. However, a similar proportion had had no prior convictions in the pre-program period examined but did re-offend later. The evidence regarding the total number of convictions for the whole group suggests though *that there has been an overall decrease in criminal behaviour although the magnitude of this change is not great, from 184 convictions pre-program to 170 convictions post-program.* The measurement of recidivism relied only on convictions registered for the limited time of two years before and after program involvement. This may not be an adequate period in which to see changes in criminal behaviour. *It is also possible that a comparable group of offending individuals without program involvement might have demonstrated progressively greater rates of recidivism over the same period of time* (my italics).

Phyllis Doherty of the Department of Justice outlined the Department's evaluation on CCP client recidivism arising out of Aboriginal Justice Strategy (AJS) research. It stated that "the effects of the program were found to be statistically significant. The program reduced an offender's likelihood of recidivating by 33.7%" (Rudin personal communication 2001).

I think that these figures show that client involvement in the CCP program reduces recidivism. However, I also think that recidivism is a problematic measure when used to gauge individual transformation and program success. Recidivism statistics simply tells us that another crime has been committed. Recidivism statistics rarely take into account the type of new offence committed or the context in which it was committed. Recidivism as a measure of individual success or failure does not take into account changing levels of social adversity confronting clients in their daily lives. For example, recidivism does not measure the work that individuals do on their lives between crimes and how that work may be subverted by social adversity and cultural discrimination. The CCP does take these issues into account when evaluating where an individual is on their healing path. The fact that an individual re-offends is less important than the step-by-step efforts clients make to heal themselves. Patti McDonald is clear that clients rarely commit the same crime for which they were diverted. They tend to commit lesser crimes. Two other points need to be made about the ineffectiveness of recidivism statistics. Recidivism only relates to catching offenders and tells us little about offender behaviour before and after an offense. Most first time offenders, according to Rudin, are not first time offenders. Often they have offended before but this is the first time they have been caught. The CCP works with clients to find out why these offenses occurred. It does not simply focus on the act or acts. Finally, recidivism can often reveal more about policing practices than about the socio-demographic characteristics of the person who was arrested. Most CCP clients live where there is a lot of over-policing. These clients, according to Rudin, tend live downtown, to be poor, homeless or under-housed and, as a

result, they tend to socialize and abuse substances in public places. When these people slip they slip very publicly. Rudin gives an example of crimes committed under the influence of drugs or alcohol (breaking a window). Due to over-policing, the police are more likely to see this act of vandalism. Hence, clients committing these acts will be arrested more often than others who live in areas of normal or under-policing and, hence, will have higher rates of recidivism. Recidivism statistics do not tell us whether the person was working on solving the problem through substance abuse counseling or that this act was merely a momentary lapse from a healing program. Recidivism simply records that the individual was caught. The CCP looks at the qualitative context of the crime to help the offender. Without qualitative context, then, recidivism statistics can block our understanding of client transformation. I believe that these concerns are crucial to understanding the causes of re-offending and should also be a part of any evaluation of individual transformation and program success. Therefore, in light of the CCP's policy on how healing takes a long time with many relapses before it is complete, recidivism should be used with caution when taken as an indicator of program or individual weakness or failure.

A few clients have been dissatisfied with their CCP experiences. Of sixteen clients interviewed, only three expressed dissatisfaction with their CCP experiences. Client (B.N.) was dissatisfied that the counselor he was sent to as part of his disposition denigrated his Christian religious beliefs. Client (B.P.) questioned the relevance of the community service he was given as part of his disposition. Client (B.K.) did not like the attitude of one of three council members who attended his hearing. The rest of the CCP

clients expressed complete satisfaction with their experiences. They maintained that what the CCP said would happen to them, did happen. Moreover, the benefits that the CCP said would accrue to clients who go through the process did accrue for the clients as chapters four, five and six illustrate. All in all, however, the CCP does “walk the walk” and not just “talk the talk.”

Moreover, the CCP is successful in its aims of providing an alternative to the formal system’s precedent-driven process that only tangentially takes into account the circumstances of the offender in sentencing. The CCP treats clients as individuals, listening and learning about their contexts before crafting individualized dispositions. The CCP is a more discursively open process than the formal system because it allows clients to tell their stories themselves, in their own way and in their own time, rather than through lawyers and restrictive rules governing testimony. Hence, the CCP has an advantage over the formal system. It is flexible and adapts to changing needs and contexts whereas the formal system is less flexible due to the requirement of following established procedures, its legal requirements to provide uniformity of treatment (R v. Sandercock 1985) and its reliance on precedent (Monture-Angus 1999)⁸¹. Relatedly, one of the central aims of alternative justice is to move away from specialist monopolies and return justice to a more immediate, unmediated and accessible set of practices. There are no lawyers in the CCP hearings. Instead volunteer council members who have “walked

⁸¹ It is too early to assess the impact on formal system flexibility due to the changes to sentencing practice and judicial discretion resulting from conditional sentencing and legislative instructions for judges to recognize the unique circumstances of Aboriginal offenders in R V. Gladue.

the walk” that clients still walk “talk the talk” of responsibility and reconnection that is immediately relevant and accessible to clients. The path to healing is made understandable and clearly laid out for clients and is tailored to clients needs. The CCP can also change the client's program if it is not working out. There are always alternatives to be considered and used throughout the CCP process. This is not the case in the formal system. Clients pointed out that the formal system does not have, or chooses not to use, alternatives when it is clear that its dispositions are not working for the client. Finally, the CCP focuses on the process that caused the client to commit a crime rather than simply on the crime itself as in the formal justice system. Context is more important than the crime. The problem that caused the offense is at the center of the circle not at the periphery as it is in the formal system. The CCP’s goal is “to make you whole again” not simply to punish. Client testimony throughout this thesis attests to how the CCP accomplishes this goal.

The CCP hearing process also gives substance to the practice of healing. Healing is not just a metaphor. Nor is it simply a political discourse that has little real meaning beyond its use as a catch-all phrase for what Aboriginal peoples must do to achieve self-government. Healing at the CCP is concrete in that it rehabilitates specific individual problems through creating or re-inculcating responsibility and re-building relationships. I show healing and restorative justice in action as Toronto’s Aboriginal community “does it their way”. Instead of hurt begetting hurt; healing begets healing. Incarceration and punishment tends not to break the cycle of disconnection, abuse, violence and crime in

which clients have been involved. The CCP process does, in most instances⁸², break the cycle. Little Canadian criminological or in-depth ethnographic research has been undertaken on restorative justice in urban diversion programs run by and for Aboriginal peoples. I have documented how CCP gives substance to government and academic calls for new ways of dealing with justice, particularly for Aboriginal peoples. My research enhances our perspective on how restorative justice and Aboriginal healing ideology and practice are being applied at the community level in Toronto. The CCP is a model *of* and a model *for* the ideals and practices of healing and restorative justice.

The hearing transcript also challenges people's ideas of how justice can be dispensed. Client and council member testimony indicates that the formal system's ideology of *one justice system and one set of laws for all* does not necessarily provide justice for all. To my mind, the CCP program, even though it is embedded within the margins of the formal justice system of Canada, is a form of legal pluralist practice. The pursuit of right relationships is central to justice and law cross-culturally. Monture-Angus (1999: 159) asserts that relationships are "the basic fabric of Aboriginal laws." The CCP does not have a codified set of practices that must be adhered to so that legal uniformity or standardization results in proper procedural outcomes. Nor does the CCP seek to re-create specialist monopolies of legal philosophy and practice. Moreover, the CCP hearing practices are legitimized through the protocol with the Crown Attorney's office.

⁸² All sixteen clients interviewed maintained that the CCP had helped them stay out of jail, helped them become less violent to others and themselves and helped them with their substance abuse problems. Even the eleven recidivists said that their CCP experience started them down the road to a better life. Of the eleven I saw five honoured at honouring ceremonies designed to praise those who have broken their personal cycles and successfully completed the CCP process.

Therefore, I maintain that the CCP philosophy and practice are culturally different but functionally equivalent to the formal justice system's legal philosophies and practices. Legal professionals might dispute this point about equivalency when working from a legal centralist standpoint. I suggest that they might be nervous about losing their practical and discursive monopoly of defining what a legal practice is and who is a professional. This might motivate them to question the legitimacy of the legal practices of the CCP. Legal pluralist theory seeks to change such attitudes.

The CCP is emblematic of the condition in which a population observes more than one body of law, that is, legal pluralism (Woodman 1998). The culturally different conceptions and practices of justice used by Toronto's Aboriginal peoples are a new way to understand and practice justice within and outside of the overarching Canadian Criminal justice system. They also allow outsiders to understand how pluralist approaches to justice offer encapsulated or marginalized populations opportunities to have their justice norms, values and legal practices recognized and valorized. My analysis, then, contributes to our understanding of legal pluralism by documenting how different forms of justice/law philosophy and practice exist within Canada. The CCP provides skeptical justice stakeholders, and a public fearful of special treatment for Aboriginal peoples, the opportunity to see how effectively diversion and culturally different justice practices work. This understanding can help destabilize legal centralist interpretative repertoires thereby leading to the acceptance of legal pluralist practices. Recognizing how well the CCP works also indicates the potential of pluralist legal

practices for other minorities and for non-Aboriginal Canadians involved with the criminal justice system.

My analysis also points to the significance of Aboriginal diversion and alternative justice as a means to accomplish two important ends for both Aboriginal and non-Aboriginal peoples alike. First, the CCP's pluralist approach to justice addresses social adversity and community and individual contexts in crime causation. It begins the healing of the intergenerational consequences of colonial and postcolonial oppression while empowering the community to take ownership of and solve its own problems. Hence, the CCP's approach can create safer more capable communities for both Aboriginal and non-Aboriginal Torontonians. These are major aims of legal pluralism as well as restorative justice. Second, the CCP justice experiment is an important signpost to direct reform in the formal justice system. The CCP offers a standard through which to evaluate the effectiveness of current legal pluralist practices and future experimentation. My analysis, and the evaluation by (Campbell 2000), point to how effectively and equitably culturally appropriate alternative justice mechanisms can provide justice for those not well served by the formal justice system. These results can be used to stimulate further debate and action in the pluralist field of alternative justice and reform in the formal system.

The CCP is just the starting point and by no means the end point. I recognize that the formal justice system has a greater volume of cases that move through it. This is a significant difference between the CCP and the formal justice system. In fact, the CCP cannot handle more cases because the CCP is never sufficiently funded by governments to increase the volume of cases that it can take in. Hence, diversion programs can only

handle a small number of cases. I suggest that this must change. I have discussed how *self-government* is a prerequisite to *self-government*. I have outlined how successful the CCP is at building capacity at both ends of this continuum. Clients and council members have all attested to the multiple ways in which the CCP heals and helps clients re-build their lives and reconnect with the community. Therefore, I think that it is imperative that the CCP be given more long-term funds to expand the program. In this way the CCP can train more council members, hire more coordinators and subsequently take in more clients.

At the yearly meeting I attended two council members spoke forcefully of their vision of the CCP's future. They dreamed that one day the CCP would no longer just be a justice "initiative" but would be sufficiently funded so that it could become a fully fledged, full time alternative that does not always have to financially struggle to do its job. I believe that now is the time for funders to make a substantial commitment to legal pluralist alternative justice. The CCP is a good place to begin to demonstrate philosophical and financial support for legal pluralism beyond the non-constitutional incremental pilot program or "initiatives" approach currently favoured by governments. If these commitments do not materialize, and the incrementalist policy continues, I submit that over-representation in prisons will continue to be a problem for Aboriginal peoples. The "initiatives" approach will never be able to serve the numbers of offenders necessary to make significant in-roads on reducing overrepresentation. It is also clear that the prison industry cannot, and will not, be able to reduce over-representation as it is

currently constituted. Hence, it is logical, not to mention compassionate, to make the commitment now rather than later.

Throughout this dissertation the positive practices and consequences of the CCP process are contrasted with the negative practices and consequences of the formal system. More importantly, clients, council members and agency members discuss the specific ways the CCP has created or re-created the core values of “all my relations” in their lives and community. In order to frame this discourse and further contribute to the domain of restorative justice, I make a distinction between restorative and transformative justice. One of my central conclusions is that the CCP not only restores those *who have had* responsibility and relationships but also transforms clients *who have never had* these core values. The CCP not only deals with what has been lost but also *produces* new states of being and relationships.

Whether clients are restored or transformed varies according to the needs and capabilities of the clients. It also varies according to the capabilities and the resources of role models and the community. Clients all indicate that they must first take personal responsibility in order to begin healing. Claiming responsibility and willingness to change are the base from which new states of being and wider sets of relationships can be produced. Once clients have accepted responsibility they can begin to walk a healing path assisted by the CCP. Clients indicate that working through the CCP process, while listening to and emulating council and agency members who have experienced many of the same problems that clients are now facing, produces or re-produces meaning in their lives. The process helps clients to construct or re-construct healthy individual,

community and cultural identities while opening up, deconstructing and healing negative colonial identities and stereotypical images that have been internalized by clients. In this regard the CCP helps clients to claim or re-claim the power to define who they are at individual, community and cultural levels. This is the link between healing and identity. The CCP healing process is, then, “a vehicle for generating meaning, identity and strength both at the level of the individual and the community” (Gattermann 1999: 1). Personal agency is produced through this process of reclamation and reconstruction. I suggest that the CCP is “agency-giving” (Bhattacharyya 1995: 61). The CCP enables clients to understand themselves, to take control of their lives and pattern their lives according to the role models presented to them by council and agency members. Success within the CCP process gives clients the confidence and the trust in themselves to initiate new, or renew old, interpersonal, familial and community relationships.

Clients explicitly discuss how they have been restored or transformed through participation in the CCP process. I focused on the productive power⁸³ of the CCP process in contrast to the repressive power of the formal justice system. This productive power is a key to understanding cultural transformation (Engle-Merry 2000: 206). I suggest that this is of central concern to Aboriginal peoples, anthropologists, criminologists and government policy-makers. Cultural production draws on a “stock of already existing

⁸³ I recognize what may be a contradiction in the way I valorize the positive, productive, transformative power of the CCP over the negative, productive power of the formal system. Foucault (1979) discussed the transformative project of the prisons and showed that the prisons were a technology of power used to transform prisoners in accordance with the larger program of power that sought to produce and coerce docile bodies that could be kept under surveillance. The CCP also transforms but not in a coercive fashion. The CCP positively transforms individuals producing healthy individual and community identities rather than producing individuals with an ‘eye’ to fit emerging industrial capitalist projects.

cultural elements drawn from the reservoirs of lived culture or from the already public fields of discourse” (Johnson 1986/87: 55; Engle-Merry 2000: 30). The CCP “produces” culture by drawing on Aboriginal justice discourse and practice, from ideals of living the right way through “all my relations” and from notions of responsibility and community. It draws from the in-common state of oppression that is Aboriginal peoples’ lived experience. It draws from the in-common dissatisfaction with, and alienation from, the formal justice system. In so doing, the CCP creates new cultural responses. Client and council member discussions of individual and community transformations, indicate that the CCP helps produce new cultural identities, interactional skills and capacities in clients that contribute to the production of Aboriginal community in Toronto.

The CCP “does it their way” by drawing from the discursive and practical domains of diversion, restorative justice, various Aboriginal “traditions” and pan-Aboriginality. Hence, the CCP is also engaged in “cultural appropriation [thereby] adopting a cultural product in terms of local meanings and practices” (Engle-Merry 2000: 30). Engle-Merry asserts that, “Cultural appropriation can be a form of resistance since it means taking an existing cultural form and replaying it in a different key or at different speed so it becomes something different, although also the same” (ibid.). The CCP has taken a non-Aboriginal alternative form of justice practice (diversion) and replayed it in an Aboriginal key thereby making it something different while still satisfying the conditions of the protocol. Clients are diverted out of the formal system, but the CCP also produces more than the diversion format was ever intended to produce. Healing Aboriginal clients has also created community identity, solidarity and vision. All of these

products can be used to foster self-*government*. Hence, capacities are being built here that go beyond simple social control through diversion. The seeds for future cultural production and resistance are being planted through the CCP process and its interaction with the Aboriginal social action agencies of Toronto.

These productions and appropriations, then, are central to the intersection between justice, healing and individual and community identity. They are of major interest to anthropologists interested in engaging themselves with "...the ways in which indigenous people assert meaning, dignity and resilience or resistance" (Knaft 1996: 66) while confronting external or internal problems and resultant culture change. They are also of theoretical and practical concern because anthropologists can learn how urban, as opposed to rural, Aboriginal peoples understand their world, creatively react to its contingencies and produce meaningful relationships and structures to deal with these contingencies. Legal professionals and policy makers can also learn about the contexts within which their policies and practices can negatively and positively affect urban Aboriginal lives. The restorations and transformations deriving from the CCP process, then, can teach stakeholders and researchers about Aboriginal cultural production, appropriation, resistance and capacity building in an urban context.

I expand the discussion of relationships, transformation and cultural production into the domain of community. I write against outsider notions that there is no coherent Aboriginal community in Toronto (merely a number of disintegrated individuals beset by a myriad of social problems). I show that there *is* an Aboriginal *community* of Toronto. This community cannot be defined or circumscribed by social science's older, spatially

based conceptions of community. I illustrate that, in Toronto, the “situated production of [community] identity, does not depend alone, or even always, primarily, on the observable, concentrated activities within a particular locale” (Marcus 1994:46).

Moreover, my research indicates how Aboriginal peoples in Toronto are fighting against outsider definitions and impositions (i.e., funding practices) of community that hamstring community building and forestall community integration.

I assert that Aboriginal peoples in Toronto are defining and practicing community for themselves. They are doing this despite continuing power to define community held by outsiders. They are re-claiming their own visions of community. I illustrate how Toronto’s Aboriginal community is still very much in-the-making at various sites, through organizations and discursive and event-based practices. Most saliently, however, I contend that community is being *produced* through Aboriginal social action agencies addressing social problems within Toronto. That is, from disintegration comes integration, through the CCP process and inter-agency cooperation with the CCP. Client, council and agency member testimony outlines how the CCP is a representative nexus and locus wherein healing practices merge with client identity concerns to create and sustain community. The CCP lights the fire of community through placing clients on healing paths that alerts clients to the possibilities and potentialities of healthy, non-criminal relationships. The CCP hearings and dispositions use various “traditional” cultural specific resources and pan-Aboriginal resources to link alienated or disintegrated individuals to healers and healing sites that reintegrate clients into “right relations.” Clients are referred to social action agencies by the CCP. These agencies then further

specify what constitutes Aboriginal community and how clients can be part of it. Clients who did not know about or belong to the Aboriginal community of Toronto found this community, joined it and subsequently played a role in producing community through their own work in social action agencies or in participation in cultural events.

This is not to say that these community building resources and practices are completely accepted by every Aboriginal person in every instance. The politics of identity do affect how community will be made and practiced. There is contestation over community membership criteria, over who has the legitimate power to define these criteria and the role of culture-specific versus pan-Aboriginal discourse and practice in healing and community production. These contestations reveal how visions for re-claiming and rebuilding community are understood differently depending upon different cultural contexts and contingencies. Community identity, then, can be "...produced simultaneously in many different locales of activity, by many different agents, for many different purposes" (Marcus 1994: 46).

The major force for community capacity building and creation is, however, the social service action agencies. They are the enabling entities who create and sustain community solidarity and agency through fostering shared identity and codes of conduct based upon responsibility, respect and relationships. The organic intellectuals within these agencies are role models whose teachings and actions give clients "...the capacity to create, reproduce, change and live according to their own meaning systems, [with] the powers effectively to define themselves as opposed to being defined by others" (Bhattacharyya 1995: 61). The everyday practices of the agencies, and the organic

intellectuals within them, “make” community through “...the unfolding of discursive and social practices and through intricate networks that attempt to reconcile public-spiritedness with moral and ethical concerns” (Lustiger Thaler 1994: 21). Philosophies and practices of the CCP, and other social action agencies, foster the emergence of community through “...an affective patterning of social practices closely tied to people’s on-going desires for collective exchanges and need-satisfaction” (ibid.). This process of discursive and practical community constitution continues to empower individuals and link them into sets of relationships across the breadth of Toronto. While some academics and policy makers may be blind to this community “in the making,” I have provided sites, discourses and directions that will enable them to see Aboriginal community in Toronto.

CCP diversion is not merely as an institution for social control. Rather, it is a process that enables the re-creation of individuals and community. The CCP process is more than just healing individuals and making them socially responsible and productive individuals through *culturally appropriate sanctions*. It is more than this “simple” rehabilitative process. The CCP’s restorative and transformative process heals what Monture-Angus (1999: 11) calls the “the varying and multiple degrees of disconnection” brought on by colonial and postcolonial programs and technologies of power. The CCP, according to council member Ivy Chaske is a place where we can “reclaim our way of doing things” and “is an integral piece of the reclamation of those things that help us become balanced human beings.” Moreover, it creates community through the re-creation or re-production of individual subjectivities linked by their Aboriginality who have had

little opportunity to feel the *communitas* felt by some reserve peoples. The everyday justice practices of the CCP and Aboriginal agencies in Toronto help “make” community *for and with* Aboriginal offenders who go through the CCP process. The CCP is the productive epicenter around which “all my relations” coalesce in Toronto. The CCP, its process and its links to other Aboriginal social action agencies, represent the intersection between alternative justice practice, healing and individual and community identity in one urban Aboriginal community.

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Appendix A

PROTOCOL BETWEEN ABORIGINAL LEGAL SERVICES OF TORONTO AND THE TORONTO CROWN ATTORNEY'S OFFICE WITH REGARD TO THE COMMUNITY COUNCIL PROJECT

This protocol outlines the types of eligible offenses, selection of eligible offenders, and the role of the Ontario Crown Attorneys in this process among other elements. I discuss this protocol on pages 9, 100, and 104.

The Community Council is a project designed, developed and operated by Aboriginal Legal Services of Toronto (ALST) that will allow the Native community of Toronto to take a measure of control over the manner in which the criminal justice system deals with Native offenders. The project uses the diversion model to take the sentencing of some Native offenders out of the courts, and put it in the hands of the Community Council - made up of members of the Toronto Native community.

The rationale behind the Community Council project is that the Native community best knows how to reach native offenders. It is the expectation of ALST that this project will be more relevant and meaningful to both offenders and victims and thus will ultimately reduce the recidivism rates among Native offenders.

The concept of the Community Council is not new - it is the way justice was delivered in Native communities in Central and Eastern Canada for centuries before the arrival of Europeans to North America and also the way that disputes continue to be informally resolved in many reserve community across the country - however this is the first project. Regular meetings between ALST and the Crown Attorneys' office will be required to ensure that the project works in the best interests of all parties concerned and in the public interest.

The framework for the operation of this program is the subject of an agreement between the Ministry of the Attorney General and ALST. The following protocol will outline the manner in which ALST and the Crown Attorneys will work together to further the goals of the project.

Initially, the Community Council will deal only with property and / or victimless crimes. The decision to restrict the type of cases to be heard by the Council has been undertaken by ALST as a result of consultations with the Native community to address the concerns of both offenders and victims of violence. ALST anticipates extending the range of offenders amenable to Council decisions.

The specific protocol between ALST and the Crown Attorneys' office is as follows: 1. ALST's Adult Criminal Court Workers at Old City Hall and Collage Park will be solely responsible for identifying and selecting Native people to participate in the program. 2. Once a Court Worker identifies an individual who might participate in the

program, he or she will contact the Community Council Co-ordinator determine if the individual has previously been before the Council and whether or not the individual complied with the Council's decision. 3. a) The Court Worker will then go to the Assistant Crown Attorney responsible for the case (or if that person is not available, the Team Leader of the particular court) and ask that the case be diverted to the Council. The Assistant Crown Attorney will endeavor to make his or her decision regarding diversion as quickly as possible. Where the Assistant Crown Attorney is consenting to diversion, he or she will first obtain the approval of the Team Leader. The approvals of the Assistant Crown Attorney and the Team Leader will be evidenced by their signatures on the consent form from described in Paragraph 4. b) While the nature of the offence committed by the individual will be a factor in the determination of whether or not to divert the case by the Assistant Crown Attorney, no offences are inherently ineligible for diversion. As well, no individual, by virtue solely of his or her prior criminal record, is ineligible for diversion to the Council. c) When the Court Worker requests the Assistant Crown Attorney consider diverting an individual, the Court Worker will indicate to the Assistant Crown Attorney whether the individual in question has previously been before the Council. If the individual has been before the Council previously, the Court Worker will provide details around the Council's decision. The fact that an individual has been before the Council previously, has successfully complied with the Council's decision and has subsequently re-offended, is not, in and of itself, a bar to diversion to the Council on another occasion. 4. a) Once consent has been received from the Assistant Crown Attorney to divert a case, the individual in question will be asked if he or she wishes to participate in the Community Council Program. If the individual indicates that he or she wishes to do so, the individual will then discuss the matter with Duty Counsel who will provide the individual with independent legal advice. If Duty Counsel concludes that the individual has a defence on the merits, diversion will not proceed. If the individual does not have a defence on the merits and consents to the diversion, he or she will sign a consent form in the presence of Duty Counsel. b) The consent form will indicate that the individual admits having committed the offence (or one of the offences) with which he or her is charged and consents to participating in the Council process. The form will also indicate that the individual consents to the release of information concerning the circumstances of the offence, relevant police information and background information on the individual to the Court Worker, the Community Council Co-ordinator and the members of the Community Council. 5. a) Following the discussion with Duty Counsel, the Court Worker will inform the Assistant Crown Attorney whether the individual has consented to the diversion. b) If the individual has consented to the diversion, the Assistant Crown Attorney will supply the Court Worker with a copy of the Crown brief - the brief will include the police report of the incident and the statement(s), if any, of the victim and the offender and other relevant material. The Assistant Crown Attorney will also furnish the Court Worker with information regarding any prior convictions of the individual. c) If the individual has not consented to diversion - or if Duty Counsel has determined that diversion is not appropriate - the fact that the accused discussed diversion to the Community Council will not be raised by the Assistant Crown Attorney at trial. 6. Where the individual has consented to diversion to the Community Council and steps 1-5

(above) have been completed, the Assistant Crown Attorney will attend in Court and, on his or her own motion, either stay or withdraw the charge(s) against the individual. 7. The success of the Community Council program depends in large measure upon victim participation in the process. For this reason, after a case has been diverted, all efforts will be made by ALST to ensure that the victim takes part in the Council hearing. 8. If the individual fails to appear at the Council hearing, the Court Worker will inform the Assistant Crown Attorney who initially dealt with the case of this fact. The Assistant Crown Attorney may choose to revive the charge(s) at the time. 9. Following a completed hearing, the Court Worker will inform the Assistant Crown Attorney who initially dealt with the case of the Council's decision. If the individual does not comply with the decision of the Council, charges will not be revived except in exceptional circumstances. Individuals who do not comply with the decisions of the Council will not be eligible for diversion to the Council on other matters for a particular period of time. In any event, as noted in 3(c) above, the Assistant Crown Attorney will always be informed if an individual seeking diversion to the Council has been before the Council previously, and will also be informed of the circumstances relating to the Council's decision, including the individual's compliance or noncompliance with the decision. 10. If the Court Worker become aware of individuals charged with offences in the perimeter courts (Scarborough, North York and Etobicoke) they may deal with Assistant Crown Attorney in those courts with regard to item 1 - 5. Once it has been agreed that the case will be diverted, the matter will be sent down to either Collage Park or Old City Hall, and the stay or withdrawal will be made in that Court. 11. This protocol will be the subject of regular review by both Crown Attorney and Aboriginal Legal Services of Toronto. (c) 1999, 2000 Aboriginal Legal Services of Toronto

Appendix B

ELDERS AND TRADITIONAL TEACHERS GATHERING BIRCH ISLAND AUGUST 27-30, 1991

This retreat with Ontario Elders and traditional teachers was crucial because it was there that the CPP's founding philosophical precepts were first elucidated. This is the gathering is discussed on page 105.

KINDNESS AND RESPECT: At the heart of the Community Council must be a real, conscious feeling of kindness and respect for both the offender and the victim. When the offender and victim realize that the Council members actually care about them and respect them, then the message of the Council has a better chance of getting through.

The most important characteristic of those serving as Council members should be a sense of kindness. Those sitting on the Council also should, where possible, have a personal understanding and experience of the problems and challenges faced by those who come before them. For example, if an offender comes before the Council with a history of problems with alcohol, the Council members selected to serve on the panel would ideally have personally dealt with this problem as well. In the same vein, where an individual comes from a particular reserve, or speaks a Native language, then there should be someone from that reserve who speaks that language on the Council panel.

SENTENCING: It must always be remembered that changing a person's lifestyle can only be done by the person him/herself. While a person can be ordered to stop certain actions and to start doing other things, whether or not the person will respond is in their hands alone. It may well take time for the important messages from the Council members to reach an offender. Time in this sense could well be measured in years, not just days or months. At the same time, even if a person is not yet ready to make the changes in their life that are necessary, they may be taking steps in the right direction and those steps should be encouraged. Council decisions therefore should be realistic and should motivate the person to look at their life and re-examine it. For example, assume a man comes before the Council having broken a store window while drunk. The Council might feel that what the person needs is to address their drinking problem - why is he drinking? What can the person do to change what is ultimately a self-destructive path? However, the Council cannot simply order a person to seek treatment at this or that agency or attend certain meetings. The person has to want to change. This does not mean the Council is powerless. In such a case they may well order the person to pay the store owner for the cost of replacing the window, or to perform community service activities. At the same time, Council members would likely talk to the offender about what he could do to face his problem. The important message - that the person should examine his life and seek to change it - might not sink in for a while, but if the person has successfully made the restitution or performed the community service and then gets in trouble again, he will

likely listen more closely to the Council members the next time around. And because he has successfully completed his decision, he will be able to come back to the Council feeling that he has managed some degree of control in his life and perhaps more willing to take on other suggestions. In terms of community resources for offenders, the Council should always keep in mind that some of the most important resources are the Elders and teachers of the community, either on a person's home reserve or in Toronto itself. Professional agencies can help an offender but sometimes the most meaningful help an offender can receive comes from a person who is spending time with them because they want to, not because they are paid. This in fact is one of the strong points of the Council, the people hearing the cases will not be judges pulling down large salaries, but members of the community volunteering their time.

SELECTION OF OFFENDERS TO COME BEFORE THE COUNCIL: It is the role of the Court Workers to make the initial selection of those to go before the Council. In making these choices however, the Court Workers cannot try to guess what offenders will be more likely than others to get something positive from the program. It is not the Court Worker's job to judge who will likely benefit or not benefit from the Council. How can anyone know the answer to such a question? The Council should be open to any offender. The only restriction to offender participation in the Council should be the lack of resources in the community, either in terms of the ability to help a certain number of people at any one time, or the ability to help that particular individual.

PROCEDURE OF THE COUNCIL: A Community Council hearing will look very different from courtroom. There will be four members on each Council panel. The Council will meet wherever is necessary and appropriate, and if it can meet out doors and out of town on occasion, so much the better. The offenders and victims who attend the Council should be made to feel welcome and to know that the Council members really do care about their situation. Council hearings should be closed to the media. Council members will reach their decisions by consensus. In some cases they may discuss the case in the presence of the accused and the victim, in others they may go into another room. There may be times when they wish to consider the case for a period of time and would thus ask that the parties return a few days later for the final decision. (c) 1999, 2000 Aboriginal Legal Services of Toronto

Appendix C

Environmental indicators that circumscribe many Aboriginal peoples lives leading to crime and victimization which can be used as indicators of the negative effects of colonialism. These indicators relate to the discussion on page 57.

VII. Aboriginal Communities

Crime and incarceration rates are noticeably higher among Aboriginal people and, consequently, in areas of the country with large Aboriginal populations. This disproportionate involvement of Aboriginal people in the criminal justice system is linked to their disadvantaged social and economic status. While these conditions have been documented for the general population above, a separate category for Aboriginal communities identifies distinct data sources of information for this group.

Factor, Rationale. Data Source

Factor 1. The number (or proportion) of housing in need of repair or sub-standard (where needs are not adequately met) or are on a waiting list for housing

Rationale The incidence of housing in need of repair, sub-standard housing and wait-listed housing reflects financial deprivation within Aboriginal Communities.

Data Source Aboriginal Peoples Survey, 1991 (national, some provincial and territorial levels)

Factor 2. The number (or proportion) of Aboriginal persons reporting drug and/or alcohol abuse as a problem in their community

Rationale A high incidence of alcohol and drug abuse increases social disorganization and crime, and puts children at a higher risk of abuse and neglect.

Data Source Aboriginal Peoples Survey, 1991

Factor 3. The number (or proportion) of Aboriginal persons reporting family violence as a problem in their community

Rationale Family violence both signifies and contributes to social breakdown and delinquency.

Data Source Aboriginal Peoples Survey, 1991

Factor 4. The number (or proportion) of Aboriginal persons reporting unemployment as a problem in their community

Rationale A high incidence of unemployment results in economic need, stress, alcohol and drug abuse and increased risk of family violence. Data Source Aboriginal Peoples Survey, 1991

Factor 5. The number (or proportion) of Aboriginal persons reporting no formal schooling or less than Grade 9 as their highest level of education

Rationale Lack of formal education or inadequate levels of education make it more difficult for Aboriginal persons to participate meaningfully in the work force. Data Source Aboriginal Peoples Survey, 1991

Factor 6. Family income of Aboriginal persons and the proportion of families living below the low-income cut-offs

Rationale A link between economic deprivation and delinquency has been documented. Data Source Aboriginal Peoples Survey, 1991

Data Source for all of the above:

Canadian Centre for Justice Statistics. 1997. Criminal Justice Indicators. June p. 67-68

Appendix D

COMMUNITY COUNCIL STATISTICS

The fiscal year is based on the government's fiscal year from March to March.

	1ST QTR 2000/01		Fiscal year To Date		Previous Fiscal Year		Totals	
# of individ diverted	43		43		77		657	
total # charges	85		85		168		1258	
total # cases	47		107		107		805	
Cases Heard	30		30		125		790	
Unheard cases	15		15		16		15	
Att. first Hearing	26	86.67%	26	86.67%	99	79.20%	653	82.66%
Total hearings	40		40		163		942	
Att. All hearings	31	77.50%	31	77.50%	120	73.62%	681	72.29%
Complied	8	53.33%	8	53.33%	55	66.27%	396	68.87%
Partial	1	6.67%	1	6.67%	7	8.43%	58	10.09%
Non-complied	6	40.00%	6	40.00%	21	25.30%	121	21.04%
In-process	78		78		67		78	

COMPLIANCE TO THE CCP'S DISPOSITIONS BY CLIENTS BY YEAR

1992/93

complied	48	78.69%
partial	7	11.48%
non-complied	6	9.84%
	61	

1993/94

complied	59	67.82%
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partial	15	17.24%
non-complied	13	14.94%
	87	

1994/95

complied	38	76.00%
partial	4	8.00%
non-complied	8	16.00%
	50	

1995/96

complied	51	69.86%
partial	6	8.22%
non-complied	17	23.29%
	74	

1996/97

complied	53	72.60%
partial	5	6.85%
non-complied	15	20.55%
	73	

1997/98

complied	60	57.69%
partial	11	10.58%
non-complied	33	31.73%
	104	

1998/99

complied	58	69.05%
partial	7	8.33%
non-complied	19	22.62%
	84	

1999/00

complied	26	89.66%
partial	3	10.34%
non-complied	0	0.00%
	131	

2000/01

complied	3	75.00%
partial	0	0.00%
non-complied	1	25.00%
	4	

CLIENT DEMOGRAPHIC INFORMATION

(See footnote 37 on page 64 for a discussion on how the CCP uses case information statistics versus how they use demographic information statistics.)

	1 ST QTR 1999/00		YTD 2000/01		Fiscal year 1999/2000		Totals	
Sex								
Male	30	69.77%	30	69.77%	42	54.55%	408	62.10%
Female	13	30.23%	13	30.23%	35	45.45%	249	37.90%
Total	43	100.00%	43	100.00%	77	100.00%	657	100.00%
Education								
Primary	7	16.28%	7	16.28%	11	14.29%	91	13.85%
High School	34	79.07%	34	79.07%	59	76.62%	488	74.28%
University	3	6.98%	3	6.98%	13	16.88%	94	17.31%
Unknown	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Age								
18-25	15	34.88%	15	34.88%	21	27.27%	235	35.77%
26-30	6	13.95%	6	13.95%	18	23.38%	158	24.05%
31-40	15	34.88%	15	34.88%	34	44.16%	207	31.51%
41-50	6	13.95%	6	13.95%	9	11.69%	62	9.44%
50+	1	2.33%	1	2.33%	2	2.60%	15	2.28%
Unknown	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Status (See page 36 for a discussion of how the Indian Act defines who is a Native)								
Yes	36	83.72%	36	83.72%	58	75.32%	530	80.67%
Non-Status	4	9.30%	4	9.30%	12	15.58%	99	15.07%
Metis	0	0.00%	0	0.00%	2	2.26%	5	0.76%
Inuit	1	2.33%	1	2.33%	3	3.90%	14	2.13%
Unknown	2	4.65%	2	4.65%	2	2.60%	9	1.37%
Psychological History								
Yes	12	27.91%	12	27.91%	15	19.48%	110	16.74%
Adopted/In foster care								
Yes	24	55.81%	24	55.81%	47	61.04%	302	45.97%

Prior Arrests

None	8	18.60%	8	18.60%	27	35.06%	163	24.81%
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Prior Failure To Appear (FTA) in court

Yes	27	62.79%	27	62.79%	27	35.06%	312	47.49%
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Employed

Yes	22	51.16%	22	51.16%	23	29.79%	151	22.98%
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Community Involvement (That clients have, or do not, have.)

No	18	41.86%	18	41.86%	36	46.75%	384	58.45%
Some	20	46.51%	20	46.51%	28	36.36%	199	30.29%
Full	5	11.63%	5	11.63%	13	16.88%	68	10.35%
Unknown	0	0.00%	0	0.00%	1	1.30%	9	1.37

Social work Involvement

None	34	79.07%	34	79.07%	53	68.83%	541	82.34%
Past	1	2.33%	1	2.33%	2	2.60%	14	2.13%
Active File	8	18.60%	8	18.60%	21	27.27%	93	14.16%
Unknown	0	0.00%	0	0.00%	1	1.30%	9	1.37%

Substance Abuse (Whether clients have abused substances in their lives.)

Yes	21	48.84%	21	48.84%	38	49.39%	398	60.58%
No	22	51.16%	22	51.56%	39	49.35%	259	39.42%

Time in living in Toronto

Under 1 yr.	2	4.65%	2	4.65%	10	12.99%	82	12.48%
1-5 yrs.	8	18.60%	8	18.60%	20	25.97%	174	26.48%
6-10 yrs.	6	13.95%	6	13.95%	8	10.39%	116	17.66%
Over 10 yrs.	23	53.95%	23	53.95%	36	46.75%	262	39.88%
Unknown	6	13.95%	6	13.95%	3	3.90%	23	3.50%

CASE INFORMATION

(Please see footnote 37 on page 64 for a discussion on how the CCP uses case information statistics versus how they use demographic information statistics.)

In Custody Prior to diversion

Yes	16	34.04%	16	34.04%	22	34.04%	265	32.92%
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Diverted at (When clients were diverted from the formal system.)

1 st appear.	4	8.51%	4	8.51%	16	14.95%	151	18.76%
Remand etc.	44	93.62%	44	93.62%	90	84.11%	613	76.15%

Trial	1	2.13%	1	2.13%	4	3.74%	54	6.58%
Unknown	0	0.00%	0	0.00%	0	0.00%	0	0.00%

Jail Prior to CCP Attendance

Attend	21	72.41%	21	72.41%	46	86.79%	375	80.92%
Non-Attend	8	27.59%	8	27.59%	7	13.21%	89	19.18%
	29	100.00%	29	100.00%	53	100.00%	464	100.00%

Failure To Appear (FTA) Prior to CCP Attendance

Attend	19	70.37%	19	70.37%	40	86.96%	318	78.71%
Non-Attend	8	29.63	8	29.63%	6	13.04%	86	21.29%
	27	100.00%	27	100.00%	46	100.00%	404	100.00%

Alcohol/Drugs (Involved in the commission of the offence.)

Yes	27	57.45%	27	57.45%	67	62.62%	553	68.70%
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Victim (Types of victims involved in client's crime.)

Person	3	6.38%	3	6.38%	17	15.89%	144	17.89%
Store	6	12.77%	6	12.77%	24	22.43%	151	18.76%
Victimless	24	51.06%	24	51.06%	42	39.25%	340	42.24%
Property	16	34.04%	16	34.04%	27	25.23%	190	23.60%

Levels of Harm to Person victimized by the crime

Slight	2	66.67%	2	66.67%	16	19.12%	128	89.89%
Moderate	1	33.23%	1	33.23%	0	0.00%	11	7.64%
Hospital	0	0.00%	0	0.00%	0	0.00%	4	2.78%

Victim Consent

Yes	2	4.26%	2	4.26%	14	13.08%	132	16.40%
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Offences (Numbers and Percentages of offences most often committed by clients.)

Assaults	2	4.26%	2	4.26%	14	13.08%	110	13.66%
Prostitution	6	12.77%	6	12.77%	8	7.48%	116	14.41%
B&E/Robbery	6	12.77%	6	12.77%	8	7.78%	63	7.83%
Weapons	1	2.13%	1	2.13%	5	4.67%	32	3.98%
Pub. Mischief	2	4.26%	2	4.26%	4	3.74%	18	2.24%
Fraud etc.	4	8.51%	4	8.51%	8	7.48%	58	7.20%
Mischief	9	19.15%	9	19.15%	10	9.35%	123	15.28%
Obst.Justice	2	4.26%	2	4.26%	7	6.54%	52	6.46%
Poss. Prop.	9	19.15%	9	19.15%	23	21.50%	105	13.04%
Theft etc.	12	25.53%	12	25.53%	29	27.10%	209	25.96%
Threats	0	0.00%	0	0.00%	5	4.67%	19	2.36%
FTA/FTC	16	34.04%	16	34.04%	29	27.10%	247	30.68%
Narcotics	10	21.28%	10	21.28%	11	10.28%	55	6.83%

Other	6	12.77%	6	12.77%	6	5.61%	53	6.58%
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Disposition Compliance (Numbers of clients who complete, do not complete or only partially complete the council decisions.)

Completed	8	53.33%	8	53.33%	55	69.92%	396	68.87%
Partial	1	6.67%	1	6.67%	3	3.80%	34	10.56%
Non-Comply	6	40.00%	6	40.00%	21	26.58%	121	21.04%
Total	15	100.00%	15	100.00%	79	100.00%	575	100.00%

Jail Prior Compliance

Comply	2	28.57%	2	28.57%	33	71.74%	216	67.87%
Partial	1	14.29%	1	14.29%	2	4.35%	34	10.56%
Non-Comply	4	57.14%	4	57.14%	11	23.91%	72	22.36%
Total	7	100.00%	7	100.00%	46	100.00%	322	100.00%

Failure to Comply (When clients do, do not or partially complete Council decisions.)

Comply	2	28.57%	2	28.57%	28	75.68%	175	65.06%
Partial	1	14.29%	1	14.29%	2	5.41%	28	10.41%
Non-Comply	4	57.14%	4	57.14%	7	18.92%	66	24.54%
Total	7	100.00%	7	100.00%	37	100.00%	269	100.00%

Dispositions (Types of Council decisions given and how often they are given.)

Com. Service	15	31.91%	15	31.91%	35	32.71%	261	32.42%
Restitution	2	4.26%	2	4.26%	1	0.93%	55	6.83%
Nat. Agency	15	31.91%	15	31.91%	52	48.60%	303	37.64%
Other Agen.	3	6.38%	3	6.38%	19	17.76%	96	11.93%
Trad. Coun.	6	12.77%	6	12.77%	20	18.69%	161	20.00%
Self-Help	5	10.64%	5	10.64%	10	9.35%	111	13.79%
Employed	11	23.40%	11	23.40%	17	15.98%	172	21.37%
Contact ALS	22	46.81%	22	46.81%	50	46.73%	306	38.01%

Compliance By Disposition

Community Service

Completed	3	60.00%	3	60.00%	15	57.69%	152	70.05%
Non-Comply	2	40.00%	2	40.00%	11	42.31%	65	29.95%
Total	5	100.00%	5	100.00%	26	100.00%	217	100.00%

Restitution

Completed	-1	100.00%	-1	100.00%	3	60.00%	31	68.89%
Non-Comply	0	0.00%	0	0.00%	2	40.00%	14	31.11%
Total	-1	100.00%	-1	100.00%	5	100.00%	45	100.00%

Native Agency (Compliance of clients referred to Native agencies.)

Completed	4	66.67%	4	66.67%	18	50.00%	174	68.24%
Non-Comply	2	33.33%	2	33.33%	18	50.00%	81	31.76%
Total	6	100.00%	6	100.00%	36	100.00%	255	100.00%

Other Agencies (Compliance of clients referred to other Toronto agencies.)

Completed	0	0.00%	0	0.00%	8	88.89%	52	22.39%
Non-Comply	1	100.00%	1	100.00%	1	11.11%	15	22.39%
Total	1	100.00%	1	100.00%	9	100.00%	67	100.00%

Traditional Counseling

Completed	-1	100.00%	-1	100.00%	9	47.37%	89	69.53%
Non-Comply	0	0.00%	0	0.00%	10	52.63%	39	30.47%
Total	-1	100.00%	-1	100.00%	19	100.00%	128	100.00%

Self-Help

Completed	3	60.00%	3	60.00%	7	87.50%	75	71.43%
Non-Comply	2	40.00%	2	40.00%	1	12.50%	30	28.57%
Total	5	100.00%	5	100.00%	8	100.00%	105	100.00%

Employ/ed

Completed	0	ERR	0	ERR	17	89.47%	103	76.30%
Non-Comply	0	ERR	0	ERR	2	10.53%	32	23.70%
Total	0	ERR	0	ERR	19	100.00%	135	100.00%

Contact ALST (Clients must contact the coordinator of the CCP.)

Completed	8	80.00%	8	80.00%	25	69.44%	182	77.12%
Non-Comply	2	20.00%	2	20.00%	11	30.56%	54	22.88%
Total	10	100.00%	10	100.00%	36	100.00%	236	100.00%

Appendix E

INTERVIEW QUESTIONS ADMINISTERED TO CCP CONSULTANTS.

Code: Refers to the question numbers that I used to organize my interview questions.

Contents: Refers to the actual questions that I asked consultants.

CODE TABLE OF CONTENTS

10 QUESTIONS ABOUT CITY LIFE.

- 101 Please tell me about where you live in the city
- 102 What do you think about where you live?
- 103 Tell me about how people get along there.
- 104 Tell me about the community you live in.
- 105 Tell me whether people help each other out or not.

11 PLEASE TELL ME ABOUT WHAT TYPE OF PLACE YOU LIVE IN.

- 111 Own house?
- 112 Rent?
- 113 Street: If they live on the street ask these questions:
- 114 Tell me about when you first decided to move to the street.
- 115 Tell me about what street life is like day-to day.
- 116 What's an average day like for you?
- 117 Please tell me what do you do for a living.
- 118 How do you feel about life in the city?
- 119 What do you say about any other cities you've been in.

12. PRE-DIVERSION INVOLVEMENT WITH JUSTICE SYSTEM

- 120 Have you ever had trouble with the police? Tell me about that.
- 121 If you have gone to court, tell me about what happened.
- 121a What do you say about your lawyer
- 121b Tell me about the attitudes of the court toward you.
- 121c What do you have to say about the sentence you received?
- 121d Could anything have been handled differently?
- 121e Tell me how you feel generally about the whole experience
- 122 Please tell me what you think about the formal justice system

DIVERSION QUESTIONS:

CRIME CAUSATION

- 13: Tell me about the offense you committed
- 131 Was it a property offense?
- 132 An offense against a person(s)?
- 133 If there was a victim, please tell me about him/her/them.
- 134 Did you know the victim?
- 135 Why did you pick this particular person?
- 136 Was violence involved and what sort was it?
- 137 Why did you do it? What were you thinking at the time?
- 137 Do you have fetal alcohol syndrome? If so, do you think that had something to do with why you committed the offense?

CHOICE AND ACCESS

- 14 Tell me about why you chose diversion
- 141 Was your choice of the mainstream system versus diversion made clear to you?
- 142 Did you feel you had a good chance of getting off in front of a standard court?
- 143 Did you go into diversion even though you were innocent in order to avoid a court appearance and the risks associated with it?
- 144 Did you feel that you could get off easier if you chose diversion? If so did that turn out to be true?
- 145 Was there any pressure on you to choose diversion? Tell me about it.
- 146 Were you happy with your choice after all was said and done?

DIVERSION PROCESS

- 15 Please describe the community council meeting that you went through step-by step.
- 151 Tell me how you felt as you went through it.
Intimidated? Afraid? Comfortable? Angry? Relieved?
- 152 What sort of questions did the Council ask you? E.g.,
Residential schools?, Education?, Substance abuse history?, Personal interests or dreams?, What you think you need to do to heal yourself?
(Looking for how the CMs opened and)
- 153 How did they make you feel? What did they make you think about?
- 154 What do you say about the council members at your hearing.
 - 154a Tell me what you thought was good about the council members.
 - a. Their in-common personal experiences with substance abuse, street or prison life?
 - b. The fact that some were grandmothers and had a lot of experience to give you?
 - c. The fact that some were 2 spirited?
 - d. How they respected you?
 - e. How they listened to you?
 - f. How they were there to help you heal yourself?
 - g. Their knowledge of the different places available to help you in Toronto?
 - h. How they did not judge you like the formal system?

i. Their use, or non-use, of traditional Aboriginal methods, medicines or teachings?

j. The kind of decision they worked out for you?

Was it relevant to you?

-Was it possible for you to complete it? (It didn't set you up for failure?)

154b What was bad about them?

155 Did you know any of them and what they did outside of the hearing?

156 Were you lectured by the council members?

a. What sorts of things did they say to you?

a. Was anything they said different from anything said to you by mainstream judges? If so, how.

a. What made the most sense to you in what they said to you?

157 Please describe how you felt right after the council hearing.

a. Did you feel better?

b. Did you get useful information from the council? (Housing, personal cleanliness? etc.)

c. Did you feel that you had a strategy to heal yourself with?

d. Did you feel like you had discovered something about your Aboriginal identity? Your sexual identity?

e. Did you feel that you were part of the Aboriginal community of Toronto? Gave you or restored balance with yourself and/or your community?

f. Did you feel confident about going back to the outside world? Stronger ability to think for yourself and less prone to peer pressure to commit offenses?

g. Did you still have a lot of emotions that were still on the surface or that hadn't been dealt with?

(Looking for how the CMs closed the client)

h. Did you feel like you wanted to go out and commit another offense or get drunk or stoned?

i. (If a prostitute): Did you go out and continue to work after the hearing? If so, why?

j. It instilled a sense of respect, responsibility and accountability for yourself and others?

k. Did you feel suicidal? If so, why?

158 If there was a **victim**, and s/he was present, tell me what happened with that victim in the hearing.

159 Tell me what you thought about the victim being there.

THE DISPOSITION

16 Please tell me about the decision you received.

What conditions did the council give you? Apology, restitution, therapy, community service, location. restriction., traditional healing, Elders?

161 How do you feel about the disposition that you got?

a. Fair or unfair?

b. Was it something that was actually possible for you to do?

- c. Was it gender neutral or did it discriminate against your gender in some way?
- d. Was it better or worse than a sentence you might have received, or did receive in a formal court? In what ways?
- e. Did it take into account both your needs and the victim's wishes, if there was a victim?

162 Tell me about how you have handled the disposition

- a. Have you started it? If so, how hard has it been to start it?
- b. Have you completed your decision completely or partially? If only partially, why?

163 Tell me about the day-to-day process of dealing with it.

- a. What are the hardest and easiest things about doing it?

164 Did you have to have a re-hearing to get you to do the decision or to change parts of it that you could not do or felt uncomfortable with? What was it changed to?

165 Has Patti changed some of the conditions of the decision that the council gave you? If so why?

166 How easy has it been to gain access to any programs that you were told to attend as part of your decision?

167 Have the agencies that were supposed to help you in completing your decision really helped you or have they just gone through the motions?

168 Do you think this decision is better/easier/harder than what you could have gotten if you had stayed in the formal system?

17 POST-HEARING SUPERVISION:

171 Please tell me about the post-hearing contact you had with CCP.

Indicators: Intensive contact? Medium? Little?

172 How has CCP/ALST monitored your compliance to the disposition?

- a. How much contact did you have with Patti?
- b. Has Patti been hard on you about completing your decision?
- c. How has Patti helped you with it?
- d. Re-hearing?

173 Do you think you need, or needed, more or less post-hearing supervision and why?

174 Have you ever been on probation?

175 Tell me how post-hearing supervision that you received compares with standard probation?

176 Please tell me what is/was good and/or bad about your post-hearing supervision

IF A WOMAN CLIENT THEN ASK THESE QUESTIONS:

528 Tell me about how you as a woman were treated in diversion

528a Tell me about how the male council members treated you.

Indicators: Good? in what ways?

-Bad? In what ways?

-Differently because you are a women? In what ways?

528b How did women council members treat you? (Look for same indicators) Did they treat you differently than the male counselors? In what ways?

528b Should women be treated the same or not? In what ways? Why?

528c Tell me about how much control you had over what happened in the hearing

528d Were you ignored at any time?

ASK ALL CLIENTS THESE QUESTIONS:

18 OVERALL IMPRESSIONS AND CLIENT OUTCOMES

181 Do you think you have been fairly treated throughout this process?

182 Has your life changed in any way since program involvement?

a. Found housing?

b. Better personal hygiene?

c. Found employment?

d. Got clean and sober?

e. Got Status card?

f. Less violent in all aspects of your life?

g. Increased awareness of Aboriginal culture and personal Aboriginal identity?

h. More connection with Aboriginal community of Toronto? More active participation and, if so, how?

i. Stopped prostitution?

j. Became more comfortable and open about your sexual identity?

k. Less involvement with police?

l. No further need to commit offenses of any kind?

183 Tell me about any changes in attitude, beliefs or ideas since completing the program

Indicators: do you make plans for the future

Interest and/or participation in Aboriginal traditions/culture

Interest in Native spirituality

184 If your life has **not** changed for the better since your involvement with CCP, please tell me in what ways.

a. Why you think that is so.

185 What do think about the program overall?

Variable: Overall perceptions of program effects

Indicators: Program helped, how? Didn't help: How and why?

186 Do you think that your experiences with crime and diversion give you the resources to help others?

187 Would you, if asked, act as a facilitator on a diversion committee should you be asked in the future?

188 Are there any things that you would change about this process? What are they?

19 CLIENT IMPRESSIONS OF COMMUNITY ISSUES:

191 Please describe who, or what you see as making up the Aboriginal community of Toronto.

a. Who would you include in it and who would you exclude?

a. Tell me about the role the social help agencies and workers within them.

192 Who would you say are the Aboriginal community leaders in Toronto?

193 How representative of the urban Aboriginal community of Toronto is CCP?

194 Is there a broad-based acceptance of CCP? (legitimacy issues)

195 Does CCP give the Aboriginal community a sense of "ownership" of justice

196 Does the urban community have continuing access and input into how CCP operates?

197 Describe any community activities that you take part in now

Variable: Integration into Aboriginal community

198 Tell me how the fact that there are so many different groups of Aboriginal peoples in Toronto (Inuit, Dene, Mic Mac, Anishnawbe etc.) effects whatever the Aboriginal community of Toronto is?

199 Tell me if you think that CCP is the only form of community justice that can work in cities. If there are other forms what are they?

20 CLIENT SELF-GOVERNMENT QUESTIONS:

201 Please tell me your thoughts on whether Aboriginal peoples should have control over justice for Aboriginal peoples?

202 Capacity for it?

203 Where might self-government begin?

204 What sort of alternatives would be used?

205 Who would run it?

206 Who should pay for it?

CRIME CAUSATION (CONTINUED)

22 Why did you do the crime? What were you thinking at the time?

221 Substance abuse variables in crime causation

-If committed crimes under the influence of alcohol/drugs then:

222 Please tell me about your drinking/drugging?

Economic variables in crime causation

223 Tell about what you need to live.

Systemic Discrimination variables in crime causation

224 Tell me about how non-Aboriginal people treat you.

225 Has this caused you to act out against non-Aboriginals and/or their property?

226 Tell me how you were treated if you have been arrested, gone to court and/or to jail.

Psychological/substance abuse variables in crime causation

227 Tell me about how you feel about yourself?

228 Tell me about how you deal with this. (How do you cope?)

Cultural variables in crime causation

229 Please tell me what you know or think about your culture

229a If little knowledge of it then:

- Tell me if this effects what you do in everyday life.

23 LAST QUESTION

230 We've covered a lot of ground. Is there anything else you'd like to tell me?

45 CCP COUNCIL MEMBER INTERVIEW SCHEDULE

451 Tell me about what makes a good council member.

451a What qualities do you think makes a good council member?

452 What skills do you specifically bring to CCP?

452a If they talk about traditional healing skills, then ask the Tradition questions (see below)

452b Knowledge of how to access help in Toronto in both Aboriginal and non-Aboriginal domains?

452c Reserve connections?

453 Tell me about the training you have to do this job.

453a Do you feel that you have enough training to do the job that you do? If not, why not?

453b What would you like to see be done to better train council members?

454 DESCRIBE WHAT YOU DO IN A DIVERSION HEARING.

454 Tell me about the process used to arrive at a disposition

454a What issues are taken into consideration?

454b Is there a mix of traditional Aboriginal solutions with non-Aboriginal solutions?

454c How does the council arrange the cooperation of other agencies?

456 Tell me how you arrive at consensus in dispositions

456a Tell me what happens when there are problems achieving it.

456b What sorts of compromises might be used to achieve consensus?

457 Tell me about your role in post-disposition supervision?

457a Are there any particular problems for you with this part of the diversion process?

457b How could they be rectified?

458 How successful do you think that you personally have been in helping the clients to heal themselves?

458a Are there any particular success stories you would like to tell me about?

458b Why do you think you were so successful in these cases?

458c Are there any diversions that did not go as well?

What happened?

459 Please tell me about the pros and cons of the work you do on the Council

459a Greatest challenges? Rewards?

459b Time consuming?

459c Emotionally draining?

459d Have you had to quit before due to burn-out?

459e How did this burn-out feel and what did you do to get over it?

459f how do you deal with these pressures now that you are back on the council?

46 COMMUNITY ISSUES:

- 461 Who would you say are the Aboriginal community leaders in Toronto?
- 462 How representative of the urban Aboriginal community of Toronto is the CCP?
- 463 Is there a broad-based acceptance of CCP? (legitimacy issues)
- 464 Does the urban community have continuing access and input into how the CCP operates? If so, How? If not, why not?

47 TRADITION QUESTIONS FOR COUNCIL MEMBERS

- 471 Please tell me what traditional law/justice means to you.
- 472 Please tell me what healing means to you.
- 473 Tell me what you know about how people dealt with troubles in the past.
 - 473a Did they punish people?
 - 473b What forms did punishment take?
 - 473c How often was it used?
 - 473d Was it only used for serious crimes or for less serious ones too?
 - 473e Who was responsible for this? Elders?
 - 473f Was healing used to deal with trouble?
 - 473g What forms did it take?
 - 473h When and how often was it used?
 - 473i Was shaming used in healing?
- 474 Where did you get this understanding of tradition?
 - 474a Reserve?
 - 474b Elders?
 - 474c Pan-Aboriginal writing?
 - 474d Teachers from different Aboriginal groups?
 - 474e Friends?
 - 474f Prison?
 - 474g If the tradition you are talking about does not come specifically from your Aboriginal group, tell me what you think about that that?
- 475 Which traditions seem more real or authentic to you and why?
 - 275a Should punishment be used today, and if so, how and when
 - 275b Should healing be used today, and if so, how and when?
- 476 Tell me about changes in traditions.
- 477 Do you think that Aboriginal traditions can be used to base new justice initiatives upon? If not, why?

48 SELF-GOVERNMENT QUESTIONS:

- 481 Please tell me your thoughts on whether Aboriginal peoples should have control over justice for Aboriginal peoples?
 - 481a Capacity for it?
 - 481b How do you think this might work?
 - 481c What sort of alternatives would be used?
 - 481d Who would run it?

481e Who should pay for it?

49 We've covered a lot of ground. Is there anything else you'd like to tell me?