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This report is made possible through the Department of Public Safety Canada, in cooperation with the Black Cultural Centre for Nova Scotia and the Micmac Native Friendship Centre

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COMMON GROUND - AN  
EXAMINATION OF SIMILARITIES  
BETWEEN BLACK &  
ABORIGINAL COMMUNITIES  
APC 29 CA (2009)

Aboriginal Peoples Collection

Single copies of this report may be obtained by writing to:

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Cat. No.: PS4-75/2009E  
ISBN No.: 978-1-100-13164-1





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# INTRODUCTION

## **Red And Black: Strengthening The Circle**

The title for this introduction refers to the symbolic representation of the Circle as understood by many Aboriginal people. The Circle has no beginning or end. All points in the Circle are equal and it is the symbol of perfect balance. Within the Circle rest four equally placed colours: black, red, white and yellow which we are taught represent the four races of Mankind. When placed in the Circle, all are equal in value and importance. By bringing together Black and Aboriginal people in the Circle, we acknowledge our similarities and equality.

In June 1989, I attended the Canadian Criminal Justice Association Congress in Halifax, Nova Scotia and decided to sit in on a workshop sponsored by the Black community. As the four speakers made their presentation, I was struck by the similarities between the experiences and issues faced by their community and those of Aboriginal People. At one point I closed my eyes and the only substantial differences between our two peoples were the accents of the presenters. Over the following few years, my experience in that workshop caused me to think that perhaps those similarities needed to be explored further.

One reason for wanting to see whether those apparent similarities could develop into something more substantial was expressed by one Aboriginal participant at the Gathering of both communities. He stated,

“As I said at the beginning, a lot of the programs that we develop as Aboriginal people become ‘ghettoised’ and I use that term with an understanding of what that means. We do something and people put walls around it and say that’s for the Indian people over there. That’s theirs. It’s not really part of the system. It’s just for them over there. And so as long as we stay within our own communities they’ll continue to be those walls out there. What I’ve seen in the last two days is that there are ways of breaking down those walls and sharing what we’ve done with other communities. Learning from other communities could help us in doing our work for our people better. That’s the part of the conversation that will have to continue.”

While there are differences between Black and Aboriginal communities in terms of history and relationships with the Federal Government, I now believe that there are several similarities which point to areas where sharing of experiences and strategies around the criminal justice and corrections systems would be valuable. Primary among those similarities was the isolation of the two communities from mainstream Canadian society. For Aboriginal people in Canada it was the reserve system and for Black people in Nova Scotia it was *Africville*, North Preston and other small communities in the Halifax area.

Through conversations with Dr. Henry Bishop, Curator of the Black Cultural Centre, and from reading material on display at the Centre, I was able to learn much of the history of Black people in Nova Scotia. They formed, at one time, a "slave society" although the lack of agricultural potential in the uneven and rocky terrain of Nova Scotia prevented slavery from developing on a plantation scale.

Most of the Black people migrating to Nova Scotia after the American Revolution were emancipated slaves, for the most part having been freed by the British as an inducement to leave their revolutionary masters. Freed Blacks were promised equal treatment with their White peers, but promises were not fulfilled. In order to survive, a number of Blacks were forced to sell themselves, or their children, into slavery or long-term indenture. In 1792 an agent of the Sierra Leone Company recruited blacks in the province to migrate to Africa. Additional migrations took place, in 1800 to Sierra Leone and in 1821 to Trinidad.

After the departure of loyalists to Sierra Leone a small group of Black families settled temporarily on the lands vacated by the black loyalists in the Preston, Nova Scotia area. In 1796, some 550 Maroons, deported from Jamaica, were settled on the lands vacated by the black Loyalists at Preston. The Maroons, with their different customs, were well-treated officially, but encountered local prejudice and discrimination. In 1800 virtually all the Maroons (at most, a handful may have been assimilated into the Black Nova Scotian population) were shipped to Sierra Leone where, ironically enough, they helped to suppress a rebellion by the former Black loyalists.

Following the War of 1812, Nova Scotia became home to Black refugees. Several hundred Black families in the United States had sought protection with the British after the commander of the British fleet issued a proclamation which said that all British subjects who came to a British ship or a British military post would be granted free transportation to another British colony in North America or the West Indies. There they were to be treated as free settlers. In this way between 2,000 and 3,000 Blacks streamed into the province by 1815. These refugees appear to have received better official reception, food, clothing, and medicine than had their loyalist predecessors, although the land received was similarly rocky and barren. Nearly all the refugee Blacks were settled within a short distance of Halifax, principally in the communities of Preston and Hammond Plains.

*Africville* was a small unincorporated community located on the southern shore of Bedford Basin. The original *Africville* settlers, comprised approximately 400 people from eight families, were former residents of the refugee settlements at Preston and Hammond Plains who moved to *Africville* in order to escape the economic hardships encountered on rocky and barren land. The refugee settlements were made up of the many Blacks that had come to Nova Scotia over several centuries.

In the 1960s Halifax began post-war renewal projects to clean up the city and wanted to clear out the area where *Africville* stood. The government officials offered the residents of *Africville* better homes, jobs, and economic opportunities in turn for tearing down their homes. The residents resisted but the city proceeded anyway and destroyed the community. Many citizens were shipped off to slum housing, their personal belongings transported to their new locations in city garbage trucks, and they were given less than \$500 compensation. Not only were houses destroyed, but livelihoods and churches were all destroyed as well. As one Black participant said at the Gathering of both communities,

“I want to comment on something that has already been said because history has a way of repeating itself if we don’t learn the lessons from the past. One of the Aboriginal participants talked about going upstairs and viewing the community of *Africville* room and recalling what Pa Carvery had said. The problem with *Africville* was that the young people in the community were not allowed to say anything in regards to the relocation. So they lost that

voice. It was easy for the outside community, the City of Halifax, to influence us with a suitcase full of dollar bills. Most of the Elders that were there didn't realize the value of their land, their homes or what they were getting."

.....

During the history of *Africville* the Black community maintained or evolved many traits common with those Aboriginal communities. Both cultures were, and are, based on relationships. The family provided the basis for cultural and social stability. Spirituality, through the strong influence of the Church, acted as a bonding agent within the community. The role of women as providers and teachers was honoured and strong leadership moved *Africville* into a cohesive community. The loss of *Africville*, which resulted in the loss of a cohesive cultural and spiritual identity, is similar to the problems faced by Aboriginal nations.

Those common problems have manifested themselves in the fact that both Black Canadians in Nova Scotia and Aboriginal people across Canada are over-represented in Canada's criminal justice and correctional systems. According to the 2006 Census, Blacks in Nova Scotia make up approximately 2% of the province's population but, in 2007, represented 6% of those incarcerated in federal institutions. Aboriginal people comprise approximately 3% of Canada's population but represented about 18% of all federal offenders.

The similarity between the over-representation of both Black and Aboriginal people in the justice system, together with those common issues faced by both communities, opened an opportunity for Aboriginal Corrections Policy to explore those issues and see whether there were opportunities for mutual support and action.

After several discussions with representatives of the Black Cultural Centre and the Micmac Native Friendship Centre, a two-day gathering of Black and Aboriginal community members from Nova Scotia took place in February 2006. The purpose of this Gathering was to explore similarities and differences in approaches to crime prevention, corrections and community development with the goal of sharing information and

possible ways in which both communities could work together for the betterment of their communities.

Co-sponsored by the Micmac Friendship Centre and the Black Cultural Centre, the Gathering brought together 26 individuals into the Circle. In addition to representatives from both communities, invited participants also included representatives from the National Parole Board, the National Association of Friendship Centres, Hollow Water First Nation in Manitoba and Public Safety Canada. The Gathering was held at the Black Cultural Centre located in Dartmouth, Nova Scotia.

The agenda for the two days was agreed to in advance and a series of questions were to be posed to the participants. They were:

1. What is your current relationship with the various parts of the criminal justice system – the police, courts, and corrections?
2. Ten years from now, how would you like to see your community be able to support victims and offenders? Who would be the key players within your community's social network, such as Elders, the Church and women that should work to improve the community's response? What opportunities and obstacles exist for moving forward as a community?
3. Each community has expressed the need to work with youth and, in particular, those youth who are at risk of coming into conflict with the law. What can your community do to provide the youth with meaningful options to crime and what else could be done?
4. From what you have heard in the circle, what have you learned from each other and what are there opportunities to work together in the future?

While these questions were to be raised to facilitate the conversation, the Circle took on a life of its own. Conversations were wide ranging in nature and reflected the priorities and issues of both communities and on the situations that face them. The first part of this report is a summary of those discussions. This portion includes more direct quotes from participants than would normally be expected in a report of this nature. The

words of the participants are included, however, because they express the issues, hopes and aspirations of the participants more faithfully than could otherwise be paraphrased.

The second is a report prepared by Michelle Mann which examines whether Aboriginal sentencing principles pursuant to subsection 718.2(e) of the *Criminal Code* are applicable to other disadvantaged groups and whether the interconnecting factors of race, gender and poverty are relevant as mitigating factors in the sentencing process outside of the Aboriginal context. The third is a paper entitled *A Collaboration Between Community Holistic Circle Healing and The Harlem Restorative Justice Project: Initial Insights* prepared by Susan Marcus, Director of the Harlem Restorative Justice Project. The Harlem project shares many of the same principles as Aboriginal healing and restorative justice processes in Canada and is an example of how the teachings of one people can support the work of another.

Ed Buller

Director, Aboriginal Corrections Policy

Public Safety Canada

## **PART ONE: The Gathering**

### **Host Organizations**

The Society for the Protection and Preservation of Black Culture in Nova Scotia (better known as the Black Cultural Society) was incorporated as a charitable organization in 1977. The Society consists of a 26 member Board of Directors, representing various Black communities in Nova Scotia and one representative of the African United Baptist Association.

The genesis of the Black Cultural Centre lay in a 1972 proposal by Reverend Dr. William Pearly Oliver for the creation of a Cultural Educational Centre that would meet the needs and aspirations of the Black Communities of Nova Scotia. The Centre was officially opened on September 17, 1983, and provides a range of programs and activities, such as cultural portrayals in the form of music, plays, concerts, as well as educational activities in the form of workshops, lectures and guided tours. The Black Cultural Centre extends programs beyond its doors to the broader community of Nova Scotia by way of a variety of cultural events across Nova Scotia. The Centre includes a museum section, an auditorium, RCMP Community Office, and a reference library. The Centre also houses permanent and temporary exhibitions that highlight the rich history of African heritage in Nova Scotia. Membership of the Black Cultural Society is opened to all people.

The Micmac Native Friendship Centre opened its doors on September 17, 1973, and the Society was incorporated June 2, 1975 and is one of one hundred and nineteen Friendship Centres across Canada. The Micmac Native Friendship Society is a non-profit, board-governed organization that currently operates nine core programs.

The Centre provides structured, social service and cultural programming for urban Aboriginal people and is a gathering point for a variety of community functions and events. The Centre has an open-door policy for all people regardless of their background or cultural affiliation. As well, the Centre serves as an instrument for the reduction of

poverty and crime, and the promotion of personal and community health and well-being. This philosophy is embedded in all programming and is based in the firm belief that by providing people with skills, a venue for spiritual and fellowship activities, health, education and a connection to the labour market, the Centre contributes to a safer, healthier and more vibrant community.

### **Getting To Know Each Other**

“I believe the similarities between the Aboriginal and African-Canadian communities exist and those similarities may lead to ways in which our respective communities can develop strategies to reduce the number of our members from entering the youth and criminal justice systems. Both of our communities are over-represented in those systems. We share, however, several common building blocks that can address that problem. We both have a strong and underlying spirituality that guides our lives. We both rely on our spiritual leaders for leadership. There is the inherent strength of our women and family relationships are the bond that keeps our communities alive. I believe we have much to share and learn from each other.”  
(Aboriginal participant)

When strangers meet for the first time, there is always some hesitancy which eventually disappears once the two learn more about each other and find common ground for a conversation and relationship. It is no different when two very different groups of people come together. That initial contact can be strained, with both groups asking themselves “Why am I here?”, “What do we have in common?” and “How do I behave with this other person?” This Gathering, the first time the Black and Aboriginal communities met together, was no different.

“It’s the first time that I’ve been here. I drove by a couple of times, looking, saying ‘I wonder can I just drop in? I don’t know these people.’ Many people have that same feeling when they go by the Friendship Centre in Halifax. Maybe they drive by and say, ‘Am I allowed in there, because I’m not Aboriginal? I don’t know the protocol.’ I was looking around as I came in. I was very, very impressed with the Black Cultural Centre because I was looking and I was thinking about the Friendship Centre, our Micmac Friendship Centre, in Halifax. I see a lot of artifacts. I’m an archeologist by the way. I was looking at all this stuff and all this stuff pertaining to the past of Black people coming from Africa.” (Aboriginal participant)

“I’m not really sure how to address the Black people, whether they want to be called African Canadians or Black people or - I don’t know. I know myself because I’m a Mi’Kmaq person.” (Aboriginal participant)

To open the Gathering, and to begin the learning process, both communities shared prayers and ceremony as a means of bringing all the participants towards a common mind and spirit. Pastor Brian Johnston, President of the Black Cultural Society and a Halifax Regional Municipality Police Officer gave the official welcome on behalf of the Society and offered a prayer of blessing to the Gathering. Gordon King, Executive Director, Micmac Native Friendship Centre introduced the sweetgrass ceremony which was lead by Bert Milberg. All participants took part in the ceremony after which there was an African drumming presentation performed by Dr. Henry Bishop, Curator of the Black Cultural Centre. Finally, welcome and honour songs were performed by the Eastern Eagle Singers.

The Gathering was held in a circle which enabled all to participate and to speak openly and in turn. In place of using an Eagle feather, each speaker was passed a carved African talking stick. The blending of the two cultural symbols was an important step in the process of understanding each other. From the opening ceremony and throughout the Gathering, participants strove to find further areas of common ground. As a number of participants noted,

“When I looked at the conference package there is the logo of the Black Cultural Centre on the front. It is the picture of the world and Africa, the birthplace of civilization, and a Black family moving across the globe. On the other side is a logo of the dream catcher, an Aboriginal insignia. Both cultures are represented. We’re all dreamers, but I think at this particular time, it’s time for us to look at our dreams and it’s a time for us to start some action. In the past I have visited Winnipeg and I was taken through an Aboriginal school. I met the principal and the teachers and there were dream catchers in every classroom. So I learned a lot from that and I’m looking at the commonalities in our two cultures. We’re both family oriented and sometimes when we look at the justice system, the justice system really doesn’t serve us both that well.” (Black participant)

“Just a couple of things. We’ve talked about plans and working together and similarities and there are a lot of similarities between our two communities.

We have shared challenges and I use the word “challenges” as opposed to “problems” within our communities. These challenges are things that we need to put solutions.” (Black participant)

“I remember I arrived in Halifax in December of ‘99 and a couple of months after the New Year there was a celebration of Black culture. It was called the “Jubilee” and I attended that. There are three things that I remember. First of all was the choir. I love the culture that celebrates spirituality through song and through dance. I love it. Much like what we do. And I really enjoyed the choir. There was another performance I remember too. It was a couple of local actors doing a little excerpt out of a play about Africville, and the way they delivered it spirituality really moved me. It was like it was actually happening. It was something along of the lines of they were being told that they were going to have to leave their community and the play was about their reactions. It was just ‘wow’. It was the first time I’d heard of that. I remember that as a child we were asked to leave our area and then move to the city. I remember my mother having all kinds of issues because her family was there and we were leaving. And I remembered all of that.” (Aboriginal participant)

The participants recognized that it was not only important to know each other, but to find ways in which they could learn from each other. Both Black and Aboriginal participants were aware that each community had developed programs and services independently from the other and that by sharing their experiences, they could find ways to move forward, both individually and collectively.

“In the Black community, as well as in the Aboriginal community, we have to get along with each other. We too have to get along with other communities that we live in, whether they are White people or whatever. Whoever is in the community. I would like to see a society that we can interact, one with the other, because we can learn from each other as well as learning from ourselves. I think that we have stalled long enough. As an individual, I am unprepared to wait another ten years to see something happening.” (Black participant)

“Just talking to people before the Gathering started, I got to learn that we are both looking for answers to the issues we face in our communities. I was amazed that we share many of the same issues and that we are both using the strengths in our communities to resolve them. Maybe we can find ways to put our minds together and take what is best from both”. (Aboriginal participant)

“For example, we have the East Preston Daycare Centre which has been up and running forever. It’s a really great model for community daycare. We also have the Aboriginal Head Start programs. It would be interesting to compare those two. What are the benefits? What are some of things that we do? What are some of the things that you do? How can we improve each program? And we look at our addiction services and say, ‘Hey, you know, we can have an addiction treatment centre in urban Halifax that has a Black addictions counsellor and an Aboriginal addictions counsellor working together.’ They could share office space and sharing expenses and meeting our communities together.” (Black participant)

“When I look at what I learned from a Chief of the Bear River Reserve a while back when I was doing Adult Education he came in and talked to us and mentioned the four things for balance in life. He talked about a mental capacity and the physical capacity, creative capacity and a spiritual capacity. I just think those are four things that we need – like the four legs of a table to keep us balanced. I think that’s the most important message I get each time I get each time I come to something like this and what I’ve learned through my years and I just want to suggest that that might be a strategy focus that we use if we’re looking at trying to work together.” (Black participant)

“Just talking to people before the Gathering started, I got to learn that we were all looking for answers to the issues we face in our communities. I was amazed that we share many of the same concerns and that we are both using the strengths in our communities to resolve them. Maybe we can find ways to put our minds together and take what is best from both peoples.” (Aboriginal participant)

## Corrections

One of the major reasons that brought representatives from the Black and Aboriginal communities together was their significant over-representation in the youth and adult justice systems which has translated into their over-representation in both provincial and federal correctional institutions. It was recognized that neither community can afford to lose young people by having them removed from their families and communities and placed in correctional facilities. They believed that the correctional system was ineffective in addressing the needs of Black and Aboriginal offenders and that it did not respond to the special needs of either population. Participants noted that incarceration made it difficult for offenders to succeed in life after released and most felt that prison experiences taught youth to be “better criminals”, where they came out worse than when they went in. As participants stated,

“Prison doesn’t correct a person. It makes many of them better crooks. They learn from the other inmates. They learn to survive in prison by using violence and intimidation. Many of them turn to drugs as a way to reduce the pain they feel inside. In some ways it is like a finishing school for life on the streets and not in a family.” (Aboriginal participant)

“We don’t have any extra people that we can throw away. There are not many Aboriginal people left in this world and we need everyone to support the building of our communities, our societies and our culture. There are about 2,000 Aboriginal people in the federal system alone and that translates into 20 Centuries of time lost each year to our people. We have to look at ways of keeping our people in our communities and looking after them, whether they are victims or offenders.” (Aboriginal participant)

“I want us, as people who are victims, to be able to stand up as individuals and users of that system to say, ‘It ain’t workin’. We have to say to ourselves, what will work for our children? Because we do not want our children in a system that incarcerates them, brings them out and says to them, ‘Guess what? You now have a criminal record so we’re not going to hire you. We’re not going to let you even work at a call centre. We need a criminal records check if you’re going to do anything.’ They have no hope. They’re hopeless at this point in time, so they go back in the institutions because at least there they’re on the same level playing field with everybody else. Everybody else in there is a criminal too.” (Black participant)

One of the major challenges identified by the participants was the lack of understanding by those decision-makers within the correctional system of the significant cultural differences and specific needs of Black and Aboriginal offenders. Participants noted that this lack of understanding extended from the courts through to parole. Others also reflected on the fact that members of the Black and Aboriginal communities lacked an understanding of the justice system, which made it difficult for them to support offenders from their communities. It was acknowledged that more work had to be done within the correctional system and communities to raise awareness of the needs of Aboriginal and Black offenders if they are to receive appropriate programming and services both in institutions and in the community. As some participants said,

“I’d like to see the community be a lot more involved as the offenders are doing their time and help them integrate back into their community by being involved in their case management team. This team assess you. They tell you who you are and what you’re all about. Sometimes they make you feel like they know you better than you know yourself. And sometimes Native people, especially Inuit people, act in different ways when they’re told something. Native people, Inuit people, Mi’kmaq people, Black people we all act in different ways. I knew this Inuit guy that didn’t talk a whole lot. He would just smile and he committed a murder. But the reason he took this life was because of his past. He was abused and he didn’t know how to ask for help or he didn’t know what to do about it so he took the person’s life. Speaking to him myself, I knew that he felt remorse and he was sorry about it.” (Aboriginal participant)

“There are people that make these decisions on your life or what programs you have to take. These are non-Native people 99.9% percent of the time. They’re non-Native people or they’re not Black. These people don’t know a whole lot about our culture, our past, our spirituality, where we come from, why we do some of the things we do, why we speak the way we speak, or why some of us look down when somebody is looking at you.” (Aboriginal participant)

“My case management team were the people that were making decisions on my life and they felt that they knew me as much as the Elders who were coming in. Those Elders were putting me through sweat lodge ceremonies and talking with me every day. The choices and decisions about programs I had to take, or what I had to do to be released, would have been totally different because the Elder knew me really, really well and he knew that I wasn’t the person that these people were saying that I was. I didn’t have to

take all these programs but I did take them. I looked at it as an experience. I learned a lot while I was in there.” (Aboriginal participant)

“And then there’s a system which is very structured. However, that system too does have mechanisms, but they’re very complicated and we as a community know nothing about corrections and unfortunately corrections generally knows nothing about Black communities or Aboriginal communities. So here’s the conundrum. You have communities who don’t have knowledge of this process and a process which doesn’t have knowledge of the communities and that’s where partnerships come in.” (Black participant)

Programming for Aboriginal inmates in federal institutions is guided by specific provisions in the *Corrections and Conditional Release Act (1982)* which states,

81. (1) The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.

81. (2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-aboriginal offender.

81. (3) In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an aboriginal community, with the consent of the offender and the aboriginal community.

82. (1) The Service shall establish a National Aboriginal Advisory Committee, and may establish regional and local aboriginal advisory committees, which shall provide advice to the Service on the provision of correctional services to aboriginal offenders.

82. (2) For the purpose of carrying out their function under subsection (1), all committees shall consult regularly with aboriginal communities and other appropriate persons with knowledge of aboriginal matters.

83. (1) For greater certainty, aboriginal spirituality and aboriginal spiritual leaders and elders have the same status as other religions and other religious leaders.

84. Where an inmate who is applying for parole has expressed an interest in being released to an aboriginal community, the Service shall, if the inmate consents, give the aboriginal community

- (a) adequate notice of the inmate's parole application, and
- (b) an opportunity to propose a plan for the inmates' release to, and integration into, the aboriginal community.

The Correctional Service of Canada has developed a number of programs for Aboriginal inmates over the years, most of which have been developed in partnership with Aboriginal organizations or with significant involvement of Aboriginal communities and individuals. In all cases, Aboriginal Elders have been consulted and their views incorporated into program delivery. While these programs exist, participants recognized that they were not always available. For example, it was noted that some programs were only available in minimum or medium security institutions. Given that a significant proportion of Aboriginal inmates are classified as maximum security inmates, they are not eligible to participate in most Aboriginal-specific programs.

Similar provisions do not exist for Black offenders or for any other group of offenders who face similar problems with respect to over-representation, lack of cultural and spiritual programs in institutions or disconnection with their communities. All Gathering participants, particularly those from the Black community, saw the need and value of having services provided to inmates by members of their respective communities and questioned why similar provisions in the *CCRA* could not be made for other communities. As participants noted,

“A Black person needs to go to the prison to deal with Black women but there is no funding set aside for visiting Black prison inmates in the institution. When I went to the Nova Institute to do a program, I had to put a proposal in myself.” (Black participant)

“I think that the institution has also got to look at programs that they can put in place. When people are coming out to work in the ‘real world’, as they call it, you need to have a job, or a market that’s going to carry them into the work force. I think a lot of times the offender is also the victim and we forget that those people that are doing the harm also have been a lot of times harmed. Ninety percent of the time the offender has also been abused. We’ve got to recognize it as a Black person that we have a lot to offer. It’s about the knowing the culture of the person that you’re dealing with and that’s not being done. The Parole Board and institutions need to get out there

and they need to bring people in. The Natives said to me, ‘We get somebody all the time but the Black women don’t.’” (Black participant)

The participants all agreed that developing and maintaining a relationship between inmates and their respective communities was essential for the safe return of those inmates after release. They noted that, in many instances, inmates were released without the necessary “safety net” of community supports and were at high risk of reoffending. As two participants noted,

“I’m sick and tired of seeing our young people coming out of an institution with absolutely no idea where they’re going to sleep, how they’re going to eat, who’s going to put some clothes on their back and who they can even talk to. It happens time and time again. One day they’re in an institution where they have three square meals a day, a roof over their head, clothes to wear, somebody to tell them what to do, when to get up, when to go to bed, the whole bit. Then all of a sudden they are dumped right in the middle of the city. A car or bus brings them in and puts them in the middle of the city and that’s it. They know absolutely nothing about how to live. And if we can’t take these people and teach them how to live and show them how to live then they’re only going back again. I have seen it time and time again, especially in the fall. Starting to get cold, what happens? “I’m going to go do a break-in, I’m going to do this, I’m going to do that to get put away for the winter.” Great. Now if that’s our society, then we’re sick.” (Aboriginal Participant)

“Over the years I have met a number of inmates in federal institutions. They all admitted they were pretty scared when they first arrived but many said they were more afraid of leaving. They said they didn’t know what was out there. They had no idea what was more than a hundred feet from the front gate.” (Aboriginal participant)

The decision to release offenders from federal penitentiaries rests with the National Parole Board. Over the years, the Parole Board has adapted its practices in recognition that Aboriginal inmates seeking release should have the opportunity to appear before the Board with cultural supports. To that end, the Parole Board has implemented hearing processes that may involve the participation of Elders if the inmate requests it. In some regions, the Parole Board has gone as far as to have hearings take place in Aboriginal communities where community members have an opportunity to speak to the issue of release. The same accommodation to cultural values is not in place for Black

inmates although efforts are being made to make parole hearings more sensitive to their needs. As an official from the National Parole Board said at the Gathering,

“I’m tasked with doing community outreach, work with victims by providing information to victims, accompanying victims to our hearings. I am also involved with training new Board members who have been appointed by the government and making sure that our Board members are kept up to date in terms of their training on a daily basis. We’ve done a fair bit of work in the last five or six years with the Aboriginal community. We’ve implemented “Aboriginal Assisted Hearings” and I’m proud to say that we conducted our second community-assisted hearing just recently and it was a big success for us.”

“We’ve also done a fair bit of work with the African Canadian communities in both Nova Scotia and New Brunswick, but we have a long way to go. I’m here today to say that we need help. We need guidance and we’ve relied on the guidance of the Black Cultural Centre here and we want to continue with that.”

“We’re in the process now of looking at hopefully implementing a hearing model that’s more sensitive to African Canadian offenders to make them feel more comfortable at their hearings where they can share information that they feel is important for us to know. We need information from offenders before we can release them.”

“We’re looking for help. We’re looking to develop alliances with people that can help us to better our work to help people. I need help to train new Board members and to sensitize Board members in terms of doing their work. And you know, anybody in the Aboriginal or Black community that wants to become Board members some day, that is good because we do need diversity on our Board which we do not have now. We need to form some sort of committee or group. We’ve already been meeting down here for three or four years and we’ve got a long ways to go. I’d like to be able to sit around here just before I’m ready to retire and know we came a long way. We would have the ability to conduct hearings that are meaningful and see both Aboriginal and Black offenders re-integrate into their communities. But you know, I think we got a lot of work to do as an organization. I say we need help.”

Participants at the Gathering also shared other ways in which they could become involved in improving corrections for Aboriginal and Black inmates. Some participants raised the possibility of more Black and Aboriginal members on Citizen’s Advisory

Committees. The objectives of these committees are to promote public knowledge and understanding of corrections through communication among offenders, CSC staff and the public; to contribute to the overall development of correctional facilities and programs; to foster public participation in the correctional process; to participate in developing community resources designed to support correctional programs; and to act as impartial observers.

While there was considerable interest shown by the participants in ways to support inmates by working within the correctional system, the majority of the discussion focused on the need for individuals and agencies to become involved with more direct support to inmates and offenders from their own communities. It was the personal touch and developing relationships with those men and women that many saw as being the best way to support them. As participants noted,

“For eight years now I have worked part-time at the shelter for homeless women. When I started going there we didn’t get a lot of Black women or Aboriginal women coming in there. But today I’m here and I can say there are Black women in there right now. And we have women of other cultures coming in there because they know there are Black women that are there. And we have a number of Black women that work there. I do that work because I really have passion for the women in prison.” (Black participant)

“We have at the present time, seven or eight young men who have been through the correction system more than once. The reason is because there is no love in their life. And what they need is a home; not a house but a home. Every person needs a home. These individuals are not capable of looking after themselves. The system, as such, has thrown them away. They’re not welcome back in their Reserves. Their own families don’t want them in some instances. They have been alcoholics or drug addicts for 90 percent of their lives and perhaps their parents were before them. Not being able to cope on a day-to-day basis does nothing but build up anger. We need a home for Aboriginal young men who cannot cope with the day-to-day living on their own. They need a Mom in that home who is going to give them the love and the protection, three square meals a day, a clean bed and clean living.” (Aboriginal participant)

“I met a woman through my work at the homeless shelter who became a good friend of mine. She was getting out of prison in a couple of days but she called me and said, ‘Are you still around?’ I said, ‘Oh, yes, I’m still here.’

She said ‘Good, because I want to come and see you when I get out.’ But then she said, ‘I wish that I could talk to someone and I could call centres and talk to women that are working there knowing that when I come out of prison that I got a place to go.’ I have both Aboriginal women and Black women that call. (Black participant)

“In my community there’s a lot of people who have done some serious time and a lot of young people that are in and out of the correctional system. A lot of them are my relatives. When I see them in the city they’re all big muscled, mean looking, hard young men and women. But when they come back to the community, they are back in a community setting which is very family-oriented. It is almost like they revert back to when they were 12 or 13 years old in the relationships that you have with them. You can hardly believe the contrast that exists between them in the community and the family and what their public persona is out there. It’s hard to communicate that to other people because they only see the hard, mean public persona.” (Aboriginal participant)

“I was also thinking about the shelter at the Friendship Centre that had learning and employment programs there when I first moved up here. I found it a really good environment when I first moved to Halifax. I worked there for the Native Youth Education Program which was a part of the shelter. We had a number of people that stayed there because it was more than a a rooming house. We had anger awareness programs. We had certified counsellors in there to counsel people that were coming in off the street from the institutions. We had job training and resume writing and how to sit in an interview and all kinds of different stuff. And then we had fun and cultural activities. We’d go to a pow wow or take them down to Kejimkujik. So there were good programs happening”. (Aboriginal participant)

Not only did some participants speak about the need to emotionally support released offenders and provide programs for successful reintegration, they also spoke about the need for communities to assume greater control over the release process.

“Section 84 is an excellent way to start taking over control of corrections because your community does have say in an offender’s reintegration. The community can put programs in place and the support is there. You don’t have all these people coming out saying, ‘oh, this one is out, but wait ‘till they break the law again’ but instead of saying that the community says ‘We’ll be there tomorrow for you’. You know we all have to stand up and fight for our own communities and we have to do it together. The partnership with the criminal justice system is getting there. They’re considering the Gladue decision when sentencing. That process is going to be happening in

Truro the court and that's a success just alone. I mean it's sad to say it had to happen. You know, somebody's life had to be taken in order for this section to come into place." (Aboriginal participant)

"I envision us controlling our own resources, our own direction and making decisions for our people when they come out of any kind of institution, and most of all, working to keep them out of the institutions so they never enter those institutions at all." (Black participant)

Regardless of which program, service or process is finally put in place to support offenders, the group recognized that the offenders, themselves, had to be involved in the planning stages to ensure that any program or service actually met their needs. As one participant stated,

"I just want to tell people we should have more Circles like this or in your community and invite those people who are on the outside to come into the Circle. Without their knowledge and experiences we don't really know what to do for them. We can throw all these ideas around and say, 'Oh we need to do this. We need this and we need money'. Well, why not ask the guy who's sitting on the corner what he needs. Why not ask the guy who just came out of jail how we can help him to find a home and to get a job." (Aboriginal Participant)

## Racism

Although the Gathering was brought together to talk about issues in their communities that have led to the high number of Black and Aboriginal people entering the criminal justice system, the participants quickly acknowledged that a major contributing factor to over-representation was racism. While no participant was anxious to raise this issue, given its sensitivity, it was an issue that could not be kept in the background. There was agreement, for the most part, that racism was “systemic” and could only, in rare cases, be directed to individuals. Systemic racism, whether through the process of colonization or maintaining the “status quo” in society, was seen as a major barrier to healing within and among communities. As participants noted,

“I want to give support to the Circle. I wanted to thank you all for mentioning racism. The racist system that we live in treats Aboriginal and Black people differently and nobody was mentioning the race card or the race factor. I hope we’re also not politically correct here and we can discuss this openly. I didn’t want to be the first one to say it though.” (Aboriginal participant)

“We are pleased to hear that the word ‘racism’ was finally mentioned. Well you know, I’m here to tell you that I have been dealing with racism for a number of years. I’ve dealt with it through all of my adult working life. Racism is alive and well. It’s just that people know how to mask it so that it’s not overt. It’s not as overt as it used to be. It’s more hidden and people know what to do in order to make it so that it does not appear to be racism. But in your heart and soul you know what’s being done to you because you are a Black woman. So we still always have to remember that’s that also part and parcel of the whole process that we have to be ever dealing with in order to come to terms with how we proceed. We want it eradicated. Is that going to happen?” (Black participant)

“Earlier someone mentioned racism and some of the problems that are inherent in our system. I’ve heard everyone calling it by a different name, but a rose is still a rose. I thought I would refer it to as the “establishment” and the definition of that “establishment” being a systemic process or a systemic mechanism. It doesn’t matter what name we call it but here are establishments and their main objective is to maintain the status quo - to maintain what the establishment is and what the establishment stands for. We need to be able to analyse and work within ourselves to prevent these

systemic mechanisms taking control over us and us becoming part of the system.” (Black participant)

“So we have to find a way to do that inner healing. I look at that statue of justice I look at that lady and she wears a blindfold. She’s blind or she wears the mask so she could not see. I said a lot of times I see justice as being blind, especially when you’re a minority, you’re Aboriginal, or you’re an immigrant coming into the community. I think that blindfold is a wrong image and at some point in time I hope it’s removed so that the justice can see clearly because a lot of times justice is done through blind sight.” (Black participant)

While many of the participants spoke openly about racism and the effect it has on themselves and their communities, others talked about the nature of racism as being ingrained into Canadian society to the point that many are not aware that it exists.

“One of my first experiences was at a Parole Board hearing where I’m representing a 33 year old Caucasian man. When we went into the hearing, the Parole Board member leaned across the table, shook the hand of the offender and said, ‘You must be Mr. Saffire. Saffire is not a Black name’. That man had the assumption that wasn’t really based on racism. I believe it was based on what I call ‘conditioning’. It’s no different when you walk into a hospital and the nurse comes out. You assume it’s the nurse because she’s wearing a white lab coat. You say, ‘Can I speak to the doctor?’ Right? You assume certain things. You walk into a car dealership and a lady walks over and says, ‘May I help you?’ You ask for a salesman assuming that she’s the receptionist. Our society has become conditioned to view people, either minorities or certain groups based on sex and certain views, with conditioned expectations. And a lot of the things we need to educate ourselves on in the community. But yes, there is racism. There is systemic problems. But there are things that have been conditioned into ourselves and we need to challenge that. Sometimes people are scared to use the term racism, but we also need to challenge that conditioning that people are subjected to. And that means we need to speak. We need to speak and we need to listen. And we can’t make assumptions the same way other people make assumptions.” (Black participant)

“Since the time Treaties were signed, and the Federal Government took responsibility for Indians, we have been treated like children in need of care. We were told what we could do and where we could live. We were not able to leave our homes without permission. The government set up Residential Schools where we could be trained to become just like White people. Well that didn’t work out too well. Over the past twenty years or so, our People have grown up and have demanded more respect and responsibility from the

Government. So now they treat us like teenagers. We can do more things ourselves as long as the Government agrees with it. There are still controls placed over our lives that no adult, no other government, would allow. This has to change. Policies and programs developed in Ottawa, mostly by White people, often have no sense of reality in communities but they still think they know better. Whether that is racism, I do not know.” (Aboriginal participant)

“So we need to understand that all racism is systematic. It’s been there for a long time. We need to make sure that there is accountability so we need to be those gate keepers. I think it’s important that we, as individuals, teach children and teach ourselves that we don’t want to re-validate individual’s closed minds about who we are. It is up to us to define who is an Aboriginal person, who is a Black person, who is a member of the Black community. We don’t want to validate those stereo-typical thoughts that they have about us.” (Black participant)

In the views of many participants, Canadian society still has an ethnocentric focus to its policies and practices in spite of efforts to improve its multi-cultural image. That has inhibited the growth of alternative approaches to addressing the needs of offenders as well as Aboriginal and Black communities as a whole. It was agreed that the differences often lay in the ways in which communities address their issues rather than in the ultimate goal which is the same – to promote healing and wellness within the community and to meet the needs of offenders. As participants noted,

“What we’re dealing with is an ethnocentric system that believes in control by maintaining, destroying and taking. I think in some way we’ve got to take what we all have and work in harmony for the best interests of the young people that are coming through the system today. How we do that, I’m not quite sure. That is why I have a wish list. It’s something that we need to first of all understand that in our differences we all have different ways of approaching the same problem which is displaced youth.” (Black participant)

“The ethnocentric system is to control and not to share. So that’s why I say we need to take control of our own kids and our own resources. We need to work with the system and force them to understand that we do not come from the same perspective. We have a different skin colour. We have a different outlook and that’s for a reason. We’re just not people who just happen to be Black and you’re White, but we’re all just the same. I’m a Black woman and I think differently. My background has been different. The way I was raised was different. But that’s okay. I understand that. That doesn’t make me any better than you. It doesn’t make you any better than me. But you have to

understand me and I have to understand you because we have to be like birds in a sky. We can share the sky but you'll find a bunch of robins flying together or crows flying together, but they're sharing the same skies. We can share this universe but you got to respect me and I'll respect you. You got to try to understand that this is how I think and I'll try to understand how you think. When it comes to my kids, I want to make the decisions for them. You can understand that and you can work with me. Maybe some day you might even be in a position whereby you will understand and be able to know what I'm doing here. Until such time as we can reach that understanding, I think we need to control our own resources, our own children and our own future. (Black participant)

“They don't understand it. They don't advocate for programs to address it. They don't name it. They don't recognize it so they don't address racism. That's been my argument all the long. We, as a people, are the victims of it. We have to move for women who were victims and we argued and fought until they got services for women. We as victims of racism have to fight and argue until we can get the services we need for the thing that ails us, which is racism.” (Black participant)

The conversation turned to the results of racism and the ways in which it appears to have become institutionalized in the justice system. Anger at the justice system, which was believed by many to promote racism, or at least excuse it, was voiced by some participants. As one person said,

“If I mention the name Karla Homolka, I'm sure everybody in this Circle would know who she was. But if I ask you to name the man from Saskatoon who murdered four Cree women, could anybody come up with that name? And when he was sentenced to four years, the judge said to him, ‘I see you smartened up. You started to concentrate your victims from the Aboriginal population because it would take a long time for these women to be found or noticed missing.’ He wasn't encouraging it. He was being sarcastic. But we all deal with racism of some sort and had to tolerate it and put up with it. How many of our people are in jail because they just couldn't take the anger and hate any longer and reacted to it, or turned to drugs and alcohol and while under the influence of alcohol in a rage moment created a crime that forever changed their lives and affected so many other people? They're not bad people. They still need loving. They're still human beings. And I for one will continue to love them until they can learn to love themselves.” (Aboriginal participant)

Some participants believed that another component to racism related to affirmative action hiring practices on the part of institutions and governments, which was

seen as “tokenism”.. While participants acknowledged the sacrifices of those who “went first”, and struggled to work within the justice system, many saw that the system was adverse to any real change. Some felt that the justice system, for at least those who choose to work within that system, would make efforts to hire individuals from minority communities but put them in positions where they were doomed to fail. As they noted,

“You know it’s terrible that in 2006 we still have ‘firsts’. It’s terrible that we can still name the first person to hold an important job. I think it’s important that we realize that this is systemic racism at work.” (Black participant)

“There is the old saying that Aboriginal people, women or minority groups have to do things twice as well to receive half the recognition. This is often the case. We are always under a microscope and we have the feeling that others are just waiting for us to fail. If it wasn’t for the fact that we are working for our people, I believe many of us would give up and go home.” (Aboriginal participant)

“So the gate keepers got to let a couple of us through and the ones they want to let through are the ones they want to give the easy ride to. They don’t want them to really be skilled or trained because later on, when they’re in the field, they want them to fail. They really don’t want to build up the diversity or the acknowledgement there. I mean there are people who work hard, don’t get me wrong, but there are a few tokens or people that want to be tokens. They want to be able to say, ‘See I told you they couldn’t do it. We gave them a law degree or we got them into Correctional Services and look what they’re doing. Black guards bring drugs into the prison system’. I mean you know it’s not going to say ‘White guard’ if something like that happens so they they’re looking for the opportunity for you to fail. Man, they’re putting trip wires there so you’ll trip. It’s there.” (Black participant)

Being recognized as the first Black or Aboriginal person to work in the justice system also had an impact on how they were viewed in their communities. While those individuals were often honoured by members of their community, and by other Black or Aboriginal people, they recognized that there was also a negative aspect of being first. Some felt that they experienced pressures to fail from both the system and their own communities. As participants noted,

“When I went to law school everybody in the damn community, and people I didn’t even know, wanted to know how my marks were and how I was doing. The stress was unbelievable. Not only was every White person waiting for

me to fail but every Black person was waiting for me to pass. And when I did well in law school, then people who wanted me to pass also wanted me to say that anyone from the community could do as well. They didn't really want me to pass because they didn't want to think I could do it and maybe they couldn't." (Black participant)

"I agree with that other speaker. There is a really sad joke about Indians who try and make a good life for themselves. It is a story about a man who saw another man collecting crabs on the shore. He would pick one up and drop it in a pail. But the pail had no lid to keep the crabs inside. When the man walked up to the other with the pail, he asked 'Why don't you have a lid on your pail to keep the crabs from crawling out'? The man said, "I only collect Indian crabs. Every time one tries to crawl out, the others pull him back down to the bottom'." (Aboriginal participant)

It was noted that perceptions of Aboriginal and Black people influence how they are treated. Individual incidents, even if they are harmless, can reinforcement the stereotypes around a whole people. As participants stated,

"One of the things, as a person from this community, that always upsets me about individuals who went to jail is that we not only have the victim of their offence but we also have the community who was victimized. I mean, if a Black male goes out there and stabs a cab driver then there are other Black men who are having difficulty in getting picked up by a cab and getting home in the rain. They become victimized because in the media they see anybody from a minority, whether they're Aboriginal or Black or any other minority, as somewhat being the same. And as a result of that those actions impact on us." (Black participant)

"A friend of mine, an Ojibway man with a high paying government job, bought a bottle of very nice wine for a dinner party he was going to. From the moment he walked out of the liquor store, he felt like everyone was staring at him and the bottle of wine. He knew that some of those people were saying to themselves, 'There goes another Indian to get drunk'." (Aboriginal participant)

Although the discussion about racism, tokenism and stereotyping was serious, and sometimes painful, participants also relied on humour as a way of making their points and lightening up the mood of the Gathering. Humour was a means of emotionally cleansing themselves from the pain that came from discussion racism and its effects on communities. The use of humour was recognized as an important cultural trait by both

Aboriginal and Black participants. In the midst of a serious discussion, one participant decided it was time for a story. He said,

“There’s a little story I have to share with you. I heard it from a good mentor of mine, Senator Calvin Ruck, God rest his soul, who told me this story. I never forgot it and it helped me survive a lot of the struggles in this work place and in my own life. He said he grew up in Cape Breton and he remembers somebody told him the story about two Black men from Barbados, who were known as Bajans. They had this idea to start a little ice shop. One of the Bajans started the ice shop and one of his best customers was the man who was his best friend. When he came to the ice shop he kept saying, ‘Man, this ice is awesome, man. You’ve got the best ice around’. And so about six months later a White man came to the shop and said, ‘Hey, I like the idea of this ice shop. I’m going to start an ice shop just like this’. So the Bajan man said, ‘Okay, man, you do that, but I got the monopoly man. You can do what you want, that’s okay. You go right ahead. I think I can make it better than you’. And so this White man said, ‘Okay, fine’. So that White man opens his ice shop up the street. The next thing you know he sees all his customers keep going to the White man’s shop and he kept asking people, ‘What’s going on? What’s going on?’ Then his best friend walks by one day and goes to the ice shop up the street. He stopped his friend on the way outside and said, ‘Hey, man, come your ass over here, man. What you talking about? You going to the ice shop up the street’. And the best friend comes up to him and says, ‘Oh, my brother, I’m sorry, man, but this White man’s ice is colder than yours’.” (Black participant)

## Identity

Identity is important for all mankind. People define themselves by whom they are, who their parents are, where they are from, what spirituality they practice, and a host of other factors that give them a sense of place and belonging. Most importantly, identity gives one a place within a larger community where individuals can relate through common bonds. Both Aboriginal and Black people at the Gathering firmly believed that their communities are “the body and spirit of life”.

Participants recognized that both Aboriginal and Black people face a similar problem that permeates their respective communities - the loss of cultural identity and the loss of who they were as a people. In many cases it is also the loss of language and ceremony. As more time passes, and more children and youth become involved in mainstream institutions, such as schools, and are influenced by the media, there was a real concern that many of the unique elements of their cultures are being lost.

Participants raised this issue and stated,

“I guess the issue is what do we do when we look at those common issues with our peoples and I see there’s two things that we have to look at. One is what we can do with our older generations. They are the ones who actually have an understanding of our identity. For our kids identity becomes a big factor. The other is that we have a lot of kids in the mainstream school. Probably the biggest concern is making sure they are bilingual as opposed to learning about their own heritage. That shouldn’t be. That’s a backwards priority. Yes, that’s part of being part of the Canadian country but the reality is we need to have an identity of who we are.” (Black participant)

“I see a very terrible situation happening in our educational system with our kids. They’re losing their sense of identity” (Black participant)

“Within the urban community there are Aboriginal people who have never learned about their traditions. I brought a young lady once to a Talking Circle at a house for troubled youth. They asked us to come and do a cultural awareness talk with some of their troubled youth. To look at her there’s no question in your mind you’re looking at an Aboriginal woman. She said, ‘You know what. I have absolutely no idea what it means to be Native’. That was because she had been placed into foster care and raised by a White family. She said, ‘I don’t know the first thing about tradition. I don’t know

the first thing about that. She has kids that she's raising and she doesn't have the ability to teach them. With some of our parents, they're too humble to admit to their kids that they don't know. So they pass on false teachings. And sometimes when you have these kids at the centre and you're doing some teachings within our youth groups, the odd one would challenge me. They would say, 'Well, my Daddy doesn't say that's right'. So who are we to correct their Daddy and tell him he's wrong? I think we need to teach our kids so that they can teach their parents. Maybe they can teach their parents and somewhere along the line they're going to meet." (Aboriginal participant)

"I look at what's going on with our young people. Restorative justice does not work for everybody. I think there's got to be some way that we can restore our children. We got to restore our children by bringing them back into the fold and by teaching them who they are because a lot of the kids that I deal with don't have identity. Yes, they're Black or they're Aboriginal, but they don't know who they are. Well when you ask them, 'Well who are you, what do you want to be?' they will say 'I don't know. I've never been told'. And there are a lot of us who don't know who we are. So I think it's about going back to the inner side. We need to teach that." (Black participant)

Fear that the youth of both communities are losing their identities has led to a concerted effort over the past several years to find ways of stopping the decline of Aboriginal and Black cultural practices and the reestablishment of spiritual teachings. Regardless of the culture within which the teachings are based, it is important to recognize and promote cultural identity. All participants who spoke on this issue recognized that the re-emergence of pride in identity will take time and effort. Participants shared ideas about ways in which they can promote culture and identity, including:

"One of the things that I think that were able to do was to put together an inspirational musical CD that is a way to reach some of the persons in the institution. They can hear that there are songs. There are messages that would be spoken and listened to. The inmates may get from that some sort of spiritual guidance. I think that this might be a way for us to have some input into correcting some of the inequities that exist in these institutions." (Black participant)

"One thing that I've really tried to tell a lot of young people is be proud of who you are. You have strong blood running through your body. You have warrior blood. We are a tribal people. Black people, Mi'Kmaq people, we

are a tribal people. We come from a long line of discipline because we know who we are. We have tribal laws that are instilled in us.” (Aboriginal participant)

“I was brought up on Reserve right up until I was 14 years old and moved into the urban setting. I moved to Halifax five years ago and I was introduced to the medicine bundle. I was introduced to traditional dancing, drumming, traditional teachings and spirituality. I studied art and I drew about how I identify as a First Nation’s person and the struggles that I go through. I find that the majority of my work always has to do with that fine line of being on the reserve and off the reserve, and being a reserve Indian and an urban Indian. That fine line of being in a city where you can see into your culture and where you can see outside of your culture. I think that’s some place that a lot of our youth exist today. They are outside our culture.” (Aboriginal participant)

“There’s a lot of work to do and I think we can do a lot if we change our attitudes toward ourselves. The slave mentality in our Black community is insidious. It’s everywhere. I fight it every single day. So we still deal with that “damaged goods” view of ourselves. We’re all “damaged goods”. But the emphasis should be on the “goods” part. To help heal ourselves we have to realize we can’t do it alone. We need to help each other deal with it.” (Black participant)

“I think in talking about challenges and solutions that identity is a huge issue. People don’t know who they are. We’re not being taught that in school and what we’re being taught is extremely small. We need to tell people every moment who they are and we need to tell ourselves. I taught myself my Black history and my son taught me the importance of always remembering that. As a young mother, when my oldest son was five, he did something rotten I think and I said to him, ‘Who do you think you are?’ And he said, ‘Nobody’. And I said, ‘Nobody?’ You are somebody. You have a name, here’s who you are and here are the people you come from and here are the things we believe in’. I was not going to be another one of those persons that said to him, ‘You are nobody’. And I think it’s important that we always tell our youth, our children and we tell each other that you need to know you’re somebody. One of the problems we have in our community with identity, I think in general, is that we do have a slave mentality where there’s a sense of conquer and divide. We don’t understand that it does not make us a bigger person to put down someone else.” (Black participant)

“Ownership. We need to empower ourselves. As long power is what they do with us, we are disempowered. We need to understand that power starts with

us and we need to build it up and we need to move forward. And we need to understand that.” (Black participant)

“This is an African Royal Authority Stick (Talking Stick) from Ethiopia. As you look at the – the “Lion” – it’s from the house of “Judah” which is also the Salasie Royal House from Addis Ababa, which is the capital of Ethiopia. The lion is a symbol of the strength of the country. This is an ebony wood stick with the coffin cross on it. If you notice the cross here, it represents the oldest Christian Church in the world. People are shocked to hear that Africa had Christianity before any other place. So we are very proud to have this. This was brought to us by a Prince from Ethiopia. He came to the Centre years ago and presented it to the Centre for our use in these kinds of ceremonies.” (Black participant)

“About 35 years ago my parents gave up celebrating Christmas and so we didn’t have Christmas for religious reasons. About 12 years after that my parents introduced us to Kawansa which are the very principles that were talked about before. We do that every year. My nieces and nephews, who are young, have never celebrated Christmas and were raised with the principles of Kawansa. I spoke yesterday about viewing things with an Afrocentric perspective. The lens that I wear is the African lens that I view the world through.” (Black participant)

“It’s really good to see that we have the youth centre over at the Friendship Centre because we do have to start teaching at a really early age because a lot of us do have a identity crisis. That helps out a lot with knowing who you are.” (Aboriginal participant)

“There’s an African parable that I always like to tell and it’s about a little boy who says to his grandfather, ‘Grandfather, is it true that the lion is the king of the jungle? And the grandfather says, ‘Yes, my grandson, it’s true’. ‘Well, if the lion is the king of the jungle then why are all the stories that we read and hear about have the hunter overcome the lion and has wrestled the lion and captured the lion?’ And the grandfather smiles at the young boy and pats him on the head and says, ‘That would not be so if the lion were telling the story.’ So I think it’s important that we tell our stories and that we tell our truths.” (Black participant)

Identity, community and personal strength were seen as being intertwined. Identity cannot be given by others or taken away although it can be shaped and influenced by others around individuals. It is, rather, something that is carried inside the individual and recognized by others who share that identity. While Aboriginal and Black people

have been labelled by others, very negatively, the label one places on him or herself can be the one that gives strength to that individual. This was the lesson many participants saw as being most important for children to learn. As some participants stated,

“The three of us walked in through the mall and there was another Aboriginal man coming this way and my friend did his nod. He did his famous nod. I said, ‘Now, who’s that?’ He said, ‘I don’t know.’ I said, ‘Well, why are you always doing that? You’re always nodding at other Aboriginal people’. He said, ‘Because as a people we acknowledge one another. I might not know that man but we’re brothers and it’s our way of showing solidarity to one another’. I thought that is so cool. (Aboriginal participant)

“We have been addressed as everything you can think of, from heathen, pagan, to savage. And then all of a sudden, maybe ‘human’? No not yet. Okay, “Indian” - that works. “Indian” is all right. Then came ‘Aboriginal’, ‘Indigenous’, ‘Treaty Indian’, ‘non-Treaty Indian’, ‘registered Indian’, ‘non-status Indian’ and ‘on-reserve Indian’. We’ve been addressed as all these terms, but one thing remains constant is we knew who we were. Regardless of whether we looked at each other as dysfunctional within our own communities, I can look back at it and say, ‘I was born there. I was raised there. Those are my people. I want them’. I love everything about that little community because that’s who I am. Nobody can take that from me.” (Aboriginal participant)

“You can call me Black or you can call me whatever. When I go into a room, the first thing a person sees is my Black face. Black people, when we’re coming together, need to always recognize we’re Black. And when the broader community sees me they don’t care whether I have a doctorate degree or whatever. All they see is me. The racial slurs come. So it doesn’t matter what title you carry, before your name or after your name, it’s what you perceive yourself to be. I perceive myself as an individual. I perceive myself as a child of God and I feel that I’m a person that can give love. I also expect love and I also expect respect.” (Black participant)

“I teach our correctional officers a race relations component when they are going through their training. I start that program by asking everybody a simple question. In one word, I ask them to tell me who they are. I say my name and we go across the room and we have a lot of people say, ‘I’m a mother’, ‘I am a Canadian’, ‘I am Acadian’, ‘I’m a wife’. They identify themselves with different terms. I then say ‘I am African Canadian’. People say, ‘Aren’t you really bi-racial? Your dad is White’. I say, ‘No, I am African Canadian. That’s my community.” (Black participant)

“It starts back with knowing who you are and being proud of who you are. I grew up without a father. Did I hold that against anybody? No, because I realized at an early age through the teachings I had from a grandmother and a bunch of aunts and uncles that loved me that I can be anything I want to be. But it’s got to be in me. So that’s the message that we need to pass on to our young kids. It’s not about what they see on TV, and some of that needs to be clipped in the wing, but it’s about who they are and what they need to be. Ten years down the road, unless we fix things here today, is going to look worse than what it looks today.” (Black participant)

“I’m from the community of Cherry Brook and I think of that first. When I grew up it was a small Black community. Now it’s an integrated community and I still live there. Then I think of the wider community where I work and I need to say I think from an Afro-centric perspective. That’s where I put myself - as an African Nova Scotian at the centre of what’s going on” (Black participant)

“I’m here today for a couple of reasons. One, is I want to honour my family’s memory and the fact that they’ve taught me that you never forget where you come from. They taught me to remember who you are, who you maintain to be and all the growth that you go through comes from that source. You need to bring homage to that. You can never forget who you are because that really is the essence of personal growth and it goes to that very core principle or value that I was taught when I was very young.” (Black participant)

“We now have Black people calling themselves ‘a person of colour’. You know what? I’m Black and I’m damn proud. I ain’t changing this colour until I die. God made me this way and I’m proud of it. I’m proud of my ancestors, of my Native heritage as well. I’m going to say this, if it weren’t for the Mi’Kmag community my ancestors would still being oppressed today and I give praise to that. I give honour to that. You could see that my grandmother was Mi’Kmag, so I honour her. I get upset that we’ve been divided.” (Black participant)

As an individual’s identity grows and strengthens, so does the larger community’s identity. With this, communities are beginning to demand their voices be heard by governments and their issues be addressed. Participants agreed that there is a growing sense that governments need to adapt their relationships with minority communities to reflect their uniqueness and their aspirations. It was said in the Gathering that one way of addressing this issue is to have members from those communities work within

governments and act as “translators”. They should be in a position that allows them to translate the intent of government initiatives to communities, in an appropriate manner, and to translate real community needs to governments when those policies and programs are developed. There was an acknowledgement, as well, that any Black or Aboriginal person working in government needs to recognize that they do not represent all Black or Aboriginal people and cultures. Within each tribal group or Black community, there may be differences that need to be considered when proposing new policies or programs. As participant said,

“I know that in the health community they are at last beginning to realize that there are health concerns that Black people have, or minorities have, that do not involve White people. I know that health authorities are beginning to realize that they can no longer go into the various communities and talk about the things communities need to do in order to prevent illnesses. People will no longer listen to White people who come in their area and talk about illnesses. Now they want one of their own to represent them and to talk to them about the illnesses. That’s what we have to do in every field of endeavour. We should have our own people do that.” (Black participant)

“I have seen cases where the government has developed programs for Aboriginal people. A group of government officials, most if not all are non-Aboriginal, will meet and develop those programs and be pleased that the final product fits nicely within their department’s mandate and funding criteria. It fits into a tight, neat box. The problem is that no one around that table knows our people or communities. They seem unaware that we are not one, cohesive group but are made up of different tribes and have different cultures. Communities may want to do that program differently to reflect their own communities’ realities, but because the government set the terms for the program, the communities can’t or won’t. After a while, those people in government will shake their heads and wonder why their program is not working.” (Aboriginal participant)

## Spirituality/Religion

It was important that spirituality ground the Gathering since it required, or permitted, each participant to speak from the heart and not from the mind. It gave the Gathering, as a whole, the peace and comfort to speak about serious, and sometimes painful, experiences with the understanding that there would be a collective sense of support and caring. Each day was opened and closed with prayer and ceremony, and everyone participated regardless of whether the prayers were Christian or from Black or Aboriginal traditions. Despite the differences in cultures and approaches, the respect for other cultures and teachings was strong and served to further unite the participants.

There was a strong, shared feeling in the Circle that the Creator endowed each individual with gifts that are meant to be shared with others. They felt that the Circle, itself, was a special gift and that the Creator guided participants in the Circle as well as throughout their lives. As participants said,

“The Circle is a special gift. When people enter the Circle it may look just like a group of people sitting together. That is not true because the Circle goes beyond space and time. When people come into a Circle they begin with prayer. They may call in the spirits of their ancestors and special relations to support them and, in that way, the Circle brings in and includes the past. When people pray for their children, or talk about ways of making things better for their children, the Circle reaches into the future. Time has no real meaning. The Circle reaches out to the community and to others who are not in the Circle. In this way, the Circle transcends space.” (Aboriginal participant)

“I’m really glad for the Circle. In our community we use the Circle a lot. And I think that brings a lot of peace and understanding. I think that everybody broad-minded should use the Circle because it’s really spiritual.” (Black participant)

“I’m doing it all for the benefit of helping young people in prison and counselling. God gives you gifts and he has given me the gift of counselling. I feel that you can do all things through Christ who gives you strength. Nothing is impossible when you put Him first in your life. I am determined to work for my young people and to push forward and I don’t care how many knock it.” (Black participant)

“I’ve heard about the Creator and another name would be ‘God’. He knows everything and we have to look to him for directions. I’m reminded about the Scripture verse, Second Chronicles, Chapter 7, Verse 14, ‘If my people who are called by name will humble themselves and pray and seek my face and turn from their wicked ways then they will hear from Heaven and I will heal their land’. I feel that in every one of us. You seek guidance and answers from the Creator, from God then we will know what to do in the future. Thank you.” (Black participant)

Participants spoke about what it meant to be connected to their spirituality. Many felt that it allowed them to move beyond the problems and pain they felt as Black or Aboriginal people. Spirituality allows for forgiveness and empathy for anyone who has done them harm and to show compassion to those in need. As two individuals said,

“I’ve always prayed. I came from a religious family. When it came down to probably my teenage years when I first saw what residential school did to my mother. There were physical scars and emotional scars. For several years I have used everything. Alcohol was my biggest thing. It was my mask. I always often ask myself this question, ‘If there was a God, why would he let this happen?’ I continuously asked that question and couldn’t find an answer. But I’m spiritual. I’m traditional and I found my answer from the Creator. He pointed it out to me in a dream. The biggest lesson learned from residential schools and all these other things that have happened to our people, is forgiveness. If you don’t forgive you can’t move ahead and I moved ahead.” (Aboriginal participant)

“Even when I started to go to the correctional centre, people looked at me and asked me, ‘Are you crazy, what are you going there for? If they are there in jail let them stay there’. But if God threw us away when we did something wrong and there was no forgiveness, where would we be at? We have to learn to have more compassion.” (Black participant)

Following a spiritual path is not easy. Participants indicated that it forced them to look at themselves and others differently. Not only did it commit individuals to speak from the heart, change the ways they lived and learn forgiveness, but also forced them to acknowledge feelings that may have been hidden for years. It was recognized that learning to speak about feelings was probably the hardest lesson to learn and to practice. As two individuals noted,

“One of the lessons we have to learn is to speak from our hearts and not always from our heads. That is why you will often hear Elders say ‘I believe’

or ‘I feel; rather than ‘I think’. Elders have also told us that people go through many struggles throughout their lives and that life takes them on many journeys. They will also say that the hardest journey is not the longest, but the shortest. It is the distance between your brain and your heart. Even the most powerful warriors will find this route filled with difficulties.” (Aboriginal participant)

“In ten years from now I was thinking about what I’d like to see our community. We would have Circles and talk about what’s happening in our communities and also be able to teach our beliefs that have been returned to our way of life. Much of the teachings we get from ceremonies we’re not allowed to write about in books. In our Circles we don’t have books. We speak from the heart. That’s what the Elders taught us. One of the earlier Elders that worked with us said that the greatest thing you can do is to be kind to your heart. Even when I go and do presentations I try to make that same connection. I speak from my heart and everything I’ve learned from home stays in my heart”: (Aboriginal participant)

It was noted by several participants that those who were involved in their own spirituality and religion were very supportive of the different beliefs of others at the Gathering. There was agreement on the importance of maintaining a spiritual life regardless of the form it takes. A teaching shared by one of the participants at the Gathering was that a spiritual journey takes one in different directions to learn about one’s own spiritual path. The goal of this search is not to change one’s beliefs but to place those beliefs on a solid foundation within a larger faith community. As one participant stated,

“I always remember that the people in our community went to in the bush to fast to get in touch with their spirituality. They do that to get that vision or that dream that they need to help them battle drugs and alcohol or whatever comes their way on the negative side. I’m very glad that we have brought the fast back to our community. In order for us to do that we had to leave our community to learn how to fast because we didn’t know it. It was very interesting because it was a Catholic Priest that took us to Alberta to fast. We have to work together with our White brothers, our White sisters, to share our ceremonies with them as well as them share their ceremonies with us. I bring that to the community school, to the youth so they can find an identity because they have no identity about who they are as Aboriginal people. I ask them to light my pipe, hold my bundle and fix it for me. They feel appreciated and are learning where they can help. I go to ceremonies outside of my community because I need that too.” (Aboriginal participant)

The need to support individuals in finding a spiritual life, or spiritual center, is much more evident in correctional facilities. For many offenders, they never received any spiritual knowledge or training, or their earlier spiritual teachings were lost. Regardless, most were unaware that spirituality is the basis for cultural identity. Participants acknowledged that offenders require special support to aid in their quest for a spiritual center. Participants also recognized that Elders, or those who minister to offenders, need to be strong individuals who truly cared for those in prison or penitentiary. As participants noted,

“Unfortunately, a lot of our people find their spirituality or find their way back to culture only after they find incarceration. I don’t know how many times I have been in institutions to meet the Aboriginal Brotherhoods where I have heard at least one person say that they didn’t know anything about Aboriginal spirituality and culture until they met an Elder in their institution. Many saw this as the most important thing they learned about, and saw spirituality as the only useful tool for their successful return to their communities.” (Aboriginal participant)

“I get called a lot of times from Corrections Canada to counsel in the institution in Burnside. I was just counselling one young man and he was in there for two years and he’s going to be coming out. He has accepted the Lord and he’s going to be baptized soon and he’s hoping never to return.” (Black participant)

“It was a major breakthrough when Elders first started coming to federal institutions. There was a lot of mistrust by Corrections’ staff who did not understand who Elders were or the medicines they brought into the institution. Some guards even thought that you could get high from smoking sweetgrass. In spite of that mistrust, and the searching of medicine bundles, the Elders kept coming. They knew that the Brothers and Sisters needed what they had to offer.” (Aboriginal participant)

“I’m overwhelmed with people coming to me. I just don’t know what to do. I need some help. I need people to get involved. I would like to see our churches all become strongly involved in the prison ministry. I would like to see the church leaders taking a strong focus on Christian ministry and what we can do for our kids around violence who will end up in prison.” (Black participant)

”When Elders began working in institutions, the Brothers really became hungry for their teachings. They wanted Elders to be everything. They wanted Elders to teach, to counsel, to do sweats and to do ceremonies. This put a lot of stress and strain on them. Not only were they almost worked to death, but they were pressured to do cultural and spiritual things that they were not trained to do. Some Elders had to leave the institution when the pressure became too much. Others would have to say, ‘I don’t do sweats. That’s not part of my teachings’. It took a lot of strength for them to say that. Some Elders went out by themselves and convinced other Elders to come into prisons to perform certain ceremonies because they knew that the Brothers and Sisters needed them.” (Aboriginal participant)

## Youth

“And it’s funny because no matter what issue we seem to be dealing with, whether it is health, or justice, or environment, every thing goes back to youth. We need to really start to focus on our youth. The only word I can use to describe it is that our youth are lost. They’re lost souls. They are out there wandering, looking for guidance and looking for support. After you’re lost for a long time you start to become angry and frustrated. Then we can have 16 year olds having babies and the babies become lost and the cycle continues. How do we stop the cycle and get them back on the track? We’re losing our heritage and we’re losing our culture.” (Black participant)

It was not surprising that the participants spent considerable time addressing the issues facing youth in their communities. They recognized that the problems faced by youth impacted everyone. They saw the youth as being lost, engaging in harmful behaviours and moving further away from their culture and communities. Participants saw a great value in education although many still questioned whether the existing educational systems meet the needs of either Black or Aboriginal children. To support children and youth outside schools, participants placed an emphasis on finding community role models who could mentor youth and finding ways to support healthier families. Giving youth meaningful activities was also identified as a priority, with the recognition that they youth must be involved in the planning and organizing of those activities. As participants noted,

“I often challenge a lot of young people in regards to what I see them doing in society today. I challenge their views, their buying into the globalization and hip hop music with its foul language and the nasty remarks about women. I don’t like the ‘bitches’ and the ‘ho’ stuff. I challenge all of that because that is not the principles we were raised on. Anybody who comes from the African Nova Scotian community knows that those were not our values or our principles. I challenge constantly the youth and their buy-into this type of behaviour.” (Black participant)

“We live in a world of self-gratification. I cannot believe it. People want everything and they want it now. They don’t think you have to work for it. Everything I’ve ever gotten in life, that’s been ever worth anything, I have had to work for it. You don’t get nothing for nothing. It involves a lot of work and we need to start telling kids the truth. ‘You need to work hard for that. You know it might be nice to have this right now but what does that mean and what consequences come with that later? I might want to party

now and not go to school but what does that mean?' Where are they going to be in ten years?'" (Black participant)

The concern that many youth were "lost" weighed heavily on the minds of several participants. They saw many youth succumbing to drugs and alcohol. They were sexually active earlier in their lives and young girls were getting pregnant. Other youth became so angry, or lost, that they harmed themselves or committed suicide. Participants from both communities recognized that these youth need help in finding themselves. There was a consensus at the Gathering that there are no "spare people" in Aboriginal and Black communities that can be lost to drugs, alcohol or prison. As participants noted,

"Like you mentioned, I have women in my shelter right now. It shocks me that they are self-harming. I've never seen in the last five years so many Black girls that are self-harming or suicidal. You got to do crisis intervention at least three times a week. You have to sit down and talk with young girls." (Black participant)

"The Black Community Advocacy Association listened last year to a couple of our youth. We were told that we have 10 year old and 12 year old children that are heavy into drugs and alcohol. Young girls are into having sex. If you saw it a couple of weeks ago, one of the schools had a code of ethics about what kids can and cannot wear to school. I give that principal credit because sometimes children have got to be responsible. Someone mentioned 16 year old girls having babies. We got 15 year old girls having babies. And I think it's sad." (Black participant)

Concern was raised about existing programs and services for youth. It was identified that some of these programs do not address the root causes that may lead them to substance abuse, pregnancy or prison. For example, while there are addictions programs for youth, they may not address the anger and frustration that lead to their involvement in drugs, alcohol or other harmful behaviours. Without addressing those core issues, participants doubted that any treatment program would have long-term success. As one participant indicated,

"I think that we should be concerned about the various programs that are out there and the various services that are needed. I think that we need to have more of an impact on what those services look like for our children. Yes, a lot of young people are involved in drugs and alcohol and there are programs out there for that. The problem is that many offenders were involved with

drugs and alcohol at the time of the offence and you just send them for drug and alcohol counselling. With a lot of Black youth, they were under the influence of racism at the time the offence occurred but there are no services that deal with that. We hold them accountable. If you assault somebody, you're held accountable. But what was the root cause of that assault? If you were under the influence of drugs or alcohol at the time, they say they got angry. You investigate that more and it turns out to be frustration and the anger caused by racism. Where is the service to address that? A lot of times that's what happens to our young people, but people who don't experience racism don't understand it." (Black participant)

Throughout the two day Gathering, participants associated the problems facing youth to the educational systems that did not meet the needs as Black and Aboriginal youth. There was unanimous agreement among the participants about the need to teach Black and Aboriginal youth about their histories and cultures. Many felt that the current curriculum in schools either minimizes or denigrates the roles of Black and Aboriginal people in Canada's development. Others felt that schools have played, and continue to play, a role in removing their cultures from their children so they could "be just like everyone else". In essence, the current educational system was identified as paralleling the objective of Indian Residential Schools which were designed to "take the Indian out of the child". All agreed that this is an unacceptable approach to education in the 21<sup>st</sup> century and that, if necessary, the communities should take control over the education of their own children and youth. As participants noted,

"When I think about the community and I think about the young people who end up in the criminal justice system, I immediately have to think about our education system. It is one of the systems that put a lot of our children in the justice system. I'm a believer of education, but I think we need to educate ourselves, and our children, to their history, to what's happening in the past and what's happening to them at the present time." (Black participant)

"We know the schools are failing our kids. Kids don't fail schools. I know that. I'm a product of that kind of system myself so I had to change my own concept of education. We have to teach our kids differently and I think that's where we can go. If we can work together with the Aboriginal community and the Black community we can take some kind of "micro-steps" to improve the way our kids are educated. We're not going to get there tomorrow. It's going to take a long time and like Doctor King said, 'I may not get there with you.'" (Black participant)

“In the last six months or so I’ve been doing a lot of looking at the education system. We send our five year old children out into that system with the hope that they will get an education and learn some skills and whatever they need to be successful in society - only to have them taught from an ethnocentric perspective. They don’t get to understand who they are and where they belong. They sometimes feel displaced with being in a system where we are saying to them, ‘Go to school and get an education. You got to get this, that and the other’. They’re not seeing any of themselves in the very system that we’re encouraging them to be part of. That’s where we as the people in the community, the Elders and so on, have to prepare our young people and take their education in our hands. What happens an awful lot of times is that we think differently, we act differently, and the Euro-centric system does not understand that, so our kids often find themselves in a position to be disciplined and the police called. And that’s been a concern of mine.” (Black participant)

“We have taught our own Black people to look at each other as competitors against the White man. And so I deal with that. I’m sure everybody around this circle, Aboriginal or Black, deals with that every day. Our youth are being sucked in. When we go to schools and we talk to these kids and they’re trying to emulate who? The White man. They’re not talking about trying to be themselves. They have an identity crisis in trying to be somebody else and our kids are failing left, right and centre in schools. They’re functionally illiterate. Their numeracy skill are terrible. We have tried to get jobs for them here but they can’t read or write. They can’t write essays and they don’t know what a paragraph is. They don’t even know how to talk to you with manners and respect.” (Black participant)

“The young lady earlier said that she was going back to school to complete her education. I admire any poor student that goes back to school. I admire the poor people of my culture going back to school because we need more education. I was a 40-year old freshman going to college. My final week of school I had six exams. Needless to say it was quite stressful because I was behind on two assignments in one course. Both of these assignments were worth 30 percent each and you needed sixty percent to pass. I talked to the facilitator that I owed these papers to on that final week and said, ‘Listen, I’ve been so hectic. I’ve got those two papers that I need to complete for you and I’ll have them done if I can have an extension of one week after this exams is done. It’s just I can’t get to them. I’m too busy studying.’ She said, ‘Oh, you passed.’ And I said, ‘Well, how is that possible if we need a 60 percent to pass and I haven’t handed in two assignments worth 30 percent each?’ She paused and she looked at me and she said, ‘You know what? I was told to put you through.’ I was one of five Aboriginal students to take the program but the other four had dropped out. It was as if they needed that one Aboriginal to be put through. And the lump in my throat went up to here

because I worked my ass off. I need to know that every effort that I put into my studies earn the marks that I get. I have to earn them.” (Aboriginal participant)

Both Aboriginal and Black participants spoke at length about the need for children and youth to be exposed to positive influences, role models and mentors in their communities. They recognized that youth will seek out individuals to emulate wherever they can and sometimes look to the wrong people. In some instances it is not by choice that they are attracted to negative influences but rather their choices may be limited or non-existent. As participants noted,

“In many of our urban neighbourhoods, children and youth are drawn to gangs. They live in poor families and see their friends and brothers walking around with money and spending it on things that these kids really want. That is an attraction. Sometimes, these youth are drawn towards gangs because, if they don’t join up, they become targets for gangs. It is a matter of protection. Still others see gangs as the only real family they have, and that is really sad.” (Aboriginal participant)

“When I got to schools and when I take time for them, they love it. They’re just like bees to honey. They circle around me so they’re all needing attention. Now our kids need attention any way they can get it. It could be negative attention or positive attention. It doesn’t matter. It’s still attention. Why do you think they’re running out talking to the drug pushers? Why do you think they’re dancing on the tables in Toronto and in Quebec and Niagara Falls. There’s a lot of them up there. That’s what happens when you look for attention from the wrong people.” (Black participant)

“I don’t blame the young person – it’s the adults. Who is selling the drugs? Who is pushing the drugs? Who’s coming in for the sex trade? Who’s doing the women on the streets? Who’s coming to them? It’s adults. Who’s giving the kids the drugs? Who are they doing it for? (Black participant)

Participants from both communities recognized that there was a serious problem in their communities due to the large number of single-parent families and the lack of positive male role models for boys and young men to learn about being a good husband and father. As participants stated,

“I grew up in a family with both a strong mother and father. I watched how they lived together and took care of me and the other children in our family. I learned that it wasn’t easy being a father and it took a lot of courage to do it

right. My father taught me a many things, but I believe I learned more just by watching him.” (Aboriginal participant)

“I would like to see in the community that we would have a support system for parents where those men who are making it in society would try to encourage men to be more mentors. It would be good to see them become involved and support their children because there are so many single parents out there. There are children where there’s no father figure involved. When these young men come out of prison there’s no place for them to go. Nobody wants to talk them.” (Black participant)

“I see a lot of families run my mothers. Men will come into the family, stay for a while and then move on to another woman. You cannot blame the women, but think about what this does to the children. They don’t learn responsibility. If there is abuse in the family, these children can begin to think that this is normal. The boys can learn that it is O.K. to hit women and girls can learn that it is normal to be abused.” (Aboriginal participant)

“And so my cry is - it’s time more men stand up. I work with a group of young boys who were having problems. They kept taking my grandson’s car and damaging it. We couldn’t understand why. So I tried to get these two community boys together with the RCMP and talk about this situation. And the young boy said, ‘Our problem is we know we’re not all great kids but we don’t have any men in these communities to stand up for us when we do something that’s wrong or before we get into trouble. Who can we go to?’” (Black participant)

Recognizing that all children and youth may not be able to find those positive role models inside their families, the participants felt that their communities had to raise up positive role models and mentors. These men and women would teach the youth and show them that the choices they made in their lives have lead to certain consequences, both good and bad. They could provide guidance in a positive way. This is sometimes easier said than done, as participants noted,

“We don’t have enough men mentors out there in the community. As I said earlier, I work with a young man who got out of prison and I have had a hard time to find a young Black man to mentor this young fellow.” (Black participant)

“You know we don’t have children at grade three who go, ‘You know what? I want to be a high school drop out when I grow up.’ and, ‘I want to be in

prison by the time I'm 20.' That's not what our kids should be focussing on. When you look at kids in grade seven and eight and nine and you ask them, 'What do you want to be when you grow up?' Guaranteed that if you ask an African Nova Scotian kid, they have to really think about it. They should be able to answer that question without a heart beat. Because there's no representatives of them in these fields that they want to go to, they feel like that's not an option for them. They'll never think about, 'When I grow up I want to be a doctor.' because, guess what, there's no African Nova Scotian doctor that's coming up to them going, 'How you doing? What hurts? What doesn't hurt?' When you take them to a dentist there's no African Nova Scotian dentist, there's no Black dentist or no Aboriginal dentist. They don't see diversity." (Black participant)

There was a recognition, however, that things were changing for the positive even if these changes were slow. One participant spoke of some communities that are recognizing the value of using released offenders as resources for youth crime prevention programs.

"There are a number of Aboriginal communities that are becoming aware that offenders returning to their communities have a responsibility to give something back to them. They are using these offenders to talk to youth about their lives, the decisions they made and the consequences of those decisions. They can really relate to the youth and can say 'I know where you are at. I was there too and these are the consequences I had to face when I made some bad decisions in my life. It's up to you to make choices, but you have to be aware of the consequences'. Those released offenders can speak directly about their experiences in jail and show the youth that it is not as easy or as safe as they may think." (Aboriginal participant)

Just as one participant talked about utilizing released offenders to work with youth, others spoke about youth helping other youth. Some even spoke about the need for youth to reach out to Elders and teach them. This action, they saw, empowered the youth by giving something back for the teachings given by Elders. As these participants noted,

"Next month we have an Elders-Youth Conference here and one thing I enjoy about that is it empowers the youth to be able to teach something to the Elders. Something that the Elders might not know. Any idea what that could be? Every kid knows the computer. How many Elders know the computer? How many kids can teach the Elders about the computer? And those kids walk away thinking, 'Wow, I'm a teacher. I have value. I can empower

myself. I'm somebody.' To me that's incredibly valuable to some of these kids and helps build some of self-esteem." (Aboriginal participant)

"We have a number of programs and we try to create opportunities and different perspectives for youths, not only from like our Mi'Kmaq community but also from the surrounding communities. We have a number of Black youth that are there as well as Mi'Kmaq youths and Caucasian youths. We have quite a diversity in our youth group. I'm here as a representative for the youth so that when I go back I can talk to them about what I learned here today. We also sit in a circle. We meet talk about different issues. We hear kids that are eight or ten years old talking about how they have a cousin who's gone to jail or somebody who's getting in trouble. We want to try to provide opportunities for them to deviate from the same path that they see other people in want to provide positive role models for them. We try to let them know as much information as we can. Whatever I learn here, I'll take it to those kids and let know that we're trying to work together as a community to provide opportunities to keep them out of correctional facilities and out of youth homes." (Aboriginal participant)

Throughout the discussion about youth, and the need for support from friends, mentors, families and organizations, participants were aware that it was predominantly adults sitting in the circle providing advice and recommendations. Participants recognized that it had to be the youth, themselves, who should be given a significant voice and responsibility to mobilize for change. Bringing youth into the discussion and decision-making processes about issues that affect them, brings both a new perspective and honesty that are required to address the problems they face. Their involvement in circles, conferences and policy-making processes will also provide opportunities for the youth to serve as spokespeople, which will develop the Black and Aboriginal leaders of tomorrow. As some participants noted,

"I look around and I see not a whole lot of youth here and we have to understand they are the leaders of tomorrow. I remember when was growing up it was you should be seen and not heard but we need to come to the realization that our youth are the leaders of today. Most of us are past 50, or almost there, and unless we involve them in healing circles, decision making circles we're going to be in the same boat we're in today in ten years." (Black participant)

"I think that lots of time we come together and we forget about the youth that we're talking about. So many times when we had our conferences they said

to us, 'Thank you for bringing us in because people go around and talk for us. They might come and work for us but they forget to bring us to the table'. I think it's very important that we look at our youth and bring the youth to the room.'" (Black participant)

"We should have the youth involved in this because they tend not to believe us most of the time what any of us are telling them, especially if you're a little bit older and some of us are a little bit older than others. Have them come in and let us know what they need and how they would like to go about doing things. I think that they're a power for the government to deal with, especially if you can get them in force and get them together and show them that they know what they're talking about." (Aboriginal participant)

"If we want to make change then we have to allow the youth to sit with us and be part of that change. Probably even more youth than Elders because they are the voices we need to listen to. I would put forward that for the next time we meet as two great peoples. We are two peoples that have done as much to improving the history of this nation as any other groups of people. But that's the story that each of us need to continue to tell our young people because it is from that sense of identity, that sense of history, that sense of community, that they go on to be all that they can be. I would propose that for the next time we meet that there be at least no less than ten youth in the midst because we need to include them to get their side of the story and for them to know that we are as passionate about what happens to them as we are about what happens to us." (Black participant)

## Women And Families

In both Aboriginal and Black communities, women are seen as the foundation of family, community and culture. As the primary care-givers of children, women not only look at the present situation in their communities but also look into the future to see what sort of lives their children may grow into. As official or unofficial leaders in their communities, women are often the quickest to recognize harm and take action. As participants noted,

“They said, ‘The people who’s working the hardest in the community is the women and the senior women.’ So we as women are strong women and somebody has to be strong for the sake of our communities.” (Black participant)

“Someone mentioned yesterday about strong Black women. We, in the Black community, have been noted to have very, very strong parents and aunts, cousins who we have been looking up to for many, many years. They have been the pillars of our community. We need them to be included in this decision making process.” (Black participant)

“When I have talked to Aboriginal women, and particularly mothers, I hear things like ‘I don’t want my daughters to grow up with violence or abuse’ or ‘When my children were babies, I didn’t look at them and say, when you grow up you’re going to become a prostitute or a drug addict. No, I want you to grow up strong, healthy and safe’. These women are the ones that are beginning to take action to improve their communities.” (Aboriginal participant)

“What I can tell you is an experience I had in an Ojibway First Nation where the community mobilized to take over their own affairs. It began when some women got together and talked over tea and talking about abuse and some of the things that had happened to them. There was the disclosure in this community that about 13 young girls had been abused by one person. At that point these women said, ‘That’s enough. We’re going to take control of this and we’re going to do something for own community’. They started having their meeting and brought in their pastor, their social services, their health nurse, their school principal, and all of those service people to meet on a regular basis. They did that for about six months and got the community mobilized.” (Aboriginal participant)

As women were acknowledged to be the strength that binds families and communities together, it was also recognized that families are the building blocks of culture and tradition. Participants noted that families should play the pivotal role in providing security for, and direction to, children and youth. Parents have a responsibility to teach and guide their children in a health way and provide for the continuation of community values and traditions. As some noted,

“When I think of our children, I think about having to take control over your our youth in every way, shape and form. And that means we have to be responsible for the messages they hear, for the direction in which they go and for the services that they should receive. We should be front and centre in terms of taking responsibility for our children’s education, leading them in a direction in which we want them to go. Because we got to be honest, the wider system is not going to direct the children where we want our children to go so we have to take responsibility for that. And I say take responsibility for that.” (Black participant)

“So I think family has a lot to do with the ideology of who we are and our traditions. I grew up with strong traditions in my home and they were called ‘principles’. They are about respecting each other, respecting your parents, learning about dignity, integrity and honesty. Those kind of things that we took for granted when I was a kid. I thought everybody had them and if I didn’t get my act together I got my ass kicked. A lot of people are now saying, ‘Okay, well that’s not the way it is today’. Well, it should be that way and I think we can implement that.” (Black participant)

It was recognized, however, that parents and families sometime need help to deal with issues that are beyond their power and capacity to resolve. Some parents have lost, or never learned, to be good parents. Participants recognized that it was essential for the survival of their communities and cultures to empower parents and give them the necessary tools to raise their children in a healthy way. Parents need to be involved in developing and delivering those tools but it was noted that families may need special support to resolve problems faced by youth who have come into conflict with the law. Participants acknowledged that no family is immune to difficult youth and that any strategy to address family needs must be holistic in nature. As participants noted,

“I’m looking at my Black youth from the Preston areas and from the surrounding Black communities in Nova Scotia that are coming to my place because the parents can no longer deal with the issues and we don’t know

how to deal with the issues. So we've got to find a way to empower the parents and not take away the parent's strength because when we do it we've got to do it where we can enable the parents to be a part of that process, as well as the youth." (Black participant)

"I know children that are coming out of rich homes, two parents and those kids have gone astray. It's not because you have two parents, it's what the parents do with those children." (Black participant)

"From the office of African Nova Scotia Affairs, we have a lot of different programs and services, and hoping to bring some new ones to African Nova Scotian communities, to really help the youth and parents. We have everything from crime prevention programs, training and education, to programs like "Positive Parenting". This program really helps parents deal with a lot of different issues. It deals with everything from educational to justice and housing issues. It's nice to be able to look at things like the 'Positive Parenting' program that's out there and say, 'Okay, it's a program that is specifically designed for parents to help them understand how to deal with problems like when their kid is thrown out of school.' It teaches parents how to react and who to contact. It teaches them how to go to the school and approach the individuals and, if they're uncomfortable because of really bad experiences that they've had, they need to call somebody else but not to lash out. We want to make sure that they are trying to get the best results possible for them and their child." (Black participant)

"Every time I think about the decision that we've made to keep one parent in the home I think about all the kids that I see going through the criminal justice system that perhaps might not have or that don't have that particular support at home. I keep thinking we're pushing them through the courts and they're going back into the same situation. There's not enough time that we have, not enough information, not enough support to provide to the courts when we're in there to try and ensure that they're not going to be back before the courts again." (Aboriginal participant)

"I think it's really important that everybody's getting together to try and look at the whole situation rather than just what's happening in terms of the events. Look at all of the background and how we can help support the family to be able to support the person that's involved in the criminal justice system so they'll not be back again." (Aboriginal participant)

## Community

Throughout the two-day Gathering, participants continued to return to the concept of community and what a community was, or should be. Some were concerned about the loss of community due to outside influences such as the Internet and television. They were concerned that the constant exposure to mainstream society's culture and social norms were having an adverse effect on how children, youth and adults perceived the world. Conversation wove back and forth among the participants about what a community should do for its members and what members owed to their communities. Underlying all of the conversation was the view that more had to be done by community members to strengthen the uniqueness of their culture and find a balance between their traditions and western societal norms.

Some participants from the Black community believed that their sense of community has been diminished by living so closely, and for so long, among non-Black people. Others felt that they maintained a distinct sense of community that could not be found among any other Black community in Canada. As participants noted,

“I think we've got to go back and to look inside. What are we missing? And a lot of it is what we don't do as a community. We lost community.” (Black participant)

“I sometimes look at myself and question who I am. I dress like White people, I work in a White organization, I live in a White neighbourhood and I speak like them. The only difference is that I am Black. I know I am different than White people, but I sometimes cannot tell what that difference is other than the colour of my skin.” (Black participant)

“Our children are being raised with exposure to a global world with Internet and television and they see everything as a homogeneous type of environment. We need to be able to show them where they're ancestors are and their identity as individuals belonging to Aboriginal peoples and people of African-Canadian descent. I see it in the prisons systems where you know the biggest thing that comes out from inmates is, 'I don't want to go to the Parole Board. I don't want to participate in this program. I don't trust the guard. I don't do this because they don't understand who I am'. Then you ask the question, 'Well, who are you?' and there's a long pause because they

don't have the answers to that question. They've gotten there because they've disenfranchised themselves from their communities and they don't have that grounding of who they are. And it's a sad statement when somebody who belongs to a community can't identify why they belong to that community because they don't have that sense of identity". (Black participant)

"The Black communities in Nova Scotia are very unique. We don't actually have this in other parts of the country. The concept of a "Black Community" in Ontario is almost "un-founded" I think to be exact. I mean the fact that we actually have 400 years of history with land ownership here is very unique. You're not going to find this type of similarity probably anywhere else in the country. So this is kind of a pioneering thing that is very much a Nova Scotia-based situation. (Black participant)

Aboriginal participants spoke of a different reality when it came to the loss of community. Through colonization, supported by the reserve system, Residential Schools and the impacts of the *Indian Act*, First Nations were geographically isolated from mainstream Canadian society. At the same time, governments carried out a policy of trying to "remove the Indian from the child" by imposing values that were foreign to First Nation cultures. This, participants felt, undermined the cohesiveness of community and the sense of community identity. While Black communities may have suffered from the dilution of their cultures and communities by their proximity to European societies, Aboriginal participants felt that it was the isolation from European society and efforts to colonize First Nation people that led to the disruption of their communities and cultures. As some Aboriginal participants stated,

"The *Indian Act* made our communities into pressure cookers. We were not allowed to leave the reserve without permission. We were not able to develop our communities in the way we wanted because we had to follow the rules set down by others. The government decided who could be part of our communities and where we had to live. This was unnatural, especially for those of our people who migrated from place-to-place and lived for part of the year in small groups. Indian Agents decided what should happen in our communities, how it should be governed and what it should look like." (Aboriginal participant)

"Whenever I go into prisons, it never fails but at least one of the brothers or sisters will say that they didn't know about their culture and spirituality until they came into prison. That makes me feel as though we, as Aboriginal

people, have somehow failed to teach our children and youth about our culture, our history and our communities. Those teachings have to come from the community so we have to rebuild our communities and make them places where children and youth learn about, and practice, our values.” (Aboriginal participant)

“Small communities such as mine are very family oriented. There is no winner and there is no loser when it comes to the justice system because very often in conflicts you have brothers against brothers or uncles against uncles. There is not an invisible perpetrator; there is not an invisible victim. How do you reconcile those two positions and try to create a more harmonious community? It’s very difficult because there are so many interests and so many personal feelings at stake. It openly falls back on ourselves as brothers and sisters, as parents, as community members to provide leadership. We cannot rely on governments to develop programs for us. We cannot rely on the ambivalence of our judges and our learned experts. It’s about reaching out to our young people, talking to them and providing that moral leadership.” (Aboriginal participant)

In spite of concerns raised about where Black and Aboriginal communities sit politically, culturally or geographically, participants agreed that communities had a responsibility to support their members, affect positive change and work towards wellness. Much of this discussion centred on the need for communities to support the healthy growth of children and youth and to give them other options than becoming involved with crime. Participants believed that both Black and Aboriginal communities had traditional forms of child rearing that supported healthy opportunities for childhood development and addressing problems involving children. As some participants stated,

“It’s also sad when I hear Elders or older people sitting back saying, ‘Well, blame the parents’. In some cases, yes, it’s the parents, but a lot of times it’s also about parents who don’t come out and see what the kids are doing. But it’s also about community. I grew up in a community where if I did something wrong my neighbour could slap the water out of me and I’d go home and tell my mother and she’d slap it out of me again.” (Black participant)

“The most important thing that drove us in our healing work, and continues to drive us in the work we do is keeping our children safe.” (Aboriginal participant)

“An African Proverb says, ‘It takes a whole village to raise a child’. Well, we need to put that back into action. It’s okay to say it, but our kids are running the streets like stray dogs and cats. They don’t know where they’re going at. There is also an old African proverb that says that ‘We let each one teach one’, so we have to learn to teach each other. There are things that I know that somebody else doesn’t know. There are things that I don’t know that somebody else knows. We all have our strengths, we all have our weaknesses, but if we pair together we can kick some serious butt.” (Black participant)

One Aboriginal youth participant spoke about ways in which communities could support their youth and provide them with positive alternatives to delinquency. It was felt that efforts, such as the ones proposed, could be done without waiting for someone to pay for a program but rather relying on community members to do it themselves.

“The community can do all kinds of things. You can open the community hall that you have. Just open the doors up and say ‘here’s a space you can use for whatever you want as long as there’s no alcohol, there’s no drugs and there’s nothing illegal going on in that building. You guys can get together with some musical instruments. You can bring in some video games and you can have whatever needs to be in there’. It’s not necessary to write a proposal and get government funding to pay salary for a facilitator. You just need a room, a safe place for kids to hang out. All communities have a church or they have a community hall or some type of centre and there’s absolutely no reason nor excuse for kids not to have anything to do other than to drink, use drugs or commit crimes because there’s a safe space in our communities. Somebody just has to take that initiative. An adult has to say, ‘Okay, I’ll open that door and I’ll sit with you guys because we need somebody to supervise these kids in there for maybe three hours a week or something’. You know that’s all it takes.” (Aboriginal participant)

Participants affirmed that communities had an important role to play in supporting their members throughout the correctional system. They recognized that it was necessary to improve how justice was delivered to both Black and Aboriginal community members and that communities had to take a leadership role in changing the system to meet their needs. They also recognized that this would be a daunting task since the system was not very flexible. Change is also made more difficult as both Aboriginal and Black communities represented minorities in the region. While there are specific provisions in Section 84 of the *Corrections and Conditional Release Act (1982)* that allow Aboriginal communities to have input to, and responsibility for, the care and release of federal

offenders, there are no comparable provisions for Black or other minority communities to assume that responsibility. Even with the specific Aboriginal provisions in the *Act*, it was noted that there were some difficulties having Section 84 arrangements approved in urban communities. Participants noted that,

“We have to take some ownership and we have to say, ‘As a community how do we work amongst each other?’ If we look at the parole system and Parole Board hearings right now, you can see some literature on the Aboriginal offender programming. You will not see anything on Black offender programming. You can see information on the Section 84 process but you do not see anything comparable for Black inmates. Part of the problem is that we all have to identify what our responsibilities are. Individuals have to take responsibilities for their actions. We also, as community members, have to take responsibility for our community members.” (Black participant)

“There was talk about trying to get Section 84 a couple of years ago with one of our community members in Halifax. We had a place of residence. We had an employment opportunity for him. We had community members willing to take this man on and mentor him. We had social workers, we had lawyers, Parole Officers and people of the community coming to support all of this. I believe it was vetoed by the Halifax Police Department. Why, because Halifax wasn’t recognized as an Aboriginal community. Because we’re not recognized as an urban Aboriginal community the whole thing was vetoed and we never did get Section 84. The sad truth about that is eventually that man had to be removed from his homeland and is now residing in Vancouver. He had to leave home and I just think that was so sad. It was such a valuable opportunity for us to learn from his experience.” (Aboriginal participant)

Representatives from both communities believed that they had to look to other, more innovative approaches to keep individuals out of the correctional system or provide for their safe reintegration if they had been incarcerated. They felt that restorative justice approaches were more appropriate for their communities since these approaches were better able to meet the needs of both offenders and their victims. These restorative processes, it was recognized, had to be driven by the community’s culture and spirituality. Most importantly, restorative approaches strengthened the role and responsibility of community by giving it a central role in the development and delivery of these processes. In that respect, restorative justice was seen not only as a process to

address the specific needs of victims and offenders, but was also recognized as a community development process. As participants noted,

“I’ve been involved in the criminal justice system for 27 years. I’m a police officer with the Halifax Regional Police, formerly with Dartmouth City Police. So for 27 years I’ve been taking people to court for a judge to put them in jail. I’ve recently been involved in a couple of Aboriginal sentencing circles and I truly believe from having participated in them that that this is the way to go. Government has shown that they are not been able to do it. So it’s up the community. It’s up to us to come up with ways to keep our people out of prison. We need to look at similar approaches to those circles for the Black community that are based on our culture and beliefs.” (Black participant)

“It would be really nice for the community to get involved in the whole case. The victim and the community should be part of getting them back together. Whether we use healing sweats or talking ceremonies, the goal is to get the families back together again. So if the community gets involved and sits together, has talking circles, healing circles or healing sweats, it’s going to be a lot easier for that person to reintegrate back into the community as a productive citizen. It will also give the community a sense that they are responsible to make that reintegration successful.” (Aboriginal participant)

“I’d rather have somebody that knows me a little bit and I’d rather have some of my community members make decisions about my life rather than somebody that is just going to read a piece of paper. You can’t just be a piece of paper and you can’t judge a book by its cover. I’d like to see a lot more healing with the victim and the offender. I would like to see a lot more positive relationships between the community, offenders and the victims. Then you would be able to give offenders a lot more positive outlook by the community when they get out. I’d like to see Parole Board members and the community members have circles to get to know the inmates as well as the families. It’s hard because healing is also a big word and it takes a lot of healing to get out.” (Aboriginal participant)

When asked who in their communities should lead any effort to change the system, there was unanimous agreement that every member of the community had a leadership role to play. While everyone believed that it was everyone’s responsibility to work towards change and wellness, it was recognized that it will take both time and energy to remind everyone that they hold that responsibility and that they have gifts to offer their community. As participants noted,

“And in terms of who would be the key players within your communities’ social effort, I think everyone is a key player. We need the people who are Elders. We need community people who are actually involved in a number of various work-related community agencies. We also need people who are church leaders because everyone is a leader, in a sense, because people all have something to contribute. We need all the key stakeholders and to me that includes government in order to come up with a plan.” (Black participant)

“Change has to come from inside the community. We need our leaders to make healing a priority. But it is not just the leaders. It is everyone in the community. It is the Elders, the women, the schools and workers in the community. It’s also the youth because they are the ones who will have to live with a system that does not work for us unless we change it. Each of us has a role to play and a gift to give to our communities.” (Aboriginal participant)

“Any change will take time which is why we look at our children and work towards making their lives better. We are a patient people and have learned to keep working for change even though it comes slowly. If we stopped working, nothing will change and the advancements we have made so far may even be lost.” (Aboriginal participant)

While everyone believed that their communities have a responsibility to support their members, and particularly those who need help the most, there was an equal belief that members had a reciprocal responsibility to support the development of, and healing in, their communities. That responsibility could take many forms. To some it meant sharing knowledge that they have gained through education, employment or life-experience. For others it meant being strong enough to assume a personal commitment to support community healing and development. Still others recognized their responsibility to reinforce the positive influences in their communities. As participants noted,

“Membership in a group or community comes with responsibility. We have a responsibility to our communities. I’m here today because I have a responsibility to my community. I am not here as an employee of the Correctional Service of Canada, who happens to be Black. I’m here as a person belonging to the Black community because I have a responsibility to it. If I can share the knowledge I have in corrections to work towards resolutions, then I’m fulfilling that responsibility to my community.” (Black participant)

“Belonging to a community or membership in a community has a responsibility. We’re all here because we feel that we have a responsibility to make our communities better. Individuals we’re trying to help are coming back into our communities. They have a responsibility to learn from their experience and to share that experience to make sure that it doesn’t repeat itself. If they’re not willing to take on that responsibility maybe they’re not welcome back at that point until they are ready. We’re here to support people and our role is to do that. That’s our responsibility. Their role is to take responsibility as well to be part of that community. You can’t come back into the community and take. You have to come back into the community and give. It’s a balance. That’s what responsibility is about. It’s not about taking. Any relationship that is about taking is a one-sided relationship. They can take their role in the community. They can be mentors. But we have to make sure that everybody knows what their role is.” (Black participant)

“When I grew up my mother gave me three things. ‘Do not bring reproach upon the Church. Do not bring reproach upon the family and do not bring reproach upon your community’. If I did anything that would embarrass my community, my church or family, I was held responsible. We all have responsibilities. A lot of our youth that come into conflict aren’t getting that message. We need to educate those individuals that you have a responsibility because you are a member of this community.” (Black participant)

A number of participants raised the point that communities could sometimes make it difficult for individuals. Some felt that jealousy played a role in how individuals were treated; particularly those who have tried to further their education and then return to the community to use their education and skills to support community wellness. This was seen as a hurdle that had to be overcome if communities are to use every human resource available to them and move forward in unity. As two participants said,

“We need to understand that we need to stop being ‘crabs in the basket’. As Malcolm-X used to say, ‘Damn crab starts to get to the top, you pull on his leg and pull him back down’. We need to stop that ‘crab mentality’ and we need to celebrate and reach out and understand that we’re stronger when we’re together. It doesn’t matter how old you are when you go out in the world and face traffic, it’s always safer to stand together and hold hands.” (Black participant)

“It wasn’t that long ago that you were lost to the community if you left to get a higher education. Those who went away to University or College were often shunned by other community members because they were seen as

‘turning into White people’. They didn’t fit in any more and if those educated people got a job with a good salary, there was a lot of jealousy. This has changed somewhat over the last several years and more young people with education are returning to their communities to use their education to help their communities. But that is not the case everywhere. We are still losing a lot of opportunities to benefit from their education and training.” (Aboriginal participant)

## Moving Forward

As the Gathering concluded with the last round of discussion, participants were asked about what they would like to see coming from the two days they shared together. While specific answers ranged over a number of ideas, there were several themes that kept surfacing. They were: the need to move beyond the past and confront those ideologies that have kept the Black and Aboriginal communities apart, the need to know and use the current system to the communities' advantage, the need continue the discussions begun at the Gathering and the need for both Aboriginal and Black communities to find ways of working more collaboratively. It was acknowledged that there was power in unity and that the two communities needed to work more closely in the future but that movement had to come from the two communities themselves.

One of the key discussion items was the need to move beyond talk to action. Many participants felt strongly that representatives from the Black and Aboriginal communities needed to meet and develop a joint plan of action to guide further discussions and actions. Some participants saw this Gathering as the beginning stage in bringing other communities into the Circle and, thereby, gaining more power and strength. While others did not disagree with expanding the Circle, it was felt that there needed to be more time than was available at this Gathering to bring closure to the discussions from the previous two days.

“There is an old Hollywood movie about Indians and some other people. I remember seeing a Chief take an arrow and break it in two. He then took several arrows and tried to break them. He couldn't. He was trying to tell the others that there is unbeatable strength if everyone works together. This is what we should be doing as our two communities.” (Aboriginal participant)

## Closing

The two-day Gathering commenced with two separate communities uniting with prayer and song. It concluded with laughter, a commitment to continue collaboration as well as prayer and song. Individuals from the Aboriginal community had the opportunity to spend time in the Black Cultural Centre, see its displays and establish new relationships. Individuals from the Black community received an invitation to visit the Micmac Native Friendship Centre. All agreed that this was a historic meeting and prayed that the conversation and work would continue over time.

“You know also I’d like to say thank you to all of you for coming here. I think it was fitting that this place, the Black Cultural Centre for Nova Scotia, hosted the first ever meeting of the Black community and the Aboriginal community. I think it was only fitting that it be held in this place. We have have had some very important people grace this place but I am here to tell you, having been the President for I believe 15 years now, no greater people have graced this place than the people who have graced it the last two days. Indeed it’s been an honour and a privilege to host this Gathering.” (Black participant)

## **PART TWO: Mitigating Sentencing: Aboriginal Sentencing Principles in a non-Aboriginal context**

(Prepared by: Michelle M. Mann B.A., LL.B. - March 31, 2005)

### **Introduction**

Since the enactment of section 718 of the *Criminal Code*<sup>1</sup>, effective in 1996, courts across Canada have been mandated to consider both aggravating and mitigating factors in sentencing an offender. Pursuant to subsection 718.2(e), courts are further directed to consider “all available sanctions other than imprisonment that are reasonable in the circumstances” “with particular attention to the circumstances of aboriginal offenders”. This particular subsection has facilitated a body of case law, starting with *R. v. Gladue*<sup>2</sup>, in which the courts have struggled to enunciate the appropriate sentencing principles to apply to Aboriginal offenders in varying circumstances.

In enacting subsection 718.2(e) parliament recognized that the overrepresentation of Aboriginal offenders in prisons was systemic, race related, and that the mainstream justice system was contributing to the problem. Subsection 718.2(e) has facilitated the imposition of restorative or community justice in lieu of prison time, and allows courts to take a more culturally relevant, contextual approach to sentencing Aboriginal offenders.

The courts have recently been challenged to extrapolate from this subsection and its underlying rationale, and impose conditional sentences on non-Aboriginal offenders also said to be disadvantaged due to systemic racism and gender bias. In 2003, the Ontario Superior Courts delivered conditional sentences to three black women, convicted of smuggling cocaine, on the basis that systemic racism, gender discrimination and their resulting poverty led them to act as couriers<sup>3</sup>. In 2004, the Court of Appeal stiffened their sentences, finding the crimes merited jail time, and that sentencing is not the venue

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<sup>1</sup> R.S. 1985, c. C-46.

<sup>2</sup> [1999] 1 S.C.R. 688.

<sup>3</sup> *R. v. Hamilton*, 2003 CanLII 2862 (ON S.C.); *R. v. Spencer*, 2003 CanLII 36890 (ON S.C.).

in which to address societal wrongs.<sup>4</sup> Leave to appeal to the Supreme Court of Canada has now been sought by one of these defendants.

The questions discussed in this paper are 1) whether Aboriginal sentencing principles pursuant to subsection 718.2(e) are applicable to other disadvantaged groups; and 2) whether the interconnecting factors of race, gender and poverty are relevant as mitigating factors in the sentencing process outside of the Aboriginal context?

### **Executive Summary**

Subsection 718.2(e) of the *Criminal Code* directs sentencing judges to consider “all available sanctions other than imprisonment that are reasonable in the circumstances” “with particular attention to the circumstances of aboriginal offenders”. This provision reflects parliamentary recognition that the overrepresentation of Aboriginal offenders in prisons is the result of a myriad of factors, including systemic racism and disadvantage and a justice system not reflective of traditional Aboriginal conceptions of justice.

In the seminal Supreme Court of Canada cases, *Gladue* and *R. v. Wells*<sup>5</sup>, the court concluded that subsection 718.2(e) obligates sentencing judges to consider all sanctions other than imprisonment for all offenders, and to take a remedial, restorative approach to sentencing Aboriginal offenders wherever possible. In sentencing Aboriginal offenders, the judge must consider the unique systemic or background factors which may have played a part in commission of the offence and sentencing procedures and sanctions which may be culturally appropriate for the offender. Courts may also take judicial notice of the broad systemic and background factors affecting Aboriginal people, and of the priority given in Aboriginal cultures to a restorative approach to sentencing.

In the Ontario case trilogy of *Hamilton*, *Mason* and *Spencer* the Ontario courts, both trial and appeal level, considered the applicability of 718.2(e) to non-Aboriginal offenders, in these cases three poor black single mothers convicted of importing cocaine. The sentencing judges concluded that the race, gender and poverty of the three drug

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<sup>4</sup> *R. v. Hamilton*, 2004 CanLII 5549 (ON C.A.); *R. v. Spencer*, 2004 CanLII 5550 (ON C.A.).

<sup>5</sup> [2000] 1 S.C.R. 207.

"mules" was a mitigating factor, whether pursuant to subsection 718.2(e) or otherwise, and accordingly delivered conditional sentences.

The Court of Appeal promptly reversed this trend, concluding that while systemic racism and gender bias might be considered as mitigating factors, such serious crimes merited jail time. Subsection 718.2(e) is applicable to non-Aboriginals in that imprisonment is appropriate only when there is no other reasonable sanction. However, the restraint in imprisonment principle has added importance for Aboriginal offenders, arising from their historical mistreatment in the criminal justice system, and traditional Aboriginal cultural views as to the purpose of punishment. Similarly, in *R. v. Borde*<sup>6</sup>, the court indicated that subsection 718.2(e) by its very language, applies specifically to Aboriginal offenders, and is rooted in traditional Aboriginal conceptions of restorative justice.

This is key to understanding subsection 718.2(e). The combination of a variety of factors, including Aboriginal sentencing values of restoration, atonement, personal responsibility and community and victim involvement, along with parliamentary intent, led the appeal courts to find that on the evidence tendered, Aboriginal sentencing principles are not applicable to non-Aboriginal groups.

However, it remains possible that if a member of another disadvantaged group could establish that the combination of their historical mistreatment and cultural views combine to make imprisonment ineffective in achieving the goals of sentencing, the court might consider those factors.

Nonetheless, sentencing judges are willing to consider the combination of circumstances that underlie an individual's commission of an offence in mitigating sentencing. Courts are required to consider all factors that impact the seriousness of the offence and the offender's personal culpability, including systemic racism and gender bias. Systemic racism and background factors faced by offenders can mitigate the

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<sup>6</sup> 172 C.C.C. (3d) 225.

sentence, although the degree of mitigation will largely depend upon the seriousness of the crime committed. For more serious offences, courts will place less emphasis on mitigating factors arising from systemic discrimination and bias, with imprisonment more likely to meet the goals of denunciation and deterrence.

Ultimately, sentencing remains a balancing act, with proportionality of the offence to the sentence still the dominant consideration. Mitigating factors are but one component in the series of considerations undertaken pursuant to the sentencing provisions of the *Criminal Code*.

## **I. Sentencing Provisions**

The general purpose and principles of sentencing established in the *Criminal Code* are as follows:

718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing...;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances;

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

The requirements for a conditional sentence are set out below:

742.1 Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court

(a) imposes a sentence of imprisonment of less than two years, and

(b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2,

The court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

## **II. The Aboriginal Context**

In enacting subsection 718.2(e) parliament recognized that the overrepresentation of Aboriginal offenders in the prisons was the result of a myriad of factors, including systemic racism, disadvantage in Canadian society and a mainstream justice system that was not reflective of traditional Aboriginal justice, thereby rendering it ineffective. This provision, along with case law and federal/provincial program funding, has facilitated the renewal of Aboriginal justice including sentencing circles and community restorative justice initiatives. And while courts have observed that restorative or community justice does not lend itself to every case, subsection 718.2(e) mandates judges to take a more culturally relevant, contextual approach to sentencing Aboriginal offenders.

Although the law in the area is a patchwork with somewhat inconsistent results across the country, subsection 718.2(e) has been interpreted by the Supreme Court of Canada in two seminal cases: *R. v. Gladue* and *R. v. Wells*.

#### **A. *R. v. Gladue***

In *Gladue*, 1999, the Supreme Court of Canada had its first opportunity to interpret the principles governing the application of subsection 718.2(e). Gladue, an Aboriginal woman, had killed her common law husband (manslaughter) and was sentenced to three years' imprisonment at trial, a sentence upheld at the Court of Appeal. The trial judge decided that a suspended sentence or a conditional sentence of imprisonment was not appropriate in this case, noting that there were no special circumstances arising from the Aboriginal status of the accused and the victim that he should take into consideration. Both were living in an urban area off - reserve and not "within the aboriginal community as such".

The Supreme Court, while dismissing the appeal on the sentence, found that the trial judge and Court of Appeal had erred in their understanding of the considerations that should be taken into account by a judge sentencing an Aboriginal offender. The court noted the mandatory nature of subsection 718.2(e) reflected in the language of "shall"; sentencing judges are thereby obligated to consider all sanctions other than imprisonment. The provision, remedial in nature, is designed to ameliorate the serious problem of overrepresentation of aboriginal people in prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing:

Rather, the logical meaning to be derived from the special reference to the circumstances of aboriginal offenders, juxtaposed as it is against a general direction to consider "the circumstances" for all offenders, is that sentencing judges should pay particular attention to the circumstances of aboriginal offenders because those circumstances are unique, and different from those of non-aboriginal offenders. The fact that the reference to aboriginal offenders is contained in s. 718.2(e), in particular, dealing with restraint in the use of imprisonment, suggests that there is something different about aboriginal offenders which may specifically make imprisonment a less appropriate or less useful sanction. (para 37)

Of course, subsection 718.2(e) does not stand alone and must be read in the context of all the sentencing provisions. However, special attention should be paid to the new emphasis on decreasing incarceration, the restorative goals of repairing the harms suffered by individual victims and by the community, promoting a sense of responsibility in the offender, and attempting to rehabilitate or heal the offender. The concept of restorative justice involves some form of restitution and reintegration into the community.

The court noted that subsection 718.2(e) evidences a parliamentary intention to expand the parameters of the sentencing analysis for all offenders, while mandating a particular remedial role for Aboriginals. And while sentencing is a highly individual matter, it has altered the sentencing process for Aboriginal offenders:

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. (para 66)

This requires that information pertaining to the accused and their community be provided to the judge by their counsel, although the court may take judicial notice of the broad systemic and background factors affecting Aboriginal people, and of the priority given in Aboriginal cultures to a restorative approach to sentencing.

The systemic and background factors to be considered in the causation of crime by Aboriginal offenders include low incomes, high unemployment, lack of opportunities and options, lack or irrelevance of education, substance abuse, loneliness, and community fragmentation. And while systemic and background factors are relevant to the incidence of crime, recidivism and sentencing for non-aboriginal offenders, “it must be recognized that the circumstances of aboriginal offenders differ from those of the majority because many aboriginal people are victims of systemic and direct discrimination, many suffer the legacy of dislocation, and many are substantially affected by poor social and economic conditions” (para 68).

Moreover, Aboriginal offenders are as a result of these unique systemic and background factors, more adversely affected by incarceration and less likely to be rehabilitated by it, because imprisonment is often culturally inappropriate and facilitates further discrimination towards them in the justice system:

In many instances, more restorative sentencing principles will gain primary relevance precisely because the prevention of crime as well as individual and social healing cannot occur through other means.(para 68).

The court observed that most traditional Aboriginal conceptions of sentencing place a primary emphasis upon the ideals of restorative justice, a tradition central to the interpretation of subsection 718.2(e). The principles of restorative justice and the Aboriginal conception of sentencing share a common underlying principle: the importance of community-based sanctions.

Generally, the more serious and violent the crime, the more likely that the term of imprisonment will be the same for similar offences and offenders, whether the offender is Aboriginal or non-Aboriginal. Simultaneously, it should not be assumed that an offender is receiving a more lenient sentence simply because incarceration is not imposed.

Ultimately, the Supreme Court found that the application of s. 718.2(e) is not limited to Aboriginal offenders living in rural areas or on - reserve. The trial judge further erred in not considering the systemic or background factors that may have influenced the accused, or the possibly distinct conception of sentencing held by the accused, and the Aboriginal community. However, given the seriousness of the crime, the sentence of three years' imprisonment was not unreasonable.

***B. R. v. Wells***

In this 2000 case, the Aboriginal accused was convicted of sexual assault against an Aboriginal woman while she was either asleep or unconscious from the effects of alcohol. At the sentencing hearing, the trial judge characterized the accused's actions as a "major" or "near major" sexual assault. In his view, deterrence and denunciation were the

paramount sentencing factors to be considered for this type of offence. He took into account several mitigating and aggravating factors and a pre-sentence report recommending a conditional sentence. He observed that he was "obliged to bear in mind" ss.718.2(e), and taking all these factors into account, found that a conditional sentence in the community would not adequately serve the elements of deterrence and denunciation. He sentenced Wells to 20 months' incarceration, a sentence upheld by the Court of Appeal.

The Supreme Court of Canada concluded that in applying the conditional sentencing provisions of section 742.1, the judge must determine whether a conditional sentence would be consistent with sections 718 to 718.2. Imposition of a conditional sentence ultimately depends upon the sentencing judge's assessment of the specific circumstances of the case, including aggravating factors, the nature of the offence, the community context, and the availability of conditions which properly reflect society's condemnation.

While the objective of restorative justice applies to all offenders, ss.718.2(e) reflects an understanding that for most Aboriginal peoples restorative justice is the primary objective, and is meant to serve a particular remedial purpose related to incarceration. However, while it requires a different methodology for sentencing an Aboriginal offender, it will not necessarily have a different result:

Section 718.2(e) does not alter the fundamental duty of the sentencing judge to impose a sentence that is fit for the offence and the offender. Furthermore, in *Gladue*, as mentioned the Court stressed that the application of s. 718.2(e) does not mean that aboriginal offenders must always be sentenced in a manner which gives greatest weight to the principles of restorative justice and less weight to goals such as deterrence, denunciation, and separation. As a result, 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. (para 44)

In the case at hand, the Court found that the sentencing judge had made a reasonable determination as to the availability of a conditional sentence, and had committed no errors, thereby upholding the incarcerating sentence.

### **III. The Ontario Trilogy**

The law surrounding the sentencing of Aboriginal offenders pursuant to subsection 718.2(e) is at least partially the inspiration for a spate of trial division cases in Ontario that considered the race, gender and poverty of three drug "mules" in mitigating sentencing. The Court of Appeal promptly reversed this trend, finding that sentencing is not the venue in which to address societal wrongs. Leave to appeal to the Supreme Court has subsequently been sought in the *Spencer* case and is currently pending.

The facts in all three cases were similar: three black women, convicted of smuggling cocaine from Jamaica, were awarded conditional sentences by the trial judge on the basis that systemic racism, gender bias and their resulting poverty led them to act as couriers. The Court of Appeal rejected the "systemic and background factors" arguments, finding that the seriousness of the crimes merited jail time.

#### A. Trial Division

#### ***R. v. Hamilton and R. v. Mason***

These two trial division cases were heard and sentenced together at the Ontario Superior Court of Justice. Both first time offenders were black women, single mothers of three children receiving no aid from the fathers and on social assistance, who pleaded guilty to charges of importing cocaine. Mason was a landed immigrant from Jamaica, potentially subject to deportation, while Hamilton is a Canadian citizen.

In determining the appropriate sentences for these two women, the judge made several observations and findings of fact based on his own experience, and research he conducted. Among the observations the judge made were that in the Brampton court (closest to Pearson International Airport):

- (1) black persons, men and women, are charged with cocaine importation in numbers disproportionate to their percentage in the general population; and

(2) black women, more often than not single mothers, are charged and sentenced to penitentiary sentences for cocaine importation in numbers disproportionate to their percentage in the general population.

This led the trial judge to conclude:

And so, the women I see in the years that I have been here, are often single, black women and single mothers carrying a huge burden, very few employable skills, little prospect for the future with respect to attracting either stable or employment at much more than a subsistence level, with the burden of child care of young children....

So there is something unique when it comes to women about cocaine importing, and I'm trying to figure out what it is, and I'm trying to figure out when I see black women before me, day in, day out, assignment court after assignment court, what it means in terms of the crime of cocaine importing, and what it should mean to me, if anything, as a sentencing judge obliged to apply equality principles, and constitutional principles in the exercise of a discretion, which sentencing is. (para 102).

He noted that a judge's understanding and experience of society is essential to contextual decision making and that the bench is entitled to take judicial notice of the history of discrimination faced by disadvantaged groups protected by the *Charter's* equality provisions.

The judge then went on to consider the applicability of the 1996 amendments, including subsection 718.2(e) and the overall scheme of the sentencing provisions of the *Criminal Code*, directing trial courts to expand the parameters of sentencing for all offenders to include restorative sentencing goals. He continued his inquiry to ask whether other definable groups such as women and visible minorities, not specified in s.718.2(e) in the same way as Aboriginal offenders, could in an appropriate case, have their unique circumstances considered in sentencing.

He concluded that:

Whether or not for other groups s. 718.2(e) permits, or compels, a similar approach to that articulated in the Gladue and Wells cases respecting aboriginal offenders, the purposes and principles of sentencing and the exercise of sentencing discretion in accordance with *Charter* values commands consideration of systemic factors in this case insofar as they are

related to the commission of the offences for which the accused have been convicted. This is the essence of equity and individualized sentencing. (para 186)

Citing *Wells* and its discussion of the systemic and background factors impacting Aboriginal offenders, the judge said:

Stopping there, and without minimizing the circumstances of aboriginal Canadians, many of the observations relating to systemic racism and its effects are equally applicable to African Canadians. At page 414, [of *Wells*] the court stated that where unique background and systemic factors "have played a part in bringing the particular offender before the court" then "it is incumbent upon the sentencing judge to consider these factors in evaluating whether imprisonment would actually serve to deter" in any meaningful way in the community of which the offender is a member. (para 187)

The court found that the requirement to take judicial notice of systemic or background factors when sentencing Aboriginal offenders, was equally applicable to female and visible minority offenders, whether pursuant to subsection 718.2(e) or otherwise:

Some of the same things [canvassed in *Gladue*] could be said of the over-representation of African Canadians in our jails and penitentiaries. I think that in an appropriate case a sentencing judge might find assistance from the approach described by the court in *Gladue* and *Wells*, even though that approach is grounded in the special reference to aboriginal offenders in s. 718.2[(e)]... However, the principles that are generally applicable to all offenders, including African Canadians, are sufficiently broad and flexible to enable a sentencing court in appropriate cases to consider both the systemic and background factors that may have played a role in the commission of the offence and the values of the community from which the offender comes. (para 189)

Given the inherently individualized process of sentencing, systemic and background circumstances playing a part in the offence should be relevant to do justice in every case.

The court proceeded to take judicial notice of the feminization of poverty as an entrenched social phenomenon, noting:

Offenders like those before the court are subject to both the systemic economic inequality of women caring on their own for young children and the compounding disadvantage of systemic racism securing their poverty status. These individuals, almost inevitably without a prior criminal record, are in turn conscripted by the drug distribution hierarchy targeting their vulnerability. Poor, then exploited in their poverty, these women when captured and convicted have been subjected to severe sentences perpetuating their position of disadvantage while effectively orphaning their young children for a period of time. (para 198)

The judge concluded that society cannot shirk its responsibility for the offender being before the court. Thus, despite the seriousness of the offence of importation of cocaine, the judge was prepared to mitigate the sentences imposed on Hamilton and Mason, due to systemic and background factors. The court concluded that:

Systemic and background factors relating to the offender's involvement in these crimes militate toward serious consideration of imprisonment to be served conditionally. In all of the circumstances, the sanction of a conditional term of imprisonment does not violate the principles of sections 718 to 718.2 of the Criminal Code. (para 234)

Taking into consideration a multitude of factors including delay, amount of the drug imported, best interests of their children, risk of deportation and days spent in custody, the court awarded 20 and 24 month sentences to be served conditionally.

### ***R. v. Spencer***

The facts in this case are similar to those in Hamilton; the trial judge hearing this case had awaited that judgment. Spencer is a single black woman with three young children, a landed immigrant, and was in receipt of social assistance at the time of her arrest for importing cocaine from Jamaica. Importantly, there were some differences in the *Spencer* case including: this accused did not plead guilty, she imported a greater amount of cocaine, and had a criminal record acquired subsequent to her importation arrest.

Defence counsel urged the judge to adopt the reasoning in *Hamilton* and impose a conditional sentence, asking:

Can crime prevention which is what Justice Hill talks a lot about in his Judgment and other goals be better achieved through healing? Are there better aims and better ways in which the criminal justice system can deal with these serious crimes? (para 16)

The court, citing *Hamilton* extensively, pointed to the difficulty of establishing the relationship between race, crime and imprisonment, while simultaneously observing that adopting too rigorous a standard of proof risks not only ignoring racism, but also perpetuating its effects. The judge concluded that similar to *Hamilton*, there was a clear evidentiary link between the systemic and background factors affecting Spencer that had played a role in her offending:

It is the background and systemic factors of Ms. Spencer's gender and race, her situation of impoverishment, and her being the sole caregiver of two small children [now three] that provides the evidentiary link to this offence. (para 60)

For these reasons I am satisfied that the systemic and background circumstances of Ms. Spencer, linked in this case to the offence of being a courier of cocaine, are a mitigating factor in the determination of a fit and proper sentence. (para 61)

Accordingly, Spencer was sentenced to two years less a day imprisonment, to be served conditionally.

B. Court of Appeal

***R. v. Hamilton and Mason***

The Court of Appeal overturned the trial judge's sentence on principle, finding that he had erred on numerous issues and made unsupported findings of fact, including in his consideration of systemic and background factors. The court found that while the duration of the sentences was not unreasonable, the imposition of conditional sentences was an error reversible by the appeal court, as the offences merited substantial prison terms despite the offender's mitigating personal circumstances.

The intervenors, the Native Women's Association of Canada, Aboriginal Legal Services Toronto and the African Canadian Legal Clinic all supported the trial judge's approach.

The sentencing process, the court said, is meant to reflect the circumstances of the specific offence, and the attributes of the specific offender:

Sentencing is not based on group characteristics, but on the facts relating to the specific offence and specific offender as revealed by the evidence adduced in the proceedings. A sentencing proceeding is also not the forum in which to right perceived societal wrongs, allocate responsibility for criminal conduct as between the offender and society, or "make up" for perceived social injustices by the imposition of sentences that do not reflect the seriousness of the crime. (para 2)

The trial judge was also found to have erred by virtue of introducing the race and gender arguments, which had not been introduced by either party, and by conducting his own research, thereby overstepping his role. His factual findings pertaining to the overrepresentation of black women in the penal system were doubted:

As of January 2003, there were twenty-five black women in the penitentiary out of a total population of almost 350,000 black women in Canada. That means that .007 per cent of the female black population in Canada is in the penitentiary. The validity of any inferences drawn from such small numbers must be open to question. (para 78)

As to the general applicability of subsection 718.2(e) to other groups, like African Canadians who have experienced discrimination in both society and the justice system, the court concluded it clearly applies to all offenders in that imprisonment is appropriate only when there is no other reasonable sanction. However, the restraint in imprisonment principle has added importance for Aboriginal offenders, arising from their historical mistreatment in the criminal justice system, as reflected in the highly disproportionate number of Aboriginals sentenced to imprisonment. This overrepresentation must be taken with traditional Aboriginal cultural views as to the purpose of punishment; the two combine to make imprisonment ineffective in achieving the purpose or objectives of sentencing where the offender is Aboriginal:

The restraint principle is applied with particular force where the offender is an aboriginal not to somehow try to make up for historical mistreatment of aboriginals, but because imprisonment may be less effective than other dispositions in achieving the goals of sentencing where the offender is aboriginal. (para 98)

And,

Parliament has chosen to identify aboriginals as a group with respect to whom the restraint principle applies with particular force. If it is shown that the historical mistreatment and cultural views of another group combine to make imprisonment ineffective in achieving the goals of sentencing, it has been suggested that a court may consider those factors in applying the restraint principle in sentencing individuals from that group: see *R. v. Borde*, supra, at p. 236. **There was no evidence in the mass of material adduced in these proceedings to suggest that poor black women share a cultural perspective with respect to punishment that is akin to the aboriginal perspective.** (para 99) (emphasis added)

The conditional sentences imposed at trial were found to do nothing to advance the restorative objectives identified in section 718, nor did they provide for reparation by the offenders or a sense of responsibility for the harm done to the community.

Further, any perspective of the black community must include those who are the victims of cocaine importation, both directly and indirectly:

Viewed from that perspective, I would not assume that members of the black community would regard the imposition of non-custodial sentences for those who import cocaine into their communities as a positive step towards racial equality in the criminal justice system. (para 148)

The fact that black women are overrepresented as cocaine couriers from Jamaica, was found by the Appeal Court to be representative not of systemic racism or gender bias but rather of the selection process of those who hire them. The obvious explanation, said the court, was that Jamaica is a predominantly black country, and those seeking couriers are likely to select individuals with some connection to Jamaica. The court concluded:

The fact that an offender is a member of a group that has historically been subject to systemic racial and gender bias does not in and of itself justify any mitigation of sentence. Lower sentences predicated on nothing more than

membership in a disadvantaged group furthers neither the principles of sentencing, nor the goals of equality. (para 133)

Further, to deliver conditional sentences to the offenders on the basis of systemic racism and gender bias would not ameliorate the situation, but rather would serve as encouragement to recruiters to target this very group, thereby increasing their vulnerability.

However, trial judges have always been willing to consider the combination of circumstances that underlie an individual's commission of an offence. The court is mandated to consider all factors that impact the seriousness of the offence and the offender's personal culpability, including systemic racial and gender bias. "If racial and gender bias suffered by the offender helps explain why the offender committed the crime, then those factors can be said to have played a role in the commission of the offence."(para 135)

In the cases of *Hamilton* and *Mason*, the offender's impoverished circumstances clearly played a role in the commission of their offence, reasons that were relevant to the sentencing process. This warranted some mitigation of their personal culpability; however, the offenders still ultimately chose to commit a very serious crime:

The blunt fact is that a wide variety of societal ills - including, in some cases, racial and gender bias - are part of the causal soup that leads some individuals to commit crimes. If those ills are given prominence in assessing personal culpability, an individual's responsibility for his or her own actions will be lost. (para 140)

The Court of Appeal ultimately concluded that proportionality, the idea that a sentence reflects the seriousness of the offence, remains the penultimate principle of sentencing. Subsection 718.2(e) cannot be used to deprecate the seriousness of the offence; where the offence causes or threatens significant harm to the individual or community, denunciation and general deterrence will be the dominating sentencing objectives:

Where the offence is sufficiently serious, imprisonment will be the only reasonable response regardless of the ethnic or cultural background of the offender. (para 100)

With respect to Hamilton and Mason, while systemic racial and gender bias provided context for the offender's commission of their crimes, it could not detract from the seriousness of the offence, and could not justify conditional sentences.

### ***R. v. Spencer***

Heard with the appeals in *Hamilton*, discussed above, the Court of Appeal again overruled the trial judge, finding that a sentence of 40 months incarceration should have been imposed at trial. Given that the reasons in *Hamilton* and *Spencer* are very similar, less emphasis will be placed on this second decision.

The court reiterated that systemic racism and gender bias can inform a trial judge's understanding of the circumstances that led the offender to commit the crime. However, despite their potential mitigating effect, where the crime is a serious one, these factors will not justify a conditional sentence.

This rationale was held to apply even more stringently to Spencer, given that she had imported more cocaine, and several personal mitigating factors, present in *Hamilton* and *Mason*, were not present here, including a guilty plea. Spencer was not as economically disadvantaged and had prospects for improving her situation when she committed the offence. Both the children's grandmothers were actively involved with them, and their fathers paid child support. The court concluded that Spencer's specific circumstances did not support the conclusion that she was impoverished, that her race or gender contributed to her financial circumstances, or that she chose to commit the crime so as to provide for her family.

In contrast to Hamilton and Mason whose sentences were almost completely served at the time of the appeal hearing, leading the court to conclude that incarceration for a few months would not serve the administration of justice, Spencer was sentenced to

an additional 20 months incarceration.

Accordingly, Spencer has requested leave to appeal from the Supreme Court of Canada, decision pending.

#### **IV. Other Cases**

##### ***R. v. Borde***

In addition to the Ontario trilogy discussed above, there appears to be one other case in which the applicability of subsection 718.2(e) to other disadvantaged accused was canvassed: *R. v. Borde*, 2003.

In *Borde*, the Ontario Court of Appeal heard a sentence appeal by an 18 year - old offender with a lengthy youth court record, now convicted as an adult for aggravated assault, possession of a loaded restricted firearm, and use of a firearm in the commission of an indictable offence. The offender, who had a difficult childhood and suffered from alcoholism, had been sentenced at trial to five years and two months imprisonment.

On appeal, counsel for the accused sought to introduce fresh evidence that he suffered from systemic racism by virtue of being a young black person in Toronto, particularly, in Regent Park. The evidence filed included a number of reports on systemic racism in Canada:

These various reports chronicle a history of poverty; discrimination in education, the media, employment and housing; and overrepresentation in the criminal justice system and in prisons. Common among these reports is the assertion that aside from the experiences of Aboriginal peoples, there is no other community in Canada that has faced and continues to face this combination of factors. (para 17)

Counsel for the defence successfully argued that the court could take judicial notice of systemic racism against the African-Canadian community just as *Gladue* directed the courts to do for Aboriginals:

The appellant's fundamental submission is that because of the similarity between the plight of Aboriginal Canadians and African Canadians, the court

should adopt a similar form of analysis for the purposes of sentencing. Further, he submits that the background of the appellant exhibits many of the same factors often found in the background of Aboriginal offenders including poverty, family dislocation, chaotic child rearing and alcoholism. I accept that there are some similarities and that the background and systemic factors facing African Canadians, where they are shown to have played a part in the offence, might be taken into account in imposing sentence. (para 27)

In response to these submissions the court considered subsection 718.2(e) and its applicability to Aboriginal offenders, including the role of the sentencing judge in ameliorating overrepresentation, bias, and discrimination. Noting that many of the same factors are present in the overrepresentation of both African Canadians and Aboriginals in the prison system, the court concluded that systemic racism and background factors faced by black youths in Toronto could in another case affect the sentence. In a more appropriate case, the sentencing judge might find assistance in the approach taken in *Gladue* and *Wells*.

However, the court also indicated its awareness that subsection 718.2(e) by its very language, applies specifically to Aboriginal offenders, and is rooted in traditional Aboriginal conceptions of restorative justice. The *Gladue* reasoning hinged on the fact that Canadian sentencing ideals of deterrence, separation, and denunciation are often far removed from the understanding of sentencing held by Aboriginal offenders and their community. It followed that:

This link for the African Canadian community is missing from the fresh evidence. The importance that the Supreme Court attached to the sentencing conceptions of aboriginal communities results from the specific reference to aboriginal offenders in s. 718.2(e). In this regard, aboriginal communities are unique. However, the principles that are generally applicable to all offenders, including African Canadians, are sufficiently broad and flexible to enable a sentencing court in appropriate cases to consider both the systemic and background factors that may have played a role in the commission of the offence and the values of the community from which the offender comes. (para 32)

Ultimately, the court found that the new evidence was not relevant in this case. It should have been introduced before the trial judge where it could have been tested, and its relevance explored. More importantly, in dismissing the application to introduce fresh

evidence, the court held that the crimes were so serious that systemic and background factors could not affect the resulting sentence. The “Gladue approach” would not lead to any different sentence for such violent and serious offences. (The court did reduce the sentence on other unrelated grounds.)

***R. v. S. (R.D.)***<sup>7</sup>

In *R. v. S. (R.D.)*, 1997, the Supreme Court of Canada had to determine whether Judge Corinne Sparks, Nova Scotia's first black woman on the bench, was biased because she had commented on racism in Halifax in acquitting a racial minority youth on charges of assaulting a white police officer. Judge Spark's youth court decision was overturned by the Nova Scotia Supreme Court and the Nova Scotia Court of Appeal. The Supreme Court upheld her original judgement, acquitting the youth and finding no bias in her remarks.

Note that this case deals with contextualized judging in assessing the credibility of witnesses, rather than in mitigation in the sentencing process.

Briefly, a white police officer arrested a black 15-year-old who had allegedly interfered with the arrest of another youth. The accused was charged with unlawfully assaulting a police officer, unlawfully assaulting a police officer with the intention of preventing an arrest, and unlawfully resisting a police officer in the lawful execution of his duty. The police officer and the accused were the only witnesses and their accounts of the relevant events differed widely. Judge Sparks determined that the accused should be acquitted, in the process commenting:

The Crown says, well, why would the officer say that events occurred the way in which he has relayed them to the Court this morning. I am not saying that the Constable has misled the court, although police officers have been known to do that in the past. I am not saying that the officer overreacted, but certainly police officers do overreact, particularly when they are dealing with non-white groups. That to me indicates a state of mind right there that is questionable. I believe that probably the situation in this particular case is the case of a young police officer who overreacted. I do accept the evidence of

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<sup>7</sup> [1997] 3 S.C.R. 484.

[R.D.S.] that he was told to shut up or he would be under arrest. It seems to be in keeping with the prevalent attitude of the day. (para 53)

The bulk of the Supreme Court judgment deals with judicial bias, and the question of whether the existence of anti-black racism in society is a proper subject for judicial notice is not dealt with since it was raised by an intervener, and not the appellant.

The majority of the court found that Judge Sparks did not exhibit bias in her comments. Four of the justices concluded that in considering the racial dynamic in the case, Judge Sparks was simply engaging in the process of contextualized judging, which was proper and conducive to a fair and just resolution of the case. Further, the impugned comments reflected an entirely appropriate recognition of the facts in evidence and of the context within which this case arose, a context known to the judge and to any well-informed member of the community.

Two other justices, though upholding the acquittal, found that Judge Spark's generalized remarks about a history of racial tension between police officers and visible minorities, unlinked by the evidence to the particular case, were worrisome. They did however; acknowledge that the encouragement of greater diversity in judicial appointments was in part so that women and visible minorities would bring an important perspective to the difficult task of judging. Three of the nine Supreme Court justices would have found judicial bias and upheld the Court of Appeal decision.

## **V. Conclusions: 718.2(e) and Mitigating Sentencing**

As is evident in the cases discussed, there is an increasing awareness by judges that systemic racism and gender bias is prevalent in Canadian society and in the justice system<sup>8</sup>.

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<sup>8</sup> Also see: *Golden v. the Queen*, 159 C.C.C. (3d) 449, wherein the Supreme Court of Canada accepted arguments that African Canadians and Aboriginal people are overrepresented in the criminal justice system; the *Report of the Commission on Systemic Racism in the Ontario Justice System* (Toronto: Queen's Printer for Ontario, December 1995) recommending that the Ontario Court of Appeal reconsider some of its sentencing principles in light of factors adversely impacting on black offenders in sentencing.

Accordingly, courts are increasingly willing to consider systemic and background factors in the sentencing process as part of the context in which an offence was committed, particularly where the accused hails from a disadvantaged background.

**A. Subsection 718.2(e)**

However, it is equally apparent from the discussion that the courts have not been prepared to extend their interpretation of subsection 718.2(e) beyond the clear meaning of the text. As noted in *Hamilton*, this provision applies to all offenders, in that imprisonment is appropriate only when there is no other reasonable sanction. However, the Aboriginal specific restraint in imprisonment principle is limited in its application to Aboriginals, both by virtue of the text, and the reasons behind its enactment. The courts have concluded that parliament was seeking to redress not only historical mistreatment in the criminal justice system, as reflected in the overrepresentation of Aboriginal peoples in prisons, but also to incorporate traditional Aboriginal cultural views as to the purpose of punishment.

This is where arguments to have Aboriginal sentencing principles developed pursuant to 718.2(e) applied to non-Aboriginals appear to fail. The legislative intent behind specifically identifying Aboriginals in this subsection was largely based on a recognition that imprisonment was ineffective in achieving the goals of sentencing with this group, largely due to cultural differences.

It is possible that if a member of another disadvantaged group could establish that the combination of their historical mistreatment and cultural views combine to make imprisonment ineffective in achieving the goals of sentencing, the court might consider those factors in sentencing. In none of the cases reviewed had any attempts been made to establish a shared group perspective on punishment similar to the Aboriginal perspective.

Even if such an evidentiary link were established between an offender and their community's cultural view on sentencing, it could arguably be up to parliament to expand the specific reference to Aboriginals in subsection 718.2(e).

It is also noteworthy that in the Ontario trilogy the Court of Appeal distinctly noted that the conditional sentences imposed at trial did nothing to advance restorative objectives, nor did they provide for reparation by the offenders, or a sense of responsibility for the harm done to the community.

This is key to understanding subsection 718.2(e). Aboriginal offenders receiving conditional sentences pursuant to this subsection are not receiving a race-based "get out of jail free" card. Indeed, it is well documented that returning to face one's victims, family and community can be much more difficult than serving a few years in jail. It is a different sentence, not necessarily a lighter one. Aboriginal offenders receiving a conditional sentence will generally be required to deal not only with their offence, but also with the underlying causes, through programs such as addictions counselling and healing initiatives.

This differs greatly from what the trial courts tried to accomplish in the Ontario trilogy, wherein conditional sentences were imposed based on the defendants' circumstances and immutable characteristics, without adequate community involvement. As the Court of Appeal noted, without that community participation, one cannot assume that its members would necessarily support conditional sentences for the offenders.

And while *Borde* initially appears to leave the door open for a sentencing judge to apply *Gladue* and *Wells* in a more appropriate case, the Court of Appeal indicated that subsection 718.2(e) applies specifically to Aboriginal offenders, and is rooted in traditional Aboriginal conceptions of restorative justice. Putting emphasis on the unique Aboriginal conceptualization of sentencing, it followed that that link was missing for the African Canadian community.

Thus, the combination of a variety of factors, including Aboriginal sentencing values of restoration, atonement, personal responsibility and community and victim involvement, along with parliamentary intent, led the appeal courts to find that on the

evidence tendered, Aboriginal sentencing principles are not applicable to non-Aboriginal groups.

## **B. Mitigation**

While the higher courts may be reluctant to apply Aboriginal sentencing principles developed pursuant to subsection 718.2(e) to non - Aboriginals, sentencing judges are willing to consider the combination of circumstances that underlie an individual's commission of an offence in mitigating sentencing.

Sentencing principles generally applicable to all offenders are broad and flexible enough to enable a court to consider the systemic and background factors that may have played a role in the commission of the offence. Courts are mandated to consider all factors that impact upon the seriousness of the offence and the offender's personal culpability, including systemic racism and gender bias.

And while membership in a group that experiences systemic racial and gender bias is not sufficient in itself, where the offender can establish that their personal circumstances played a role in the commission of the offence, this may serve to mitigate their sentence pursuant to section 718.2. In light of the direction in subsection 718.2(e) to consider all other sanctions than imprisonment, these factors could ultimately contribute to the imposition of a conditional sentence.

Thus, in *Borde*, the court clearly remained open to the possibility that systemic racism and background factors faced by black youths in Toronto could in another case, affect the sentence. Similarly, in the cases of *Hamilton* and *Mason*, the Court of Appeal concluded that the offender's impoverished circumstances, having played a role in the commission of their offences, were relevant to the sentencing process. However, while systemic racial and gender bias provided context and some mitigation for the offender's crimes, it could not detract from the seriousness of the offence, which merited jail time.

Indeed, a key consideration throughout the appeal decisions in *Hamilton*, *Spencer* and *Borde* is the seriousness of the crimes committed. Whether the importation of dangerous drugs like cocaine or the commission of violent offences with weapons, the courts indicated they might have taken a different approach to mitigation on the basis of systemic and background factors with respect to a less serious offence.<sup>9</sup>

Ultimately, in *Hamilton*, the court concluded that although a conditional sentence is theoretically possible for serious crimes such as importing cocaine, in reality it would rarely reflect the gravity of the offence or send the requisite denunciatory and deterrent message.

Thus, as with Aboriginal offenders (as enunciated in *Gladue* and *Wells*), the more serious the offence, the less emphasis the courts will place on mitigating factors arising from systemic discrimination and bias, with imprisonment considered more likely to meet the goals of denunciation and deterrence.

As the Court of Appeal concluded in *Hamilton*, a sentencing proceeding is not the appropriate venue in which to right perceived societal wrongs and injustices or allocate responsibility for criminal conduct as between the offender and society. To some degree, the court was addressing the “floodgates” argument, wherein the deterrent value of sentencing would be for naught should it be established that solely on the basis of disadvantage, one is likely to receive a light sentence for a serious crime. And, as further noted in *Hamilton*, the delivery of conditional sentences on the basis of systemic racism and gender bias would not only fail to ameliorate the situation of poor black women, but would serve as encouragement to recruiters to target this very group; thereby increasing their vulnerability and negating any general deterrent value.

Ultimately, sentencing remains a balancing act, with proportionality of the offence to the sentence still the dominant consideration as reflected in section 718.1. Mitigating factors are but one component in the series of considerations undertaken

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<sup>9</sup> In *R. v. Carpenter*, 165 C.C.C. (3d) 159, the British Columbia Court of Appeal upheld a sentence of six years imposed on an Aboriginal offender for the importation of heroin. Despite the offender’s troubled background and absence of any criminal record, the court found that the seriousness of the offence supported the fitness of the sentence.

pursuant to the sentencing provisions of the *Criminal Code*, even where an offender can establish that systemic racism (and gender bias) provides context for the commission of the offence.

## **PART THREE: A Collaboration Between Community Holistic Circle Healing & The Harlem Restorative Justice Project: Initial Insights**

(Prepared by: Susan K. Marcus - March 31, 2007)

### **Harlem Restorative Justice Project**

Violence affects people differently. It seems an obvious observation yet, in New York, there are limited resources to address the harms caused by violence. One option is a criminal justice system focused on arrest, prosecution and punishment, but with little attention to the needs of the victims or communities in which the violence occurred, the effect on the families of any particular sanction, or the effectiveness of the punishment in reducing recidivism for the offender. Or, piecemeal solutions are offered that seek to resolve single issues in individuals' lives, in isolation from their communities or the larger dynamics that contributed to the harm. Little is done in any holistic way to address the needs of all those affected by violence. Or, the response is simply to do nothing. Victims of violence suffer a tragedy and are given little support, safety planning or healthy outlets for processing their loss. They become tomorrow's offenders, and the cycle of violence continues.

Listening to the community while developing the Harlem Restorative Justice Project (HRJP), we have learned that there are many people who want other solutions. A victim calls the police for immediate intervention, and then becomes upset that the father of her child goes to jail, loses his job, or must leave their family home. A mother is alarmed by her son's increased hostility and potentially violent behavior, but wants him to get help, not go to jail. A teenager in the projects wants a long-term truce to the ongoing fights between him and another boy in the neighboring projects.

While New York does have some non-adversarial processes that use some form of mediation with non-violent property crime, there are no such options for more serious offenses. Yet, experience shows that Restorative Justice is particularly effective in the

more serious offenses. Hollow Water First Nation is the world's leading example of an effective community-based solution to resolving violence in a holistic way.

The Harlem Restorative Justice Project was borne out of inspiration from Hollow Water, and specifically, Burma Bushie, one of the founders of Community Holistic Circle Healing (CHCH). The reader will note many similarities between HRJP and CHCH. This is not an accident. The founder of HRJP (the writer) first heard of Hollow Water over ten years ago. It is the hope of HRJP to realize the emotional, psychological, spiritual and physical transformation of the community members in Harlem that has been achieved in Hollow Water.

### **Practice Model of HRJP**

The Harlem Restorative Justice Project is an alternative model for resolving conflict than the traditional criminal justice response of arrest, trial and sentence in a court of law. The project seeks to create an option to resolve conflict for those whose primary desire is to heal from the harms they have experienced. HRJP's goals are to end the cycle of violence for its participants, reduce reliance on the criminal justice system as a means to respond to violence, and create a more autonomous community with the will and resources to heal themselves and their relationships.

The process used to address violence is true to the fundamental principles of Restorative Justice, and uses the Circle model as the primary tool for community engagement. The intervention first involves significant preparation with the persons harmed and the person responsible for the harm. Then, project members identify and meet with the support persons for the person harmed and the person responsible for the harm, understanding the harms to be addressed, developing safety plans, preparing each stakeholder for the process so they know what to expect, and addressing the participants' varied needs and concerns.

The project engages professionals in the community – such as social workers, psychologists, doctors, teachers, clergy, members of neighborhood organizations,

employers - to assist the stakeholders. These professionals assist the community where needed, with education, resources, a sympathetic ear, and strategies for safety. The structure of their relationship with the participants is according to the needs articulated by the participants. These professionals agree to be resources for the participants in preparation for the Circle, during the Circle process, and on a long-term basis. The professionals act as supports to the participants, rather than assume primary responsibility or control over the process.

Once the person harmed feels ready to speak their truth and confront the person responsible for harming them, and once the person responsible for the harm is ready to accept responsibility, the group convenes in a Circle, facilitated by at least one member of the project. The Circle process incorporates core Restorative Justice principles that create a space for true healing and restoration: respect, honesty, accountability, empathy, equality, restoration and dignity. Present are the person harmed and their supports, the person responsible for the harm and their supports, relevant mental health professionals who have agreed to support the participants on a long-term basis, facilitators, and relevant community leaders (i.e. a minister, council member, board of education member, teacher, defense attorney). Persons harmed more indirectly may also be present (i.e. family members or friends of the victim, witnesses to the crime, community members whose knowledge of the crime has affected their sense of safety or connectedness, or local business owners).

The Circle seeks to acknowledge the harm done, validate the pain and suffering of the person(s) harmed, affirm that what happened was wrong, and attend to the needs and interests of the participants in the Circle. The persons harmed share their experience of what happened, as well as the pain and difficulties that resulted from the harm. Through this process, the person responsible for the harm gains a full understanding of the harm caused by their behavior. The responsible party is then called upon to verbally and publicly take full responsibility for the harms that resulted from their actions.

Participants are treated equally; no one person's perspective is dismissed, nor are anyone's concerns or needs minimized. The Circle allows participants to witness and practice respect for one another's perspectives, limitations and fears.

The group determines collectively, by consensus, what restoration needs to be made. This process empowers those affected by the crime as they, for the first time, are given a say in how they believe they will be healed. Those who were harmed are able to ask for the help that they need, and those responsible are able to make amends for their actions, but express legitimate concerns about meeting obligations. The community is empowered to decide what outcome best serves their interests to be a healthy and vibrant place of prosperity. The goal is to address the emotional, economic, social and cultural needs of those who were harmed, allow the person responsible for the harm to make reparation, and to help those responsible for the harm seek personal changes to prevent future harm.

While individual accountability is the intervention point for a restorative process to begin, the Circle also discusses ways in which the larger community has contributed to the harm, and changes that all can make to create sustainable change. Thus, all take responsibility for developing healthy relationships. This process reduces reliance on Government to solve problems, and communities become resources for their own healing transformation.

Finally, there is consistent and monitored follow-through. To this end, the support persons, professionals and community leaders agree to participate in the continuing task of ensuring the person responsible for the harm meets their obligations, and monitor any potential for relapse or victimization. There is also agreement to attend to the participants' continuing needs to feel safe, supported and connected. More Circles may be convened if the parties encounter continuing challenges. Follow-through may last from one month to five years. There is no set timetable; the process is designed to create a permanent and sustainable system of support within the community that is available to the participants whenever they need it.

## **Similarities Between Community Holistic Circle Healing (CHCH) and HRJP**

There are many similarities between HRJP's model and CHCH's. Most fundamental is the core belief that given a safe place, healing is possible and will happen, no matter what the crime. Both CHCH and HRJP's protocols aim to create that safe place. Both programs believe that no one is beyond redemption, and people are not defined by the worst acts they have committed. Both programs seek to give voice to the stakeholders in determining how best to heal from the harms that have affected them. Those stakeholders, in both programs are: the person who was harmed, the person who committed the harm, their families, and their larger communities. HRJP, like CHCH, starts from a set of values that guide all participants' conduct: honesty, kindness, respect, and sharing.

The communities in which the programs work are similar as well. Both programs work within communities with traditions and histories of great strength, creativity and wisdom. Both communities have strong ties to rich spiritual traditions. Both communities contain members who are connected to one another already. This was evident in the Sentencing Circle witnessed on March 2, 2007 in Hollow Water. Although there were five different cases being heard, support persons there for a sister on one case would be a cousin to the accused on another case. Similarly, while Harlem is in a city of eight million people, there are neighborhoods within the Neighborhood of Harlem. In public housing towers and neighborhood blocks, residents have lived there for generations. People already have existing, long-term, relationships. Harlem, also, because of its rich political and creative history, is said to be a "state of mind." To belong to Harlem implies a connection not just to the geographic area but to the soul of what it has represented to the African-American and Latino cultures throughout history.

Despite these strengths, both have been beset by systemic abuses. Both are minority communities yet make up a majority of, or are over represented in, the prison population (In New York State, African-Americans and Latinos make up 91% of all prisoners. 75% of that 91% comes from just seven neighborhoods in New York City.

Harlem is one of them.<sup>10</sup>) Both have had to deal with substance abuse as a major epidemic: in Hollow Water, it was alcohol; in Harlem, crack.

Despite the sense of community that does exist in both places, that sense can be vague, or disorganized. In neither place is there a monolithic sense of community. Burma Bushie stated that a sense of community did not exist until CHCH began the healing Circles. The process itself created community, rather than community being something the process relied upon for it to work. In Harlem, as well, the process of starting HRJP, and offering the Circles, is a process that will help create a clearer sense of community with vision and purpose.

And while there is a strong spiritual tradition in both the African-American and Latino cultures, there is no monolithic sense of how exactly that tradition manifests itself today. There are as many churches as there are Bodegas (small convenient stores) in Harlem. Further, spirituality, while accepted widely in the culture in Harlem in general, in practice is lost to some, inaccessible to others, and disappointing to more. In Hollow Water the community members, as part of developing CHCH, continue to explore their spiritual journey together. It will be a similar process in Harlem.

As for the program protocol, HRJP, like CHCH, recognizes that significant preparation is necessary before a Circle between the person who was harmed, and the person responsible for the harm, begins. CHCH works with both the person who was harmed and the person who committed the harm for months, sometimes years, before the Circle begins. CHCH offers counseling, support groups, life-giving activities like volunteering or quilting Circles, and continuous support within the community, available 24 hours a day, seven days a week. CHCH has separate Circles for the families the day before the larger Sentencing Circle.

Like CHCH, HRJP may use Healing Circles between those who were harmed and their supports, or those who committed the harm and their supports, before a Sentencing

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<sup>10</sup> Correctional Association Basic Prison and Jail Fact Sheet, March 2006.

Circle has begun. HRJP is not on a timetable. The pace of the process is determined by the readiness of the primary stakeholders. This highlights another similarity: both HRJP and CHCH's programs are voluntary. Both programs offer a process that is available to the participants if they wish to take part in it, but do not mandate anyone's participation.

Not only do both programs engage in significant preparation, but both programs have similar goals as to what the preparation should accomplish. With respect to the person who committed the harm, both programs work toward getting that person to accept responsibility for their actions. The Circle does not begin for CHCH or HRJP until that happens. With respect to the person who was harmed, both programs work with that person until they are at a point where they can speak their truth and assert their own needs to their community.

HRJP uses a similar format as CHCH. At HRJP, the format used is a Circle. Like CHCH, there are opening and closing ceremonies to the Circle. Each person speaks one at a time, without any "cross talk." In CHCH, during the Sentencing Circle on March 2, 2007, a microphone was passed around, which provided the signal for who was to speak, and when. At HRJP, the program uses a talking piece, but the result is the same: each person speaks one at a time, and for as long as they are holding the talking piece, they may speak. In both programs the tenor of the Circle is the same. In both, participants are asked to speak from the heart, and all other participants listen attentively while someone is speaking.

The format of the rounds is also similar. In the Circle at CHCH, first the group was asked to state who they were and why they were in the Circle. Then they were asked to acknowledge the person who was harmed. They were then asked to go around and speak to the person who committed the harm. The final round was the community's recommendations for resolution. HRJP generally follows the same protocol, although there would be additional rounds to reflect on a reading, song, or artwork, silence, and the potential for several rounds as the group works towards consensus.

Just as CHCH focuses on healing for all persons involved, so does HRJP. HRJP's process does not elevate one person's status over another. The pain from a person who was harmed does not annihilate the concerns of the person responsible for the harm, nor do rights or procedures, designed to protect someone who has committed a harm, silence the person who was harmed. HRJP, like CHCH, is not on the "side" of any of the participants. HRJP sees all of the participants as members of the community, and aims to be a healing force for all.

When asked by the Judge in the March 2 Sentencing Circle where the Sentencing Circle fit into CHCH's healing process, Burma Bushie, answered that the Circle is a halfway point. That is similar to how HRJP envisions its process. Both programs work with participants not only before and during, but after the Circle as well. Both programs continue to work with participants long after sentencing, and aim to create a sustainable system of care within the community, reducing reliance on Government and generating capacity within the community to become resources in their own lives.

Finally, HRJP is similar to CHCH in its journey towards creating a healing process for community. CHCH began twenty-three years ago as a group of community members talking about their own histories of abuse. They then began reaching out to other members of their community, in order to spread awareness of the abuse and learn of others' stories. They then sought to educate themselves about the traditional ways of healing, as well as western ways of healing, in order to build community capacity. It was only then that they approached the Justice system to ask that cases be referred to them. HRJP is in the initial stages of development; the program is taking a similar approach to building the project. It is a project that begins in the community.

### **Obstacles Within Community and Government That Inhibit Community Healing Process**

In general, all of the obstacles that may inhibit a community-based healing process in Harlem relate to two fundamental goals of HRJP: to create a sustainable, long-term process that effectively heals communities and breaks the cycle of violence, and to

stay true to the values on which a successful restorative intervention is based, so that it may actually succeed. Below are more specific examples, but fundamentally, whether it be satisfying basic needs of Harlem residents, developing community capacity, or negotiating a relationship with Government, the challenge is in realizing the ideals upon which HRJP is based.

One of the obstacles within Harlem that inhibits a community healing process is the lack of basic necessities available to the community. In Harlem, residents may be without health care (for both physical and mental illnesses), housing, money enough for food, or work. In Maslov's hierarchy of needs, these are basic needs that people look to be satisfied before they are able to focus on meeting other needs of community and relationship.<sup>11</sup> But finding the resources to meet these needs is a challenge in a city notorious for its housing shortage, inadequate in its health care and, at times, indifferent to the suffering of its fellow citizens. In one case in which HRJP worked, the mother and daughter were fighting over how much food the sixteen-year old daughter ate. The mother's food stamps were recently taken away because she made \$7.00 too much a year. Her young daughter, hungry, growing, and one who liked to cook, was literally eating the family out of house and home. Such problems need to be attended to for any healing to happen within a family.

Mental health issues present a significant challenge. In one case HRJP has worked on, the family had multigenerational, untreated diagnoses of Bipolar Disorder. In order to ensure the safety of the participants and meaningful engagement in the process, the mental illness of the mother had to be dealt with before she could sit in a Circle, without abusing her son. This was a challenge, however, because there are inadequate treatment alternatives for someone living with mental illness, particularly for those without money. Medicaid/Medicare, the Government-funded health insurance program, funds doctors at unbelievably low rates (\$25 to \$35 per hour), making it unlikely that any private practitioner would see a patient with only Government-provided insurance.

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<sup>11</sup> Boeree, C. George. (1998). Abraham Maslow. Retrieved November 18, 2004, from <http://www.ship.edu/~cgboeree/maslow.html>.

Psychiatric units at hospitals are ill-equipped to deal with patients on a long-term or sustainable basis. Most visits are not more than several days, and there is no follow up. There are therapeutic communities, but they are priced well out of the budget of most of the residents of Harlem.

In addition to finding resources to support residents as they embark on this journey to heal themselves, another significant challenge is the challenge of a Government partnership. Currently, in its initial stages of development, HRJP is focusing on developing community awareness of and capacity to respond to violence. Eventually HRJP will partner with Government to integrate its approach to mainstream justice. HRJP's approach represents a sea change in how Government currently responds to crime. It is a restorative, rather than punitive approach. It is one that gives the power to those most affected by the crime, rather than in a judge or prosecutor. It is a process that is long, open-ended, and inclusive, rather than time-limited, and exclusive. It is a process that is flexible and adapts to the needs of the participants, rather than follows a pre-determined protocol. While in and of themselves these values are not controversial, embarking on an entirely new way of resolving crime, and reorienting Government's relationship to community, is quite revolutionary.

Of course, even when there is a will, changing Government culture takes time. There are rules and procedures firmly in place that are difficult to sort through, let alone change. Also, training and education of Government is a continual process. At CHCH, just as they had successfully trained a Crown Attorney or a police officer or a judge in their process, that person left their position, and the process began all over again. There is little continuity as officials in hired positions, rather than in longstanding relationship to the community, come and go.

In working with Government, keeping true to the principle of voluntariness presents a challenge. HRJP believes firmly that engaging participants through love and relationship-building yields more transformation than coercion. The criminal justice system in New York operates almost entirely on coercion. Even when treatment

alternatives are offered, there is usually a “do this or else go to jail” element in a participant’s choice. Those who are harmed, also, can be forced to testify against their will. Using relationship-building to engage participants rather than coercion affects those who accept responsibility in a more meaningful way. The consequences of not following through on an obligation in the Restorative Justice context are felt within the immediate community, rather than to a disconnected authoritarian body that dictates punishments. This is one the central aspects of any successful restorative intervention. When the individual accepting responsibility truly understands the consequences of their actions, on people about whom they care and desire not to hurt, they are more likely to transform their behavior. HRJP believes, and seeks to demonstrate, that this is best accomplished with love, not fear. Staying true to that principal will be a challenge in HRJP’s relationship to Government.

Another challenge presented when HRJP works in partnership with Government is the significant collateral consequences that take effect once a person is arrested for a crime. With Government involvement come rules and procedures that may work against, or at a minimum disrupt, these aspects of a restorative process. For example, if the person accused of the crime lives in public housing (as many residents of Harlem do), they are in danger of losing their housing (New York City Housing Authority has a “zero tolerance” policy to crimes being committed on or off public housing property; family members may also be evicted unless they agree to permanently exclude the person accused of the criminal behavior from their home).

If they have children, the Administration for Children’s Services (ACS) will be contacted, and a case will open to monitor the accused’s ability to care for their child. ACS will take the child and place them in foster care for a minimum of 90 days, while the claim is being investigated. If the accused is on probation or parole, the simple fact of arrest may trigger a violation. If the accused is a student in public school, they may be suspended.

Thus a person may have to go to Housing, Family and Criminal Court, and possibly Probation, Parole, or school suspension hearing, to respond to one arrest. Needless to say this makes job attendance difficult, and persons accused of crimes have lost their jobs because of excessive absences for attending all of the Court proceedings.

Such intrusion by so many different agencies also affects the emotional and psychological well-being of those caught in this web. Communication may be poor among the various agencies – a limited order of protection is issued in family court to allow for contact between the parties, and the judge orders counseling; in criminal court, a full order of protection is issued that prevents any contact. Just the experience of going through these different processes may leave people accused of crimes feeling hopeless, angry and disoriented about the lack of control over basic things like shelter, liberty, and the ability to be with loved ones. Moreover, there is still great stigma attached to being a criminal defendant in New York. People accused of a crime are by and large not treated with dignity when they come before a Court. They are assumed to be lying, manipulative, and irresponsible. There is little expectation that they will succeed when given a treatment alternative to incarceration. The experiences of being involved in these systems can feel humiliating, degrading and disrespectful, and lead to withdrawal from public activities.

The fact that all of these systems may descend upon a person if they are accused of a crime makes it difficult to work in an environment of trust, safety and control. Participants are reluctant to take part in a process that triggers all of these factors (and because each of these conditions carries with it not just consequences for the targeted person, but for their family as well). Also, there is simply the difficulty in navigating through so many different agencies' policies and procedures. There is the potential to lose the focus of a restorative process as form and bureaucracy trump true healing. Such hurdles are not insurmountable, and a community-based process that works in partnership with Government is ideal. But care must be taken to allow the work to go forward despite these challenges.

Another concern is the development of community capacity. Too quickly are residents likely to call the police on a family member, neighbor or employee. Just as Government has a tendency to take power away, so do people have a tendency to give power away. Yet it is true that people need help when presented with a challenging situation of how to prevent, and respond to, violence. No one person, or family, should be expected to handle such situations alone. Safety planning and resources to help families and community members get the help they need is crucial. The problem with this is that once a resident calls the police, they then are disheartened over the lack of control they have once the criminal justice system is set in motion. The people affected must have real control over what help they receive in order for the help to be meaningful, and long-lasting. HRJP operates on the assumption that that people are their own best teachers. It will be a challenge to develop the capacity of people to get in touch with their own strength, their own inner teacher, when dealing with conflict, when there has been a long history of looking to others to do that. Government has not encouraged it and citizens have not practiced it. We must find a balance between developing community capacity and finding resources that will support, rather than control, residents' healing processes. The task is for the community to be in a position to engage Government as an equal partner, able to negotiate the terms on which Government becomes involved in their lives.

Hopelessness and wariness of yet another program is an obstacle to overcome in the Harlem community. As a neighborhood made up of mostly African-Americans and Latinos, residents have been oppressed in a myriad of ways. Racial profiling, police abuse, high levels of foster care placements, drug addiction, lack of meaningful jobs, poor schools, and high concentrations of neglected public housing buildings all contribute to a feeling of disconnectedness from a larger community. Yet there have also been a great number of programs started in Harlem to try to address these issues. But Harlem residents have seen these programs come and go. A new program is met with skepticism, as residents wonder if this is yet another "do-gooder program that doesn't do a whole lot of good." Harlem suffers from a lack of resources developed and run by the actual

people who seek to utilize those resources. There will be a challenge in the project having credibility with the citizens of Harlem.

### **Promising Practices to Be Shared**

HRJP is currently a model entirely run by the stakeholders. Only those individuals affected by the crime, and committed to the wellbeing of the community, participate in the process. The work now being done is on those cases that the Government cannot, or has not been able to, address (i.e. the criminal case has been dismissed but the problem still exists). In contrast, CHCH depends more on Government resources than HRJP in its process. This presents some challenges for CHCH. For example, in the Sentencing Circle on March 2, 2007, participants waited from fourteen to four years to have a hearing, as they waited for the Government to make the time to hear the cases. The Crown Attorney scheduled five cases on what day, which did not allow adequate time for each case to be heard. The community made recommendations, but ultimately the final decision rested with the Judge. There was no consensus to the sentencing decision. It was felt that while this process presented great advantages over the traditional criminal justice system, more could be done if the community had a greater say in the process. Burma Bushie of CHCH expressed interest in expanding her community's role in the Sentencing Circle. Thus, there is potential for CHCH and HRJP to navigate together how to balance Government involvement with a community capacity's to take greater control over the healing process.

HRJP also seeks to focus not just on individual, but collective, accountability. CHCH has thus far not programmatically addressed the broader, systemic harms that have affected their community. However, they have begun "Return to Spirit" workshops, in which they work with clergy to address the harm done to First Nations by the mass "re-education" of Native people in residential schools. Return to Spirit is a specially designed program (not by Hollow Water) based on Yoga, Buddhism and Transpersonal Psychology. CHCH is excited about the prospect of integrating the Return to Spirit program into their protocol as it is a combination of spiritual and psychological approaches to wellbeing.

This is a promising practice that HRJP is interested in exploring. Because of the rich spiritual tradition in the African-American and Latino communities in Harlem and the resistance in the African-American and Latino communities to traditional, western, psychological approaches to wellbeing, an approach that incorporates spirituality and leaves room to address systemic, collective harm suffered by the African-American and Latino communities, has great potential in Harlem.

### **Approach for Further Relationship**

It is recommended that there be continued collaboration between CHCH and HRJP. Specifically, it is recommended that members of Hollow Water come to Harlem to share information directly with a broader cross-section of community members. It is also felt that members of Hollow Water would benefit in coming to observe the practices and setting in which HRJP operates in order to better inform their practices. It is also recommended that members of Hollow Water come to Harlem specifically to train community members in the Return to Spirit program.

It is finally recommended that a larger group of people (3-4) from HRJP attend the follow-up Circle in September in Hollow Water, to observe the process and spend more time sharing information with CHCH.

Both programs are unique in the world in their mission to create a healing process that addresses more serious crimes of violence, addresses those crimes within the community, addresses both individual and collective harms, and focuses on getting well instead of getting even. While many programs incorporate some of these aspects, few have integrated all of these approaches into one program. HRJP would like to demonstrate that this integration is precisely what has made Hollow Water stand out in its ability to prevent reoffending. Hollow Water's program has been tremendously successful: in the twenty-three years of their existence, only three people have reoffended. Such numbers are unheard of in the United States, where more than 80

percent of repeat offenders return to prison within three years.<sup>12</sup> With the staggering statistics in the United States that 60 percent of African-American men without a high school diploma ending up in jail<sup>13</sup>, and one out of every three African-American men overall ending up in jail<sup>14</sup>, Harlem desperately needs to do something different in responding to crime.

A collaboration with Hollow Water to see how to apply its successes to the Harlem community would be of great value in finding an alternative and effective solution to prevent crime. In turn, Hollow Water would benefit from a sister project that mirrors many of their own principles. An example of their protocol in an urban setting with diverse ethnic communities will break open the dialogue about the contexts in which Hollow Water's program can work. Working together, each program can challenge the other to take new risks, find new solutions, and keep going forward in the struggle to heal communities and end the cycle of violence.

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<sup>12</sup> Todd Clear, Lecture at New School College of Social Research, Symposium, Punishment: The U.S. Record, 12/1/2006.

<sup>13</sup> Bruce Western, Lecture at New School College of Social Research, Symposium, Punishment: The U.S. Record, 12/1/2006.

<sup>14</sup> Id.