

# **RACIALIZED POPULATIONS AND MENTAL HEALTH COURT DIVERSION**

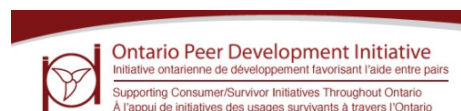
---

MAY 2019

Prepared by the Community of Interest  
for Racialized Populations and Mental Health and Addictions

## ACKNOWLEDGEMENTS

The *Racialized populations and mental health court diversion* project was undertaken collaboratively by the Community of Interest (COI) for Racialized Populations and Mental Health and Addictions. The COI is composed of the following organizations, as well as representation from racialized persons with lived experience.



The COI would like to thank individuals with lived experience, case managers and mental health court workers who contributed as focus group participants. Without their experience, knowledge and participation, this project would not have been possible.

This report was prepared by Christine Conrad and Candace Vena, Canadian Mental Health Association (CMHA) Ontario, and Angela Yip, Centre for Addiction and Mental Health (CAMH). We would also like to acknowledge Irma Molina, Peer Program Evaluation Project Coordinator, CMHA Toronto, and Candace Vena, CMHA Ontario, for facilitation and analysis of the focus groups.

This COI is led by CMHA Ontario and is supported by EENet (part of the Provincial System Support Program at CAMH) and the Provincial Human Services and Justice Coordinating Committee.

For more information, please visit:

<http://eenet.ca/the-racialized-populations-and-mental-health-and-addictions-community-of-interest>

This report is dedicated to Raymond Cheng,  
a passionate advocate and founding partner of the COI.



May you rest in peace.

# CONTENTS

Overview of the Community of Interest (COI) for Racialized Populations and Mental Health and Addictions . . . . .	6
Past COI focus areas . . . . .	7
The current issue . . . . .	7
What does the literature say? . . . . .	8
Mental health court diversion . . . . .	8
Race-based data and the Canadian criminal justice system . . . . .	10
Race and mental health . . . . .	11
Conclusion of literature review . . . . .	13
Highlights from the COI's focus groups . . . . .	14
Purpose . . . . .	14
Methodology . . . . .	14
Key findings . . . . .	15
Limitations . . . . .	20
Recommendations/conclusions . . . . .	21
Think tank day . . . . .	22
Conclusion . . . . .	26
References . . . . .	27
Appendix A . . . . .	29

## EXECUTIVE SUMMARY

Studies indicate that racialized immigrant populations and Indigenous populations have a higher prevalence of mental distress and/or risk of suicide than average Canadians. Statistics also show that there is an over-representation of racialized populations, particularly Indigenous and Black populations, in frequency of arrests and incarcerations in Canada.

Based on this information, there is a pressing need for further research on the treatment of racialized populations in the Canadian criminal justice system. This report outlines the findings of focus group research conducted on these matters by the Community of Interest (COI) for Racialized Populations and Mental Health and Addictions.

The COI conducted focus groups to explore the experiences of racialized individuals as they interacted with mental health court support services and diversion. In January 2019, the COI hosted a think tank day, bringing together over 150 participants including persons with lived experience, mental health and justice service providers, and government representatives.

Most people with lived experience reported a lack of awareness around diversion and mental health court support services and expressed confusion around court processes in general, and specifically around diversion. Most participants agreed that their race affected how they were treated.

Issues surrounding racial and class bias, transparency, and awareness of mental health supports and diversion programs must be further explored as there is a need to improve the well-being of racialized individuals with mental health issues that interact with the justice system.

This report provides five key recommendations defined by the COI:

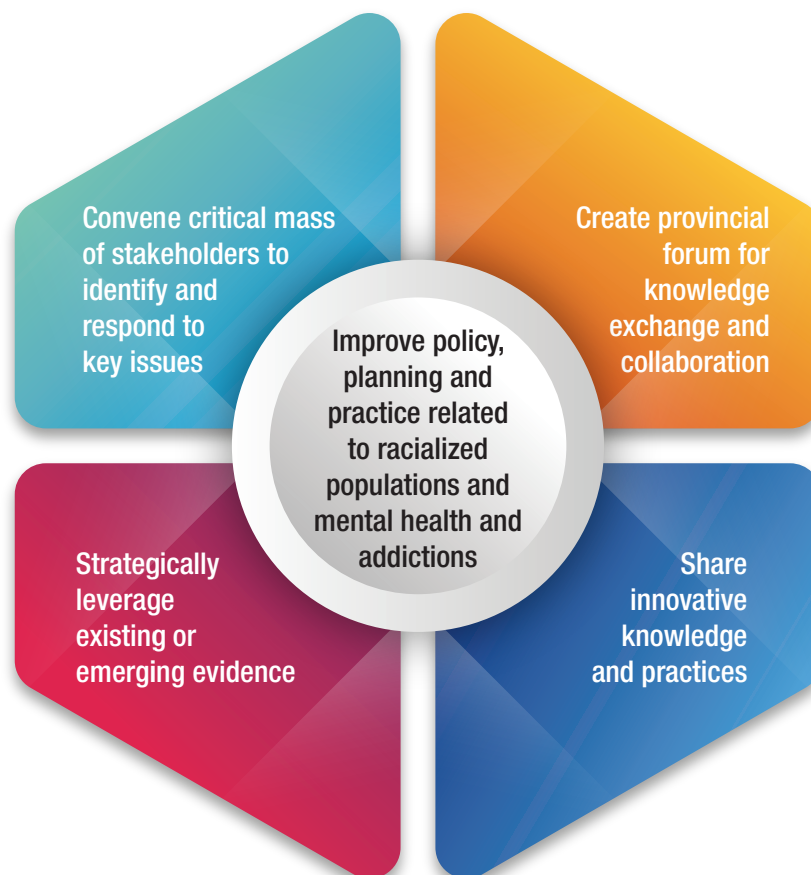
1. Race-based data should be collected throughout the criminal justice system to better facilitate access to mental health court diversion for racialized individuals.
2. More culturally competent and trauma-informed services within the justice system, including specialized training for police officers, are needed.
3. Every member of the justice system, including judges, police officers, and mental health court support workers should be responsible for promoting mental health court diversion.
4. Culturally-specific system navigators are needed to share information and resources with justice-involved individuals.
5. Mental health court locations and hours of operation should be expanded across the province.

# OVERVIEW OF THE COMMUNITY OF INTEREST (COI) FOR RACIALIZED POPULATIONS AND MENTAL HEALTH AND ADDICTIONS

The COI is a provincial forum for knowledge exchange and collaborative knowledge creation focused on issues related to racialized populations and mental health and addictions.

The overall goals are to:

- Share innovative knowledge and practices of COI partners and other stakeholders.
- Convene a critical mass of stakeholders from across and beyond the mental health and addictions system to identify and respond to crucial issues impacting racialized populations.
- Strategically leverage existing or emerging evidence (including community-based, lived experience, peer-reviewed academic, and other sources of knowledge).
- Improve provincial, agency, and provider policy, planning, and practice related to racialized populations and mental health and addictions.



## Past COI focus areas

The COI began working together in 2012, where it explored how racialized individuals and communities in Ontario accessed hospital emergency departments for mental health and addictions related reasons. The COI hosted a think tank day and produced a report on the [results](#) of the event.

In 2014, the COI explored a collection of sociodemographic data from the Ontario Common Assessment of Need. A think tank was held in 2015 to explore the potential of the tool for advancing equity in the mental health and addictions system. Read the [results](#) of the think tank day.

## THE CURRENT ISSUE

Starting in 2016, the COI shifted its focus to criminal court diversion programs and practices, and examined how racialized populations were being served. This involved focusing on formal mental health diversion programs as well as informal diversion practices for racialized persons with mental health and addictions issues in the criminal justice system.

The COI's current objectives include:

- Increasing understanding of how diversion is generally applied, specifically to racialized populations. Currently there is anecdotal information indicating that racialized populations may not be offered mental health diversion as often as other populations. More evidence is needed to understand how equity is applied to racialized populations in this context.
- Raising awareness about the need for standardization of race-based data collection throughout the criminal justice system for issues of equity to be properly addressed through evidence-based policies and practices.
- Contributing to existing strategies to improve the overall well-being of racialized populations moving through the criminal justice system.
- Examining perceptions of race in the justice system and how those perceptions impact the outcomes, as well as what is needed to effectively address systemic racial inequities.

We hope to connect the Ministry of the Attorney General; service providers/case managers working with clients from racialized communities; mental health court support workers; service users/racialized persons with lived experience and family members in both diversion and non-diversion programs; Legal Aid Ontario; Crowns; police officers; provincial entities; and additional stakeholders of the mental health and addictions sector and other related sectors *to work collaboratively in improving mental health and addictions and justice services, supports, and the overall outcomes for racialized populations in the criminal justice system.*



## WHAT DOES THE LITERATURE SAY?

The purpose of this section is to:

- Provide a preliminary picture of the landscape and needs of racialized individuals.
- Identify the key issues due to the gap in data.
- Support the focus group's findings.

### Mental health court diversion

The traditional criminal justice system is not designed to address the unique needs of individuals with mental health issues. Mental health courts are a therapeutic alternative to regular criminal courts with a mandate to address the mental health needs of individuals who are justice-involved. These individuals can receive the medical and community supports they require while addressing their criminal matters through mental health court diversion. These courts usually have a dedicated judge who may have training in mental health law, as well as dedicated Crown attorneys and defence counsel, mental health court support workers, and psychiatrists.<sup>1</sup>

As a problem-solving court, mental health courts are less adversarial than traditional courts, with decisions made collaboratively by the judge, lawyers and mental health professionals. Most mental health courts typically hear matters related to guilty pleas, sentencing, assessments for fitness and not criminally responsible on account of mental disorder, treatment orders and consent bail hearings (where the Crown agrees to release on bail). Upon completion of a diversion program, charges may be withdrawn, or alternative sentences to incarceration issued.

The goals of mental health courts are to:

- Decrease recidivism
- Improve clients' health and community safety
- Ease the burden on the traditional criminal justice system
- Avoid prison sentences

### Benefits of mental health courts

Research shows mental health courts link individuals to the treatment they need and reduce recidivism.<sup>2</sup> These courts may reduce the number of days incarcerated, reduce substance use, and improve mental health status.<sup>3</sup> Mental health courts in Pennsylvania and Florida have been shown to be more cost-effective than traditional courts.<sup>4</sup> By focusing on rehabilitation and treatment rather than punishment, mental health courts are “decriminalizing” mental illnesses by connecting individuals with mental health issues to the supports they need, rather than incarcerating them.<sup>5</sup>



## **Mental health courts in Ontario**

There are 19 mental health courts operating in Ontario as of October 2017.<sup>6</sup> These courts are established on an ad hoc basis and do not have a standardized operation process or designated funding specifically for court operations. Most of these courts sit once or twice a month. Toronto's Old City Hall court sits five days a week, full time. Almost all of Ontario's mental health courts have a designated Crown attorney, meaning they are assigned to that court and may have special training. Some courts also have a designated judge and duty counsel.

## **Eligibility for mental health courts**

Referrals to mental health court diversion in Ontario are most often made by a mental health court support worker using mental health screening tools. These tools help to confirm a mental health issue or identify symptoms. Most mental health courts require a connection between the client's mental health issue and the offence for the client to be eligible. The client must usually be willing to participate and receive treatment, although this is not a requirement in Toronto's Old City Hall court.<sup>7</sup>

Most mental health courts in Ontario will not accept clients charged with class 3 offences (e.g., murder, manslaughter, sexual assault, child abuse, or offences involving serious bodily harm or firearms). In some courts, clients charged with serious class 2 offences are ineligible (e.g., assault, dangerous driving, breaking and entering, theft). Clients with serious substance use issues that could be better addressed through drug treatment court diversion are not eligible to participate in select mental health courts. In almost all mental health courts in Ontario, the Crown attorney makes the final decision on eligibility. The mental health court support worker is also usually involved in making the decision, while defence counsel, the judge and psychiatrists may play a role as well.

## **Diversion plans and completion of the program**

In all of Ontario's mental health courts, the mental health court support worker develops the diversion plan with input from the client, the Crown attorney, and other service providers as needed.<sup>8</sup> The plan will include a court schedule for the client, and treatment or medication as needed. Clients attend court and report on their diversion progress. The court will reward clients for compliance with their diversion plan and for being honest with the court. Rewards include certificates of completion, gift cards, and praise from the court. Conversely, the court will sanction clients for failing to attend court, lying to the court or failing to follow their diversion plan. Sanctions include expulsion from the program and charges not being withdrawn.

Anecdotally, very few clients opt out of the program but those who do often cite that the diversion process is more onerous and can take much longer than the traditional criminal court process. Studies in the United States, meanwhile, show males and racialized individuals are less likely to complete mental health court diversion than white females due to noncompliance.<sup>9</sup> Racial inequities in family support, education and employment may be responsible for this finding. Prior criminal behaviour, substance use and re-arrest have also been associated with negative termination.<sup>10</sup> However, a significant proportion of mental health court participants overcome these challenges by changing their behavioural patterns with the structure and support of the mental health court.<sup>11</sup>

## Race-based data and the Canadian criminal justice system

There is very little known about the direct relationship between race and crime in Canada.<sup>12</sup> This, in part, is due to the fact that Canada does not systematically collect or disseminate race-based data on criminal statistics.<sup>13</sup> Most of race-based data as it relates to individuals processed through the Canadian criminal justice system is used solely for internal purposes and is not available to the public.<sup>14</sup>

It is important to note that there has been a long-standing debate as to whether criminal justice statistics should include race-based data.<sup>15</sup> More recently, however, discussions surrounding the collection of race-based data have emerged due to broader debates about race, crime and the administration of justice. While some evidence has suggested that racial bias and discrimination is embedded within the administration of Canadian criminal justice, other evidence suggests that racialized populations are disproportionately involved in criminal activity.<sup>16</sup> Due to the limited availability of this data, it has been increasingly difficult to test and/or challenge either of these claims.

### What the data shows

With the sparse data that is available, the literature clearly reveals that racialized populations, in particular Indigenous and Black populations, are overrepresented in both arrest and correctional institution statistics.<sup>17</sup> In addition, there is some evidence that indicates Indigenous and Black populations are overrepresented in the justice system when it comes to violent crimes and victimization.<sup>18</sup> Some researchers have argued that it is the social conditions Indigenous and Black Canadians live in that contribute to elevated rates of violent offences.<sup>19</sup>

Levels of police surveillance are greater for racialized populations and racialized populations are more likely to be caught when breaking the law compared to non-racialized populations for the same types of crimes.<sup>20</sup> This may suggest that disproportionate arrest statistics may have more to do with police surveillance practices, rather than actual racial differences in criminal activity.<sup>21</sup>

There is also evidence to suggest that this racial bias goes beyond police interactions and into criminal courts. Canadian studies have found that both Indigenous and Black populations were more likely to be denied bail and remanded into custody compared to other racialized populations.<sup>22</sup> When racialized populations are granted bail, they are more likely to be released with a greater amount of conditions by which they must abide.<sup>23</sup>

### Perceptions of bias

Furthermore, studies have revealed that racialized populations tend to view the criminal justice system much more negatively than other populations.<sup>24</sup> A significant proportion of racialized populations perceive bias in the criminal justice system, particularly when it comes to interactions with the police and courts.<sup>25</sup> In particular, low-income racialized populations may feel doubly disadvantaged as they not only experience racial discrimination, but also do not have the financial means to navigate and access services in the system. For example, these populations may experience more issues with access to justice such as obtaining legal representation, accessing interpretation services, paying for bail and paying for optional rehabilitative and other diversion programs.<sup>26</sup>

### The need for more data

What has been agreed upon is the pressing need for further research on the treatment of racialized populations in the Canadian criminal justice system and the importance of examining how and when race intersects with other markers such as language, socioeconomic status, age and gender, and their impact on justice outcomes. Additionally, those who advocate for the collection of race-based data argue that these statistics are critical to determine whether there is a relationship between race and crime, increase transparency within the justice system, track the pathways of racialized populations in the justice system, and provide helpful information that could be used in the development of criminal justice and social policy.

### Race and mental health

Canada is one of the most ethnically-diverse countries in the world, with over 20 per cent of its population born outside of Canada. As social determinants of health, race and ethnicity intersect with other factors such as income, education, and employment to form the living conditions that make up an individual's mental health and well-being. Despite its importance and relevance for policy making, the literature on the issue of race, ethnicity and mental health is very limited.<sup>27</sup>

### Immigrant populations

- One longitudinal Canadian study found Black immigrants and South Asian males were more likely to develop moderate to high mental distress than any other ethnicity.<sup>28</sup>
- Chinese Canadians with education less than Grade 12 had a higher predicted probability of reporting moderate to high mental distress, in contrast to those with an education beyond Grade 12.
- In Toronto, people of Ethiopian origin are 9.8 per cent more likely to experience depression in their lifetime than the national average.<sup>29</sup>
- Afghan youth surveyed had a very high risk of having had suicidal thoughts at 25 per cent, compared to the Canadian average of 3.7 per cent.<sup>30</sup>

### Indigenous populations

Other studies demonstrate that Indigenous individuals are twice as likely to die by suicide than non-Indigenous individuals.<sup>31</sup> These statistics are more pronounced for certain demographics: Indigenous youth are five to six times more likely to die by suicide than the national average, Inuit individuals are up to 25 times more likely, and Inuit youth are up to 40 times more likely to die by suicide than the average Canadian.<sup>32</sup>

### Access to mental health services

Sociocultural factors such as immigration and ethnicity are key factors in the development and severity of mental illnesses. However, relatively little is known about the mental health status and health service utilization of ethnic minorities in Canada.<sup>33</sup> Access to mental health supports remains a critical issue for racially- and ethnically-marginalized populations. As the above statistics demonstrate, one solution will not be appropriate for all racialized populations. Each demographic requires its own unique response suited to its needs.

There are many factors which affect equitable access to mental health services for members of racialized communities. Some of these include:

- Information is often only provided in English and French.
- Few culturally-specific outreach initiatives or service provision is directed to Indigenous or racialized communities.
- Referrals and relationships with community agencies are poorly made and maintained.
- Racialized and Indigenous communities may be located far from mental health services.
- Mainstream institutions lack an of awareness of communities and their needs.<sup>34</sup>

These issues are most acutely felt among Indigenous communities, where a history of colonialism, racial discrimination, social exclusion and poverty have generated mistrust and fear of mainstream services, deterring these communities from accessing services and obtaining culturally-appropriate care. Few psychiatric services respond specifically to Indigenous communities with cultural competency and systemic approaches to research, clinical support, programming, organizational change, health promotion and community collaboration. Together, these factors create challenges at every stage of the mental health system's interaction with Indigenous communities.<sup>35</sup>

Policy makers, health system planners, service providers and additional relevant stakeholders and sectors must begin to incorporate race and ethnicity as critical factors in the planning of programs and in the provision of care.

## Conclusion of literature review

The literature demonstrates that racialized populations have higher rates of mental health issues than the national average. Racialized populations are also overrepresented in the criminal justice system. Mental health courts offer a therapeutic alternative to traditional courts that focuses on rehabilitating the individual and reducing recidivism.

There are currently no studies examining race and mental health court diversion in Canada (which may be due to lack of data), but there does exist evidence from the United States. In the US, white males are overrepresented in these alternative courts.<sup>36</sup> Furthermore, white females are the most likely population to successfully complete a mental health court diversion program in the United States.<sup>37</sup>

The purpose of the COI's focus groups was to supplement existing evidence, by hearing from justice-involved racialized individuals and their service providers regarding mental health court diversion, and to demonstrate the need for race-based data collection throughout the mental health court diversion process. These results are shared in the next section.

# HIGHLIGHTS FROM THE COI'S FOCUS GROUPS

## Purpose

The COI conducted needs assessments for mental health court services and diversion programs in Toronto. The purpose of these focus groups was to explore the experiences of racialized individuals as they interacted with mental health court support services. Through these findings, the COI aimed to identify successes, gaps and barriers within the system and make recommendations for change.

## Methodology

In total, 20 participants shared their experiences and perspectives. Three did so through individual interviews and 17 took part in two separate focus groups.

The focus group participants included:

### *Service providers:*

- Case managers working with clients from racialized communities that had experienced a mental health challenge or difficulty and had been charged with a criminal offence and appeared in a criminal court in Toronto (four individuals)
- Mental health court support worker in Toronto who had supported individuals from racialized communities with their court matters (one individual)

### *Service users:*

- Racialized persons who had been charged with a criminal offence, appeared in a criminal court in Toronto and received mental health diversion (nine individuals)
- Racialized persons who had been charged with a criminal offence, appeared in a criminal court in Toronto and been denied mental health diversion or were unsure whether they had received diversion (six individuals)

In relation to demographic information, 12 service users identified as male, two as female and one as transgender. Ages ranged between 22 and 59 years old. In terms of background, eight service users indicated being born outside Canada and identified with several national and/or ethnic backgrounds, including African/Indian, Colombian, Filipino, Guyanese, Jamaican and Spanish. Seven stated being born in Canada, four of whom identified as Indigenous, while three did not identify an ethnic/racial background.

## Recruitment, consent and data collection

Service users were canvassed for participation by case workers and managers of COI member organizations, who explained the project and provided recruitment flyers. **Recruitment flyers were also widely distributed throughout members of the COI's networks.** The interview and focus group facilitators verbally explained an overview of the project and its purpose, what participation entailed, the use of data, how confidentiality is maintained, the voluntary nature of the project, and the right to withdraw participation. Participants consented upon reading (or being read) an informed consent statement.

Interviews and focus groups followed a semi-structured format with open-ended questions. The interview questions were developed in partnership with the COI. Participants had a choice to have the interview audio-recorded (from which notes were taken later) or to have the interviewer take hand-written notes during the interview. Efforts were made to ensure that interviews were within participants' control, for example, participants could skip questions and interviewers were able to adapt to participants' conversation styles and reactions to questions. For one of the focus groups, audio was recorded due to the size of the group (more than 10 participants). For the second focus group, which had four participants, digital notes were taken.

## Key findings

Findings were organized into four themes that were listed by order of relevance, starting with the themes that were more prominent and ending with the themes that were less discussed. Lack of awareness around diversion programs, lack of transparency in court/legal processes and issues related to race and racism were broadly discussed by both service users and service providers. Issues of poverty were brought up by some service users and issues of migration and citizenship were brought up by some service providers. Issues related to distrust and loss of hope in the justice system were raised by some service users.

### 1. Lack of awareness and transparency around diversion programs

#### Awareness

Most service users reported a lack of awareness around diversion and mental health court support services during the initial stages of their criminal cases. Some service users reported not being offered or made aware of mental health diversion early in their process (i.e. bail hearing, first appearance). Other service users reported that they first learned about diversion while in custody on remand from other individuals who had already been through the process. Most service users expressed they were unclear as to whether the police and court personnel had the obligation to tell service users about mental health diversion.

This is what some of the participants shared:

*"Duty counsel only talks to you about bail. They don't mention any diversion programs."*

*"I was never offered, nobody ever explained anything to me. Nobody ever explained the mental health system to me until eventually they had enough of me and maybe they recognized 'this person has a mental health issue.'"*

---

**"I was never offered, nobody ever explained anything to me. Nobody ever explained the mental health system to me until eventually they had enough of me and maybe they recognized 'this person has a mental health issue.'"**



**"The clients I work with are not necessarily aware of what other diversion programs are available. If they don't have someone advocating for them, their defense counsel will not tell them. When I think of accessibility, I think of awareness. A lot of these clients may not even be aware of mental health court diversion even before we're able to talk with them about mental health concerns... The person may not look like they have a mental health issue. One time, a lawyer was very upset that I even suggested that for the client. The lawyer said 'well you did it – you are responsible.' I, myself, was not sure if I needed to go through a lawyer, so I brought it up to the lawyer and that was the response."**

*"It's weird that no one tells you about the mental health diversion unless you happen to hear about it [in jail]."*

*"The only reason I found out [about mental health diversion] was because I missed court dates for being in the hospital. If I didn't miss those court dates, they wouldn't have known about my condition, they wouldn't have known about anything and they wouldn't even have asked me."*

In line with what most service users expressed, all service providers agreed that clients are often not aware of diversion programs unless someone is advocating for them. One service provider shared their experience:

*"The clients I work with are not necessarily aware of what other diversion programs are available. If they don't have someone advocating for them, their defense counsel will not tell them. When I think of accessibility, I think of awareness. A lot of these clients may not even be aware of mental health court diversion even before we're able to talk with them about mental health concerns... The person may not look like they have a mental health issue. One time, a lawyer was very upset that I even suggested that for the client. The lawyer said 'well you did it – you are responsible.' I, myself, was not sure if I needed to go through a lawyer, so I brought it up to the lawyer and that was the response."*

### **Transparency**

Most service users expressed confusion around court processes in general as well as specifically around diversion. They also noted a lack of transparency regarding court/legal processes. For some participants, the role of their community case manager was a key aspect in helping them navigate the system and understand procedures. One participant expressed the following:

*"I was very confused. Most of the time I didn't even know what I was doing there [in court]. Most of the time, I'd go see my case worker and she'd tell me that I'd have to come see her, but when I had a court date I wouldn't know what the court date was for. So, I would go into the court and then they would ask for another date and I would sort of freeze up because I didn't know what was going on. When I went to see [the case manager], she would explain everything clearly, but with duty counsel they didn't tell me everything."*

*"When you go into court, there should be someone there to explain what is happening, because many people don't know what's going on. You only get one phone call in jail and you can't call cell phones, only landlines, so people get really stuck. They should tell you the process, because you're just waiting there and going to talk to people when they tell you to and duty counsel only talks to you about bail. They don't mention any diversion programs."*

In line with service users' experiences, most service providers also agreed that court/legal process were not transparent enough for both service users as well as service providers. The following quotes exemplify this point:

*"I don't necessarily believe there is transparency. They could do a better job."*

*"Is the legal system transparent enough for people in the community? The short answer is no, it is not transparent enough."*

*"Operationally, each court has a different culture. The culture of Scarborough court, of city hall. I don't know how support is evaluated."*

## 2. Race and diversity

When asked if race and/or culture (or perceived race and/or culture) affected participants' experiences in their criminal case or accessing diversion, most participants agreed that their race affected how they were treated. This was particularly highlighted when service users described their interaction with the police. Two service users shared their experiences:

*"I would be walking on the street and he [police officer] follows me at two miles an hour, one mile an hour, and he just stares at me and I'm asking him 'why are you stalking and staring at me?' I say, 'that's good practice. That's why a lot of Native American women disappear up in the country side, eh?' [participants laugh] Personally, I think I have been affected by racism, I have become so acceptable to it, the best decision I have ever made is to suck it up."*

*"When the cops stop you, they change the tone more as soon as your accent comes out."*

---

**"When the cops stop you, they change the tone more as soon as your accent comes out."**

---

**“How many females are there? How many Blacks are there? Do we have any statistics? At front-line so much diversity, but higher up?”**

Most service providers also agreed that race plays a role in the ways in which racialized populations are treated. Encounters with police were also highlighted as defining moments in the direction that criminal cases take. For example, one service provider noted that, “police have a lot of discretion [on] whether to lay charge[s],” and that the perception of Black individuals as “violent” can lead to a higher number of charges. Within this context, it is most likely that racialized people with mental health challenges, “are not taken to a hospital. They are taken to jail.”

Some service providers also pointed out that racism goes beyond encounters with police and affects other parts of the criminal justice system. One service provider stated that the chances for white people to get bail are higher. Another service provider expressed that once released, a racialized person lacks connections:

*“When a racialized individual comes out, he lacks supports [while] non-racialized [individuals] will have supports.”*

Another service provider pointed to the lack of diversity within the justice system, raising questions about equal representation:

*“How many females are there? How many Blacks are there? Do we have any statistics? At front-line so much diversity, but higher up?”*

Although most participants agreed that race played a role in service users’ treatment throughout the criminal process, two service users expressed that race did not play a role for them.

### **3. Poverty, immigration and citizenship**

Some service users expressed that poverty was also a factor on how they were treated by authorities. One service user explained:

*“I totally agree with someone who did say that it is a class issue. They look at poor people, or people with less, differently from how they look at someone who maybe has a job or is a head of a company. They look at us as drug addicts. We are the low class. The bottom of the barrel.”*

For some service providers, issues of immigration and citizenship were also relevant and closely connected to people’s

experiences in the justice system. One service provider noted that, “the patterns of who we service in the mental health court tend to mirror the waves of immigration.”

Another service provider noted that perceptions of criminality (who is perceived as a criminal and who is not), “determines access to citizenship. If you’re from Siberia and you’re white, nobody cares about your background. But if you are Black from Nova Scotia, you are assumed to be from elsewhere despite being here for 400 years.”

#### 4. Distrust and loss of hope in the justice system

Some service users expressed distrust and loss of hope in the justice system. One service user captured this general sentiment in the following quote:

*“The justice system is broken because everybody in the justice system is there to make money, from the judge to the lawyers, police, as well as the jails themselves. Everything is money. It has nothing to do with helping someone. [There are] very few people, in the justice system that [are] actually looking to help someone. The other thing about the justice system is that it gets tiring for us. Once we realize this is what we have to go through, this is my life, I cannot get ahead because of that thing in the past, it is always going to be in my future.”*

---

**“The justice system is broken because everybody in the justice system is there to make money, from the judge to the lawyers, police, as well as the jails themselves. Everything is money. It has nothing to do with helping someone. [There are] very few people, in the justice system that [are] actually looking to help someone. The other thing about the justice system is that it gets tiring for us. Once we realize this is what we have to go through, this is my life, I cannot get ahead because of that thing in the past, it is always going to be in my future.”**

## Limitations

Limitations, inherent to qualitative research, apply in this study. The findings were based on a small sample size, limited to individuals attending courthouses in the City of Toronto. Thus, this sample was not representative of all racialized populations in Ontario's mental health court support and diversion programs. Nevertheless, the perspectives, provided by participants, offered important insights into themes that previously had not been explored in this area of research. Incorporating quantitative data would provide for a more comprehensive understanding of the experiences of racialized communities.

Another limitation of the study was the high number of male participants compared to other genders. Most service users identified as male (12). Only two service users identified as female and one as transgender. It is possible that the higher male numbers reflect larger structural patterns in the criminal justice system where involvement tends to be much higher for men.<sup>38</sup> Thus, it is possible that the themes and issues raised were representative of gender specific experiences, needs, and challenges. While the information gathered from the female and transgender service users added to the overall assessment, it is not sufficient to provide insight into the particular experiences of these populations. The limited participation of female and transgender service users and the absence of additional 2SLGBTQIA+<sup>1</sup> identities represent a significant limitation.

---

<sup>1</sup> Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and other sexual orientations and identities.

## Recommendations/conclusions

The objective of the interviews and focus groups was exploratory. They were intended to shed light on some of the experiences and needs of racialized individuals interacting with mental health court support services and diversion in Toronto. Some of the themes raised by participants included:

- The lack of awareness around mental health court support services and diversion programs.
- The lack of transparency in court/legal processes.
- Issues related to race and racism, poverty, migration, and citizenship.
- Loss of hope in the justice system.

While these themes provided a starting point for understanding some of issues faced by service users, further exploration is recommended. The following recommendations are proposed:

1. Given the small sample size for this study, broader consultation with additional stakeholders is highly recommended.
2. Given the limited participation of female and transgender service users and the absence of additional 2SLGBTQIA+ identities in this needs assessment, it is recommended that the participation of women and non-binary individuals be proactively incorporated into the methodology of future needs assessments or research studies.
3. While the focus for this needs assessment was the experiences of racialized populations in general, the findings show that there might be considerable differences in experiences among different populations. Differences within racialized populations may impact individuals' particular experiences with the justice system and/or diversion programs and warrant further exploration.
4. More research is needed to explore interconnections between issues of race, poverty, immigration and citizenship as they relate to court diversion access or denial.



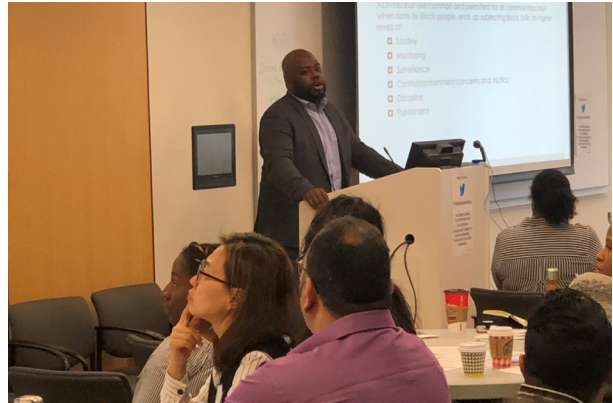
## THINK TANK DAY

The COI hosted a think tank day on the impact of race on mental health court diversion in Toronto on January 7, 2019. The event brought together over 100 participants in person and 50 more via webinar, including representatives from the Ministries of Health and Long-Term Care, the Solicitor General, and the Attorney General; duty counsel; police officers; probation officers; court support workers and managers; mental health and addictions services providers; and persons with lived experience.

The think tank featured keynote speakers, including Dr. Akwasi Owusu-Bempah, a scholar on racism in the criminal justice system and Assistant Professor at the University of Toronto, Mississauga; and Anthony Morgan, a human rights lawyer who supports the City of Toronto's Confronting Anti-Black Racism Unit. A panel consisting of lawyers, mental health court workers and a person with lived experience shared personal experiences and observations of racism in the justice system (*see Appendix A for the think tank day agenda*).

Think tank participants then discussed how the experiences of racialized individuals with mental illnesses in the justice system can be improved. The key recommendations from these discussions are summarized below. To access resources and webinar footage from the day, please click [here](#).

Think tank day participants were asked to discuss the following questions in small groups. They wrote their answers on chart paper, which was later collected by the event organizers. Key recommendations were shared in a discussion with the entire group.



Anthony Morgan, City of Toronto's Confronting Anti-Black Racism Unit, keynote speaker, think tank day



Dr. Owusu-Bempah, Assistant Professor at the University of Toronto, Mississauga, key note speaker, think tank day



Think tank day panel. From left to right: Jordan Eastman Heyman, Focus Group Participant; Kimberly Roach, Policy Counsel, Racialized Communities Strategy, Legal Aid Ontario; Peter Ackie, Court Support Worker, Across Boundaries; A.J. Grant-Nicholson, Policy Counsel, Mental Health Strategy, Legal Aid Ontario



## 1. What supports, services or resources are needed before charges are laid to prevent racialized individuals with mental health or addictions-related issues from interacting with the justice system?

At the system level, many think tank participants highlighted the need for more specialized staff and programs to educate and promote awareness of mental health services to de-stigmatize mental health in racialized populations. Ideas included:

- Culturally-competent and trauma-informed services and care with the justice system, including specialized training for police officers
- Increasing funding for mobile crisis teams to respond to people experiencing a mental health or substance use crisis
- Initiating new and expanding existing pre-charge diversion programs with police
- Increasing the number of front-line staff who are racialized and have lived experience
- Providing mental health services at the courthouse to increase awareness and accessibility
- Expanding restorative justice programs
- Inviting ethno-cultural service providers to educate families and the community about the court system in courthouses, places of worship, schools, etc.
- Decriminalization of drugs for personal possession
- Increasing the number of mental health beds in the community
- Each community/neighbourhood should identify champions of mental health

At the agency level, participants recommended more funding for community organizations, peer support services and recreational programs for youth and young adults. This included:

- Peer support in the community and over the phone
- More funding for settlement agencies
- Hiring people with lived experience in leadership positions
- More co-operation and collaboration between service providers

Participants would like to see the following offered at the client level:

- Life skills support (preventative)
- Advising people of their rights
- Awareness of mental health supports available in their community
- Early mental health screening, diagnosis, medication and treatment

## 2. How can racialized individuals going through the justice system be made more aware of the process and what's happening?

Many think tank participants identified the need for information sessions and resources, including:

- Having culturally-specific system navigators, rights advisors and legal translators
- Early case management
- Information sessions from settlement and immigration organizations, community health centres, culturally-specific agencies and people with lived experience
- Hosting sessions in more comfortable settings, such as public libraries and community centres
- More education around legal and immigration processes
- Know-your-rights classes in elementary schools, high schools and colleges
- Literature that is very accessible and easy to understand
- Resources that are interactive and arts-based, such as social media, infographics and videos
- Specific stakeholders should help explain the justice system process to clients:
  - Police during arrest/charge
  - Mental health workers from different ethnic/racial groups
  - Duty and defence counsel to ensure their clients understand

## 3. Who should be promoting/recommending mental health court diversion?

Many think tank participants thought everyone who is aware of mental health court diversion should promote it to potential clients.

Players within the judicial system were seen as being the most responsible for promoting mental health court diversion, including:

- Judicial officers (justices and justices of the peace)
- First responders, such as police and mobile crisis teams
- Mental health court support workers
- Probation officers

Other service providers who should also promote mental health court diversion:

- Hospitals and medical practitioners
- Shelters
- Community service or immigration agencies, mental health workers, social service workers, peers
- People with lived experience, families, the client themselves
- Child protection services
- Elders and healers in Indigenous communities

#### 4. How can mental health court diversion be more accessible for racialized individuals and how can those who are not eligible receive the supports they need?

At the system level, mental health court diversion can be made more accessible through education with the court system by:

- Expanding mental health courts to all courts, add more days to existing courts and expand hours to evenings and weekends
- Screening and assessing each individual entering the court system for mental health challenges
- Getting creative with a restorative justice approach (mental illnesses should not be punished but supported)
- Establishing standardized diversion criteria
- Training judges, lawyers, correctional staff, etc. to recognize the signs/symptoms of mental health conditions
- Mandating mental health workers in each court
- Informing clients who are not eligible for mental health court of drug treatment court and Gladue court/Indigenous peoples' court

Communities and agencies can provide better services and supports to clients by:

- Building trust with clients by listening with empathy and without judgment
- Hiring staff from diverse ethnic/racial backgrounds in leadership positions
- Training staff on early detection of mental health issues and trauma-informed approaches
- Addressing the root causes of mental health and addictions issues (housing, employment, education, etc.)
- Providing easy access to medical staff, interpretation services, legal aid and case management

- Destigmatizing programs at a community level
- Outreach within the community and mobile services
- Collaborating with community partners including faith-based organizations
- Initiating a mentorship or peer support program
- Promoting informed consent for information sharing within the circle of care and talk to family and other supports

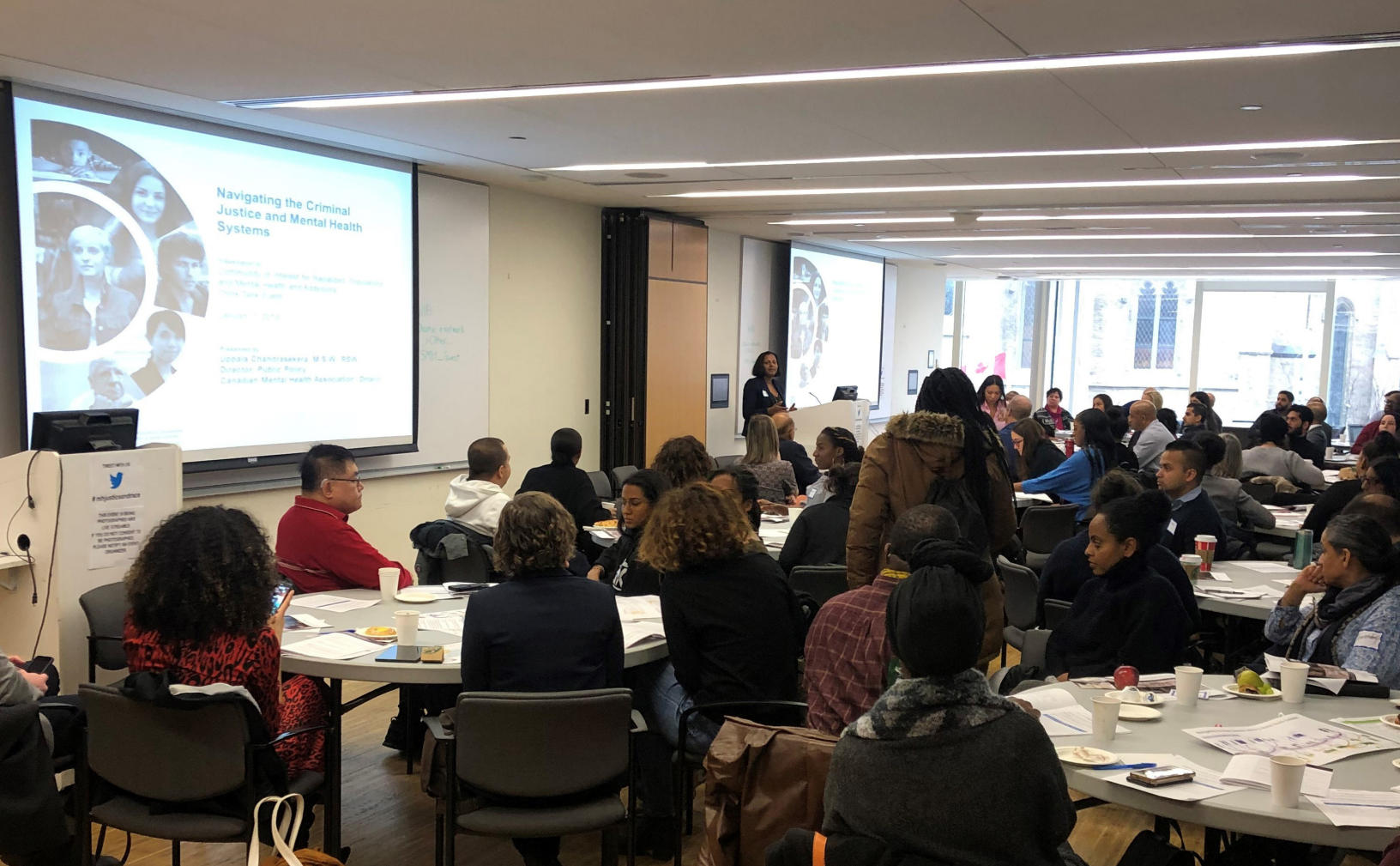
#### 5. Where in the criminal justice system pathway should race-based data be collected?

Within the justice system, think tank participants suggested data should be collected at every step by:

- Police at the initial point of contact/arrest and when the person is brought to jail/holding cell
- Court staff/Ministry of the Attorney General at the first appearance and at sentencing
- Front line services/agencies such as bail programs, John Howard Society, housing organizations
- Legal Aid Ontario
- Probation officers/Ministry of the Solicitor General
- Hospitals

Furthermore, participants felt:

- Any data collected must be used correctly and contextualized to show correlations between income, race, and other social determinants of health
- Data should be combined with that collected by social service agencies
- Why the data is being collected must be explained to staff and the client



Uppala Chandrasekera, Director of Public Policy, CMHA Ontario, presents to think tank day participants

## CONCLUSION

The COI has been focusing on racialized populations and mental health court diversion since 2016. We examined the benefits and limitations of mental health courts, the over-representation of racialized individuals in the justice system, and the lack of data on the intersection of race and mental health diversion in Canada. Our focus groups revealed a lack of awareness and transparency around diversion programs, perceived racial and/or cultural biases in the justice system, and the intersections of race and poverty. At our think tank day, we heard from key stakeholders, including people with lived experience, service providers, and provincial ministry representatives.

Think tank participants suggested that race-based data be collected at every step of the justice system and used contextually to show correlations between race and access to diversion programs. Mental health court diversion could be made more accessible to racialized individuals if all members of the justice system promoted the program. Mental health courts should be expanded to all courts, and each individual entering the court system should be screened and assessed for eligibility. Future research is needed to explore interconnections of race, gender, poverty, immigration and citizenship as they relate to court diversion access or denial.



## REFERENCES

- <sup>1</sup> DeMatteo, D., et al. (2013). Community-based alternatives for justice-involved individuals with severe mental illness: Diversion, problem-solving courts, and re-entry. *Journal of Criminal Justice*, 41, 64-71.
- <sup>2</sup> Sarteschi, C.M., et al. (2011). Assessing the effectiveness of mental health courts: A quantitative review. *Journal of Criminal Justice*, 39, 12-20; Lange, S., et al. (2011). The effectiveness of criminal justice diversion initiatives in North America: A systemic literature review. *International Journal of Forensic Mental Health*, 10(3), 200-214.
- <sup>3</sup> *Ibid.*
- <sup>4</sup> *Supra*, note 2, Sarteschi, C.M., et al. (2011).
- <sup>5</sup> Fisher, W. H., et al. (2006). Beyond criminalization: Toward a criminologically informed framework for mental health policy and services research. *Administration and Policy in Mental Health and Mental Health Services Research*, 33(5), 544-557.
- <sup>6</sup> Provincial Human Services and Justice Coordinating Committee (HSJCC) & Canadian Mental Health Association, Ontario Division. (2017). *Mental health courts in Ontario: A review of the initiation and operation of mental health courts across the province*. Retrieved from: <http://ontario.cmha.ca/wp-content/uploads/2017/11/Mental-Health-Courts-in-Ontario-1.pdf>
- <sup>7</sup> *Ibid.*
- <sup>8</sup> *Ibid.*
- <sup>9</sup> Aldigé Hiday, V., et al. (2014). Predictors of mental health court graduation. *Psychology, Public Policy, and Law*, 20(2), 191-199.
- <sup>10</sup> *Ibid.*
- <sup>11</sup> *Ibid.*
- <sup>12</sup> Wortley, S. (1999). A northern taboo: research on race, crime, and criminal justice in Canada. *Canadian J. Criminology*, 41(2), 261-274; Wortley, S. (2003). Hidden intersections: research on race, crime, and criminal justice in Canada. *Canadian Ethnic Studies Journal*, 35(3), 99+.
- <sup>13</sup> Owusu-Bempah, A., & Wortley, S. (2014). Race, crime, and criminal justice in Canada. In S. Bucerius & M. Tonry (Eds.), *Oxford handbook of ethnicity, crime, and immigration* (Chapter 11). Oxford University Press. 10.1093/oxfordhb/9780199859016.013.020; *Ibid.*, Wortley, S. (2003).
- <sup>14</sup> *Ibid.*, Owusu-Bempah, A., & Wortley, S. (2014).
- <sup>15</sup> Roberts, J., & Doob, A.N. (1997). Race, ethnicity, and criminal justice in Canada. *Crime and Justice*, 21, 469-522.
- <sup>16</sup> *Supra*, note 13, Owusu-Bempah, A., & Wortley, S. (2014).; *Supra*, note 12, Wortley, S. (1999).
- <sup>17</sup> *Supra*, note 12, Wortley, S. (2003).; *Supra*, note 13, Owusu-Bempah, A., & Wortley, S. (2014).; *Supra*, note 15.
- <sup>18</sup> Wortley, S., & Owusu-Bempah, A. (2012). Race, ethnicity, crime and criminal justice in Canada. In: A. Kalunta-Crompton (Ed.) *Race, ethnicity, crime and criminal justice in the Americas* (pp. 11-40). London: Palgrave Macmillan.
- <sup>19</sup> *Ibid.*
- <sup>20</sup> *Supra*, note 12, Wortley, S. (2003).
- <sup>21</sup> *Ibid.*
- <sup>22</sup> Hamilton, A., & Sinclair, M. (1991). *Report of the Aboriginal Justice Inquiry of Manitoba*. Winnipeg: Government of Manitoba; Kellough, G., & Wortley, S. (2002). Remand for plea. Bail decisions and plea bargaining as commensurate decisions. *The British Journal of Criminology*, 42(1), 186-210.
- <sup>23</sup> *Ibid.*, Kellough, G., & Wortley, S. (2002).
- <sup>24</sup> *Supra*, note 12, Wortley, S. (2003).
- <sup>25</sup> *Supra*, note 13, Owusu-Bempah, A., & Wortley, S. (2014).; Bowing, B., & Phillips, C. (2002). *Racism, crime and justice*. Britain: Pearson Education.
- <sup>26</sup> *Supra*, note 12, Wortley, S. (2003).
- <sup>27</sup> Pahwa, P., et al. (2012). Longitudinal trends in mental health among ethnic groups in Canada. *Chronic Diseases and Injuries in Canada*, 32(3), 164-176.
- <sup>28</sup> *Ibid.*

- <sup>29</sup> Fenta, H., et al. (2004). Determinants of depression among Ethiopian immigrants and refugees in Toronto. *Journal of Nervous and Mental Disease*, 192, 363-372.
- <sup>30</sup> Hyman, I., et al. (1996). The mental health of refugee children in Canada. *Refuge*, 15, 4-8.
- <sup>31</sup> Government of Canada. (2006). *The human face of mental health and mental illness in Canada*. Ottawa, Ontario: Minister of Public Works and Government Services Canada, Cat. No. HP5-19/2006E, ISBN 0-662-43887-6.
- <sup>32</sup> *Ibid.*
- <sup>33</sup> Chiu, M. (2017). Ethnic differences in mental health and race-based data collection. ICES report. *Healthcare Quarterly*, 20(3), 6-9.doi:10.12927/hcq.2017.25296.
- <sup>34</sup> Kafele, K. (2004). Racial discrimination in mental health in racialized and Aboriginal communities. In *Race policy dialogue papers*. Toronto, Ontario: Ontario Human Rights Commission.
- <sup>35</sup> *Ibid.*
- <sup>36</sup> *Supra*, note 2, Sarteschi, C.M., et al. (2011).
- <sup>37</sup> *Supra*, note 9.
- <sup>38</sup> Sirocich, F., et al. (2018). Seeking supportive housing: characteristics, needs and outcomes of applicants to the Access Point: Toronto mental health and addictions Access Point waiting list analysis. Retrieved from: <http://www.wellesleyinstitute.com/wp-content/uploads/2018/04/The-Access-Point-Waiting-List-Analysis-Full-Report.pdf>; Sirocich, F. (2008). Correlates of crime and violence among persons with mental disorder: an evidence-based review. *Brief Treatment and Crisis Intervention*, 8(2), 171-194.

## APPENDIX A – THINK TANK DAY AGENDA



9:30 am - 10:00 am	Registration
10:00 am - 10:15 am	'Words that come before all else' <b>Traditional Healer:</b> <i>Cynthia White</i> , Aboriginal Services, CAMH
10:15 am - 10:25 am	<b>Opening Remarks: Racialized Populations and Mental Health Court Diversion, Project Overview</b> <b>MC:</b> <i>Deqa Farah</i> , Senior Manager, Mental Health & Substance Use Housing Program, Fred Victor
10:25 am - 10:35 am	<b>Journey Through the Justice System</b> <i>Uppala Chandrasekera</i> , Director of Public Policy, CMHA Ontario
10:35 am - 10:55 am	<b>Race Based Criminal Justice Data in the Canadian Context</b> <b>Keynote Speaker:</b> <i>Dr. Akwasi Owusu-Bempah</i> , Assistant Professor, Department of Sociology, University of Toronto, Mississauga
10:55 am - 11:10 am	<b>Q &amp; A</b>
11:10 am - 11:25 am	<b>Morning Break</b>
11:25 am - 11:45 am	<b>The Maddening Criminalization of Blackness in Canada</b> <b>Keynote Speaker:</b> <i>Anthony Morgan</i> , Community Development Officer, Confronting Anti-Black Racism Unit, City of Toronto
11:45 am - 12:00 pm	<b>Q &amp; A</b>
12:00 pm - 12:45 pm	<b>Lunch</b>
12:45 pm - 1:45 pm	<b>Panel Discussion - Race and Mental Health Court Diversion</b> <b>Moderated by:</b> <i>Judy Virgo</i> , Mental Health Court Support Worker, Fred Victor <b>Panelists:</b> <i>Jordan Eastman Heyman</i> , Focus Group Participant <i>Peter Ackie</i> , Court Support Worker, Across Boundaries <i>A.J. Grant-Nicholson</i> , Policy Counsel, Mental Health Strategy, Legal Aid Ontario <i>Kimberly Roach</i> , Policy Counsel, Racialized Communities Strategy, Legal Aid Ontario
1:45 pm - 2:00 pm	<b>Afternoon Break</b>
2:00 pm - 3:00 pm	<b>Group Discussions:</b> How to Improve Experiences and Outcomes for Racialized Individuals with Mental Health Illnesses in the Justice System?
3:00 pm - 3:45 pm	<b>Report back from Groups</b>
3:45 pm - 4:00 pm	<b>Wrap Up and Closing Remarks</b> <i>Deqa Farah</i> , Senior Manager, Mental Health & Substance Use Housing Program, Fred Victor

