Reconfiguring Canadian Penalty: Gender, Diversity, and Parole

by

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Abstract
This research provides a local case study of responses to ‘gender’ and ‘diversity’ within Canada’s federal parole system. I examine the following questions: How are certain ‘differences’ and categories of offenders constituted as targets for ‘accommodation’ or as having ‘special needs’? How do penal institutions frame ‘culturally relevant’ or ‘gender responsive’ policy and, in doing so, use normative ideals and selective knowledge of gender, race, culture, ethnicity, and other social relations to constitute the identities of particular groups of offenders? I explore these questions by tracing the history of policy discussions about gender and facets of diversity within legislation and penal and parole policies and practices, as well as the current approaches to managing difference used by the National Parole Board (NPB). Specific focus is given to the organizational responses and approaches developed for Aboriginal, female, and ‘ethnocultural’ offenders.

In this study, I show that the incorporation of diversity into the federal parole system works to address a variety of organizational objectives and interests, including fulfilling the legislative mandate to recognize and respond to diversity; appealing to human rights ideals and notions of fairness; managing reputational risk and conforming to managerial logics; instituting ‘effective’ correctional practice; and addressing issues of representation. At the
same time, the recognition of gender and diversity produces new penal subjectivities, discourses, and sites upon which to govern. I argue that the accommodation of gender and diversity provides a narrative of conditional release and an institutional framework that positions the NPB as responsive to the diverse needs and/or experiences of non-white and non-male offenders. In the Canadian context, the penal system strives to deliver ‘fair’ punishment through the selective inclusion of difference, and without altering or reconsidering fundamental structures, practices, and power arrangements. Diversity and difference are instead added onto and/or incorporated into preexisting penal policy and logics, including risk management and managerialism.
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Chapter 1
Introduction, Context, and Method

The scholarship on penal reform over the past twenty years has produced a large body of literature theorizing and otherwise accounting for the various ways that punishment has changed since the early 1970s. Although there is overwhelming agreement in the literature that most western countries’ penal systems have shifted, the underlying reasons—and scope—of these reforms are debated among scholars. Extant literature has focused on the punitive nature of contemporary penal policy, including debates about the emergence of a ‘new’ penal order and the ‘death’ of rehabilitation as a central feature of modern punishment (e.g., Garland 1990, 1996, 2001, 2003a; Feeley and Simon 1992, 1994; O’Malley 1999; Pratt 2000; Simon and Feeley 2003; Sparks 2003; Tonry 2004; Brown 2005; Hallsworth 2005; Pratt et al. 2005; Simon 2007; Harcourt 2009). Other scholars have considered the ‘rise’ of risk-based penalties and associated reforms to penal policy based on the logics of risk and ‘what works’ (e.g., Feeley and Simon 1992, 1994; Ericson and Haggerty 1997; Hannah-Moffat 1999, 2005; Garland 2003b; Hudson 2003; Kemshall 2003; O’Malley 2004; Maurutto and Hannah-Moffat 2006; Carlen 2008). A large body of scholarship has examined the implications of the so-called ‘punitive turn’, including mass incarceration (e.g., Caplow and Simon 1999; Tonry and Petersilia 1999; Blumstein 2003; Petersilia 2003; Haney 2004; Tonry 2004) and its gendered, racialized, and classed character (e.g., Kruttschnitt and Gartner 2003, 2005; Tonry and Petersilia 2003; Tonry 2004; Wacquant 2003, 2005; Sudbury 2005).

Many of the explanations for the state of contemporary penalty have been accused of being largely abstract and lacking the empirical data required in support of the assertions made (e.g., Garland 2003; Haney 2004). Garland (2003), for instance, cautions against making generalizations about what is occurring in different contexts. Indeed, the bulk of scholarship on penal change has focused on policy and practice within the United States, yet evidence suggests that there are important differences in penalty among western countries, such as Canada (e.g., Meyer and O’Malley 2005; Moore and Hannah-Moffat 2005). Scholars have also focused attention on assessing the impacts of penal change on specific elements of penal systems and particular populations in order to provide richer accounts of what is
happening ‘on the ground’ in different jurisdictions. For example, the research on parole has examined changes to operational practices and governing rationales over time (e.g., Simon 1993; Lynch 1998), while research on women’s imprisonment has documented the various ways that penal change has impacted prison structures and how women are punished (e.g., Hannah-Moffat 2001, 2002; McCorkel 2003; Kruttschnitt and Gartner 2005). These studies support the idea that it is important to examine local specificities and the differential (and often unequal) impacts of penal policies on different populations as penal reform is by no means straightforward or consistent in reach and consequence.

Within this broader context, a small, but growing body of literature is examining penal change in relation to issues of ‘diversity’ within penal populations, including various approaches taken by penal systems to help ameliorate gender discrimination and historical legacies of discrimination against indigenous peoples (e.g., Cunneen 2006; Murdocca 2007, 2009; Spivakovsky 2008; Hannah-Moffat and Maurutto 2010; Martel et al. 2011). Although the literature on reforms to the punishment of women is well developed and covers several jurisdictions including Canada (e.g., Hannah-Moffat 2001; Hannah-Moffat and Shaw 2000; Hayman 2006), the United Kingdom (e.g., Carlen 2002a; Corcoran 2010; Hedderman 2010), and the United States (e.g., Kruttschnitt and Gartner 2005; Shaylor 2009), fewer studies have considered questions of racial, ethnic, or cultural diversity1 in relation to penal change or how specific diversity initiatives, such as legal requirements or policy changes designed to ameliorate formal and systemic discrimination in penal policy and practices, has effected these regimes. This may be because not many jurisdictions undertake diversity initiatives—for example, because of funding issues or punitive sentiments (Zellerer 2003)—and/or the initiatives that do exist are relatively new and not yet the subject of much academic research. The research that has examined these issues shows a number of unintended consequences. For instance, Schoenfeld’s (2010) work has documented how well-intentioned prison conditions litigation to reduce the incarceration of black prisoners in Florida, and therefore

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1 As will be discussed throughout this dissertation, ‘diversity’ is not formally defined by government officials or within government texts, but rather emerges as a fluid term that most commonly is used to signal non-whiteness and sometimes non-maleness. Herring (2009: 209) notes that “[g]enerally, ‘diversity’ refers to policies and practices that seek to include people who are considered, in some way, different from traditional members”. Within the literature, diversity is also linked to groups that are typically covered under human rights, affirmative action, or equal employment opportunity legislation or policy (Edelman et al. 2001; Ahmed et al. 2006; Kaley et al. 2006; Herring 2009; Dobson et al. 2011). Throughout this thesis I use the term ‘diversity’ as a construct that includes racialized and/or culturalized difference. In the Canadian context, diversity tends to refer to racial and ethnic difference, as constituted in relation to the dominant white Anglo- and Franco-Canadian norms.
address issues of racial injustice, paradoxically resulted in the building of new prisons. Unintended consequences have also resulted from efforts to address systemic discrimination through institutional reforms that involve adding diversity initiatives onto existing processes and structures (e.g., Hannah-Moffat 2001, 2004a; Carlen and Tombs 2006; Hayman 2006; Martel and Brassard 2008; Martel et al. 2011; Pollack 2011).

In the Canadian context, federal penal institutions in recent years have placed greater emphasis on the need to recognize diversity and respond to differences in the offender population. These changes can be situated in a broader context whereby organizations—from government institutions to corporations—have faced increasing pressure to accept and promote gender, racial, and ethnocultural diversity from various sources, including human rights, employment equity, and multiculturalism law. Diversity within the offender population has, for the most part, been identified as belonging to three groups: Aboriginal, women, and so-called ‘ethnocultural’ offenders. These groups are constituted as ‘different’ in relation to the normative white male offender. The failure to account for differences over time has produced forms of overt and systemic discrimination. As such, these groups are seen to have special needs that cannot be met through the status quo, and consequently require certain accommodations, which range from the development of new programs to the creation or alteration of physical structures (e.g., healing lodges and special ranges within penitentiaries), to special formats for parole hearings (e.g., elder assisted hearings).

Key legislative changes, such as the 1992 Corrections andConditional Release Act (CCRA), and developments in case law have mandated that federal penal institutions be responsive to specific differences. For instance, the Supreme Court of Canada’s decision in R. v. Gladue [1999], an important court case that will be discussed in more detail in Chapter 2 and throughout the dissertation, specified a different approach for sentencing Aboriginal offenders and has been used by the penal system to guide its policies and practices. In addition to legal stipulations requiring institutions to take into account cultural differences—or perhaps because of them—there is increasing recognition that the ‘success’ of penal responses (e.g., in the rehabilitation and reintegration of offenders) is based on their ability to be responsive to issues of diversity.

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2 More recently, in Canada mentally ill offenders are increasingly viewed as a special population; however, mental health is not marked as a different in the same way as race or ethnicity, culture, and/or gender.
The institutionalization of diversity mandates and subsequent changes in penal policy and practice raise interesting questions for scholars of punishment, particularly given that much of the mainstream theorizing has focused on transformations that are highly punitive in nature and preoccupied with the management of risk. Although often occurring in tandem with well documented punitive and risk-based policies, diversity-related reforms that accommodate gender and ethnocultural diversity are shaping the punishment of offenders in the pursuit of a variety of penal goals, such as the amelioration of racial injustice through reductions in the incarceration rates of indigenous peoples and the creation of gender responsive models of justice. Such changes are very much specific to certain jurisdictions based on their unique historical, social, and political contexts; issues of injustice and discrimination are different across borders. It is therefore worthwhile to study the implications and outcomes of local initiatives.

Contemporary penal responses to diversity in the offender population raise important questions around the impacts and effects of these transformations. Much of the critical literature on penal change shows that there are many unintended consequences of well-intentioned reforms (e.g., Rothman 1980; Cohen 1985; Hannah-Moffat 2001, 2004a; Hannah-Moffat and Shaw 2000; Monture-Angus 2000; Snider 2003; Carlen and Tombs 2006; Hayman 2006; Martel and Brassard 2008; Shaylor 2009; Schoenfeld 2010; Martel et al. 2011). There is a possibility that recent initiatives to make incarceration and conditional release sensitive and responsive to notions of gender, race, ethnicity, or culture will reaffirm these structures as necessary or suitable for managing deviance. In this way, such well-intentioned reforms may strength the “carceral pull” of these institutions (Carlen and Tombs 2006: 339; see also Shaylor 2009), particularly as they appear responsive to various groups of offenders and their needs. It is therefore important to consider how current penal systems and practices of punishment—which are based on and have “privileged white male nativist norms” (Flavin and Bosworth 2007: 218)—respond to what they perceive to be, and constitute as, the concerns or needs of those who are not white or male.
The Present Study

This dissertation is a qualitative study of how concerns about ‘gender’ and ‘diversity’ are historically and politically constituted as ‘problems’ that mandate changes to existing penal policy and practice. The study examines the various meanings, impacts, and implications of penal transformations that aim to construct what appear to be ‘fair’, ‘culturally appropriate’, and/or ‘gender responsive’ penal policies and practices. A central focus of this research is on how the ideal of diversity is interpreted and used to alter conditional release (i.e., parole) policy and practice. This research provides a nuanced understanding of how well-meaning penal reforms are institutionalized and their outcomes. It documents some of the complexities of operationalizing abstract ideals of substantive equality and the amelioration of discriminatory practices that have yet to be sufficiently examined in the penal literature.

My research explores the following questions: How are certain ‘differences’ and categories of offenders constituted as targets for ‘accommodation’ or as having ‘special needs’? And more broadly, how do penal institutions frame ‘culturally relevant’ or ‘gender responsive’ policy, and in doing so, use normative ideals and selective knowledge of gender, race, culture, ethnicity, and other social relations to constitute the identities of particular groups of offenders? I explore these questions by tracing the history of policy discussions about gender and facets of diversity within legislation and penal and parole policies and practices, as well as the current approaches to managing difference used by the National Parole Board (NPB).

My research suggests that the incorporation of diversity into the federal parole system fulfills several organizational objectives. These include: satisfying the legislative mandate of the CCRA to recognize and respond to diversity; meeting expectations of fairness; observing human rights ideals and, increasingly, the interests of victims; managing reputational risk to protect the organization from legal challenges and/or negative public opinion; conforming to managerial logics as a means to measure and track diversity and show that it is being done at the organization; instituting ‘effective’ correctional practice in order to reduce risk and increase public safety; and addressing issues of representation such that board members and staff reflect the diversity of the Canadian population.

3 Because it is awkward to put quotation marks around ‘diversity’, ‘difference’, and ‘gender’ each time these concepts are used, I have done so in a limited fashion throughout this dissertation. It is hoped that the reader will consider these concepts as social constructions in the absence of quotation marks.
My conceptual and empirical approach is informed by two main fields of thought. The first stems from the work of Foucault and scholars who have employed his methods and theoretical orientations. This literature has encouraged me to ask ‘how’ questions and consider the relationships between power and knowledge in the act of governing, and especially towards the governing of those constituted as different along lines of gender, race, and culture. It has also encouraged a critical thinking of the implications of these reforms. For instance, Foucault’s work in *Discipline and Punishment* and *Madness and Civilization* cautions against seeing reform as simply leading to improvements of conditions for those under the control of penal or psychiatric institutions (Mills 2003). In the case of culturally appropriate or gender responsive punishment, we cannot necessarily see these as simple improvements to how non-white and non-male offenders are treated within the penal system. Foucault asks us to question such assumptions and consider the implications that these responses bring about. For Foucault (1991: 84), critique does not have to lead to prescriptions as to “what needs to be done”. In the context of punishment, where reform is a continuous process, this argument is particularly important as the task of the researcher can instead focus on *how* punishment and penal practices are discursively constituted and carried out, and to what effects, without the aim to make things ‘better’. Exploring the recognition of gender and diversity also means attending to the ways in which this recognition produces a range of outcomes, including new penal subjectivities, discourses, and sites, upon which to govern. This involves considering how knowledges of the ‘other’ emerge within institutional discourses around gender and diversity and shape the approaches adopted to address issues of difference. In this sense, knowledge and power are productive, potentially creating culturalized, racialized, and gendered regimes of punishment. Yet, Foucauldian literatures within the field of punishment have yet to fully explore how gendered and racialized knowledges inform and produce new penal practices.

The second field of thought that has shaped my approach to this study is what I will group together as feminist, anti-racist, and postcolonial, and for the sake of simplicity will term anti-racist feminist thought. Anti-racist feminist scholarship provides important insights that are often not considered within mainstream sociology of punishment literature on penal change. This diverse field influences my conceptual analysis of the notion of difference and how it is constituted and taken up in the context of punishment. Within this study, I use anti-
racist feminist literatures to understand the concepts of gender and diversity, and their fluidity, nuances, and connections to broader social relations of power. One of my interests in this study lies in how problems and solutions in relation to gender and diversity are constituted in the context of the NPB and subsequently, what gets left out or unrecognized in the process. Through the institutional and legislative recognition of gender and diversity, certain penal subjects are marked by or with difference and as different. The constitution of diversity as something non-white individuals or cultures possess maintains whiteness as the norm to which difference is positioned. Similarly, the coding of gender as ‘women’ works to reaffirm masculinity as the standard. Yet, at the same time, institutional policies that recognize difference capture identities as singular, not intersecting and simultaneously experienced. The anti-racist feminist literature on intersectionality is therefore useful for understanding how penal institutions are largely unable to simultaneously consider different facets of identity, including gender, race, class, culture, sexuality, ability, and so forth, and how this shapes the organizational responses to differences among offenders (e.g., hooks 1981; West and Fenstermaker 1995; Burgess-Proctor 2006; Yuval-Davis 2006).

By combining anti-racist feminist thought with a Foucauldian approach to documenting processes, this study explicates how concepts of gender and diversity are understood, operationalized, and institutionalized within conditional release policy and practice. The conceptual and theoretical challenge of combining these two fields of thought is twofold. First, anti-racist feminist scholarship has a strong social justice orientation and desire to improve the lives of those who are marginalized and oppressed, whereas Foucauldian literatures tend to avoid normative claims to analyze the effects of institutions or programs. Second, in contrast to much anti-racist feminist thought, Foucauldian analyses view power as a strategy that must be performed instead of something that the state or a particular group possesses. My intent with bringing these two fields of thought together is to advance our understanding of the production of gendered and racialized penal policies and practices, and how ideas about difference are constituted in institutional initiatives and approaches, rather than to make normative claims about these processes. I draw on anti-racist feminist scholarship to problematize the concepts of gender and diversity, but utilize a Foucauldian method of analysis to document the processes, outcomes, and consequences associated with how these concepts are integrated into policy and practice.
Although Foucauldian and anti-racist feminist scholarships provide the primary theoretical and conceptual foundations of this study, the bodies of literature emerging from the areas of the sociology of organizations and critical management studies are also important resources for considering how issues of diversity and gender are taken up by organizations and may affect change (e.g., Edelman et al. 2001; Kalev et al. 2006; Dobbin et al. 2011). These literatures are also helpful for making connections between the uptake of diversity and organizational processes oriented toward performance management, corporate risk management, and audit culture (e.g., Power 1997, 2007; Ahmed et al. 2006; Ahmed 2006a, 2007). In contrast to much anti-racist feminist thinking, these scholarships complicate institutional engagements with gender and diversity and provide more nuanced accounts of the impediments to bringing about institutional change. In sum, this project brings together Foucauldian, anti-racist feminist, and critical organizational literatures to help advance our understanding of penal change and the consequences of institutional responses to difference in the context of Canadian penality.

As previous research has shown, the incorporation of gender and diversity into penal policy and practice can have unintended outcomes (see Hannah-Moffat 2001, 2002, 2004a; Hannah-Moffat and Shaw 2000; Snider 2003; Hayman 2006; Shaylor 2009; Schoenfeld 2010; Pollack 2011). In particular, penal institutions tend to transform and co-opt the insights of feminist and other advocates such that the original intent and scope of ideas for reform become incorporated into the larger penal agenda (see also Rothman 1980; Carlen 2002b; Houchin 2003). Similar arguments can be made for the incorporation of culture and ethnicity into correctional discourses (see Jackson 1988; Monture-Angus 2000; Hayman 2006; Martel and Brassard 2008; Martel et al. 2011). For instance, as Hayman (2006) suggests, the recognition of ‘Aboriginality’ has resulted in the expropriation of Aboriginal cultures into the broader penal agenda such that concepts of ‘healing’ and ‘spirituality’ are reoriented to reflect the goals and values of the correctional enterprise. Some critical scholars suggest that these changes tend to further entrench the dominant paradigms of punishment under the guise that penal systems are now responsive to issues of diversity (Carlen and Tombs 2006; Shaylor 2009). My research builds on this critical analysis of how knowledge of gender, Aboriginal, and ethnocultural differences are integrated into policies and practices of managing an offender’s risk through conditional release decision-making. I also extend these
arguments by showing how the NPB’s integration of gender and diversity, and certain institutional practices, act as a form of “reputational risk management”—that is, the self-interested identification and management of various risks to institutional reputation—(Power 2004: 32) that insulates the NPB from criticism and potential legal challenges of discriminatory practice.

As Garland (1990: 3) observes, “the structures of modern punishment have created a sense of their own inevitability and of the necessary rightness of the status quo”. Thinking around penal policy and practices of punishment tends to “assume the current institutional framework, rather than question it” (ibid.), thereby reinforcing dominant explanations and rationales for who, why, and how we punish. Similarly, Simon (1993: 9) argues that “[o]ne of the primary tasks of an institution that exercises the power to punish is to provide a plausible account of what it does, and how it does what it does”. I contend that the accommodation of gender and diversity provides a narrative of conditional release and an institutional framework that positions the organization as responsive to the diverse needs or experiences of non-white and non-male offenders. In the Canadian context, the penal system strives to deliver ‘fair’ punishment through the selective inclusion of difference, and without altering or reconsidering fundamental structures, practices, and power arrangements. Diversity and difference are instead added onto and/or incorporated into preexisting penal policy and logics, including risk management and managerialism. The organizational approach to difference is focused on the production of knowledge about the other in an attempt to be culturally (or gender) sensitive. In addition, the rhetoric of diversity does work for the organization in terms of performing ‘inclusion’ and ‘managing’ reputation. Diversity initiatives become auditable products that demonstrate diversity is being done within the organization.

The National Parole Board

For federally sentenced offenders, the conditional release system is the last stage of the penal system in Canada. This system has been largely rationalized as a means of enabling gradual release so that prisoners may return to their communities under the supervision of parole

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4 In 2010, the applied title of the National Parole Board (NPB) was changed to the Parole Board of Canada (PBC) as a result of the government’s Federal Identity Program. This dissertation will use the organization’s previous title throughout for the sake of consistency and clarity as this name is cited in the vast majority of data sources.
officers to serve the remainder of their sentence. Gradual and supervised release are viewed as promoting public safety by allowing for the monitoring of released offenders as they attempt to (re)establish themselves in their communities, thereby by permitting corrective actions (e.g., parole suspensions or revocations) if their behaviours become ‘risky’ to the public. In Canada, the CCRA requires that all federally sentenced offenders be considered for some type of conditional release during their sentence (NPB 2010a). There are four types of release: temporary absence, day parole, full parole, and statutory release (ibid.).

The NPB is an independent administrative tribunal that has, under the CCRA, exclusive decision-making power to grant or deny release (with the exception of statutory release which is set by law), apply conditions, suspend and revoke release, detain offenders until the completion of their sentence, and consider appeals of its decisions (NPB 2011a). Established in 1959 through the Parole Act, the organization makes conditional release decisions for all federally sentenced offenders in Canada, as well as for prisoners in the provinces and territories that do not have parole boards. The NPB is also responsible for making decisions related to pardons and clemency; however, its program of conditional release accounts for most of its work. Board members are the individuals responsible for conditional release decision-making. The NPB headquarters are located in Ottawa and there are offices located in the five regions: Pacific, Prairies, Ontario/Nunavut, Québec, and Atlantic. The organization is part of the Public Safety Canada portfolio and is headed by a chairperson who reports to Parliament through the Minister of Public Safety (ibid.).

The CCRA and its Regulations comprise the legislative framework for the NPB’s policies, operations, training, and decision-making (NPB 2011a). The CCRA outlines the principles guiding the NPB and the criteria for conditional release decision-making. As per the Act, the protection of society is the paramount principle guiding the work of the organization. The assessment of whether an offender, if s/he reoffends, poses an “undue risk” to society is the primary focus of release decision-making, along with the belief that her/his gradual release would contribute to public safety (ibid.). The CCRA also mandates the organization to adopt policies to guide decision-making, which the NPB has done through its Policy Manual (see NPB 2011a). The Policy Manual, in turn, reflects the prescriptive

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5 Ontario and Québec are the only provinces with their own provincial parole boards. British Columbia had its own parole board, but was disbanded on April 1, 2007 (NPB 2008a).
6 The CCRA allows for both full- and part-time board members but restricts the number of full-time members to forty-five.
elements of the **CCRA** that guide decision-making, such as the stipulation in section 151(3) of the *Act* that these policies respect “gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements”.

The NPB has several partners that assist the organization to carry out its mandate. These include law enforcement, the courts, provincial and territorial corrections, community groups, and non-governmental agencies. The NPB’s primary partner is the Correctional Service of Canada (CSC) “which is responsible for the custody, programming, and case management of offenders serving two years or more and for their supervision in the community on conditional release, and for case preparation and parole supervision in provinces/territories without their own parole boards” (NPB 2010b: n.pag). According to the NPB (2000a), its ability to make “quality decisions” rests on the information provided to the organization by the CSC. More recently, this includes the provision of ‘cultural information’ to the NPB regarding Aboriginal offenders, including assessments by elders, offenders’ progress in Aboriginal programs, and/or institutional behaviour within Aboriginal-specific ranges or institutions (NPB n.d.-a). 7

As demonstrated in the following, issues of diversity are taken up within the NPB in a variety of different contexts. Diversity—that is, female, Aboriginal, and ethnocultural difference—is understood to be relevant to formal policies and practices, including those relating to decision-making, hearing formats, and risk assessment. Diversity issues also emerge in relation to the training of board members and staff so as to improve communications and information gathering during hearings, thereby contributing to more ‘appropriate’ decision-making. Another way that diversity is taken up relates to the membership of the NPB and the extent to which board members are representative of the community. Diversity issues are also tracked in relation to the organization’s corporate performance monitoring and reporting activities, such as how it implements the *Canadian Multiculturalism Act*. Other organizational practices like community consultations, outreach activities, and research agendas have also taken up issues of diversity.

For this research project, the NPB was selected as a site to study how issues of difference in the federal offender population are recognized and responded to through

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7 Document obtained via ATI request no. A-2010-00008 to the NPB.
institutional policies and practices. There are several reasons for my selection of the NPB. Conceptually, I find parole and conditional release to be a fascinating system of punishment, largely because it occupies the space between prisons and the community. I agree with Simon’s (1993: 11) characterization of parole as “a unique enterprise”, one that “must provide an account of how dangerous people can be secured in the community, and thus of the relationship among criminal dangerousness, penal technologies, and public safety”. As a decision-making body with a prescriptive mandate under the CCRA, the NPB is required to navigate this terrain and do its work in a social and political context that is increasingly risk averse. Practically, the NPB was selected because it has attempted to incorporate gender and diversity into its policies and practices. It is also a small organization and I had hoped (naively, in hindsight) that its size would present fewer obstacles to research access (e.g., as compared to the CSC).

The literature on parole in Canada is sparse, particularly in relation to the creation of the CCRA, the development of the conditional release system over time, and the establishment of the NPB as the federal decision-making body. Although a few Canadian studies have considered the gendered and racialized nature of conditional release decision-making (e.g., Hannah-Moffat 2004a; Silverstein 2005; Turnbull and Hannah-Moffat 2009) and the reintegration of female offenders on parole (e.g., Maidment 2006; Pollack 2007, 2008, 2009, 2011), to my knowledge no study has examined how the NPB as a penal institution has responded to and managed diversity over time. This dissertation will contribute to the advancement of knowledge in this area.

Method and Sources

Primary data for this qualitative project consists of (1) interviews and (2) documents. As will be discussed further below, my limited access to the NPB as the key organization of interest in this study fundamentally shaped the range and number of interviews conducted and the sorts of institutional documents obtained for analysis. I was not able to employ more formalized qualitative research methodologies, such as participant observation or institutional ethnography, that are often used to study organizations and which reflect feminist approaches to research. This study utilizes a multi-method approach involving the analysis of (i) interview data, (ii) documents accessed through public channels (e.g., libraries,
the internet, etc.), and (iii) documents obtained through the filing of requests to the NPB under the Access to Information Act (ATIA). Access to the NPB was limited, therefore the use of publicly available and institutionally held documents helped fill in some gaps likely left by the small number of interviews and vice versa. This triangulated approach aims to provide a richer account based on the best available data.

Interviews

I conducted semi-structured interviews with a total of 13 individuals who can be classified as belonging to two groups: (1) key informants, who provided background and contextual information on the development of legislation, as well as various policies and practices, and (2) practical informants, who provided information on the day-to-day operation of the NPB, as well as its institutional history. These individuals are from two main groups: the civil service and the voluntary sector. The NPB is a small institution and given the imperative to protect the confidentiality of my informants’ identities, I cannot provide further details on the backgrounds or professional roles of the study participants.

I initially identified potential participants by perusing the NPB’s website, as well as the NPB’s staff listing in the online Government Electronic Directory Services. I then contacted these potential participants through introductory emails which outlined who I was, the purpose of my research, and invitation to participate. I typically followed up these introductory emails with follow-up emails and in some cases, telephone calls. I also sent introductory letters to those whose email addresses could not be located.

Participants were also recruited through a snowball sampling method. I asked each informant if they could recommend other people for me to speak with about my research. Most participants named potential interviewees and often named people I had already interviewed or approached about my research. This helped confirm that I was speaking to, or in contact with, the most appropriate people. This snowball sampling method helped identify and put me in touch with a number of key informants.

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8 This directory can be found at http://sage-geds.tpsgc-pwgsc.gc.ca.
The interviews were semi-structured, meaning that I had a list of questions to guide the discussion but had the flexibility of adding or omitting questions as the interview progressed based on the participant’s responses and in keeping with time constraints. Several participants asked for the list of interview questions in advance. The semi-structured interview format also allowed for me to ask the participants the same sorts of questions, albeit adapted to their particular experiences and backgrounds. This enabled me to see how different participants answered similar questions. The interviews primarily focused on how the CCRA came into being; how the NPB has implemented the diversity principles of this legislation and/or other diversity initiatives; the perceived success or limitations of diversity initiatives; and the role of victims and other accountability mechanisms in the conditional release process.

Each interview was selectively transcribed, meaning that I reviewed each interview and transcribed (via MS Word) the sections or portions that were most relevant to my research. Notes were made summarizing the other content that was not transcribed in order to (a) ensure the interview contents were placed in context and (b) allow me to return to particular portions for transcription when necessary. Once the interviews were transcribed, I carefully read the transcriptions to see what themes emerged, as well as any differences and similarities in informants’ responses to the same or similar questions.

Negotiating Access

In order to conduct the interviews described above, I had to negotiate access with the NPB (Noaks and Wincup 2004). This process led to some disappointing results as my initial plans were thwarted. As Spivakovsky (2011) has observed, penal institutions typically do not provide clear guidelines for researchers on their websites about how data can be accessed. Consequently, although internal procedures for granting (or denying) access do exist, these tend to be neither transparent nor straightforward.

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9 Interviews took place at locations of participants’ choosing and were one to two hours in length; due to geographical distance, two were conducted over the telephone. Protocols around informed consent and confidentiality were followed, including permissions to digitally record the interviews.

10 My decision to perform selective translations was due to my narrowing of the scope of the study to focus on issues of gender and diversity, and not to also include victims and accountability mechanisms.
I had intended to interview board members in each region except for Québec.\footnote{This is due to a lack of my lack of proficiency in French. This is a noted limitation in this study as it is possible that regional practices around diversity initiatives may be different in Québec.} I approached potential interviewees individually rather than locating and seeking permission from a gatekeeper—an individual who has “power to grant or withhold access to people or situations for the purpose of research” (Burgess 1984: 48, cited in Noaks and Wincup 2004: 56). I sent invitation letters to each full-time board member in the Atlantic and Prairie regions and to each full- and part-time board member in the Pacific and Ontario regions. I also sent invitation letters to the Regional Managers of Community Relations and Training and Regional Vice-Chairpersons of all regions except Québec under the assumption that these individuals could also speak to issues of diversity in the context of conditional release.

After my letters were sent out, I encountered a gatekeeper. I received a call from a staff person of the Policy, Planning and Operations Division at the NPB national office saying that I could not interview board members without permission.\footnote{Apparently the national office was notified by one of the recipients of my invitation letters that I was approaching board members about my research (personal communication).} I was informed that I had to complete a Request for Information for Research or Statistical Purposes form. This form required me to provide a general description of my research project, its purpose or objectives, and the type or class of information I was seeking, as well as contact information for three references.\footnote{As Noaks and Wincup (2004) discuss, such organizational requirements are quite common in criminological research and are part of the process of negotiating and sustaining access.} I submitted the form and was notified via email that my request to interview board members was denied according to the following rationale: “It is our feeling that Board members will not be able to provide you with the information you require (i.e. information on policies and practices and how they are responsive to special needs offenders)” (personal correspondence, May 4, 2009). Instead, I was referred to the NPB’s Policy Manual located on their website.

Given this feedback, my next step was to submit another Request for Information for Research or Statistical Purposes form whereupon I requested permission to invite staff at the regional offices to participate in my research. After this submission, I was asked to attend a meeting at the NPB national office with two staff. The purpose of this meeting was to provide me with an opportunity to clarify the objectives of my research to help with the decision whether or not to grant my request for access. At the meeting I was directed to
additional information about diversity initiatives on the NPB’s website encouraged to rewrite my request form so that I clearly stated my research questions and how my study will be useful for the NPB. I was also directed to additional information about diversity initiatives on the NPB’s website.

As Martel (2004) has shown, penal institutions exercise a gatekeeping function that determines the granting or denial of access, as well as shaping the extent and/or nature of that access (see also Noaks and Wincup 2004; Yeager 2008; Spivakovsky 2011). These institutions are also key sites whereby competing knowledge claims may have to be reconciled in order for a researcher to have success in gaining access. In this sense, gaining access often involves negotiation as to how to pitch a project in such a way that appeases competing knowledge claims (see Martel 2004), presents an acceptable project to the institution (Noaks and Wincup 2004), and/or, as in my case, ensures that there is a clear benefit of the proposed research for the institution.

I followed the staff members’ advice and resubmitted the request form. I was informed via email that my request was approved. I was provided with a list of five specific individuals that I was allowed to invite to participate in my research. The email stated that “[i]f during your research process you discover there are others you would like to talk to, you will need to submit another request for access” (personal correspondence, August 18, 2009). I also asked a staff member if I could submit a new request for access form so that I could interview board members and was essentially told no, which I interpreted as there would be no point as the request would be denied (personal communication).

To proceed with my research, I was required to sign a Research Agreement that had four undertakings to which I had to agree; there was no negotiating around this. These undertakings are primarily focused on ensuring the confidentiality of individuals and information accessed. However, clause 3 caused some concern as it dealt with publication:

3. Publication of any material which derives substantially from information classified as confidential may be made only with consent of the NPB. This condition is imposed to avoid inadvertent publication of information the disclosure of which would be prohibited under the provisions to the Access to Information and Privacy Acts. To avoid any problem in this respect the author will send a copy of his/her report to the Board before publication.
Because I was unsure of the potential impact this could have on submitting my dissertation for defence, I asked for clarification as to (1) what information was defined as confidential and (2) the time frame for receiving permission (or commentary) on the publish-ability of any documents that utilize information accessed under this request. I was advised that these undertakings were primarily concerned with protecting the identity of any staff participating in my research and any programs or policies that they may reveal that are not part of the public record and therefore protected under the ATIA and the Privacy Act. The NPB, however, refused to give a timeline as to how long they would review any documents submitted to them for their approval. I was told by one staff person that the NPB Research Agreement was essentially a risk tool to help protect the organization and ensure that researchers complied with both Acts (personal communication).

Document Sources

Many of the documents analyzed in this dissertation were publicly available through libraries and government websites. Various reports produced by the government, commissions of inquiry, task forces, and Parliamentary committees, as well as Hansard records, were accessed through the libraries at the University of Toronto, Carleton University, and the University of Ottawa. Many of the institutional reports produced by the NPB were accessed through the Public Safety Canada Library in Ottawa. Several websites were also key sources for documents, including the NPB, the CSC, Treasury Board of Canada, Office of Auditor General Canada, and Office of the Correctional Investigator Canada, as well as non-governmental organizations such as the Canadian Association of Elizabeth Fry Societies and the Native Women’s Association of Canada. I also attempted to access materials through the Library and Archives Canada in Ottawa, with a specific goal to obtain documents relating to the Correctional Law Review. However, due to the time period of this research (i.e., mid-1980s and onwards), very few relevant materials could be located. This is because little material of interest had been formally archived and likely rests somewhere in a government storage facility.
I also accessed unreleased and/or unpublished documents produced by the NPB through 16 formal requests made under the *ATIA*.\(^{14}\) These requests were filed in 2009 and 2010. My initial requests focused primarily on obtaining documents that interview participants had mentioned, yet were not able or willing to share. Later requests were used to access materials mentioned in the documents I received from earlier access to information (ATI) requests. I also made two informal requests via email to the ATI Analyst assigned to my formal requests. Using the *ATIA* allowed me to go beyond the surface of the organization to access documents that are not publicly available and thus outside of the ways in which the NPB imagines and portrays itself as an organization through its website.\(^{15}\) ATI requests allow researchers to get at what Walby and Larsen (2011: 625) have termed the “live archive”—the multitude of texts produced within governments on a daily basis—yet this process can best be described as ‘hit or miss’. Due to the relative novelty of using the *ATIA* for criminological research, the following section provides some context to the Act, as well as some methodological considerations related to the use of ATI requests in this study.

### Accessing Information

The purpose of the federal *ATIA*, passed in 1982, is “to give Canadians a qualified right to documents held within federal ministries and agencies” (Roberts 2002a: 49). The *Act* outlines the processes by which requests can be made, as well as the circumstances upon which federal government institutions may refuse to release information (Roberts 2002b). As required by subsection 6(1) of the *Act*, requests for information must be written to the appropriate government institution and contain enough detail that an employee can reasonably locate the desired record. Formulating written requests requires one to identify the type of material required (e.g., policy documents, memoranda to ministers, emails, budget reports, etc.) and often requires some knowledge of government speak in order to use the terminology most likely to result in the successful identification and retrieval of the desired information. It also requires the requester to focus on a particular date range in order...

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\(^{14}\) Following Larsen and Piché (2009: 206), whenever these documents are first cited in this dissertation I provide the ATI reference numbers; this should enable other researchers to retrieve information obtained through the request by citing the appropriate number.

\(^{15}\) Interestingly, and perhaps unsurprisingly, most informants and the NPB staff I dealt with to access information repeatedly referred me to the organization’s website, as if it contained all the material necessary to conduct a ‘proper’ study of my topic of interest. Given the bureaucratic and political influences on what information actually gets posted on government websites, the *ATIA* is an important tool for accessing information.
to help the government employee locate the record. As such, the use of ATI requests is best thought of as a snowballing research process\textsuperscript{16} that often necessitates several attempts before obtaining the correct records.

A related issue stems from the requirements under section 11 of the \textit{ATIA} that pertains to request fees. Generally speaking, each request for information requires an application fee of $5.00 that covers photocopying of the requested record(s).\textsuperscript{17} In addition, the government institution can spend up to five hours free of (additional) charge searching for the requested record(s). Subsection 11(2) allows government institutions to charge for each hour in excess of five hours “reasonably required to search for the record or prepare any part of it for disclosure”. Part of the research process, therefore, requires the formulation of ATI requests that are narrow enough to fit within the parameters of the fee structure set by the Act so as to avoid paying additional fees. Through the process I had several telephone conversations with the NPB’s ATI coordinator assigned to my requests to help narrow the scope of my requests in order to avoid paying additional fees. I kept notes of these conversations for my records.\textsuperscript{18} The most common suggestion from the ATI coordinator was to refine the search to a shorter time frame (e.g., in two year periods). The informal ATI requests I made were much smaller and specific in nature (i.e., copies of a newsletter) and largely represented an attempt on my part to see what information (if any) could be access through informal channels.\textsuperscript{19}

The \textit{ATIA} requires government institutions to respond to requests within 30 days. However, subsection 9(1) allows institutions to make extensions, for instance, if more time is needed to locate the requested record(s) or consultations are required to comply with the request. Ten of my 16 requests resulted in delays under subsection 9(1)(b) of the Act, each for an additional period of 30 days. The Act also permits government institutions to refuse to disclose records and/or redact portions of these documents when released. To my knowledge,

\textsuperscript{16} My discussion of ATI as a research method draws from a document written by Mike Larsen (n.d.) called ‘Beyond Open-Source: Research Using Access to Information Acts’ and a workshop on access to information given by Mike Larsen, Justin Piché, and Kevin Walby on May 29, 2009 in Ottawa. Much credit is owed to these three scholars on sharing their insights and knowledge of using ATI for sociolegal research.

\textsuperscript{17} An ATIP coordinator at the NPB indicated that this amounts to roughly 200 pages (personal communication).

\textsuperscript{18} Larsen suggests that for methodological purposes, records be kept of any conversations with ATI coordinators regarding the refinement of requests to compare against the materials received and for the purposes of filing a complaint to the Office of the Information Commissioner of Canada. As part of the methodological process, I kept a log of all requests, including the dates requests were received, any extensions made, and when I received the released material.

\textsuperscript{19} Again, this follows Larsen’s suggestion to pursue informal means of accessing information in conjunction with formal requests via the \textit{ATIA}.
none of my requests were refused outright, although as I will discuss in more detail below, I did not receive all records that I requested. In several instances, certain information was redacted pursuant to subsection 19(1) of the ATIA, which allows for a government institution to refuse to disclose material containing personal information. I did not file any complaints to the Information Commissioner concerning the processing of my requests, as is permitted by sections 30 and 31 of the ATIA.\footnote{Yeager (2006) went as far as to sue the CSC for its refusal to release information under the ATIA, although he was unsuccessful in the end. He argues that the use of litigation under ATI laws should be part of the “methodological arsenal” of critical criminology (ibid.: 513). Conversely, Larsen and Piché (2009) note the consequences of filing complaints or engaging in litigation may result in researchers experiencing further delays and increased difficulty accessing information.}

The use of the ATIA as part of the research process appears to be a relatively new phenomenon among academic researchers in Canada. Yeager (2006) notes that American researchers have used the U.S. Freedom of Information Act to conduct social science research, yet in Canada, little published research currently exists that relies heavily on ATI as a method to access data (but see Yeager 2006; Larsen and Piché 2009; Piché and Walby 2010; Walby and Larsen 2011). The benefit of ATI as a research technique is that it allows researchers to move beyond what is publicly available and access materials that government institutions consider to be internal or even secret in nature (Larsen and Piché 2009; Walby and Larsen 2011). It also enables researchers, such as myself, to continue research projects when faced with a milieu characterized by “a growing degree of institutional protectionism [that] has begun to shape research by restricting and policing some academics’ access to criminal justice agencies in Canada” (Hannah-Moffat 2011: 445). Such protectionism requires researchers to be creative when studying penal institutions.\footnote{See the special collection of essays on research access edited by Mopas and Turnbull (2011) for a more detailed examination of overcoming barriers to access.} However, as a research technique, ATI is not without limitations—those related to pragmatic aspects of doing research and those of more far reaching consequence.

Using ATI as a Research Technique

The practical limitations of using ATI as a research technique relate to the ‘hit or miss’ nature of filing ATI requests, especially when general information is sought. As such, a substantial amount of time can be spent fishing around for information. A related problem is that no explanation is provided as to why certain material was selected to be disclosed. A great degree of administrative discretion is exercised in determining which documents to
provide within the time (and page) allotments stipulated in the ATIA. Practically speaking, the best results were achieved when requesting specific documents based on their titles or other narrowly defined descriptive information. However, in several instances, even when my requests were very specific, I received information that was not relevant to my request. In other cases, my requests for specific material yielded no results whatsoever, with no accompanying explanation as to why the material was not provided. This does not necessarily appear to be a refusal to disclose, but rather is illustrative of the difficulties associated with making ATI requests.

A key aspect of filing ATI requests relates to the various negotiations—or what Walby and Larsen (2011: 628) refer to as “access brokering”—that go on between the researcher and the organization, represented by the ATIP coordinator. The process of filing ATI requests is not simply one of asking and receiving information, but rather access is negotiated through the fine tuning of requests to ‘fit’ within the parameters of the ATIA, the organization’s internal information management practices, and the administrative discretion exercised by the ATIP coordinator. Accessing information is also made difficult due to the grey space that lies between the archive and the present. Unsurprisingly, the more recent the material of interest is, the easier it is to access. This poses problems for trying to retrieve material that is over five years old. For instance, two of my requests yielded no results, and according to the ATI analyst, this was because the material I requested was too old and nothing could be located (personal communication, August 3, 2010), despite the specific document having been referred to in several other NPB documents. A related limitation of using ATI requests is that the researcher is not privy to the institutional knowledge surrounding particular documents or materials. More specifically, as an outsider looking in to an organization, it is difficult for the researcher to know the relative worth or weight of a document within its organizational context.

Yeager (2006: 500) argues that the notion of freedom of information is myth: “[s]o-called liberal, democratic governments keep a lot of information secret, or prevent its disclosure through obfuscation and delay”. Although there is a right to information under the ATIA, various internal practices of government institutions have a significant impact on response times and decisions to disclose (Roberts 2002a, 2002b, 2005). Research by Roberts (2002a, 2002b, 2005) has highlighted how requests under the ATIA may be handled
differently by ATI officers depending on the information requested and the professional backgrounds of the requesters. More specifically, federal institutions may slow down the response process when the information requested is deemed ‘sensitive’ and/or requested by members of the media or political opposition parties. Roberts (2002b: 176) contends that it is likely that freedom of information laws “have been weakened by the emergence of internal practices designed to ensure that governments are not embarrassed or surprised by the release of certain kinds of politically sensitive information”. The exercise of discretion through various internal administrative practices shapes the ‘right’ to access information under the *ATIA*.23

The relevance of Yeager’s (2006) and Roberts’ (2002a, 2002b, 2005) work here is that it demonstrates the existence of internal discretionary administrative practices that manage the flow of information released through requests made under the *ATIA*. One can only guess whether or not the requests I made to the NPB were handled differently based on the information I sought or my status as a researcher with a university affiliation.24 Nevertheless, the above discussion has attempted to highlight some important methodological considerations in relation to using *ATIA* as a research technique.

**Document Analysis**

Written documents produced by the NPB comprised a significant portion of the data analyzed in this study. These documents include mission and vision statements; policy manuals; training manuals and workbooks; newsletters; assessment reports; institutional performance reports; corporate strategies and analyses; and pamphlets and descriptive materials. Some of these documents are specifically related to diversity, including policies, commitment statements, newsletters, assessment reports, and explanatory materials, while others were more general in nature (e.g., performance reports, annual reports, corporate strategies, policy manuals, etc.). These documents are utilized within this study to fashion a

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22 As Yeager’s (2006: 508) experience has shown, some institutions may be more willing to accommodate certain requesters than others, with internal administrative discretion playing a large role in who is deemed a “preferred researcher”.

23 There are a variety of administrative practices that stem the flow of information released by government institutions, such as the “amber light process” whereby politically sensitive requests are flagged and handled more cautiously, or the tagging of other politically sensitive requests as “red files”. See Roberts (2005) for a critical discussion of how certain requests are managed through internal *ATIA* processes.

24 It would be possible, of course, to place requests under the *ATIA* and *Privacy Act* to obtain internal documents to investigate how my ATI requests were handled. For example, Walby and Larsen (2011) suggest filing ATI requests related to the processing of their ATI requests enables researchers to ‘reflexively’ engage with ATI as a practice of information management.
historical record (in the absence of one) and to consider how the organization constitutes and responds to the problem of diversity. The focus of my analysis is the institutional representations, narratives, and discourses within institutionally produced documents that speak to notions of gender and diversity.

As Prior (2003: 2) argues, the analysis of documents requires us to move away from an approach which considers them as “stable, static and pre-defined artefacts” to one which sees them in terms of “fields, frames and networks of action”. In this sense, it is important to consider what documents do within organizational settings. Documents have a constitutive function; that is, they work to constitute social phenomena in particular ways, thereby structuring social relationships and identities. Documents are agents that do things within networks of action, such as constitute identities or strategies for action (ibid.). The various documents analyzed here can be seen as sites of contestation around which diversity, accommodation, and inclusion are occurring. By examining how language is used and institutional narratives or representations are made, it is possible to understand wider facets of power relations in constituting difference and the impacts this brings about (Blommaert 2005).

The use of documents as data within this study is complicated by the fact that they are also relied upon for their content. Given the paucity of research in Canada on federal conditional release and parole, the NPB as an institution, and the incorporation of diversity into conditional release policies and practices, I have had to rely on institutionally produced documents for their content to help understand and explain the very subject of study and produce a historical record. Yet, at the same time, these documents also produce facts about the world and reflect the interaction of power and knowledge, thereby defining how “things are to be arranged, and what is to be included and excluded in the realm of what is known and what is knowable” (Prior 2003: 47; see also Foucault 1991; Fairclough 2003). The process of dismantling documents is important because “what is counted and how it is counted are expressive of specific and distinctive ways of thinking, acting and organizing” (Prior 2003: 48). The documents collected and analyzed in this study are illustrative of how issues of difference are known and the sorts of responses that are imagined and/or enacted.

My method of analyzing these documents first involved sorting and grouping the documents according to their type (e.g., annual reports) or topic (e.g., elder assisted
hearings). I then immersed myself in the data (Rose 2001), such that these documents were part of my daily life for three years. I closely read, re-read, and took notes on each document, including the key issues, in order to get a sense of the content. Next, I read through the notes for prominent themes. Comparing document notes to one another allowed me to link different documents, as well as observe similarities and differences in how ideas or issues were framed and represented. As many institutionally produced documents include citations or bibliographies, I was often able to locate the source document and trace how it was taken up within other documents and how ideas evolved over time. I also used the citations and bibliographies to help triangulate the data sources to ensure I captured all documents on a particular topic. Most of the documents I accessed were dated, thereby permitting me to follow the development of a policy paper or initiative over time.

The mixed methods approach taken here is intended to reduce some of the limitations resulting from a lack of access to the NPB (e.g., the organization’s refusal to let me interview board members and additional staff) and the use of ATI as a research technique. It is possible that these difficulties have affected the evidence I was able to draw on and the findings and interpretations of my study. Given these access issues, I have focused my analysis on the organization’s representation of itself and its approaches through the documents it produces, not on actual practice. Interviewing board members (assuming one could get access) would be one way to collect richer data on how diversity approaches work in practice, including firsthand information on the complexities of these endeavours. In spite of these data limitations, my study presents original data on an area that has received little academic research. This dissertation can be seen as a starting point for future research in the area. Accordingly, my analysis of the data collected for this study aims to be persuasive (Rose 2001); I do not claim to have assembled the only or final interpretation of these data (Vander Kloet 2010). Future research will help build upon this study, particularly research that can overcome the access difficulties I faced.

A Note on Method and Theory

During the process of researching and writing this dissertation much thought was given to the purpose of this work in light of the subject matter. Through interviews with informants and countless hours spent reading various documents, it became clear that many people have
been, and are, committed to social justice ideals and improving the lives and life chances of offenders defined as different along lines of gender, race, ethnicity, culture, and so forth. The purpose of this dissertation is not to detract from these beliefs, commitments, and efforts. My intent with this work is to focus on the processes and implications of how gender and diversity are constituted and institutionalized in the context of penal reform, punishment, and risk. This critical examination of how notions of gender, race, and culture inform penal policies and practices of governing offenders on the basis of difference does not suggest that such approaches have no value or have not improved the lives of those who are punished in Canada. That these policies and practices have, at times, been requested by, or developed in conjunction with, marginalized groups does not preclude an analysis of the official representations of these developments or the discourses upon which they are based.

It is also important to acknowledge that the way in which I have assembled this dissertation, and the analytical approach taken, may work to reinforce the ‘othering’ of Aboriginal, female, and ethnocultural offenders by treating them as different (in comparison to the white, male norm) and distinct (thereby glossing over the intersections among gender and race). In recognizing this contradiction, I suggest that this approach is not necessarily ‘negative’ as it allows the analysis to follow how notions of difference are produced and taken up within law and organizational policies and practices. For instance, I have separate chapters on Aboriginal, female, and ethnocultural offenders because these are the three groups that the organization has identified and treated separately in its approaches and practices. I allowed my analysis to follow the framing of difference in these ways. Additionally, although this dissertation looks critically at how understandings of gender are taken up with conditional release policies and practices, it does not specifically examine male offenders, masculinities, or the gendered nature of organizations. Such analytical elements are beyond the scope of the study and may again reflect the contradictions and limitations associated with this analytical approach.

Contributions to the Field

The recognition of various differences—gender, cultural, and ethnic—within the offender population, and the creation of policies and practices to address these differences, undoubtedly represents an important development in the context of penal change. It also
creates openings for research to advance knowledge in the study of punishment. This dissertation advances the current literature and knowledge on penal transformation in five ways. First, this study provides a history of changes to conditional release and parole law in Canada and shows how gender and diversity become issues of concern for the NPB. This contribution is important because in the present context, the salience of these issues is often taken for granted, with little analysis of how past debates about diversity have informed, to varying degrees, the current policy provisions for gender, racial, and/or cultural difference.

Second, this dissertation problematizes how concepts like gender and diversity are institutionalized within the NPB. I show that without clear definitions, the incorporation of these concepts into conditional release policy reflect narrow and often uncomplicated understandings of difference. The organization’s defining of gender and diversity does not adequately capture the complexities and nuances of these constructs. My research demonstrates the implications for the development of penal policies and practices that attempt to be inclusive of these differences.

Third, through this study, I fill a gap in the literatures on penal change which has yet to examine the racialized and gendered aspects of these transformations. I show that part of the changes to Canadian penality since the 1970s is a story of how the penal system tries to be more responsive to offender differences but that these efforts have unintended consequences and are limited by the penal structure itself. I use anti-racist feminist and critical organizational literatures to document how gender and diversity are taken up within conditional release policies and practices. By connecting these literatures to the study of punishment, I offer an interdisciplinary and nuanced analysis of my research questions. My study provides a counterpoint to much of the writing that focuses on broad penal transformations and does not consider in any depth how issues of gender, race, and culture factor in or are constituted in these processes. This study of the reconfigurations of Canadian penality through the recognition of certain differences will contribute to a small, but growing body of scholarship examining gendered and racialized penal practices.

Fourth, this dissertation offers a unique methodological approach to the study of punishment and penal transformation. My use of the ATIA to collect data otherwise publically unavailable enables me to trace how the NPB has taken up and selectively
incorporated issues of gender and diversity over time, as well as the internal struggles around the inclusion of these differences.

Lastly, I advance the scholarship on penal transformation by identifying the complexities of changing organizational policies and practices to rectify discrimination and be more inclusive of difference in the context of punishment. This study’s findings signal the need for further consideration of attempts to change penal policies and approaches so as to limit discriminatory impacts. It also encourages critical reflection on how these seemingly progressive efforts produce new, often unanticipated, practices of punishment and governing offenders.

Chapter Outlines

Chapter 2 traces the previously undocumented historical moments of recognition, articulation, and development of responses to gender and diversity within Canadian conditional release since the 1970s. In undertaking this project, my research was restricted by the absence of a formal institutional history of parole in Canada. This chapter therefore offers a contribution to the field by documenting changes to conditional release over the past four decades. To do so, I examine various government and non-government reports, key pieces of legislation, and case law that provide insight on how issues of difference were constituted, which problems were identified and how they were framed, and the types of solutions that were imagined. I explore how gender and diversity emerge as institutionally important in the current context, including how diversity is constituted through various forms of knowledge that frame the problem of difference as manifested in certain penal populations, and related to particular policies and practices. This chapter aims to provide a historical context for the institutional responses to diversity at the NPB by tracing the emergence of diversity as an object of penal concern. I argue that the initial framings of diversity within legislation and policy debates, and the constitution of the ‘problems’ facing certain offender populations, shape the types of legislative and organizational solutions that are imaginable and practicable.

Chapter 3 focuses more directly on the NPB and traces its organizational approaches to gender and diversity. I use anti-racist feminist, sociology of organizations, and management studies literatures to position the NPB’s own “diversity work” (Ahmed 2007a:
within a broader context where organizations are increasingly required to respond to gender and diversity issues. I discuss the creation of the NPB’s Aboriginal and Diversity Initiatives section and the types of diversity work it carries out. I suggest that how diversity is constituted within the organization shapes its diversity work. I also argue that organizational policies and initiatives that respond to, or attempt to accommodate, diversity can be seen as technologies of power for organizing difference and producing knowledge about those defined as different. Organizational attempts to be culturally, racially, and/or gender sensitive may work to reproduce institutional whiteness and maleness and dominant conditional release approaches based on white male offenders as the standard.

Chapter 4 examines the acceptance of diversity in an organizational context that is increasingly focused on institutional risk management, including the orientation toward audit culture, corporate risk analysis, and strategic visions. Drawing on critical management literature, this chapter considers the NPB’s production of various documents to monitor its operations, plan its activities, and frame its commitments as important texts for analyzing the performance of ‘inclusion’ and the management of ‘reputation’ in relation to the problem of difference. I argue that these documents frame how the organization is responding to the challenges presented by diverse groups of offenders whose special needs call for accommodation and thereby function as techniques of reputational risk management.

Chapter 5 focuses on three organizational knowledge practices designed to produce to ‘appropriate’ conditional release decisions for offenders who have been identified as different along lines of gender, race, and culture: diversity training, the interpretation of Gladue, and attempts to ‘indigenize’ risk. I suggest that these knowledge practices can be understood as organizational attempts to ‘know’ certain populations and the ways in which difference is applicable to issues of risk assessment in the context of decision-making. The cultural and gendered knowledges of offenders circulated through these practices reveal the complexities of accommodating difference in the pursuit of ‘appropriate’ decisions.

Chapter 6 examines the NPB’s diversity work specifically in relation to Aboriginal offenders. I explore the genesis of the elder assisted hearing (EAH) and community assisted hearing (CAH) approaches and their contemporary manifestations, as well as the implications of how ‘Aboriginality’ and the role of the elder are constituted vis-à-vis these practices. I also consider how the Gladue decision was implemented within the organization.
I contend that EAHs and CAHs are two instances of a reconfigured contemporary penalty in which standard practices (i.e., parole hearings) are ‘Aboriginalized’ in order for hearings, and the parole process more generally, to be perceived and experienced as ‘fair’, ‘effective’, and ‘culturally appropriate’. In addition, the NPB’s implementation of the Gladue decision illustrates how the organization is grappling with issues of Aboriginal difference. I argue that Aboriginal offenders are confined to the realm of culture, with EAHs and CAHs remaining exceptional and peripheral to the normal program of conditional release.

Chapter 7 looks at diversity work in relation to those offenders defined as ‘ethnocultural’. I show how notions of difference within the context of institutionalized multiculturalism have shaped the development of responses to non-white, non-Aboriginal offenders. The chapter considers various institutional documents that attempt to define, understand, and rationalize this population as targets of ethnicized conditional release policies and practices. I examine how the organization has grappled with issues of ethnocultural difference by analyzing four institutional practices: the idea of adapting the hearing models originally designed for Aboriginal offenders; the refocused efforts on interpretation services for offenders who do not speak English or French; a regional project developed specifically for African Canadian offenders; and the production of cultural fact sheets to advise decision-makers. I argue that organizational responses to ethnocultural offenders works to maintain institutional whiteness and masculinity through the attribution of diversity to those who are non-white and the lack of consideration given to gender issues.

Chapter 8 focuses on the organizational responses to female offenders. I examine the attempts to create a corporate strategy for this group, as well as one regional initiative designed to better familiarize female offenders with the hearing process. Although the organization recognizes that gender influences criminal offending and conditional release outcomes and that female offenders are different from male offenders, it struggles with practical application of exactly how gender (or perhaps more accurately, femininity) figures into conditional release decision-making. I argue that organizational responses to diversity are unable to consider gender as one intersecting aspect of difference. Gender issues are also translated as being solely applicable to female offenders. Moreover, the partitioning of racial and/or cultural difference from gender has resulted in the constitution of female offenders as
a largely homogeneous group, where Aboriginal women and racialized women exist as afterthoughts or appendages to dominant approaches for this offender population.
Chapter 2
Putting Gender, Race, and Culture on the Penal Agenda

Since the late 1960s, the federal parole system, like other government institutions, has been the target of numerous reform efforts, primarily as a result of increased public criticism, and subsequent governmental scrutiny. And, largely beginning in the 1970s, Aboriginal and feminist lobbies brought similar pressures to reform based on the perceived differences and different needs of Aboriginal peoples and women in conflict with the law. In particular, concerns began to be raised about the failure of the justice system in relation to Aboriginal peoples—as evidenced by their vast over-representation in the penal system—as well as the lack of appropriate facilities, programs, and approaches for both Aboriginal and female offenders. The momentum toward reform was also strengthened by the introduction of the Charter of Rights and Freedoms in 1982 and several key government and non-government reports throughout the 1970s and 1980s highlighting the particular disadvantages faced by Aboriginal and female offenders caught in the carceral net. The enactment of the Corrections and Conditional Release Act (CCRA) in 1992 marks the first time issues of gender, ethnicity, and Aboriginality are recognized in corrections and conditional release legislation, thereby mandating the institutional recognition of diversity within the federal offender population.

This chapter explores recent reforms to the conditional release system in Canada with a focus on efforts directed toward issues of gender and diversity. It does not intend to offer a comprehensive history of penal reform in Canada over the past forty years; rather, my aim is to provide an account of key changes to conditional release and the broader penal context as a result of diversity issues. Importantly, this chapter offers one of the first accounts of the changes in parole leading up to and following the enactment of the CCRA. I explore how diversity becomes institutionally important, including how diversity is constituted through various forms of knowledge that frame the ‘problem’ of difference as manifested in certain penal populations, and related policies and practices. As Garland (2001: 26) observes, “[e]very ‘solution’ is based upon a situated perception of the problem it addresses, of the interests that are at stake and of the values that ought to guide action and distribute

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25 As will be discussed in Chapter 7, discussions around ethnocultural offenders emerge much later, primarily beginning in the late 1990s and early 2000s.
consequences”. By examining the process of penal reform over the past four decades, we can see how the problem of diversity is framed and made actionable in particular ways. These ‘solutions’ reflect a selective incorporation of diversity as only certain knowledges and approaches are taken up and integrated into policies and practices. As will be shown, diversity issues cannot be ignored; through the enactment of the CCRA, penal institutions face legal risks for their failure to respond to difference. At the same time, there is genuine interest on the part of many individuals to creating penal systems that take issues of diversity into account.

This discussion is situated in the broader context of penal change as shifts in the area of conditional release are by necessity connected to correctional reform. Among the official documents (e.g., commissions of inquiry, Parliamentary committees, government task forces and initiatives, etc.) analyzed here, the primary problem identified for Aboriginal offenders relates to their over-representation within the correctional population, with related concerns raised around the lack of culturally relevant punishment. For female offenders, the main problem relates to their ‘under-representation’ in the penal system which was seen to be related to discriminatory treatment due to the lack of gender appropriate punishment. These documents frame both the problems and solutions to difference and produce particular knowledges of Aboriginal and female populations upon which to base reforms and strategies of governance. I argue that the historical framing of the problems related to Aboriginal and female offenders is important because it shapes the solutions, thereby excluding alternative visions for change that are not consistent with how these problems are understood. This framing limits the scope of change and directs the focus toward ‘fixing’ aspects of legislation, policy, and practice to make the penal system more ‘responsive’ to certain offender differences and not others. The following provides a context for the institutional responses to difference to be discussed in subsequent chapters by tracing the emergence of diversity as an object of penal concern. The developments traced here are indicative of the challenge of bringing about penal change within complex systems that must handle multiple objectives (Houchin 2003), of which gendered and cultural approaches are only part.
The Problem of Indigeneity: Over-representation, Parole Failure, and Cultural Difference

The challenges facing Aboriginal peoples in conflict with the law have been a subject of ongoing concern for the last forty years. During this time, a key policy concern at the federal level was the continuing over-representation of Aboriginal offenders within the penal system and the identification and implementation of possible remedies that could reduce the rate of imprisonment while making punishment ‘fairer’ through ‘culturally appropriate’ programs and practices. Efforts to create ‘culturally sensitive’ penal policies were based on the recognition of indigeneity, or Aboriginal difference, as shaping the relations between Aboriginal offenders and the criminal justice system. Aboriginal peoples were understood as being culturally different from non-Aboriginals and having unique perspectives and needs. This section considers the ways in which the ‘problems’ facing Aboriginal peoples were framed as a way to situate the types of ‘solutions’ created. I argue that indigeneity presented its own problem to the penal system by illuminating the whiteness of normative practices and processes, and troubling assumptions that ‘fair’ or ‘equal’ treatment was equated with ‘same’ treatment. The various governmental reports and inquiries discussed herein can be seen as producing knowledge about Aboriginal offenders and their needs as targets of reform efforts, yet the basic assumptions about conditional release and punishment remain largely unquestioned.

Although *Indians and the Law* (Canadian Corrections Association 1967) was one of the first reports to consider the relationship between Aboriginal peoples and the criminal justice system, it was during the 1970s that the federal government began to recognize the particular problems faced by Aboriginal offenders (Ekstedt and Griffiths 1988). The issue of over-representation—that is, the numbers of Aboriginal offenders in both federal and provincial correctional institutions were disproportionately high compared to their numbers in the general Canadian population—emerges as particularly salient in governmental texts.26 This problem was identified consistently in nearly all reports of various commissions.

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26 For example, in 1984, Aboriginal peoples comprised 9.5% of the federal prison population, yet made up only 2% of the general population (Solicitor General 1988b). In 2007-08, Aboriginal peoples accounted for 17.3% of the federal offender population, compared to 4% of the adult Canadian population (OCI 2009a).
inquiries, and initiatives since the 1970s that examined federal penal regimes, and was occasionally linked to systemic discrimination. Additional problems cited included the lower rates of conditional release for Aboriginal offenders, their poor performance while on parole, the lack of culturally relevant approaches and practices, and little Aboriginal representation among staff employed by Canada’s penal institutions.

The 1974 report of the Standing Senate Committee on Legal and Constitutional Affairs, chaired by Carl Goldenberg, called *Parole in Canada*, was among the first to identify Aboriginal offenders and their needs (Canada 1974), although a mere two pages were devoted to these issues. The Goldenberg Report highlights the disproportionate numbers of Aboriginal offenders within the federal correctional system and the challenges they faced when on parole. Concerns about Aboriginal offenders’ poor parole performance were echoed in the *Solicitor General’s Study of Conditional Release: Report of the Working Group*, published in 1981, which discusses, albeit briefly, their lower rate of release, yet higher rate of revocation. However, the report notes that this is not an indicator of racism in corrections, but in many cases reflects a lack of release plans considered appropriate by releasing authorities. Native offenders sometimes consider this judgment of their release plans to be an insistence by authorities that Natives try to adapt their plans and post-release lifestyle to a standard appropriate for white offenders, but not necessarily for Natives. (Solicitor General 1981: 117-118)

This excerpt recognizes the problem of cultural difference as leading to parole failures for Aboriginal offenders, where the whiteness of the system results in inappropriate decision-making around release plans. The normative criteria and decision-making practices that produce discriminatory results are not viewed as racist, but inappropriate as they reflect white standards.

A pivotal report for penal reform related to Aboriginal offenders is the Task Force on the Reintegration of Aboriginal Offenders as Law-Abiding Citizens (hereinafter the Task Force). This report lays the foundation for future policy initiatives directed towards
Aboriginal offenders. The Task Force\textsuperscript{27} was created in March 1987 by the Solicitor General with a mandate to:

- examine the process which Aboriginal offenders (status and non-status, Indians, Metis, and Inuit) go through, from the time of admission to a federal penitentiary until warrant expiry, in order to identify the needs of Aboriginal offenders and to identify the ways of improving their opportunities for social reintegration as law-abiding citizens, through improved penitentiary placement, through improved institutional programs, through improved preparation for temporary absences, day parole and full parole, as well as through improved and innovative supervision.

(Solicitor General 1988a: 5)

The Final Report: Task Force on Aboriginal Peoples in Federal Corrections (hereinafter the Final Report) was released in 1988 and contains 61 recommendations for change to existing policy, institutional structure, and programming.

The impetus behind the Task Force was the government’s recognition of a number of problems, which include: the over-representation of Aboriginal people within federal corrections; the lack of Aboriginal peoples as correctional staff; the differential parole grant and revocation rates for Aboriginal offenders; and the complexity created “by the fact that Aboriginal offenders are not a homogeneous group” due to their different constitutional and legal statuses and cultures (Solicitor General 1988a: 5). The Task Force also noted that assessment practices have been developed based on non-Aboriginal offenders and, as such, questioned the “capability of an individual from a particular socio-cultural, economic and professional background to assess individuals who do not share the same background and perceptions” (ibid.: 37). Here, the presence of Aboriginal difference illuminates the whiteness of normative practices and processes and their disparate impact on Aboriginal offenders.

Also in 1988, the Standing Committee on Justice and Solicitor General, chaired by David Daubney, released the report, Taking Responsibility, on its review of sentencing, conditional release, and corrections (Canada 1988). Like other official documents, the central

\textsuperscript{27} The Task Force consisted of representatives from the CSC, NPB, Secretary of State, Solicitor General, Department of Indian and Northern Affairs, and Native Counselling Service of Alberta. To carry out its mandate, the Task Force consulted with Aboriginal inmate groups and Aboriginal communities, staff at federal penitentiaries, NPB staff and board members, as well as other organizations involved in aftercare services for Aboriginal offenders (Solicitor General 1988a).
problem identified in relation to Aboriginal offenders was their over-representation in custody, with additional problems related to lower levels of participation in programs, their more frequent waiving of parole opportunities, and lower rates of parole compared to other offenders. The Daubney Committee also noted the perception on the part of Aboriginal offenders that “the National Parole Board is not always sensitive to the needs of Native offenders or the environment to which they are to be conditionally released” (ibid.: 215). The two main contexts used to illustrate this lack of sensitivity were explained as follows:

One of these [contexts] is to refuse to accept a release plan because there is no parole supervision capacity in the area to which the inmate is to be conditionally released—often a reserve or remote village where the offender has come from or where there is a community willing to take him back. The other is to impose the standard disassociation condition of release saying that the offender is not to have contact with anyone with a criminal record. (Canada 1988: 215)

Here, the problem is located in NPB decision-making practices that are insensitive to cultural difference, which may result in unfair decisions for Aboriginal offenders. In this context, decision-making policies and practices are not identified as discriminatory, but rather that there is a need to be more sensitive.

Locating ‘Solutions’, Making ‘Exceptions’

The pursuit of ‘culturally sensitive’ penal practices emerges as a primary solution to the problem of Aboriginal difference as manifested in the over-representation of Aboriginal offenders, their poor performance while on parole, and their cultural needs. As will be shown in the following, the types of solutions offered to address the problems facing Aboriginal offenders remain consistent over time and reflect an approach to diversity that is about making exceptions. In this sense, reform efforts were focused on making minor adjustments to the penal system so that Aboriginal difference could be accommodated without fundamental change in structures or dominant practices. As Monture (2006: 77) argues, these solutions are framed as cultural accommodations, thereby deflecting focus from issues of systemic racism within the justice system and failing to consider that the system itself is not ‘appropriate’ for Aboriginal peoples. As exceptions, these solutions reflect a selective
incorporation of Aboriginal knowledges and practices into corrections and conditional release policy.

One of the solutions to the problems facing Aboriginal peoples put forth by numerous reports is the increased involvement of Aboriginal peoples and organizations in all facets of corrections and conditional release. The presence of Aboriginal individuals within penal institutions was thought to make improvements to the system’s handling of indigenous peoples and the provision of more appropriate penal responses. For instance, the Goldenberg Report recommended increases in the number of Aboriginal staff to assist Aboriginal offenders with pre-release planning, as well as having parole authorities contract with Aboriginal organizations for the delivery of aftercare services (Canada 1974). The 1975 National Conference on Native Peoples and the Criminal Justice System also advocated for the increased involvement of Aboriginal groups in the planning and delivery of programs and services, the greater recruitment of Aboriginals into positions throughout the justice system, and the establishment of Aboriginal committees, consultations, and commissions to advise federal government ministries on Aboriginal justice issues (Solicitor General 1975). These recommendations were restated nearly ten years later in an Advisory Committee’s report on ways to reduce violent incidents in federal penitentiaries (Solicitor General 1984). According to the report, the use of Aboriginal staff would help reduce “difficulties in staff/inmate relationships”, while contracting with Aboriginal groups “would provide programming which is more sensitive to the needs of native inmates” (ibid.: 27). Such organizational adjustments that better reflect the specific needs and circumstances of Aboriginal offenders were linked to improved management, thereby reducing tensions and improving relations among prisoners and staff (ibid.). Within these reports, issues of Aboriginal over-representation, parole failure, and cultural difference could be addressed through the greater involvement of Aboriginal peoples in the penal system as staff and program deliverers.

The Task Force on the Reintegration of Aboriginal Offenders as Law-Abiding Citizens (Solicitor General 1988a) and the Daubney Committee (Canada 1988) also supported the greater participation of Aboriginal peoples in corrections and conditional release. In order to allow for “equitable decision-making and equivalent opportunities for [the] successful reintegration” of Aboriginal offenders, the Task Force found that there must be greater participation of Aboriginal peoples within the correctional system, including
increased Aboriginal control over programs and services for Aboriginal offenders (Solicitor General 1988a: 10). Likewise, the Daubney Committee called for Aboriginal-specific programming that was designed and delivered by Aboriginal peoples (Canada 1988). Increased hiring was thought to “assist in good communications and greatly enrich the professional treatment of Aboriginal offenders” (Solicitor General 1988a: 38). The Task Force also recommended an increased number of Aboriginal board members to heighten “trust between the National Parole Board and Aboriginal offenders” and “lead to parole decisions which are consistent with conditions in the North and Aboriginal communities” (ibid.: 41). Furthermore, a greater representation of Aboriginal staff at both regional and national offices was seen as a way to ensure all locations had “Aboriginal expertise” available (ibid.: 42). The inclusion of diverse staff consequently emerges as a key institutional strategy to provide a more culturally appropriate environment. Yet, the integration of Aboriginal staff and organizations into penal institutions is also a practice of inclusion that is selective, emphasizing certain attributes (e.g., spirituality and cultural practices) and neutralizing others (e.g., demands for Aboriginal control of justice processes) (Jaccoud and Felices 1999: 86). This issue will be addressed in greater detail in Chapter 6 in the discussion of EAHs and CAHs.

Both the Daubney Committee (Canada 1988) and the Task Force (Solicitor General 1988a) recommended greater participation of Aboriginal communities and agencies in the conditional release process. More specifically, the Task Force advocated the greater participation of Aboriginal organizations and/or community councils in the supervision of Aboriginal offenders and post-release services as a way to improve their chances on conditional release (Solicitor General 1988a). Without the involvement of Aboriginal communities and organizations, the NPB “often has no option but to reject their release plan if it involves returning to those communities” (ibid.: 73). In order to improve the likelihood of Aboriginal offenders being accepted back into their communities, the Task Force recommended greater participation of Aboriginal community leadership in release decision-making, such as through the provision of advice on release conditions (ibid.: 76-77). Similarly, the Daubney Committee (Canada 1988) recommended that the NPB enable Aboriginal communities that want to accept returning offenders to assume responsibility for reintegrating them. The idea of greater involvement of Aboriginal communities in the parole
process will be discussed in more depth in Chapter 6, where I suggest that these solutions may, among other things, work to shift the onus away from the government and onto Aboriginal communities, which are expected to assume responsibility for Aboriginal offenders as a practice of culturally appropriate punishment (Anderson 1999).

Another solution put forth in several official documents relates to training for non-Aboriginal staff, such as orientation training on Aboriginal issues (Solicitor General 1975) and sensitization and awareness education for staff so that the specific cultural and spiritual needs of Aboriginal offenders can be met (Solicitor General 1984; Canada 1988). Training was viewed as a necessary mechanism for promoting acceptance of cultural difference as a means to be responsive to Aboriginal offenders’ needs (Solicitor General 1984: 51). The Task Force also recommended cultural awareness and sensitivity training based on a perceived “lack of understanding on the part of decision-makers about Aboriginal Peoples and Cultures”, as well as “uneasiness” on the part of CSC and NPB personnel due to difficulties gauging the “reactions of Aboriginal offenders in an interview situation” (Solicitor General 1988a: 44). The solution for sensitivity training stems from the initial framing of the problem facing Aboriginal offenders as a matter of insensitivity; that is, insensitive parole boards and conditional release practices have contributed to the poor parole performance among Aboriginal offenders. The issue of training is analyzed in Chapter 5.

In terms of more unique solutions to the problem of indigeneity, the Task Force recommended the inclusion of Aboriginal elders within decision-making processes at the NPB (Solicitor General 1988a). The Final Report indicates that Aboriginal elders were seen to provide more accurate assessments of Aboriginal offenders for three main reasons:

(a) an Elder’s understanding of Aboriginal communities and their degree of acceptance of a released inmate; (b) an understanding of Aboriginal spiritual and cultural programs, and whether the inmate has benefited from those programs; and (c) the willingness of Aboriginal inmates to discuss their problems and aspirations with Elders who, in turn, listen to the inmates in an appropriate manner. (Solicitor General 1988a: 37-38)

However, it appears that not all members of the Task Force were in agreement that elders were capable of more accurate assessments of Aboriginal offenders or that they should
replace other professionals’ assessments for conditional release decision-making. Instead, the Task Force recommended that elders, if requested by the offender, be allowed to submit assessments to the NPB on behalf of the offender and that these assessments be considered on par with other professional assessments. The Task Force noted that this would lead to more equitable decision-making (ibid.: 38) as elders’ assessments could provide more accurate information about Aboriginal offenders and their release plans. As noted in the previous section, concerns were raised about inappropriate decision-making for Aboriginal offenders, where (white) board members were using non-Aboriginal standards upon which to assess Aboriginal offenders (see Solicitor General 1981; Canada 1988). Here, the Task Force presents an argument for the integration of new forms of knowledge into conditional release decision-making and a broadening of the scope of expertise recognized by the NPB, a recommendation which is eventually implemented (see Chapter 6).

Reinforcing the Need for Change

The Task Force’s report was debated in a session of the House of Commons on November 27, 1990, with then New Democrat Member of Parliament John Brewin making a motion for the government to immediately implement the Task Force’s recommendations (Canada 1990a: 15820). The ensuing discussion of the report reflected general agreement among the Members of Parliament (MPs) participating in the debate that the situation of Aboriginal peoples needed to be addressed. However, from the perspective of the government, voiced by Benno Friesen, then Parliamentary Secretary to the Solicitor General of Canada, actions were already being taken to implement the recommendations, including an “accelerated implementation plan” by the CSC (ibid.: 15824). The CSC was viewed by several MPs—with the exception of Brewin—as being capable of bringing about change through adjustments to its operating procedures, including its strategic planning and mission statement. The motion was subsequently dropped from the Order Paper.

Non-governmental voices also pressed for reforms to improve the situation of Aboriginal peoples in the penal system. The report of the Canadian Bar Association (CBA) Committee on Imprisonment and Release, entitled Locking Up Natives in Canada (Jackson 1988), reinforced several of the solutions raised by the Task Force and Daubney Committee.

However, the CBA Committee was more forceful in its critique of the criminal justice system’s treatment of Aboriginal peoples and pushed for more fundamental structural and organizational changes. For instance, it situated the over-representation of Aboriginal peoples within the correctional system in the context of poverty, racist stereotyping, colonization, and alcoholism, noting that “the prison has become for many young native people the contemporary equivalent of what the Indian residential school represented for their parents” (ibid.: 3-4). In addition, the CBA Committee argued for Aboriginal self-determination and the creation of indigenous justice systems, rather than solely the accommodation of Aboriginal difference within the mainstream criminal justice system—the approach advocated by the Task Force.

Like the Task Force and Daubney Committee, the CBA Committee was also supportive of the NPB working with Aboriginal communities to ensure that offenders can be released on parole to their communities (Jackson 1988: 101). However, it favoured legislative changes that required penal programming to be “particularly suited to serving the spiritual and cultural needs of Aboriginal offenders” (ibid.: 109). Interestingly, the CBA Committee observed that some Aboriginal-lead initiatives have been thwarted by correctional authorities, such as when programs become “transformed […] through the process of fitting into” the correctional bureaucracy (ibid.: 96-97). For instance, the CBA Committee noted that the proposals put forth by Aboriginal organizations tended to be modified through the negotiations with penal institutions prior to implementation. As such, it argued that programs be designed and delivered in consultation with Aboriginal offender groups and community organizations, presumably as a way to mitigate the cooptation of these initiatives.

Importantly, the CBA Committee report illustrates alternative knowledges of how to resolve the problems experienced by Aboriginal offenders. These knowledges offer solutions based in the context of Aboriginal self-determination, and ensured through legislative changes rather than solely through reforms to institutional policies and practices (Jackson 1988). The framing of Aboriginal difference by the CBA Committee favours the creation of Aboriginal models of punishment instead of the modification of mainstream practices to accommodate Aboriginality. However, as will be shown, these solutions are not adopted
within the CCRA. The dominant framing of Aboriginality as something that can be accommodated within the existing system limits the options for reform.

Gender Discrimination and the Partitioning of Difference

The last few decades of the twentieth century also saw increasing concern about the imprisonment of female offenders and the lack gender appropriate policies and practices. In Canada during the 1970s and 1980s, specific focus was directed toward the impacts of incarceration on female prisoners as a result of the conditions at the Prison for Women in Kingston, Ontario. The growing awareness of issues faced by female offenders was associated with the larger women’s movement in Canada and the increasing number of feminist interventions through the courts (Hayman 2006). The increasing involvement of women in the realm of policy-making within government also focused attention on women’s equality struggles (Rankin and Vickers 2001). In relation to penal change, “feminist penal reformers began to actively pursue liberal, rights-based equality strategies to secure equal access to prison and community programs for female offenders and to improve their conditions of confinement” (Hannah-Moffat 2001: 134). Reformers and advocates also pressured the government to develop ‘appropriate’ responses to female prisoners based on the recognition of gender differences among women and men. In the following, I analyze the discussions about female offenders emerging from key governmental reports and inquiries. I argue that the framing of the problem as one of gender discrimination works to partition various aspects of difference, such that certain female offenders (e.g., Aboriginal women offenders) are viewed as doubly disadvantaged when racial discrimination is added to gender discrimination. This framing prevents an intersectional analysis of the various problems facing female offenders as a diverse population.

Although the problem for Aboriginal peoples was their over-representation in the penal system, for female offenders it was ‘under-representation’—they were “too few to count” (Adelberg and Currie 1987). The small number of women in prison was viewed as the main factor in their inequitable treatment (Ekstedt and Griffiths 1988). Most government-led correctional initiatives focused on female offenders during the 1970s and 1980s

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29 For example, in 1998, 2.5% of the federal prison population were women (Hannah-Moffat and Shaw 2000). In 2009-10, female offenders constituted 3.7% of the federal prison population and 6.3% of the federal conditional release population (NPB 2010d).
examined the problems faced by women prisoners due to their small numbers. In particular, the primary concern was the Prison for Women, including issues of geographic dislocation and the lack of gender appropriate programming and services (Hannah-Moffat 2001; Hayman 2006). However, concerns around the Prison for Women were nothing new. As Ekstedt and Griffiths (1988: 336) note, “every major correctional inquiry in Canada has recommended closure of the Prison”, including Archambault (in 1938), Fauteux (in 1956), and Ouimet (in 1969), although as Hayman (2006: 20) observes, these calls took place within broader discussions of federal imprisonment rather than specific considerations of female offenders.

The 1970s and 1980s also witnessed greater attention to the female offender as an object of knowledge, or what Snider (2003: 354) calls a “punishable subject”. As with Aboriginal offenders, the proliferation of governmental reports and inquiries work to constitute female offenders in particular ways through knowledge claims about who they are and what they need. One of the earliest reports to comment on the specific circumstances of federally sentenced women was the Royal Commission on the Status of Women in 1970. Although the Commission’s report made a number of recommendations, of interest here are its calls for revisions of the Prisons and Reformatories Act to eliminate discriminatory provisions, promote greater cooperation with Aboriginal communities, create halfway houses for female offenders, and ensure the availability of appropriate services and programs for Aboriginal and Francophone female offenders (Hannah-Moffat 2001; Hayman 2006).

The Commission’s recommendations were echoed in subsequent reports and reviews in the late 1970s which examined, and made recommendations on, the issue of the female offender. For example, in 1977, the National Advisory Committee on the Female Offender echoed themes raised by the Commissions’ report, including the “need for more community-based residences, temporary release, and better institutional programs linked (wherever possible) to the community” (Ekstedt and Griffiths 1988: 336). A year later, in 1978, the National Planning Committee on the Female Offender, in its assessment of the Advisory Committee’s report, recommended the creation of regional federal facilities and development of community-based residential centres (CBRCs) for women. Also in 1978, the Joint Committee to Study Alternatives for the Housing of the Federal Female Offender was convened by the Commissioner of Corrections to examine the issue of correctional facilities
for women offenders. Like the Planning Committee, the Joint Committee also advocated for the increased use of CBRCs for women and exchange of service agreements with the provinces to allow for the housing of federally-sentenced female prisoners in provincial facilities (ibid.). These recommendations echo the approaches put forth for Aboriginal offenders in that the solutions to female difference could be accommodated within the existing system through minor adaptations, such as increased aftercare services and improved programming.

Concerns about female offenders and the problems posed by the Prison for Women continued to be raised in several government reports related to parole and conditional release during the 1980s. For instance, the *Solicitor General’s Study of Conditional Release: Report of the Working Group*, published in 1981, points to the difficulties created through the geographic centralization of the Prison for Women and the lack of meaningful correctional programming and conditional release planning (Solicitor General 1981). It recommends further study of three possible changes to the system to help alleviate these difficulties:

First, more liberal use could be made of parole by exception and day parole to move women closer to their home communities under correctional supervision. Second, government funds could be made available to finance releases to areas distant from PW [Prison for Women]. Third, there may be a need for a special caseworker at PW to help deal with the special release planning and coordination problems experienced by women. (Solicitor General 1981: 153)

The recommendations point to an approach to reform that encourages minor tweaking of the system and exceptions such that female offenders can be better accommodated through special activities within existing structures and practices. Concerns about the Prison for Women continued in the mid-1980s with the Advisory Committee to the Solicitor General of Canada on the Management of Correctional Institutions recommending the regionalization of “the accommodation of federal female offenders across the country” to reduce geographic isolation (Solicitor General 1984: 42) and solve the problem of the Prison for Women.

Both the Final Report of the *Task Force on Aboriginal Peoples in Federal Corrections* (Solicitor General 1988a) and the Daubney Committee (Canada 1988) report were critical of the centralized nature of women’s imprisonment at the Prison for Women. The Daubney
Committee’s tour of the Prison for Women cemented its acceptance of the Canadian Association of Elizabeth Fry Societies’ submissions on the prison’s geographical isolation, overly high security level, and unequal provision of programs. A potential solution to the latter problem was for correctional programs to “be responsive to the needs, aspirations and potential of women offenders” (ibid.: 235, emphasis removed). The Daubney Committee also chastised the CSC for its reluctance to expand halfway houses for women offenders because their numbers were too small and therefore viewed as lacking cost efficiency. To best address the needs of female offenders, the Daubney Committee recommended the creation of a Task Force on Federal Female Offenders to plan for the closure of the Prison for Women and address the problems associated with programming for female offenders (Canada 1988).

The Task Force and Daubney Committee reports identify Aboriginal women offenders as experiencing additional difficulties due to their gendered and racialized identities. Aboriginal women offenders are constituted as a special group of women within the female offender population and framed as dually discriminated against. This framing reflects an additive approach that understands ‘women’ as a disadvantaged group due to gender, while non-white women are even more disadvantaged as a group due to race; additional disadvantages (e.g., class, ability, sexuality, etc.) can be tacked on as appropriate (Grabham et al. 2009). For example, according to the Daubney Committee, “imprisoned Native women are triply disadvantaged: they suffer the pains of incarceration common to all prisoners; in addition they experience both the pains Native prisoners feel as a result of their cultural dislocation and those which women prisoners experience as a result of being incarcerated far from home and family” (Canada 1988: 237). Consistent with this framing, the Task Force notes that Aboriginal women offenders encounter additional difficulties, including a lack of specific (i.e., cultural) programming and day parole facilities (Solicitor General 1988a). Scholars such as hooks (1991), Razack (1998), Yuval-Davis (2006), and Grabham et al. (2009) have argued that the framing of inequalities as additive, rather than intersectional, works to partition differences and reinforce approaches to women that tend to privilege one form of difference over others. A similar process appears to be occurring here through the framing of gender and cultural difference as being additive and resulting in dual or triple disadvantage. Yet, the Daubney Committee also observes that programming should “be appropriate to Native female offenders in terms of both culture and gender” (Canada 1988:
237, emphasis in original) to address dual discrimination. Here, the Committee hints at the importance of programming that addresses the intersectionality of culture and gender, but does not consider exactly how these issues should come together.

Towards ‘Gender Justice’

During the late 1980s and early 1990s, several feminist-inspired reform efforts continued to push for change in the treatment of female offenders. The deteriorating conditions at the Prison for Women, including the suicides of several Aboriginal prisoners, helped spark the launch of a Charter challenge against the CSC by the Women’s Legal and Education Fund (LEAF) in 1987 (Hannah-Moffat 2001). In LEAF’s view, the CSC’s treatment of female offenders violated their section 15 rights on the basis of sexual discrimination. According to Hannah-Moffat (2001), this Charter challenge was postponed in anticipation of the release of a key reform document intended to address the problem facing women prisoners: the report of the Task Force on Federally Sentenced Women (TFFSW), Creating Choices. This reform document encapsulates feminist knowledges that constitute female offenders as different and in need of “women-centred” models of punishment (Hannah-Moffat 2001, 2002; Hayman 2006).

The TFFSW was created in 1989 by the Solicitor General with the mandate “to examine the correctional management of federally sentenced women from the commencement of sentence to the date of warrant expiry and to develop a plan which will guide and direct the process in a manner that is responsive to the unique and special needs of this group” (TFFSW 1990, emphasis removed). Its terms of reference were later amended to “stress the over-representation of Aboriginal people in the Canadian criminal justice system as well as the significant impact of Aboriginal experience in clarifying the unresolved problems affecting federally sentenced women” (TFFSW 1990). The TFFSW’s primary goal was closing the Prison for Women and regionalizing women’s imprisonment in Canada.

Of the government initiatives discussed so far in this chapter, the TFFSW and its report, Creating Choices, published in 1990, has received the most critical scholarly attention (see, for example, Hannah-Moffat and Shaw 2000; Hannah-Moffat 2001, 2002; Hayman 2006). The TFFSW was unique in that it was comprised of representatives from both

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30 The notion of ‘gender justice’ can be attributed to Carlen (2003).
government and feminist, non-profit advocacy organizations (Hannah-Moffat and Shaw 2000; Hayman 2006). It was also attentive to the unique issues faced by Aboriginal women offenders. Although much of Creating Choices focuses on creating a holistic and women-centred model of corrections, it touches upon issues related to conditional release. The TFFSW proposed a community release strategy that would allow for additional accommodation for women on conditional release, such as halfway houses, Aboriginal centres, home placements, and multi-use women’s centres, which provide women-centred and Aboriginal-specific programming and services. This strategy would also allow community support workers to assist women offenders to create personal plans during their incarceration so that they can prepare for release as soon as they are eligible (TFFSW 1990).

In relation to the larger reform movement, Creating Choices makes a strong argument for the recognition of women (not necessarily gender) and Aboriginality within the operation and design of the country’s penitentiaries for women. The TFFSW recognized that legislative change was needed in order to meet its goals and bring its recommendations to fruition; however, its mandate was limited by the requirement for it to “develop a plan which can be implemented within current legislation” (TFFSW 1990). As noted in its report, this created severe constraints. It obligated the Task Force to exclude from full consideration provincially sentenced women, the impact of the pre-sentence period and the issue of Aboriginal self-determination with respect to corrections. In addition, the legislative limitations precluded the formulation of a community-based correctional system. (TFFSW 1990)

It is therefore interesting that the TFFSW’s mandate was limited to making recommendations within the legislative framework existing in the late 1980s when, at the same time, the federal government was undertaking a comprehensive correctional law reform project.

Penal Reform in Action: The Correctional Law Review

Taken together, the increased focus on Canada’s correctional system as a whole during the 1970s, 1980s, and early 1990s brought greater attention to the parole system, as well as the specific issues faced by Aboriginal peoples and women under penal control, eventually leading to a large-scale reform process on the part of the federal government to revamp the legislation governing corrections and conditional release. The coalescing of diversity and
gender agendas enabled these reforms to move forward in a temporal moment characterized by concern about the rights of these groups to more fair and appropriate punishment. As one informant recalled, there was growing recognition that “what’s fair for everybody isn’t always fair for certain groups that have particular needs or particular problems or just react differently, [because] their circumstances are different” (Interview 9). At the same time, the existence of new legal mechanisms—such as the Charter of Rights and Freedoms—allowed for right claims if institutions did not respond to calls for changes, as seen with LEAF’s challenge on behalf of federally sentenced women (Hannah-Moffat 2001). The Charter and the resultant Correctional Law Review project (part of the larger Criminal Law Review) were significant factors in the enactment of a new piece of legislation, the CCRA, on June 18, 1992. This section considers the reform efforts led by the Correctional Law Review, with specific attention to how issues of diversity and gender are taken up and incorporated into the new legislation.

The roots of the CCRA lie in the Criminal Law Review project, which began in 1979, and its policy document, The Criminal Law in Canadian Society, published in 1982 (McPhail 1999). The Criminal Law Review was launched after a federal-provincial meeting of Ministers responsible for criminal justice in October 1979. The Ministers agreed that a thorough review of the Criminal Code was needed in order to enact “a modern, responsive and effective Canadian criminal law” (Canada 1982: 10). In addition, the review was deemed necessary to address what McPhail (1999: 2) calls a “crisis of legitimacy” of the law and the criminal justice system, largely due to the public’s fear of crime and increased burdens on the system in the 1970s. This more general context for the Criminal Law Review points to issues of accountability and reputation for the government, whose failure to bring about a coherent and modern approach to criminal justice “would be met, at best, by public ambivalence and, at worst, by disrepute” (ibid.: 2-3). Griffiths (1988) contends that the Criminal Law Review was created in part due to increasing judicial scrutiny of corrections and conditional release operations during the late 1970s and early 1980s.

According to one informant, The Criminal Law in Canadian Society comprised a “policy framework for criminal law” that “articulated a lot of principles about sentencing and
corrections, [such as] the use of restraint in application of criminal law to solve social problems, restraint in the number of people we send to prison, and asked a number of questions” (Interview 1). These questions focused on determining “the proper scope, purpose and objectives of the criminal law” (Canada 1982: 2). *The Criminal Law in Canadian Society* recognizes the importance of the *Charter*, both in terms of its broader impact on human rights legislation and the issue of compliance of law and policy with *Charter* principles. Interestingly, the document concludes by noting that the treatment of Aboriginal offenders and female offenders received no discussion because such issues were considered to be peripheral to its scope, rather than central aspects of criminal law. In this sense, issues of culture and gender were relegated to the sidelines of penal reform. This initial framing is important as it reinforces the designation of non-white and female offenders as other, such that difference becomes a ‘special project’ to be managed outside the ‘real’ work of penal institutions.

Building off *The Criminal Law in Canadian Society*, and as part of the larger Criminal Law Review, the Correctional Law Review (CLR) project was established to focus specifically on issues related to corrections and conditional release law. As one informant reveals,

there was a recognition that the *Penitentiary Act* and *Parole Act* had not kept up with developments… They had been amended along the way but it had been piecemeal reform, so the decision of the government was to launch this thing called the Correctional Law Review to think about what should a modern legislative framework look like. (Interview 1)

This ad hoc development and the lack of a clear statement of principles or philosophy in these pieces of legislation constituted the key problems addressed by the CLR (Solicitor General 1986b: 57-58).

The CLR was conducted by a team working in the Policy Branch of the Solicitor General of Canada, along with the aid of a working group comprised of members from the CSC, NPB, and Department of Justice (McPhail 1999). The CLR was carried out between 1986 and 1988 and yielded nine working papers which outlined the ideas, principles, and philosophies that were to guide and influence the development of corrections and conditional release law and policy. These working papers fed into the government’s proposals,
Directions for Reform, published in 1990, which formed the basis of the CCRA. Reflecting back on the CLR, one informant notes that “it was an exciting time to put it mildly… it was just a massive exercise and taken very seriously” (Interview 1). The CLR focused on the consolidation of five pieces of federal legislation—Solicitor General Act, Penitentiary Act, Parole Act, Prisons and Reformatories Act, and Transfer of Offenders Act—as well as certain sections of the Criminal Code. It also consulted widely with provincial and territorial jurisdictions, victims’ groups, non-profit service agencies, academics, members of the public, all levels of the court, inmates, and correctional staff in order to garner feedback on its proposals (McPhail 1999).

The working papers of the CLR, which total nearly 500 pages, cover a number of philosophical and substantive issues related to correctional and conditional release law in Canada. The first two working papers outline the guiding philosophy for corrections and the framework for the CLR. The remaining papers focus on substantive issues including conditional release, inmate rights, the powers of correctional staff, Aboriginal peoples, federal-provincial issues, and mental health services for inmates. These papers reflect the impact of the Charter on corrections and conditional release law. Indeed, one of the principal tasks of the CLR was “to ensure that all correctional legislation and practice conform[ed] with the Charter” (Solicitor General 1986b: 61). The reform process was geared toward the production of legislation that avoided or minimized litigation on the basis of Charter rights and the common law duty of fairness. Litigation was seen as “costly, slow and (often for reasons of slowness alone) ineffective to serve as an adequate remedy for the hundreds of decisions made daily by correctional authorities in relation to inmates” (Solicitor General 1986a: 32). The creation of new legislation was one way the government could minimize the legal risks posed by litigation, particularly in relation to human rights complaints.

The CLR’s working papers on conditional release (Solicitor General 1987a) and Aboriginal peoples (Solicitor General 1988b) highlight many of the same concerns related to Aboriginal offenders raised in early government reports. The problems of over-representation, cultural difference, and poor parole performance emerge once again as dominant themes and are framed as key areas in need of reform. Governmental concern

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32 This discussion of Charter rights focuses mainly on fundamental human rights issues affecting prisoners; no reference is made to Charter equality provisions around sex (or gender) or ethnic, racial, and/or cultural discrimination.

33 See O’Connor (1985) for a discussion of the early impacts of the Charter on the parole system.
around Aboriginal offenders is positioned in relation to the recognition of this population as a special “group warranting specific attention both because of the special legal status of Aboriginal peoples and because of the serious ongoing problem of their substantial overrepresentation in the correctional system and other manifestations of their situation as a traditionally disadvantaged group” (Solicitor General 1988b: 352). The working paper works to constitute Aboriginal offenders’ difference vis-à-vis non-Aboriginal offenders “in terms of their attitudes, values, interests, identities and backgrounds” (ibid.: 355). The cultural uniqueness of Aboriginal offenders is framed as making things difficult for conventional methods, such as those related to pre- and post-release planning (Solicitor General 1987a: 95). The framing of Aboriginal offenders within this document suggests that they are understood to have special cultural, spiritual, and social needs which can be accommodated as add-ons to the mainstream penal system (Monture 2006).

In relation to conditional release, the CLR identifies several problems for Aboriginal offenders. First, there is the tendency of more Aboriginal than non-Aboriginal offenders to waive their rights to parole hearings, suggesting that the former are not able to benefit from conditional release as are the latter. Second, the CLR points to the unique challenges for successful reintegration within Aboriginal communities due to the exclusion of Aboriginal communities from effective participation in the parole preparation process and the development of reintegration plans for Aboriginal offenders (Solicitor General 1988b). In other words, Aboriginal communities have not been able to participate within the parole process. Concerns are also raised about the appropriateness of parole decision-making practices related to Aboriginal offenders, as well as a lack of Aboriginal representation among NPB board members and staff. This lack of representation is linked to a limited understanding of Aboriginal offenders and inappropriate and inadequate parole planning, criteria, and assessments (ibid.).

These failures are connected to concerns over potential Charter challenges if the NPB’s “decisions, procedures and conditions of parole could be demonstrated to de facto discriminate against Native inmates” (Solicitor General 1988b: 365). More generally, the uniqueness of Aboriginal offenders due to their treaty rights and specific provisions in various constitutional documents was identified as a potential source of litigation, particularly in cases involving claims of systemic discrimination. According to the CLR,
“[e]ven where a law or program is apparently neutral on its face, it may have a different impact on some minority groups than on the mainstream” (ibid.). The CLR recognizes the potential for discriminatory treatment to arise from legislation or policies that appear fair or non-biased, but in practice work to the detriment of Aboriginal offenders. Consequently, a key focus for the CLR was proposing strategies to reduce the risk of litigation.

The working papers propose some legislative and policy approaches to alleviate the aforementioned problems facing Aboriginal offenders. More specifically, the working paper makes a case for the new legislation to include specific provisions for this population:

The unique status of Canada’s aboriginal peoples, and their acute problems once they arrive in correctional care suggests that there is merit in statutory entrenchment of appropriate protections. Legislation in this area would clearly demonstrate the government’s concern to improve the situation of aboriginal people in corrections…

Grounding aboriginal corrections policy in legislation gives such policy greater authority, and provides explicit protection for specific entitlements such as religious freedom. (Solicitor General 1988b: 374)

This excerpt is illustrative in several ways. First, the focus on “appropriate protections” and “specific entitlements” reflects the framing of Aboriginal difference as something that can be accommodated within the mainstream justice system (Monture 2006). It also works to define difference down such that entitlements are restricted to things like religious freedom. Second, the statement about governmental concern hints at an orientation toward diversity that is connected to issues of reputation and the imperative to appear responsive to the plight of disadvantaged groups of offenders, as would be expected given the political nature of the document. The entrenchment of Aboriginal corrections policy within legislation also speaks to the need to compel penal institutions to address Aboriginal offenders’ needs, such as in cases where desire to do so is lacking. The grounding of such policy in legislation would also provide an opportunity for advocates to hold institutions to account through litigation.

Based on the framing of the problems for Aboriginal offenders in relation to conditional release, as noted above, the proposed reforms are unsurprising. For instance, the CLR proposes a provision in correctional law allowing Aboriginal communities greater participation in conditional release planning, programming, and supervision (Solicitor General 1988b). Given the concerns over inappropriate parole decision-making practices, the
issues of staff recruitment and training are raised, along with the recommendation of a provision requiring “specific Native awareness training [be provided] to all staff coming into contact with Native offenders” (ibid.: 381). The possibility of a legislated requirement for an affirmative action program to increase the hiring and promotion of Aboriginal staff is also considered; ostensibly, these reforms would increase Aboriginal representation among NPB board members and staff and subsequently improve organizational knowledge and understanding of Aboriginal offenders and appropriate parole planning, criteria, and assessments. Of note is the lack of attention paid to the issue of gender, or female offenders, more specifically, or to the issues of race, ethnicity, or culture (with the exception of Aboriginal offenders) within the CLR and its working papers. Absent from the working papers is any discussion of principles that reflect the need of the correctional and conditional release systems to take into account the specific needs of female offenders. As discussed above, significant consideration was given to Aboriginal-specific provisions within the proposed legislation so as to help ameliorate the disadvantages experienced by this population.

Setting the Stage: Directions for Reform

The CLR working papers outlined several proposals for reform in relation to Aboriginal offenders, with a notable lack of attention to gender or other forms of racialized difference. The preceding discussion has attempted to show how the constitution of problems facing Aboriginal and female offenders are eventually made actionable in “ways that fit with the dominant culture and the power structure upon which it rests” (Garland 2001: 26). This section considers the framing of key issues related to diversity within the broader context of reform efforts directed at corrections and conditional release. The compartmentalization of difference can be seen in the tendency to approach certain differences (e.g., gender or Aboriginality) separately and as being relevant to specific contexts (e.g., programming or services).

In 1990, the federal government published a green paper entitled Directions for Reform: A Framework for Sentencing, Corrections and Conditional Release (Canada 1990b), which was accompanied by the papers Directions for Reform in Corrections and Conditional Release (Canada 1990c) and Directions for Reform in Sentencing (Canada 1990d). As one
informant recalls, the green paper “was intended to be a comprehensive response to the Daubney Committee, to the various inquiries into [the] community tragedies, and to be roll up of the Correctional Law Review” (Interview 1). Taken together, the green papers formed a consultation package that outlined proposals for policy and legislative changes related to sentencing, corrections, and conditional release. According to the same informant, Directions for Reform reflects the idea that any reforms to the criminal justice system must approach the system as a whole: one “can’t think about corrections without also thinking about what’s going on at sentencing, and what criminal justice should be about” (Interview 1). In this sense, the green papers reject “patchwork, ad hoc approaches” to criminal justice reform and espouse the CLR’s goal of “creating a coherent, integrated set of rules in corrections” (Canada 1990b: 10).

In the introduction to Directions for Reform, the government notes a number of problems with sentencing, corrections, and conditional release systems, including poor public perception; unmet concerns of victims; lack of information sharing between agencies; lack of non-carceral programs; sentencing disparities; over-reliance on incarceration; treatment and assessment of offenders; rehabilitation; and public concern about conditional release (Canada 1990b: 2-3). It also recognizes the special needs of Aboriginal and women offenders, as well as long-term offenders, sex offenders, and mentally disordered offenders. The proposed reforms are contextualized in relation to the Charter and speak to the criticisms and recommendations raised by the Daubney Committee.

Directions for Reform is significant in that it makes some strong statements about gender and diversity, particularly in relation to corrections and conditional release. It states:

It can be said that our prison system is geared to managing a homogeneous population of offenders. As much as it has inadequacies in its primary focus, its shortcomings are unfortunately even more acute for women, Aboriginal People, ethnic groups, the mentally disturbed, and other distinct groups. The effectiveness of

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34 This green paper outlines ten issues to be addressed with policy and legislative reform: rebuilding public trust in the justice system; increasing equity and predictability in sentencing and decision-making; ensuring greater integration among criminal justice components to make the system work more smoothly; providing more effective sentencing and sentence administration; improving the reintegration of offenders and public protection; increasing fairness and accountability within the justice system; reducing the over-reliance on incarceration and creating alternatives; attending to special classes of offenders; addressing the concerns of victims; and clearly articulating the purposes and principles of sentencing, corrections, and conditional release (Canada 1990a).
our system, its fairness, and its even-handedness are called into question by our approach to these groups. (Canada 1990b: 10)

In relation to women offenders, the paper points to the small number of federally sentenced women as the main reason for the lack of facilities and programs for them. For Aboriginal offenders, it notes the over-representation of Aboriginal peoples among the penitentiary population and suggests this disparity is likely to increase if steps are not taken to prevent the incarceration of Aboriginal peoples in the first place. The paper also argues that the special needs of Aboriginal offenders—and the doubly special needs of Aboriginal women offenders—must be met in order to reduce recidivism and ensure fair treatment in the conditional release process (Canada 1990b). According to the government, “[p]art of the solution must lie in recognizing that traditional Aboriginal community, spiritual and cultural values are not the same as those of non-Aboriginal communities” (ibid.: 11). Ostensibly, these differences must be taken into account in order to “deal fairly and effectively with Aboriginal offenders” (ibid.). As such, the government proposed a principle for corrections that requires correctional policies, programs, and practices “respect gender, ethnic and cultural differences, and should be responsive to the needs of women and Aboriginal People, as well as the needs of other groups of offenders with special needs” (ibid.: 18). No such provision is suggested for sentencing or conditional release.

The companion paper, Directions for Reform in Corrections and Conditional Release, outlines proposals for policy and legislative changes related to these key areas. It states the “fundamental goal of corrections and conditional release reform is to improve public safety, correctional effectiveness, and public confidence”, which can be accomplished through a “clear set of rules, as well as effective practices” (Canada 1990c: 1). The paper indicates that the paramount consideration for the corrections and conditional release systems is the protection of the public. Issues of gender and diversity are not raised within this companion paper in relation to conditional release. They do, however, appear in the chapter on corrections and more specifically in connection to programming. In this way, difference is compartmentalized as being relevant to only some aspects of punishment and not others. The paper notes that the correctional system has been criticized by women’s groups and other organizations “for failing to rectify the disparity in treatment between male and female inmates in relation to the availability of programs and services, geographic location and
security classification” (ibid.: 35). It mentions the TFFSW and states that the government “will be making proposals in relation to programs, facilities and resources for female offenders once it has had an opportunity to consider the Task Force Report, as well as other opinions and recommendations in this area” (ibid.). However, the paper indicates that the new legislation will contain provisions requiring correctional programs and services be “particularly suited to serving the needs of female offenders” (ibid.). In this ways, gender issues are reduced to concerns around gender-specific programming and services.

The issues facing Aboriginal peoples are largely discussed in relation to programming and service contracts with Aboriginal communities or agencies so that they can take up some of the punishment of Aboriginal offenders. Here, Aboriginal communities can be responsibilized for addressing the structural and systemic problems facing Aboriginal offenders (Anderson 1999). The paper also emphasizes the importance of consulting with Aboriginal groups so that the CSC can better respond to the special needs of Aboriginal offenders. In particular, it argues that these consultations will aid in the development and implementation of programs and address the problem of disproportionate numbers of Aboriginal peoples within the correctional system. In relation to conditional release, the government proposes training workshops for NPB members so that they have increased sensitivity and better knowledge of Aboriginal issues, as well as requiring that all new policies be assessed as to their impact on Aboriginal offenders (Canada 1990c: 35).

The aforementioned papers were put forth for consultation with interested members of the public, academics, criminal justice professionals, service providers, and inmates. As one informant recalls, there was “a team of people dedicated to [consultations] … we just wanted to hear from all perspectives because, you know, in criminal justice there’s no single right answer usually, there’s a lot of competing points of view, and the idea was to try to find the right balance” (Interview 1). The CCRA was the end product of the CLR and this final consultation process.35

35 The sentencing reforms to the Criminal Code brought about in 1996—including section 718.2(e)—were another product of the CLR, although “people often forget” this fact (Interview 1). According to one informant, “it was just because of parliamentary delays and elections that the sentencing stuff was proclaimed later” (Interview 1).
The *Corrections and Conditional Release Act*

Bill C-36\(^{36}\) was presented in the House of Commons for its second reading on November 4, 1991, by Doug Lewis, then Solicitor General of Canada. In his presentation of the bill to Parliament, Lewis stressed the paramount focus on public safety, stressing that “if the release of an offender threatens society, the offender will not be released” (Canada 1991: 4430). The proposed legislation was framed in relation to the “plight of victims” and the need for the system to better meet victims’ needs and restore public confidence (ibid.). The specific issues facing female and Aboriginal offenders were noted briefly towards the end of Lewis’ remarks. In particular, Lewis mentioned the closure of the Prison for Women and construction of regional facilities, as well as the expansion of correctional programming for Aboriginal offenders (ibid.: 4434) as key initiatives to address gender and Aboriginal difference supported by the proposed legislation.

The *CCRA* is significant because, for the first time, the *Act* recognizes—albeit partially and selectively—gender, cultural, and ethnic issues. Part One of the *Act*, which focuses on ‘Institutional and Community Corrections’, lists among its Principles “that correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements” (s.4(h)). Part One also outlines the special considerations for programs for women offenders, such that the CSC should ensure the provision of programs that address their needs (s.77(a)), and are (in theory) to be developed in consultation with women’s groups and others who have experience with, and expertise on, female offenders (s.77(b)). Similarly, Part One of the *Act* recognizes the special needs of Aboriginal offenders. Sections 80 to 84 call for the provision of programs developed on the basis of Aboriginal offenders’ needs; the creation of advisory committees to provide advice to the CSC on Aboriginal issues in consultation with local Aboriginal communities; the recognition of Aboriginal spirituality and spiritual leaders as being on par with other religions and religious leaders; and the provision of information to Aboriginal

\(^{36}\) The Bill’s full title is ‘An act respecting corrections and the conditional release and detention of offenders and to establish the office of Correctional Investigator’.
communities about prisoners’ parole application, such that the communities can aid in their integration.

Part Two of the CCRA, entitled ‘Conditional Release, Detention and Long-Term Supervision’, interestingly, does not contain a specific principle related to gender and/or ethnic/cultural issues. However, the Section called ‘Organization of the Board’ contains a clause requiring that NPB policies “respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements” (s.151(3)). It remains to be seen why the drafters of the CCRA did not include the above clause as part of its general principles, as in Part One. However, as will be discussed later on in this dissertation, it appears that the NPB has interpreted the CCRA in such a way that gender and diversity have become increasingly relevant to the institution’s policies and practices. More specifically, through the creation of the Aboriginal and Diversity Initiatives section, the NPB is attempting to respond to the “growing ethnocultural diversity within Canada's federal offender population” and the Act’s directive that the NPB must “develop policies and processes which are sensitive to [Aboriginal offenders’] circumstances and needs” (NPB 2010c: n.pag).

The compartmentalization of gender and diversity as being applicable to certain contexts (e.g., programming and community consultation) enables institutions to narrowly interpret when and how diversity matters. In addition, several informants expressed some reservation as to the ability of the CCRA to bring about change in relation to the special needs related to gender, Aboriginality, and ethnoculturalism. One informant noted that the CCRA only contains one paragraph “that speaks to women, Aboriginal, whatever, in Part II, and it’s only in relation to our policies” (Interview 7). The same informant believed that the principle would be more effective if it was broadened beyond NPB policies to include its approaches (Interview 7). Another informant felt that the Act, as a whole, did not have enough “meat” to compel the NPB to “look at ethnicity” or “women”, which was viewed as a shortcoming, especially given the changing “Canadian mosaic” and the increasing “multicultural aspect of the prison population” (Interview 13). According to a different informant, at the time the CCRA was enacted “the multicultural development of Canada had not impacted to the same degree [and] had not created the same level of concerns” that
currently exist around ethnocultural offenders (Interview 6). So although the legislation is fairly specific around Aboriginal offenders, it was viewed by some informants as being unable to adequately ‘force’ the organization to adequately address the needs of other diverse groups, including ethnocultural and female offenders. In a different vein, another informant was skeptical about the inclusion of gender and diversity into law more broadly, arguing instead that as an “add-on” to the “big system”, the accommodation of particular groups “is undermined by the big policy picture” (Interview 9). For this informant, “you cannot have broad social policy, you know, that has a destructive effect on minorities and then try to make up with it with minor policies that still fall under that” (Interview 9). From this informant’s perspective, the clauses in the CCRA that address diverse populations are add-ons with limited ability to bring about change.

The Post-CCRA Context

Since the enactment of the CCRA in 1992, issues of gender and race within Canadian penalty have continued to garner attention. Although the consideration of diversity issues tends to be focused on corrections rather than conditional release, these ongoing discussions have highlighted how penal institutions have accommodated (or failed to accommodate) gendered and racialized difference. This section provides a brief overview of key developments after the passage of the CCRA that relate to issues of gender and diversity within Canada’s penal system. The intent of this overview is not to be exhaustive, but rather to highlight some of the important developments that involve diversity issues. Some of these developments reflect general concerns around diversity issues that were happening at the time, while others more directly touch upon the legislative mandate of the CCRA and the purview of the NPB. A key development in this context is the Supreme Court of Canada’s decision in R. v. Gladue [1999], which supports an approach to decision-making that takes into account Aboriginal difference.

Five Year Review of the CCRA

In 1998, a comprehensive review of the Act was initiated, as per section 233 which requires a parliamentary committee to review its provisions and operations after five years. In support of this review, the Solicitor General (1998) released a consolidated report examining the
provisions of the CCRA and other issues. This report highlights “special groups” of offenders with “special needs” as one of four “thematic lines” that guided legislative reform, with the other three being public safety and reintegration, openness and accountability, and fair processes and equitable decisions (ibid.: v). The report describes how the CSC and NPB have implemented the provisions in the CCRA that mandate action in relation to policies and programs for Aboriginal and female offenders. It also examines statistical data related to incarceration and parole rates for these groups which reflect their racialized and gendered difference. The report details specific organizational initiatives that aim to tackle “longstanding challenges” related to Aboriginal and female offenders (ibid.: 142), several of which will be discussed in later chapters. This report underscores the legislative requirement that Canada’s federal systems of corrections and conditional release address special offenders groups and their needs, which in this context are identified as Aboriginal and female.

In November 1998, the Standing Committee on Justice and Human Rights established the Sub-committee on Corrections and Conditional Release with a mandate to conduct the review of the CCRA. The Sub-committee released its report in May 2000, entitled A Work in Progress: The Corrections and Conditional Release Act (Canada 2000). While the review was comprehensive in scope, several recommendations were made in relation to “special groups with special needs”, the first of which was to broaden the Act’s provisions (i.e., section 4(h) and subsection 151(3)) to include offenders who are young, elderly, or have serious health problems (Canada 2000: para 3.33). The Sub-committee indicated that the CSC and NPB had already been taking the needs of these groups into consideration; inclusion in the provision of the CCRA would further solidify these activities. The bulk of the Sub-Committee’s recommendations for “special groups with special needs”, however, focused on Aboriginal and female offenders. As will be seen, the Sub-committee pointed to the same issues that have been raised time and again within government reports over the past several decades. In relation to female offenders, the Sub-committee concentrated on the issue of programming, including the need for the CSC to provide “services that will facilitate their reintegration into the community as law-abiding citizens”, despite the fact that the organization faces “difficulties” due to the relatively small number of federally incarcerated
female offenders (ibid.: para 3.42). In other words, the number problem could not be used as an excuse for failing to meet female offenders’ needs in this regard.

Regarding Aboriginal offenders, the Sub-committee pointed to their over-representation among federally sentenced offenders and the tendency for Aboriginal offenders to spend more time incarcerated and be subject to the detention provisions of the CCRA, in comparison to non-Aboriginal offenders (Canada 2000). The Sub-committee also reiterated the requirement within the CCRA that rehabilitation and reintegration programming be “sensitive to Aboriginal culture” (ibid.: para 3.45). Services and programming that reflected Aboriginal offenders’ needs were seen to promote their reintegration as law-abiding citizens. The Sub-committee recommended the creation of a position of deputy commissioner for Aboriginal offenders who could both champion and problem solve in relation to issues affecting this population. The position was envisioned as akin to the existing deputy commissioner for women, including participation in the CSC’s executive committee (ibid.: para 3.48).

The Sub-committee discussed several other issues relating to Aboriginal and female offenders, but in relation to CCRA provisions pertaining to the CSC (e.g., segregation, “maximum security/special-needs women”, etc.). The report did not assess how the NPB had responded to diversity-related provisions of the Act. The Sub-committee, however, did observe “based on its institutional and other visits that the ethnocultural make-up of the offender population [had] changed in the last number of years” (Canada 2000: para 9.13). Due to the increased diversity of the offender population, the Sub-committee recommended that both the CSC and NPB continue their programs of recruitment and training to respond to the changing offender demographics. In sum, then, the five year review of the CCRA highlighted most of the same issues affecting Aboriginal and female offenders that were raised prior to its enactment. The matter of the increasing diversity of the offender population—in terms of its ethnocultural (i.e., non-white) make-up—emerges as a more novel concern. The Sub-committee’s five-year review of the CCRA focused primarily on correctional issues in relation to issues of diversity, with little said about the NPB’s policies and approaches for non-white and female offenders.
Maintaining Momentum on Issues of Offender Diversity

For female offenders, the mid-1990s and early 2000s comprise a significant time period due to the notable reconfigurations in the punishment of federally sentenced women. More specifically, it was during this time that the women-centred vision of Creating Choices was implemented through the establishment of new regional prisons and the closing of the Prison for Women. This time period is also marked by several developments that drew attention to the issues facing federally sentenced women, including systemic failures on the part of the Canadian penal system to address their needs. The first development was a Commission of Inquiry headed by Louise Arbour in response to a series of high profile events at the Prison for Women in 1994 (Canada 1996a; see also Faith 1999; Shaw 1999; Hannah-Moffat and Shaw 2000; Hannah-Moffat 2002; Jackson 2002). The report details Arbour’s findings in relation to the events at Prison for Women, including abuses of power and violations of prisoners’ rights. She also outlines recommendations to address systemic problems within the correctional system and instill a culture of rights within the CSC (Canada 1996a).

The second development was the Canadian Human Rights Commission (CHRC) “review of the treatment of federally sentenced women on the basis of gender, race and disability” (CHRC 2003: Preface). This review was conducted after the CHRC was approached in March 2001 by the Canadian Association of Elizabeth Fry Societies and Native Women’s Association of Canada, as well as other organizations such as the Canadian Bar Association, the Assembly of First Nations, and the National Association of Women and the Law. These organizations raised concerns about the treatment of female offenders by the federal corrections system, including both prison and community corrections services (ibid.). Although the review focuses on the CSC, the CHRC’s findings highlight more general issues related to bringing about organizational change within a system that was created for white male offenders. According to the CHRC (2003: 71), “[d]ifferences between individuals and groups that relate to prohibited grounds of discrimination must lead to changes in how systems are designed, how policies are developed, and how practices are implemented”. More specifically, it argues that penal institutions must go beyond making “special measures” in order to transform the system into one that is inclusive, with an “equal

37 See Hayman (2006) for an in-depth study of these penal transformations.
opportunity” for all offenders “to benefit from the rehabilitative purpose of the correctional system” (ibid.). The CHRC (2003: 71) observed that to be gender responsive, the penal system had to both create services based on the “underlying differences among women and men” and recognize that not all female offenders are alike. In particular, Aboriginal women and female offenders with disabilities may have different needs in relation to rehabilitation and reintegation. Aboriginal women were also identified by the CHRC as being over-represented within the correctional system, likely due, at least in part, to their over-classification by security assessments (ibid.). The CHRC’s report is noteworthy as it argues for the penal system to be transformed so that it is compliant with human rights.

For Aboriginal offenders, issues of over-representation, discrimination, and access to culturally appropriate treatment continued to be raised at the federal level during the 1990s and 2000s. A key development was the Royal Commission on Aboriginal Peoples (RCAP) and the release of its five-volume report in 1996 (Canada 1996b). The RCAP was created in 1991 by the federal government with an extensive mandate that included helping to mend and build a more just relationship between Aboriginal and non-Aboriginal people in Canada. One of the mandated focal points was justice issues facing Aboriginal peoples. The over-representation of Aboriginal peoples within the justice system was explored at length by the RCAP in its report, Bridging the Cultural Divide (Canada 1995). The RCAP identified three theories to explain over-representation: culture clash, socio-economic, and colonialism. However, it concluded that colonialism was the best explanation for the over-representation of Aboriginal peoples, especially because it best explained the ongoing reality of disadvantage and discrimination. The RCAP observed that “[t]he Canadian criminal justice system has failed the Aboriginal peoples of Canada—First Nations, Inuit and Metis people, on-reserve and off-, urban and rural—in all territorial and governmental jurisdictions” (ibid.: 309). It explained that the “principal reason for this crushing failure is the fundamentally different world views of Aboriginal and non-Aboriginal people with respect to such elemental issues as the substantive content of justice and the process of achieving justice” (ibid.). This conclusion bluntly questions the ability of the mainstream justice system to meet the needs of Aboriginal peoples and points instead towards doing something different in relation to punishment, rather than tinkering with existing practice.
A second important development during the 1990s relates to the addition of section 718.2(e) to the *Criminal Code*, one of the sentencing reforms that came into effect in 1996. This amendment is particularly significant as it introduces a sentencing provision intended to help address the over-representation of Aboriginal offenders within the justice system. In this way, the criminal law is being used to address racial oppression and the historical legacy of colonialism on Aboriginal peoples through the recognition of difference (Kramar and Sealy 2006). Section 718.2(e) stipulates that “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” (emphasis added). The latter part of this clause reflects the intent to reduce the imprisonment of Aboriginal offenders by requiring sentencing judges to use their discretion to consider non-custodial options, including more creative and restorative sentences (Roach and Rudin 2000; Pelletier 2001; Kramar and Sealy 2006). Although the directed focus on the circumstances of Aboriginal offenders may encourage more contextualized sentencing decisions, it is less clear how these circumstances matter or what they mean for policy development. The application of section 718.2(e) was subject to review for the first time by the Supreme Court of Canada through a 1996 appeal in *R. v. Gladue* (Roberts and Melchers 2003). The following section briefly introduces the Court’s 1999 decision in this case, as Chapters 5 and 6 will examine in more detail the impacts of the decision on the NPB.

**Attempting to Ameliorate Racial Injustice: The Application of *R. v. Gladue* **

The Supreme Court’s decision *Gladue* is an important development toward the formalization of responses to Aboriginal offenders within the Canadian justice system. As will be discussed in subsequent chapters, the *Gladue* decision constitutes part of the legal framework that shapes the institutional responses to diversity at the NPB and creates opportunities for litigation for discriminatory treatment if institutions fail to consider and accommodate, where feasible, Aboriginal uniqueness. The Court’s decision acknowledges the impacts of systemic discrimination within the criminal justice system that have contributed to the over-representation of Aboriginal peoples. It also recognizes that Aboriginal offenders who live off reserve, such as in urban contexts, deserve to be treated like other Aboriginal offenders.

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38 Several scholars have expressed doubt about the ability of this provision to reduce the over-representation of Aboriginal offenders (see Pelletier 2001; Roberts and Melchers 2003).
(Roach and Rudin 2000). Notably, the decision can be understood as an attempt to ameliorate historical and contemporary instances of racial and cultural injustice by encouraging remedial and contextual sentences (Roach and Rudin 2000; Kramar and Sealy 2006; Murdocca 2007, 2009; Williams 2009). However, although the Supreme Court’s decision requires that attention be paid to Aboriginal offenders’ circumstances, there is less clarity around how these contexts matter and, more importantly for the NPB, what this means for policy.

The case of *Gladue* involved an appeal of an Aboriginal woman’s sentence of three years’ imprisonment and a ten-year weapons prohibition for manslaughter in the death of her common-law partner. In imparting the sentence, the provincial court judge of the Supreme Court of British Columbia determined that section 718.2(e) did not apply to Gladue because she lived within an urban, off-reserve environment and therefore was not a member of an Aboriginal community. This was the key issue upon which the case was appealed to British Columbia’s Court of Appeal (Kramar and Sealy 2006). According to Roach and Rudin (2000), the trial judge based his decision to discount Gladue’s Aboriginal status on myths and stereotypes about Aboriginal offenders. The Appeal Court ruled that section 718.2(e) was relevant to Gladue despite her living off-reserve, yet upheld the sentence due to the seriousness of the crime (Kramar and Sealy 2006). In the appeal to the Supreme Court, the sentence was not revisited because Gladue had been paroled. However, the Court used the case to interpret the legislative intention behind the provision.39

The decision in *Gladue* is significant because it calls upon judges to remedy “injustice faced by aboriginal peoples in Canada” (*Gladue* 1999: para 65). The decision provides a “framework for analysis” for sentencing that requires judges to consider “the unique background and systemic factors which may have played a part in bringing the particular offender before the courts” (ibid.: para 69). The Supreme Court notes various factors that “figure prominently in the causation of crime by aboriginal offenders”, including “low incomes, high unemployment, lack of opportunities and options, lack or irrelevance of education, substance abuse, loneliness, and community fragmentation” (ibid.: para 67). In order to help remedy such injustices and reduce the incarceration of Aboriginal peoples, judges are authorized “to employ creative methods” when sentencing Aboriginal offenders

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39 See, for example, Roach and Rudin (2000) and Kramar and Sealy (2006) for more in-depth analyses of *Gladue*.
(Williams 2009: 85), even if the alternatives are not culturally focused (Roach and Rudin 2000). The *Gladue* decision is therefore noteworthy because it reflects an attempt to recognize and respond to Aboriginal difference in the context of decision-making. In addition, several courts in subsequent cases have drawn on *Gladue* to apply the sentencing provision to non-Aboriginals, including African Canadian offenders (e.g., *R. v. Hamilton* [2003]) (see Kramar and Sealy 2006).

Conclusions

This chapter provided an account of reforms to the conditional release system in Canada since the early 1970s with a focus on efforts directed toward issues of gender and diversity. I analyzed how problems and solutions to Aboriginal and female difference were constituted and framed within official documents linked to penal change, including the key transformations in conditional release leading up to and following the enactment of the *CCRA*. In particular, I have shown that Aboriginal and female differences are framed narrowly into homogeneous categories of Aboriginality and woman, which works to simplify a range of diversities into uncomplicated constructs. I argued that the constitution of these differences matters because the framing identifies the ‘problems’ that need to be addressed through policy reform. For Aboriginal offenders, the framing of Aboriginality directs policy reform to concentrate on issues of over-representation rather than more insidious forms of systemic discrimination that may emerge as a consequence of the dominant risk-based approach to conditional release. In the case of female offenders, the focus on gender difference partitions various aspects of difference (e.g., gender from race), which prevents an intersectional analysis of the various problems facing female offenders as a diverse population. As will be discussed in subsequent chapters, although gender and cultural differences are recognized as impacting conditional release processes, the dominant policy framework remains unchanged.

Taking as a starting point the 1970s, this chapter followed key activities in the area of penal reform. I drew on the reports of various commissions of inquiry, government task forces, and Parliamentary committees to explore how concerns around Aboriginal and female offenders were articulated and represented. More specifically, the chapter has shown that reports typically frame the primary problems for Aboriginal offenders as their over-
representation within the correctional population, accompanied by their tendency to fail on parole and the lack of culturally relevant approaches to punishment. Culturally relevant punishment is constituted as a solution to these problems and as something that can be incorporated within existing penal structures and approaches. I argued that indigeneity, or Aboriginal difference, presented its own problem to the penal system by illuminating the whiteness of normative practices and processes, and troubling assumptions that ‘fair’ or ‘equal’ treatment was equated with ‘same’ treatment. For female offenders, the primary problem related to their small numbers within the penal system, which was seen to be related to discriminatory treatment due to the lack of gender appropriate penal approaches. The uncomplicated framing of Aboriginal and female difference, and the focus on group demographics and experiences, narrows the scope of possible solutions. For instance, the common solutions raised for both groups include the recruitment of a more representative workforce, ensuring appropriate programming, and providing sensitivity training to staff. Through the enactment of the CCRA, a number of these solutions are put into law, as well as the legislated recognition—albeit partial and selective—of gender, culture, and ethnicity as being relevant to certain aspects of corrections and conditional release policy.

My analysis of various commissions of inquiry, Parliamentary committees, and government task forces indicates that the types of solutions offered for Aboriginal and female offenders remain fairly consistent over time and reflect an approach to diversity that is about making exceptions. That is, legislative and policy initiatives to address issues of difference were largely brought into conformity with existing approaches and “established patterns of operation” (Houchin 2003: 143; see also Carlen 2002). Reform efforts were focused on making minor adjustments to the penal system so that Aboriginal and gender difference could be accommodated without fundamental change in structures or dominant practices, as proposed by advocates such as the Canadian Bar Association. Consequently, attempts to make the conditional release system more ‘fair’ and ‘effective’ for Aboriginal and female offenders proceed as if the system generally ‘works’ for these populations.

By examining the processes of penal change over the past four decades, we can see how the problem of diversity in the offender population is framed and made actionable in particular ways. These solutions reflect a selective incorporation of diversity as only certain knowledges and approaches are taken up and integrated into policies and practices. Gender
and Aboriginal difference are constituted as being relevant to specific contexts (e.g., programming or services). Additionally, these differences tend to be compartmentalized (e.g., gender or Aboriginality) and treated separately. This historical chapter situates the institutional responses to difference that are discussed in subsequent chapters. While this chapter has traced the discussions about gender and diversity within government reports to show how concerns about gender, cultural, and racial differences were articulated and responded to over time, the next chapter examines the development of specific initiatives at the NPB for dealing with gendered and racialized difference.
Chapter 3
Responding to Diversity: Organizational Approaches to Managing Difference

Few theorists of punishment have studied how issues of diversity have been taken up in the context of penalty. When race and ethnicity are discussed, the focus tends to be on the over-representation of certain groups among those who are stopped by police and incarcerated and/or the varying experiences of racist justice system processes (Bowling and Phillips 2002; Phillips and Bowling 2003; Bosworth et al. 2008). There has been little use of anti-racist feminist literatures in mainstream scholarship on punishment; these literatures are rarely in conversation. Yet, anti-racist feminist literatures offer important insights for analyzing how issues of diversity and difference are recognized and governed by penal institutions, as well as the sorts of organizational responses that come about through these recognitions.

This chapter analyzes the organizational responses to diversity, including how the NPB has responded to diversity over time, the creation of the present-day Aboriginal and Diversity Initiatives section of the NPB, and other initiatives undertaken at the organization to address the problem of difference. The NPB’s responses to diversity occur in a context where “public institutions [are required] to acknowledge, rather than ignore or downplay, cultural [and ethnic] particularities” (Dhamoon 2007: 3). Institutions are expected to accommodate certain forms of difference through the recognition that fair treatment does not mean identical treatment. In other words, institutional responses to diversity are premised on substantive as opposed to formal equality arguments. The accommodation of difference is also justified on the basis that institutions should reflect the diversity of the Canadian population in order to be more inclusive of difference. As discussed in the previous chapter, for the NPB, section 151(3) of the CCRA mandates that it attend to gender, cultural, and ethnic differences, including the special needs of Aboriginal and female offenders. Importantly, however, the law does not specify what differences matter or how they are relevant to conditional release policy. Part of the organizational process of accommodating diversity, then, is determining which specific differences matter and in what ways.

This chapter begins by providing a brief review of critical scholarship on diversity within organizations, including the language of diversity and how this shapes the scope and content of approaches taken to create a more responsive and inclusive organization. This
review helps situate the NPB’s responses to diversity within a broader context in which both public and private organizations are responding to questions of difference. This chapter also considers some of the implications of the recognition, inclusion, or accommodation of difference and diversity within the NPB as a penal institution, including the degree to which the diversity of the offender population challenges institutional policies and practices based on white, male norms. I argue that these penal policies and initiatives can be seen as technologies of power for defining differences in particular ways and how to manage them.

The Language of Diversity and Organizational Contexts

The various meanings, operationalization, and institutionalization of diversity is explored by scholars with diverse theoretical orientations and substantive areas of focus. Anti-racist feminist scholars have provided important critiques of the language of diversity and its connections to power within institutional contexts (e.g., Bannerji 2000; Puwar 2004; Ahmed et al. 2006; Ahmed 2007a; Phillips 2007; Dhamoon 2009), while scholars interested in the sociology of organizations have studied processes of institutional change through the integration of diversity rhetoric and practices (e.g., Edelman et al. 2001; Kalev et al. 2006; Herring 2009; Dobbin et al. 2011). Other research on organizations has shown that processes of racialization and gendering are embedded into the creation of organizations and their operation (Acker 1990, 2006; Britton 1997, 2003; Puwar 2004; Ahmed et al. 2006; Nichols 2011). The scholarship by anti-racist feminist theorists is helpful for deconstructing the language of diversity and its manifestations within organizational policies and practices, but tends to lack the critical recognition of the complexities of bringing about institutional change as do the organizational literatures. Anti-racist feminist literatures also tend to prioritize oppressive power relations and inscribe intention to institutional actors over documenting the process by which institutions selectively frame, operationalize, and institutionalize diversity. Drawing upon these two literatures, the purpose of this section is to examine the language of diversity, consider how diversity typically gets taken up within organizations, and explore some of the implications of the particular ways diversity is framed. I argue that the selective framing, operationalization, and institutionalization of diversity are reflective of the complexities and challenges of integrating diversity and bringing about organizational change.
The term diversity is a vacuous construct; its given meaning and definition varies within institutional contexts. Yet, the vagueness of the term is likely what facilitates its operationalization within policy and practice. Puwar (2004: 1) notes that the “language of diversity is today embraced as a holy mantra across different sites”, and yet “what diversity actually is remains muffled in the sounds of celebration and social inclusion”. Similarly, Ahmed and colleagues (2006: 7) have observed that the “word ‘diversity’ is difficult to pin down” because it is often “used to refer both to individuals and to everyone” (see also Edelman et al. 2001; Ahmed and Swan 2006; Herring 2009), as well as to “signal a well-intentioned stance against prejudice” (Dhamoon 2007: 6), often in lieu of other languages used to describe issues of equality. Edelman and colleagues (2001: 1590) point to the expansive power of diversity discourses, such that the concept can “include a wide array of characteristics not explicitly covered by any law”. Indeed, it is the fluid nature of diversity that makes the study of its incorporation into organizational contexts interesting. In the context of penalty, the language used to recognize and respond to diversity among offenders helps shape the responses to the problems that this diversity poses, both to a dominant framework based on white male offenders and ideas about what constitutes ‘fair’ punishment for those deemed diverse.

Several scholars have argued that the shift towards the language of diversity means that other kinds of languages are no longer used or at least shifted to the periphery of policy debates (Benschop 2001; Ahmed et al. 2006; Ahmed and Swan 2006; Dhamoon 2007; Phillips 2007; Swan and Fox 2010). Described as the “turn to diversity” (Ahmed and Swan 2006: 96), this shift reflects “the way that diversity as a concept and set of practices has replaced or supplemented the concepts and practices of equal opportunities” (Swan and Fox 2010: 570). The language of diversity is believed to differ from identity-based categories such as gender and race because it “does not so powerfully appeal to our sense of justice and equality” (Benschop 2001: 1166). For these scholars, the turn to diversity reflects the appeal of the ‘celebratory’ aspects of difference that the term evokes. Ahmed and colleagues (2006: 33) argue that the languages of equality, social justice, or anti-racism are increasingly absent from policy debates around difference and diversity, largely because these terms have “complex histories” linked to political actions such as the women’s and civil rights movements. In contrast, fluid and abstract terms like diversity are easily mobilized and can
be defined and used in many ways. Although diversity may not appeal to notions of justice or equality (Benschop 2001), the term is appealing in the sense that it can make people “feel good” (Ahmed 2007a: 245). Diversity is something that can be celebrated and even consumed, especially when it is framed as enriching organizational environments. Conversely, terms such as equality or anti-racism are more challenging as they point to structural elements.

For critically-oriented scholars, then, the uptake of diversity signals the need for considering how such discourses may displace alternative framings or strategies, such as those of equality, anti-racism, or anti-sexism; be complicit with racism and other forms of discrimination (Razack 1998; Jaccoud and Felices 1999; Bannerji 2000; Puwar 2004; Ahmed et al. 2006; Phillips 2007); and/or simply exist as “something that can be implemented without necessarily changing the underlying structure of the institution and its day-to-day operations” (Brayboy 2003: 73). According to these perspectives, the language of diversity is seen to have the potential to skirt around power relations and fail to bring about meaningful organization change. Other scholars have looked to institutional and managerial practices to help understand how organizations take up the concept of diversity and integrate it (to varying degrees) (e.g., Edelman et al. 2001; Kalev et al. 2006; Herring 2009; Dobbin et al. 2011). In contrast to anti-racist feminist scholars who tend to focus on how systems of racism and sexism shape the institutionalization of diversity, this literature looks to organizational processes and structures to help explain how diversity is taken up. By focusing more on institutional practices, this literature provides insight on why organizational change is difficult to bring about, particularly in relation to equality and anti-discrimination agendas. For example, Edelman and colleagues (2001) have shown that diversity rhetoric intersects with managerial knowledges to transform legal ideals and reframe understandings of law. They argue that diversity rhetoric works to convert diversity into a managerial concern, rather than a legal issue. Dobbin and colleagues (2011) have also explored the uptake of diversity within organizations that have implemented diversity programs, such as training, taskforces, and mentoring. This research highlights the importance of corporate cultures in promoting (or suppressing) diversity initiatives. The institutionalization of diversity, then, is a complex and contested process (Schneiberg and Soule 2005) that is shaped by managerial logics and corporate cultures (Edelman et al. 2001; Kalev et al. 2006; Dobbin et al. 2011).
Diversity within Organizations

Research on diversity within organizations reveals that, overwhelmingly, the term has come to refer to a workforce that contains a variety of individuals from different gender, racial, and/or ethnic backgrounds (Puwar 2004; Ahmed 2006; Ahmed et al. 2006). Diversity is seen to ‘arrive’ within organizations via the inclusion of people who look ‘different’ (i.e., women and non-white peoples). This arrival is important as it has the potential to disturb the status quo and shed light on the racialized and gendered norms upon which dominant institutional processes are based (Puwar 2004). Such is the case with increasing numbers of non-white and non-male offenders in the penal system and calls for greater representation of this diversity among staff and decision-makers. However, the physical presence of gendered and/or racialized individuals does not mean that an organization is therefore ‘diverse’ or that this necessarily leads to more ‘inclusive’ penal policy or regimes.

During the initial stages of this project, it became apparent, through interviews with informants and within NPB documents, that the term diversity implicitly refers to race and ethnicity and sometimes gender (read: women). I could not locate any formal or explicit definition of the term within internally produced documents. I asked one informant what was meant by diversity at the NPB:

We would define it among ourselves, we would define it as everything but white males, really, know you, just in our internal conversations, that’s the populations that we dealt with. We certainly wouldn’t have gone out in the public and said that, but that’s really the populations that we felt that we were responsible for. (Interview 8)

As this quote illustrates, diversity is understood as pertaining to female and non-white male offenders as these are the populations that have been identified as in need of greater attention (e.g., NPB 2010b, 2010c). Through this framing, diversity works as a shorthand signifier of difference as being that which is not white maleness.

The recognition of diversity in corrections and conditional release policy provides an opportunity to consider the constitution of difference in relation to the universal norm (i.e., the white male) that circulates in discourses about offenders, as well as staff and board members. If diversity presumes a multiplicity of difference, then it begs asking, different from what? (Bannerji 2000: 41). According to Puwar (2004), the notion of difference helps illuminate the gendered and racialized norm and how this norm operates within
organizations.\textsuperscript{40} Several scholars have examined the implications associated with the locating of diversity within non-white and non-male individuals (e.g., Brayboy 2003; Puwar 2004; Ahmed et al. 2006; Hunter 2010). The primary implication noted by these scholars is the reproduction of institutional whiteness and masculinity, and the hyper-visibility of clientele and staff who are not white or male. However, more interesting analytical questions can be considered by shifting the focus to the implications of an organization’s engagement with diversity and how it makes diversity actionable through various policies and initiatives.

Several scholars have expressed concern as to how notions of difference are conceptualized and put into practice in the context of criminal justice (e.g., LaRocque 1997; Anderson 1999; Jaccoud and Felices 1999; Cowlishaw 2003; Hannah-Moffat 2004a, 2004b; Bosworth et al. 2008; Hudson 2008a; Murdocca 2009; Hannah-Moffat and Maurutto 2010). Writing about the move to establish culturally relevant models within the criminal justice system, LaRocque (1997) argues that it is important to consider how ideas about tradition, culture, and healing are taken up in policies and practices that aim to be culturally appropriate. The integration of such ideas into policies and practices are not straightforward as the underlying meanings are complex and contested and often do not adapt well to penal contexts. Other scholars such as Anderson (1999) have shown how notions of tradition and difference work to constitute and govern Aboriginal offenders and communities in particular ways. For instance, difference is something the Canadian state encourages Aboriginal peoples to embrace and be proud of, with the result that ideas about culture and spirituality become incorporated in Aboriginalized technologies of governance and utilized to encourage certain Aboriginal subjectivities. Similarly, in their examination of the recruitment of racialized groups in Canadian police forces, Jaccoud and Felices (1999: 87) argue that integration policies function more as a process of racialization that attribute difference to certain others than of reducing social inequality.

In Canada, the idea that the penal system should be responsive to difference is now commonly expressed within government documents and websites, as well as being mandated by the CCRA. The recognition of, and response to, difference is generally accepted as

\textsuperscript{40} Critical race scholars have convincingly shown how this norm is characterized by its invisibility; that is, to be seen as ‘normal’ and the ‘universal human’, to be without gender or race, is to occupy a privilege position, as power located in this invisibility (hooks 1992; Goldberg 1993; Mohanram 1999; Puwar 2004). Whiteness and maleness are both unmarked normative positions. Whiteness tends to be defined as the absence of race, while the male body is typically invisible as a sexed or gendered entity (A. Young 1996; Puwar 2004).
necessary to dealing with a variety of penal concerns, including effective and appropriate programming, decision-making, and training (Brady 1995; Zellerer 2003; Martel et al. 2011). It has resulted in attempts to create appropriate, sensitive, and/or relevant policies and practices that respond to difference, whether this be cultural, ethnic, or gender. In this sense, punishment is increasingly constituted as something that should be carried out in gender specific and culturally appropriate ways. These differences pose a formidable challenge to institutional policies and practices derived from Eurocentric values (Comaroff and Comaroff 2004), including those premised on treating offenders alike. Within liberal democracies such as Canada and penal institutions like the NPB, a key issue that emerges is how difference is recognized and responded to, and in what ways. The remainder of the chapter considers the various recognitions of, and responses to, diversity at the NPB.

The Aboriginal and Diversity Initiatives Section

The following discussion examines the Aboriginal and Diversity Initiatives section of the NPB’s national office as a key unit within the organization that is charged with doing what Ahmed (2007a: 237) calls “diversity work”—the various activities and practices related to attempts to put diversity into action within institutional contexts. The present-day Aboriginal and Diversity Initiatives section originated out of the position of Manager of Diversity Issues, which was created in September 1998 to focus on Aboriginal, women, and ethnocultural issues (NPB 2006a: 12). According to one informant, the Chairperson at that time thought the NPB should have a counterpart to the diversity work being done at the CSC’s Aboriginal Initiatives section (Interview 7). Initially, the section was to be focused solely on “Aboriginal issues”, but section 151(3) of the CCRA broadened its scope to other groups (e.g., women and other special needs offenders) (Interview 7). In addition, the national office sought to ensure it could provide a measure of consistency for the organization’s response to diversity concerns. As one informant explained, the NPB “wanted to have national visibility and to work with the regions and not to be overly influenced… by Prairie traditions” (Interview 7). This is because the Prairie Region was active in its attempts to address the needs of Aboriginal offenders due to their significant over-representation within the region.

41 Document obtained through ATI request no. A-2009-00010 to the NPB.
The same informant noted that the position of Manager was created largely through “the political will within the Parole Board” (Interview 7). In other words, the impetus for creating the Manager position (and then-Diversity Issues section) came primarily from the interest of the Chairperson at the time, who directed the Executive Vice Chairperson and the Executive Director to “make it happen” (Interview 7). Initially, Aboriginal initiatives were a “standing agenda item” at Executive Committee meetings so that the regions could provide updates. According to the same informant, this ensured that all regions had to consider Aboriginal issues, rather than just the Prairie Region, and in doing so, provided a type of accountability mechanism for action. The informant explained that the requirement for all regions to report on their diversity initiatives “made a really big difference” because “after a while, all the regions were engaged in talking about all of these areas […] and actively pursuing initiatives” (Interview 7). The reporting requirement thereby helped ensure the responsibility for diversity initiatives was distributed more evenly across the organization.

Previous research on the uptake of diversity within organizations has pointed to several different determinants of the degree to which diversity programs and initiatives gain ground. For Ahmed and colleagues (2006), the commitment of leaders within organizations is crucial to what gets done and the overall success of integrating diversity within organizations. They argue that the “commitment of the leadership is what makes policies legitimate, true and real, as what ‘comes down’ the organisation” (ibid.: 115). Without the support of senior management, it is much more difficult to do diversity work and bring about organizational change. When commitment wanes, the allocation of resources may also be affected, thereby reducing the ability of staff to carry out diversity work (ibid.). However, Ahmed et al.’s focus on leadership does not tell the whole story. Research by Dobbin and colleagues (2011) highlights the importance of corporate culture for the support and implementation of diversity initiatives. More specially, organizational cultures that are “pro-diversity” are more likely to promote diversity policies and programs, particularly if such practices reflect industry norms and in cases where there are women managers who internally advocate for change.

Interviews with two informants highlighted the importance of senior management in determining what got done in relation to diversity. According to one informant, the NPB’s

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42 According to one informant, the Executive Committee “is the decision making body” of the NPB (Interview 7).
“political will” waxed and waned due to changes in senior management, some of whom were seen to have “no interest in any of that work” (Interview 7). As a result, diversity issues were removed as a standing agenda item at Executive Committee meetings (Interview 7). The removal of the reporting requirement suggests that diversity issues were not effectively integrated into the existing organizational structure of the NPB, but rather were constituted as peripheral to the organization’s ‘real’ work. In other words, concerns about diversity were simply added to the mix of interests and priorities and were subsequently reliant on the sustained commitment of individual actors. Diversity issues were treated more as a special project rather than an ongoing aspect of day-to-day organizational processes.

Another informant noted that the NPB has “scaled back a lot of the work that Aboriginal Initiatives” does and that the section is “no longer represented on senior management or Executive Committee” (Interview 8). When asked why this was the case, the informant explained that there “was no will from senior management to keep that going” (Interview 8). At the time of writing, two individuals make up the Aboriginal and Diversity Initiatives section. The same informant noted an organizational tendency to pay “lip service” to issues of gender and diversity (Interview 8), where commitment exists in words, rather than through the actions of the institution. For this informant, the NPB’s commitment to diversity was reflected in the actions of senior management, rather than as emblematic of the NPB’s corporate culture.

As the above quotes from informants about the creation and evolution of the Aboriginal and Diversity Initiatives section demonstrate, the “personal commitment” of senior managers is very much related to “organizational commitment” (Ahmed et al. 2006: 115). The section was started due to the interest and commitment from a previous Chairperson, yet in recent years the reported lack of commitment from senior management may be reflected in the waning organizational commitment. This, of course, assumes that commitment to diversity is reflected through particular actions, such as in the staffing of the section, its representation on decision-making bodies, and allocation of resources so it can do its work. There may be other reasons (i.e., financial or political pressures) for the ebb and flow of commitment to diversity, as represented by its actionable elements, but personal

commitment emerged as the key issue identified by informants during the course of this research.

I suggest that the apparent inability of diversity issues to stick as key aspects of the organization’s structures and practices can be linked to how the problem of diversity was framed in the first place. The working definition of diversity as being everything but white male offenders and staff (the norm) constitutes differences as relating to non-white and female offenders and staff (the others) (Puwar 2004; Ahmed et al. 2006; Ahmed 2007a). This process of othering positions diversity as outside the norm, thereby increasing the likelihood that notions of difference will be seen as peripheral to the organization’s primary work and as issues that can be accommodated as a special project, not those which demand the rethinking and reworking of structures, policies, or practices to be inclusive. Senior management’s refusal to provide adequate funding for the organization’s diversity work is one way that diversity agendas are regulated (see also Phillips 2007).

Organizationally, the national Aboriginal and Diversity Initiatives section is part of the Policy, Planning and Operations Division of the NPB. Its current mandate is to meet the “challenges” posed to the NPB by the “growing ethnocultural diversity within Canada’s federal offender population”, “increasing ethnicity and gender issues”, and the “long-standing challenges related to Aboriginal offenders” (NPB 2010c: n.pag), such as their over-representation. The NPB (2008a: 221) indicates that the section’s “energies are particularly focused on developing national strategies and initiatives aimed at enhancing informed conditional release decision-making, in relation to Aboriginal, women, and ethnocultural/racial offenders, to ensure public safety”. As such, its work feeds into various organizational processes for responding to gender, cultural, and racial diversity within the NPB’s existing legislative parameters. To do so, the section undertakes “research production and analysis, awareness-building and community outreach that pertains to Aboriginal, ethnocultural and women offenders in the federal correctional system” (NPB 2010c: n.pag). It also provides “corporate expertise” on these groups and leads on board member training and policy development and implementation, as well as working with the regional offices, partner departments, and stakeholders on diversity issues (NPB 2008a: 221). In sum, the Aboriginal and Diversity Initiatives section is primarily focused on knowledge production

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44 See the NPB’s organizational chart at http://www.npb-cnlc.gc.ca/org/chart-eng.shtml.
about certain aspects of offender diversity; that is, female, Aboriginal, and ethnocultural difference.

There is one region—the Prairie Region—that has its own Aboriginal and Diversity Initiatives unit. According to one informant, the unit “was not something that was funded by the national office, it was identified as a need by the region” because it has a “vastly higher Aboriginal population than any of the other regions” (Interview 11). As the informant explained, “in all the other regions the Regional Manager of Community Relations and Training would take care of their [sic] job as well as the Aboriginal and Diversity Initiatives, whereas in [the Prairie Region] it’s just not possible for them [sic] to do all of it” (Interview 11). The Prairie Region’s Aboriginal and Diversity Initiatives unit’s main focus is on Aboriginal programs like elder assisted hearings and training “board members and staff to be culturally sensitive” (Interview 11). Because of the low number of Aboriginal board members in the region, the unit wants to ensure “that they’re very aware of Aboriginal culture and why there’s so many Aboriginal offenders incarcerated” (Interview 11), as called for by the Supreme Court’s decision in Gladue. The creation of this regional unit points to the links between organizational commitment to diversity and the resources necessary to do diversity work.

In relation to the importance of the national office’s Aboriginal and Diversity Initiatives section, one informant remarked that the NPB “can do its job without having a diversity unit, you know, they can make decisions on parole with or without, you know, the most credible information or the most appropriate information” (Interview 8). However, it was the informant’s belief that diversity initiatives “were vital to helping board members get a better understanding of the person sitting in front of them” (Interview 8). In this sense, the section is seen as playing an important role in ensuring better decision-making practices through the recognition of difference. Yet, the compartmentalization of diversity within the organization as being the purview of the Aboriginal and Diversity Initiatives section and its regional counterpart is shaped by the constitution of difference as belonging to non-white and non-male individuals. The creation of a special section with seemingly limited staffing and inclusion in organizational processes may reflect a lack of institutional integration of diversity. These data suggest that the incorporation of diversity into standard organizational approaches and practices is by no means straightforward. Several barriers pose a challenge to
the creation of inclusive institutions, including a lack of political will, the organizational culture, and financial constraints. In the next section, I explore the sorts of diversity work undertaken at the NPB.

Forms of Diversity Work

As suggested above, what gets done within organizations is shaped by how diversity, and its associated problems and issues, gets defined (Ahmed 2007a). A canvassing of the activities of the Aboriginal and Diversity Initiatives section and some regions suggests that diversity work focuses largely on raising awareness related to particular groups of offenders, communities, and victims. These forms of diversity work can be viewed as strategies for managing difference and representing the organization as diverse and inclusive. In this context, difference is acknowledged and accommodated in ways that do not challenge dominant institutional practices. Said differently, diversity is confined to certain activities—committees, newsletters, and community outreach—that remain peripheral to the organization’s day-to-day functioning and real work.

Diversity Committees

According to Kalev et al. (2006), diversity committees emerged during the late 1980s based on organizational experts’ recommendations that oversight and advocacy groups were needed within institutions to spearhead and monitor diversity initiatives. Typically, diversity committees are comprised of individuals who represent different areas of the organization and have different professional backgrounds (ibid.). Yet, as the following discussion illustrates, the work of diversity committees is shaped by how diversity is conceptualized by the organization in the first place. In the case of the NPB, diversity is framed as relating to non-white (and occasionally female) offenders and staff, thereby resulting in these groups as the focal points for diversity committees. As a consequence, diversity issues are not seen as relevant for white male offenders and staff.

Some of the regional NPB offices have diversity committees. For instance, the Atlantic Region has informal committees focused on Aboriginal and African Canadian issues which involve interested staff, elders, and the African Canadian cultural liaison officer. The committees create work plans for training and community outreach with the overall goal of
helping both the community and offenders by making the parole process more substantively fair to particular groups. According to one informant, “these committees for women, for Aboriginals, for black offenders have a lot of merit in the decision making process” and “can help keep our communities safe” (Interview 10). The Prairie Region’s diversity committee is also “staff focused” (Interview 11). The same informant explained that the purposes of the committee are to promote “staff and Board member awareness of diversity issues facing [NPB] offices in Canada as a whole” and to “be inclusive of all staff and Board member contributions and to provide information about community cultural events” (Interview 11).

The Ontario Region’s Diversity Committee consists of volunteer board members and staff (NPB 2005a). Its stated mandate “is to promote diversity and equality within the region” (ibid.). The terms of reference state that the Committee’s work focuses “on providing advice on policy and training initiatives with respect to historically disadvantaged groups in our society and address inequalities based on sex, race, ethnic origin, disability, sexual orientation, age, religion and income” (ibid.). These terms of reference clearly identify the facets of inequality to address, thereby linking diversity to equality; this is unique as diversity tends not to be organizationally defined nor connected directly to historical disadvantages.

However, from the interviews it appears that these regional committees exist largely as a result of personal interest in, and commitment to, diversity issues (Interview 10). Previous research on diversity work within organizations suggests that commitment to diversity is unevenly distributed, with responsibility for diversity often located in some individuals and units more than others (Brayboy 2003; Ahmed et al. 2006; Ahmed 2007a; Smith and Roberts 2007). Processes of racialization and gendering tend to result in the responsibilization of non-white and female staff for diversity work, which may free the organization from having to do diversity work when there are “diversity champions” for this intended purpose (Ahmed 2007a: 250). Yet, without diversity champions, it is unlikely this work would get done at all, or at least to the same extent. Personal interest in, and commitment to, diversity issues likely is what drives the diversity agenda within organizations, especially in cases where there is more “lip service” than action, such as through the allocation of resources (ibid.: 249).

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45 Document obtained through ATI request no. A-2010-00033 to the NPB.
This is not to say that diversity committees do not serve important functions within the NPB. Indeed, such committees may push the diversity agenda forward and work to address pressing issues. However, because the distribution of responsibility for diversity is uneven, it may result in others being able to give it up as well, even as the organization can claim or show that it is responding to diversity (Ahmed 2007a). Consequently, diversity becomes something that only certain individuals and units do, rather than being the responsibility of all members of the organization as in the case of the ideal of ‘mainstreaming’ (e.g., Squires 2005; Eveline et al. 2009) or with the ‘full’ integration of diversity (e.g., Smith and Roberts 2007). Yet, on the other hand, “the project of ‘integrating diversity’ by not having a diversity unit, which works on the principle that ‘everyone’ should be responsible for diversity, does not seem to work” (Ahmed 2007a: 250). This is likely because “‘everyone’ quickly translates into ‘no one’” (ibid.). Mainstreaming diversity does not succeed because diversity and equality are not mainstream (ibid.: 252), hence the need for drivers and supports, such as through diversity committees. This connects to the operational definition of diversity as pertaining to female and non-white difference and its framing as a special project within conditional release policy and practice.

Diversity Newsletters

Newsletters can be seen as techniques used by the NPB to produce knowledge about certain differences and communicate diversity issues among staff and board members. Diversity newsletters also work to promote an image of the organization as being conscious and committed—one that is doing something about diversity and is therefore responsive to advocate and stakeholder calls for reform. In other words, these documents help manage reputational risk, that is, the potential harms to reputation that could result from inactivity on the diversity front, an issue that will be considered in more depth in Chapter 5. Additionally, newsletters reflect and reinforce the organization’s understanding of diversity as relating to non-white and female populations through a process of othering. Difference is constituted against white and male norms and dominant organizational practices, thereby framing these populations as objects to be ‘known’. Newsletters provide a vehicle for knowledge about these others to be disseminated while simultaneously reinforcing a view of diversity as a special project that is peripheral to the organization’s real work.
For a short period of time, the Aboriginal and Diversity Initiatives section of the national office produced a newsletter with the intent for it to “be a forum to share information between the regions and national office”, “provide updates on various initiatives, meetings and conferences” and upcoming events, and impart some “fun facts and educational information” (NPB 2007a: 3). This information focused on Aboriginal, female, and ethnocultural groups. The newsletter was originally slated to be distributed quarterly, but only three issues were produced between 2007 and 2008 (personal communication). The Prairie Region also publishes a ‘Diversity Committee Newsletter’ (NPB 2009a), which aims to assist in the sharing of information and networking (Interview 11). This newsletter is intended to be a monthly publication of the region’s diversity committee (NPB 2008a: 221).

These newsletters represent a form of diversity work that attempts to put diversity into action. Conceptualized as a mechanism to share and transmit information and activities related to diversity, these newsletters involve the translation of diversity into certain formats that will appeal to the intended audience of NPB staff and board members. Part of the work here is ‘selling’ issues related to ethnicity, women, and Aboriginal peoples as matters of importance for all members of the organization. For instance, although much of each newsletter was devoted to summaries of various initiatives, meetings, or conferences related in some way to the NPB and diversity (e.g., female and non-white) groups, space was given to upcoming events, as well as “did you know” and recipe sections (NPB 2007a, 2008b, 2008c). The newsletter format is one way to communicate information in ways that feel good, rather than feel bad; in other words, diversity is framed in terms of cultural enrichment. It is something that can be celebrated and even consumed (Ahmed 2007a), such as through the sections highlighting community events (e.g., Black History Month, International Women’s Day, the International Day for the Elimination of Racial Discrimination, National Aboriginal Day, Multiculturalism Day, Saint-Jean Baptiste Day, and Chinese New Year) and offering recipes as a means “sharing one’s culture” (NPB 2007a: 11).

The newsletters are reflective of Canadian liberal multiculturalism, which involves “the celebration of diverse cultures and their festivities, clothes, food, and music” (Dhamoon

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46 Document obtained through an informal ATI request (no. AI-2009-00001) to the NPB.
47 Document obtained through ATI request no. A-2009-00010 to the NPB.
48 Document obtained through an informal ATI request (no. AI-2009-00003) to the NPB.
49 Document obtained through an informal ATI request (no. AI-2009-00003) to the NPB.
2007: x). As hooks (1992: 21) has argued, with the commodification of otherness or difference, “ethnicity becomes spice, seasoning that can liven up the dull dish that is mainstream white culture”. The discourse of cultural enrichment encourages everyone to participate in the celebration and experience of difference. The newsletters share knowledge about gender and diversity as things requiring sensitivity and awareness, and as special issues that are peripheral to the NPB’s real work. Again, this is reflective of how diversity is operationalized within the organization.

Advisory Committees

In addition to diversity committees, some regions also have joint CSC-NPB advisory committees devoted to diversity issues. These committees are techniques of creating legitimacy around organizational approaches to diversity and fostering perceptions of inclusiveness. As with diversity committees, advisory committees are a way of generating and managing reputation as an organization that is concerned about, and committed to, diversity. These forms of diversity work show that something is being done about offender and staff differences, albeit those which are institutionally recognized as different in relation to the white male norm.

The Pacific Region’s Ethnocultural Advisory Committee is one example of an advisory committee. It was formed to provide assistance, advice, and recommendations to the Regional Deputy Commissioner (CSC) and Regional Director (NPB) on issues related to ethnocultural offenders (CSC-NPB n.d.). These issues include the identification of “the needs and cultural interests of offenders belonging to ethnocultural minority groups”, the development and maintenance of “programs and services to meet the cultural needs of offenders who are incarcerated or on conditional release”, and the promotion of a “better understanding” within both organizations of “related/pertinent ethnocultural issues including, but not limited to, employment equity, discrimination in the workplace and multiculturalism” (ibid.: 1). According to the NPB (2008a: 222), “[t]he Minutes from the various meetings are widely shared within the Board as a means of sharing ideas and best practices”.

As described in its terms of reference, the Committee’s scope is extended to issues affecting offenders (e.g., addressing needs), communities (e.g., building partnerships), and

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50 Document obtained through ATI request no. A-2010-00033 to the NPB.
organizations (e.g., education and awareness in the workplace) (CSC-NPB n.d.: 1). Although not explicitly defined, ethnocultural offenders appear to be those from “ethnocultural minority groups”, which ostensibly means non-white offenders who are different from the presumed cultural majority of white Canadians. The lack of attention to gender within the terms of reference further suggests that the focus of the Committee is non-white, male offenders. This follows an observable pattern within the institution whereby difference is implicitly constituted vis-à-vis the unstated white, masculine norm. Unlike organizational committees that are made up of staff and board members, the Pacific Region’s Ethnocultural Advisory Committee membership consists of a chairperson and at least “seven people selected from the community who are familiar with ethnocultural issues and who represent ethnocultural communities reflecting the diversity of Pacific Region’s ethnocultural offender population” (CSC-NPB n.d.: 2, emphasis added). A member must both ‘represent’ (i.e., look like a community) and ‘know the issues’ (i.e., can speak to ethnicity and culture). The terms of reference specify that “non-ethnocultural candidates” may be considered for appointment to the Committee if they have “extensive experience working with [minority group] issues” (ibid.). The notion of a non-ethnocultural person is interesting in this context as it signals how processes of racialization work to designate some people and communities as having ethnicity or culture, while others do not. Whiteness is largely unacknowledged except as being non-ethnocultural; in other words, whiteness is by default defined as a lack of race, ethnicity, or culture. It is the norm through which the difference of ethnocultural offenders and their communities are constituted. Awareness and knowledge of those who are different is positioned as a potential solution to this difference. Advisory committees address this need by sharing information about the relevance of diversity to corrections and conditional release, as well as by bolstering the NPB’s image as an organization that is committed to diversity issues.

Community Outreach

Another form of diversity work carried out by the NPB is community outreach, especially with Aboriginal communities. The targets of community outreach echo how the concept of diversity is operationalized within the organization as pertaining to racialized individuals and communities. As with the abovementioned committees and newsletters, outreach can be seen
as a technique of building reputation and demonstrating that the organization is committed and responsive to diversity.

Several rationales for conducting community outreach are apparent from the NPB’s documents. One reason is that this initiative supports the organization’s strategic outcomes for “safeguarding Canadian communities and public safety” (NPB n.d.-b: n.pag). In this sense, diversity work is linked to matters of public safety. The NPB contends that

Aboriginal communities are generally less informed about the correctional process and would benefit from greater understanding of the system. A better informed community means better quality community involvement in Section 84 CCRA releases, better informed decision-makers about these communities and ultimately better safeguards for public safety. (NPB n.d.-b: n.pag)

Outreach therefore helps educate Aboriginal communities with the aim to increase their involvement in community assisted hearings (CAHs) and/or the supervision of Aboriginal offenders on conditional release. This outreach is perceived as necessary given the over-representation of Aboriginal offenders in federal penitentiaries and their lower rates of conditional release compared to non-Aboriginal offenders (ibid.). Chapter 6 considers CAHs in detail, including the ways in which Aboriginal communities are involved in the conditional release process.

Community outreach is often done at the regional level in order to respond to regional issues and needs. For instance, the Atlantic Region office does outreach with Aboriginal communities to explain the CAH model and give presentations on the pardon function of the NPB (Interview 10). The Region has also hired a consultant to do outreach with Aboriginal victims because there are “not a lot of Aboriginal victims who are registered with the Board and [the organization] has been trying to figure out why” (Interview 10). This issue was also identified by the Prairie Region, which does outreach and works to raise awareness on the reasons why “it would be less desirable to identify [oneself] as a victim” within an Aboriginal community (Interview 11). Community outreach via education and information sharing is one way the organization attempts to bring Aboriginal communities in line with its normative practice of victim registration.

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51 Document obtained through ATI request no. A-2009-00017 to the NPB.
The NPB (n.d.-b) views community outreach as a mechanism to increase the organization’s profile with Aboriginal communities. Outreach helps the NPB to build reputation through its workshops and forums to educate Aboriginal (and other) communities about its mandate. Within NPB documents, community outreach is framed as supporting the organization’s strategic goals and obligations, as well as for building and bolstering partnerships with other government departments like the CSC and the Royal Canadian Mounted Police (ibid.). Community outreach and consultation are also viewed as contributing to the NPB’s “openness” and “accountability”, whereby it must share both “successes” and “failures” as indicators of the organization’s performance (NPB 2009b: 17). In order to manage reputation, organizations “must understand their constituencies, consider their significance and possible impact, and develop and implement a strategy for communicating with them” (Power 2007: 145). Community outreach requires knowledges of particular communities as the targets of outreach such that the organization can effectively communicate with them. The evaluation of outreach activities becomes a risk-based practice in the service of organizational reputation (ibid.) as the organization can show that it is responding to the needs or concerns of diverse communities. Although community outreach likely serves multiple organizational functions, little is known about how community consultations are carried out, such as whether they are ongoing, negotiated process of developing practices; one-time events that cement particular practices in place (Hyndman 1998); and/or tied to performance outcomes (Power 1997).

Aboriginal Circle

In addition to diversity and advisory committees, which appear focused on ethnocultural offenders, the NPB has a unique Aboriginal-focused working group called the Aboriginal Circle. The mandate of the Aboriginal Circle is to provide “strategic advice to NPB’s Executive Committee on any matter related to policy, training or operations arising from the Board’s mandate for conditional release, pardons, [or] clemency that will improve the efficiency and effectiveness of the Board in meeting the needs of Aboriginal offenders, victims and communities” (NPB 2009c: n.pag). The Aboriginal Circle was established after

52 Document obtained through ATI request no. A-2009-00009 to the NPB.
a March 1999 meeting of NPB representatives from all regions, as well as the national office (NPB 2006a). Initially, the participants were, for the most part, Aboriginal board members and staff, although non-Aboriginals were also in attendance as representatives from those regions that did not have any Aboriginal board members or staff (NPB 2005b). The NPB (2005b: 1) observes that “[f]or most Aboriginal participants, this was the first opportunity to come together in a national forum as Aboriginal people, to share individual and regional experiences as NPB staff and decision-makers”. The meeting resulted in a number of recommendations, one of which was for the group to meet annually “to promote the use of the Board’s internal resources in terms of [participants’] expertise on Aboriginal issues and to contribute to the NPB’s vision as it concerns Aboriginal people” (ibid.). As a form of diversity work, the Aboriginal Circle was to be a key resource to drive the agenda forward on so-called, yet undefined, “Aboriginal issues”.

Approval for the creation of this working group of Aboriginal board members and staff was given by the Executive Committee (NPB 2005b, 2006a). The Aboriginal Circle was to meet annually, typically for two days, and act as an advisory body to make recommendations to the Chairperson and Executive Committee regarding Aboriginal issues (NPB 2006a, 2008a). In the 2004-05 fiscal year, the Aboriginal Circle held a strategic planning meeting to “discuss concrete plans for the direction of the Aboriginal Circle”, including its role, vision, and priorities (NPB 2005b: 1). The resulting document from this meeting outlines a strategy for the Executive Committee in relation to Aboriginal issues (see NPB 2005b). This document also contextualizes the Aboriginal Circle within an environment characterized by the over-representation of Aboriginal peoples in the justice system; government priorities that support mechanisms or approaches that meet the needs of Aboriginal peoples and communities; a legislative mandate to address the conditional release needs of Aboriginal offenders; the findings rendered in the Royal Commission on Aboriginal People and the Gladue decision; and the NPB’s vision for Aboriginal offenders (ibid.). In this sense, the document lays out the rationale for the existence of the Aboriginal Circle as an

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53 This meeting was funded by the Aboriginal Community Corrections Initiative, a part of the federal government’s five-year Strategy for Aboriginal Justice.
54 Document obtained through ATI request no. A-2010-00030 to the NPB.
55 The creation of this type of group mainly comprised of Aboriginal peoples, largely on the basis of ethnic and/or cultural identities, was unique at the NPB.
entity that supports various priorities aimed at addressing the needs of Aboriginal offenders and their communities.

According to its vision statement, the “Aboriginal Circle is a body of knowledge and expertise about Aboriginal culture, people, and communities; it is a body of knowledge on the conditional release process; it is a body who can review areas of concern relating to Aboriginal offenders” (NPB 2008d: 4). The Aboriginal Circle has been viewed as “a golden opportunity for the Board to remain sensitive to aboriginal culture and sensitivities in delivering its mandate” (ibid.: 5). However, as the Aboriginal Circle’s strategy document notes, the Circle’s role as an advisory group to the NPB has been “informal in nature” (ibid.). The Aboriginal Circle therefore recommended that the group be formally recognized so as to “engender understanding and recognition from the broader organization”, particularly in relation to the importance of its work “vis-à-vis Aboriginal issues” (ibid.). The group also sought to have “Aboriginal concerns” be part of the NPB’s “day-to-day business in order for the Board to collectively move forward” (ibid.). The Aboriginal Circle’s strategy document is one way the group sets its priorities and accompanying “strategies for action” (NPB 2005b: 5). The committee’s push for inclusion through formal, as opposed to informal, recognition by senior management reflects the positioning of diversity as ‘outside’ the organization’s main functioning and the struggle of diversity groups to bring it ‘in’.

The current terms of reference for the Aboriginal Circle outline the membership for the committee (NPB 2009d). Following an assessment of the committee in 2008 (see NPB 2008d), the nature of membership was altered, thereby shifting the Aboriginal focus to a broader organizational representation. In its initial articulation (e.g., NPB 2005b), as discussed above, the Aboriginal Circle provided a space for predominantly Aboriginal staff and board members to share experiences and strategize on ways for the organization to respond to Aboriginal issues. Ostensibly, such a space was needed for Aboriginal staff and board members and other interested individuals to consider issues that were not garnering attention from the organization. According to one informant, this particular membership structure “was sometimes not necessarily as clear, so [for example] there was [sic] some people that maybe were not contributing at all” (Interview 4). The informant also explained

56 Document obtained through ATI request no. A-2009-00018 to the NPB.
57 Document obtained through ATI request no. A-2010-00033 to the NPB.
that there was a need “to reach out for people that are not necessarily Aboriginal but have a
collection to make because of their capacity [i.e., position]” that involves work related to
diversity or Aboriginal issues (Interview 4). The recently altered membership raises the
possibility that organizational priorities and interests, rather than those of Aboriginal staff
and board members, will steer the Aboriginal Circle.58

The current terms of reference state that “membership will be comprised of
permanent and rotating members, with each region being represented by at least one
member, and ensuring adequate representation of Aboriginal staff or Board members” (NPB
2009d: 1, emphasis added). The notion of “adequate representation” is not defined. Rotating
members participate in the committee for two years. Membership in the Aboriginal Circle
consists of:

- a chairperson who is a member of the Executive Committee and designated by the
  Chairperson of the NPB;
- four permanent members who are representatives of the NPB and include the
  Directors of Policy, Planning and Operations and Professional Development and
  Decision Processes, the Manager of Aboriginal and Diversity Initiatives, and the
  Regional Manager of Aboriginal and Diversity Unit;
- six rotating members who are representatives of the NPB and include a Regional
  Director, a Regional Manager of Community Relations and Training, and “up to 4
  Aboriginal Board Members (regional rotation; always with at least 1 Board
  Member from the Prairie region)”;
- a CSC partner who has “expertise in Aboriginal issues” in the spheres of
  corrections and conditional release;
- a rotating elder/cultural advisor;
- two or three external members who are representatives from Aboriginal
  organizations that have experience with the work of the NPB; and
- observers whose presence is permitted at the discretion of the chairperson (NPB
  2009d: 1).

58 This is not to suggest that such priorities and interests are necessarily or always mutually exclusive.
At least one in-person meeting is to be held annually, with additional meetings to be determined by the committee’s chairperson. S/he must also approve any alternate representatives for the meetings (ibid.).

This membership structure raises some questions as to how adequate representation of Aboriginal persons may be obtained and how issues of power play out within the Aboriginal Circle. It is unknown how the Aboriginal organizations are selected, although it could be surmised that these are organizations that are ideologically compatible with the NPB and/or have preexisting or working relationships with the organization. Although such an approach potentially broadens the organizational responsibility for Aboriginal issues by reducing the responsibility for diversity from Aboriginal board members and staff and shifting it to ‘everyone’ (Brayboy 2003; Ahmed et al. 2006; Ahmed 2007a), the new membership structure may work to reduce the critical edge of the Aboriginal Circle as a vehicle for holding the NPB accountable for how it handles or responds to Aboriginal issues. Yet, as a form of diversity work, the Aboriginal Circle represents an important institutional process for integrating and/or including Aboriginal difference in the organization and conditional release policy and practice. It serves as an oversight body that may increase the accountability of the NPB in how it deals with issues pertaining to Aboriginal offenders.

Other Diversity Work

In relation to other forms of diversity work at the NPB, the Atlantic Region has developed a “resource guide about each Aboriginal community” for board members which explains the size of the reserve, its population, and the available services to assist with decision-making (Interview 10). The creation of resource guides works to constitute Aboriginal communities in particular ways, as certain types of communities, containing certain individuals and resources. As a knowledge product, each guide will necessarily be based on imperfect and selective information. Additionally, complex histories and issues will have to be simplified in order for the information to fit within a short-hand guide format. It is unknown whether these guides are created with community input, with opportunities for dialogue and feedback, or if they are the result of a top-down initiative. Although this information is seen to help board members make decisions because they will know “what this community is [like] and what’s available to the offender” (Interview 10), the resource guide may inadvertently impose
normative criteria on Aboriginal communities in relation to reintegration. Indeed, the resource guide was viewed by the informant as an effective way for board members to learn about Aboriginal communities because it was financially impossible for board members to travel to each community: it is “kind of a way [the organization] brings [the community] to them” (Interview 10). As will be discussed in Chapter 7, the NPB has also developed cultural fact sheets that profile certain countries to assist board members in decision-making for immigrant offenders. These short-hand guides aim to provide quick cultural information for busy board members, yet produce racial knowledge about certain offenders and their ‘home’ countries. Similar to the other forms of diversity work discussed above, the resource guides and factsheets produce knowledge about specific differences and are reflective of how diversity is operationalized at the NPB.

Responding to Diversity

The previous section examined the creation of the Aboriginal and Diversity Initiatives section and the diversity work of the NPB. The following discussion highlights the various responses to diversity at the NPB as articulated by informants and within key documents. This includes the impetus for the organization to change, how diversity is believed to impact risk assessment and decision-making, and how the organization is committed to diversity. I show that the process of institutionalizing diversity is complex and marked by competing ideas as to how and why diversity matters. Despite the uptake of diversity within the NPB, exactly how knowledges of difference and sensitivity to diversity are used to make gender or culturally ‘appropriate’ decisions remains less clear. Concerns about certain offender differences come up against dominant policies and practices, such as the assessment of risk, where the integration and understanding of diversity issues are limited. Diversity is defined and taken up in ways that fit into existing organizational structures.

Impetus to Change

Informants identified the CCRA as a vital development that led to changes at the NPB with respect to diversity. Several of the NPB’s documents also point to compliance with the law as a driver for change (e.g., NPB 2008a, 2010c). More specifically, the NPB (2008a: 220) indicates that section 151(3) of the CCRA “guides the Board’s work in relation to Aboriginal
and diversity initiatives” and comprises its “legislated responsibility”. The Act “dictates that [its] policies must respect gender, ethnic, cultural and linguistic differences and that the Board must be responsive to the needs of women, Aboriginal peoples, and of other groups of offenders with special requirements” (ibid.). The NPB is mandated by law to consider diversity in its policies. The organization’s key documents (e.g., NPB 2009b, 2010e) frame its institutional commitment to issues of diversity in terms of compliance with law. Importantly, the focus on legal compliance positions the organization as responding to diversity in order to mitigate against legal risks and potential risks to reputation. Compliance with the law is also one among several competing expectations about how gender and diversity should be included in organizations and the goals of diversity work.

Impetus to change was also internally generated. Several informants noted that Aboriginal board members and staff pressured the organization to be more responsive to the needs of Aboriginal offenders during the parole and conditional release process. One informant said that the NPB was “fortunate… to have on the Board First Nations individuals in the Prairie Region and in the British Columbia Region who were strong advocates within [the organization’s] consultations and discussions for the unique interests” (Interview 6). Another informant also pointed to the work of certain staff and board members, particularly in the Prairie Region, to “connect with Aboriginal communities” and apply internal “pressure” (Interview 13). These staff and board members were therefore important advocates for change, pressing the organization from within to respond to diversity and to take into account issues of ethnicity, culture, and/or gender in institutional policies and practices.

Several informants noted the changing ethnic composition of the Canadian population as an important driver for the increased attention to diversity within the NPB, both in terms of responses to ethnocultural offenders and the organization’s hiring of board members to ensure proper ‘representation’. As one informant put it, “we can’t just keep doing our regular business, it’s changing out there” (Interview 7). This sentiment was echoed by another informant who indicated that justice system responses to ethnocultural groups are a result of the “changing pace of the Canadian population… As the Canadian population changes, you can usually see, sometimes it’s a generation delayed, but you can usually see it reflect in
those populations having a period within our criminal justice system where they are in conflict” (Interview 2).

The idea that changes to the national population’s demography creates pressures within organizations to consider diversity is supported in research from other areas (e.g., Jaccoud and Felices 1999; Ahmed and Swan 2006). The changing ethnic make-up of the Canadian population was said to require the NPB to adopt different approaches to assessing offenders’ risk:

We have a vast myriad of peoples from different cultures and you cannot apply the uh, you know, white Anglo-Saxon filter because it doesn’t fit… the diversity is such within the offender population, as well as in Canada, that you cannot do that anymore. (Interview 5)

This diversity was also seen to have impacted the NPB’s hiring practices, as explained by one informant:

Parole Board has always tried to reinforce with the government of the day the need for diversity within [its] board member appointments. The legislation clearly identifies that it’s a community board, that the members collectively represent the values and beliefs of the Canadian population. So this was a way of reinforcing the need to reflect that in the board members. (Interview 2)

Another informant noted that the NPB tries to reach out to diverse groups because the organization is supposed to be representative of the Canadian population and have a “balance” of these groups (e.g., women and men, Aboriginal and non-Aboriginal, etc.) appointed to the Board (Interview 4). To ensure a “balanced representation”, the NPB (2011b: n.pag) states that it “makes every effort to recruit individuals from a wide variety of cultural, ethnic, and professional backgrounds”, as well as by “promoting a balanced gender representation”. The organization indicates that its “effectiveness” in serving diverse communities is linked to “the recruitment, selection and appointment of qualified members and staff from these communities” (NPB 2010b: n.pag). One informant noted that the NPB has focused on “trying to have more Aboriginal people appointed, particularly in the Prairie Region” (Interview 3). Ostensibly, the inclusion of more Aboriginal or non-white board members and staff will, among other things, help improve the organization’s performance and effectiveness (Jaccoud and Felices 1999).
A representative parole board was also seen as being important to offenders as a matter of respect for the diversity of “life conditions”. As explained by one informant:

I think it’s important that justice be perceived as being accessible and in tune with those it’s supposed to serve. If you appoint only people, uh, people from only upper-middle class, white, in their late 50s, you will not have that necessary—you have to have a connection to the people you’re supposed to be serving. (Interview 5)

As this quote reveals, a more representative board, in terms of its class, racial, and age make-up, was seen to enable greater connections with the offender (and victim) population and therefore make board members more accessible and responsive to diverse needs, experiences, and backgrounds. Yet, as Jaccoud and Felicies (1999) contend, practices of representation and the integration of diversity within an organization necessitate the designation of the other. The authors state that “designation is not only reproduction, but production, of otherness to the extent that one or several characteristics are selected out of a complex set of statuses and identities” (ibid.: 86). Consequently, for the groups selected for increased representation, it is their ethnic or cultural identities that are deemed relevant (ibid.). This works to privilege one aspect of identity or form of difference over others, thereby limiting recognition of the simultaneity and multiplicity of identity (Dhamoon 2009).

The NPB (2011b: n.pag) states that knowledge of “the societal issues impacting on the criminal justice environment including gender, Aboriginal and visible minority issues” is part of the criteria used to select board members. However, given the nature of the appointment process (i.e., the fact that the NPB can only make recommendations to Cabinet59 as to who should be appointed), several informants suggested that the NPB was limited in what it could do as an organization to increase its diversity—that is, the visible representation of individuals within the organization that look different in terms of their racial and/or ethnic background. As one informant explained,

if only one visible minority applies [to be a board member] and he flunks the written test, then that’s the end of the visible minority… [the NPB has] no control of input on who applies and […] no control over who succeeds as well. (Interview 5)

59 In Canada, the federal Cabinet is comprised of Ministers selected by the Prime Minister and is part of the executive function of government (Marleau and Montpetit 2000).
This informant explained the recruitment process for 2008 as an example of the difficulty associated with increasing board member diversity:

[The NPB] had 416 people who applied to become parole board members, of which we had 25 Aboriginal people and 23 visible minorities. So the initial pool was a little bit more than 10% of the total number of applicants was either Aboriginal or visible minority, five and five, good? And then we have, uh, we screened in 20 and 17, but only five and five survived the written test and the ended up at an interview. And we ended up with two and two qualified. So out of 62 qualified candidates we only have four who are either Aboriginal or visible minority, which is lower than the original proportion, but we have no control over the quality of the candidates. (Interview 5)

These comments reflect a type of “institutional inertia” (Ahmed et al. 2006: 75) whereby the lack of a representative board can be explained away, and in a sense, justified as an unfortunate but inevitable situation. The idea that the NPB has “no control over the quality of candidates” explains the lack of representation from non-white people. Yet, according to the same informant, the NPB tries “to have [qualifying] tests that are culturally sensitive” (Interview 5), which presumably means tests that do not privilege the knowledges and experiences of white Canadians. The informant also recognized that the NPB is “far from having reached that [greater representation], you know, the typical board member is still somebody in, on average, in their 50s” and the organization is “still predominantly white, central Canadians” (Interview 5). The focus on the representation of organizational diversity as the presence of racialized individuals as staff reinforces the idea that this presence alone can change policies and practices.

However, in relation to gender (i.e., (white) women), the same informant suggested that the NPB was doing “not bad” in terms of its gender composition, with the ratio of approximately 45 women to 55 men (Interview 5). Another informant concurred with this assessment, noting that (white) women were very well represented as NPB staff, including those in higher level positions and as members of the Executive Committee (Interview 12).

Ahmed et al. (2006: 78) suggest that “it is only certain kinds of difference that are

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60 This informant indicated that the NPB’s written test has been reviewed to assess its “cultural sensitivity” (Interview 5). I filed an ATI request to receive copies of any reviews of the tests, but this request yielded no documents.
61 Albeit in a joking manner, the informant noted that if representation was based on the inmate as opposed to general population, then the NPB would be doing very well in the area of women’s representation as board members, as the federally sentenced women’s population is much smaller.
acceptable” within organizations, such that “assimilable” differences are preferred over “unassimilable” differences. Perhaps in the case of white women, this group’s difference is more open to assimilation and less likely to challenge shared organizational values than non-white women and men.

Diversity and Risk Assessment

All informants agreed that sensitivity to difference was a necessary condition for making decisions and conducting parole hearings, both of which are centred on the assessment of risk. As noted in Chapter 1, the assessment of risk is mandated by the CCRA and focuses on whether or not the offender presents an “undue risk” to reoffend. Several informants highlighted the issue of communication between board members and offenders and how this can impact risk assessment.

[A] lot of it comes down to communication, to make sure that everybody’s understanding the same vocabulary, and when you ask a question, people are understanding what you ask and you understand what they are saying to you. I mean, there’s all kinds of examples of how men and women communicate differently, so this is important when we’re doing interviewing techniques, we actually spend some time on looking at the issues that could impede communication cross gender, cross cultural, […] and that in turn will have, can have an impact on your risk analysis. If you think someone is being evasive in answering your questions, but they come from a culture where giving you a direct answer is rude and they believe that, then you have to find another way of communicating because you could be misinterpreting their answers. (Interview 2)

[F]or one thing it’s all about the gathering of information to base their decision on, so it’s all these pieces of the puzzles. So the more that they can understand about the person in front of them, and you know, getting them to realize that they can actually learn from that person, will just give them more information, you know, on which to base their decision. (Interview 7)

[I]n terms of training it’s a big issue, how to approach interviews, […] basically the purpose of the hearing is to try to get a sense of the offender and if you can’t connect
with the offender at the hearing, then you’ve lost your chance and the offender has lost her chance. (Interview 13)

Aboriginal offenders and other offenders from various ethnic groups were also viewed as less able and/or willing to “spill their guts” at hearings. The idea that offenders should share openly during parole hearings reflects expectations around the presentation of a certain kind of self that conforms to the communication style preferred by the NPB (see McKim 2008). The idea that the NPB’s regular hearing approach was not working for all offender groups (i.e., non-white, non-male) was evident in the lack of communication between offenders and board members. As the above quotes reveal, diversity is believed to impact the hearing process, thereby requiring board members to be cognizant of offender differences, including those related to gender, ethnicity, and culture. Yet, the belief that diversity matters does not necessarily mean that board members know how to apply knowledge of offender difference to their decision making (e.g., Hannah-Moffat 2004a; Hudson and Bramhall 2005; Silverstein 2005); this point will be discussed in further detail in subsequent chapters.

Sensitization to difference was raised by several informants as being central to making quality release decisions, where sensitivity to various differences would contribute to improved information gathering and assessments of risk. According to one informant, “unless you understand what you’re dealing with you don’t make an informed decision” (Interview 13). It was therefore important to be sensitized to the issues facing particular racialized or ethnicized communities, such as knowing where people are returning to upon release and “where they come from” (Interview 13). For instance, one informant noted that board members need an awareness of the [offender’s] community, what’s unique to the community, what may be the impediments to communications, what may be the impediments to the cultural impediments to change. I mean, if you’re returning to a community that holds values that are in conflict with our law, with Canadian law, then it’s important to understand how that can be managed if the individual’s returning to a community. Or whether it presents a risk that can’t be managed. (Interview 3)

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62 The issue of reduced communication among Aboriginal offenders is one of the main reasons for the creation of elder assisted hearings.
Awareness of, and sensitivity towards, cultural and community differences—particularly those that deviate from Canadian norms and standards—were important for properly assessing risk. Sensitivity was also deemed necessary for understanding how different offenders react at parole hearings. In relation to female offenders, one informant noted that special interviewing approaches were needed because of women’s greater emotionality at hearings where many “just freak out” due to fear (Interview 13). In this particular example, it is possible that gender stereotypes may help shape the types of situations requiring sensitivity to difference.

Several informants viewed sensitivity as a necessary condition for treating offenders fairly and appropriately, such that differences among offenders mattered in the context of release decision-making. But to take gender or culture into account, one had to “know something or be sensitized to something that was going to assist the person” (Interview 12). Knowledge of the other was viewed as essential to the process of assessing risk and making decisions.

I mean, you don’t do a hearing of someone that is a Chinese, for example, a Chinese offender, without knowing what’s the background, the cultural background, because—and their own experience of their community—because you can interpret completely out of context the way they talk to you, the way they look or don’t look at you, and things like that. (Interview 4)

[A]s a board member you come to an appreciation that there are different paths to reducing risk and to changing behaviour. (Interview 3)

For these informants, sensitivity to offender diversity is linked to the ideal of a ‘fair’ and culturally sensitive process, one that helps ensure parole hearings are handled ‘properly’ based on offenders’ differences. One technique for attending to difference that was raised by several informants involved “put[ting] yourself in someone else’s shoes, to be able to understand where someone else came from and where they’re going back to” (Interview 8). Informants also spoke of the need to recognize culture and gender as filters that shape how people see the world and these influence decision-making. Board members therefore need to be “aware of their own perception and how it colours, can colour, their assessment and their decision” (Interview 4).
In sum, being responsive to diversity through sensitization to, and awareness of, difference was perceived as a benefit as it contributes to what many informants identified as quality decision-making. Although informants did not define the term explicitly, in the context of the interviews quality or appropriate decision-making emerges as a practice that requires board members to ensure that they are able to effectively communicate with offenders across gender and/or cultural lines to gather information upon which to base their decisions. Inaccurate or misconstrued information based on a lack of cultural or gender sensitivity or awareness was seen by several informants to impede decision-making and potentially lead to unfair decisions. Officially, a “quality decision” is guided by eight “hallmarks”, of which “a responsiveness to diversity” is part (NPB 2011c, Ch. 2.2: 23). Attention to diversity is therefore something required by policy, linking issues of sensitivity and awareness to notions of accountability in decision-making.

Exactly how knowledges of difference and sensitivity to diversity are used to make quality or appropriate decisions remains less clear. As previous research has shown, the interpretation and application of cultural and gendered knowledges in practice is often problematic (see Hannah-Moffat 2004a; Hudson and Bramshall 2005). The focus on sensitization leaves unquestioned the existing decision-making criteria and processes; these issues will be explored in greater detail in Chapter 5. Indeed, this knowledge of the other was viewed critically by one informant, who was worried how it would be taken up and applied during hearings:

I guess I was always worried [...] in relation to Aboriginal offenders, oh yes, they got training about [how] Aboriginal people don’t look you in the eye, they don’t do this, they don’t do that. Well, sorry, some do look you in the eye, and if they do, I was always worried that board members would think, hmm, this is a high risk, look at that, he has no respect for me, he’s looking me right in the eye, you know, kind of a thing. (Interview 7)

63 Other components include making decisions that protect the public while being consistent with the principle of the least restrictive option; reflect an impartial deliberation of the case while being consistent with the duty to act fairly; and is based on pertinent and accurate information and follows the NPB’s policies (NPB 2011c, Ch. 2.2: 23-24).

64 I made an ATI request for sections of the Board Member Risk Assessment Manual that focus on Aboriginal offenders, women offenders, ethnocultural offenders, and cultural perceptions in order to explore how issues of risk assessment and decision-making are articulated in relation to these populations. However, I was informed that the NPB, citing sections 21(1)(a) and 21(1)(b) of the ATIA, could not release the Manual because the organization was concerned that its release would set a precedent and potentially result in offenders learning how board members make decisions (personal communication, January 10, 2011).
The informant points to the challenges associated with being sensitive to diversity. As Ahmed and colleagues (2006: 86) point out, “[t]he concept of ‘educated racism’ challenges the assumption that racism is about a lack of education or knowledge, as a form of ignorance or intolerance”. Instead, racism can be understood as “a way of ‘knowing the other’ rather than produced by an absence of knowledge” (ibid.). Educated forms of racism may be expressed subtly or politely and in well-meaning ways through practices around knowing the other (ibid.: 90), as the informant astutely observes in the above quote.

Although knowledge of gendered and racialized offenders and different processes for gathering information were seen as important for assessing risk, several informants stressed that risk was still the primary concern; this follows the prescriptive clauses of the CCRA around decision-making. As one informant noted in relation to women offenders,

[w]e certainly can’t assume because they’re women there’s no longer risk issues… [W]e still have to consider are they a risk, at risk to commit another crime… [W]e can’t ignore risk where it exists. (Interview 3)

According to another informant,

[t]he risk assessment will be the same for Aboriginal as non-Aboriginal or, you know, Vietnamese as non-Vietnamese, or women or men, the assessment of risk will remain the same. It’s how we get the information leading to the assessment of risk. (Interview 11)

Issues of gender, race, and culture are to be taken into account, yet the primary focus, as required by law, is the assessment of risk—a concept and practice that is constituted as neutral and ahistorical, yet scholars have argued is gendered and racialized (see Stanko 1997; Walklate 1997; Hannah-Moffat 1999, 2004a, 2005; Chan and Rigakos 2002; Maurutto and Hannah-Moffat 2006; Hannah-Moffat and O’Malley 2007). The positioning of diversity as secondary to risk has been found in other areas of the criminal justice system that have attempted to respond to difference. For example, in their study of pre-sentence reports in the context of section 718.2(e) of the Criminal Code and Gladue, Hannah-Moffat and Maurutto (2010: 263) found that the narrow focus on risk superseded “the type of contextualized analysis of race required by Canadian law”. Several NPB documents also reflect the notion that training in cultural awareness and sensitivity does not supplant risk to public safety as the key concern, as required by law. Instead, awareness of, and sensitivity to, other cultures
helps board members “to study files better, and to select the information they need to assess an offender’s readiness for release” (NPB 2010b: n.pag). As the NPB (2006b: 17) puts it, “[b]eing responsive to diversity lends itself to enhanced and improved information collection for quality decision-making”. The organization’s diversity initiatives (e.g., EAHs, CAHs, sensitivity training, community outreach, etc.) are understood to allow board members to gather better information about others that, in turn, allows them to make better decisions. This focus reinforces organizational concerns around legal compliance and potential litigation as a major institutional driver for change.

Commitment to Diversity

Interviews with informants revealed a range of opinion as to the NPB’s commitment to issues of diversity. To some informants, the NPB has welcomed diversity initiatives, while to others there has been significant resistance to change. According to one informant, “the Board has been perceived as being the leader in terms of the appointment process [for board members] and in terms of the [sensitivity] training process” (Interview 13). The same informant did not “think there’s any board in the world that gives as much training” as the NPB (Interview 13). In this sense, the NPB’s commitment to cultural and sensitivity training reflects the organization’s openness to diverse others.

Several informants noted that there appeared to be limits to the accommodation of diversity initiatives. For instance, the idea to analyze each policy developed and adopted within the organization against its impact on diversity (i.e., Aboriginal offenders and gender issues) “was difficult to accomplish” and eventually “didn’t work” because of a lack of institutional support (Interview 13). Another informant indicated that the work of the Aboriginal and Diversity Initiatives section has been “scaled back” in recent years, given a long stretch of time in which the Manager position was vacant and the fact that the unit is “no longer represented on senior management or Executive Committee” (Interview 8). According to another informant, “whether you move ahead [with diversity-related initiatives] or not, is very much at the discretion of the powers that be” (Interview 7). This same informant highlighted the varying levels of will at the NPB among senior management to support and legitimize the work of the Aboriginal and Diversity Initiatives section. As the

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65 Document obtained through ATI request no. A-2010-00006 to the NPB.
informant put it, the section was essentially at the “mercy” of senior management (Interview 7). In this sense, the informant indicated that work on, and commitment to, diversity at the organization varied according to who was in charge.

Although the NPB may express its commitment to diversity and to being responsive to legislative provisions that require attention to difference, this does not necessarily lead to substantial changes in organization culture. In this sense, organizations may demonstrate they are responding to diversity, but on superficial levels (Brayboy 2003; Ahmed et al. 2006; Wrench 2005). The work of doing diversity within organizations may be met with a lack of support among senior management, few or no resources, and a resulting lack of power within the organization to bring forth a diversity agenda. The potential sidelining of diversity initiatives may occur even as an organization outwardly portrays itself as being concerned about, and responsive to, issues of diversity.

One informant pointed to the need to change the organizational culture of the NPB so that issues of diversity are “always in people’s mind” and “become part of the culture” (Interview 13). The informant felt that there is a limit to what can be accomplished through policy because “in the end it’s a question of individual sensitivity and individual approach” (Interview 13). Similar observations were expressed in a discussion paper on Aboriginal issues, which points to the need for diversity to be an ongoing project, rather than as something that can be ‘finished’:

[T]he Board must never allow itself to become too comfortable with its accomplishments or it risks becoming stagnant. The NPB must continuously re-examine what it is doing to ensure that it continues to grow and develop processes to meet ever changing needs. (NPB 2000a: 11-12)  

According to this perspective, “diligence” is required so that organization continues “its efforts to improve the way of doing business with Aboriginal peoples, be they offenders, organizations, or communities” (ibid.: 11). Organizational commitment to ongoing attention to Aboriginal and diversity issues is therefore viewed as fundamentally important to bringing about change within the organization.

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66 Document obtained through ATI request no. A-2009-00017 to the NPB.
Conclusions

This chapter examined how the NPB has responded to diversity over time, including the creation of the present-day Aboriginal and Diversity Initiatives section, and other initiatives undertaken at the organization to address the problem of difference, such as diversity committees, newsletters, community outreach, and the Aboriginal Circle. As detailed in Chapter 2, the CCRA mandates that the organization attend to gender, cultural, and ethnic differences, including the special needs of Aboriginal and female offenders, within its policies. This chapter narrowed the analytical focus by examining how issues of diversity are recognized, understood, operationalized, and institutionalized by the NPB over time. A key concern was the constitution of diversity within the organization. Drawing on anti-racist feminist and organization studies literatures, I illustrated how certain differences and categories of offenders are constituted as targets for accommodation and as having special needs. Although anti-racist feminist literatures are helpful for understanding how ideas about gender and diversity are taken up in organizations, the focus on repressive power relations limits insight into the processes by which these constructs are appropriated and redefined through organizational practices. Diversity ideals and discourses are incorporated in ways that complement existing institutional structures.

This chapter advances our understanding of how the NPB has grappled with issues of difference by considering the various ways that gender and diversity have been institutionalized. My analysis of interviews with informants and institutional documents demonstrates that the term diversity implicitly refers primarily to race and ethnicity and sometimes gender. A critical deconstruction of how issues of gender and diversity are framed within the organization illustrates the underlying meanings behind complex constructs. I argue that the framing of diversity in this way is important, as it shapes (not causes) the scope and content of approaches taken to create a more responsive and inclusive organization. The institutionalization of diversity reflects a selective understanding and inclusion of difference, as well as a lack of clarity around exactly how and when differences matter in the context of conditional release.

The chapter also examined the various responses to diversity at the NPB as articulated by informants and within key documents. The main themes that emerge relate to the impetus for the organization to change, how diversity is believed to impact risk
assessment and decision-making, and how the organization is committed to diversity. Informants pointed to the need for organizational change as manifested in the increasing diversity of the offender population and internal and external pressures to ensure the organization is representative of this diversity. Informants also agreed that issues of difference impacted release decision-making and how parole hearings are conducted, both of which involve the assessment of risk. In relation to organizational commitment to diversity, the interviews yielded a range of opinion as to the NPB’s commitment: to some informants, the NPB welcomed diversity initiatives, while to others there was significant resistance to change in this area. This range of views about the inclusion of diversity within the organization underlines the challenge of creating culturally appropriate or gender responsive penal practices and how ‘best’ to deal with gender, cultural, or ethnic others.

With the general recognition of the need to take differences into account, questions emerge as to how this can occur in practice. The chapter’s exploration of the creation of the Aboriginal and Diversity Initiatives section, the various forms of diversity work that take place within the organization, and informants’ perspectives on how diversity matters to conditional release revealed that the organizational uptake of diversity is by no means a straightforward or simple process. The data presented here illustrate the challenge of accommodating diversity, including which differences are recognized, how they are known, and what sorts of responses can be developed as a result. As Minow (1990: 20, emphasis in original), in what she refers to as the “dilemma of difference”, asks:

when does treating people differently emphasize their differences and stigmatize or hinder them on that basis? and when does treating people the same become insensitive to their difference and likely to stigmatize them on that basis?

This quote captures the challenge of accommodating diversity and how best to be responsive to difference. Emphasizing certain differences through processes of othering may subject particular offenders to regulation based on various gendered, racialized, or cultured differences. These questions speak to larger themes of the dissertation around how issues of gender and diversity are seen to matter in the context of punishment. In the next chapter, I build on the discussion of how diversity has been taken up by the NPB by focusing on diversity in the context of organizational performance culture. More specifically, I look at the
incorporation of diversity into organizational processes oriented around performance management and corporate planning.
Chapter 4
Performing ‘Inclusion’, Managing ‘Reputation’: Diversity in the Context of Organizational Performance Culture

This chapter is about the representation of organizational responses to diversity in institutional documents. The documents are used for corporate planning, audit, and performance management functions for the NPB. These seemingly mundane practices are important because they “represent events and phenomena as information, data and knowledge” (Inda 2006: 7) that constitute diversity and simultaneously monitor and measure the accomplishment of diversity goals. The NPB’s various documents to monitor its operations, plan its activities, and frame its commitments are important texts for analyzing how diversity issues are incorporated into organizational processes. These documents can be viewed as what Ahmed et al. (2006: 27) term “institutional speech acts”: “speech acts that make claims ‘about’ an institution, or ‘on behalf’ of an institution”. Accordingly, these documents illustrate how ‘inclusion’ is performed and ‘reputation’ is managed in relation to the problem of difference. Institutional speech acts help frame how the NPB is responding to the challenges presented by diverse groups of offenders whose special needs, as recognized by law, call for accommodation. Corporate planning, audit, and performance measurement documents also provide organizational accountability for addressing diversity issues, including those mandated by law. By translating organizational diversity practices into corporate documents, the organization makes its work intelligible, and therefore open to critical review.

This chapter analyzes how issues of diversity and Aboriginality are understood and articulated in several NPB documents that contribute to the performance of inclusion and management of reputation. It begins with a brief overview of the literatures on organizational risk management and organizational performance culture to help situate the NPB’s corporate planning, audit, and measurement practices for diversity issues in a broader context. I consider how the NPB’s diversity work has been taken up within these practices, including how diversity is constituted and the challenge of translating diversity work into auditable or measurable artifacts. Next, I analyze several corporate planning, vision, and policy documents to explore how issues of diversity are implemented and how these documents
may work to perform inclusion and manage the NPB’s reputation (and image) as an organization that is responsive to diversity.

Managing Institutional Reputation

In his discussion the larger context of organizational risk management, Power (2007: 129) points to the emergence of reputation in the mid-1990s “as a discrete category of managerial concern”. He suggests that reputation is constituted through the institutional practices designed to monitor, measure, and evaluate it (ibid.: 141). Yet, the “essential nature” of organizational reputation is its “potential unmanageability” (ibid.: 129). In the context of prison governance, Murphy and Whitty (2007) and Whitty (2010) have drawn attention to the intersections between reputational risks and human rights issues. As Whitty (2010: 2) argues, there has been an “increasing recognition that human rights have the ability to manifest as significant organisational [sic] risk”. Non-compliance on the part of corrections and conditional release institutions with various legislation and policies pertaining to the rights of offenders (and concomitant duties of the state) becomes a risk that could result in damage to the organization’s reputation “irrespective of actual legal liability” (ibid.). In this chapter, I extend this analysis to further our understanding of how the NPB’s recognition of gender and diversity relates to institutional reputation, where the failure to attend to these differences constitutes a risk to the NPB’s image. This recognition enables the organization to publically show that it is both progressive and legally compliant, as well as observant to its diverse clients’ needs.

Organizational diversity initiatives can be seen as strategies for “managing difference as a site of risk” (Bell 2006: 154). In the context of the NPB, gender, cultural, and racial categories are drawn upon “to articulate how components of the population require special management” (ibid.) as organizational risks. Such risks are reputational because a failure to respond to diversity can put the organization in contravention of legislation, thereby making it susceptible to legal challenges, and the subject of critical commentary in the news or public realms. Institutional concerns over reputation may encourage compliance with various laws and policies related to diversity. In some cases, legislation and policy encouraging and/or requiring institutional responses to diversity may be viewed more as reputational risks and problems to be managed, rather than as ‘goods’ in and of themselves (Murphy and Whitty
However, my research indicates that institutional concerns about managing reputation risk and maintaining an image of the NPB as being responsive to diversity coexist with other rationales for accommodating difference.

Performing Inclusion: Diversity within ‘New’ Organizational Cultures

Several commentators have noted how organizational responses to diversity “are part of a wider cultural shift, where diversity and equality are becoming part of performance and audit culture” (Ahmed and Swan 2006: 97; see also Ahmed 2006; Ahmed et al. 2006; Mirza 2006). This cultural shift has been situated in the larger context of public sector restructuring observed in several western countries where public administration has become increasingly managerial, entrepreneurial, and service-driven (Ahmed et al. 2006; Carlen 2008). Under the umbrella of neoliberalism and in the context of the “new public management”, “the emphasis on solving entrenched, complex social, political and cultural and economic problems is reduced to ‘technicist explanations and solutions’” (Ahmed et al. 2006: 15). At the same time, public sector organizations have also been “transformed to varying degrees by discourses about risk and its possible management” (Power 2007: 1; see also Hood et al. 2004; Rothstein et al. 2006). Organizational concerns are being reframed as categories of risk—financial risk, legal risk, political risk, etc.—thereby subjecting institutions to “a new mode of accountability and monitoring in the name of risk” (Power 2007: 4).

Increasingly, diversity is being translated into documents and other measures that can be evaluated and assessed as indicators of organizational performance (Ahmed and Swan 2006; Ahmed 2007b). This practice of turning responses to diversity into performance indicators appears to be part of a broader trend seen within a wide range of organizational contexts, from universities (see Ahmed et al. 2006; Ahmed 2006, 2007) to companies (see Benschop 2001; Power 2007). Mirza (2006: 150) has pointed to the “bureaucratization of diversity” as initial concerns over recognition and inclusion have been translated into an approach that focuses on monitoring progress and tracking difference. As such, diversity policies become measures of “good performance” (Ahmed and Swan 2006), thereby creating an “institutional paper trail” (Mirza 2006: 150) that shows how diversity has been done. In this sense, diversity is becoming packaged as if it is “a property of objects that can be passed around” (Ahmed 2006: 115) and tallied up. Research by Edelman and colleagues (2001) has
also highlighted how legal models related to diversity are transformed by managerial rhetoric, resulting in what they term the “managerialization of law” whereby legal concerns around discrimination or ameliorating historical injustice are replaced by a notion of diversity geared toward organizational concerns. These studies draw attention to the need to consider how diversity is taken up within organizational settings.

Ahmed and Swan (2006: 97) stress the importance of analyzing “how diversity is being ‘done’ through technologies of audit, inspection and monitoring” within organizations. Previous research suggests that bureaucratic and audit-focused approaches to diversity—such as those which privilege tick boxes and paper trails—may result in less focus on actually doing diversity work (i.e., bringing about change) and more on its tracking (i.e., such work is done when the appropriate boxes can be ticked) (Ahmed et al. 2006; Ahmed 2006, 2007b; Swan 2010). Technologies of audit and performance monitoring are also seen to be gendered and racialized, reflecting and reinforcing masculinity and whiteness (Swan 2010). The tracking and auditing of diversity indicators within organizations may therefore represent an attempt to turn implicitly feminized diversity initiatives into hard data. The technicist approach to diversity can also be seen in the framing of diversity initiatives as ‘best practices’, which typically exist as lists of strategies for countering inequality (Kalev et al. 2006). For instance, the NPB’s Cultural Hearings Working Group identified the hearings for Aboriginal offenders (i.e., EAHs and CAHs) and ongoing community outreach as best practices (NPB 2006b). As best practices, such initiatives can be standardized and measured as quantifiable evidence to show that the NPB is being responsive to diversity.

The shift toward audit and performance cultures within organizations is reflected in discourses relating to the ‘management’ of diversity. In this sense, difference is portrayed as a key challenge facing modern organizations (Benschop 2001), yet one for which a ‘business case’ can be made (i.e., diversity strengthens and/or improves organizations) (Herring 2009). Yeatman (1990) and Edelman et al. (2001) have pointed to the potential for notions of equality, and by extension, diversity, to be co-opted by managerial concerns, such that they are reframed in terms of how they can serve organizational management or corporate interests, and not as goods in and of themselves. Similarly, Puwar (2004: 124) suggests that the development of policy initiatives under the banner of diversity carries with it “the unspoken small print of assimilation [and] a ‘drive for sameness’”. The regulation and
management of difference—whether it be gender, racial, cultural, etc.—fall under various administrative logics which can determine ‘how much’ difference can be tolerated or accommodated by an organization (ibid.).

One informant pointed to a benefit of turning diversity issues into performance indicators and as part of performance agreements for senior management. Namely, the informant suggested that “if you really want to get movement on something, you got to hit them in the wallet [i.e., performance bonus]” (Interview 7). As indicators of performance, diversity issues were tied to senior managers’ performance agreements; it is unknown if this is still the case. However, previous research suggests that audit is like a ‘stick’ that compels action because organizations tend to “only take seriously the activities that are audited and attached to financial returns or penalties” (Ahmed 2006: 115). Moreover, as Power (1997: 33) has argued, audit culture has a generative effect by making things auditable; that is, it produces an audit system by generating documents and other things (e.g., performance agreements) that are assessable. By making diversity something that can be audited, the benefit is that the organization has to do something in order to show it has done something, such as through the creation of an auditable paper trail (Ahmed 2006).

The NPB’s diversity work is captured and displayed through a variety of institutional reports that document performance. These include Performance Monitoring Reports, Departmental Performance Reports, and Reports on Plans and Priorities. Diversity work is not, of course, the main focus of such performance reports, but is nonetheless captured at various points. Performance monitoring involves “the use of empirical indicators to document the extent to which intended services and activities are undertaken and to measure outcomes that are supposed to result from these services and activities” (Mears and Butts 2008: 266). From such monitoring, various trends in, and outcomes of, activities and service delivery may be tracked as a means to determine effectiveness (ibid.). In addition to the performance reports noted above, the organization can also count the knowledge products—that is, the various consultants’ reports and literature reviews on specific populations like Aboriginal and ethnocultural offenders—to demonstrate proof that diversity issues are taken seriously.

The NPB’s diversity work has also been included in the annual reports of the Canadian Multiculturalism Act (see Citizenship and Immigration Canada 2008, 2009). The
The Act requires federal institutions to provide yearly input on their activities (NPB 2006c: 2). For instance, the 2007-08 report describes how the organization has established regional diversity committees and participates with the CSC in regional Ethnocultural Advisory Committees as part of programs or policies that enhance respect for diversity or take diversity into consideration (Citizenship and Immigration Canada 2009: 58). The report also mentions the NPB’s study of interpretation at conditional release hearings as helping to support Canada’s “multicultural reality” (ibid.: 69), as well as the community consultations and partnerships with African Canadian Nova Scotian community groups in the Atlantic Region as part of organizational efforts to improve services for ethnocultural groups (Citizenship and Immigration Canada 2008: 65).

The various forms of diversity work (e.g., committees, newsletters, consultations, training, etc.) undertaken at the NPB are translated into auditable products that can be counted and summarized as evidence that the organization is doing something about diversity. These techniques enable the organization to appear diverse and responsive to the issues facing various diverse groups of offenders, communities, and victims. In relation to institutional reputation, audit and performance monitoring cultures may have some benefit in terms of holding penal institutions to account. As Mears and Butts (2008) contend, performance monitoring can be seen as a mechanism of accountability for criminal justice institutions. Such monitoring is believed to capture the degree to which operations and reforms are working as planned. Assuming institutional transparency exists, interested individuals and agencies can help track the degree to which the institution’s speech matches its acts.

However, several informants pointed to the difficulty of quantifying diversity work. As one informant explained,

Part of the difficulties with Aboriginal Initiatives and like elder interventions and stuff like that is [...] how do you add on paper and write it in the report and give it a number and [...] say okay now their [...] risk to re-offend is reduced by 5% because they spoke to an elder or because they went to a naming ceremony. (Interview 11)

Such difficulties emerge “when the internal rules and measures of assessment derive from the field of accountancy” (Davies and Gregory 2010: 404). Because of the difficulties

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67 Document obtained through ATI request no. A-2010-00042 to the NPB.
associated with determining whether program objectives are achieved (i.e., outputs), the focus may shift toward the tracking of program operations (i.e., inputs) and assessments of participant satisfaction (e.g., feedback surveys) (Carlen 2008: 3).

Another informant noted the complexity of measuring the success of the organization’s diversity work and the length of time needed to assess the impact of its initiatives, particularly if the focus of measurement was recidivism rates (Interview 5). This informant stated:

There are so many factors that interface with success. The Correctional Service has had a difficult fiscal period if you wish, their budgets have been short for several years now. The nature of criminality has changed significantly, so how can you isolate, you know, these little programs, what the impact of these programs has been on the outcome, it’s impossible to isolate because there are other multiple factors… But the point is there should be no visible, if you wish, obvious discrimination.

(Interview 5)

The emergent concern is for the organization to appear responsive to diversity, even if the outcomes of the “little programs” cannot be quantified. If the organization cannot demonstrate that its programs are having the desired results (e.g., lower recidivism rates), then it can at least show that it is doing something to respond to issues of diversity.

Davies and Gregory (2010: 403) have argued that “the values, goals and technologies of performance management, deriving as they do from the field of accounting, are inadequate when used to evaluate organizations such as the probation service, the work of which is not adequately judged by a calculation of the number of tasks completed within a time frame”. This observation is also relevant to conditional release and the difficulties associated with measuring diversity work. For instance, the challenge of measuring the performance of diversity initiatives like EAHs and CAHs is compounded by the logics of performance management which tend to be directed toward numerical outputs (ibid.). In this sense, the measurement of such initiatives necessitates different standards in terms of outputs; EAHs and CAHs cannot logically be measured against same standards for regular hearings (e.g., in terms of time, resource expenditures, etc.). In the following section, I shift focus to analyze how diversity issues are taken up with institutional documents related to corporate planning, strategic visions, and corporate strategies.
Diversity within Corporate Planning

Corporate planning is another technique of managing diversity and monitoring the organization’s response to the various challenges presented by an increasingly heterogeneous federal offender population. Such planning aims to enable the organization to capture diversity-related activities and track the organizational response (NPB 2006c). In 2006, the NPB developed a ‘Framework for Cultural Competence Planning’ to “facilitate the Board’s ability to strategically plan activities relating to Aboriginal, women, and ethnocultural offenders, as well as their communities” (ibid.: 2). This Framework is also supposed to help “the operational planning process” by providing information about, and placing emphasis on, “ Aboriginal and diversity related initiatives”, as well as by providing “a vehicle to monitor progress, resource, and program issues” (ibid.: 2-3). As a tool for planning, the Framework aims to keep diversity on the agenda.

In developing its Framework, the NPB (2006c) considered the recommendations of the Aboriginal Circle in its ‘Role, Vision and Priorities’ document (see NPB 2005b). The Aboriginal Circle’s definition of cultural competency is based on the organization’s “willingness and ability to recognize that difference does matter” (NPB 2006c: 4). Cultural competency is reflected in the (racial/ethnic) make-up of the organization, its consultancy work with “diverse communities”, the existence of policies and practices that consider difference, and respectful and responsive human resources management. These facets of cultural competency are perceived to be relevant to corporate planning activities because “Aboriginal and diversity initiatives cover virtually every area” of the organization: “Human Resources, Board member and staff training, public education/citizen engagement, performance measurement, communication, policy, finance and resource allocation, [and] administration” (ibid.). This statement reflects a push to ensure diversity issues are accounted for in all aspects of the organization’s work.

The notion of cultural competency is relevant to corporate planning in three main ways. First and foremost, human resources planning considers diversity needs related to hiring, staff and board member recruitment, training, and staff retention to ensure the organization has “employees who reflect the diverse make-up of the community they serve” (NPB 2006c: 4). It also plans for various accommodations for “differences in the workplace” according to the business model of diversity; that is, that a “fair and equitable” workplace
bolsters its “business opportunities, thus taking advantage of diversity” (ibid.). In this sense, diversity is a resource that does something for an organization, such as through its outward appearance and reputation as a certain kind of organization, one that cares about difference (Ahmed 2007b).

Second, planning for public education and citizen engagement would aim to “put a face on the Board and identify ‘target’ communities as dictated by the diversity within a given region” (NPB 2006c: 4, emphasis added). The NPB can plan for how it represents itself (its “face”) and to whom (the targeted communities). Public education and citizen engagement planning for diversity can focus on presenting a particular face for the organization, one that is representative of the community and being responsive to their needs. This type of rationale is reflected in outreach activities, such as those for Aboriginal communities, discussed in the previous chapter.

Third, operational planning for policies, protocols, and practices would reflect the “dynamics of difference” (NPB 2006c: 5). Such differences include those related to Aboriginality, ethnicity or culture, and women. Cultural competency assists operational planning by setting a reminder that organizational activities are to be sensitive to difference. Such an approach involves the use of a policy consideration checklist to ensure various differences are (at minimum) considered or perhaps even analyzed in depth.68 Interestingly, one informant attempted to establish such a process:

that for each policy that [the organization] developed and adopted there would be reference to how it would impact on diversity, on Aboriginal offenders, and on gender issues. And that was difficult to accomplish because I had to push back and push back and push back. And frankly it didn’t work [because of lack of support].

(Interview 13)

According to the same informant, “if you want to ensure that it’s always in people’s mind then you’ve got to provide a mechanism where they can’t forget about it” (Interview 13). It appears that the Framework document attempts to institute such a mechanism whereby operational planning is to “involve the identification of specific activities relating to Aboriginal and diversity initiatives which build upon each other over multiple fiscal years”

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68 The NPB’s (2006c) Framework document includes as an annex CSC’s ‘Diversity, Gender and Cultural Sensitivity Checklist for CSC Policy Development’.
The inclusion of such initiatives in the organization’s corporate plans would thereby allow for their monitoring, evaluation, and, more importantly, appropriate resource allocation.

The Framework document maps out a four-phase action plan to implement cultural competency within the organization (NPB 2006c: 5-6). This action plan includes specific tasks and activities to ensure corporate planning exercises would include planning related to Aboriginal and diversity initiatives. The intent appears to embed cultural competency within planning such that all future activities would have Aboriginal or diversity related components and mechanisms to achieve cultural competency. The goal for phase four is an “effective and culturally competent organization” (ibid.: 6). This suggests that by following phases one to three, diversity will be achieved, as if it is a project with a completion date rather than an ongoing process of integrating and attending to issues of difference.

Diversity within Corporate Vision Statements

The NPB’s corporate visions work to constitute problems and solutions in relation to diversity. Although not strictly focused on such issues, these vision statements outline the various “challenges” and “opportunities” that diversity poses, as well as visions for organizational direction and corporate strategies to achieve these visions. The Vision and Strategic Plan 2000 and Beyond (NPB 1999) and Vision 2020 – Public Safety, Public Service (NPB 2009b) are two documents that can be read as “institutional speech acts” because they “make claims ‘about’ or ‘on behalf’ of an institution” (Ahmed 2006: 104; see also Ahmed et al. 2006). As speech acts, these documents are authorized by the institution, make claims about it, and point toward future courses of action. Yet, as Ahmed (2006) argues, these speech acts do not necessarily do what they say, and can be non-performative by failing to bring about the intended actions or consequences.

The NPB’s corporate vision statements are similarly formatted, including an introduction, environmental scan, vision, and set of corporate strategies. The 1999 Vision and Strategic Plan 2000 and Beyond is framed around the “new millennium” and the challenges and opportunities the NPB faces in carrying out its program of conditional release (NPB 1999). The document also describes the legal context in which the organization operates, including the Charter and CCRA, as well as the philosophical focus on rehabilitation and
reintegration as key values upon which conditional release in Canada was based (ibid.). While also noting a similar legal context and the origins of conditional release, the 2009 *Vision 2020 – Public Safety, Public Service* document is largely framed around issues of public safety (hence the title), including victim involvement and the threat of terrorism (NPB 2009b). Its orientation toward public service is also reflected through a greater focus on effectiveness and accountability in the organization’s resource management (ibid.). Because this document replaced the 1999 *Vision and Strategic Plan 2000 and Beyond*, it will be the focus of discussion here.

Diversity as a ‘Challenge’

The *Vision 2020* document’s “environment scan” frames issues related to diversity and Aboriginal peoples as a “challenge” to the organization’s program delivery (NPB 2009b: 7). In other words, these issues are seen as adding complexity to the conditional release process. The document raises three challenges in this regard: changing demographics; the over-representation of Aboriginal peoples in the criminal justice system; and the growing diversity of the Canadian population (ibid.). These issues are challenging to the organization for a number of reasons, including the potential impacts on resources. These challenges do, however, also raise questions as to the adequacy—and perhaps legitimacy—of the NPB’s standard operating procedures in the face of difference.

In relation to demographic change, concern is expressed over the “above-average growth in Aboriginal populations” (NPB 2009b: 8) in a context where the ‘general’ Canadian population is aging and growth is occurring mainly due to immigration. These general population trends are contrasted with the higher birth rates of Aboriginal populations. The assumption here is that the higher Aboriginal birth rate may lead to more Aboriginal participation in crime and consequently add to their over-representation within the Canadian penal system. This assumption is reinforced in the discussion of the second challenge regarding the over-representation of Aboriginal peoples in the criminal justice system, which is identified as having “reached crisis proportions” (ibid.: 12). The NPB (2009b: 13) notes that the “baby boom” will increase the “numbers of Aboriginal youth approaching what are perceived to be the most crime-prone years”, in conjunction with other trends, such as the movement of Aboriginal youth to urban centres, where ostensibly they are at greater risk of
criminal offending. These concerns about the perceived population growth for Aboriginal peoples and their move toward urban living are expressed in other NPB documents (e.g., NPB 2008a, 2009e).69

As Spivakovsky (2009: 217) argues, the over-representation of Aboriginal offenders in the criminal justice system tends to be rationalized as both a problem and a symptom of Aboriginal difference. In other words, Aboriginality is the reason for criminality and higher rates of incarceration, rather than inappropriate criminal justice approaches (ibid.; see also Murdocca 2007) or more systemic issues related to racism, discrimination, and poverty. The notion of an Aboriginal baby boom shifts the focus away from such broader systemic issues—such as poverty and substandard healthcare—to a problem of population. The document, however, does suggest that Aboriginal offenders are at a disadvantage at every stage of the penal system (NPB 2009b). For instance, in relation to conditional release, the NPB (2009b: 12) notes that Aboriginal offenders are less likely to be granted full parole and more likely to be released on statutory release. The document diplomatically states that this could be either a ‘good’ thing (i.e., without statutory release Aboriginal offenders would not have a chance to be in their communities prior to warrant expiry) or a ‘bad’ thing (i.e., evidence that the conditional release system has failed to engage Aboriginal offenders resulting in a default use of statutory release for this offender population) (ibid.).

The challenge of Aboriginal over-representation is one that the NPB indicates it cannot resolve (NPB 2009b: 13). Instead, the organization can “make sure that Aboriginal offenders, victims and communities are aware of their rights with respect to parole and pardons and that there are no systemic barriers to Aboriginal involvement in these areas” (ibid.). This includes having “policies and training that recognize the unique societal and cultural factors related to Aboriginal offenders and their communities” and the pursuit of “alternate models for parole hearings”, such as those involving elders and community members (ibid.). In addition, the document indicates that the NPB must ensure its workforce “includes appropriate Aboriginal representation”, although there is no explanation as to what

69 Yet, as a member of the Aboriginal Circle pointed out in relation to this trend, Aboriginal peoples’ move to urban centres is often not a matter of ‘choice’ or ‘free will’, but rather due to the uninhabitable conditions of many communities and forced relocation by the government. See NPB (2005c; document obtained through ATI request no. A-2010-00030 to the NPB).
“appropriate” means in this context as no precise targets are indicated. According to one informant, the *Vision 2020* document recognizes that the over-representation of Aboriginal offenders is “a massive issue and that it’s something that needs to be addressed for the National Parole Board as well as CSC” (Interview 11). Yet, the document frames over-representation as a cultural problem, rather than an organizational or systemic problem (van Dongen 2005: 191). The problem is constituted as *their* difference, not the inability or unwillingness of penal systems or policy approaches to change.

The third challenge relates to the growing diversity of the Canadian population. Although the term diversity is not explicitly defined within the document, it is linked to notions of “Canada’s ethno-cultural composition”, which is said to have “changed remarkably in recent decades” (NPB 2009b: 8). Diversity is connected to non-white, non-Christian, non-English or French speaking others who are expected to ‘arrive’ within the penal system in increasing numbers, thereby impacting conditional release programs. According to the document, this “[i]ncreasing diversity will be reflected in the fabric of Canadian communities and in the culture and ethnicity of offenders and victims of crime” (ibid.). This discursive construction of diversity positions difference within racialized and ethnicized offenders, victims, and communities (Puwar 2004; Ahmed 2007a), who in turn are portrayed as an “invasive force” (Bannerji 2000: 4).

The anticipated institutional impact of this increasing diversity is twofold. First, the organization must ensure it is “representative of the community”, as per section 105 of the *CCRA* (NPB 2009b: 8). The NPB (2009b: 8) states that this may require institutional adjustments due to the “growing diversity in the workplace”, including “the development of culturally respectful polices and training, and new management skills and approaches”. Here, it can be assumed that the “growing diversity” involves greater numbers of non-white bodies entering the organization as workers. Second, the NPB’s “policies, training and decision tools must respect issues of diversity and gender and build understanding of the factors associated with risk and public safety for special groups of offenders and the communities to which they will return” (ibid.). It is not clear exactly what “issues of diversity” are seen to be relevant. In addition, the inclusion of gender here in this context is interesting as it seems to

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70 In one of its Performance Monitoring Reports, the NPB (2007b: 25) notes that the Treasury Board Secretariat sets workforce targets for Aboriginal and other groups based on census information, which are used to determine the degree to which the organization is representative of the Canadian population.
be appended to diversity, which implicitly refers to ungendered ethnocultural offenders, communities, and victims. It is unclear whether the organization anticipates changes in the gender composition of the federal offender population and is indicating a need to respond to ‘women’ as a special group. Gender is not referred to in the rest of the *Vision 2020* document.

Responding to Diversity

The constitution of Aboriginal peoples and their over-representation, and the increasing diversity of the offender population as challenges to conditional release within the *Vision 2020* document suggest that diversity is something that upsets the status quo. Clearly, the organization cannot continue its business as usual due to the complexities posed by racialized and culturalized (and in some cases, gendered) others. The presence of diversity creates pressure to be responsive to difference via conditional release policies and programs. The framing of diversity as a challenge is instructive as it helps reveal the unstated and taken-for-granted norms of, and within, the organization. Diversity challenges institutional whiteness and maleness and requires accommodations that take difference into account.

The narrative responses to the challenge posed by diversity within the *Vision 2020* document skirt around such issues as racism or equality. What is seen to be required are respectful policies, training, and management styles rather than a recognition of how racism or other forms of discrimination might impact the workplace or the program of conditional release. This approach can homogenize a wide range of differences for the sake of respect without a clear understanding of exactly what is being respected and how and when this matters in the context of conditional release. As Ahmed (2006: 122) argues, diversity is appealing because it is a “comfortable term that allows people to engage more easily with this kind of work”. In contrast, terms like equality evoke “compliance and meeting legal requirements” (ibid.), thereby emphasizing “the law’s focus on discrimination, injustice, and historical disenfranchisement” (Edelman et al. 2001: 1632). Yet, the use of the term diversity within the document may also be telling: “insofar as diversity signifies the presence of racial others, then it might also point to how organizations are oriented around whiteness, around those who are already in place” (Ahmed 2006: 124). In this sense, the *Vision 2020* document expresses a particular vision of the NPB as an organization, one which must respond to the
challenges presented by diverse others, whether these be non-white or Aboriginal offenders, communities, and victims.

Diversity and Reputation

Organizational approaches to managing diversity are also linked to notions of reputation and image management (Webb 1997; Benschop 2001). Benschop (2001: 1170) notes that diversity—such as having a representative workforce or diversity policies—has important symbolic effects which include an improved public image, greater legitimacy, improved ability to connect to diverse groups, and perhaps better uptake of organizational services to members of these groups. Often referred to as the business case, such arguments for diversity focus on the benefits of representative or diverse workforces for the organization itself (Wrench 2005; Eveline et al. 2009; Herring 2009; Braithwaite 2010). However, Ahmed and colleagues (2006: 9) caution that the linking of diversity to institutional reputation may result in the concealment of signs of inequality or racism that could damage reputation.

Power (2007: 145) suggests that reputation has been institutionalized as a focus of managerial concern. External perceptions of reputation are targets of management, with attempts by the organization to present a certain image of the organization. Within the Vision 2020 document, one vision is that the NPB, “as an inquisitorial body is, and is perceived to be, open and fair, respecting the duty to act fairly and the unique needs and circumstances of diverse groups in its decision policies and processes” (NPB 2009b: 15, emphasis added). Another vision is that the organization “is perceived to be a community board representing, and being representative of, diverse communities and their concerns, including the concerns of women, ethnic minorities, the elderly, and youth” (ibid.: 16, emphasis added). In both of these vision statements, a key goal is that the NPB is perceived as being a certain kind of organization. As practices of reputational management, these statements attempt to construct a certain sort of image and maintain the organization’s reputation in relation to the risks posed by diversity because the failure to respond could be detrimental (Power 2004, 2007; Ahmed 2006). The focus on perception suggests that it is something that can be tracked or measured, and therefore be used to evaluate the organization’s performance as a certain kind of organization that is responsive to the needs of diverse offenders, communities, and victims.
Additionally, the second vision quoted above works to evoke a dichotomy between ‘us’ and ‘them’, such that so-called “diverse communities” have certain concerns that may differ from ‘ours’, those of the organization. The notion of “their concerns” locates difference within the bodies of people from diverse communities, as well as the other specified groups such as women and youth. This dichotomy reinforces processes of exclusion that constitute difference as residing in those who do not reflect the unstated norm of the organization. The vision of representing or being representative of the concerns of these others also operates to place such concerns on the periphery of the organization. This language does not speak to changing the organizational milieu or in terms of inclusion, but rather ensuring that there is a perception that “their concerns” have been accounted for.

Ahmed (2006: 118) argues that the “politics of diversity and equality has become about image management: diversity and equality work is about generating the right image and correcting the wrong one”. Consequently, perceptions about an organization as being white or male need correcting, such that its image is one of being representative of diverse communities. Adequate representation is also linked to notions of legitimacy, such that these diverse communities may view the organization as more trustworthy (Phillips 2007). As Ahmed (2006: 118) contends, work around issues of diversity “becomes about changing perceptions of whiteness [or maleness] rather than changing the whiteness [or maleness] of organizations”. Her concern is that such perceptions can then be taken up as institutional descriptions, “as if being perceived as diverse is what gives the organization such qualities” (ibid.). Reputational management practices can therefore function as technologies of concealment by refocusing organizational efforts on managing image through the production of documents, like the *Vision 2020*.

**Diversity within Corporate Policy**

Corporate policy documents comprise one last example of how the inclusion of diversity is performed and reputation is managed. Ahmed (2007b: 590) suggests that “[w]riting documents that express a commitment to promoting race equality is now a central part of equality work”. The NPB’s (1996: 1) Corporate Policy on Aboriginal Offenders (hereinafter Corporate Policy) is one such document that represents the organization’s “position in
regards to vision, policy and process” for Aboriginal offenders.\footnote{This is the only corporate policy document directed toward a specific offender population that I could locate. As will be discussed in Chapter 8, attempts were made to have a similar document developed for female offenders, but the result was a commitments document.} The existence of such a document can be understood as an act of “making an institutional commitment public” (Ahmed 2006: 109). Commitments documents can perform inclusion through statements about what the organization does and is doing in relation to diversity. These documents can also function as mechanisms of accountability for ensuring that the organization is living up to its commitments.

As noted in the Corporate Policy, the basis for the organization’s response to Aboriginal offenders is legislative, including the Charter and the CCRA. This document starts with law, thereby framing the institutional commitment as an act of compliance. In this sense, the organization is committed to doing what the law says. The language of the document works to highlight the differences and distinctive needs presented by Aboriginal offenders. These differences and needs form the basis of the organization’s commitments. There are no commitments made to racial equality or anti-racism; rather, the commitments are frame in relation to institutional sensitivity to matters of Aboriginal difference. This framing reflects how issues of difference have been institutionally defined and institutionalized (see Chapters 2 and 3).

In keeping with other government documents, the over-representation of Aboriginal peoples in custody is a central justification for the organization’s commitment to work “with Aboriginal people, leaders, governments and communities” (NPB 1996: 2). The document also highlights the organization’s commitment to understanding the world views of Aboriginal and Inuit offenders, the “importance of sacred teachings”, and the involvement of elders in the release process (ibid.: 3). At the same time, the Corporate Policy is clear that the focus of gaining organizational knowledge and understanding about Aboriginal difference is to “better assess readiness for release” (ibid.). The commitment to Aboriginal peoples is (re)oriented toward the institution’s own mandate. This is significant because it is illustrative of how ideas about diversity are selectively included and aligned with existing institutional approaches.

The Corporate Policy also states that the organization’s commitment to “openness, integrity, [and] mutual cooperation” with Aboriginal offenders is evident through its
“willingness to trust, respect, understand and involve Aboriginal leaders, governments, communities, elders and organizations by recognizing their responsibilities and contributions in assessing the offender’s readiness for release and the subsequent impact of that release” (NPB 1996: 3). The commitment to the inclusion of diversity is portrayed as necessary for making quality release decisions. In order to make such decisions, the Corporate Policy document stresses the NPB’s “willingness to be adaptive” and consider any “knowledge, experience, teachings and information relating to the offender’s healing” during board members’ deliberations, including the contributions of the elder (ibid.: 3). These statements present the organization as one that works with Aboriginal communities for the betterment of Aboriginal offenders and toward culturally appropriate decision-making.

The Corporate Policy document indicates that the organization’s commitment to Aboriginal offenders is shown in its policies around training for board members and staff; the consideration of “alternative justice approaches”; and culturally sensitive case documentation practices, hearings, decision-making, and selection criteria for hiring Aboriginal board members and staff (NPB 1996: 4-5). Cultural awareness and sensitivity training are required for review of files and utilizing and understanding the ‘appropriate’ information to assess an Aboriginal offender’s potential for release. Both elders and Aboriginal board members are expected to contribute to training and “ongoing learning by sharing their knowledge and experience” (ibid.: 4). Sensitivity to “cultural matters” is also to be expressed during hearings where “Board members will take a positive, non-conversational approach to asking questions and obtaining information” (ibid.: 5). The organization’s commitment to Aboriginal offenders is also reflected by ensuring “whenever available and possible” Aboriginal board members will be assigned to EAHs (ibid.). These commitments impart an organizational pledge to modifying standard policies and practices, such that the organization is committed to awareness and sensitivity to Aboriginal difference, rather than anti-racism or self-determination.

The Corporate Policy outlines additional organizational commitments to culturally sensitive hearing formats (e.g., appropriate décor, removal of barriers, and opportunities for prayers and smudges); clearly articulated roles and responsibilities for participants to ensure the “rendering of quality, culturally sensitive decisions” (NPB 1996: 6); promoting the hiring of “qualified” Aboriginal board members and staff who have “knowledge of and sensitivity
to Aboriginal cultures” (ibid.); and exploring the incorporation of “the Aboriginal holistic healing approach” into its work (ibid.). As will be discussed in Chapter 6, these commitments reflect an institutional approach to Aboriginal difference that is about indigenizing dominant practices, such as parole hearings. The goal of hiring more Aboriginal peoples as a means to increase the NPB’s diversity is repeated here (see Chapter 2) as a typical solution to creating ‘culturally appropriate’ conditional release processes.

An informal ATI request indicates that the Corporate Policy on Aboriginal Offenders was never updated but instead rolled into section 9.2.1 of the NPB Policy Manual. In 2000, the Corporate Policy was reviewed by the Aboriginal Circle, which found that the document “had lost its relevancy as an awareness-raising document and that policy pertaining to Aboriginal offenders should be integrated into the NPB’s Policy Manual” (NPB 2000a: 8, emphasis added). This assessment by the Aboriginal Circle points to an attempt to mainstream Aboriginal issues by including them in the Policy Manual. In other words, rather than keep these issues marginalized within the irrelevant Corporate Policy, they were integrated into the Policy Manual and, at least in theory, made actionable. The mainstreaming of Aboriginal issues into the Policy Manual may also provide a type of buffer against claims that the organization is failing to be culturally sensitive. The integration of Aboriginal issues therefore helps protect institutional reputation.

Conclusions

This chapter has shown how organizational responses to diversity are represented within institutional documents that are produced for the purposes of corporate planning, audit, and performance management functions. Documents that monitor operations, plan activities, and frame commitments to diversity are important texts for analyzing how diversity issues are incorporated into organizational processes, particularly in contexts dominated by managerial logics. Taken together, I argue that these documents simultaneously function as instances where ‘inclusion’ is performed and ‘reputation’ is managed in relation to the problem of difference, and as sources of organizational accountability for addressing diversity issues, including those mandated by law. Within penality, these documents frame how the organization is responding to the challenges presented by diverse groups of offenders whose

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72 Personal communication (March 22, 2010) regarding ATI request no. AI-2009-00001 to the NPB.
special needs, as recognized by law, call for accommodation. By translating organizational diversity practices into corporate and audit products, the organization makes its work more transparent.

The chapter provided an overview of the literatures on organizational risk management and organizational performance culture to situate the NPB’s corporate planning, audit, and measurement practices for diversity issues in a broader context. I demonstrated how the NPB’s diversity work mobilizes these practices, including how diversity is constituted and the challenge of translating diversity work into auditable or measurable artifacts. The conversion of various forms of diversity work (e.g., committees, newsletters, consultations, training, etc.) into auditable products can be used by the organization to show it is doing something about diversity. Such techniques enable the organization appear diverse and responsive to the issues facing various diverse groups of offenders, communities, and victims. At the same time, audit and performance monitoring practices may function to hold penal institutions to account for addressing diversity, as mandated by law.

The remainder of the chapter analyzed corporate planning, vision, and policy documents as data that show how issues of diversity are taken up, including the performance of inclusion and the management of reputation. The organization’s corporate planning exercise is presented as a technique of managing diversity and monitoring the NPB’s response to the various challenges presented by an increasingly heterogeneous federal offender population. Strategic planning towards developing cultural competency is one technique for incorporating diversity within the organization’s processes. The analysis of the NPB’s corporate visions suggests that these statements work to constitute diversity as both a challenge and an opportunity. Diversity is presented as a challenge to dominant organizational policies and practices, while also providing an opportunity for the NPB to portray itself as a certain type of organization that is being responsive to difference among offenders, victims, and communities. Similarly, the NPB’s corporate policy on Aboriginal offenders positions the organization as one that is committed to addressing the needs of this population and working towards culturally appropriate conditional release decisions.

In sum, this chapter builds upon the previous chapter through its examination of how diversity is taken up within the context of managerial concerns around performance measurement and corporate planning. In the next chapter, I explore how issues of diversity
are impacting conditional release decision-making through training initiatives, the incorporation of the *Gladue* decision, and attempts to meld risk assessment with Aboriginal knowledges.
Chapter 5
In Pursuit of ‘Appropriate’ Decisions: Racialized and Gendered Knowledges within Training and Risk Assessment

The NPB’s raison d’être is conditional release decision-making. As discussed in the previous two chapters, attention to diversity has been organizationally identified as a necessary part of quality decision-making. In order to make ‘appropriate’ release decisions, the NPB has recognized that certain differences must be taken into account, as required by section 151(3) of the CCRA. The NPB (2010b: n.pag) states that the “actions and decisions of Board members respect the gender, ethnic and linguistic differences of all offenders”. This statement of commitment is based on the organization’s view that “conditional release decisions need to consider this diversity to be successful” (ibid.). ‘Appropriate’ decisions, then, reflect the organizational goal of being ‘responsive’ and/or ‘sensitive’ to offenders’ gender, ethnic, or cultural differences, rather than ignoring them. Yet, exactly how diversity is recognized and seen to matter in the context of decision-making is complicated. Previous chapters have argued that how diversity is organizationally defined shapes the types of responses pursued by the institution. The constitution of diversity as being non-white and female frames how diversity is understood for the purposes of decision-making, as well as the techniques utilized in the pursuit of ‘appropriate’, and hence accountable, decisions. Through this understanding of diversity, non-white and female offenders become the object of knowledge; learning about difference consequently emerges as a key organizational exercise.

This chapter considers organizational knowledge practices that contribute to ‘appropriate’ conditional release decisions for offenders identified as different along lines of gender, race, and culture. These knowledge practices are organizational attempts to constitute certain populations and how difference is applicable to issues of risk assessment for release in the context of decision-making. This chapter focuses on three such practices: diversity training, the interpretation of the Gladue decision, and attempts to ‘indigenize’ risk. The first section on diversity training examines how difference is constituted within training manuals and reinforces whiteness and maleness as the normative subjectivity of decision-makers. Second, the section on Gladue illustrates how the Supreme Court’s decision and ideas about
Aboriginal difference are taken up by the organization and made applicable to decision-making. Finally, the third section on the NPB’s attempts to indigenize risk demonstrates the incompatibility of Aboriginal and institutional knowledges of risk. The challenge of ensuring culturally competent and gender responsive approaches means decision makers ought to ‘know’ these particular populations, recognize their own personal biases, and ensure the correct knowledges and sensitivities come together in practice (Zellerer 2003). I argue that the cultural and gendered knowledges of offenders circulated through these practices show the complexities of accommodating difference in the pursuit of ‘appropriate’ decisions.

Diversity within Training: Constituting Difference and the Imaginary Subject

In addition to training on parole policies and legislation, risk assessment, and decision-making, board members receive training in cultural awareness and sensitivity. Cultural awareness and sensitivity training is a key diversity initiative and form of diversity work undertaken by the NPB. Most of this training is directed towards board members, both through orientation and training of new members, and ‘refreshers’ and ongoing training for current members. The awareness and sensitivity training undertaken at the NPB is focused largely on Aboriginal, female, and ethnocultural offenders, with some training directed at ‘cultural perceptions’. According to the NPB (2010b: n.pag), “[t]his training helps [board members] to study files better, and to select the information they need to assess an offender’s readiness for release”. Awareness and sensitivity is expected to lead to improved decision-making.

The NPB’s approach to training is focused both on learning about gender and cultural differences, and coming to recognize the various perceptions that shape how one sees the world and makes decisions. Board members are encouraged to look to cultural and/or gendered explanations for understanding female and non-white offenders’ behaviours and release plans. Cultural differences are viewed as a cause of misunderstandings or misinterpretations, with the remedy being cultural knowledge to be delivered by various experts and training sessions (van Dongen 2005). The target of change is the individual and her/his biases, not institutional structures or practices (Kalev et al. 2006). Such an approach reduces the likelihood of organizational change and does not encourage critical thinking about dominant paradigms.
Bannerji (2000: 38) argues that “diversity sensitization or training has largely displaced talk about and/or resistance to racism and sexism”.73 Instead, the focus is placed on acquiring knowledge about others and learning to be sensitive to a range of socially produced differences.74 The NPB’s diversity-focused training is largely directed toward decision-making in relation to ethnicized, culturalized, and gendered difference. Armed with acquired racial, cultural, and/or gendered knowledge, decision-makers are better able to ‘see’ or gaze upon those who are different, and make more responsive decisions. Training is a strategy used by the NPB to disseminate gender and cultural information to board members and staff. The training curriculum is not structured to encourage critical thinking or the questioning of current policies or approaches to decision-making. Training occurs within preexisting organizational structures and is consequently a way of supplementing knowledge of offenders’ gender, ethnic, and cultural differences and the (potential) relevance to conditional release decision-making.

The following examines how notions of diversity and difference are constituted and disseminated through the organization’s training initiatives. It begins with an overview of training at the NPB, followed by a consideration of how diversity is constituted within training. I argue that such initiatives work to produce and circulate gendered and racialized knowledges of female and non-white offenders. The training texts are based on an imaginary subject who is white and male, thereby reproducing rather than challenging institutional whiteness or destabilizing masculine norms. Such an approach to training does not work toward cultural integration or a reconsideration of dominant paradigms; rather, the focus is placed on making exceptions in the case of those constituted as different from the white male norm. Training also addresses organizational concerns around reputational risk where the training of board members to be aware and sensitive can reduce instances of (overtly) biased decision-making and thus legal liability (Barlow and Barlow 1993), as well as demonstrate to observers that the organization is committed to diversity. Finally, I argue that the training approach reflects a selective inclusion of issues related to gender, race, and culture, one that fits with the over-riding organizational focus on risk as the basis for decision-making.

73 ‘Talk’ about diversity issues does occur, such as in the context of diversity committees.
74 Alcoff (1998) suggests that it is important to consider the origins of ‘sensitivity’ training, including the ‘business case’ (i.e., racism impedes workplace productivity) and its development with white people as the target audience.
Board Member Training at the NPB

The responsibility for training is divided between the national office and regional offices (NPB 2008e). In terms of the training of new board members, the national office provides two weeks of foundational orientation training, while the regional offices offer a further three weeks of regional orientation training (ibid.). Prior to these in-house training sessions, new board members are given an introductory reading package to review and on which they are assessed (Interview 2). Regional training allows for new board members to learn regional issues, including the offender population demographics (NPB 2008), problems associated with Aboriginal gangs (Interview 11), and issues that are unique to various ethnocultural communities, such as the “cultural impediments to change” for offenders from communities deemed to “hold values that are in conflict with our law, Canadian law” (Interview 2). The regions largely provide ongoing training for board members, with some training-related presentations occurring nationally at the NPB’s annual general meetings (NPB 2008e). According to one informant, ongoing regional training workshops for board members occur several times per year (Interview 13).

As part of the national orientation program, the Aboriginal and Diversity Initiatives section gives a presentation about its work (NPB 2009f). The presentation explains the section’s organizational purpose, its legislative and policy relevance, and some of its ongoing projects (ibid.). The section provides information about diversity initiatives, but not how these initiatives matter or relate to actual practice. As one informant explained, the presentation was reduced “from three hours to fifteen minutes and at one point it was five minutes” (Interview 7). As a result, “the focus ended up being not on any of the actual issues or any of that, but more, here’s Aboriginal and Diversity Initiatives, it’s an important area within the Parole Board, despite whether or not that was true at the time” (Interview 7). New board members were also given documents in relation to Aboriginal and Diversity Initiatives to read at a later time under the pretense that the NPB was committed to female offenders or the advancement of Aboriginal corrections and parole (Interview 7). The informant’s comments draw attention to a potential gap within the organization’s stated commitment to Aboriginal and diversity issues and what it actually does in practice via its training program.

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75 Document obtained through ATI request no. A-2010-00031 to the NPB.
76 Document obtained through ATI request no. A-2009-00009 to the NPB.
(Ahmed et al. 2006). Notwithstanding the NPB’s ‘official’ organizational commitment to diversity, several informants viewed sensitivity training as playing an important role in decision-making. For instance, one informant noted that diversity training provides board members with the necessary “tools” to “adequately interpret” offenders’ release plans and assess their risk by taking into account differences, such as those related to culture or gender (Interview 5). Another informant commented that training allowed board members to “come to an appreciation that there are different paths to reducing risk and to changing behaviour” (Interview 3). For these informants, diversity training contributed to improved decision-making through the consideration of difference and its relevance to rehabilitation and reintegration.

In relation to the content of NPB training, another informant explained that the NPB’s training programs are “centred on evidence-based research” and often developed with the help of “an advisory committee of experts in the field” (Interview 2). The informant also explained that experts were used to help deliver the training content to new board members (Interview 2). In addition, Aboriginal board members provide input into training programs, including making presentations during regional training workshops (Interview 13). Elders are identified as “key contributors” to board member training on account of their cultural expertise, as well as recipients of “training on parole hearing procedures so they can be effective participants” (NPB 2007c: n.pag).

Regional training initiatives have additional informal components for board members and staff. For instance, the Atlantic Region’s contracted elder provides a sweat or “cultural day” at his community for interested staff and board members (Interview 10). The Prairie Region also provides “intensive Aboriginal awareness” that allows new board members to “interact with [NPB-contracted] elders and participate in ceremonies” (Interview 11). These components are framed as learning events for (non-Aboriginal) board members. One informant noted that due to the large number of different Aboriginal groups and cultures, regional training was focused on raising awareness of some cultural differences and experiences that Aboriginal peoples have lived through, with the understanding that there are many more that cannot be covered in training (Interview 11).

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77 In this context, ‘expertise’ is institutionally defined and may include researchers external to government or representatives from departments such as the CSC.

78 Document obtained through ATI request no. A-2009-00010 to the NPB.
Another informant indicated that the NPB’s training was “not as sophisticated as it should be” due to the complexity of addressing “a large number of angles” and doing so in a short period of time allotted for training (Interview 5). These angles include differences based on gender, cultural background, immigrant status, age, and so forth. Difference is viewed as adding complexity; individual aspects of identity that diverge from the normative standard complicate matters. The notion that training is difficult to do well because of the large number of angles relates to how diversity is initially defined. As discussed in the previous chapter, diversity is a fluid concept because it includes a congerie of differences linked to race or ethnicity with a simultaneous emptying out of meaning. This framing of diversity reflects training approaches that involve both learning about those who are different and participation in feel good activities.

I made several requests under the *ATLA* to the NPB for its training materials related to diversity, including those pertaining to female offenders, ethnocultural offenders, Aboriginal offenders, and awareness or sensitivity, more generally. I received two main training packages. The first, entitled ‘Module 1 – Diversity in Offender Population and Other Considerations’, has three units devoted to issues of diversity which reflect the constitution of certain differences as targets of knowledge: Aboriginal offenders (Unit 1), gender, ethnic, cultural, and linguistic differences (Unit 2), and female offenders (Unit 3) (NPB n.d.-c). These units are positioned in relation to the NPB’s core value of “respect[ing] the inherent potential and dignity of all individuals and the equal rights of all members of society” (ibid.: 215). The second training package is Aboriginal Perceptions Training. The remainder of this section considers how diversity is constituted and disseminated within these NPB training materials, as well as how the organization’s approach to training reinforces rather than challenges institutional whiteness and masculinity.

Constituting the Other

My analysis of the training materials that comprise Module 1 suggests that diversity is defined as pertaining to non-white and female offenders through a process of ‘othering’.

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79 In 2008, the NPB contracted with a consultant to evaluate its program of board member training. Although this evaluation focused broadly on the NPB’s board member training regime, some specific comments were made about the need for “further improvement” to training on issues of diversity, including Aboriginal, ethnocultural, and women offenders (NPB 2008: 17).

80 Document obtained through ATI request no. A-2009-00009 to the NPB.
Those defined as ‘other’—those who deviate from the white male norm—are constituted as an “object of knowledge” (Mills 1997: 101). The training materials in Module 1 position Aboriginal, female, and ethnocultural offenders as special groups with different experiences and needs in relation to their offending histories and programming requirements. Cultural sensitivity, then, becomes a matter of turning the gaze on these others and acquiring knowledge about their differences, with the end goal of “enhanced” decision-making practices (NPB n.d.-c: 215). Such an approach risks reinforcing the permanence and immutability of various racial, ethnic, gender, and cultural differences, while reducing these differences into simplified constructs that can be learned through short training sessions (Wrench 2005).

For instance, Unit 1 is a one day session in which participants are expected to learn about the history of Aboriginal peoples and the various legislative, correctional services, and risk factors related to Aboriginal offenders (NPB n.d.-c). The session aims to build skills for cultural sensitivity so that decision makers will know how to review files, assess readiness for release, and communicate with Aboriginal offenders (ibid.). Several exercises work to constitute Aboriginal peoples as the other, such as through lessons about the various differences between mainstream society (i.e., white society) and Aboriginal peoples, such as the dissimilarity in values and senses of power. For example, the exercise on values presents a chart contrasting those of Aboriginal peoples with that of the “mainstream”, “non-traditional”, “urban” society (ibid.: 162), thereby presenting a false binary between ‘us’ and ‘them’, and fixing Aboriginal peoples in time (i.e., in the past) and space (e.g., on reserve). Similarly, the exercise on power plots the differences between “powerful” and “powerless” people as a way to chart the disparities facing Aboriginal peoples as a result of the intergenerational impacts of colonization (ibid.: 246).

The dichotomous representations of difference in these exercises present simple, uncomplicated stories about diversity. Participants are expected to learn that ‘they’ are like ‘this’, while ‘we’ are like ‘that’. LaRocque (1997) argues that the operationalization of difference into charts, typologies, and modules is especially problematic. Such an approach to being culturally appropriate for Aboriginal peoples runs the risk of conceptualizing difference in relation to stereotypes that were “founded, justified, and perpetuated by the colonial process” (ibid.: 77). Moreover, “reducing and fitting cultural expressions into
charted, boxed-in modules falls prey to simplistic, rigid, formulaic, and doctrinaire ‘solutions’ to very complex issues and problems” (ibid.). These generalizations are presented as objective knowledge for participants to learn through their representation in official training materials (Mills 1997). The reduction of diverse Aboriginal cultures and practices into homogeneous constructs in the training materials reflects the challenge of capturing heterogeneous identities and experiences and translating them into formats that can inform decision-making.

Similar to the training unit on Aboriginal offenders, the training on gender differences in Part B of Unit 2 constitutes female offenders as different to the male offender norm. Participants are required to learn about female difference, including issues of stereotyping, communication, and the ways in which gender bias may be present in the justice system and its effects (e.g., the creation of laws or policies that do not reflect the perspectives of women) (NPB n.d.-c). The idea that laws or policies may not reflect women’s perspectives appears to be something that participants should be aware of, rather than lead to a questioning of the policies that board members are expected to abide by as decision-makers. However, the manual does not explicitly define the concept of gender, but the discussion of gender differences works to code gender as female through a focus on women’s difference from men in relation to a range of indicators of inequality. Through this coding, the manual does not enable a critical consideration of gender as a relational concept that includes both masculinities and femininities, and as one part of identity that intersects with other markers, such as race, class, or sexuality. As a result, the only gender differences viewed as mattering are those related to women’s equality, such as reducing gender bias and considering women’s perspectives. The unstated male norm remains unrecognized and by default is deemed not to matter in the context of conditional release decision-making. This framing prevents the consideration of the gendered nature of male offending and its relevance to conditional release.

Part C also works to constitute diversity within the bodies and experiences of non-white others. This session defines concepts such as ‘ethnic group’, ‘culture’, ‘race’, ‘racism’, and ‘racialization’, and explains the manifestations of racism and racialization within the criminal justice system (NPB n.d.-c). A “key learning point” is to have participants “understand others” by developing “some sense of their life experiences and the impact of
these” on people’s actions, reactions, and communication (ibid.: 258). Given the session’s focus on ethnic and cultural differences, this exercise involves getting to know the other. This other is defined in relation to ethnic, cultural, and/or racial difference in comparison to an unstated, but implicit, white norm. As with masculinity, whiteness is therefore not considered as mattering to conditional release decision-making.

Reproducing Institutional Whiteness

One of the consequences of the way in which diversity is manifested within NPB training is that institutional whiteness is reproduced, rather than challenged. To say that institutions are ‘white’ does not mean that they are simply made up of white people. Rather, institutional whiteness is constituted through assorted processes of racialization that produce whiteness as a norm, against which others are seen to appear different (Ahmed et al. 2006). Whiteness is therefore what is unseen and unmarked (Puwar 2004). The training materials imply that the imagined reader is a white, male subject, which further entrenches this norm within the information to be learned and how gendered and racialized offenders are to be known. Through the othering of non-white and female offenders, participants are encouraged to focus on various ethnic, cultural, and gender differences as individualized aspects of identity. Although differences are recognized, whiteness is reaffirmed as the normative position (Webb 1997) and is not problematized as potentially relevant to conditional release.

Part C of Unit 2 encourages participants to consider the impacts of racial privilege as a way to know the other. As part of the introduction to this section, participants are asked to complete an exercise called ‘Unpacking the White Knapsack’. This exercise involves participants assessing which among 23 statements apply to them because of their skin colour (NPB n.d.-c: 174). The statements are supposed to reflect “some of the ways having white skin can make a difference in day-to-day life” (ibid.). The exercise is intended to help participants recognize the impact of invisible white privilege and how the statements reflect the “conditions of daily experience which many Canadians [i.e., white Canadians] usually take for granted as neutral, normal, and universally available to everyone” (ibid.: 175). The imagined participant is white, as the exercise makes less sense when applied to non-white

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81 The metaphor of carrying a ‘knapsack’ of invisible white privileges was originally created by McIntosh (1992).
participants. The focus on white privilege does not go as far as to address the issue of white complicity in racism and colonialism (Alcoff 1998). Furthermore, by requiring participants to focus on skin colour, the exercise approaches race, privilege, and racism as discreet issues, rather than as inextricably tied to other facets of identity and power. In this sense, white privilege is shaped by gender, class, sexuality, ability, age, and so forth, and is not a monolithic experience or marker of advantage (ibid.).

Despite this exercise requiring participants to consider the impact of white privilege, whiteness is largely invisible in the text of Part C. The imagined participant appears to be white given references to ‘we’, such as when ‘we’ are asked to consider the experiences of ‘others’ or if ‘we’ would make similar decisions about ‘others’ as white people (NPB n.d.-c: 261). Bannerji (2000: 42) argues that the way in which diversity is constituted must be contextualized in “the historical context of the creation of Canada, of its growth into an uneasy amalgam of a white settler colony with liberal democracy”. For this reason, notions of otherness and difference are produced in relation to the presumed norm of white Canadian, where the definition of Canadian is very much tied to the country’s colonial past and present. Processes of othering work to position diversity as peripheral to, or outside, normative board member subjectivity.

The white knapsack exercise is reflective of the way in which difference is institutionally defined as being located in the bodies, cultures, and experiences of others. Ahmed and colleagues (2006: 43) contend that the “very idea that diversity is about those who ‘look different’ hence keeps whiteness in place” within organizations. As I. Young (2009: 281) reminds us, attempts to ameliorate racial injustice must first recognize processes of racial differentiation that assign penalty and privilege. Training on racial and ethnic diversity does not appear to address forms of systemic discrimination, nor does it raise the possibility that the organization’s decision-making criteria can be biased and produce inequitable results. Despite an attempt for (white) participants to consider their own racial privilege, this privilege is not linked to the institution’s structures, policies, or practices.

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82 According to Rozas and Miller (2009: 30), this exercise may also be “evocative for people of color who have not had these privileges” as the recognition of such can be validating.
Narrowing the Scope of Diversity

Although diversity is located in female and non-white identities, experiences, and cultures, it is also represented as relating to individual differences and traits rather than social power. The dominant articulation of diversity within the training manuals “individuates differences by understanding them as residing in or belonging to individuals rather than produced by social structures” (Ahmed et al. 2006: 11; see also Hyndman 1998). In this way, the scope of diversity is narrowed to a focus on communication styles, individual experiences, and cultural beliefs “rather than differences which relate to social power that in turn produce privilege and inequalities” (Ahmed et al. 2006: 11-12). The organizational focus on increasing awareness and sensitivity by learning about others reflects this narrow understanding of diversity.

In Unit 2’s three-hour session, participants are expected to know “how gender, ethnic, cultural and linguistic dynamics impact on communications and risk assessment and risk management of offenders” (NPB n.d c: 249). They are also expected to demonstrate awareness in relation to several issues, including cultural and linguistic differences, empathy towards others, and the need for assessments that respect diversity. For example, Part D of Unit 2 focuses on linguistic differences. In this section, participants are expected to learn about communicating with others from different cultures. Communication styles are framed an aspect of diversity that affect how people interact; participants are encouraged to recognize how “cultural backgrounds strongly influences [sic] communication styles” (NPB n.d.-c: 262). Attention is drawn toward the impacts of accents, vocabulary, body language, and styles of communication on decision-making. Participants are expected to “be sensitive to these influences” (ibid.), including how various cultural “filters” shape how messages are both sent and received (ibid.: 178). Knowledge of linguistic differences is seen as supporting appropriate decisions through reductions in miscommunication.

Although Unit 2 reviews some research on racism within the criminal justice system, the training reinforces a narrow vision of diversity through its focus on awareness and sensitivity as solutions to individual biases and ignorance. The narrowed scope works to make the NPB responsible for more limited range of potential problems related to difference. For instance, by focusing on individual biases and ignorance, the organization’s efforts are
directed towards reducing the risk that individual board members will display bias or allow insensitive comments to enter into their dialogues with offenders and subsequent decision-making. In order to be sensitive to various gender, ethnic, cultural, and linguistic differences, the Part D session expects decision makers to avoid using jargon or making racial jokes and remarks, focusing on the offender’s accent, or “being misled or distracted by cultural differences such as body language, lack of eye contact, etc.” (NPB n.d.-c: 263). The failure to demonstrate sensitivity along these lines poses risks to institutional reputation.

The “wrap up” session in Part E of Unit 2 reminds participants of the various “concessions” that are expected “in relation to gender, ethnic/cultural, and language”, including different interview styles, greater flexibility when considering release options, and critical appraisal of “written materials to offset misperceptions” (NPB n.d.-c: 263). These concessions are based on the notion that fairness and equality are often achieved through different treatment in order to avoid placing certain groups at a disadvantage (ibid.). Importantly, this reflects a key feminist understanding of substantive equality that does not involve treating women like men (Jhappan 1998; Hudson 2002), and here this logic is also extended to other groups. However, in the context diversity training, concessions speak less of rights and more of needs; that is, certain groups have special needs to be accommodated. Diversity is therefore constituted as a need that can be responded to within dominant organizational policies and practices. Terms such as needs and concessions are much more softer than rights because they are not necessarily linked to legislation as something that must be complied with, but rather can be seen as good things the organization is doing in response to diversity (Ahmed 2007a).

Seeing the World ‘Differently’

As a vacuous concept, diversity has the tendency to neutralize “important histories of antagonism and struggle”, where part of the appeal of the term is its offering of “a ‘happy’ vision of society where conflict, differences and inequalities have already been resolved” (Ahmed et al. 2006: 12). In this sense, diversity is unhinged from issues of power and constituted as a level playing field comprised of various differences. This understanding is reflected in NPB training on cultural perceptions, which generally aims to have participants recognize how their worldviews differ from those of others and impact upon decision-
making. Within this training, cultural perceptions are presented as value-neutral indicators of diversity, with the implication that people just see the world differently. The social relations of power that work to constitute difference and shape worldviews—such as racism and sexism—fade from view in such a way that individuals are simply left with cultural perceptions (Razack 1998; Bannerji 2000).

Several informants spoke about the importance of training on cultural perceptions for decision makers. One informant explained that it was “counter-productive” to deny how one’s worldview shapes the decision-making process (Interview 4). Instead, the informant believed in a type of “reflective objectivity” where one is aware of personal biases: “Just be aware of it and question yourself, what are the lenses you’re putting on when you’re taking that file, reading the file, then meeting that offender, asking the questions and making that decision” (Interview 4). Another informant expressed similar views as to the need to learn about the various “filters” or lenses that shape how one sees a person from a different background or gender (Interview 5). These comments highlight the importance of being aware and sensitive to difference to help reduce the likelihood of making biased decisions.

Unit 2 offers critical perspectives on the notions of objectivity and impartiality, with the recognition that individuals “are inevitably partial” because everyone has particular worldviews that shape how events and other people are understood and interpreted (NPB n.d.-c: 262). Participants are encouraged to be responsible for keeping their biases in check by being aware of their own worldviews. According to the module, “[u]nrelenting detachment is not invariably the best way to be objective and impartial, since it leaves the decision-maker only with his or her own perspective on the world” (ibid.: 255). Instead, participants are encouraged to empathize with others as a way to better to understand their perspectives and experiences: “[w]ithout the exercise of empathy decisions rest implicitly upon the assumption that the persons affected are like the decision-maker” (ibid.).

Consequently, the remedy for differing cultural perceptions is awareness and sensitivity in decision-making. The idea that the very laws and policies to which decision makers must abide are partial or biased does not enter the discussion.

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83 Interestingly, the discussion related to empathy is located in the section on gender differences, although there is no indication as to whether or not empathy is considered to be a ‘gender issue’ or a gendered phenomenon.
A Limited Understanding of Female Offenders

Following Part B of Unit 2’s training on gender differences, Unit 3 focuses specifically on female offenders. This follows from the organization’s understanding of diversity as including women as a special offender population, where gender is code for female. It appears, however, that Unit 3 has yet to be completed, as there is no lesson plan or learning objectives.\(^{84}\) The module’s outline tentatively indicates that Unit 3 is to be a two-hour session focused on the following topics: women in conflict with the law, Aboriginal female offenders, and special issues related to female offenders such as risk assessment factors and program considerations (NPB n.d.-c: 265). Based on the results of my requests under the \textit{ATIA}, it appears that the training on women offenders consists of two presentations made to board members by CSC representatives who specialize in the areas of women offender programs and research (CSC 2010a, 2010b).\(^{85}\) One presentation focuses on the CSC’s reintegration programs for female offenders and explains the organization’s approach to this population, including notions of risk, need, and responsivity (CSC 2010a). A section on Aboriginal female offenders explains the CSC’s “circle of care” program model which includes a curriculum consisting “of an integration of Aboriginal cultural models and mainstream skills development approaches” (CSC 2010a: n.pag). The second presentation explains federal correctional system for women in Canada, female criminality (including comparisons to male criminality), the profile of federally sentenced women, and the assessment of risk and need for this population (CSC 2010b). These presentations are focused on imparting knowledge about federally sentenced female offenders and the system in which they are incarcerated.

The national training module on female offenders offers new board members a limited understanding of this population. The organization’s reliance on the CSC\(^{86}\) to provide information on female offenders reinforces the CSC’s approach to this population and precludes other sources of knowledge and information, which may provide alternative

\(^{84}\) I filed two separate ATI requests with the NPB in 2009 and 2010 regarding training for women offenders. The 2010 request specifically asked for updated materials given the module was listed as “under construction”. I was informed that there were no other materials available that would respond to my request (personal communication, December 23, 2010). This suggests that the module remains incomplete.

\(^{85}\) Documents obtained through ATI request no. A-2010-00038 to the NPB.

\(^{86}\) Of course, this makes sense organizationally given the division of responsibilities among the CSC and NPB.
perspectives. This differs from the other training sessions which are compilations of selected materials; while these selections are likely institutionally self-serving, they do include sources beyond that of the CSC.\textsuperscript{87} In addition, the information provided via the training presentations perpetuates a one-dimensional understanding of ‘woman’, with Aboriginality included as the main difference among the population. Other intersecting lines of difference are not considered. These training materials constitute essentialized understandings of the female offender and the Aboriginal female offender, thereby resulting in simplified, one-dimensional understandings of what is a diverse population. This is not unique to training, but rather reflects the broader organizational approach to issues of gender, as will be discussed in Chapter 8.

Aboriginal Perceptions Training

The second training package utilized by the NPB is Aboriginal Perceptions Training (APT). APT is a recent initiative that has been piloted at the NPB since February 2008 (NPB 2008a: 209). This three-day training program is based on the RCMP’s APT course that has been modified by the NPB to meet its “training needs” (NPB 2009c: n.pag). According to one informant, the NPB worked with Aboriginal consultants to develop this training program (Interview 2). Participants are expected to learn about “Aboriginal perspectives of history, justice, education and healing and mainstream perspectives” in order to “promote Board members’ understanding of how the historical variance between both perspectives may have contributed to the over-representation of Aboriginal people in the criminal justice system” (NPB 2007d: 3),\textsuperscript{88} as if cultural differences—not colonial practices—produced this problem. Such statements reflect an understanding of diversity as a level playing field devoid of relations of power and privilege.

Several informants linked APT to the \textit{Gladue} decision. For instance, one informant noted that APT was created in response to an identified need to implement the \textit{Gladue} decision as “people needed greater understanding of how Aboriginals may […] find themselves ending up in conflict with the law over generations” (Interview 2). According to

\textsuperscript{87} For example, the Report of the Commission of Systemic Racism in the Ontario Criminal Justice System and reports from Statistics Canada.

\textsuperscript{88} Document obtained through ATI request no. A-2009-00018 to the NPB. The ‘trainer’s manual’ for Aboriginal Perceptions Training was requested through ATI request no. A-2010-00038; however, I was told “there is no current training manual available” (personal communication, December 23, 2010). It is important to note that the version I received under the \textit{ATIA} is identified as a ‘pilot’, suggesting that it has yet to be finalized.
another informant, APT ensured board members received training on the *Gladue* decision (Interview 10). With such knowledge of various background and systemic factors, APT is supposed to “facilitate informed conditional release decision-making in the case of Aboriginal offenders” (NPB 2007d: 3). Another informant felt that APT “get[s] people to think differently about the way they see the world” (Interview 8). The same informant noted that APT “is more or less successful depending on the participant’s willingness to open up”, although the informant had witnessed “people go through radical transformations in the way they think through that program” (Interview 8).

APT has four objectives:

- to build awareness of the systemic elements that have contributed to the over-representation of Aboriginal People in the criminal justice system;
- to understand the unique position of Aboriginal People in Canadian Law;
- to provide a greater understanding of the role of healing in Aboriginal communities and in correctional programs; and
- to provide an overview of the background factors to be considered in decision-making. (NPB 2007d: 3)

The three-day training program is broken down into six sessions which cover such topics as perceptual screens, Aboriginal concepts of law and justice, traditional Aboriginal societies, the causes of over-representation, state assimilation practices, the concept of healing, and the implications of *Gladue* on decision-making (NPB 2007d: 3-4). In each session, participants must complete individual and group exercises that involve reading and answering questions based on various excerpts, some of which will be analyzed below.

Similar to Part C of Unit 2 of the general training program discussed above, the first session of APT focuses on perceptual screens. The aim of this session is to understand the various screens that shape how people view their world and affect how judgments are made, as well as attitudes and feelings toward different situations (NPB 2007d: 3). The participant exercises in this session are focused on the different influences on individuals’ lives, including early childhood experiences and environmental and social structures, as well as culturally-based communication patterns. Ostensibly, this two-hour session aspires to raise the idea that there is no ‘right’ way to see the world, but rather a diversity of viewpoints and frames based on one’s upbringing and location. The implication for decision-making is that
board members and offenders may see the same situation differently. The example scenario used to illustrate this point contrasts the environmental and social contexts of a non-Aboriginal male Torontonian with an Aboriginal male from a remote community in the Northwest Territories, as well as the different decision-making practices of federal government officials with the Chief and Council of a remote Aboriginal community (ibid.: 10-11). This exercise reinforces the idea that ‘they’ are different from ‘us’ and therefore think and do things differently.

One key focus of APT is learning about assimilationist practices of the Canadian state. The fourth training session focuses on the residential school system and the so-called “60s scoop” involving the ‘adoption’ of Aboriginal children by the Canadian state (NPB 2007d). The excerpt in the Participant Workbook on the residential school system presents this history from a largely self-congratulatory government perspective that focuses more on the federal government’s apology and reconciliation process—the ‘Aboriginal Action Plan’—and the importance of healing for Aboriginal communities. The emerging story is one about ‘them’, not ‘us’, with the result that ‘we’ are not implicated or recognized as complicit (Razack 1998). Notwithstanding the recognition that Aboriginal peoples continue to be impacted by the legacy of the residential school system, the focus of the excerpted information is the past. Participants are provided with a directory of residential schools in Canada that includes the names, locations, and opening and closing dates. An accompanying timeline of residential schools provides a rather sanitized version of history as a progression of events located in time and space, yet one that is not contextualized in colonization and white settlement. In comparison, the excerpt on the 60s scoop provides a deeper context for the discussion of the removal of Aboriginal children from the 1960s to mid-1980s. The text situates the theft of Aboriginal children in the colonial process and considers how Aboriginal communities have been, and continue to be, impacted by this assimilationist program.

The session on assimilationist practices also includes a list of intergenerational impacts resulting from the residential school system and forced adoption programs. These issues are entirely negative, with no mention of the diverse attributes and resiliencies of Aboriginal peoples and communities. The list presents more as an inventory of Aboriginalized risk factors that board members can be trained to watch for when making decisions about Aboriginal offenders. The constitution of Aboriginal peoples and
communities in this way suggests a static level of dysfunction throughout their involvement with the penal system, thereby deflecting attention away from the role of correctional and conditional release policies in reinforcing these inequalities (Phillips 2011). As suggested above, the use of lists or typologies risks relying on essentialized cultural traits that are based on colonial stereotypes and which dilute complex problems into straightforward solutions (LaRocque 1997). Aboriginal diversity is selectively simplified into a format that is focused on transmitting information. The remaining challenge is how decision makers can use this knowledge to make decisions that are ‘fairer’ and more appropriate for Aboriginal offenders.

The notion of ‘healing’ also emerges as a prominent topic in APT. The session on healing seeks to enable participants to “explore and understand the concept of healing from an Aboriginal Perspective”, as well as to “understand healing as a correctional intervention in the rehabilitation of Aboriginal offenders” (NPB 2007d: 4). Despite these two aims, the latter emerges most prominently in the Participant Workbook. The NPB (2007d: 76) identifies eight “principles of healing” to help inform participants’ understanding of Aboriginal perspectives. What is conceptually interesting here is how these principles are subsequently reframed into correctionalist formats for training on “healing as a correctional intervention”. In this context, an Aboriginal offender’s culture is viewed as a correctional resource that leads to self-realization (Dhamoon 2009). Healing is reconstituted as something that can be used in the context of conditional release decision-making to assess her/his progress toward rehabilitation and likelihood of successful reintegration.

The reconstitution of healing into correctionalist frames and formats are reflected in APT through several examples of file information that could be included in the documentation provided by the CSC for board member decision-making. One example is a review of the offender prepared by an elder during four phases of the correctional process: intake, intervention, reintegration, and post incarceration (NPB 2007d: 80-81). This report is supposed to identify “where an offender is on his/her healing journey”, as well as “assist the CMT [case management team] in completing their assessments on the offender” (ibid.: 80). The report is also viewed “as a holistic approach that serves as a baseline from which to measure progress” (ibid., emphasis added) and reflects the notion of the healing journey. Such an approach has the implication of encouraging board members to use their knowledge

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89 The notion of ‘healing’ will be analyzed in greater detail in the next chapter.
of healing as a yardstick to assess Aboriginal offenders. Healing is reframed as a necessary and culturally specific indicator of rehabilitation, as understood within the dominant correctional paradigm.

A second example related to healing is the idea of a healing plan. The elder may prepare this plan as part of the offender’s overall correctional plan to ensure “special attention” will be given to her/his “particular circumstances and background” as an Aboriginal person (NPB 2007d: 80). Nielsen (2003: 77) defines healing plans as holistic and focused “on giving each individual an opportunity to work under close monitoring on the underlying causes of [her/]his behavior”. These plans reportedly draw on “Aboriginal culture and practices” (ibid.). The Participant Workbook includes a sample of information that could be included in a healing plan, which charts out Aboriginal offenders’ plans according to four dimensions—physical, emotional, spiritual, and mental—that are identified as being part of human beings and necessary for holistic healing (NPB 2007d: 84). Yet, the sample reflects an attempt by the institution to quantify healing based on the number and types of interventions (e.g., ceremonies, teachings, and activities) used to address each dimension. A sample healing plan provided in the Participant Workbook outlines a series of questions for the elder to complete about the Aboriginal offender, including whether s/he “acknowledge[s] a spiritual name”, “understand[s] who [s/]he is”, “understand[s] the four dimensions of human nature”, or understands “the symbolism of the sweat lodge” (ibid.: 105-107). As with the above example of the elder review, the healing plan can be seen as an Aboriginalized correctional plan that attempts to translate Aboriginal knowledge into a format that fits with the dominant correctional framework—one in which change can be tracked and counted.

In keeping with other NPB training materials and approaches, gender is not considered within APT. The imagined Aboriginal offender appearing in the pages of the Participant Workbook is largely genderless, except for the fact that all Aboriginal offender scenarios are based on males. As LaRocque (1997: 89-90) observes, the concern over cultural appropriateness works to “whitewash” gender domination within Aboriginal communities, such that “Aboriginal women’s experiences, perspectives, and human rights” are often disregarded. This approach also results in the privileging of culture and ethnicity over gender, thereby preventing an intersectional analysis.

One informant explained that APT is
a way of seeing the world through a different lens, so it could be applied to Aboriginal or any other culture or women or anything like that. The message of [the training] is going to be [...] what you perceive of an incidence is not what everyone is going to perceive and just trying to reinforce that. (Interview 11)

Interestingly, the informant understood the program as applicable to other groups beyond Aboriginal offenders. The notion of seeing the world differently suggests that there is a ‘normal’ way, such as that of white males, and a ‘different’ way, which is exemplified by Aboriginal and various non-white and/or non-male offenders. This quote illustrates the challenge of responding to difference through an approach that constitutes diversity vis-à-vis white male norms and standards. On the one hand, it limits the chance that normative practices will be reconsidered, such as the relevance of masculinities to offending and punishment. On the other, diversity remains an exception to the normal process of conditional release.

Assessing the Implications of Gladue

The case of R. v. Gladue [1999], as shown in Chapter 2, was an important decision for Aboriginal offenders, with impacts ranging beyond sentencing to corrections and conditional release practices. The Gladue decision was welcomed by one informant who explained that it allowed for the NPB’s decision-making policies to be “more sensitive to the needs of offenders” by requiring board members to “take into account [the offenders’] history, their background, their experience in the residential school and all that” (Interview 4). According to another informant, “the Gladue decision has asked that our board members take into account where [the] offender has come from and to make decisions based on what they feel would be the most effective rather than simply punitive” (Interview 11). Another indicated that the Gladue decision has had “a huge impact” on decision-making because board members have to consider the backgrounds of Aboriginal offenders (Interview 10). As these responses suggest, the Gladue decision requires decision makers to situate Aboriginal offenders in the context of their communities and take into consideration their histories and experiences as Aboriginal peoples in Canada.
As noted in the preceding section, the *Gladue* decision was interpreted as supporting the provision of knowledge about Aboriginal offenders and their specific backgrounds to board members, such as through training. The NPB (n.d.-a: n.pag) contends that the understanding and consideration of the unique background factors of Aboriginal offenders facilitates the decision-making process for Board members in that this information provides a more wholistic [sic] and relevant picture of the offender.

In order for board members to make release decisions, they must be “provided with adequate and relevant information in terms of who this person is, ties to community and supports, urban, rural, progress in addressing criminogenic factors” (NPB n.d.-a: n.pag). Such knowledge about Aboriginal offenders should then be used to assess their readiness for release and whether or not they pose undue risk to their communities. Knowledge about Aboriginal communities is deemed to be particularly important as the “NPB is aware that not all Aboriginal offenders are welcomed back into their communities” and thus “is open to other comprehensive release plans” (ibid.) as part of its being sensitive and responsive to Aboriginal difference. In addition, the organization wants information in cases where an (Aboriginal) offender is “following traditional ways”: “For example, if he/she is working with an Elder, participating in ceremony, living on the Pathways [Healing] range, have connections been made with community resources so that the offender may continue on this path upon release” (ibid.).

Such cultural information can then be used towards reaching ‘appropriate’ decisions that take these factors into account.

The NPB (n.d.-a) notes that the information shared by the CSC is “critical” to its release decision-making. Although board members have in the past “expressed frustration in the lack of information coming forward in the case of Aboriginal offenders”, the NPB indicates that it is “very supportive of CSC’s application of the *Gladue* decision” (ibid.). This application requires the social history of individual Aboriginal offenders to be taken into consideration in correctional planning and decision-making (CSC 2009), and included in the information submitted to the NPB for conditional release decision-making. Aboriginal “social history” is defined as something that “applies to Aboriginal offenders by birth right” (NPB n.d.-a: n.pag). It includes the following factors:

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90 Pathways healing ranges (or units) are described as “a traditional environment within CSC institutions for Aboriginal offenders dedicated to following a traditional healing path” and are part of the ‘Aboriginal Corrections Continuum of Care’ model introduced by the CSC in 2003 (CSC 2009).
• effects of residential school system (offender as survivor or intergenerational effects from family’s historical experiences);
• family or community history of suicide;
• family or community history of substance abuse;
• family or community history of victimization;
• family or community fragmentation and/or displacement;
• level or lack of formal education;
• level of connectivity with family/community;
• experience in child welfare system;
• experience with poverty;
• loss of or struggle with cultural/spiritual identity;
• exposure or membership to street gangs; [and]
• experience with the young offender system and/or custodial sentencing under the Young Offenders Act. (NPB n.d.-a: n.pag)

The social history approach works to constitute a particular sort of Aboriginal subject in the context of conditional release policies and related documents. These factors reflect certain knowledges about, and representations of, Aboriginal peoples as a group who experience systemic disadvantage due to their “birth right”, which presumably means their ‘race’ as Aboriginals. However, unlike the Gladue decision, these factors do not include the experiences or impacts of racism and assimilation in the context of colonialism; nor is there mention of how gender (and other intersecting aspects of identity) interacts with these factors. Yet, these factors are clearly racialized as belonging to Aboriginal offenders as a matter of birthright.

As such, this list reads as a collection of racialized risk factors through which the Aboriginal offender is constituted and subsequently assessed. This (re)framing presents the above experiences “as the calculable and predictable traits of an Indigenous offender” (Spivakovsky 2009: 222). It also works to shape the range of appropriate interventions to identify and target such traits, much in the same ways that are other criminogenic factors such as anti-social attitudes or criminal associates (ibid.). As Spivakovsky (2009: 223) has observed, in order to have them fit in the dominant correctional frame, “complex experiences of loss and dispossession” are reduced as the individual deficiencies of the Aboriginal
offender, and thereby disconnected from issues of power and privilege. Research by Hannah-Moffat and Maurutto (2010) has also found that Gladue principles are incorporated into the dominant language of criminogenic risk/need within pre-sentence reports. As a consequence, cultural considerations tend to be itemized alongside risk factors because the overarching conceptual framework of the pre-sentence report remains anchored on the assessment of risk and need (ibid.). Hannah-Moffat and Maurutto (2010) caution that the reframing of Gladue principles as risk factors will result in Aboriginal offenders continuing to be labeled as “high risk” and “high need”. This, in turn, works against the purpose of incorporating Gladue principles into NPB policy, which is to make better-informed decisions regarding Aboriginal offenders.

One of expected outcomes of the incorporation of Gladue principles into correctional policies and practices is the “[e]mpowerment of Aboriginal offenders to enhance their cultural competency and celebrate their heritage” (NPB n.d.-a: n.pag, emphasis added). Indeed, as Martel and Brassard (2008: 341) have observed, it is through the provision of Aboriginal programming and spiritual ceremonies that Aboriginal offenders are said to “‘learn’ of their cultural distinctiveness” and construct their own racialized identities. In this context, culture is defined as something Aboriginal offenders possess and can (learn to) express competently, while the notion of heritage is linked to the past as something Aboriginal offenders can celebrate. The concept of cultural competency is suggestive that there is a right way for the expression of one’s culture, which is simultaneously defined as something that is immutable and homogenous. The notion of competency also suggests that it is something that can be measured and assessed as a factor affecting an offender’s risk of reoffending.

Producing more culturally competent Aboriginal offenders who know and “celebrate their heritage” is seen to contribute to public safety through the reduction of their risk. Aboriginal identities are believed “to hold the key to rehabilitation from a life of crime” (Martel et al. 2011: 243). In the language of risk, the empowerment that is presumed to come through the adoption of an Aboriginal identity is more closely linked to the notion of protective factors, as embracing one’s Aboriginality could lower her/his risk of recidivism and prevent future involvement in the criminal justice system (Spivakovsky 2009; Marie 2010; Martel et al. 2011). In this sense, my analysis of the NPB’s Gladue assessment
suggests that it is the removal or loss of Aboriginal offenders’ Aboriginality that is constituted as the problem, to which culturally appropriate programming and assessments can be applied.

Yet, as Waldram (1997: 38) has argued, the correctional system has “profound difficulties […] in accurately identifying Aboriginal inmates in cultural terms and in understanding the influence that culture has on their prison behaviour”. His research has illustrated problems with the identification and labeling of Aboriginal offenders as Aboriginal and how traditional Aboriginal offenders are perceived and described within documentation by correctional staff. For Waldram (1997: 34), greater “accuracy” is needed if Aboriginal offenders “are to be treated as cultural beings”. In contrast, for Martel and colleagues (2011: 243), accuracy may not be the issue. These scholars have pointed to the “troubling fact” that the ‘discovery’ of one’s Aboriginality occurs “via a state co-opted definition of what is and is not aboriginal culture”. Penal institutions are setting the standards and expectations around Aboriginality in an effort to be responsive. This issue is also relevant to the next section.

Divergent Ideologies: Institutional Attempts to ‘Indigenize’ Risk

In the early 2000s the NPB entertained the idea of developing a risk assessment framework that was responsive to Aboriginal offenders. The organization contracted with a consultant to “research and conceptualize” its risk assessment process for Aboriginal offenders “through a traditional holistic Creational View” (NPB 2001: 1). The consultant’s report sets out a “traditional Aboriginal framework” which was used to analyze the NPB’s decision-making policies for Aboriginal offenders, with specific focus on section 2.1 of the Policy Manual and EAHs (NPB 2001). This framework attempts to incorporate Aboriginal philosophies and worldviews, and recognizes the impacts of colonization on Aboriginal offenders through the disruption of “traditional knowledge systems, and traditional social institutions within Aboriginal communities” (ibid.: 2). According to the NPB (2004a: 8, emphasis added), this “framework was to become a training tool that would help the Board members gain a better understanding of the Aboriginal worldview, as well as a better understanding of the offender as an Aboriginal person”. Such an exercise reflects a common institutional response to

91 Document obtained through ATI request no. A-2009-00022 to the NPB.
difference whereby “aboriginal culture is taken to be a bounded, unified set of customs, habits, values and beliefs” (Martel et al. 2011: 245). The selection and reproduction of one Aboriginal worldview within a training tool ensures that “culture operates as a totalizing idiom”, instead of reflecting the diversity of Aboriginal worldviews, experiences, and cultural practices (ibid.). The homogeneous characterization of Aboriginality reflects the challenge of institutionalizing diversity. The selective inclusion shows that something is being done to address Aboriginal difference, while at the same time produces a certain version of Aboriginality that Aboriginal offenders may then be expected to represent—an issue that will be addressed further in the next chapter.

A key finding of the consultant’s report is that the assessments used by the CSC and provided to board members for their decision-making do not capture “essential cultural information” that would help them understand “Aboriginal specific risk factors and areas of need” (NPB 2001: 51). The example of employment is used to explain how offenders’ files do not reflect Aboriginal understandings of employment, such as value attached to “the activities an individual participates in to sustain and enhance life” (ibid.), which may be particularly relevant for Inuit offenders. To rectify this situation, the consultant recommends the creation of a grid based on the seven stages of life for Aboriginal peoples that can capture “areas of need and risk factors” that are “Aboriginal specific”, as well as take into account the impacts of colonization on Aboriginal offenders and their communities (ibid.: 52). In this sense, the report recommends holistic assessments that are informed by Aboriginal perspectives on healing in the context of Aboriginal offenders’ “development through the seven stages of life” (ibid.: 61). Similar approaches have been considered in Australia (see Day 2003; Day et al. 2003; Spivakovsky 2008) and New Zealand (see Marie 2010) to improve the assessment and treatment of indigenous offenders.

The consultant’s proposition of an Aboriginal assessment tool (i.e., grid system) to measure an Aboriginal offender’s progress through the seven stages of life reflects an attempt to translate diverse Aboriginal perspectives and knowledges into a format that can be recognized and utilized by the corrections and conditional release system’s dominant frame of risk. The consultant’s recommendation is an attempt to make the penal system adapt its

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92 Other scholars (e.g., Hannah-Moffat 2005; Martel et al. 2011) have argued instead that such assessments are inherently flawed (and racialized) because they capture various factors that systematically disadvantage Aboriginal peoples.
knowledges and practices regarding Aboriginal offenders, rather than have Aboriginal perspectives and knowledges integrated into the dominant penal frame. A reading of the consultant’s report illustrates the dissimilarity of Aboriginal and mainstream understandings of concepts like healing and risk assessment. For example, the report is critical of healing or rehabilitation being framed and understood via cognitive behavioural theories because of its incompatibility with the “traditional Aboriginal framework” (NPB 2001: 54). In particular, according to the consultant, cognitive behavioural theories of rehabilitation are based on bringing an offender in line with society’s norm, which is not appropriate for Aboriginal offenders as this norm has been imposed through colonial policies of assimilation and cultural destruction (ibid.). To remain consistent with the ideal of diversity when assessing an Aboriginal offender’s healing, the NPB ought to consider information from a traditional Aboriginal perspective (ibid.: 60), and not with the dominant frame based on cognitive behaviouralism and the risk-need-responsivity model. The failure to utilize culturally appropriate modes of assessment could therefore result in unfair and potentially discriminatory decisions.

The consultant’s findings reflect what Monture-Angus (1999) has long argued; that is, the logic of risk management, as “one of the foundational ideas of the current correctional philosophy”, is incompatible with Aboriginal cultures and traditions. She suggests that this incompatibility goes beyond “cultural conflict” due to the ways that risk thinking frames relationships, as if individuals can be disassociated from their communities and broader social relations. Risk assessments individualize risk into an assortment of domains that cannot capture the interrelationships between an individual and her/his community. Monture-Angus (1999) argues that this “individualizing of risk absolutely fails to take into account the impact of colonial oppression on the lives of Aboriginal men and women”. As a result, risk assessments do not measure risk but rather “one’s experiences as part of an oppressed group” (ibid.; see also Marie 2010; Martel et al. 2011). The individualization of risk makes it difficult to account for social context factors, such as discrimination or interdependence, that shape people’s lives (Day 2003)—a challenge I also discuss above in relation to the implementation of Gladue.

The consultant’s attempt to frame Aboriginal perspectives and knowledges into easily digestible bits for the NPB illustrates the challenge of bringing together divergent
worldviews. It also raises questions as to the degree to which different knowledges and perspectives are embraced and integrated into policies and practices. As noted above, the consultant presents a case for the use of an Aboriginal assessment tool based on traditional Aboriginal knowledges and perspectives; in this sense, the penal system is asked to do things differently. The notion of an Aboriginal assessment tool reflects the dominance of risk thinking and the barriers to bringing about change in relation to how penal institutions deal with Aboriginal offenders. As Day (2003: 7) observes, a key issue relates to making change within “a dominant culture that seeks an evidence basis for interventions, defined by an adherence to a scientific method of knowledge production”. Existing methodologies for evaluating interventions for Aboriginal peoples may be culturally biased (ibid.) and inadvertently discount different ways of conceptualizing and assessing the likelihood of reoffending or what an individual needs to address the challenges s/he faces.

The NPB contracted with the same consultant in the 2001-02 fiscal year to “develop a final enhanced training framework for risk assessment in a traditional Aboriginal way” (2004a: 8).93 This second contract allowed the consultant to “further research and consult across the country” in order to create an “Aboriginal Risk Assessment Framework” (ibid.). However, the NPB determined that it “was not yet ready at this stage to implement” the Framework (ibid.); instead, the organization “recognizes that much work remains to be done before implementing such a tool and that it should move steadily but cautiously in this direction” (ibid.: 9). Subsequent discussions of the Framework in the documents accessed were not evident. Nonetheless, this attempt to indigenize risk is significant because it shows how two incompatible worldviews or knowledges are combined by an institution to accommodate diversity.

Conclusions

This chapter has shown how the NPB has incorporated concerns about gender and diversity into the dominant institutional frame. The integration of information about Aboriginal, female, and ethnocultural differences into the organization was characterized by the selective inclusion of information that is more general in nature, partly because the complexities of these differences do not easily lend themselves to concise policy applications. I examined

93 I submitted an ATI request to access this report but was told that it could not be located (ATI no. A-2010-00027).
three different organizational knowledge practices that aim to produce gender responsive and culturally ‘appropriate’ conditional release decisions for offenders identified as different along lines of gender, race, and culture. Diversity training, the assessment of Gladue, and attempts to indigenize risk are organizational attempts to know certain populations and make diversity applicable to issues of risk assessment in the context of decision-making. Yet, the challenge of ensuring culturally competent and gender responsive approaches means decision makers ought to know these particular populations, recognize their own personal biases, and ensure the appropriate knowledges and sensitivities come together in practice.

The first section on diversity training examined how difference is constituted within training manuals. The NPB’s approach to training is focused both on learning about offenders who are defined as different, or other, and coming to recognize the various perceptions that shape how one sees the world and makes decisions. The analysis of interview data and training manuals demonstrated that such initiatives work to produce and circulate gendered and racialized knowledges of female and non-white others. The training texts are based on an imaginary subject who is white and male, such that diversity training tends to reinforce whiteness and maleness as the normative subjectivity of decision-makers, while diverse offenders are othered as targets of knowledge and concern. This framing limits the scope of diversity by portraying differences as relevant to certain groups of offenders (not all offenders) and for particular reasons (e.g., spirituality, background experiences, etc.). A selective understanding of offender differences is utilized in the training materials, likely because conditional release policy cannot deal with the complexities and nuances of diverse identities.

The second section on Gladue illustrated how the Court’s decision and ideas about Aboriginal difference are taken up by the organization and made applicable to decision-making. The Gladue decision was interpreted as supporting the provision of knowledge about Aboriginal offenders and their specific backgrounds to board members. Through Gladue, decision makers are required to situate Aboriginal offenders in the context of their communities and take into consideration their histories and experiences as Aboriginal peoples in Canada. However, the analysis clarified the challenges of translating histories and experiences into criteria for assessing risk and making decisions. I found that the Court’s
decision and ideas about Aboriginal difference have resulted in reconstituted techniques of governing Aboriginal offenders through notions of tradition and culture.

Lastly, the chapter’s third section on the NPB’s efforts to indigenize risk through the incorporation of Aboriginal philosophies and worldviews demonstrated the incompatibility of Aboriginal and institutional knowledges of risk. The proposition of an Aboriginal assessment tool to measure an Aboriginal offender’s progress is an attempt to translate diverse Aboriginal perspectives and knowledges into a format that can be recognized and utilized within the penal system’s dominant frame of risk. Although this proposal was abandoned by the organization, it is an illustrative example of the challenge that Aboriginality poses to dominant penal practices, including those not easily adaptable according to the logic of cultural appropriateness. The next chapter considers this challenge in more detail by considering the institutional responses to Aboriginal offenders at the NPB.
Chapter 6
Cultural Ghettos? Organizational Responses to Aboriginal Peoples

Colonial policies have had devastating impacts on Aboriginal communities, producing poor social, political, and economic outcomes. One such impact can be seen in the relationship between Aboriginal peoples and the Canadian criminal justice system. As discussed in Chapter 2, Aboriginal offenders are over-represented within federal corrections—a trend that has remained constant for over forty years and which has recently worsened (see OCI 2009a). Additionally, conditional release rates for Aboriginal prisoners are consistently lower than the rates for non-Aboriginal groups, but the rates of revocation and new offences are higher (NPB 2000a). For these reasons, Aboriginal issues constitute the bulk of the NPB’s diversity work. As noted in Chapter 5, the NPB’s emphasis on Aboriginal peoples is reinforced by the pivotal Supreme Court decision in Gladue. The NPB is therefore cognizant of the various “pressures and expectations for extensive, effective and integrated action” to address “the needs of Aboriginal peoples” (ibid.: 3). This chapter traces the development of Aboriginal-focus initiatives and unpacks how Aboriginality is constituted through these strategies.

The primary diversity initiatives related to Aboriginal peoples developed at the NPB are elder assisted hearings (EAHs) and community-assisted hearings (CAHs). Both initiatives are included in policy and are intended to respond to the special needs of Aboriginal offenders and their communities, and increasingly, Aboriginal victims. Elders play a key role in EAHs and CAHs and serve multiple functions: as sources of knowledge about Aboriginality for board members; as ‘interpreters’ of culture; as ‘bridges’ between Aboriginal offenders and board members; and as liaisons between Aboriginal communities and the NPB. However, I will argue that elders and Aboriginal knowledges are used selectively to allow for the adaptation of conditional release hearings while dominant decision-making paradigms remain intact.

Despite the existence of EAHs since 1992 and CAHs since 1997, there is a paucity of academic research on these initiatives. This chapter details the genesis of the NPB’s initiatives and examines how Aboriginal needs and problems are constituted at these hearings, as well as the implications associated with their use. EAHs and CAHs are two
techniques used by the NPB to modify and Aboriginalize standardized practices (i.e., parole hearings) to accommodate diversity demands. In addition, the NPB’s implementation of the *Gladue* decision illustrates how the organization is grappling with issues of Aboriginal difference. I argue that Aboriginal offenders are ‘ghettoized’ in the realm of culture, meaning that culture and cultural difference are constituted as the defining features of Aboriginal offenders and the central focus of the modified hearing approaches. Consequently, EAHs and CAHs are considered to be exceptional and peripheral to the ‘normal’ program of conditional release. These initiatives also serve important institutional functions by allowing the organization to appear responsive to the needs of Aboriginal peoples, thereby reducing potential risks to reputation through claims of inaction and cultural ignorance.

The emphasis on Aboriginal offenders is justified but has the unintended consequence of making diversity initiatives synonymous with Aboriginality and therefore marginalizing other forms of diversity. In particular, ‘gender’ (or female offenders), although recognized as distinct with different needs, is not specifically mentioned within the institutional discussions of EAHs or CAHs. As will be examined in Chapter 8, gender is bracketed in discussions of Aboriginality—as well as issues of ethnicity and/or culture, more generally—in the context of initiatives designed to address the needs of Aboriginal offenders. As a result, the focus of EAHs and CAHs is an implicitly male Aboriginal subject.

Elder Assisted Hearings and the Role of Elders

EAHs are the main diversity initiative at the NPB.\(^\text{94}\) This hearing model was the most common initiative named during interviews when informants were asked to identify how the NPB had responded to calls for better approaches to diversity at the organization, both pre- and post-CCRA. The EAH initiative also has the largest volume of documentation (i.e., policy, background, training, and assessment) produced internally by the NPB. This is consistent with the interview data that suggest the special needs of Aboriginal offenders are the paramount focus of diversity initiatives at the NPB. This section traces the creation of the EAH model and considers various issues and tensions associated with its implementation and use, including the key role played by elders. It demonstrates how Aboriginal knowledges and

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\(^{94}\) As will be shown, the term used to describe hearings for Aboriginal offenders has changed over time. For the sake of simplicity and consistency, the term elder assisted hearing (EAH) will be used to describe this hearing format throughout the dissertation.
practices were selectively incorporated into an ‘adapted’ hearing format that attempts to be responsive to Aboriginal difference while maintaining dominant decision making frameworks.

Background

The perceived need for improved approaches to dealing with Aboriginal offenders during the parole process was identified before the enactment of the CCRA. A key document—as discussed in Chapter 2—was the Final Report of the Task Force on Aboriginal Peoples in Federal Corrections (Solicitor General 1988a, hereinafter the Final Report), which makes a strong case for Aboriginal-specific approaches in both corrections and conditional release. In relation to the latter, the Final Report recommends the use of elders as assessors to aid the decision-making processes of the NPB. The traditional role of elders is framed as helping to counsel “community members in appropriate behaviour, maintaining peace and harmony among community members and generally acting as grandparent to the community” (ibid.: 37). It was believed that elders could better assess Aboriginal offenders’ suitability for parole because of their knowledge of Aboriginal communities, spiritual and cultural correctional programs, and how to best communicate with Aboriginal offenders. Elders’ perspectives were viewed as adding “significantly to the understanding of the case and thus [facilitating] a more equitable decision” (ibid.: 38). Accordingly, the Final Report includes the recommendation that, if requested by a prisoner, elders be allowed to submit an assessment to the NPB that would be weighted similarly as other professional assessments.

EAHs originated in the Prairie Region in the 1980s as board members and staff tried to “address issues regarding Aboriginal offenders” and especially the “disproportionate number of incarcerated offenders of Aboriginal ancestry” (NPB 2006a: 1). The NPB’s (2006a) background paper, ‘Elder-Assisted Hearings: An Historical Perspective’, notes that studies conducted by the Prairie Region in the early 1980s indicated that Aboriginal offenders were more likely to be denied conditional release and waive their right to a hearing than non-Aboriginal offenders. In addition, it reports that Aboriginal offenders felt “uncomfortable” and “alone” at parole hearings “without having someone with them [whom] they could rely on for support” (ibid.: 2). In sum, the NPB (2000b: 3) recognized that the
“conditional release process failed to take into account the unique needs and circumstances of Aboriginal offenders”.

The impetus for a more culturally relevant hearing also came from the perception that “Aboriginal offenders were not opening up in the hearing, they were struggling to communicate”, and “they were one word answering” (Interview 8). As one informant explained, because of these communication barriers, “board members were not getting the kind of information they needed to make decisions”, thereby limiting their ability to make “good decisions” (Interview 8). Consequently, the communication barriers between board members and Aboriginal offenders were seen as impinging on the NPB’s decision-making abilities.

The NPB (2006a: 2) spent much of the 1991-92 fiscal year consulting with elders, native brotherhoods, and native liaison officers in the Prairie Region on how the parole hearing process could better respond to the needs of Aboriginal offenders. At a November 1991 meeting, one Aboriginal board member “spoke of a vision for the NPB to deal with Aboriginal offenders which would include the involvement of Elders in non-confrontational hearings” (ibid.). This idea was supported and steps were taken to pilot the model. The first EAH subsequently took place on January 22, 1992 at Drumheller Institution in Alberta (ibid.).

Part of the challenge of the EAH related to finding “the ways and means where [the NPB] can adapt [the] hearing and decision process to be more culturally sensitive to the aboriginal way without adversely affecting the Board’s role and mandate to render independent, quality decisions” (NPB 2006a: 3). During this development phase, tensions existed around the varied ways in which elders were to be defined and integrated into the process. A report prepared by a consultant in 1992 indicates that initially, elders were “invited to serve as a resource” to board members during hearings, as well as provide “cultural guidance and spiritual knowledge” and “put the offenders at ease” during parole hearings (ibid.: 3). The use of elders as advisors to the process is reflected in the fact that the NPB contracts with specific individuals to provide this service. Yet, a key issue related to determining how much information elders were to receive about offenders prior to EAHs and the nature and extent of information they were expected to provide to board members (NPB 2000b: 17).
A point of controversy in the development of EAH policy and practice related to the elder’s ‘place’ during board members’ deliberations. To some, the elder’s presence violated “the principles of fundamental fairness” (NPB 2006a: 4) because they “could have raised issues to Board members during deliberations to which the offender did not have a chance to respond” (NPB 2000b: 3). To clarify the legality of elders’ presence, the NPB sought several legal opinions, one in 1995 and another in 1997. Both opinions recommended that the parole applicant consent to the elder’s presence (NPB 2006a: 4-5). In response, the NPB established some procedural safeguards to ensure offenders understood their rights related to EAHs. For instance, a consent form was created in 1996 that required offenders to agree to the elders’ presence at all times. Information was also provided as to the role of the elder and applicants were asked to indicate whether they wanted their hearing to open with a prayer (ibid.: 5). This was seen to be the “most appropriate way to allow offenders to choose whether or not they want an Elder assisted hearing while also providing the offender’s consent for the Board Elder to remain in the hearing room during deliberations” (NPB 2000b: 15). The debate around the presence of the elder during deliberations raises questions as to her/his place in the hearing process and the extent to which s/he is perceived by the offender as a neutral third-party, an agent of the NPB, and/or a support for the offender.

Another issue that arose during the development of the EAH approach related to who was eligible for these hearings. During the implementation of EAHs in the Prairie Region, “there were concerns being voiced that EAHs should not be imposed on any offender and that the choice to do so should be theirs” (NPB 2006a: 3-4). Initially, Aboriginal offenders were given first priority in assignments to EAHs, although many non-Aboriginal offenders also attended these hearings in the Prairie Region (ibid.: 4). The Pacific Region attempted to accommodate requests for EAHs by establishing an “order of preference”: “1. Aboriginal offenders practicing traditional ways; 2. Non-aboriginal offenders practicing traditional ways; 3. Aboriginal offenders not practicing traditional ways; [and] 4. Non-aboriginal offenders not practicing traditional ways” (ibid.: 8). However, such an order of preference was later abandoned according to the rationale that although such hearings are meant for Aboriginal offenders, a “non-Aboriginal offender, who is committed to an Aboriginal way of life, may also request” an EAH (NPB 2011c, Ch. 9.2.1: 123, emphasis added). Interestingly,

95 Additionally, as of 1997, offenders are asked to confirm on record their request for an EAH (NPB 2006a: 5).
access to an EAH is not solely predicated upon one’s racialized status as Aboriginal, but more so on the practice of “traditional ways” or “an Aboriginal way of life”. As one informant explained, “you don’t have to be born an Aboriginal, if you have a genuine desire and you engage in programs to discover Aboriginal spirituality you can also have access to this type of hearing” (Interview 5). Ostensibly, “genuine desire” and a record of programming would be demonstrated within the offender’s case file to support her/his request for an EAH. The EAH approach therefore allows for a new type of hearing that can accommodate some Aboriginal offenders, while others remain within the regular hearing format and can continue to have a non-Aboriginal experience.

The physical format of EAHs provoked much debate and disagreement, with the table emerging as the paramount source of contention. According to one informant, “the fight about the table deal for the Aboriginal hearings was unreal because board members like to have a table to do what you’re doing [writing], and to not have a table really bothered them” (Interview 7). For some, tables were viewed as a barrier to open dialogue among those participating in the hearings, while others were committed to the status quo. The NPB’s (2006a: 5) background paper on EAHs notes that it “was some time before Elder-Assisted Hearings were held in a circle without the benefit of a table”. It appears that much debate occurred around the organization of the hearing room and whether or not to remove the table or arrange chairs in a circle format. The same informant notes that “one region in particular just raised hell about that [the removal of tables], like no way, […] gotta have a table” (Interview 7).

Another “controversial” issue related to women wearing pants at EAHs in the Prairie Region: “Cultural protocol is such that women attending [the] ceremony (smudge) wear a skirt or place a shawl, or similar item over their hips” (NPB 2006a: 6). Men are encouraged to wear casual clothing instead of a suit (NPB n.d.-d). To accommodate women who did not want to follow the cultural protocol, EAHs are divided into two parts: ‘ceremonial’ and ‘business’, with the former part optional (NPB 2006a: 6). The NPB (2009g: n.pag) indicates that in the Prairie Region, the skirt protocol is in place as a sign of “respect for the traditional and cultural values of the First Nations people in the Prairies, and as a show of

96 Document obtained through ATI request no. A-2009-00010 to the NPB.
97 Document obtained through ATI request no. A-2009-00010 to the NPB.
respect for the Elders performing the ceremony”. The protocol is based on the following rationale:

Women are asked to wear skirts as validation to the power they hold. Women are the givers of life; they are the nurturers. Because of that nurturing role and the gift of being able to provide life to the unborn child in the womb, they share a sacred and powerful gift with the Creator and Mother Earth. The wearing of the skirt honours that power and that very sacred connection to Mother Earth. (NPB 2009g: n.pag)

This protocol does not apply to hearings for Inuit offenders. Ostensibly as a measure to accommodate women who are not dressed appropriately, NPB hearing officers are to “have shawls available at the hearings for women who wish to participate in the ceremony” (ibid.).

Although these alternate hearing approaches for Aboriginal offenders developed in the Prairie Region prior to the CCRA, one informant indicated that the legislation gave the NPB “a push to basically kind of force the other regions because they were not as excited about it to get going” (Interview 13). According to this informant, the willingness to implement EAHs throughout the regions was mixed, with some regions keen on the idea and others fairly resistant (Interview 13). The informant also notes that the impetus for establishing EAHs was strongest in the Prairie Region because they were seeing those offenders on a daily basis. They were seeing them coming back. They were seeing them not showing up for hearings because they [Aboriginal offenders] thought, we’re caput anyways, so why bother. And they were seeing them going back to situations in the community which they knew in advance would probably not be of much help. (Interview 13)

The push to create EAHs in the region was, according to this same informant, largely led at the time by an Aboriginal board member and regional vice-chairperson who was described as being “a voice in the desert” (Interview 13). The NPB’s (2006a: 7) background paper on EAHs also suggests that the drive for these hearings in the Pacific Region was led by this same individual. The informant contends that much of the resistance from other regions was due to a numbers issue; that is, “the numbers [of Aboriginal offenders] in the Prairies was huge, but in Ontario and Québec and the Atlantic region there were not that many Aboriginal offenders, so the pressure was not sensed as much” (Interview 13). The informant goes on to say that to bring about changes in policy, all regions need to be on board. However, with
EAHs, “when you have one region [Prairie] and a bit in B.C. [British Columbia] pushing, it doesn’t have the same momentum” (Interview 13). For the Ontario and Québec regions, the need “to develop new approaches for Aboriginal offenders… was not an issue, [as] they would see an Aboriginal offender once in a blue moon” (Interview 13).

The NPB’s (2006a) background paper does not highlight these tensions in the development of EAHs and their implementation across the regions. It details the different experiences of each region as EAHs were put into practice, but does not indicate that some regions were resistant to the implementation of this approach. Similar to the informant quoted above, the resistance appears to be related to numbers: the paper indicates that the numbers of Aboriginal offenders in Québec was small compared to western Canada. For this reason, the Québec Region commissioned a study to determine whether or not any changes should be made to hearings to make them more respectful toward Aboriginal offenders (ibid.: 11), which suggests that some regions needed additional ‘proof’ that such specialized hearings were required, thereby necessitating organizational action. As will be discussed later in Chapter 7, a similar pattern can be seen in relation to the adoption of different approaches for ethnocultural offenders.

The differing experiences of each region also suggest that the development and implementation of EAHs varied because “the replication of existing models was not appropriate”, such “that each region should establish their own model in consultation with Aboriginal communities, offenders, CSC staff, Native Liaison Officers and Elders” (NPB 2006a: 13). The NPB (2000a: 5) indicates that the requirement for the organization to be “flexible in its approach to assisted hearings” is based on regional consultations with Aboriginal communities. Such regional differences include the presence (or absence) of elders during deliberations, the layout of the hearing room and hearing format, and having elders or Aboriginal advisors on contract with the NPB or using the CSC’s elders (NPB 2006a). The regions also used different names for EAHs, with the exception of the Pacific and Prairie Regions. For example, these hearings are known as Aboriginal Assisted Hearings in the Atlantic Region, Adapted Hearings for Aboriginal Offenders in the Québec Region, and Aboriginal Circle Hearings in the Ontario Region (ibid.). Ostensibly, these name variations reflect regional preferences, such as those of the regional office and/or the Aboriginal communities in the area.
The Executive Committee gave permission to the other regions to “consider implementing” such approaches in 1995 (NPB 2000b: 5). Such a directive appears to lack persuasion or convey a sense of urgency. Nevertheless, EAHs began in the Pacific Region in 1997, followed by the remaining regions (i.e., Atlantic, Québec, and Ontario) in 2000 (NPB 2006a). Starting in the early 2000s,\(^98\) steps were taken to implement “more culturally sensitive hearings” in the Northwest Territories (NPB 2002a),\(^99\) Nunavut, and in other areas such as Labrador (NPB 2006a). As will be discussed next, Inuit offenders were recognized as distinct from other Aboriginal groups and therefore steps were taken to develop a separate EAH model to reflect this difference.

Hearings for Inuit Offenders

Inuit offenders have been recognized as a special group in the context of Aboriginality, thereby justifying a more specific approach within NPB policies and practices. The NPB (2004a: 13) views the EAH model as being “based on First Nations traditions and culture”. Despite the fact that the other Aboriginal offender populations (i.e., Métis and Inuit) are “considerably smaller”, the NPB has recognized that “the needs and circumstances” of these populations “are equally as important” (ibid.). However, it appears that hearings for these other Aboriginal populations have lagged behind. Hearings for Inuit offenders developed at different times in the regions. Inuit offenders are seen as an unique Aboriginal group because of their isolation and “connection with their home”, and because many Inuit offenders cannot speak English or French (NPB 2006b: 3). Inuit offenders from northern Canada experience geographic dislocation during incarceration in southern penitentiaries and may face additional challenges while on conditional release if they are not paroled to home communities.

The first Inuit hearing was held in the Atlantic Region in September 2001 after consultations with Inuit and Innu communities in Labrador (NPB 2006b). An Inuit hearing model was explored in 2004 in the Ontario and Nunavut Region when it contracted with an

\(^{98}\) In 2000, the federal budget set aside funding over five years for ‘A Strategy to Advance Effective Corrections and Citizen Engagement’ (NPB 2004a). The NPB, along with two other federal partners (Solicitor General and the CSC), was granted funding, part of which it used to focus on Aboriginal corrections. Among its commitments was the expansion of EAHs and implementation of “culturally appropriate hearing models for offenders from the Nunavut Territory” (ibid.: 7). According to the NPB’s (2004a) evaluation report, the number of EAHs increased in each region over the time period.

\(^{99}\) Document obtained through ATI request no. A-2009-00017 to the NPB.
Inuk consultant to prepare guidelines for Inuit hearings (NPB 2004b). Following the NPB Policy Manual’s Aboriginal Assisted Hearings (or EAH) model, flexibility was allowed for the region to provide hearings for Inuit offenders. As with EAHs, it was recommended that Inuit hearings allow Inuit offenders to be assisted by elders and liaison officers, and provide for ceremonial practices and a circle format (ibid.). For instance, prior to the start of a hearing, time would be allotted for the lighting of the qulliq (a crescent-shaped stone lamp typically fuelled by animal fat) and a prayer given by the elder in the offender’s chosen language. The guidelines also recommend that Inuit hearings follow a circle format, without a table, in which participants are arranged in a particular order (ibid.).

As with the general EAH model, Inuit hearings are viewed as allowing for board members to gain greater knowledge of Inuit offenders for risk assessment and decision-making purposes. Inuit hearings are also presented as improving board members’ “confidence level[s]”, as well as enhancing the “cooperation from the Inuit offenders” (NPB 2004b: 11). The consultant’s report also stresses the role of Inuit cultural awareness training for board members and staff and recommends the NPB provide funding for some members and staff to travel to Nunavut “to experience the living ways of the Inuit and meet with people who impact the community the most” (ibid.: 6). To further develop its hearings for Inuit offenders, the report encourages the organization to forge partnerships with community organizations to enhance its decision-making process for Inuit offenders, as well as create an “ongoing communications strategy” so that the NPB can better share information about its roles and responsibilities (ibid.: 11). The report also recommends a review of the risk assessment used by the NPB to ensure it is “culturally sensitive to the Inuit lifestyles” (ibid.: 9). As discussed in the previous chapter, attempts to meld risk logics with holistic approaches, such as through hearings for Inuit or Aboriginal offenders, pose conceptual and practical difficulties that are not easily overcome (see Monture-Angus 1999; Hannah-Moffat and Maurutto 2010). For instance, producing a ‘culturally sensitive’ risk assessment approach that considers Inuit lifestyles may result in the translation of various cultural considerations into a list of Inuit risk factors. This is because the overarching conceptual framework of risk assessment remains focused on individualized traits associated with the likelihood of recidivism.

\(^{100}\) Document obtained through ATI request no. A-2009-00022 to the NPB.
Implementation Issues

The inclusion of Aboriginal difference through the EAH model is characterized by institutional disagreement about how ‘best’ to integrate Aboriginality into the NPB’s policies and practices. The implementation of the EAH approach was monitored by the Performance Measurement Division of the NPB. Requests made under the ATIA yielded one evaluation of the EAH model from March 2000. One of the purposes of this evaluation was to determine whether or not the implementation of the EAH policy had “lived up to its original spirit and intent” (NPB 2000b: 9). Several areas of concern in relation to the implementation of EAHs in the Prairie Region are highlighted in the evaluation report. These concerns echo some of the tensions discussed previously around the role of the elder and the degree to which Aboriginality could be safely or appropriately accommodated without undermining the integrity of decision-making.

One identified concern related to the failure to remove barriers as most EAHs were being held in regular hearing rooms. The level of participation of elders at EAHs also differed depending on factors such as the elder’s and board members’ personalities and the type of case under review (NPB 2000b: 9). In addition, there was apparent difficulty on the part of some board members in relating “information on Aboriginal cultural and spiritual traditions to the risk assessment criteria” (ibid.). Such implementation issues hint at the difficulty of modifying an existing approach to make it sensitive to culture and other forms of difference, as well as the existence of resistance to change on the part of some staff and board members to the accommodations required by the EAH format.

Another implementation issue related to the “conflict between the need for regional flexibility and national consistency” (NPB 2000b: 9). For instance, with the implementation of EAHs in the Pacific Region, there was concern that the process reflected “Prairie Indian traditions, which may not be culturally appropriate to other Aboriginal groups within the region” (ibid.: 11). In this sense, “regional flexibility” was desired as it would allow the Pacific Region to adapt the EAH approach based on Coast Salish traditions so as not to impose different cultures on offenders (ibid.). According to the evaluation report, the needs

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101 In addition to assessing the implementation of the EAH approach, the evaluation report also provides some data on EAHs, including which offenders were using this hearing format. For instance, between June 1996 and September 1999, males accounted for the vast majority (98%) of offenders for which EAHs were conducted, with 88% of these offenders defined as Aboriginal (NPB 2000b: 6).
of Métis offenders could be met by the regular EAH model, but Inuit traditions had yet to be addressed (ibid.: 20). The report recommends that the NPB “consider what steps could be taken to accommodate the needs of Inuit offenders within the Elder assisted hearing approach or whether this is appropriate” (NPB 2000b: 39). Interestingly, despite the unique status of Métis peoples in Canada (see, for example, Restoule 2000; Sawchuk 2001), Métis offenders are not given much consideration within the NPB’s documents on EAHs, unlike Inuit offenders. One document notes that Métis offenders were “comfortable” using the EAH model, although preferred access to Métis elders (NPB 2004a: 14). Perhaps this is because there is an organizational understanding of Métis offenders as different, but not different enough to warrant separate approaches.

The issue of knowledge emerged as another implementation concern. In particular, questions were raised around NPB-contracted elders’ knowledges of “Aboriginal traditions”, especially those of nations or groups that are not their own (NPB 2000b: 20). The report explicates that both the Prairie and Pacific Regions attempted “to ensure that their Elders represent the diversity of the Aboriginal population in the region” (ibid.). However, despite the recognition that “Aboriginal traditions differ from nation to nation”, the NPB maintains that “the core values of Respect, Caring, Kindness, Honesty, Sharing, Trust and Honour remain pretty much the same for all” (ibid.). The notion of “core values” reflects a homogenous approach to what are heterogeneous populations. Such an approach is suited to the organizational mandate to be responsive and accommodating to Aboriginal needs, yet to the extent that it is reasonable, as defined by the institution. One informant indicated that there “was never any claim that” an elder would “have to be of the same background as the offender” for an EAH (Interview 8). The perception was that “an Aboriginal offender who was truly following his[her] path would respect an elder no matter what their [sic] culture was” (Interview 8). Again, the discretion rests with the organization as to the selection of elders’ knowledges and the elements that comprise a culturally sensitive hearing format.

The form and structure of EAHs are based on particular conceptions about Aboriginal traditions and vary across the regions. The circle format is one common form used in EAHs in the Pacific Region and more recently in the Prairie Region. EAH policy for the use of the

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102 The exception related to Inuit offenders; NPB-contracted elders interviewed for the evaluation did not think they could provide advice on Inuit traditions (NPB 2000b: 21).
circle outlines where each person attending the hearing is to sit in the circle, as well as those who will sit outside of the main circle in a semi-circle (NPB 2000b: 22; NPB 2009g). The policy also explains the direction and order of speech around the circle (e.g., clockwise, starting with board members) (NPB 2000b: 22). Other traditions reflected in EAHs are prayers and smudging, which are conducted upon the offenders’ request. In the Pacific Region, a prayer may be conducted at the start of an EAH “for truth, honesty and good judgement” (ibid.: 23). A smudge of the hearing room may also occur “depending on the traditions of the Board Elder” (ibid.).

Another tradition is the use of an eagle feather (or wing) for speaking, which “is used as a symbol of speaking the truth and speaking from the heart” (NPB 2000b: 23). The use of the eagle feather is dependent on whether or not it is part of “the traditions of the Board Elder” (ibid.) and is associated mainly with the Pacific Region. In contrast, in the Prairie Region an eagle feather may be used during a smudge but not as a speaking instrument. The NPB (2000b: 23) notes that the “use of the Eagle feather has been a somewhat controversial issue in the Prairie region with some Aboriginal people and at least one Board Elder feeling strongly that it should not be used in such a public place as the [correctional] institution”. More specifically, there was concern that the feather was “too sacred” to be used in a penitentiary (ibid.), suggesting that not all symbols or practices are easily portable to penal environments.

In sum, the various ways that the NPB has (selectively) taken up Aboriginal traditions highlight some of the tensions and contradictions associated with creating culturally appropriate hearings in the context of penal institutions, particularly where certain practices are transported into foreign and incompatible contexts. The institutionalization of Aboriginal traditions requires certain decisions to be made around which symbols and practices to import and incorporate. For example, although the eagle feather may be a preferred symbol for inclusion within conditional release hearings, its meaning and use within penal spaces are contested. As evidenced by the different approaches taken within the Pacific and Prairie Regions, not all traditions are easily universalized. Tensions also exist around the backgrounds and knowledges of NPB-contracted elders and the degree to which they can assist hearings with Aboriginal offenders from different cultures and/or nations. These findings echo previous research on the inclusion of certain differences into penal structures,
whereby the original meanings and intents underlying diversity initiatives are reframed in ways that are consistent with existing policies and practices (see, for example, Hannah-Moffat 2004a, 2004b; Hannah-Moffat and Maurutto 2010; Martel et al. 2011; Pollack 2011).

The debates around the set up of the hearing and the incorporation of various traditions are not minor matters. As McMillan (2011: 181) observes, “articulating what are the customary practices and how they are made meaningful today—and who decides—are complex and highly contested”.103 In the context of penal responses that are aiming to be culturally appropriate and fair, these issues are especially important in how non-Aboriginal institutions come to understand and embrace certain aspects of Aboriginality and not others. The incorporation of tradition raises questions as to whose tradition(s) is(are) included, particularly given the enormous cultural diversity of Aboriginal peoples and the profound impacts of colonization on Aboriginal cultures and traditions, especially in the context of gender relations (LaRocque 1997). For instance, the skirt protocol raises interesting questions about the ideas about gender upon which it is based. As LaRocque (1997: 86) observes, there may be some “confusion surrounding cultural and traditional values and their applications, particularly as they relate to the oppression of women”. As will be discussed later in this chapter, institutional understandings of Aboriginal culture and tradition are intertwined with historically derived notions of indigenous authenticity (see Garroutte 2003; Raibmon 2005), which work to inform institutional expectations of who Aboriginal offenders are and what they need.

The NPB (2000b: 25, emphasis added) indicates that the distinctions in the practices and procedures for EAHs between the Pacific and Prairie Regions were determined to not “be based on differences in the cultural and spiritual beliefs of the Aboriginal populations in the regions”, but rather “more a result of different management styles and the way in which the Elder assisted hearing approaches evolved in each region”. Interestingly, this quote points to the importance of organizational culture in how diversity initiatives are implemented. The evaluation report suggests that the less structured approach to EAHs taken in the Prairie Region reflects the fact that the approach developed on an experimental basis to “address the unique needs and circumstances of Aboriginal offenders” within the region (ibid.: 25). This

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103 See also Haslip (2002) for a discussion of attempts to reintroduce traditional principles to contemporary Aboriginal communities.
occurred at a time when the Prairie Region management “did not feel that there was much support outside of the region for the development of an Aboriginal specific hearing process” (ibid.). The lack of consultation with the National Office on the development of the EAH model was justified on the basis that the regional management thought the model would never “have gotten started if they had consulted with and waited for support from” the NPB headquarter (ibid.: 26). In contrast, the Pacific Region developed its EAH approach approximately four years after the Prairie Region and “was thus able to draw on many of the lessons learned” while developing detailed policies and procedures in consultation with the national office (ibid.).

Another pertinent implementation issue was the selection of elders to be contracted with the organization. The NPB (2000b: 24) contends that choosing elders is “key part of the success of the Elder assisted hearing approach” and thus the regions “go to great lengths to get Elders that are highly respected in the Aboriginal community”. One informant explained that the NPB considered an elder to be “somebody who in his or her community is recognized as being an elder”, which differed depending upon the Aboriginal group from which s/he is affiliated (Interview 5). The informant noted that being an elder was not dependent on age, but on community recognition for wisdom (Interview 5). Yet, the NPB looks for certain skills in the elders it hires, especially those around language. For instance, elders are expected to be fluent in English as well as “an Aboriginal language appropriate to the majority of the incarcerated Aboriginal population” (NPB 2000b: 24). However, in northern Canada, it is preferable for elders to speak more than one dialect of the languages in the Northwest Territories regions because “it was recognized that offenders would prefer an elder who spoke their dialect” (NPB 2002: n.pag). However, due to the number of different dialects, several elders could be put on “‘standby’ to accommodate the differences among offenders” (ibid.).

The selection process for elders varies between regions. For instance, in the Prairie Region, the NPB selects “Elders that have been given that title out of great respect by their community, who have extensive knowledge of the traditional ways and ceremonies, and who have gained wisdom through many years of living and are therefore generally in their 60’s or older” (NPB 2000b: 24). In contrast, the selection process in the Pacific Region was (at least initially) “largely based on the Regional Vice-Chairperson’s extensive knowledge of, and
connections in, the Aboriginal communities in the region” (ibid.: 24). A noted difference between the Pacific and Prairie Regions’ approaches was that the Pacific Region selected elders with extensive experience working in the penal system, while the Prairie Region preferred elders who did not work in the system (ibid.). Concerns were expressed that elders in the Pacific Region would often have personal knowledge of, or experience working with, many of the offenders who came before board members, thereby compromising its “independence” and putting it in a “conflict situation” (ibid.: 25). In this sense, tensions exist around the sorts of permissible knowledges that elders possess and are allowed to bring to the EAH format.

Yet, for the NPB (2000b: 29), the “presence of the Elder alone does not create a respectful and comfortable environment”. Offenders may not embrace the elder, while others may not agree with the available EAH format. For instance, the evaluation report cites some interviews with offenders from the Prairie Region who felt that the EAH model “was not respectful to them or their Aboriginal traditions” (NPB 2000b: 27). Some offenders considered the elder to play a “token role” in the hearing, either because s/he was not very involved in the process or viewed simply as “another Board member” (ibid.). To address these issues, the report recommends that the EAH model show “respect for Aboriginal ceremonial tradition” and ensure that “the Elder has, and is perceived to have, an important role in the hearing” (ibid.: 29). These concerns about the role of the elder and the EAH model raise questions about the space given to elders to work within the confines of organizational structures and practices governing Aboriginal initiatives. More specifically, elders must navigate the spaces and opportunities made possible within the legislation and policies guiding hearings and decision-making.

The NPB (n.d.-d: 13) acknowledges “that there are differences among Aboriginal cultures and the teachings that Elders hold”. As such, it “recognizes the flexibility, acceptance and respect of these differences among Elders” (ibid.). Yet, the NPB maintains that “certain accommodation” is permitted while trying to maintain the “integrity” of EAHs (ibid.). Interestingly, although “flexibility” to cultural “differences” is encouraged, both the Prairie Region’s Elder Reference Manual (NPB n.d.-d) and Elder-Assisted Hearings General Guidelines (NPB 2009h) outline fairly specific EAH protocols around offerings, eagle

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104 Document obtained through ATI request no. A-2009-00010 to the NPB.
feathers, smudges and prayer, skirts, and the circle, and the temporal and spatial ordering of cultural or ceremonial aspects and the hearing itself (e.g., smudges cannot occur during the hearing, but rather as part of the ceremony prior to its commencement). Ostensibly, this is to help keep EAHs consistent across the region or perhaps to prepare non-Aboriginal hearing attendees for a typical EAH process. Yet, it does raise questions as to the ability of such hearings to be flexible enough to accommodate the elders’ and/or offenders’ preferences related to which aspects of culture they wish to ‘perform’ for board members. As research by Waldram (1997), Martel and Brassard (2008), and Martel et al. (2011) suggests, the cultural heterogeneity of Aboriginal offenders poses problems for the penal system. More specifically, Waldram (1997: 79) contends that the success of culturally-oriented programs is “predicated on the ability of Elders and inmates to negotiate meaning and ritual, to establish a common cultural ground and understanding of the symbols to be used”. Given the detailed protocols for EAHs, it is unknown how much flexibility is permitted for the accommodation of different cultural and/or spiritual practices.

Waldram’s (1997) work is also helpful for thinking about the contradictions and complexities related to the hiring of elders for work in penal institutions. To be successful, elders have to be both knowledgeable and adept at cultural and spiritual services, and able to fit into the institutional culture in terms of interacting with staff, attending meetings, giving presentations, and doing paperwork. As Waldram (1997: 124) argues, “[i]n effect, Elders are expected to behave like the (invariably Euro-Canadian) chaplains and other correctional staff who are involved with offender rehabilitation”. Additionally, to gain contract work within corrections, elders must submit bids through the tendering process. “Euro-Canadian” skills, such as proposal writing and advanced education, and not knowledge of Aboriginal offenders or spirituality, that are likely to lead to the awarding of contracts. As a result, non-governmental Aboriginal organizations tend to be more successful at gaining contracts than independent elders (ibid.). Martel and colleagues (2011) also observe that elders and other Aboriginal workers are increasingly required to meet the specifications of institutionally accredited programs in order to work in federal penitentiaries. In the correctional context, then, elders are expected to adapt spiritual knowledges and practices to fit the dominant regime, which is, in essence, white and Eurocentric (Waldram 1997; Martel and Brassard
2008; Martel et al. 2011). They must also be willing to follow the institution’s rules and practices, which may comprise their independence (Hayman 2006).

It is unknown whether these pressures and preferences around hiring and institutional practice are similar in the context of the NPB. However, several NPB documents obtained via the ATIA suggest that some of the concerns raised by Waldram (1997) and Martel et al. (2011) could apply. For instance, the NPB also contracts with elders for the provision of services for hearings and cultural awareness and sensitivity training. As noted above, there are regional preferences as to what type of elder should be contracted to provide services. The Prairie Region, for example, has a “priority listing” for its elders (NPB 2009h: n.pag). This listing organizes elders into “core” and “secondary” (or back up) groups, where the core elders for each regional penitentiary are given first priority (ibid.). It is unclear whether the organization of elders by type and priority relate to human resources concerns around seniority and/or whether there are institutional preferences for certain ‘kinds’ of elders who are more willing to work within the dominant correctional box and who do not challenge institutional policies or practices. There is a possibility that the priority listing is a technique of governing elders’ knowledges and censoring what goes into culturally sensitive approaches for Aboriginal offenders.

Waldram’s (1997) concerns about the need for elders to adapt their knowledges and practices according to institutional structures may also be reflected in the protocols developed for EAHs and CAHs by the NPB. The Prairie Region’s Elder Reference Manual (NPB n.d.-d), for example, is quite specific in how these hearings are to be conducted. The Manual also explains what is expected by contracted elders, including values and ethics related to public service and confidentiality issues. Elders under contract with the NPB are also expected to participate in meetings and training sessions with board members and staff (ibid.). Accordingly, part of the job is making non-Aboriginal board members and staff aware of Aboriginal issues through various training exercises. Clearly, the job profile of elders is diverse and requires elders to serve multiple, often conflicting, functions—a point I will return to in the section on the role of elders below.
‘Mainstreaming’ the EAH Approach

Despite the challenges related to the implementation of EAHs for Aboriginal offenders, the NPB has taken steps to ‘mainstream’ the model. According to the NPB’s (2006a: 13) background paper, a decision made at the May 1999 Executive Committee meeting led to the creation of a sub-committee of the Aboriginal Circle to review the NPB’s policy from “an Aboriginal perspective”. This review resulted in “policy pertaining to Aboriginal offenders” being put into the NPB Policy Manual (ibid.; see also NPB 2004a). The rationale for the policy shift is that “what was being stated in relation to hearings for Aboriginal offenders was actually relevant for all offenders coming before the Board” (NPB 2006a: 13, emphasis added). As will be discussed later, the notion of all offenders became largely operationalized as ethnocultural offenders, albeit with the occasional reference to female offenders. One of the primary drivers for the mainstreaming of the EAH approach was the release of the Gladue decision, as well as greater attention paid to the “importance of inclusive measures” (ibid.) for ethnocultural offenders (Kiefl and Currie 1994). It also appears the NPB “anticipated that other groups may require cultural hearings” under section 151(3) of the CCRA (NPB 2006a: 14).

In 2004, changes were made to the NPB Policy Manual based on a review conducted by a sub-committee of the Aboriginal Circle. ‘Elder Assisted Hearings’ were renamed ‘Cultural Hearings’. A 2004 Policy Circular explains that the “Cultural Hearing is a clear expression that the Board views people of different ethnic backgrounds as equal and valued members of society” (NPB 2004c: 1). The term ‘cultural hearing’ was considered to better reflect “ethnic pluralism as a fundamental characteristic of Canadian society” and the NPB’s need (i.e., its legal obligation) to be responsive to the groups specified in section 151(3) of the CCRA (NPB 2006a: 15). This move toward a more mainstreamed and generic cultural hearing format risks eroding the basis for why EAHs were created in the first place, which was to address the specific needs of Aboriginal offenders. Alternatively, this maneuver to accommodate Gladue works to present the organization as one that is responsive to the needs of diverse offenders, not just Aboriginal offenders who are often constituted as recipients of ‘special treatment’.
However, the changes to the Policy Manual are more rhetorical than substantive. The altered name and statement of commitment to ethnic pluralism allows the organization to claim that methods exist to accommodate diversity, even as this alternative hearing format remains largely directed towards Aboriginal offenders. Indeed, despite the name change and expanded scope, cultural hearings remained focused on Aboriginal offenders. The NPB notes that:

conducting hearings with an Aboriginal Cultural Advisor reflects, in part, the Board’s responsiveness to Aboriginal people. The Board will continue to develop its hearing process to be responsive to other diverse ethnic and cultural groups and to the special needs of women. (NPB 2004c: 1)

The new stated purpose of hearings with Aboriginal cultural advisors was “to create a responsive hearing process for Aboriginal offenders (First Nations, Inuit and Métis), and one that will facilitate a more accurate understanding of the offender for Board members” (NPB 2004c: 1). The policy for prioritizing which offenders could have hearings with Aboriginal Cultural Advisors was removed on the following basis: “Whether or not Aboriginal offenders follow an Aboriginal way of life, Aboriginal programming, or Aboriginal spirituality is not relevant; the fact that they are Aboriginal means they may choose to request a Cultural Hearing” (NPB 2006a: 14, emphasis added). As such, the ‘right’ to an EAH was once again predicated upon one’s racialized status as Aboriginal, where blood became more relevant than what one did. The amendments were also intended to ensure that all Aboriginal offenders were included, as it was thought that the “previous policy alluded more to First Nations’ culture rather than reflecting all groups included in the term Aboriginal—Inuit, Métis, and First Nations” (ibid.). Such inclusion provides direction toward “global compliance while allowing for regional specificity” (NPB 2004a: 8).

The 2004 amendments to the Policy Manual also removed references to elders and instead used the term ‘Aboriginal cultural advisors’ on the basis that not all NPB Aboriginal advisors were elders (NPB 2006a: 15). The broadened term better reflected the participation of “those individuals knowledgeable of Aboriginal culture and respected in their communities”, as well as allow for the participation of advisors from “other cultural groups” once Cultural Hearings were initiated for these groups (ibid.). As outlined in the Policy Circular (NPB 2004c: 2), “an Aboriginal Cultural Advisor must be an Elder or another
respected and knowledgeable Aboriginal person”. Her/his role is “to provide Board members with information about the specific cultures and traditions of the Aboriginal population the offender is affiliated with, and/or Aboriginal cultures, experiences, and traditions in general” (ibid.). It states further that advisors “may also offer wisdom and guidance to the offender and may advise the Board members during the deliberation stage of the hearing to provide insights and comments with respect to cultural and spiritual concerns” (ibid.). Cultural advisors are constituted as ‘bridges’ over ‘cultural divides’ between board members and offenders.

New amendments in 2007 to the Policy Manual resulted in section 9.2.1 being titled ‘Hearings for Aboriginal Offenders’ (NPB 2011c, Ch. 9.2.1: 123). The term ‘elder/advisor’ replaced the ‘Aboriginal cultural advisor’ and the definition of who this person is was removed. The amendments also add to the statement of purpose of EAHs that such hearings will adhere to the “established criteria for decision-making” (ibid.). Additionally, the “policy now focuses solely on hearings for Aboriginal Offenders”, thereby removing reference to other groups and non-Aboriginal offenders who are following traditional ways (NPB 2011c, Annex A: 206). Interestingly, the 2007 amendments reverse many of the changes made in 2004. Of note is the refocusing of the hearings on Aboriginal offenders and the move away from opening such hearings to other groups of offenders. The 2007 amendments also reassert the primacy of risk assessment as the key focus of these hearings, even if it is cultural in nature.

These developments are illustrative of how the organization has grappled with questions of difference and the limits of accommodation, as well as how priorities and actions related to diversity can fluctuate over time. While there was an attempt to broaden the scope of the EAH model by making it more generically cultural rather than Aboriginal-specific, the organization abandoned this approach and returned the focus to Aboriginal offenders. Chapter 7 considers the extension of alternative hearing formats to ethnocultural offenders in more detail.

**EAHs in Practice**

EAHs are defined as a “hearing format which takes into account the uniqueness of Aboriginal culture and heritage” (NPB 2009g: n.pag). These hearings aim to provide “an
environment of trust and respect where the offender can feel comfortable in sharing information related to his/her journey” (ibid.). EAHs also utilize “an interview style respectful of traditional values” (ibid.). For instance, in order to be respectful, the style of questioning used by board members is supposed to be “compassionate and non-confrontational” and focused “on healing and accepting responsibility rather than the offence” (NPB 2000b: 23). This approach aims to “allow the offender to build a sense of comfort in speaking” (ibid.). To build this “sense of comfort”, questions may focus on “the offender’s Aboriginal heritage or participation in Aboriginal ceremonies” (ibid.). Ostensibly, this is because heritage or ceremonies are comfortable topics of discussion for Aboriginal offenders.

The set-up of hearing rooms for EAHs is also important and differs among the regions. In the Prairie Region, hearings are to be “held in secure and culturally appropriate location[s]”, 105 such as rooms that allow for a circle format, with space in the centre of the circle to be allotted to elders for ceremonial items, such as the eagle feather and smudge bowl (NPB 2009g). A similar set up is specified in the Ontario/Nunavut Region’s Aboriginal Circle Hearings guidelines (NPB 2010f). 106 A key component of EAHs relates to the removal of ‘barriers’. These barriers may be ‘physical’ (e.g., tables) or ‘social’ (e.g., use of language, style of dress, etc.) (NPB 2000b: 2). In order to best facilitate the “exchange of information”, such barriers should be minimized (ibid.). For example, the Ontario and Nunavut Region guidelines request that, based on tradition, “Board members wear casual clothing when possible” (NPB 2010f: 1). These modifications alter the style and appearance of the hearing in ways that the NPB defines as ‘culturally appropriate’ for Aboriginal offenders.

The offender can select whether s/he would like the hearing to open and/or close with the elder conducting a prayer and/or smudge (NPB 2009g). In the Ontario/Nunavut Region, the Aboriginal advisor, in consultation with board members and the hearing officer, determines the place (e.g., within the circle or outside the hearing room) and timing of any prayer and/or smudge, while taking into account participants’ allergies or differing religious beliefs (NPB 2010f: 2). Guidelines also exist around the timing of procedural safeguards and

105 Of course, one could question the cultural appropriateness of secure spaces within penal institutions and the degree to which such spaces are experienced as white and/or colonizing (see, for example, Faith 1995; Waldram 1997; Edney 2002; Martel and Brassard 2008).

106 Document obtained through ATI request no. A-2010-00034 to the NPB.
which hearing elements are subject to audio recording. For instance, the Atlantic Region’s guidelines for EAHs specify that the elder is to conduct a prayer and smudge after the procedural safeguards are completed, but that these are not recorded (NPB 2010g). EAHs may also involve the elder “conducting traditional teachings [with the offender] in preparation for a hearing” (NPB n.d.-d: 13). In the Ontario/Nunavut Region, the Aboriginal advisor may give advice to the offender during the hearing, such as once board members’ decision is delivered (NPB 2010f: 4).

EAHs also differ from regular hearings in relation to persons in attendance. The Policy Manual notes that the NPB “will take into consideration Aboriginal relationship values which may influence the offender’s rehabilitation and reintegration, such as, the importance of the offender’s family, the community, and its leaders and Elders” when determining who may be present (NPB 2011c, Ch. 9.2.1: 124, emphasis added). Here, “Aboriginal relationship values” are implicitly constituted as immutable cultural traits that are different or unique from those of non-Aboriginal offenders. The term ‘family’ is further explicated in the Manual, drawing attention to “Aboriginal understandings” of family that extend beyond blood relations (ibid.). It also indicates that the offender may have another elder (i.e., a non-NPB contracted elder/advisor) present at the hearing, but s/he may not be involved in board members’ deliberations (ibid.).

Compared to regular hearings, EAHs cost more to conduct due in large part to honorariums for NPB-contracted Elders (NPB 2000b: 34). Figures from the 2005-06 fiscal year indicate that the approximate cost of an EAH is $1,450, while a regular hearing costs around $850 (NPB 2006d: 11). EAHs also take a “significantly longer” amount of time to conduct, resulting in fewer hearings per day (NPB 2000b: 36). The NPB (2000b: 36) has estimated that EAHs take an average of 50% more time; so if a regular hearing takes an hour, an EAH takes an hour and a half. Consequently, an average of “three EAHs can be conducted per day compared to five regular hearings” (NPB 2004a: 26). In 2009-10, 428 hearings in Canada were elder-assisted, which represents 3% of the 16,992 federal and provincial reviews conducted that fiscal year (NPB 2010d). Although the majority (84%) of participants were Aboriginal, the proportion varied among the regions, with 100% Aboriginal offenders in the Québec Region and 80% in the Pacific Region (ibid.). Of the

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107 Document obtained through ATI request no. A-2010-00034 to the NPB.
1,125 panel reviews conducted for Aboriginal offenders in 2009-10, 32% were elder-assisted (ibid.). That the majority of Aboriginal offenders are going through the regular hearing format may signal a potential disconnect between the institutionalization of Aboriginal diversity in the EAH model and what Aboriginal offenders prefer for their conditional release hearings.

‘Different’ Format, ‘Same’ Focus

Despite the challenges and contradictions associated with the implementation and use of the EAH model, interviews with informants show a high level of support for EAHs among those interviewed. Informants generally perceived these hearings as more fair, culturally sensitive, and respectful for Aboriginal offenders. According to one informant, “[w]hat we discovered in doing [EAHs] is it doesn’t maybe change the decision, but at least there’s a fair chance” because “Aboriginal offenders feel more respected, their circumstances are really more taken into account and they open [up] more” (Interview 4). Several informants indicated that improved communication between Aboriginal offenders and board members led to better decisions because offenders would have had a “fair chance to tell their story and to say what are the supports that they will have in the community” (Interview 4).

Although EAHs have different formats from regular hearings, the NPB is clear that the hearing process itself does not change board members’ decision-making (NPB 2003a: 5). According to the NPB (2009g: n.pag), “risk assessment is the same for Aboriginals as it is for non-Aboriginals”. Several informants also stressed that EAHs did not change the criteria board members have to consider for release (i.e., the protection of the public) or their analysis of risk, but “the process itself is more culturally sensitive” (Interview 2). In terms of bringing about actual change to the release of Aboriginal offenders, it appears that EAHs serve a largely symbolic function as long as the decision-making criteria remain the same. Put differently, board members’ policy compliance in the context of EAHs will not produce different outcomes if the criteria themselves are discriminatory (Hudson 1993). These criteria are set by the CCRA, thereby limiting what the NPB can do in this regard.

In an attempt to be culturally appropriate, the organization has indicated that “the word risk is not a meaningful term for Aboriginal people” (NPB 2006a: 15). Yet, rather than

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108 Document obtained through ATI request no. A-2010-00006 to the NPB.
do things differently for Aboriginal offenders, the NPB amended its Policy Manual to remove references to terms like risk assessment to reflect this idea, using instead the language in Part II of the *CCRA* which requires Board members to review cases and make decisions as to whether offenders present “undue risks” to society (ibid.). The NPB is clear that the “absence of such terms as ‘risk assessment’ from policy did not signify that the Board does not continue to do a thorough assessment of the offender”, but rather that the *language* in policy has changed (ibid.). Notions of what is culturally appropriate also come into play in such assessments. Indeed, board members are to assess Aboriginal offenders on their healing and participation in Aboriginal programs and ceremonies that incorporate Aboriginal teachings as factors that influence risk (NPB 2000b: 2). Unfortunately, previous research has shown how decision makers’ attempts to be appropriate to a variety of socially produced differences (e.g., gender, culture, race, etc.) can actually reproduce stereotypes and illicit unintended consequences (see, for example, Nightingale 1991; Chiu 1994; Volpp 1994; Lawrence 2001; Fournier 2002; Hannah-Moffat 2004; Silverstein 2006).

One informant explained that the EAH approach provides a more “efficient” interview format and a method of gathering information that is “different” and “dynamic” (Interview 13). In a regular hearing, “the interviews are somewhat confrontational with the offender, whereas in the elder assisted hearings it’s much more like a talk, a discussion” (Interview 13). EAHs were described as enabling Aboriginal offenders “to share more freely and honestly with the board members so the board members can make the best possible decision” (Interview 11). The format of the EAH was thought to be “more familiar” to many Aboriginal offenders who would have had opportunities to engage in circles while incarcerated (Interview 11). One informant contrasted this to the regular hearing model, which was viewed as prohibiting the information gathering process for board members: “walking into a boardroom with a bunch of people who are in suits, who are firing questions at them [Aboriginal offenders], will not assist them in saying what they need to say” to board members (Interview 11). By improving communication, EAHs are viewed as enabling board members to better gather and assess risk information and reach the right decision (NPB 2004a).

Despite producing a different format through the arrangement of the hearing room, the availability of ceremony, and the assistance of an elder, the focus remains the same: the
assessment of risk—or as the NPB (2007c: n.pag) puts it, “[t]he risk an offender poses is a first consideration in seeking harmony, peace, and balance in the successful integration of offenders from confinement to the community”. Couched in a restorative justice discourse, this odd statement reflects the attempted melding of risk thinking, as required by law, with discourses of Aboriginality. One implication of the ascendancy of risk thinking is that the EAH format may be more symbolic than substantive in effect. A parallel can be drawn here between EAHs and healing lodges for Aboriginal offenders. As Monture-Angus (1999) argues, healing lodges “are institutions no matter how much Aboriginal culture and tradition inspires their contour, shape, and form”. In this sense, although the EAH may look different, it is still a conditional release hearing that is based on the letter of the law and focused on the assessment of risk—a practice that is said to be “incompatible with Aboriginal cultures, law, and tradition” (ibid.). The process was adapted, rather than fundamentally changed. The creation of EAHs reflects “the adaptation of an approach, without rethinking the epistemological issues of whose knowledge” or approaches prevail (Hyndman 1998: 251). Decision makers are therefore called upon to be sensitive to Aboriginal cultures and traditions, as reflected in the reoriented hearing space and use of ceremony, while applying decision-making criteria that were developed based on non-Aboriginal norms.

The Role of the Elder

As the preceding discussion suggests, elders play a key role in EAHs and provide a variety of services for both board members and Aboriginal offenders. Elders are relied upon for their expertise in Aboriginal matters, including issues of tradition, culture, and spirituality. They are variously constituted as ‘interpreters’ of culture and ‘bridges’ between Aboriginal offenders and board members. At the same time, elders are supposed to support Aboriginal offenders by creating culturally appropriate environments for their conditional release hearings. In this way, elders are called upon to serve an important, yet complicated function within an institutional context that selectively incorporates Aboriginal knowledges and practices and confines their expertise to specific matters. The following discussion explores the role of the elder in more detail. I argue that despite the best of intentions, the organization has a difficult time ‘hearing’ other voices in ways that do not reproduce “long-standing, and much criticized, dichotomies” (Puwar 2004: 70). There is a straight-jacketing effect where
elders’ voices tend to be locked into their marked identity as Aboriginal, therefore being kept outside the realm of normative conditional release processes.

The current definition of the elder’s role is the same as that outlined in the 2004 Policy Circular (see NPB 2004c), which is to supply board members with information pertaining to Aboriginal “cultures, experiences, and traditions”; this information may be “general” in nature (i.e., applicable to all Aboriginal peoples in Canada) or specific to the “cultures and traditions of the Aboriginal population the offender is affiliated with” (NPB n.d.-d: 13). The Policy Manual specifies that elders may be “active participant[s] in the hearing and may ask about the offender’s understanding of Aboriginal traditions and spirituality, progress towards healing and rehabilitation, and readiness of the community to receive the offender if return to the community is part of the release plan” (NPB 2011c, Ch. 9.2.1: 123). During EAHs, elders may converse with offenders in “an Aboriginal language to gain a better understanding of the offender, and to assist the Board members with gaining further information helpful to achieving a quality decision” (ibid.). Elders summarize these discussions for board members and other hearing participants prior to decisions being made (ibid.).

The organization considers the elder to be “an independent advisor to the Board” who “can ask the offender questions which test the offender’s understanding of Aboriginal teachings” (NPB 2000b: 27, emphasis added).109 Board members may also rely on the elder to answer various questions during the deliberation process. Such questions may “relate to specific Aboriginal beliefs or traditions that were discussed during a hearing or be more general to get the Elder’s perspective on the offender’s openness and honesty during the hearing or the offender’s understanding of Aboriginal cultural and spiritual traditions” (ibid.: 28). The NPB (2000b: 27) states that this “aids the decision-making process because it provides Board members with a better understanding of the offender and the offender’s risk factors”. So although elders are not to provide direct opinions on decisions to grant or deny release (ibid.: 29), they are called upon to be cultural and spiritual ‘translators’ for board members who are implicitly constituted as non-Aboriginal. They are entitled to speak to certain issues (i.e., matters of culture, spirituality, and tradition) and not others.

109 In one study of NPB decision-making practices, Silverstein (2005) found that board members relied on elders at hearings to confirm if the offender was following traditional ways.
Elders are also called upon to “maintain the fluidity of the circle process” (NPB 2009g: n.pag). The elder is described as “someone who creates an interview environment which facilitates a culturally-sensitive hearing process” (NPB 1996: 4). This allows the offender to have a “fair opportunity” to make her/his case and the board members to ascertain the relevant information required to make a decision. As one informant put it, the elder’s “job is to make sure that the communications flow between parole board members and the offender goes well” (Interview 5). Elders are expected to facilitate the dialogue in a more culturally appropriate, non-confrontational manner and ensure that “what the offender is trying to explain to the board goes through or is conveyed clear in a way that board members can understand” (Interview 5). The NPB (2004a: 14) notes that elders, in conjunction with the circle format, help produce a “calming atmosphere” that makes offenders “feel more at ease and keep[s] them honest and open as they speak from the heart”. The organization also contends that “the insights the Elders provide into the offender’s progress in healing and potential for growth in the future… help [board members] make better decisions” (NPB 2000b: 27).

The elder is also framed as assisting by creating “a bridge between the offender and parole board members” (Interview 5) and by providing board members “guidance related to culture” (Interview 8). The elder is viewed as a support for board members for providing cultural awareness and information if board members have questions during hearings (Interview 10). For instance, s/he could aid board members in their understanding of what “an offender was talking about on his healing journey” (Interview 8). In this way, the elder is constituted as an authoritative knower of all things Aboriginal and is positioned as a key site to translate this knowledge to (non-Aboriginal) board members.

A number of informants viewed the elder as a ‘cultural interpreter’. As one informant explained, “[t]he elder does not interpret language, [s/]he interprets culture” for board members (Interview 5). As a cultural interpreter, NPB-contracted elders do not shape decisions, but rather help in matters of culture. In this sense, elders must translate Aboriginal otherness into the normative framework of the hearing and into formats that (non-Aboriginal) board members can understand. The narrowing of elders’ responsibilities to matters of cultural interpretation and the performance of ceremony in hearings suggests that their expertise is limited to that of culture and spirituality. The focus on culture also steers the
discussion away from other topics, such as the impacts of racism on Aboriginal offenders’ behaviours, both prior to and during incarceration.

One informant indicated that there has been a move to have elders (and/or their assistants) provide assessments to board members which can be “considered as the same as […] a community assessment or a psychological assessment” (Interview 8). Elders’ opinions may be considered along with that of other professionals, such as judges or police officers (NPB 2007c). This approach places elders among other experts that provide reports to the NPB in preparation for hearings. Yet, at the same time, such an approach runs the risk of compartmentalizing elders’ expertise, which would run against a more holistic approach to hearing processes for Aboriginal offenders.

Community Assisted Hearings

The above discussion has detailed the genesis of the EAH model and highlighted some of contradictions and challenges associated with its development and implementation as a ‘culturally appropriate’ initiative for Aboriginal offenders. CAHs comprise another key NPB initiative for Aboriginal offenders. Like EAHs, CAHs provide a venue for the organization to learn about Aboriginal offenders and their communities through the assistance of elders as a means to make more appropriate decisions. However, compared to EAHs, CAHs are conducted infrequently and are much more costly, intensive undertakings. CAHs are rationalized as a restorative justice initiative for Aboriginal offenders that bring parole hearings to the community and include, where possible, the participation of victims. This section traces the creation of CAHs and discusses some of the implications associated with their use. It suggests that CAHs work to produce knowledge of the Aboriginal offender and her/his community for board members. At the same time, knowledge is produced about the offender for the benefit of the community, such that it can be responsibilized for the care and supervision of the offender.

Background

As with EAHs, the idea for CAHs may trace back to the Final Report on Aboriginal Peoples in Federal Corrections (Solicitor General 1988a). The Report recommended greater participation of Aboriginal communities with the corrections and conditional release process
through the expansion of services to Aboriginal organizations and their greater authority in decision-making processes. Although it does not specifically mention CAHs, the Final Report’s recommendations call for mechanisms to ensure Aboriginal communities are consulted when decisions are made about releasing Aboriginal offenders back into these communities. Furthermore, it recommends allowing the community’s leadership to propose special conditions to be attached to conditional release orders (1988a). This position was reflected in the Correctional Law Review’s working paper on Aboriginal offenders, which proposed a provision for Aboriginal community involvement “on a local, specific level” in cases where Aboriginal offenders wanted to be released back to their reserves (Solicitor General 1988b: 379).

Given the similarities in wording, the CLR’s proposed provision appears to have formed the basis for section 84 of the CCRA, which states:

Where an inmate who is applying for parole has expressed an interest in being released to an aboriginal community, the [Correctional] Service [of Canada] 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 inmate’s release to, and integration into, the aboriginal community.

Section 79 of the CCRA defines an “Aboriginal community” as “a first nation, tribal council, band, community, organization or other group with a predominantly aboriginal leadership”. The NPB (2007: 1) has gone further to operationalize this definition for CAHs, specifying that “the community must be reasonably well defined by reason of racial origin of its members, culture or by geography or some other feature which distinguishes it from other communities”. Such a definition reflects the “conceptual practice of spatial segmentation” of “peoples and cultures” (Malkki 1992: 28). There is a tendency “to tie people to places through ascriptions of native status: ‘natives are not only persons who are from certain places, and belong to those places, but they are also those who are somehow incarcerated, or confined, in those places’” (Appadurai 1988: 37, cited in Malkki 1992: 29). The reserve is a key example of a spatialized practice that segments people defined as indigenous to

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110 Document obtained through ATI request no. A-2009-00010 to the NPB.
111 The NPB (2007: 1) notes that this definition is “therefore not necessarily restricted to the Aboriginal community”. As will be discussed later, this may open up CAHs to non-Aboriginal communities, assuming such communities ‘fit’ within the definition.
particular spaces. The notion of an Aboriginal community reflects the assumption that Aboriginal communities are spatially distinct from other groups. This raises questions about notions of community in the context of urban settings—an important issue addressed by Gladue.

The NPB (2002b: 2)\(^{112}\) indicates that CAHs were created in response to section 84 of the \textit{CCRA} and are “based on restorative justice principles of returning balance to the community”. The NPB’s self-identified “role is that of an advocate for their promotion and use” (NPB 2000a: 9). The NPB’s 2002 evaluation of CAHs positions this hearing format as an “innovative” response that helps address the “distinctive needs and interests of Aboriginal offenders”, which “is of vital importance for the NPB” (NPB 2002b: 2). The aims of these hearings include “bridging differences”, “healing”, and “reconciling parties” through the restoration of relationships (NPB 2006a: 7). CAHs are framed as a culturally appropriate mechanism for bringing together Aboriginal offenders and their communities in the pursuit of a restorative process to reintegration.

As one informant explained, the Aboriginal Circle helped come up with CAHs as a way for the NPB to support section 84 (Interview 7). With the NPB’s narrow mandate (i.e., making release decisions) in mind, including the fact that this section falls under CSC’s part of the \textit{Act}, it was determined that what the NPB could do

was not ever be a barrier to community involvement. And so if a community was so engaged in the return of an individual to their community that they wanted to have a say in how that release was going to work and what they wanted in that release… so we decided okay then, it’s easier for us to go to your community than for all of you to come to an institution where you may or may not get security clearance. (Interview 7)

CAHs therefore provide a mechanism for interested communities to be involved in the hearing process (Interview 7) and play a greater role in release planning (NPB 2009g). And, as the above quote attests, by locating hearings within the community, one potential barrier to participation (i.e., the need for security clearance) is reduced. The quote also reflects the language of equality of opportunity, not outcome (Phillips 2007: 85); that is, the organization can try to create opportunities to increase the ‘fairness’ of the process by including the community, but not being a barrier does not say much about the outcome, such as the making

\(^{112}\) Document obtained through ATI request no. A-2009-00017 to the NPB.
of ‘culturally appropriate’ decisions. Although CAH participants provide important input, the NPB is clear that the final decision rests with board members, as per the *CCRA* (NPB 2002b).

It is also notable that section 84 of the *CCRA*—the basis of the CAH—does not enable Aboriginal self-determination over correctional matters affecting Aboriginal peoples. As Dyck (1991: 40) cautions, it is important to consider how “the ‘politics of aboriginality’ may, under certain circumstances, serve to maintain rather than to eliminate the practice of tutelage”. In other words, the institutional discourse surrounding CAHs appeal to notions of Aboriginality and restorative justice, yet may reflect more symbolic, as opposed to substantive, shifts in ownership of corrections and conditional release processes, or a decolonizing of the relationship between Aboriginal peoples and the penal system (Cunneen 2009). The NPB effectively retains its authority to include or exclude Aboriginal knowledges and to decide if and when certain practices will be altered.

**CAHs in Practice**

The first CAH took place on April 30, 1997 in the Prairie Region in the Peigan Nation in Brocket, Alberta, followed by six more held between August 1997 and April 2000 in First Nations communities (five in Alberta and one in Saskatchewan) (NPB 2006a: 6).\(^{113}\) Compared to EAHs, the arrangement of CAHs is more complicated. Several factors are considered before a CAH is approved, including “public safety, the seriousness of the offence, the assessment by CSC as to the readiness of the community and the offender for this type of hearing, the potential for re-victimization if the hearing takes place in the community and costs” (NPB n.d.-d: 14). Given these factors, it appears that there is a high threshold that must be passed before a CAH will be approved.

In terms of process, an Aboriginal offender must initiate a CAH and her/his community must be willing to participate in the parole hearing (NPB 2002b). Moreover, the CSC must give a positive recommendation for the offender’s release before the CAH process is initiated. This process is justified on the basis that CAHs are labour intensive undertakings and require significant preparatory work by both the CSC and NPB (NPB 2006a: 6). Before a

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\(^{113}\) I could not locate reliable data on the number and frequency of CAHs since 2000. One report (see NPB 2007b) indicates that two CAHs were held for Aboriginal female offenders in 2006, but it is unknown if additional CAHs were held that year. Statistical information about CAHs do not appear to be reported annually as is the case for EAHs.
CAH takes place, the offender must spend time in her/his community (typically through an escorted temporary absence) and “participate in a circle with community members” as a way to “become reacquainted with family and community members” (NPB 2002b: 3). Such requirements reflect the restorative justice focus of this initiative. This preparatory work also helps ensure community buy-in for the CAH process and the potential return of the offender.

To request a CAH in the Prairie Region, an offender must submit a form to the NPB two months prior to the hearing date. The potential for holding a CAH for the offender is then assessed by the Regional Director, Regional Manager of the Aboriginal and Diversity Unit, and Regional Vice-Chairperson (NPB 2009g). Staff from the CSC and NPB consult with the community and hold a meeting prior to the hearing to explain the legislation, the responsibilities of each party (including financial responsibilities), and, in conjunction with community and NPB-contracted elders, decide on the hearing format and protocol (ibid.). The NPB (2009g: n.pag) notes that this meeting also provides an opportunity to “build a relationship between the community, CSC and NPB”, as well as to “define the expectations of community responsibility” both in relation to the actual hearing and supervision issues if the offender is granted conditional release.

Guidelines for the Prairie Region indicate that a CAH “is to be held in a safe, neutral, culturally appropriate location (e.g. community facility rather than a police station” (NPB 2007e: 4). These guidelines outline the protocols for CAHs, including when ceremonial elements (e.g., prayer, smudge, etc.) take place, the use of a circle format, who can speak and when, and so forth (ibid.). For instance, the circle must “respect local cultural practices and traditions” and CAH participants “are encouraged to respect ceremonial guidelines such as the wearing of a skirt for women” (ibid.: 5). Despite its intent to be a “responsive hearing process” for Aboriginal offenders and their communities, the NPB prefers CAHs to be held in English, although simultaneous translation services could be made available (ibid.). Arguably, this language preference seems to work against attempts to be responsive as it fails to consider how asking Aboriginal peoples to communicate in English is situated in a legacy of colonialism and assimilation (Waldram 1997). Consequently, the CAH is reoriented toward the preferences and standard operating procedure of the institution.

The NPB (2006a: 7) views CAHs as a “natural progression or extension” of EAHs that allow the affected community to be involved in the parole decision-making process. As
with EAHs, elders facilitate CAHs. However, CAHs differ from EAHs as they are longer (i.e., tend to take up an entire day), more ceremonial, often include a feast upon the completion of the hearing, and involve more people (i.e., interested community members). According to one informant, a CAH “doesn’t change the role of the board member, they have to make a decision”, but it “changes setting… it involves the whole community, it’s quite [a] powerful set up” (Interview 4). This set up is seen to enable the offender and community to have ‘voice’ in determining the conditions attached to the offender’s parole release, which may result in the imposition of some unique conditions (NPB 2006a: 7). In addition, victim involvement is much greater under CAHs than compared to regular parole hearings (NPB 2002b). The NPB (2002b: 4) sees victims are “full participants”: “they have the same right to speak as freely as the offender or other participants”. The inclusion of victims is said to reflect the restorative justice frame of CAHs.

Elders also play an important role in CAHs. During the planning stage, elders may act as cultural liaisons between the NPB and Aboriginal communities; for instance, they may work with community elders to determine the format and protocol of the CAH (NPB 2009g). As one informant explained, the regional elder “always goes out before us [the NPB] and, you know, meets with the band and council” to do outreach in preparation of CAHs (Interview 10). Elders bring “knowledge and expertise than can foster the healing process between the community and the offender” (NPB 2007c: n.pag). During the hearing, the elder is called upon to “maintain the order and fluidity of the circle” (NPB 2007e: 4) and help “ensure that other agendas do not overrun the circle” (ibid.: 5). Elders also provide the “guidance [that] is needed to reach culturally appropriate ways of restoring a just relationship between the offender and the community where harmony, peace, and balance can be restored” (NPB 2007c: n.pag).

Implementation Issues

Based on several interviews and analyses of institutional documents, CAHs emerge as a popular initiative, yet is one that has encountered several implementation difficulties. According to one informant, “the success rate [with CAHs] is very, very high” (Interview 7). However, another informant observed that CAHs are “something that communities are not very willing to become involved in for some reason” (Interview 11). The informant
explained that not all Aboriginal communities wanted to accept offenders and the associated responsibilities for supervision. Another informant highlighted the challenge for Aboriginal offenders returning to home communities that are poor and lacking employment and other options (Interview 13). The 2002 evaluation of CAHs also notes that “[n]ot all Board members are comfortable with the circle format and ‘stepping outside’ the traditional NPB roles” (NPB 2002b: 5). Without the support from board members and Aboriginal communities, the CAH model may be difficult to institutionalize as a diversity initiative for Aboriginal offenders.

The NPB (2004a: 17) has indicated that “the lack of funding makes it a difficult approach to implement”. As noted above, cost is one of the factors considered prior to the approval of a CAH. However, it is unknown how fiscal restraint works to shape access to CAHs. Another issue is that section 84 is the CSC’s responsibility under the CCRA; it is up to the CSC to get the process started. Two reports released in 2003 are critical of the lack of use of section 84 for the reintegration of Aboriginal women offenders in particular. For instance, the Auditor General of Canada (2003) indicates that section 84 releases were not typically discussed with Aboriginal women offenders during the intake process. Likewise, the Canadian Human Rights Commission (CHRC) notes that “little use” was made of section 84 for Aboriginal women offenders, with a sum of 13 agreements between April 2001 and September 2003 (CHRC 2003: 57). Both the Auditor General (2003) and the CHRC (2003) recommend that the CSC review its approach to section 84 to help increase the use of this legislative provision. Similarly, the 2005-06 and 2008-09 annual reports of the Office of the Correctional Investigator of Canada (OCI) recommend greater use of section 84 (OCI 2006, 2009b). These recommendations suggest that there are institutional impediments to the use of CAH as an alternative hearing format for Aboriginal offenders.

CAHs as Restorative Justice

CAHs are framed as a restorative justice initiative under section 84 of the CCRA (NPB 2000c). 114 As indicated above, the intent of CAHs is to “provide the opportunity for restoration to take place between the offender, the community and possibly the victim” (NPB 2006b: 18). CAHs are framed by the NPB as “an innovative decision process which

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114 Document obtained through ATI request no. A-2010-00006 to the NPB.
recognizes the value of restorative approaches to conditional release decision-making” (ibid.) and noted as being “very successful” in terms of “healing, restoring balance, reconciling parties, bridging differences and involving the community in the decision-making process” (NPB 2002b: 8).

Pavlich’s (1996a, 1996b, 2005) work on restorative justice—or what he refers to as “restorative governmentalities”—is especially helpful for thinking about how power works through such practices as CAHs and for unpacking taken-for-granted concepts such as healing, the victim, and the community. Drawing on Foucault’s notion of governmentality, he has shown how restorative approaches constitute particular subjects (e.g., the victim, community, and offender) as targets of governance. As partners in the “timely reintegration of [Aboriginal] offenders” (NPB 2000c: 10), these subjects are inscribed certain roles to play in the context of CAHs. Yet, not all partners are willing to partake in this restorative process, such as in cases where communities do not want a particular offender to return or because they do not have the appropriate resources to ensure the offender can be supervised.

One area of difficulty and a barrier to the success of CAHs, as raised by the NPB (2002b), is victim participation. Victim participation poses a key problem for CAHs as restorative justice given that it is championed as a defining feature (Pavlich 2005). For the NPB (2004a: 16), “[v]ictim participation is one of the most sensitive aspects” of the CAH approach. Part of the difficulty relates to involving victims in “meaningful ways” while ensuring they are “informed of the nature of the process and provided with a safe method of participating” (ibid.). Restoration is viewed as best achieved when victims participate in CAHs. However, the CAH initiative has suffered from a low rate of victim participation (NPB 2002b). The NPB (2002b) notes that victims may not want to participate due to a lack of comfort with the circle format or if there are divisions within their communities over the offence. Victims’ refusal to participate is constituted as a problem by the NPB because victims are seen as assisting Aboriginal offenders’ healing journeys and the CAH process more generally (ibid.: 10). Consequently, without the participation of victims—a key constitutive element of restorative justice (Pavlich 2005)—the potential for restoration decreases.
Producing Knowledge, Building Reputation

As with EAHs, CAHs also “promote better understanding of Aboriginal communities and their citizens” (NPB 2007c: n.pag) for board members. As the NPB (n.d.-d: 14) explains, this is a more “responsive hearing process for Aboriginal offenders” because it “facilitate[s] a more accurate understanding of who the offender is as an individual in his/her community”. CAHs are said to contribute to “quality decisions because of the honesty, openness and respect in the process” (NPB 2002b: 6). CAHs are framed as more ‘effective’ mechanisms for gaining information about the offender and his or her community: “By bringing the offender and community together in hearings, there is better understanding of how the offender can return to the daily, shared experiences of the members of the community” (NPB 2007c: n.pag). Community participation is therefore constituted as an important mechanism for producing knowledge about the offender in the context of her/his community and works to improve board members’ decision-making abilities (NPB 2006b: 18). The production of knowledge about the offender and community may, in turn, lead to more innovative and ‘fair’ techniques of governance (Hannah-Moffat and Maurutto 2010).

CAHs are also represented as beneficial for Aboriginal communities as mechanisms for getting a better glimpse at the ‘soul’ of the offender: these hearings enable communities to “judge for themselves the sincerity of the offender’s commitment to change, his acceptance of traditional ways and his ability to manage himself in the community” (NPB 2002b: 6). The NPB (2002b) contends that CAHs contribute to the protection of society (the paramount principle of the CCRA) by preparing Aboriginal communities through the provision of knowledge about returning offenders. Through a CAH, an Aboriginal community “is better prepared to accept and support the offender because it has more information about the offence, the steps the offender has taken, the barriers the offender needs to overcome and ways in which they [the community] can assist him” (ibid.: 11). The community is then “prepared to welcome the offender back into the community with full knowledge of the issues” (ibid., emphasis added). Of course, the offender’s issues are institutionally defined and reflect the penal system’s dominant paradigm of rehabilitation and reintegration. CAHs produce knowledge about the offender that fits within the overarching mandate of the organization.
CAHs are also framed as beneficial for Aboriginal communities by enabling them to better understand the parole system, thereby providing more information to the NPB about offenders and their communities (NPB 200b2: 6). The NPB (2002b: 9) notes that “[o]ne unexpected benefit of holding the [community assisted] hearings in Aboriginal communities is the restoration (or, perhaps more correctly, creation) of respect for the NPB and CSC”. The NPB’s involvement in the community through the outreach necessary to hold CAHs therefore helps the institution build its reputation by providing information about the parole system to Aboriginal community members; in turn, community members “gain respect” for the NPB (ibid.). The NPB (2004a: 18) contends that its outreach activities to Aboriginal communities have been perceived positively by community members, in contrast to “past experiences with government [that] have often been negative in that they felt that they were not being listened to”. Through the CAH format, the NPB can show that it is being responsive to Aboriginal communities and bolster its reputation as an organization that listens to diverse communities.

‘Responsible’ Aboriginal Communities

One implication of CAHs as a technique of governance relates to the potential for Aboriginal communities to be responsibilized for the supervision of Aboriginal offenders on conditional release. As Martel and colleagues (2011: 246) have observed, the community has become a key “programmatic locale” for the shaping of Aboriginal subjectivities and the governance of risk. Aboriginal communities are identified by correctional institutions as important sites for responsibilization through both “community and individual empowerment” (ibid.) and as “better equipped to manage the risk of Aboriginal parolees” (Silverstein 2005: 347; see also Kramar and Sealy 2006). Notions of tradition help constitute peaceful individuals and responsible communities (Anderson 1999) as desirable elements of CAHs. Neoliberal criminal justice discourses of partnership and capacity building combine with culturally appropriate practices to target Aboriginal communities as vital conduits for the risk management of Aboriginal offenders on conditional release.

Within official documents, CAHs are framed as establishing partnerships with Aboriginal communities that “promotes their active role in the reintegration of offenders” (NPB 2004a: 24). The NPB (2007c: n.pag) contends that CAHs “respect and contribute to
the traditional sense of responsibility felt by every community member for each other and for the creatures and forces that sustain all human life”. This quote is illustrative of the incorporation of Aboriginal discourses into conditional release policy. Yet, it is unclear how the “traditional sense of responsibility” is operationalized on practical levels and the implications of this for Aboriginal communities. Martel et al. (2011: 247) argue that “[a]t the heart of such responsibilization of Indigenous communities lay several myths about the community being a zone of ensured healing”. The institutional framing of Aboriginal communities as spaces of tradition and healing reconstitutes these communities as the appropriate risk reducing locales for Aboriginal offenders. Yet, the portrayal of Aboriginal communities as having a “traditional sense of responsibility” that is “felt by every community member” suggests that there are ‘good’ Aboriginal communities which will take offenders back into the fold and participate in healing and the restoration of peace and harmony. The logic of such responsibilization reflects the idea that Aboriginal communities will help guide and shape Aboriginal offenders into responsible subjects and in ways that correspond with the objectives of the community (Pavlich 1996b) and broader penal apparatus.

The responsibilization of Aboriginal communities through CAHs also necessitates the enmeshing of the community within the dominant institutional paradigm of community supervision. As the NPB (2002b: 5) notes, if a CAH results in parole being granted, the Aboriginal community “has a great deal of work to do”. To transfer responsibility for parole supervision to an Aboriginal community, community members must be mobilized with knowledge of what is “proper, informed community supervision” so that they can recognize the “danger signs” leading to relapse, such as alcohol use (ibid.). Through such knowledge, community members can be responsibility for intervening when the offender is “slipping back into old habits” and putting her/him “back on the right track” (ibid.). Despite the apparent cultural appropriateness of the CAH and the release decision, the community must follow the institutionally prescribed practices of proper and informed supervision.

This shifting of responsibility for supervision is rationalized as a culturally sensitive approach to restorative justice for Aboriginal offenders and their communities. According to the NPB (2002b: 7), CAHs represent a “return to the old ways” by “returning the process to

115 The CSC’s workload for parole supervision is subsequently reduced (NPB 2002b).
the community where it used to belong”. Ostensibly, this nostalgic statement references the presumed primordial state of Aboriginal communities prior to the devastation wrought by white settlement and colonization. Various features of CAHs—the circle format, the inclusion of ceremony and prayer, etc.—are based on notions of traditional practices for resolving disputes in Aboriginal communities (ibid.). Such institutional discourses cast Aboriginal communities as being made up of “people of consensual culture rather than dissenting politics” (Raibmon 2005: 12). The constitution of Aboriginal communities as bastions of tradition and consensus reflect contemporary popular discourses that romanticize Aboriginal peoples and essentialize cultural difference (Buchanan and Darian-Smith 2011). Such discourses do not acknowledge the impacts of colonialism on Aboriginal communities and governing structures (Monture-Angus 1999). Many communities lack the financial and other resources to participate in the supervision of returning offenders or embrace the so-called “traditional sense of responsibility” that is expected of them (Dyck 1991; LaPrairie 1996; Martel et al. 2011). The shifting of responsibility for supervision through CAHs helps absolve the state of responsibility while simultaneously portraying the NPB and the CAH initiative as being culturally responsive.

Presenting an ‘Authentic’ Aboriginal Self

The discursive constitution of both EAHs and CAHs as enabling more open and honest communication between the offender, the NPB, and in some cases, the victim and/or the offender’s community, relies on the offender’s presentation of an ‘authentic’ Aboriginal self, one in which s/he must demonstrate genuine commitment to her/his “cultural and spiritual traditions” (NPB 2002b: 7). This has important implications, especially if Aboriginal prisoners’ participation in Aboriginal programs or practices is linked to their release (Silverstein 2005; Martel and Brassard 2008; Martel et al. 2011). The focus on spirituality and culture in relation to Aboriginal offenders may also enable the sidestepping of other important issues such as racism and the systemic effects of colonialism. As Cowlishaw (2003: 109) has shown, appeals to cultural difference tend not to reflect an “understanding that culture and history are intertwined”. As a result, the “kind of culture that receives automatic respect is old culture, culture without history” (ibid.: 112-113, emphasis in original). In this sense, the separation of culture from history tends to remove reference to
how colonial practices have impacted Aboriginal peoples and communities and (re)shaped cultural practices, traditions, knowledges, gender relations, and so forth. Appeals to cultural difference, then, may work to generate particular expectations for Aboriginal peoples and communities without an understanding of how the contexts have changed (Anderson 1999).

In a similar vein, LaRocque (1997: 88) suggests that criminal justice attempts to be culturally appropriate have had the effect of constituting particular identities for Aboriginal peoples, including the idea of spirituality as a “precondition of being accepted” as Aboriginal. Various notions of Aboriginal authenticity underpin penal discourses and the production of culturally appropriate practices. Yet, as Raibmon (2005: 3) notes, such notions have “achieved a commonsense status that obscure[s] their historical roots”. In other words, institutional expectations about who authentic Aboriginal offenders are, what they need, or how they behave are entrenched in a long history of Canadian colonialism. It is therefore important to consider the role of penal discourses in producing ideas about Aboriginality and how the authentic Aboriginal offender is constituted (Buchanan and Darian-Smith 2011).

For instance, the notion of the traditional path works to produce an authentic Aboriginal subject to which Aboriginal offenders are compared. In the context of EAHs and CAHs, Aboriginal offenders are encouraged to “emphasize certain aspects of their selves congruent with the larger objectives of the programme principles” (Anderson 1999: 310, emphasis in original). In other words, decision-making policies that stress the assessment (or testing) of an Aboriginal offender’s commitment to cultural or spiritual traditions necessitates the presentation of certain aspects of self and identity which conform to popular notions of Aboriginality that are inscribed within NPB policies. If ‘good’ (and thus authentic) Aboriginal offenders are those who follow a traditional path and have embraced their Aboriginal spirituality, the hearing provides a space for the presentation of particular aspects of the self that reflect these desired attributes. In this context, culture is envisioned “as a rather straightforward performance” that demonstrates an Aboriginal offender’s reduced level of risk (Martel et al. 2011: 246, emphasis in original).

EAH and CAH policies reflect the incorporation of Aboriginal knowledges and traditions into the dominant correctional agenda, whereby complex histories, current realities, and diverse identities are simplified for practical application. Indeed, as Anderson (1999: 318, emphasis in original) has pointed out, only “selected notions of Aboriginality are
put into practice” and there is a tendency for these to be valourized rather than thoughtfully contextualized in terms of their traditional usage and meaning (see also LaRocque 1997; Raibmon 2005). For Martel and Brassard (2008: 342), there has been increasing “Aboriginalization” of Canadian prisons, meaning that particular constructions of Aboriginal identity are reflected and perpetuated within correctional institutions and discourses, which can be viewed as a technique of contemporary colonialism. Such Aboriginalization is reflective of symbolic adaptations, rather than meaningful change or the creation of separate justice processes (Haslip 2002).

Martel and Brassard (2008: 344) argue that the Canadian penal system has created an “authoritative Aboriginality [that] is built upon the identity criteria of the Canadian government—under the impetus of Aboriginal lobbies—and is a clear racialized construction of the otherness of Aboriginal peoples”. Aboriginal prisoners are confronted with this institutionally imposed Aboriginality and a range of culturally appropriate options, including programming and spiritual practices, that reflect a homogenous, “oversimplified, [and] over-generalized version of Aboriginal identity” (ibid.). According to Martel and Brassard (2008: 344), the prison system draws upon and incorporates certain traditional markers and symbols of Aboriginal cultures (e.g., sweat lodges and smudging) that help constitute a hegemonic Aboriginality, thereby subordinating and delegitimizing “alternative representations of Aboriginality”. In this sense, penal policies and practices help mould the category of the authentic Aboriginal subject (Buchanan and Darian-Smith 2011: 119).

The constitution of this penal subject through institutionally promoted discourses on Aboriginality “can be constrictive and colonizing, especially when Aboriginal identity assumes a permanence and rigidity that is co-opted by [penal] institutions” (Martel and Brassard 2008: 347; see also Restoule 2000). The process of establishing EAH and CAH policies tends to essentialize various customs and practices “as being necessarily traditional and timeless” (Buchanan and Darian-Smith 2011: 121). Similarly, the tendency to act as if there is a singular Aboriginal culture—despite the recognition that there are many diverse Aboriginal cultures—holds Aboriginal offenders to difficult standards of “cultural purity” (Raibmon 2005: 9). In writing about the role of law more generally in essentializing cultural difference, Buchanan and Darian-Smith (2011: 121) argue that “[c]hange over time, and cultural variegation at any given moment, is occluded as law creates and invokes flattened
images of what Native people do and do not do”. This essentialization also tends to draw clear demarcations between Aboriginals and non-Aboriginals in determinations of what is authentic (ibid.), thereby working to solidify the former’s presumed otherness.

An important implication of the notion of an authentic Aboriginal self relates to cases where an Aboriginal offender appears not to have much connection to her/his traditional culture or heritage. As Justice Murray Sinclair has asked, “[w]hen confronted with an aboriginal accused [or offender] who has no identity with his[her] aboriginal identity, what does one do?” (Sinclair 1990: 15, cited in Waldram 1997: 27). He notes that, in the context of sentencing, the tendency is to assume that if an Aboriginal accused “has no connection to his[her] aboriginal culture, then it is no longer a factor to take into consideration” (ibid.; see also R. v. Gladue [1999]). Justice Sinclair’s observations are also relevant to the correctional and conditional release contexts as policies call upon staff and decision makers to assess Aboriginal offenders’ progress in embracing their culture and tradition, including their participation in Aboriginal-specific correctional programming.

There exists, then, a potential “lack of fit between the institutional construction of a hegemonic Aboriginality and individual self-identifications as Aboriginal” (Martel and Brassard 2008: 357). Notions of Aboriginal authenticity thereby present potential challenges for those offenders who deviate from the institutionally produced Aboriginality. Yet, as Buchanan and Davian-Smith (2011: 122) suggest, “conceptualizations of authentic indigeneity are always emergent, taking definition through comparison and contrast across a range of temporalities and contexts”. In this sense, authenticities change over time and in different contexts and with push-back from Aboriginal peoples who may work to contest and alter dominant institutional understandings of Aboriginality.

Exceptions to the Rule: EAHs and CAHs as ‘Alternative’ Models

Both EAHs and CAHs are defined as ‘alternative’ models of parole hearings used to “meet the needs of Aboriginal offenders” (NPB 2003a: 1). These hearings are considered to be alternative as they differ from the ‘regular’ hearing model in style and allow for “a better and

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116 See works by Garroutte (2003) and Raibmon (2005) for thoughtful discussions of how Aboriginal identities and authenticities are negotiated in the context of modernity.

117 A parallel can be drawn here to cases when Aboriginal offenders do not request an EAHs (or CAH) but proceed with a ‘regular’ hearing. This raises the question as to how an offender’s status as Aboriginal is seen to matter in the context of the regular hearing format.
more thorough Board review” (ibid.). The NPB (2003: 1) characterizes these alternative hearings as being respectful, engaging, restorative, dialogue friendly, representative and diversified, meaningful, inclusive, open setting with fewer physical barriers, less foreboding and demeaning, and honest. Although the EAH and CAH models differ, both are said to reflect alternative approaches associated with restorative justice that attempt to remove barriers to facilitate dialogue and improve information gathering (ibid.: 7). In this sense, EAHs and CAHs are exceptions to the rule, rather than normalized hearings.

Given the stated characteristics of alternative hearing models, it raises the question as to why all parole hearings are not conducted in such ways. One answer is that the maintenance of EAHs and CAHs as exceptions reflects the constitution of diversity within the organization. That is, through a process of othering, Aboriginality is positioned as outside the norm, thereby shaping the organizational focus on adapted hearing formats, rather than a rethinking and/or changing of normative conditional release decision-making processes. For example, a discussion paper prepared by the Prairie Region (NPB 2003a: 7) on alternative models and possible modifications to the NPB’s regular hearings notes that any modification must be consider in relation to “several realities”, including the notion that “Caucasian offenders comprise the majority of the federal offender population nationally”. Unfortunately, the paper does not elaborate on this statement. It is therefore unclear whether this means that the regular hearing format should not be modified because most offenders are white, under the assumption that white offenders would not benefit from a different hearing model, or that the federal offender population is not yet racially diverse enough to warrant alteration to the regular format. Nevertheless, this statement reflects the constitution of diversity within non-white (and female) bodies and its location outside the norm.

It appears that with the NPB’s reading of the Gladue decision, the NPB considered extending the EAH and CAH formats to other groups of offenders. In particular, the organization recognizes that female offenders “feel intimated” by the regular hearing process and recommends the exploration of conducting alternative hearings for offenders from diverse communities (NPB 2003a: 7). Yet, according to one informant, the NPB’s senior management did not support the idea that all offenders, regardless of their gender and racial, ethnic, or cultural backgrounds, could benefit from the format of EAHs (Interview 7). The
informant noted that most aspects of EAHs, with the exception of the elder and ceremonies, were applicable to all hearings:

The respectful environment, the removal of barriers to facilitate dialogue, you know, more simplistic language, you know, more patience, and so, allowing if there’s people from the community there, let them talk if they’ve got something to add in terms of support upon release or whatever, you know, being more inclusive.

(Interview 7)

The informant suggested that such a hearing format would be useful for all offenders given the offender profile, which includes low literacy levels and learning disabilities, among other factors (Interview 7). That the organization did not support the extension of the EAH format to all offenders is not especially surprising. In practical terms, such a reconfiguration would be costly and require access to additional human and operational resources. More conceptually, the extension of the EAH model to all offenders would require dissolution of the normative model and entrenched ways of doing things that have been built up over time since the creation of the organization in 1959. Such a change would also require the organization to ‘see’ diversity in ways that preclude constituting and regulating difference as other to the white, male norm (Puwar 2004). As will be discussed in Chapter 7, the NPB has explored alternative hearing models with African Canadian offenders and communities in the Atlantic Region (NPB 2003a), arguably because this fits with the dominant organizational practice of responding to the needs of a constituted other.

Interpreting and Institutionalizing the Gladue Decision

Although EAHs and CAHs—as the NPB’s primary diversity initiatives for Aboriginal offenders—predate the Supreme Court’s decision in Gladue, this decision has impacted the organization’s decision-making policies and cultural sensitivity training for board members and staff, as shown in Chapter 5. Despite its focus on sentencing, the NPB (2000a: 6) interpreted Gladue as having “an impact on every aspect of the criminal justice system” and serving “as the impetus for action consistent with the Board’s Vision”. Additionally, Gladue “helps to crystallize the need for the NPB to consider the unique circumstances of Aboriginal offenders in risk assessment and risk management” (ibid.). The NPB (n.d.-a) also points to section 151(3) of the CCRA as confirming the need for action on the part of Aboriginal
offenders. Both the *CCRA* and *Gladue* help drive action (i.e., policy change) by the NPB in this regard.

In its assessment of *Gladue*, the NPB (n.d.-a: n.pag) states that “it is not nearly enough” for background and systemic factors to only be considered at sentencing. Instead, such factors that are “associated with Aboriginal offenders” should be referenced in NPB policy (NPB 2000a: 6). The NPB identifies the CSC as having a responsibility “to incorporate similar standards and practices when managing the sentences of offenders, particularly Aboriginal offenders” (NPB n.d.-a: n.pag). More specifically, the systemic and background factors identified by the Supreme Court in its decision “must be taken into account when constructing and implementing sentence planning, correctional program planning, risk assessment, release planning and community reintegration planning and monitoring” (ibid.). The NPB stresses that *Gladue* principles ought to be integrated at every phase of the correctional process in order to provide Aboriginal prisoners “a culturally relevant continuum of care” as a means of ensuring their successful rehabilitation and reintegration (ibid.). The NPB’s recognition of the CSC’s responsibilities to implement *Gladue* principles reflects an organizational understanding that the NPB cannot act alone in trying to make the conditional release process more ‘appropriate’ for Aboriginal offenders.

The NPB (n.d.-a: n.pag) indicates that in “March 2000 the Executive Committee directed the incorporation of the *Gladue* principles in the Board’s policies relating to the assessment of risk”. The NPB determined that the *Gladue* decision supported the initiatives it already had underway, including EAHs, CAHs, and cultural sensitivity training (ibid.). *Gladue* was also seen to be relevant to the CSC’s case preparations and submissions to the NPB for conditional release hearings (ibid.). However, the NPB indicates that the consideration and application of *Gladue* principles within the correctional sphere “may not always translate to an earlier release or support for discretionary releases” (ibid.).\(^\text{118}\) Rather, the important issue is that “all of the relevant information is taken into consideration during correctional planning, release planning, support or non-support of discretionary releases, institutional and community monitoring, etc.” (ibid., emphasis added). As will be discussed below, the potential for improved information collection is one of the NPB’s key anticipated

\(^{118}\) Section 718.2(e) has been interpreted as requiring a different methodology for determining what is ‘right’ for Aboriginal offenders, not mandating a different result (see, for example, *R. v. Wells* [2000], para 44).
outcomes for the incorporation of Gladue concepts and principles. It could be argued that the organization’s inclusion of the decision makes organizational sense as it supports priorities and practices that were already in place, such as EAHs and CAHs, which are directed toward gathering knowledge about Aboriginal offenders in order to make appropriate decisions.

The NPB’s assessment of Gladue resulted in the finding that “factors such as racism and ties to community were also relevant to other offenders” (NPB n.d.-a: n.pag). As such, the incorporation of Gladue principles into the Policy Manual requires board members “to consider such factors in their assessment of risk for all offenders and not solely in decision-making for Aboriginal offenders” (ibid., emphasis added). The extension of the Gladue decision to other offenders is linked to subsequent court decisions, such as in R. v. Borde [2003] and R. v. Hamilton [2003], which involved the application of “Gladue-like interpretation[s] of section 718.2(e) to African Canadians” (Kramar and Sealy 2006: 124). As one informant explained, the Hamilton decision “said the Gladue principles should apply to other [groups], like the black community” (Interview 4).

The decision to extend Gladue principles to all offenders could be understood as an attempt to mainstream the consideration of systemic and background factors, shifting the original focus from Aboriginal offenders—who, as a group, are uniquely situated given Canada’s colonial histories and presents—to all offenders.119 Ostensibly, the assessment of risk for each offender requires board members to consider how a number of structural factors have impacted the individual and shaped her/his conflict with the law. What is not clear, however, is the degree to which all offenders becomes, in practice, all non-white offenders, particularly in the context in which Gladue is discussed within the NPB’s assessment paper (NPB n.d.-a: n.pag). There is no mention of whiteness or any indication as to whether or not such principles have any applicability to white offenders. By framing “racism and ties to community” as relevant to “other offenders” (ibid.), these factors are seen to only apply to non-white offenders.

The ‘mainstreaming’ (or generalization) of Gladue principles also raises questions as to whether this results in a weakening of the original intent of the decision when it becomes expanded to all offenders. Section 718.2(e) of the Criminal Code was developed specifically

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119 This extension of Gladue principles has also occurred in other parts of the correctional process, including the preparation of pre-sentence reports in the Province of Ontario (see Hannah-Moffat and Maurutto 2010).
for Aboriginal offenders because of their unique position within Canada’s colonial legacy. This provision seems to recognize “that there is a particular structural relationship between Indigenous peoples and criminal justice systems which is quite different from other groups” (Cunneen 2009: 211). Generalized *Gladue* principles are reflected in section 2.1 of the NPB Policy Manual which requires board members, when assessing the criminal and social histories of offenders, to examine any “systemic or background factors” such as “the effects of substance abuse in the community, racism, family or community breakdown, unemployment, income, and a lack of education and employment opportunities, dislocation from his/her community, community fragmentation, dysfunctional adoption and foster care, and residential school experience” (NPB 2011c, Ch. 2.1: 11). Although presented without reference to Aboriginal offenders, many of these ‘factors’ clearly reflect the colonial legacy affecting Aboriginal peoples. Exactly how these factors are brought into the decision-making process is unknown. In addition, these “systemic or background factors” are one among 17 factors to be considered by board members when assessing an offender’s criminal and social history.

**Conclusions: Producing Cultural Ghettos?**

This chapter examined initiatives directed at the special needs of Aboriginal offenders. The NPB has developed EAHs and CAHs to make conditional release hearings more responsive to issues of culture and spirituality. I argued that these initiatives reflect the institution’s attempts to Aboriginalize its hearing processes and decision-making policies. With the *Gladue* decision, steps were taken to transfer the key findings into the context of parole decision-making, such as through the recognition of systemic or background factors as part of board members’ assessment of risk. These reforms are rationalized in several ways, including helping to reduce risk through culturally appropriate conditional release decision-making, ensuring a more fair and effective parole system, and contributing to the penal goal of reduced numbers of Aboriginal prisoners. These initiatives also serve important institutional functions. They make the NPB appear responsive to Aboriginal peoples’ needs, thereby reducing potential risks to reputation through claims of inaction and cultural ignorance.

120 My request under the *ATIA* for the ‘Board Member Risk Assessment Manual’ was denied.
Drawing on institutionally produced documents and interview data, this chapter documented the emergence of EAHs and CAHs and considered some of the tensions and implications associated with their use. In the first section on EAHs, I examined how this initiative came to be and the important roles played by elders (i.e., as sources of knowledge about Aboriginality for board members; as ‘interpreters’ of culture; as ‘bridges’ between Aboriginal offenders and board members; and as liaisons between Aboriginal communities and the NPB). I demonstrated how Aboriginal knowledges and practices were selectively incorporated into EAHs as an ‘adapted’ hearing format that attempts to be responsive to Aboriginal difference while maintaining dominant decision-making frameworks. The second section on CAHs discussed the creation of the initiative and issues associated with its implementation and use. It illustrated how CAHs are rationalized as a technique of restorative justice, produce knowledge about Aboriginal offenders and their communities for decision-making, build institutional reputation, and responsibilize Aboriginal communities for the care and supervision of released offenders. The chapter also demonstrated that EAHs and CAHs are constituted as enabling more open and honest communication between the offender, the NPB, and in some cases, the victim and/or the offender’s community. I argued that these initiatives rely on the offender’s presentation of an ‘authentic’ Aboriginal self, one in which s/he must demonstrate genuine commitment to her/his cultural and spiritual traditions. My findings echo previous research that has shown how penal institutions selectively incorporate and transform knowledges about diversity into formats and processes that are consistent with existing structures and practices (see Hannah-Moffat 2004a, 2004b; Martel and Brassard 2008; Martel et al. 2011; Pollack 2011).

This chapter has two key findings. The first relates to the tensions and contradictions associated with creating culturally appropriate hearings in the context of penal institutions, particularly where certain practices are transported into foreign and incompatible contexts. The institutionalization of Aboriginal traditions requires certain decisions to be made around which symbols and practices to import and incorporate. As evidenced by the different approaches taken within the Pacific and Prairie Regions, not all traditions are easily universalized. Tensions also exist around the backgrounds and knowledges of NPB-contracted elders and the degree to which they can assist hearings with Aboriginal offenders from different cultures and/or nations. The second key finding involves the issue of
Aboriginal culture. This chapter has shown that Aboriginal offenders are ghettoized in the realm of culture, with EAHs and CAHs remaining exceptional and peripheral to the ‘normal’ program of conditional release. EAH and CAH policies reflect the selective incorporation of Aboriginal knowledges and traditions into the dominant correctional agenda, whereby complex histories, current realities, and diverse identities are simplified for practical application, and the dominant focal point is culture.

The ghettoization or confinement of Aboriginal offenders to the realm of culture may work to depoliticize penal practices, thereby downplaying power relations and the ongoing colonial relationship among Aboriginal peoples and the Canadian state (Bannerji 2000). The incorporation of elements of Aboriginal culture and spirituality into conditional release processes allows for the modification of standard practices without a fundamental reconsideration of the status quo. In other words, these approaches may encourage “culturalist response[s] to structural oppressions” (Kramar and Sealy 2006: 144). A second implication of the focus on culture is that Aboriginal offenders may be over-determined by culture, such that institutional attempts to be culturally sensitive ironically produce a type of cultural straightjacket that captures and constrains Aboriginal offenders within this realm. Such an approach makes an intersectional analysis particularly challenging. Indeed, as noted at the outset of the chapter, gender or female offenders are not specifically mentioned within the institutional discussions of EAHs or CAHs. Given the NPB’s efforts to create ‘culturally appropriate’ and ‘fair’ practices, these issues are especially important because they show how non-Aboriginal institutions come to understand and embrace certain aspects of Aboriginality and not others. The next chapter considers the selective inclusion of diversity in more detail in its examination of diversity work targeting offenders defined as ‘ethnocultural’.
Chapter 7
Discourses of Difference: Constituting the ‘Ethnocultural’ Offender

The increasing diversity of the federal offender population, in terms of its racial and ethnic composition, has been noted as a challenge by both the NPB (2010c) and CSC (2009b) in recent years. The growing numbers of non-white and non-Aboriginal offenders have created pressures on the penal system to be responsive to additional groups marked by their racial, ethnic, and/or cultural identities. At the NPB, offenders defined as ‘ethnocultural’ are constituted as targets of diversity initiatives that are separate from those developed for Aboriginal offenders. Compared to Aboriginal and female offenders, organizational responses to this population occurred much later and were linked by several informants to the increasing diversification of the Canadian population brought about through immigration. The development of initiatives for ethnocultural offenders can be situated in the context of institutionalized multiculturalism and larger debates around the limits of tolerance and accommodation. These reforms occur in a milieu where the liberal nation-state “is being embarrassed by heterodoxy”, as various groups designated as racially or ethnically different from the white, Canadian norm are demanding “respect, recognition, room for self-expression, [and] entitlement” (Comaroff and Comaroff 2004: 188). Within federal penal institutions, the offender population is increasingly shifting from the ‘usual’ to the ‘unusual’ (Bannerji 2000), thereby necessitating institutional adjustment to accommodate these differences.

This chapter explores how the NPB has grappled with the inclusion of difference as represented by the ethnocultural other. It analyzes the various documents that define and rationalize this population as targets of ethnicized conditional release policies and practices. The institution’s attempts to accommodate ethnocultural offenders are also examined, including the adaptation of hearing models originally designed for Aboriginal offenders and refocused efforts on interpretation services for offenders who do not speak English or French. Finally, this chapter explores some of the initiatives developed to respond to the needs of ethnocultural offenders, the main initiative being the African Canadian Liaison Project. As with NPB initiatives developed for Aboriginal offenders, gender is not considered in the production of knowledge about, and practices for, those offenders.
constituted as ethnocultural. I argue that ethnocultural difference poses a more challenging set of diversities to be negotiated into conditional release policies and practices. Unlike the notion of Aboriginality, which can be more easily simplified for inclusion in policy and practice, ethnocultural difference is more nebulous and tougher to conceptualize in concise terms. The construct of ethnocultural may include a variety of different racial, ethnic, and/or cultural minority groups that do not share common histories, traditions, or cultural practices. These diversities represent a greater complication to inclusion and accommodation because penal institutions must select particular identities (e.g., African Canadian offenders) in order to rationalize and develop diversity initiatives. If, as argued in previous chapters, the institutionalization of diversity is about making exceptions to dominant practices, such as through modified parole hearings (e.g., EAHs), the challenge posed by ethnocultural offenders is determining which and how many exceptions to make.

Institutionalized Multiculturalism

The development of diversity initiatives for ethnocultural offenders can be situated in the broader context of institutionalized multiculturalism.\(^{121}\) As a federal institution, the NPB is responsible for implementing the Canadian Multiculturalism Act within its larger mandate.\(^{122}\) This legislation, like the CCRA, ensures accountability by requiring the NPB to respond to diversity, while at the same time producing reputational risks to be managed vis-à-vis failures to act accordingly. The NPB (2010c: n.pag) frames and justifies its diversity initiatives for ethnocultural offenders as a response to multiculturalism and simultaneously recognizes the “growing ethnocultural diversity within Canada’s federal offender population” and the “increasingly diverse communities to which these offenders” return. The concept of an ethnocultural offender reflects liberal multicultural discourse which defines and locates difference in non-white others based on the white English and French ‘core’ (Bannerji 2000; Dhamoon 2009). The category of ethnocultural aggregates different racialized minority groups, thereby erasing the heterogeneity of these populations and their differential treatment by the justice system (Hudson and Bramshall 2005; Bramshall and

\(^{121}\) Multiculturalism is a contested concept about which much scholarship has been produced. For differing perspectives, see Kymlicka (2007) and Dhamoon (2009), among others.\(^{122}\) As indicated in Chapter 4, as part of this implementation, federal institutions are supposed to report annually on any internal activities pertaining to the implementation of the Act (see Citizenship and Immigration Canada 2009).
Hudson 2007). For instance, offenders identified as ‘black’ are over-represented within the federal penal system based on their proportions in the Canadian population (NPB 2009e: 41), yet are not constituted as a special offender group as are Aboriginal offenders.

The organizational response to ethnocultural difference is outlined in a document entitled ‘The Canadian Multiculturalism Act’ (NPB 2010h). This document presents the NPB as one which is responding to issues of ethnic and cultural difference through a number of initiatives, including the NPB’s participation on regionally- and nationally-based ethnocultural advisory committees in conjunction with the CSC; the “periodic” organization of “information forums” involving ethnocultural community agencies and groups; the use of “experts from a variety of ethnocultural and ethnoracial backgrounds” for sensitivity and awareness training; the Employment Equity Plan, which aims to help increase the employment (and thus representation) of “equity group members”; and the celebration of events that “promote awareness and understanding of the diversity of Canadian society and to increase respect and inclusiveness” (ibid.: n.pag). As argued in Chapter 3, these forms of diversity work are based on an understanding of diversity as located in non-white individuals, experiences, and cultures.

This document identifies two provisions of the Multiculturalism Act upon which organizational commitment is based: firstly, that “[a]ll citizens are equal and have the freedom to preserve, enhance, and share their cultural heritage”, and secondly, that “[m]ulticulturalism promotes the full and equitable participation of individuals and communities of all origins in all aspects of Canadian society” (NPB 2010: n.pag). The NPB (2010h: n.pag) indicates that its Executive Director has been appointed the Multiculturalism Champion who “supports, encourages, promotes and endorses activities and initiatives” related to the implementation of multiculturalism within the organization. Such activities and initiatives include ensuring equal opportunity to gain employment at the NPB; enhancing contributions to “the continuing evolution of Canada” by individuals and communities of “all origins”; improving understanding of and respect for diversity; increasing sensitivity and responding to “the multicultural reality of Canada”; and utilizing the language skills and cultural understanding of various individuals (ibid.). According to the NPB (2010h), these activities and initiatives are also supported by the organization’s legislative basis (i.e., section 151.3 of the CCRA), policy manual, core values, and strategic vision.
The organizational commitment to and “investment in multiculturalism is predicated on forgetting [a] range of complicated colonial legacies and racial struggles”; this includes the naturalization of white settlement as Aboriginal nations were displaced and decimated, and the establishment of “intense racialized hierarchies […] between European settlers, Native Nations, Black, Chinese and Asian settlers, and other more recent patterns of immigration” (O’Connell 2010: 538). Organizational discussions of multiculturalism fail to consider whiteness “in its multiple forms and expressions” (ibid.). Institutional understandings of ethnicity do not consider whiteness despite historical patterns of ethnicizing Italian and Irish Canadians. In dominant multicultural discourses, ethnicity is linked to cultural difference and separated from white, Canadian norms.

The critical literature on Canadian multiculturalism can be used to contextualize the NPB’s approach to ethnocultural offenders and the discourses of difference that permeate institutionally produced documents about this offender population. This literature is also useful for studying how such discourses of difference tend to preserve, rather than upset, institutional whiteness. Multiculturalism is as a governing discourse that organizes and manages difference (Bannerji 2000). More specifically, Bannerji (2000: 78) argues that multiculturalism is a “vehicle for racialization” because it selectively ethnicizes some groups and not others:

It establishes anglo-Canadian cultural as the ethnic core culture while ‘tolerating’ and hierarchically arranging others around its ‘multiculture’. The ethics and aesthetics of ‘whiteness,’ with its colonial imperialist/racist ranking of criteria, define and construct the ‘multi’ culture of Canada’s ‘others’.

The establishment of “the British and French as competing yet ‘founding’ nations” within multiculturalism policy and the positioning of Aboriginal peoples and racialized immigrants as “external to the nation” helped provide “the basis on which ‘race’ and ethnicity came to be codified through culture” (O’Connell 2010: 539). For O’Connell (2010: 538), “liberal whiteness is accomplished not through the rejection of diversity, but through its institutionalization in broader cultural and political practices and policies”. She argues that the “respect for difference presupposes a white rational liberal subject who defines, measures, and allows for allowable differences” (ibid.: 540, emphasis in original). The
The notion of *allowable* differences is important because not all differences among the various (non-English, non-French) cultures are legitimated by discourses of multiculturalism:

Ethnic foods, dress, cultural celebrations, and diversity are welcomed and encouraged in the public realm until supposed ethnic enclaves are identified or Native groups initiate land claims on territories they deem have been illegally occupied. (O’Connell 2010: 540)

Significantly, respect and tolerance are granted as long as multicultural difference is confined to a celebration of diversity, without challenging the current order of things (Hyndman 1998; O’Connell 2010). This, according to O’Connell (2010), maintains hegemonic whiteness in Canada. In the following section, I analyze this tendency in the discursive constitution of ethnocultural offenders in NPB texts.

**Constituting the Ethnocultural Offender**

The documents analyzed here illustrate how institutional discourses of difference constitute the ethnocultural offender as a distinct target for special penal practices. The construct of the ethnocultural offender provides an opportunity to consider how “the deployment of diversity reduces to and manages difference as ethnic cultural issues” (Bannerji 2000: 51) in the context of conditional release. Knowledges of difference emerge in institutionally produced documents to signify non-white and (non-Aboriginal) offenders as both carriers of diversity and targets for diversity initiatives. Through this process, ethnicity and culture are racialized as characteristics or traits of the ethnocultural offender; whiteness remains the unacknowledged and unmarked point of comparison to which this difference is produced. The constitution of ethnocultural offenders as bearers of culture simultaneously represents board members as having no culture or as putting aside their culture when acting in a professional capacity (van Dongen 2005: 184). It is therefore important to consider how ethnocultural offenders are ‘made up’ within institutional discourses and penal policies.

I made several requests under the *ATIA* for NPB documents relating to ethnocultural offenders and issues of diversity more generally. The documents I received are illustrative of how the organization is grappling with an increasingly diversified federal offender population, as well as more heterogeneous communities and victims of crime. More specifically, and with one exception, these texts reflect the production of racialized
knowledge about particular groups of offenders and various strategies designed to understand and address difference. In this section, I examine how the NPB has attempted to ‘know’ and respond to ethnocultural difference. Key institutional mechanisms for producing knowledge about this population are research reports, community consultations, and diversity committees. I show that ethnocultural difference poses a more challenging set of diversities to be negotiated into conditional release policies and practices than does Aboriginality or gender.

Producing and Knowing the Ethnocultural Offender through Research

One institutional approach for coming to know the ethnocultural other is the production of research reports about this group of offenders. My requests under the ATIA located three reports, one from the Québec Region (NPB 2005d), 123 one from the Pacific Region (NPB 2005e), 124 and one from the National Office (NPB 2009i). 125 The first two reports focus primarily on the profile and needs of offenders defined as ethnocultural in order to better know them and determine whether the conditional release process could be altered to address their needs. In contrast, the third report takes a more critical look at how ethnocultural offenders are defined and the implications of these definitions for organizational processes. In addition to being knowledge products, these reports can be seen as techniques of managing reputation and demonstrating that the organization is being responsive to diversity issues. The existence of these reports further illustrates how separate branches of the organization (e.g., the two regional offices versus the National Office) may differently approach the problem that difference poses to dominant frameworks and practices, including how diversity is defined and accommodated.

For the Québec Region, knowledge of the other was required before it undertook steps to alter its practices. In the 2004-05 fiscal year, a consultant was hired to “conduct a needs analysis among the major stakeholders involved and offenders from various ethnic origins”; this was a “first step” for the Region “[b]efore determining the way it wanted to address the issue of cultural diversity” (NPB 2005d: 3). The consultant’s mandate was to determine “whether improvements could be made to the hearing process so that the National

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123 Document obtained through ATIA request no. A-2010-00022 to the NPB.
124 Document obtained through ATIA request no. A-2010-00022 to the NPB.
125 Document obtained through ATIA request no. A-2009-00020 to the NPB.
Parole Board’s decision-making process would be tailored to meet the needs of offenders of diverse cultural origins” (ibid.: 4, emphasis added). Although not explicitly defined, a read of the report indicates that “offenders of diverse cultural origins” are non-white ethnic minorities, excluding Aboriginal peoples, and focused on male offenders within this population. The use of language and the framing of issues within the report suggest that the imagined reader is white; indeed, whiteness is the implicit norm to which others are constituted. The report highlights the differences exhibited by these ethnocultural others, such as their different perceptions of justice and the experiences of (white) stakeholders in dealing with this offender population. In relation to the former, the report points to different cultural understandings of violence against women, the use of hallucinatory drugs, and the distrust of authority (NPB 2005d: 9) to demonstrate the potential otherness of ethnic offenders from various (non-Canadian) origins.

The Pacific Region hired a consultant in the 2004-05 fiscal year to review its “ethnocultural population to identify profiles, trends, issues and needs in relation to NPB decision-making” as a means to enhance the cultural competency of the hearing process for ethnocultural offenders (NPB 2005e: 2). This study involved an analysis of data extracted from the Offender Management System to identify the “target groups” of ethnocultural offenders from the “top three communities” in the Region based on notions of race (i.e., non-whiteness), country of origin (i.e., outside of Canada), and primary language (i.e., not English or French). The focus on numbers points to the notion of a critical mass, such that an organizational response may be necessary if there are sufficient numbers of offenders from identifiable communities.

The Québec Region’s report examines the experiences of (white) stakeholders to assess the “level of general knowledge” among stakeholders in relation to “cultural diversity” (NPB 2005d: 7), presumably to determine if there was an organizational need or justification for acting on diversity issues. This knowledge is identified as being “limited”, as low numbers of stakeholders “have received basic training on ethnic minorities” (ibid.: 9.

126 The report states that “[i]n spite of their small numbers, [Aboriginal offenders] have had the benefit, for some years, of specific institutional programs and special arrangements for their hearings” (NPB 2005d: 7). This, according to the report, is “understandable” because Aboriginal people “are homogeneous and share many customs, beliefs and cultural values” (ibid.). The assumption here is that it is easier for the organization to accommodate the needs of Aboriginal offenders because they are essentially all the same (i.e., they are all Aboriginal). This is contrasted to those offenders constituted as ethnic minorities who are understood to be made up of “many ethnic groups, races and cultures” (ibid.).
emphasis added). Ethnic minorities are simultaneously constituted as an object of knowledge and a source of difference. At the same time, the stakeholders are constituted as the homogeneous, non-ethnic majority who “may encounter individuals from various cultural origins in their personal lives”, yet their gaze upon the other is limited through a low “level of knowledge” about ‘them’ (ibid., emphasis added). According to the report, “[t]his lack of knowledge gives rise to misunderstanding, mistrust and discomfort” and may work to strain communication between (white) board members and ethnocultural offenders (ibid.: 10). The ‘appropriate’ solution to this problem therefore becomes a matter of increasing knowledge about these offenders and their communities.

Both the Québec and Pacific Regions’ reports consider the elements involved in the conditional release decision-making process and how these might be modified to attend to the needs of ethnocultural offenders. In relation to information gathering, the NPB (2005d: 11) indicates ethnocultural offenders need to do ‘better’ at communicating information to board members: “Limited knowledge of the official languages and refusal to or difficulty in expressing oneself openly are barriers that must be overcome so that the offender can clearly express his point of view and initiate change”. Ethnocultural offenders are expected to meet the normative criteria of the system. The Pacific Region’s report recommends that ethnocultural offenders be allowed assistants at hearings to help ensure a proper flow of communication (NPB 2005e). Likewise, the Québec Region’s report is supportive of formalizing the role of “ethnic minority representatives” as active participants at conditional release hearings (NPB 2005d: 14). This “representative, who belongs to the same ethnic community as the offender, would be able to draw the commissioners’ [board members’] attention to significant elements of [her]his culture in comparison with those of the majority”, as well as help ethnocultural offenders “feel more secure” during the hearing process (ibid.). The representative’s participation is also seen to “provide supporting information on the home community, monitoring resources and support to which the offender would have access upon release” (ibid.). Organizational considerations of adapting the regular hearing model for ethnocultural offenders are examined later in this chapter.

Concerning risk assessments for decision-making, the Québec Region’s report encourages decision makers to recognize the lack of correctional programs for ethnocultural offenders, noting that available programs are run in French or English and “were designed to
meet the needs of the majority” (NPB 2005d: 11). Accordingly, board members are advised to “make a distinction between a refusal to participate in programs and difficulty integrating into them” in order “to avoid unfairly penalizing this ethnic clientele” (ibid.). However, it still appears that the onus is placed on ethnocultural offenders to try to participate in programs—even those that may be irrelevant—as their refusal to do so may be used against them as a sign of resistance to rehabilitative programming.

Lastly, in relation to parole hearings, the Québec Region’s report indicates that hearings are “uncomfortable” for both ethnocultural offenders and board members (NPB 2005d). The former are said to be “intimidated by the decorum and conduct of a hearing”, while the latter believe that ethnocultural offenders “mistrust” the process (ibid.: 12), thereby reducing the “climate of trust and mutual respect” (ibid.: 13). As shown in the previous chapter, similar experiences were reported by Aboriginal offenders which helped drive the creation of EAHs and CAHs to Aboriginalize the hearing format. In keeping with the dominant organizational approach to difference, the report concludes that the NPB does not have to go about altering its “entire decision-making process, but rather, by and large, \textit{making some minor changes} and, above all, \textit{demonstrating an attitude of openness and respect}” (ibid.: 16, emphasis added). In this sense, a tweaking of the status quo, combined with an “attitude of respect” among board members, are viewed as the necessary steps to “improving the effectiveness of existing mechanisms” (ibid.). For instance, a “[g]reater awareness of the living conditions of the various ethnic minorities would foster greater understanding of the behaviour of offenders and could make mutual interaction easier” (ibid.: 13). In other words, what is required is more knowledge of the other so that (white) board members will know what to do and how to act appropriately when presented with non-white offenders at conditional release hearings. Training and knowledge acquisition become the appropriate organizational responses in this context.

Similarly, the Pacific Region’s report recommends that the organization enhance its cultural competency through orientation and refresher training for board members (NPB 2005e). It also advocates informing offenders that board members receive such training in order to “enhance the confidence of ethnocultural offenders in the Board when offenders prepare for their cases and during the hearing” (ibid.: 8). This step was envisioned as a response to the perception among some ethnocultural offenders “that there is a lack of
cultural understanding among Board Members”, which is believed to affect their confidence in accessing fair hearings (ibid.). Similarly, the Québec Region’s report proposes that stakeholders and ethnic minority organizations are educated about the NPB’s initiatives to ensure that they are “aware of [the NPB’s] open approach and its concern for equity with respect to cultural diversity” (NPB 2005d: 17). In other words, the practice of educating ethnocultural offenders and their communities is to convey the idea that diversity is being done at this organization (Ahmed et al. 2006).

The third report, produced by a consultant for the national office in 2008, stands in stark contrast to the Québec and Pacific Regions reports. Although it has a similar focus in terms of providing the organization “with knowledge about NPB staff and board member needs pertaining to their work with ethnocultural minority offenders in the hearing process” as a means to inform “the development of training materials, resources and/or other initiatives” (NPB 2009i: ii), the report also draws on external sources that enable a more critical consideration of notions of ethnicity and cultural competency. This report is unique when compared to most NPB documents due to its critical exploration of issues related to ethnocultural offenders, including the basic starting point of defining what is meant by the term, some of the advantages and disadvantages of identifying offenders as ethnocultural, and different options for diversity training (ibid.).

As a knowledge practice, the national office’s report provides the NPB with information about the existing legislative frameworks that support diversity and equality (e.g., the Charter and Multiculturalism Act) and the development of cultural competency (NPB 2009i). Instead of simply providing knowledge of ethnocultural offenders, the report examines how staff and board members understand and perceive ethnocultural difference and its ‘place’ within the conditional release system. The report is exceptional among other NPB diversity-related documents because it explores how the ethnocultural offender is constituted by the organization and acknowledges the complexities of identifying and responding to ethnic and/or cultural difference.

In sum, the three reports discussed here represent institutional techniques of producing knowledge about ethnocultural offenders as a means to determine how these diversities can be integrated into the NPB’s policies and practices. These reports also constitute ethnocultural diversity as pertaining to non-white and non-Aboriginal individuals
and communities; whiteness is the implicit norm to which differences are framed. The reports are illustrative of how the NPB is struggling with the challenge of ethnocultural diversity in the federal offender population.

Knowing the Ethnocultural Offender through Community Consultations

Community consultations are another example of institutional practices focused on ethnocultural difference. In 2004, the Aboriginal and Diversity Initiatives section applied for and received a grant from Canadian Heritage to support its diversity work (NPB 2004d). This funding was intended to support initiatives that formed relationships between the organization and ethnocultural communities, such as forums with these communities and key community leaders (ibid.: 1). According to the Aboriginal and Diversity Initiatives section (NPB 2004d: 2), the funding provided by Canadian Heritage was met with excitement as it enabled interested regions to “do some of the work that [they] have been wanting to do, for some time now”. The section indicated that “a lot” could be accomplished, both nationally and regionally, given “how far [they] have come with minimal financial resources” (ibid.). This statement suggests that such diversity work for ethnocultural offenders had not been funded by the NPB, thereby requiring the Aboriginal and Diversity Initiatives section to seek other government funding to support the work it wanted to carry out.

The Aboriginal and Diversity Initiatives section used some of the funding to support its Ethnocultural Consultation Project that it started in 2002. The remaining funding was made available to the regions—upon approval of the section—in support of region-specific work with ethnocultural groups (NPB 2004d: 1). The Prairie Region, for example, utilized resources to hold three community forums in March 2005 in Winnipeg, Edmonton, and Calgary (NPB 2005f). These cities were chosen after a “statistical breakdown” showed that these locations reflect “diverse offender populations” and have community agencies and services for “ethnocultural people” (ibid.). The aim of the forums was to “provide the Board with a better sense of the programs and services which the agencies offer and would give National Parole Board an opportunity to inform community agencies and members about [its] role within the criminal justice system” (ibid.). The forums also supported the

127 Document obtained through ATI request no. A-2009-00017 to the NPB.
128 This funding could also be used for regional pilots of a hearing model for ethnocultural offenders (NPB 2004d: 2).
129 Document obtained through ATI request no. A-2009-00017 to the NPB.
production of knowledge about these communities, as well as the opportunity to build organizational reputation and download some responsibility for conditional release onto diverse communities.

The Aboriginal and Diversity Initiatives section’s Ethnocultural Consultation Project stemmed from the organization’s discussion of “innovative ways that it may be more responsive to offenders from diverse racial, ethnic and cultural backgrounds taking into account their unique cultural heritage and their differential experiences with the criminal justice system” (NPB 2005g: 1). The organization views its advances in the area of hearings for Aboriginal offenders as having “opened the door to envision the creation of a hearing process which is sensitive to the culture and traditions of offenders from diverse cultural backgrounds” (ibid.). The NPB consulted with ethnocultural offenders, CSC staff, non-governmental organizations involved in community supervision, and community groups, organizations and community leaders representing diverse populations. These consultations were conducted to fulfill several objectives: to garner feedback about the hearing process and how it could be “enhanced” to better meet the needs of ethnocultural offenders; to gain insight on how to facilitate the release and reintegration of ethnocultural offenders; and to develop partnerships with community organizations and representatives of diverse communities (ibid.: 1-2).

The NPB focused its Consultation Project on ethnocultural offenders—defined as non-white and non-Aboriginal—because it had already conducted a “substantial amount of work” on Aboriginal issues, including consultations with Aboriginal communities and elders (NPB 2005g: 2). Female offenders were excluded from the project because “an extensive consultation” had previously been completed with this population. In this way, culture and ethnicity are artificially separated from gender, such that female offender issues are set apart from those of ethnocultural offenders and deemed to be outside the scope of consultations; the organization can only look at women or ethnicity, not both, even though facets of identity are always multiple, intersecting, and simultaneously experienced (see hooks 1981; Collins 1990; Crenshaw 1991; Razack 1998; Yuval-Davis 2006). The decision to exclude female offenders also functions to implicitly gender ethnocultural offenders as a male population,

130 Document obtained through ATI request no. A-2009-00017 to the NPB.
131 The organization is referring to its ‘Federally Sentenced Women’s Consultation Report’ (see NPB 2002).
while the varying ways masculinities intersect with diverse ethnicities and/or cultures are unrecognized. Yet, a consultation project that looks specifically at issues of ethnicity, culture, or race in relation to conditional release without considering the intersecting impacts of gender may establish norms for the offender population defined as ethnocultural to the detriment of non-white female offenders. In other words, it raises questions as to how female ethnocultural offenders fit in the conditional release context, such as in relation to their grouping as female offenders, where norms around whiteness may dominate.

The report of the Ethnocultural Consultation Project explores a number of themes related to conditional release for male ethnocultural offenders (NPB 2005g) and demonstrates how the organization is attempting to come to grips with difference. For instance, the issue of the format of release hearings yielded divergent opinions during consultations. On the one hand, the report outlines support—primarily by offenders—for the more informal approach reflected in the EAH model where the offender’s supporters are allowed to speak and the hearing room is organized to enable participants to sit in a circle (ibid.: 5). On the other, there was a firm belief, particularly among CSC staff, in the status quo: “The quasi-judicial format is a setting that most Canadians are familiar with and comfortable with so there should be no problem in continuing to utilize it for hearings” (ibid., emphasis added). The report does not analyze the assumptions about the status quo for the organization’s release hearings. Yet, as this quote indicates, one key assumption among the opponents of a different approach to hearings is that organizational “professionalism” is reflective of a white, masculine, Canadian format that exhibits quasi-judicial formalities (e.g., boardroom set up, formal attire, etc.) and demarcates the uneven power relations between board members and offenders.132

The Ethnocultural Consultation Project also signaled a desire among decision makers for knowledge about ethnocultural offenders’ cultural norms. More specifically, the ways in which various groups’ “family dynamics differ from mainstream norms” were seen to “present unique challenges for Board Members and POs [parole officers]” (NPB 2005g: 10). Knowledge of such norms is linked to the assessment of risk, such that the exploration of

132 Concerns were also raised during consultations in relation to “informal” hearing formats not satisfying victims, such that the NPB would need to “find some balance between the victim’s needs and processes that are most beneficial and productive for the offender and the Board Members” (NPB 2005g: 6). This assumes that victims would only be satisfied with a hearing process that reflects white, normative standards.
cultural issues within release hearings could work to reduce risk within the community (ibid.). Without “sufficient information on the cultural norms” of the offender’s community, it is feared that board members “may overlook important areas in the hearing” (ibid.: 11). The issue of sufficient information was linked to board member training on “matters of culture” (ibid.: 14). These findings highlight an organizational preference for racialized knowledge of diverse others as a solution to the problems posed by diversity, as if knowing the other will lead to appropriate decisions based upon standard decision-making policies and practices of risk assessment.

The relationship between culture and risk assessment is another area addressed by the Consultation Project and which illustrates the organization’s attempts to grapple with difference. For instance, the report suggests that risk assessment ought to occur through a consideration of the assorted “cultural factors” underlying a given case, including an analysis of the “cultural implications” of imposing special conditions (NPB 2005g: 10-11). However, the example used (i.e., the case of an offender killing his wife) highlights the difficulties associated with the insertion of culture talk into quasi-judicial settings where gender and multiculturalism intersect. More specifically, the use of cultural knowledges in the context of conditional release hearings raises questions as to what sorts of knowledges are privileged over others, how cultural communities and experts are defined and according to whose terms, and how these knowledges may reduce complex practices and power relations to stereotypes.

Given the time pressures and case loads of board members, there may be a reliance on shorthand information such as through reference guides for various cultural or ethnic groups, as well as the cultural fact sheets that will be discussed later in this chapter.

Knowing the Ethnocultural Offender through Committees

Diversity committees are another strategy for knowing the ethnocultural offender. The Atlantic Region is one region to have created a committee in response to the perceived needs of ethnocultural offenders, with specific focus on African Canadian offenders. The African Canadian Offender Project Committee (formerly the Afro-Canadian Committee) was created in 2000 in response to the over-representation of African Canadians in the correctional system (NPB 2006b: 9). This committee “examines issues surrounding the African-Canadian

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133 See Deckha (2004) for a thoughtful summary of feminist debates around the impacts of recognizing cultural identities with legal settings.
population and gathers information to improve the decision-making process for African-Canadian offenders” (ibid.). Knowledge production is a primary aspect of its work. For example, working with community groups in Nova Scotia, the committee has held meetings to “increase NPB’s awareness and sensitivity to African-Canadians within the criminal justice system, to increase NPB’s knowledge of the communities that ethnocultural offenders will be returning to and how cultural factors impact on the assessment of risk for African-Canadian offenders” (ibid.). One meeting yielded recommendations for the piloting of a CAH within “the African Nova Scotian community” as a way to “allow community members and cultural agencies to be empowered to take a more active role in the hearing process and successful offender reintegration” (ibid.: 12). Other meetings yielded strong support among community groups for alternative approaches to conditional release hearings for ethnocultural offenders. Such alternatives include allowing for offenders to have assistants present for support and having board members work to establish a “respectful and welcoming” environment for offenders through small talk and the removal of the table (ibid.: 13). The community meetings also yielded calls for a more diverse board that includes representation from various ethnocultural communities, especially for hearings with ethnocultural offenders (ibid.).

Another initiative of the Atlantic Region was holding a mock hearing in March 2005 for community members and those representing cultural and community agencies (NPB 2006b: 15). The mock hearing involved the demonstration of the ‘regular’ hearing model and an ‘adapted’ hearing model that the Region developed based on its consultations with community groups. The NPB (2006b: 15) notes that “[t]he adapted model was selected by participants as the model which should be utilized for African Canadian offenders”. This model, termed the ‘African Canadian Hearing Model’, was to be piloted within the Atlantic Region and have the following characteristics: the use of a circle format without tables, casual style of dress by board members, starting the hearing with small talk to put the offender “at ease”, and having board members discuss with the offender “his/her background, upbringing and experiences of racism” (ibid.). Yet, board members were required to still assess risk as they do in “all hearings, in accordance with NPB policy and legislation” (ibid.). The proposed model reflects the NPB’s incorporation and extension of Gladue principles to African Canadian offenders, including the consideration of background
and systemic factors impacting this population. That the Atlantic Region was able to develop a hearing model for African Canadians may reflect the unique history of this population in the Region (see Nelson 2002). In particular, black Nova Scotian offenders may be more easily constituted as an identifiable group of ethnocultural offenders with special needs that can be addressed through an adapted hearing model.

Taken together, the research reports, community consultations, and ethnocultural offender committees represent institutional techniques for producing knowledge about ethnocultural difference and considering how this diversity can be accommodated in conditional release policies and practices. The section showed how the NPB is grappling with ethnocultural difference and its relevance to parole hearing formats and approaches to decision-making. As with Aboriginal offenders, gender is partitioned from the institutional discussions about ethnocultural offenders; this population is implicitly constituted as male. The next section examines in more depth some of the NPB’s responses to ethnocultural offenders.

Responding to Ethnocultural Difference

This section considers four examples of the NPB’s attempts to accommodate ethnocultural offenders and respond to their perceived differences. As with the preceding discussion, these institutional responses illustrate how the organization is attempting to be responsive to the needs of an increasingly diverse federal offender population. An analysis of these responses shows how discourses of difference work to constitute ethnocultural offenders as non-white and non-Aboriginal, yet as having special needs due to their various racial, ethnic, and/or cultural identities and backgrounds. Ethnocultural offenders are framed as different in relation to an unstated white norm. This framing reinforces their presumed otherness as the targets of inclusion through adapted conditional release processes.

Reconsiderations of the ‘Regular’ Hearing Format

The preceding discussion of knowledge products, community consultations, and diversity committee work highlighted the desire of various stakeholders for the creation of an altered hearing format for ethnocultural offenders. Yet, as noted in previous chapters, the altering of the ‘regular’ hearing format to be inclusive to “offenders from diverse populations” (NPB
2006b: 17) has been met with some resistance from senior management. Such diverse populations include “cultural, racial, ethnic, women, [and] special interest (i.e. those with mental health concerns, etc.)” offenders (ibid.). The NPB (2006b: 17) indicates that the EAH format was “identified as the model which stakeholders and key partners would like to see utilized for offenders from diverse cultural backgrounds”. This expansion was viewed as “the natural progression of the development of parole decision models which recognize the unique needs and circumstances of diverse groups within the offender populations and diverse communities in Canada” (ibid.), as well as a matter of fairness (i.e., according to the logic that all offenders should have a choice, not just those who are Aboriginal) (NPB 2005g). In this context, diverse offender groups implicitly refers to non-Aboriginal and non-white offenders—those who are cultural, racial, and/or ethnic, but not gendered, others. These groups are understood to need “an open, comfortable atmosphere and tone” for their hearings so that board members can “gather the critical information that is required to make a quality assessment of risk and to enhance NPB’s decision-making ability” (NPB 2006b: 17).

As with Aboriginal offenders, ethnocultural offenders were identified as having the potential to benefit through alternative hearing formats and the use of cultural advisors to provide cultural insights to board members about offenders’ backgrounds.

According to one informant, a Cultural Hearings Working Group was created as a result of pressure for the organization to do something in relation to ethnocultural offenders (Interview 7). Some work had already been done on the notion of ‘alternative models’ to the ‘regular’ hearing format in 2003. The same informant explained that the mandate of the Working Group was “to look at elder assisted hearings as a best practice and to see what from that we could learn and transfer to our hearings in general or for offenders from other cultural groups” (Interview 7). One of the meeting reports, however, notes that the Working Group also considered the special needs of female offenders for hearings (NPB 2006d: 1). As the next chapter will show, the offhand inclusion of female offenders in the context of cultural hearings reflects the NPB’s confusion around what to do with gender, particularly as gender is treated separately from issues of culture and ethnicity.

134 See NPB (2003a). One informant explained that the regional director of the time was tasked with the job of identifying alternative approaches “as part of his performance agreement” (Interview 7).

135 Document obtained through ATI request no. A-2009-00017 to the NPB.
The same informant noted the unwillingness of the organization to have all conditional release hearings follow the EAH format, despite the prevalence of illiteracy and learning disabilities among the federal offender population (Interview 7). This position was echoed by another informant who stated that “a less formal, more conversational approach to hearings is more successful for every offender” (Interview 8), regardless of her/his gender, ethnicity, or culture. Indeed, at one meeting of the Working Group, participants found that most aspects of the EAH model could be applied to regular hearings. As the informant explained:

So we spent the first day, okay, tell us about what works well with elder assisted hearings and the list went on and on. Then we look at, okay, now, what from this is transferable, what could apply to all hearings. And we started pulling everything in effect but the elder and the opening prayer ceremony, right. The respectful environment, the removal of barriers, to facilitate dialogue, you know, more simplistic language, you know, more patience, and so, allowing if there’s people from the community there, let them talk if they’ve got something to add in terms of support upon release or whatever, you know, being more inclusive. So all of this stuff came out. (Interview 7)

The report of the Working Group’s February 2006 meeting summarizes such elements in more detail:

- The offender’s ability to choose
- Respectful, fair, equality and a better balance of power
- Inclusiveness, flexibility and openness
- Offenders feel heard, are more comfortable and empowered
- The environment is less formal with the procedural safeguards being covered outside of the hearing room
- The recognition of an Elder or Aboriginal Cultural Advisor
- The format promotes dialogue and is engaging. (NPB 2006d: 2)

According to the informant, the Working Group “ended up taking all that could be transferred and put it into our proposed hallmarks for a quality hearing [document]” (Interview 7). The hallmarks identified by the Working Group include the following:
1. Respectful of all participants including colleagues, staff, the offender and his/her supports throughout the process.
2. Focused on the statutory criteria relating to the assessment of risk by ensuring a well managed process for which participants are well prepared, the information is complete and of good quality, and legislation, case law, and policy are adhered to.
3. Conducive to the gathering of information through the use of interview techniques that promote open dialogue, the use of simple written and verbal language to accommodate various literacy levels and language barriers. When required, language and cultural interpretation services are provided by qualified interpreters.
4. Inclusive and flexible in that participants, including victims, have the ability to speak to the important issues regarding the case before the Board and this information is taken into account. Participants, including the offender, feel heard.
5. Cognisant [sic] that difference matters and responses which appropriately demonstrate sensitivity and an understanding of who the offender is as an individual in his/her community.
6. Informative and participants, including observers, have a clear understanding of the decision to be made, as well as the hearing and deliberation processes.
7. One in which consideration for the importance of the physical environment is made. Participants are able to hear, tissues and water are provided, the audio equipment used ensures clear recordings of the proceedings, and measures are taken to underscore the independence of the Board. Depending on the type of hearing and physical layout, physical barriers may be removed or minimized through the use of a round table. (NPB 2006d: 2-3)

Similar to the EAH and CAH models, these hallmarks shift the hearing format but do not alter the structure of parole decision-making. Although notions of respect, open dialogue, inclusion, flexibility, and reduced barriers point toward an endeavor to make the hearing format less daunting for all offenders, board members must stay focused on the assessment of risk, as per the CCRA and NPB policy. The fifth element affirms the importance of difference in conditional release decision-making and the need for sensitivity. However, given how diversity is constituted within the organization, in practice all offenders might be
reduced to *some* offenders whose gender, ethnic, or linguistic identities positions them as different and in need of additional accommodations, such as cultural interpretation or the removal of barriers.

Tracking how the Working Group’s hallmarks are operationalized and implemented by the NPB provides an opportunity to see how issues of difference are accommodated and put into practice. Following the recommendation of the Working Group, the above elements were adapted into the ‘Hallmarks of a Quality Hearing’ and included in the organization’s Policy Manual, under section 9.2, in August 2007 (NPB 2008a: 221). The Hallmarks section of the Policy Manual is implicitly framed in relation to section 151(3) of the *CCRA*; although no specific reference is made to the legislation, the stated commitment reflects the wording of the section 151(3). This policy is an accountability measure indicating that the NPB is an organization that is responsive to diversity issues. However, the Hallmarks section also acts as a technology of concealment by failing to challenge the NPB’s culture and normative practices around conditional release hearings, even when it appears to have integrated diversity (Ahmed and Swan 2006; Ahmed 2007b).

The Policy Manual states that the “Hallmarks serve to guide Board members in their responsibility for the conduct and integrity of the hearing and in professionally managing the decision-making process” (NPB 2011c, Ch.9.2: 116). The Manual lists seven hallmarks said to be reflective of a quality hearing that promotes the organization’s duty to act fairly:

- respectful of all those present;
- focused on the statutory criteria for assessing whether or not the offender presents an undue risk to society;
- well managed and that those who are actively participating are well prepared and legislation, case law, and policy are adhered to;
- conducive to the gathering of additional information and facilitating a more accurate understanding of the offender through the use of an interviewing style that uses plain language to accommodate various physical and mental health conditions and literacy levels and facilitates open dialogue. Qualified interpreters provide language interpretation services when required;

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136 This is not to be confused with Section 2.1 of the Policy Manual, which contains a section called ‘Hallmarks of Quality parole Decision-Making’. Here, a quality decision, among many other factors, “reflects a responsiveness to diversity” (NPB 2011c, Ch.2.2: 23).
• inclusive and flexible allowing Board members to hear from those persons who have information on the case. The offender, and others present, know they are heard;
• responsive to gender and cultural differences demonstrating a sensitivity and an understanding of who the offender is as an individual in his/her community. Qualified cultural interpreters provide services when required; and
• informative and all those present have a clear understanding of the decision to be made, as well as of the hearing and deliberation processes. (NPB 2011c, Ch.9.2: 117)

These hallmarks are similar to the recommended elements proposed by the Cultural Hearings Working Group, with some minor changes. In particular, the Working Group’s seventh proposed element regarding the physical environment of hearings is not included as a hallmark but as an additional factor that could be considered, such as the removal of physical barriers (NPB 2011c, Ch.9.2: 117). Reference to gender as a difference to be responsive and sensitive to is also included in the hallmarks identified in the Policy Manual, but not explicitly mentioned in the Working Group’s recommendations. The introduction of the policy was framed as addressing issues related to ethnocultural offenders (e.g., NPB 2007b), with gender as a secondary consideration or add-on without much thought as to why or how it matters.

As with the regular hearing format and the EAH and CAH models, the second hallmark reflects the focus on risk as the key issue driving the hearing. Again, the dominant assumption is that risk and the assessment of risk are neutral, rather than value-laden and problematic for non-white and female populations (Hannah-Moffat 2004b, 2009, 2010; Hudson and Bramshall 2005; Harcourt 2007). Like the regular hearing format, notions of risk and actuarial tools are based on white, male normative criteria and rarely consider social differences related to gender, race, and class, or the social contexts that produce inequality (Hannah-Moffat 2009). Such attempts to create a quality hearing through certain inclusions reflect that the diversity of offenders is largely symbolic, particularly as the underlying decision-making criteria remain unchanged.
Interpretation Issues

Linguistic difference emerges as another marker of diversity under the umbrella of ethnoculturalism and has been recognized within the organization as an issue impacting decision-making. More specifically, several informants identified language interpretation as being associated with ethnic or cultural difference within the offender population and thus is racialized as a need for those offenders defined as ethnocultural. Offenders whose first language was not English or French were largely constituted along racial or ethnic lines. Under section 140(9) of the CCRA, offenders have a right to interpretation at conditional release hearings: “An offender who does not have an adequate understanding of at least one of Canada’s official languages is entitled to the assistance of an interpreter at the hearing and for the purpose of understanding materials provided to the offender”. This right is also set out in section 9.5 of the NPB Policy Manual (NPB 2011c). For the NPB (2011c: 9.5: 132), “[t]he use of interpreters supports the Board’s commitment to ensuring that the offender is aware of, and understands all relevant information provided to the Board for the hearing and also understands the proceedings of the hearing”. In addition to being a right for offenders, language interpretation reduces the possibility of legal and reputational risks to the organization in cases where linguistic minority offenders do not receive ‘fair’ hearings because of a failure to address their language needs.

The Ethnocultural Consultation Project (NPB 2005g: 8) identified language as a “significant problem” for “many ethnocultural offenders, particularly those from Asian or South Asian backgrounds as well as Inuit offenders”, who are not English or French speakers. Relying on racialized stereotypes, concerns were raised that because “Asian offenders come from backgrounds where it is important to be deferential to elders and those in authority”, they may “essentially agree to anything without knowing or understanding what they are agreeing to” (ibid.). Language barriers interact with culture and race to the potential detriment of ethnocultural offenders. To address language concerns, the Aboriginal and Diversity Initiatives section applied for and received funding from the ‘Inclusive Institutions Initiative’ of Canadian Heritage in the 2007-08 fiscal year (NPB 2008f). 137 This

137 Document obtained through ATI request no. A-2009-00017 to the NPB.
funding supported an interpretation project to assess “the existing interpretation services provided at NPB hearings nationally to ensure that offenders from diverse ethnocultural/ethnoracial backgrounds, whose maternal language is not English or French, receive accurate and precise interpretation services upon which Board Members rely to conduct an assessment of risk and to make a conditional release decision” (ibid.: 1). An offender’s inability to speak either official language was identified as a source of exclusion from the normal process of conditional release decision-making, with accurate and precise interpretation services working to include the offender.

As explained by the NPB (2008f: 1), language interpretation at panel hearings is important because hearings provide opportunities for offenders to make representations to board members about their cases and for board members to examine issues or concerns and pose questions to offenders about information that may not be contained in their files. Board members rely on language interpretation for hearings with offenders who do not speak or understand English or French in order “to obtain accurate information upon which to base conditional release decisions” (ibid.). Likewise, interpretation helps ensure that offenders are aware of their rights and allows them to understand and respond to the questions posed by board members. One informant noted that interpretation was necessary in order to “ensure every offender has a fair hearing” (Interview 10). The NPB (2008f: 1) indicates that many offenders who do not speak English or French are from racialized groups and may be disadvantaged at their parole hearings due to language interpretation issues. In this context, language emerges as a marker of ethnocultural difference and an additional issue to be addressed in hearings for ethnocultural offenders.

In 2009, the NPB published a pamphlet providing tips for board members when conducting interpreter-assisted conditional release hearings (NPB 2009j). Akin to other institutional techniques of managing difference and knowing offenders defined as different (e.g., EAHs, CAHs, training, etc.), these tips reflect diversity as something that can be accommodated within existing organizational structures and practices. Following Chapter 4, the pamphlet is also an auditable product that can show diversity is being accommodated.

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138 The NPB (2008f: 6) also indicates that ethnocultural offenders with limited English or French language competency are at further disadvantage as the CSC’s core programs are primarily offered in the official languages, thereby reducing their ability to complete the recommended rehabilitative programs.

139 Document obtained through ATI request no. A-2009-00020 to the NPB.
within the organization. And, as with the institutional approach to ensuring appropriate decisions, these tips help responsibilize decision makers for being sensitive and aware of difference and its application in practice.

The pamphlet explicates the legal basis and communications needs for interpretation at hearings, the extent of Canada’s linguistic diversity, and the role of interpreters. In particular, the document notes that “[w]ithout interpretation, many linguistic-minority offenders might be disadvantaged at parole hearings”, while improper interpretation “might hamper quality decision making” (NPB 2009j: 2). Good interpretation is linked firstly to the protection of the public and secondly to the rights of the offender (ibid.). The selection of interpreters therefore emerges as a key factor in achieving fair hearings. As explained by the NPB (2009j: 5), the organization uses community interpreters which “are often members of the same ethno-linguistic communities for which they are interpreting” and in some cases “the interpreter and the offender may belong to the same social or geographic community”. For this reason, community interpreters are supposed to be aware of and disclose potential conflicts of interest (e.g., previous interactions or relationships with the offender) and “make special efforts to maintain neutrality” (ibid.). The pamphlet suggests that board members clarify the role of interpreter at the hearing so that the offender knows s/he is not involved in decision-making and is a neutral third party acting in a professional role (ibid.: 6). These characterizations reflect an institutional understanding of “ethno-linguistic communities” as largely homogenous and insular and community interpreters as potentially unprofessional and biased. Similar to the selection of elders for contracts with the NPB, the organization may prefer interpreters who can meet normative criteria reflecting Euro-Canadian values and standards (Waldram 1997).

The pamphlet characterizes ‘good’ interpretation extending beyond the verbal to include non-verbal cues. These are deemed culturally specific and may differ from those that would be easily understood by (white) French and English Canadians (NPB 2009j: 9). For instance, body language, eye contact, and tone of voice are flagged as impacting communication and interpretation within conditional release hearings (ibid.: 10). However, due to the variety of cultural differences around non-verbal communication, the pamphlet cautions board members against interpreting such cues (ibid.), presumably in case board members get it wrong. Anglo- and Franco-Canadian culture is used as the norm to describe
standard examples of non-verbal communication, from which others differ. There is also no consideration of how gender intersects with culture and other facets of identity to impact communication. The ethnocultural offender imagined as in need of interpretation is implicitly gendered as masculine. The lack of attention to gender is illustrative of the challenge of creating policies and practices that can account for multiple differences simultaneously.

African Canadian Cultural Liaison Project

The African Canadian Cultural Liaison Project is a third example of the NPB’s attempts to accommodate ethnocultural offenders’ difference. African Canadian offenders have been identified as a specific group of ethnocultural offenders with special needs. The project, based in the Atlantic Region, was the result of funding received through the federal government’s ‘Inclusive Institutions Initiatives’, the purpose of which was “to ensure that federal programs, policies and services reflect the needs and realities of ethno-racial and ethno-cultural communities” (Canadian Heritage 2005: 25). Notions of ethno-racial and ethno-cultural reflect multicultural discourses that racialize difference as belonging to non-white bodies, communities, and cultures (Dhamoon 2009). Aboriginal peoples are not included in the constitution of difference as being ethno-racial or ethno-cultural; these terms are used to define non-indigenous people of colour, marking them with race, ethnicity, and culture vis-à-vis the unmarked, unstated white norm. Ethnocultural and Aboriginal offenders may share similar needs in the context of conditional release, but the organizational separation of these groups suggests a recognition of Aboriginal peoples as a distinct population, likely due to their unique constitutional status.

The African Canadian Cultural Liaison Project involves contracting an African Canadian cultural liaison officer to work with the NPB (NPB n.d.-e). According to one informant, the cultural liaison officer’s “role is essentially the same in principle as an elder, in terms of he’s there at the hearing as a support to the board members” (Interview 10). The informant also explained that hearings with the cultural liaison officer are similar to EAHs or CAHs in that “it’s the offender that makes the request to have that type of hearing” (Interview 10). The liaison officer also conducts training sessions with regional NPB staff on

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140 This initiative was a component of *A Canada for All: Canada’s Action Plan against Racism*, a federal plan launched in 2005 by the then Liberal government (Canadian Heritage 2005).
141 Document obtained through ATI request no. A-2009-00020 to the NPB.
“the black community in Halifax” (Interview 10) and meets with African Canadian prisoners to help prepare them for their hearings and release (Interview 8). The cultural liaison officer’s activities echo the role of the Aboriginal elder as s/he functions as an ‘interpreter’ of ethnicity and culture for board members, as a ‘bridge’ between African Canadian communities and the NPB, and as an appropriate support for African Canadian offenders.

The African Canadian Cultural Liaison Project had four goals: (1) improved release plans; (2) better preparation for hearing and release; (3) improved information sharing at hearings; and (4) provision of expertise on matters of culture to board members in order to improve information upon which to make conditional release decisions (NPB n.d.-e). These goals mirror concerns around Aboriginal offenders and the rationale for establishing EAHs and CAHs. To improve African Canadian offenders’ release plans, the cultural liaison officer provides “information on community accessibility and activities to help enhance offender[s’] release plans to their home communities” and improve “their chances of successful release” (ibid.). To better prepare African Canadian offenders for their hearings and release, the cultural liaison officer provides these offenders with information about the hearing process. The NPB (n.d.-e: n.pag) contends that the increased awareness means offenders “are better equipped to answer the questions they face at these hearings” and “are more at ease with the process”. This approach helps the organizational management of difference by orienting African Canadian offenders to the dominant hearing process. It does not, however, fundamentally alter the structure of the hearing; to do so would be seen as compromising the integrity and validity of the process. A similar pattern was observed in the Aboriginalization of conditional release policies where selective notions of Aboriginal difference were incorporated into existing practices (see Chapter 6).

The cultural liaison officer is expected to accomplish the third goal of enhanced information sharing through improved communication at hearings and the provision of cultural information in relation to community accessibility, the availability of services, and community activities (NPB n.d.-e). Ostensibly, this strengthens African Canadian offenders’ release plans. This expertise also addresses other issues related to this target population of offenders. As one informant explained, “let’s say the offender is released to a community outside of Halifax and the board members might have questions about that community and this person [the cultural liaison officer] is from […] that area where the bulk of the black
offenders in [the Atlantic] Region come from and are released to, so he provides that real cultural awareness to board members about specific communities” (Interview 10). African Canadian offenders and their communities are framed in essentialist terms that gloss over differences and present them as objects that can be known and managed (Dhamoon 2009). The lack of attention to gender raises further questions about who speaks for racialized communities. The rationale for this project follows other organizational techniques of knowing the other through cultural awareness, where the cultural liaison officer serves an elder function to translate racialized knowledges and experiences into formats the (white) board can understand and use to make appropriate decisions. In this context, diversity is subject to a regulated accommodation (Bannerji 2000; Dhamoon 2009).

Cultural Fact Sheets

The final example of organizational approaches to constituting and managing ethnocultural difference is cultural fact sheets. The NPB produced a number of “country insights” handouts for several countries, including Pakistan, Vietnam, China, and Jamaica (NPB n.d.-f, n.d.-g, n.d.-h, n.d.-i). These fact sheets contain a variety of information covering demographics, society, and culture. The latter two categories speak to issues related to family, language, religion, politics, education, communication and interpersonal relations, and drug and alcohol use. This information is compiled from several websites such as those of Citizenship and Immigration Canada and Foreign Affairs and International Trade Canada, as well as the Central Intelligence Agency, Wikipedia, the British Broadcasting Corporation, and the countries’ government websites. These fact sheets can be understood as techniques of producing knowledge about ethnocultural others, much like the newsletters discussed in Chapter 3. Similar to the newsletters, the cultural fact sheets demonstrate an awareness of difference. However, unlike the newsletters, these facts sheets were created to aid decision-making, although it is not clear how exactly this information is to be used.

The concept of a cultural fact sheet appears to have emerged from a meeting of the Cultural Hearings Working Group (NPB 2006d). According to the meeting report, the information contained on the fact sheets was intended to “assist decision-makers on a more basic level to identify possible elements that may affect the offender’s case”, such as “the

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142 All documents obtained through ATI request no. A-2010-00006 to the NPB.
impact of participation in a family violence program on an offender whose cultural values and beliefs may differ from ours” (ibid.: 4, emphasis added), in cases of deportation, or for cross-cultural understandings of family and religion (e.g., NPB n.d.-e: 1). The lines between ‘us’ and ‘them’ are drawn through the assumption of certain offenders as cultural others who are different from us and our culture and values. This ‘our’ is not defined, although the implicit assumption is that the ‘us’ is white Canadians, while the ‘our’ is Anglo- and/or Franco-Canadian culture. ‘Our’ culture becomes the reference point by which other cultures and countries are described. Previous research on the assessment of non-white offenders within the justice system points to the use of racialized knowledges of difference that draw upon and reproduce stereotypes of those deemed other (e.g., Hudson and Bramshall 2005; Silverstein 2006; Bramshall and Hudson 2007). In particular, certain characteristics of otherness become constituted as targets for intervention, such as family and community relationships in the case of South Asian offenders in the United Kingdom (Hudson and Bramshall 2005; Bramshall and Hudson 2007).

The Working Group meeting report cautions that the information provided in the fact sheets “would not be intended to encourage Board members to go to a hearing with any generalizations or preconceptions about race and culture” (NPB 2006d: 4). However, the very format of a fact sheet necessitates some degree of generalization and shorthanding of information so that the products are helpful for the user. If the volume of facts is too onerous or the information is too detailed, then the point of the fact sheet would be lost, rendering the product unusable. The framing of the information works to reinforce generalizations and preconceptions through the othering of various cultural or racial groups as being different from us. The cultural fact sheets provide shorthand information about their differences, thereby reducing complex cultural, social, political, and economic issues into generalized bits of information about the habits, values, and traditions of people from certain countries. It is unclear the degree to which such information would be applicable to offenders who are first, second, or third generation immigrants to Canada. The cultural fact sheets do not offer explanation to board members as to how they are to use the information provided to inform their decision-making. The responsibility to properly use this information appears to be downloaded to individual board members, thereby shielding the institution from possible scrutiny where cultural information is used inappropriately.
Conclusions

This chapter analyzed how institutional discourses of difference constitute the ethnocultural offender as a distinct other (i.e., different from Aboriginal and female offenders) and target for accommodation within the broader context of institutionalized multiculturalism. It identified the strategies used by the NPB to know and rationalize this offender population as a target of ethnicized conditional release policies and practices. The chapter also considered organizational responses to ethnocultural difference, including the adaptation of hearing models originally designed for Aboriginal offenders and refocused efforts on interpretation services for offenders who do not speak English or French. Some of the initiatives developed to respond to the needs of ethnocultural offenders, such as the African Canadian Liaison Project, were also discussed. I argued that these responses are based on an organizational understanding of ethnocultural offenders as other and illustrative of a liberal multicultural discourse which racializes ethnic and cultural difference as belonging to non-white individuals. At the same time, gender is not considered in the production of knowledge about, and practices for, offenders defined as ethnocultural.

Data for this chapter are comprised of interviews with informants and institutionally produced documents that focus on diversity issues pertaining to non-white, non-Aboriginal offenders. These data illustrated how the NPB is grappling with an increasingly diversified federal offender population, as well as more heterogeneous communities and victims of crime. One of the primary organizational approaches to ethnic difference is centred around the production of racialized knowledge about these offenders and various strategies designed to understand and address their difference. This chapter discussed research reports, community consultations, and diversity committees as key institutional mechanisms for producing and circulating racialized knowledge. For example, the research reports are illustrative of how the problem of difference and appropriate responses are framed. The chapter also considered four initiatives to accommodate ethnocultural offenders and respond to their perceived needs. The organization’s reconsideration of the regular hearing format and the development of hallmarks for quality hearings signal the impact of diversity on dominant organizational processes. In the context of decision-making, linguistic difference emerged as another marker of diversity under the umbrella of ethnoculturalism, with the need for tips and training for board members to ensure fair and accountable hearings. The African
Canadian Cultural Liaison Project was the third example of the NPB’s attempts to accommodate a specific sub-set of ethnocultural offenders who were identified as having special needs. The cultural liaison officer’s activities reflect the role of the Aboriginal elder as s/he functions as an ‘interpreter’ of ethnicity and culture for board members, as a ‘bridge’ between African Canadian offenders and communities and the NPB, and as an ‘appropriate’ support for African Canadian offenders. Lastly, the development of cultural fact sheets is illustrative of the challenge that ethnic and cultural difference poses to decision-making.

In relation to the larger themes of the dissertation, this chapter has pointed to the productive power of knowledge and the potential to create culturalized and racialized regimes of punishment in the pursuit of fair and sensitive conditional release decisions. The chapter has also shown how the NPB discursively imagines and constitutes particular offenders’ identities based on notions of race, culture, and ethnicity, while whiteness remains the unacknowledged and unmarked point of comparison to which this difference is produced. Additionally, the chapter demonstrated that in contrast to Aboriginality, ethnocultural difference poses a more challenging set of diversities to be negotiated into conditional release policies and practices because this difference is tougher to conceptualize in concise and simplistic terms. Ethnocultural diversity represents a greater complication to inclusion and accommodation because penal institutions must select particular identities (e.g., African Canadian offenders) in order to rationalize and develop diversity initiatives. The next chapter turns the focus on the issue of gender—an issue entirely absent within institutional discourses around ethnocultural difference.
Chapter 8
Conceptual Silos and the Problem of Gender

Chapters 6 and 7 noted how issues of gender are largely ignored in conditional release policies and practices dealing with diversity. For racialized women, penal diversity policies rarely frame gender as intersecting with other forms of difference. When they do, most responses reflect an additive approach whereby racial discrimination adds to gender discrimination so that racialized women are doubly oppressed (Yuval-Davis 2006). The presumed norm for racialized penal populations is implicitly constituted as male. My analysis of organizational documents argues that the recognition of gender (i.e., femininities) within the context of diversity initiatives remains underdeveloped both conceptually and practically. Although criminological knowledges about female offending are used by the NPB, the organizational approaches to female difference reflect the complexities associated with addressing exactly how conditional release processes can be made gender responsive. Additionally, how (or if) conditional release policies and practices can consider intersecting facets of identity so that penal subjects are understood holistically rather than as singularly (e.g., Aboriginal or female) remains unclear. Put simply, there seems to be a lack of knowledge or ability to develop policies or approaches that can ‘gender’ diversity. These challenges exist in an organizational context where the female offender population a small, but increasingly diverse portion of offenders appearing before the board.

This chapter examines the NPB’s responses to female offenders, including informants’ perspectives on how gender matters, the institutional process of developing a commitments document, and the creation of a special parole hearing project at Nova Institution in the Atlantic Region. These initiatives are illustrative of the incorporation of feminist and criminological knowledges about female offending into organizational understandings of female offender issues and the management of risk. Next, I present two main arguments based on my findings on how the organization has dealt with gender difference: First, the organizational approach to gender is one of conceptual silos; that is, gender tends to be treated as separate entity from other aspects of identity. My analysis of NPB texts demonstrates an organizational inability to treat gender as one facet of many intersecting, co-occurring identities. Second, I argue that gender is a ‘problem’ for this
organization. Although the NPB recognizes that gender influences criminal offending and conditional release outcomes, it struggles with practical application of exactly how gender figures into conditional release decision-making. There is a working assumption that ‘women’ (as a category) are different from ‘men’ (as a category) and therefore have special needs. Organizational understandings of, and approaches to, gender reflect the coding of this construct as relating solely to female offenders, such that gender is not seen as mattering for male offenders. There is little consideration of gender as relational construct or the ways in which policies, practices, or processes themselves are gendered. I conclude the chapter by considering some of the implications of these findings, including the reproduction of (white) male offenders as the norm and the subsequent othering of female offenders and their essentialization as a homogenous group.

Responses to Female Offenders

The development of special or different penal approaches for female offenders because of their gender is not a new phenomenon. As several scholars have shown, notions of gender differences have always informed the punishment of women, albeit in different ways based on historically contingent understandings of gender, race, class, and sexuality (e.g., Rafter 1990; Howe 1994; Zedner 1995; Hannah-Moffat 2001; Zaitzow 2004). Penal law and norms are viewed as both gendered and gendering (Bertrand 1999). The gendered nature of punishment has been explored largely in relation to imprisonment, including the structures and experiences of the prison (e.g., Britton 1997; Sim 1994; Bosworth 1996; Bosworth and Carrabine 2001; Comack 2000; McCorkel 2003), prison programming (e.g., Carlen 1983; Morash et al. 1994; Pollack 2005), and practices of risk assessment (e.g., Hannah-Moffat 2000, 2004b, 2005; Pollack 2007). A smaller body of work has considered gender in the context of parole and conditional release (e.g., Hannah-Moffat 2004a; Pollack 2007, 2008, 2009; Turnbull and Hannah-Moffat 2009; Morash 2010).

As discussed in Chapter 2, the Task Force on Federally Sentenced Women’s (1990) report, Creating Choices, encouraged the creation of a women-centred model of punishment for female prisoners in federal penitentiaries, with specific focus on Aboriginal female offenders through the creation of a healing lodge. The recognition of feminist criminological scholarship on the ways and reasons that women and men differ in terms of criminal
offending, pathways to crime, experiences of violence and trauma, treatment and reintegration needs, and experiences of imprisonment has supported the development of so-called gender responsive approaches to assessment and treatment within Canada’s prisons for women. The extent to which the current model of imprisonment of federally sentenced women is gender responsive or reflects an understanding of diverse women’s needs and experiences has been contested, both by scholars (e.g., Hannah-Moffat 1995, 2001; Shaw 1999; Hannah-Moffat and Shaw 2001; Hayman 2006) and public entities such as the Arbor Commission (Canada 1996), the Canadian Human Rights Commission (2003), and the Office of the Correctional Investigator through its annual reports.143

Responses to female offenders at the NPB have occurred alongside responses to Aboriginal offenders and, more recently, ethnocultural offenders. These responses are also linked to a broader context of social change in the women’s movement and the enactment of legislation prohibiting sex-based discrimination (e.g., the Charter, the Canadian Human Rights Act, etc.). Two informants also had ideas about the origins of organizational responses to female offenders at the NPB. According to one informant, both Creating Choices and the Arbour Report propelled the issue of female offenders forward (Interview 7). The same informant explained that organizational attention to female offender issues was bolstered in 2002 or 2003 when this became “part of the standing agenda item in the Aboriginal and Diversity reporting” (Interview 7)—at least for a time (see Chapter 3). According to the other informant, the CCRA was the main driver for the recognition of gender within NPB policies and practices. However, the informant was skeptical about the impact of the Act because “there’s virtually nothing in [it] for women” (Interview 13). The same informant speculated that the absence of specific clauses for female offenders was due to a lack of research about their needs at the time and the fact that “the Charter was there to protect them” (Interview 13). In this sense, the CCRA helped propel issues related to female offenders forward, but other pieces of legislation such as the Charter were available to compel organizational responses if needed.

143 However, the bulk of scrutiny of the ‘handling’ of women offender issues appears to be directed toward the CSC, rather than the NPB. For instance, the Office of the Correctional Investigator’s (OCI) annual reports document that various failings of the CSC in relation to this population. Many of the criticisms were directed toward the housing of women prisoners in maximum security units and in male penitentiaries (e.g., OCI 2000). These reports also highlight the over-representation of Aboriginal women among the federal female population and their under-representation on conditional release. The high proportion of “visible minority” women incarcerated federally in Canada has also been noted (OCI 2001).
Most informants interviewed indicated that gender mattered in the context of correctional programming and issues related to conditional release. These informants believed that it was important for the NPB and board members to be aware of the differences in programs for female offenders, the different criminal trajectories and patterns of female offending, and female offender needs in relation to conditional release and reintegration. Several informants mentioned that female offenders have different needs and risk factors that board members ought to know about for more ‘fair’ and ‘appropriate’ decision-making. In this regard, training for board members on gender issues was deemed an important organizational response by a number of informants. According to one informant, some board members needed training on female offenders because they lacked experience with women who were not privileged and came from disadvantaged backgrounds—women with whom many board members could not relate (Interview 8). Increased sensitivity and awareness was thus viewed as necessary for fair decision-making. Another informant noted that training was needed for board members when there were changes in policy or programming at women’s prisons (Interview 10) so that board members were kept aware of the factors shaping women’s imprisonment.

A minority of informants argued that gender was not relevant to conditional release decision-making. For instance, one informant stated that gender was not relevant to the assessment of risk, noting instead that female offenders comprise a small segment of the federal offender population and would not necessarily share a common set of generalizable features (Interview 6). Presumably, the small number of female offenders could justify or explain a lack of need for different approaches or knowledges for decision-making (see Adelberg and Currie 1987). Another informant voiced the view that female offenders were not held as accountable as male offenders by the criminal justice system as a whole, such that the system is “bending backwards” for them (Interview 12). Gender responsive penal practices were subsequently viewed as special forms of treatment that diminished women’s accountability.

Compared to its other diversity initiatives, the NPB’s diversity work related to female offenders is limited in scope. The following considers how the NPB developed its corporate strategy for female offenders and the eventual operationalization of this strategy into a set of commitments. I then examine one of the diversity initiatives developed for female offenders
in the Atlantic Region. I suggest that these practices work to produce and circulate gendered knowledges of female offenders and shape the types of responses deemed appropriate and actionable. The apparent lack of gender specific conditional release policies and practices, such as an adapted hearing format like EAHs, reflects the challenge of including gender as an aspect of difference. The following reveals institutional disagreement about how and when gender matters in the context of conditional release.

Creating a Corporate Strategy for Federally Sentenced Women

In the early 2000s, the NPB undertook a process to create a corporate strategy for federally sentenced women, a result of having made a commitment to do so (NPB 2002c: 2). As explained in Chapter 4, the organization created a corporate strategy for Aboriginal offenders in 1996, although this strategy did not factor in any ‘gender issues’ and was eventually rolled into the NPB’s Policy Manual. The process for creating a corporate policy for federally sentenced women began with a discussion paper that outlined female prisoners’ issues, followed by a meeting with stakeholders to garner feedback to shape the strategy. Yet, as will be discussed below, the corporate strategy never materialized; instead, the organization produced a commitments document, which was adopted by the Executive Committee in 2003. The consultations and stakeholder meetings represent institutional processes of negotiating how gender is relevant to conditional release and the sorts of accommodations permissible to address gender differences.

The initial intention for the corporate strategy for female offenders was “to address specific issues related to the assessment of risk” and “the Board’s decision-making process for the conditional release” for this population (NPB 2002c: 2). The strategy was to be based in large part on consultations with various groups from all five NPB regions, including NPB personnel, representatives from the CSC, inmate committees, and advocacy groups like the Elizabeth Fry Societies, as well as incarcerated and conditionally released federally sentenced women (NPB 2002d). According to the NPB (2002d: 2), the impetus for the consultation process “was to gather outsider input and to gain insight into how the National Parole Board can facilitate release and reintegration in more innovative and productive ways and to determine if it needs to enhance its credibility, particularly in relation to female offenders”. Consistent with other forms of diversity work at the NPB, the focus here was on
producing knowledge about female offenders to serve the dual purposes of being more responsive to their needs and improving organizational reputation.

In 2002, the NPB released a discussion paper that reported on the results of the cross-country consultations. This paper was intended to provide a “foundation for the discussion and development” of the strategy (NPB 2002d: 3). It raises several issues related to federally sentenced women at both national and regional levels. The consultations were broad in scope, covering the topics of incarceration, release, and reintegration; as a result, the paper reports on subjects beyond the purview of the NPB, such as those pertaining to the CSC (ibid.). In relation to conditional release, the issue of differential and discriminatory treatment emerges as a prominent theme within the discussion paper. Improved training and more gender responsive conditional release processes are the main solutions raised to help address the needs of female offenders.

The differential treatment of women and men is an issue that has received a significant amount of attention within feminist legal scholarship (see I. Young 1990; Jhappan 1998). Differential treatment was a perception held by many respondents during the consultations (NPB 2002d). These perceptions reflect the complexities surrounding the formal versus substantive equality debate; that is, whether equality (for women) involves the same treatment (as men) or different treatment. In the case of same treatment, formal equality is said to be achieved if ‘women’ are treated the same as ‘men’. Conversely, substantive equality is achieved if ‘women’ are treated differently from ‘men’ such that gender (and other) differences are taken into account and recognized in law or policy (I. Young 1990; Jhappan 1998). Discrimination may occur in cases where (a) the same treatment approach disadvantages women and/or (b) the different needs of women are not recognized or accommodated. For the NPB (2002d: 10), “differential treatment, whether real or perceived, needs to be addressed in creating a fair and equitable strategy for the release and reintegration of women offenders”. However, this statement does not clarify whether fairness or equity would be best achieved through formal or substantive equality approaches.

The issue of differential and discriminatory treatment is discussed in relation to multiple contexts. For example, it pertains to release decisions that facilitate the reintegration

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144 I have used quotation marks to signal the gender essentialism produced by the equality model, where men as a class are the assumed reference group and intragroup differences (e.g., race, class, sexuality, etc.) among both men and women are denied (see Jhappan 1998).
of female offenders. According to the paper, respondents raised concerns about a perceived lack of resources and supports within communities for the gradual and structured release of female offenders, including access to programs and halfway houses in women’s home communities. The lack of community options was believed to result in the denial of parole for female offenders. Some respondents called on the NPB “to be more flexible and open-minded, particularly when it comes to release plans that are a little different than the standard course of action” (NPB 2002d: 7). Concerns were also voiced about the imposition of conditions by board members. The paper indicates that conditions may interfere with female offenders’ release if they are too restrictive and remove women’s sources of support, such as through non-association requirements (ibid.: 9). The concerns voiced within the discussion paper have also been raised by Canadian scholars and advocacy organizations over the past several decades (e.g., Shaw 1989; CHRC 2003; Pollack 2008). The paper draws upon and reflects feminist knowledges of female offending and reintegration needs to support arguments for a more gender responsive approach to conditional release for female offenders, including different release planning options and conditions of release.

The difference between female and male offenders is also relevant to how parole hearings are conducted. There are divergent views of how gender ought to be integrated into the hearings and decision-making. The paper notes respondents’ concern that the NPB is “harder on women than it is on men”, resulting in female offenders dreading their parole hearings while male offenders are viewed as “often eager for this opportunity” (NPB 2002d: 10). Some respondents felt that female offenders were unfairly judged in parole hearings because they had broken societal norms and gender role expectations through their criminal offending (ibid.), and that board members were not considering the gendered dimensions of their lives, such as family and spousal violence (ibid.: 12-13). In contrast, the paper reports that consultations with board members “revealed a belief that women [offenders] are prepared by correctional staff to have expectations about the Board” that it cannot meet (ibid.: 10). In particular, the paper notes the perception among board members that the CSC takes a “touchy/feely” approach to female offenders that does not occur for men (ibid.). This results in hurt feelings or things being “blown out of proportion” during parole hearings when board members are trying to be “objective” (ibid.). The paper notes the perception among consulted board members that the CSC staff side with female offenders and reinforce
their “victim status”, which serves to make female offenders weak and unable to stand on their own, especially during conditional release hearings. Consulted board members also reported opinions as to the nature of women’s punishment, including the belief that “the boundaries between the women [offenders] and staff have faded” through the approach taken by the CSC (ibid.). The ‘correct’ approach for corrections was believed to be reflected in men’s institutions as this punishment was “objective and detached”, with clear demarcations between staff and offenders (ibid.). For these respondents, differential treatment was viewed as further disadvantaging women by not treating them like male offenders.

These views, however, were not shared by other consultation respondents. The paper indicates that staff working with female offenders believed that board members required training on women and crime because their views were outdated and that the “tone and content of questions posed at hearings display[ed] a gender, race and class bias” (NPB 2002d: 11). The paper discusses how these respondents argued for changes to conditional release policies and practices to reflect “an understanding of women’s criminality as it is situated within the context of social power, gender relations and economic position [sic]” (ibid.). Respondents also believed that board members should question women differently compared to men, such as refraining from barraging women offenders with questions or adopting “aggressive tones”, and allowing them to “express themselves in their own way” (ibid.). For these respondents, differential treatment would contribute to more fair and equitable treatment of female offenders as long as conditional release processes were based on feminist criminological knowledges of female offending and through the proper training of board members. The challenge, as previous research has shown, is how alternative knowledges are then taken up in existing processes, including the selective integration of knowledges that complement dominant framings of female offenders’ needs (see Snider 2003; Hannah-Moffat 2005; Moore 2008).

Other indicators of differential treatment raised by the consultations pertain to greater program availability and staffing levels at penitentiaries for male offenders, which were said to result in more opportunities for temporary absences and earlier access to conditional release (NPB 2002d). Some respondents also opined that female offenders were subjected to a greater number of psychological assessments than male offenders and that risk assessment tools designed for men were being used for women, even though “the issues that relate to
risk of recidivism for the two groups are very different” (ibid.: 11). These respondents believed that female offenders were also assigned higher levels of supervision while on conditional release as a result of unfair risk assessment practices. These concerns around differential treatment highlight the tensions related to the most suitable approach for ensuring equity and fairness in corrections and conditional release processes. In the case of access to programming, staffing, and supervision levels, the implicit assumption is that female offenders should have similar treatment, at least in terms of access, to male offenders. Regarding the risk assessment of female offenders, there is an apparent preference for different tools and practices that reflect gender differences in risk and criminal offending. The NPB is called upon to address forms of differential treatment that disadvantage oppressed groups, while simultaneously pursuing practices and approaches that may counter those disadvantages. The lack of clarity around the ‘best’ way to address gender difference (i.e., similar versus different treatment) may contribute to institutional inertia on addressing the needs of female offenders as a group.

Respondents also voiced concerns about the discriminatory treatment of certain segments of the female offender population. For example, the paper indicates that consultations brought up “the ongoing concern that the Board is not racially and ethnically diverse”, nor “representative of the female offender population or the public in general” (NPB 2002d: 12). As a result, there was a perception that the NPB’s decision-making process was unfair and biased due to this lack of representation—an assumption that ignores power relations among women by presupposing that women are oppressed or disadvantaged in the same way (Razack 1998). The consultations revealed support for the use of “cultural assistants” to “clarify misunderstandings and raise Board members’ awareness of cultural variations” (NPB 2002d: 12). Concern was also raised regarding the need for the hearing process to respond to female offenders who experience language or educational barriers when being questioned. Respondents’ concerns about the NPB’s treatment of diverse female offenders reflect the challenge of capturing and integrating multiple differences into policy. Drawing artificial lines around particular differences, such as the partitioning of gender from ethnicity, simplifies the offender for decision makers.

Some of the regional issues detailed in the discussion paper also spoke to the discriminatory treatment of certain groups of female offenders. For instance, in the Ontario
Region, the dominance of Christianity in prison programs at Grand Valley Institution and a lack of openness to non-Christian spirituality were identified as unfair practices. Consultations with the Black Inmate and Friends Alliance revealed a belief that black women offenders tend to be labeled violent, thereby affecting how the CSC and NPB viewed this group. In the Atlantic Region, consultations at Nova Institution raised concerns that board members were “uncomfortable with same-sex relationships” (NPB 2002d: 18), resulting in “derogatory and judgmental” questioning during hearings (ibid.: 19). It was felt that board members should not question “same-sex relationships as part of a woman’s release potential” (ibid.). In the Prairie and Pacific Regions, CSC staff were seen as being unaware of Sections 81 and 84 of the CCRA and therefore failing to inform Aboriginal offenders of these culturally oriented options for conditional release (ibid.: 21). Together, these concerns speak to the diversity of the female offender population and the difficulties of addressing multiple forms of difference simultaneously and in ways that do not privilege gender as the primary target of discrimination.

The discussion paper highlights the importance of addressing the gender-specific needs of female offenders. Respondents’ calls for improved gender responsive approaches were viewed as making conditional release processes fairer for female offenders. In relation to hearings, some respondents suggested the organization needed “to undertake a more holistic approach to women’s parole hearings”, such that their life circumstances and responsibilities as mothers be considered (NPB 2002d: 12). Training on gender-specific issues was viewed as necessary for increasing the gender responsiveness of board members, including the areas of “cultural differences, addiction, family and spousal violence, women’s obligations as mothers and women with special needs” (ibid.: 12-13). Another recommendation was for the NPB to have a “presence” at women’s prisons to help inform prisoners about the hearing process, thereby working to demystify the NPB for prisoners and allowing the organization to “get to know” the prisoners (ibid.: 13). While the discussion paper notes that improvements still needed to be made to how the organization responds to female offenders, many respondents acknowledged that the NPB had “improved significantly in being sensitive to women’s issues and [was] more aware of appropriate ways to treat women” (ibid.: 14). Within this context, women are framed as a homogeneous group.
presumed to share similar experiences and needs based on their gender (Razack 1998; Yuval-Davis 2006).

In March 2002, the NPB held a meeting with stakeholders to help in the development of its corporate strategy for federally sentenced female offenders (NPB 2002c). The participants included representatives from the NPB, CSC, and British Columbia Parole Board, as well as academics, the director of an inmate committee, and a former offender. The meeting report documents the discussions and recommendations and is framed around three main areas: reintegration issues, risk assessment, and policy and training issues (ibid.). According to the report, these discussions and recommendations were intended to “serve as the framework for NPB’s future movement and direction in regard to the development of its corporate strategy” (ibid.: 2). The report concludes with a total of 36 recommendations for the NPB, many of which focus on issues of training, the needs of female offenders, concerns about cultural and/or ethnic diversity, and the clearer articulation of policy for decision-making (ibid.: 25-28). The report echoes many of the issues raised by the preceding discussion paper while advancing the conversation forward through its recommendations. Like the discussion paper, the meeting report frames advocates’ perspectives on how gender issues matter to conditional release and represents an institutional process of negotiating how gender can be included in policy and practice.

The meeting report summarizes a number of concerns raised by participants in relation to reintegration, including the lack of housing for female offenders on parole or conditional release; the difficulties related to finding employment; access to culturally appropriate programs; and the release needs of Aboriginal women offenders (NPB 2002c: 3-9). Participants recommended that the NPB look to “diverse ethno-cultural community agencies” for input on how the organization could better meets the needs of diverse women offenders (ibid.: 6). The report indicates “strong support among participants” for piloting the use of “cultural assistants/interpreters” at parole hearings, with the potential for expanding such an approach to other groups of offenders, such as those with mental health issues or female sex offenders (ibid.). Participants also recommended that the NPB help increase the use of section 81 and 84 releases for Aboriginal women offenders (ibid.: 9). Support was also given for the extension of these types of releases to “other communities and for other ethno-cultural offenders” (ibid.: 8).
The reported discussion of risk assessment focused on decision-making issues related to female offenders. For instance, the meeting report notes that the CSC and NPB have different understandings of risk, with the latter largely concerned about risk of reoffending (NPB 2002c: 10), as mandated by the CCRA. It was recommended that the NPB create a protocol on how board members are to assess risk for this group while also ensuring that “creativity” could be used for granting release (ibid.: 11). These recommendations are based on a shared understanding among participants that female offenders are generally better risks for release than male offenders (e.g., they are less likely to recidivate and are not as threatening to public safety) (ibid.: 9). Because of these differences, it was argued that female offenders should be given opportunities for more creative releases in support of gradual and structured release plans (ibid.). The report highlights participants’ concerns that the lack of board member diversity may result in limited “sensitivity to specific ethnocultural groups as well as the unique issues related to women” (ibid.: 12). According to participants, board members’ assessment of risk must “be multi-layered with a view to both cultural and gender issues” such that assessments can appropriately capture female offenders’ “diverse needs” and experiences (ibid.: 12). Examining female offenders’ cultural backgrounds was consistent with the Gladue decision, which supports a contextual approach to decision-making. It recommended that “cultural interpreters” be involved in hearings to help board members clarify issues related to culture and ensure that board members avoid “aggressive, confrontational or offensive” lines of questioning or language (ibid.). Participants also recommended that all hearings follow the “approach and atmosphere engendered at hearings for Aboriginal offenders” (ibid.: 16). The EAH model was thought to “provide a cooperative rather than an adversarial environment” for hearings (ibid.), which was considered a more gender responsive approach.

In relation to policy and training issues, the meeting report indicates participants’ support for NPB policy to be “validated for its applicability to gender and ethno-cultural diversity” (NPB 2002c: 18). It was recommended that the NPB develop working relationships with community agencies to help raise awareness and enhance knowledge of various issues related to diversity. Participants also identified the issue of “flexibility”, recommending that board members move “away from traditional ways of thinking and be inventive and open to unconventional release plans”, albeit within the existing legislative
framework (ibid.: 18). This flexibility for approaches to the release plans of female offenders was to be put into policy “to ensure its longevity and its application by Board Members across the country” (ibid.: 19), thereby ensuring institutional accountability. The report also notes the view that board member training was not providing adequate depth on “the unique issues faced by women and ethno-cultural offenders” (ibid.: 19). Participants were concerned that not enough time was allotted during training to “address the diverse issues facing FSW [federally sentenced women] and to increase Board Member awareness and sensitivity” (ibid.). For these participants, board members required in-depth knowledge and awareness of female offender and diversity issues in order to make appropriate release decisions.

In September 2003, the Executive Committee adopted several commitments to federally sentenced women (NPB 2003b) and an action plan was developed to ensure follow through (Interview 7). As one informant noted, these commitments are not the intended corporate strategy that was originally planned for during the consultation process and meeting with stakeholders (Interview 7). The informant explained that one senior staff member had really pushed for a corporate strategy, but “that’s not really what [the NPB] ended up with”, largely due to changes in senior management and resistance from individuals within the organization (Interview 7). My research efforts did not produce any materials that outlined the difference between a corporate strategy and a commitments document. However, it could be surmised that the former would require greater organizational accountability to address female offender issues than the latter.

The commitments document outlines the steps taken by the CSC in recent years towards addressing the specific needs of female offenders. Noted initiatives include the building of new regional prisons and a healing lodge, the appointment of a Deputy Commissioner for Women at the CSC, and the closing of the Prison for Women (NPB 2003b: 2). The commitments document is positioned in the context of gains for female offenders and is rationalized in the following way:

In order to continue to progress in a consistent and effective manner and also in concert with our partners who share in our vision we must clearly state our organizational position with regards to FSW [federally sentenced women]. The NPB Commitments are a means to that end and will serve as the foundation and direction
of future Board activities dedicated to being responsive to the special needs of women. (NPB 2003: 2)

Additionally, the document references two pieces of legislation that support the NPB’s commitments to federally sentenced female offenders. The first is section 151(3) of the *CCRA*, which requires the organization to respect gender and other differences and be responsive to the special needs of female offenders. The second is the *Charter*, and more specifically, section 15(1) which requires equal protection and equal rights under the law (ibid.). The production of such a document that states its objectives and vision in this way speaks to issues of institutional accountability and the management of organizational reputation. As explored in Chapter 4, this type of document works to portray the organization as a certain type (i.e., one committed to federally sentenced women) while simultaneously making the organizational accountable (e.g., through litigation or public embarrassment) for following through on its commitments.

Through the document, the NPB (2003b) made seven commitments to federally sentenced female offenders. These commitments reflect a melding of feminist and criminological knowledges with dominant organizational approaches to managing difference. They represent a formal recognition that ‘what works’ for female offenders is often different from that for male offenders, where feminist and criminological knowledges are used to guide the what works. In this way, the commitments reflect—at least on paper—a substantive equality approach that accepts gender differences as guiding the treatment of female offenders within the context of conditional release. Yet, it is important to consider how gender is defined and operationalized, particularly as it may come to signify “a uniform category of difference” (Hannah-Moffat 2008: 198) that does not capture female diversity and how gender intersects with other facets of identity.

The first commitment is to adopt a gender-specific approach at hearings for federally sentenced women. This is based on the idea that female offenders are unique in relation to criminality and needs, and “require a gender-sensitive environment that promotes trust and openness and is conducive to information gathering” (NPB 2003b: 3). No further explanation is given as to what might constitute a gender-specific hearing or why issues of trust or openness are related to femininity. However, following from the consultation paper and report of the stakeholder meeting, this commitment may reflect the view that regular parole
hearings are difficult for female offenders, thereby requiring board members to adjust their behavior and communication styles to ensure accurate information gathering (NPB 2002c, 2002d). These documents also revealed stakeholder preferences for the EAH model and its possible adaptation for use with female offenders. This model was positioned as contributing to a holistic treatment of female offenders and a hearing milieu that promotes openness, trust, and a non-adversarial relationship between board members and offenders. In this context, there is an implicit gendering of the conditional release hearing, whereby the regular hearing is viewed as masculine and the alternative hearing is constituted as feminine. Following my analysis of EAHs in Chapter 6, the notion of a gender-specific hearing may draw upon and reproduce normative assumptions of femininity, and in the process, establish unspoken expectations around how female offenders behave at hearings and engage with board members.

The second commitment is to forge partnerships with community organizations, academics, researchers, and community leaders to enhance “collective knowledge and awareness of available resources and women’s issues” (NPB 2003b: 3). This commitment stems out of an acknowledgement of existing knowledge and expertise related to female offenders and the imperative for the organization to engage with “all relevant and interested partners in new initiatives, policy development and training pertaining to FSW to ensure comprehensive and appropriate measures are undertaken” (ibid.). This commitment appears to follow from the standard organizational practice of consultation as a means to build institutional knowledge and represent the organization as one that is open, inclusive, and responsive to diversity issues.

The third commitment relates to “the concept of individual, creative and gender-specific options for release, which addresses the re-establishment, where appropriate, of familial relationships and incorporate[s] accommodation options such as Private Home Placements and Satellite Apartments, which meet CSC guidelines” (NPB 2003b: 3). The organization indicates that successful reintegration for female offenders is impeded by the lack of accommodation options upon their release. In this context, private home placements and satellite apartments (that meet CSC guidelines) are viewed as gender-specific accommodation options because they enable women to reestablish familial relationships. This commitment reflects the recommendations put forth in the consultation paper and
stakeholder meeting report for the NPB to consider creative options for release so that female offenders are not unfairly disadvantaged by the limited community-based accommodations (NPB 2002c, 2002d). The organization also indicates that “access to positive familial relationships and strong social support networks facilitates” successful reintegration (NPB 2003b: 3). This commitment reflects an institutional understanding of the central tenets of relational theory, including the view that relationships are the defining feature of women’s lives and selves (Hannah-Moffat 2008), and thus a key to their successful reintegration. With this commitment, the organization supports the reestablishing of certain kinds of familial relationships “where appropriate”, thereby suggesting that relationships and supports that are institutionally defined as “positive” may be made relevant to release decision-making (see Hannah-Moffat 2007; Pollack 2007).

The fourth commitment is to ensure decision makers are equipped with a “comprehensive understanding of women’s issues” due to the “potential for poverty and disenfranchisement” to present barriers to meeting basic needs (NPB 2003: 3b). This commitment echoes feminist knowledges about the oppression of women, as well as the recommendations emerging from the consultation paper and report of the stakeholder meeting for board members to understand how gendered adversities produce and sustain female offending. Presumably, a “comprehensive understanding of women’s issues” would reduce unreasonable expectations among board members about who female offenders are (e.g., largely poor, under-educated, low-skill) and how poverty influences their reintegration (NPB 2002d). To make gender responsive release decisions, board members would need to understand the social context of female offending and utilize their knowledge to support creative release plans.

The issue of cultural diversity within the female offender population is the focus of the fifth commitment. The NPB (2003b: 3) “acknowledges” that this diversity “exists” and recognizes that there are “resources within [these] communities that could assist decision-makers by contextualizing the crime and its cultural meaning”. The organization makes the rather vague commitment to develop “policies and practices that address the ethnocultural diversity” of this population (ibid.). The notion that ethnocultural communities have “resources” to help board members likely relates to the use of cultural interpreters or assistants in hearings as a means to reduce board member confusion or uncertainty in the
face of diversity, and to provide knowledge of the cultural contexts of offending. However, the notion of ethnocultural diversity is not defined; it is therefore unclear if the term includes Aboriginality as a marker of ethnocultural difference or refers to non-white, non-Aboriginal diversity—the implicit institutional framing as discussed in the previous chapter. Additionally, the partitioning of cultural diversity in one commitment works against an intersectional approach, such that racial or cultural difference is added on to the list of elements for decision-makers to consider.

The sixth commitment stems from the acknowledgement that (a) actuarial risk assessment tools do not exist for female offenders and (b) despite this “deficiency”, female offenders still do “well” while on conditional release (NPB 2003b: 4). The NPB’s commitment is to examine “specific issues related to the assessment for release of Federally Sentenced Women and the Board’s decision-making process for their conditional release in collaboration with researchers, academics and our partners” (ibid.). That there are no actuarial risk scales for female offenders to be used in decision-making, particularly those assessing the risk of recidivism, sets female offenders apart from male offenders in the context of the standard conditional release process. Board members cannot draw on risk scores for their decision-making for female offenders. Additionally, as highlighted in the consultation paper and stakeholder meeting report, there is concern that risk tools are being used to assess and guide the treatment of female prisoners even though these tools do not recognize or account for the ways in which risk and need are gendered. The implication here is that correctional decisions based on these tools may impact female offenders in the conditional release process whereby their file information influences decision-making (NPB 2002d). The organization’s commitment to explore risk assessment issues for female offenders suggests it has accepted the views of stakeholders and gender-informed researchers for more work in this area. Yet, the commitment reaffirms actuarial tools as a desirable end goal of ongoing research on risk assessments for female offenders.

The seventh and final commitment to federally sentenced female offenders relates to the creation of “comprehensive training materials to provide the foundation for quality decision-making” for this population (NPB 2003b: 4). This commitment is derived from the

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145 The exception is Aboriginal offenders (male and female) as the primary risk tool relied on by the NPB to inform decision-making, the Statistical Information on Recidivism (SIR) scale, is not valid for female and Aboriginal offenders.
acknowledgement that board members need “women-centred” training that includes “a thorough understanding of the particular criminogenic circumstances” of this population (ibid.). The need for gender responsive training was identified in both the consultation paper and stakeholder meeting report and linked to more effective conditional release decision-making for female offenders. The final commitment also ties together the preceding six commitments, as training would inevitably be required to bring them into fruition. As shown in Chapter 5, training is also a standard organizational practice linked to quality decision-making and deemed to be particularly relevant to female and non-white offender populations.

The NPB (2003: 4b) indicates that its adoption of the seven commitments to federally sentenced female offenders would “ensure their longevity as well as consistency in their application nationally”. Although the commitments document may differ from a corporate strategy, it can be understood as a move towards institutional accountability in the area of female offenders. The document is also noteworthy for the rejection of a gender-neutral approach to conditional release and acceptance of different strategies and approaches for female offenders, albeit largely based on an understanding of gender as a homogeneous category. However, as Ahmed (2007b) has cautioned in relation to the production of commitments documents, ‘saying’ is not necessarily ‘doing’. Bringing about organizational change in relation to diversity is complicated and challenging (Kalev et al. 2006; Dobbin et al. 2011).

Although my research did not trace if these commitments were actualized, some observations are possible. First, there are no written principles or guidelines for a gender-specific model. However, the Atlantic Region appears to have adopted a gender responsive approach by adapting its hearing format to remove barriers (Interview 7; Interview 10) and involve more “questioning on the individual’s background and history”, including “issues of victimisation [sic], family violence, prostitution, and substance abuse” (NPB 2006d: 2). Second, there were no policies or information detailing how the NPB would address the issue of ethnocultural diversity among federally sentenced women. The initiatives for ethnocultural offenders described in the previous chapter do not consider gender or specific issues pertaining to female offenders. Finally, the training materials on female offenders and gender issues, as shown in Chapter 5, appear incomplete and under-developed, rather than comprehensive in nature or scope. Momentum on female offender issues appears to have
waived since the early 2000s; the only additional gender-related practice evident was an initiative developed in the Atlantic Region.

Demystifying the Parole Hearing: Information Sessions for Female Offenders

The preceding discussion highlighted several perspectives on the needs of female offenders during the conditional release process. In particular, female offenders (as a group) were identified as having more challenging and negative experiences of parole hearings and board members than male offenders (as a group). One regional response to these sorts of concerns was the establishment of the Atlantic Region’s Female Offender Committee in September 2000. The purpose of the committee was to identify “issues relating to female offenders that can improve decision-making” (NPB 2006b: 7). In the 2006-07 fiscal year, the Committee started an initiative to provide information sessions for female prisoners at Nova Institution (NPB 2007f). These information sessions involved NPB staff, such as communications and hearing officers, screening a video of a parole hearing for female offenders and providing time to answer questions about the hearing process. The sessions were created in response to the concern “that female offenders do not feel prepared for their hearings” (ibid.: n.pag) and “generally were not opening up” during their hearings (Interview 10), as expected by the organization. In order to carry out the information sessions, the Atlantic Region sent invitation letters to female prisoners scheduled for hearings, as well as posted invitation notices about upcoming sessions on bulletin boards throughout the penitentiary. In order to increase participation, the invitations indicated that prisoners were permitted to ask their employers for time off to attend the session and that coffee was offered (NPB 2007f).

The information sessions were piloted on a monthly basis starting in 2007. However, at a meeting of the Female Offender Committee in November 2008, it was decided that the sessions would be held “every two months instead of monthly due in part to budget restraints and operational requirements” (NPB 2009k: n.pag). According to the Committee, the information sessions were viewed positively by Nova Institution (NPB 2007f) and the prisoners who attended the sessions (NPB 2010i). In July 2009, the Committee decided it would film a new video of a mock parole hearing using NPB staff as actors because the

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146 Document obtained through ATI request no. A-2010-00032 to the NPB.
147 Document obtained through ATI request no. A-2010-00032 to the NPB.
148 Document obtained through ATI request no. A-2010-00032 to the NPB.
existing video was “long and a bit outdated” (ibid.: n.pag). According to one informant, the information sessions helped demystify the hearing by showing female offenders “what to expect”, thereby decreasing “their anxiety level[s]” (Interview 10). This diversity initiative assumes that female offenders, as a group, have greater needs in preparing for their hearings. The information sessions represent the inclusion of knowledge about female offenders into an initiative that aims to improve female offenders’ experiences of the hearing process. That the frequency of the initiative was reduced due to budgetary and operational issues also underscores the challenge of pursuing alternative practices, particularly for small segments of the offender population. The staying power of such practices is reflective of the challenge of doing things differently based solely on the construct of gender difference.

The Challenge of Doing Things Differently

As shown above, the institutional discourse around female offenders reproduces a general understanding of women-centredness or gender responsiveness that is based on a set of ideas around the different needs of women that cannot be addressed by a correctional system designed for men (Shaylor 2009). According to two informants, the Atlantic Region has pursued a different approach to hearings for female offenders as a way to be responsive. More specifically, hearings for female offenders involve the removal of barriers (e.g., tables) and the use of a circle format (Interview 7; Interview 10). Yet, as one informant indicated, the removal of barriers at hearings for women offenders was not entirely embraced by all segments of the organization, particularly as some questioned why this should only occur for women (Interview 7). Despite the lack of consensus, the same informant explained that the removal of barriers became part of the hearing policy within the region (Interview 7) and therefore constitutes a gendered modification to the standard hearing format.

The debate within the Atlantic Region around how the hearing is set up and the degree to which it is a gender responsive approach or one that should be normalized throughout the region is illustrative of the shaky foundation upon which some ideas about gender responsiveness are based. The previous chapter’s discussion of the institutional approach to developing an alternative hearing format also touched on the degree to which adapted formats are responsive to ethnicity or culture. Unlike EAHs and CAHs for which Aboriginal knowledges and practices are used to justify the production of a different hearing
format, there does not appear to be a solid rationale for why the removal of barriers or the use of a circle format constitutes a ‘gender issue’. The challenge of doing things differently may be dependent on how gender is operationalized within institutional policies and practices (Hannah-Moffat 2008).

Dealing with Difference: Conceptual Silos and the Problem of Gender

The following summarizes my findings on how the NPB has dealt with gender difference by presenting two main arguments: First, the organizational approach to gender is one of conceptual silos; that is, gender tends to be treated as separate entity from other aspects of identity. Second, gender is a problem for the organization in the sense that it struggles with practical application of exactly how gender factors into conditional release decision-making. This institutional approach to gender difference works to both reproduce (white) male offenders as the norm and essentialize female offenders as a homogenous group.

NPB documents illustrate an organizational inability to treat gender as one facet of many intersecting, co-occurring identities. Instead, gender is treated as distinct from race or ethnicity as the main markers of organizationally recognized difference. One of the main implications of the particular way that difference has been institutionally identified and defined—as Aboriginal, female, and ethnocultural—is that a “false unity” has been imposed on these three groups by way of their difference and a “false emphasis” has been placed on a single facet of identity (Hudson 2008b: 279). Individuals are identified and defined by one aspect of identity, such as female, Aboriginal, black, or Asian, and assigned group membership on the basis on this aspect. Organizational responses have largely been tailored in response to generalized group attributes that imply a “false homogeneity” to members, thereby glossing over substantial diversity within these groups (ibid.). As Hudson (2008b: 279) observes, this means “that individuals are too readily assumed to have the values, beliefs, aspirations and dilemmas that are attributed to the group-values, beliefs, aspirations and dilemmas that might or might not be application to their own lives and personalities”.

Essentialist constructions of identity are challenged by anti-racist feminist scholars (e.g., hooks 1981, 1992; Collins 1990; Crenshaw 1991; West and Fenstermaker 1995; Razack 1998; Yuval-Davis 2006). The treatment of gender as a unitary category fails to recognize how race, class, sexuality, and ability intersect with gender to differently position
women (Razack 1998). Additive approaches (e.g., racism plus sexism equals double oppression) also do not allow for an understanding of intersecting facets of identity (Razack 1998; Yuval-Davis 2006). At various times throughout this dissertation I have highlighted how the additive approach tends to be used when issues of race or ethnicity are considered in relation to female offenders. Aboriginal and racialized female offenders are first identified within the category ‘women’ and racial or ethnic difference is then added on to gender such that they are doubly disadvantaged or face twice the challenges. In addition, the institutional tendency to define offenders by a single facet of identity means that offenders marked by multiple institutionally identified differences are often left out. This is especially the case among Aboriginal and racialized female offenders; the category of ‘woman’ is implicitly constituted as white, while the Aboriginal and ethnocultural constructs are produced as masculine.

The simultaneity of various facets of difference (West and Fenstermaker 1995: 13) has evaded policy thinking and the development of practices for ‘women’ as a diverse population. West and Fenstermaker (1995: 13) summarize the problem this way:

Capturing [the simultaneity] compels us to focus on the actual mechanisms that produce social inequality. How do forms of inequality, which we now see are more than the periodic collision of categories, operate together? How do we see that all social exchanges, regardless of the participants or the outcome, are simultaneously ‘gendered,’ ‘raced,’ and ‘classed’?

The complexity of an intersectionality analysis makes its transfer to practical settings (e.g., decision-making, training, policy development, etc.) challenging. Similar to Hannah-Moffat (2010), my research findings suggest that penal policies are only capable of addressing one form of difference at a time. Feminist reformers have been (largely) successful at putting ‘woman’ on the penal agenda, albeit in an essentialized form.149

Second, I argue that gender is a problem for the NPB in the sense that the organization struggles with the practical application of exactly how gender figures into conditional release decision-making. My analyses of various NPB documents pertaining to diversity suggest that the organization has grappled, and continues to grapple, with how

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149 The privileging of white, middle-class sensibilities in feminist thinking in the context of penal reform can be viewed as the result “from both who did the theorizing and how they did it” (West and Fenstermaker 1995: 10).
gender matters to conditional release. Although gender is officially acknowledged as being important in the context of punishment and relevant to conditional release, understandings of exactly how gender matters and ought to be operationalized within policies and practices are limited (Hannah-Moffat 2008, 2009). Although there is an agreed upon assumption within NPB documents that ‘women’ (as a category) are different from ‘men’ (as a category) and therefore have different or special needs, the understanding tends to stop there (see also Hannah-Moffat 1995). There is also little consideration of gender as relational construct or the ways in which policies, practices, or processes themselves are gendered. Instead, gender is code for women and gender difference is unitarily understood as pertaining to femininity. The dominant institutional conceptualization of gender works to reinforce (white) male offenders as the (genderless) norm against which female difference is constituted. My research suggests gender is not as easily operationalized within institutional policies and practices as are notions of Aboriginality.

Conclusions

This chapter outlined the various responses to female offenders at the NPB over time, including informants’ perspectives on how gender matters, the institutional process of developing of a commitments document, and the creation of a special parole hearing project at Nova Institution in the Atlantic Region. These initiatives are based on an incorporation of feminist and criminological knowledges about female offending into organizational understandings of female offender issues and the management of risk.

Drawing on interview data in the first section of the chapter, I showed that most informants believed that it was important for the NPB and board members to be aware of the differences in programs for female offenders, the different criminal trajectories and patterns of female offending, and female offender needs in relation to conditional release and reintegration. A minority of informants did not think gender mattered much in the context of conditional release. Using internally produced documents, the chapter also considered the NPB’s process of developing a corporate strategy for female offenders and the eventual devolution of this into a set of commitments. This process involved the production and circulation of gendered knowledges of female offenders and ideas about their needs in relation to parole and conditional release. The consultations and stakeholder meeting
represent the NPB’s negotiation with how gender is relevant to conditional release and the sorts of accommodations permissible to address gender differences. Lastly, I examined one of the diversity initiatives developed for female offenders in the Atlantic Region, which focused on demystifying parole hearings through information sessions at Nova Institution. The apparent lack of gender specific conditional release policies and practices may reflect the limitations of gender as a category of difference requiring institutional accommodation. In contrast to EAHs and CAHs for which Aboriginal knowledges and practices are used to justify the production of a different hearing format, there does not appear to be a solid rationale for why modified hearings, such as through the removal of barriers or the use of a circle format, constitute a ‘gender issue’.

The chapter’s final section is a summary of key findings on how the NPB has dealt with gender difference and speaks to the broader themes of the dissertation. The first finding is that the NPB’s approach to gender is one of conceptual silos; that is, gender tends to be treated as separate entity from other aspects of identity. There appears to be an organizational inability to treat gender as one facet of many intersecting, co-occurring identities. The second finding is that gender is a problem for the organization in the sense that it struggles with practical application of exactly how gender figures into conditional release decision-making. The main implication of this institutional approach to gender difference is that (white) male offenders are reproduced as the norm and female offenders are essentialized as a homogenous group. The organizational approaches to female difference discussed in this chapter illustrate the complexities of developing gender responsive conditional release processes.
Conclusion

In this dissertation, I examined two main questions: How are certain ‘differences’ and categories of offenders constituted as targets for ‘accommodation’ or as having ‘special needs’? How do penal institutions frame ‘culturally relevant’ or ‘gender responsive’ policy and, in doing so, use normative ideals and selective knowledge of gender, race, culture, ethnicity, and other social relations to constitute the identities of particular groups of offenders? By analyzing various official and internal government documents, I explored these questions by tracing the penal transformations that led to the recognition of gender and facets of diversity within legislation and organizational policies and practices since the 1970s, with a specific focus on present-day approaches to accommodating difference at the NPB. I have shown how notions of diversity are constituted as relating to non-whiteness and non-maleness, with Aboriginal, female, and ethnocultural offenders identified as populations in need of accommodation. I examined in detail the sorts of organizational approaches and initiatives developed for these three offender groups to demonstrate how issues of difference are selectively incorporated and framed as relevant to particular aspects of the conditional release process. This research demonstrates how the NPB has negotiated what diversity means and its relevance to parole and release decision-making, and in doing so, highlights the challenges and complexities of accommodating offender diversities in the pursuit of a more ‘fair’ and ‘appropriate’ penality.

This research shows how gender and diversity are constituted and shape institutional approaches and policy responses that conform to the existing organizational structure. The institutionalization of diversity at the NPB involved the inclusion of selective understandings, which ultimately fail to recognize the complexities and nuances of this construct. For example, I argued that the exclusive reading of gender as women and diversity as non-whiteness has reinforced the othering of these groups while maintaining masculinity and whiteness as the normative frames and standards within conditional release policies and processes. The implication is that the organizational inclusion of gender and diversity becomes a ‘special project’, one that is peripheral to the ‘real work’ of the institution. At the same time, the organizational tendency to think about differences as separate, rather than intersecting, results in the prioritization of one facet of identity over others (e.g., gender over
I also argued that gender and diversity are made to ‘fit’ within dominant penal logics and approaches, including risk assessment and managerialism. More specifically, gender and diversity are framed as factors to consider when gathering information about offenders and assessing risk. These diversities are also constituted as performance measures and targets of managerial efforts to represent the organization as responsive to the diverse needs or experiences of non-white and non-male offenders.

Through this dissertation, I have shown that the incorporation of diversity into the federal parole system addresses a variety of organizational objectives and interests. These include fulfilling the legislative mandate of the CCRA to recognize and respond to diversity; addressing expectations of fairness; observing human rights ideals and, increasingly, the interests of victims; managing reputational risk and conforming to managerial logics as a means to measure and track diversity and show that it is being done at the organization; instituting ‘effective’ correctional practice in order to reduce risk and increase public safety; and addressing issues of representation such that board members and staff reflect the diversity of the Canadian population. At the same time, the recognition of gender and diversity produces new penal subjectivities, discourses, and sites upon which to govern. For instance, I have shown in relation to EAHs and CAHs how discourses about Aboriginality produce ‘authentic’ Aboriginal subjectivities that reflect institutionally defined expectations around tradition, culture, and healing. This allows the organization to respond to Aboriginal difference by altering the normative hearing process to include elements of ceremony while maintaining the dominant (and legally mandated) risk assessment and decision-making practices. Similarly, the discursive constitution of Aboriginal communities within policy documents for CAHs work to frame these communities as responsible collectives that can take up the supervision of returning offenders. This approach responsibilizes Aboriginal communities for the reintegration of paroled Aboriginal offenders as an exercise in restorative justice. More broadly, these research findings indicate that institutional approaches to gender and diversity draw upon and circulate gendered, culturalized, and racialized knowledges of offenders and offending as a way to know certain populations and develop ‘responsive’ practices that take these differences into account. This is significant because the focus on knowing about various differences does not clearly translate into what to do about these differences in practice.
This analysis of institutional policies, training materials, research reports, corporate documents, and internal records demonstrates the challenge of recognizing and responding to complex and multifaceted identities, histories, and experiences. This research shows that the incorporation of gender and diversity into the NPB and its conditional release policies and practices is not a straightforward undertaking. The NPB’s various approaches to recognizing and responding to difference—from its implementation of the Gladue decision to the development of cultural fact sheets about ethnocultural offenders—are illustrative of how the organization is grappling with offender diversities and their relevance to conditional release decision-making. Yet, how issues of gender and diversity are initially defined has important implications for the ways in which these constructs are understood and integrated into policy and practice directed at offenders defined as different along lines of gender, race, ethnicity, and culture. Selective and narrow understandings of diversity can limit the scope of penal change when diversity becomes a ‘special issue’ that is seen to impact only certain offenders, policies, or approaches. This research also illustrates the challenge of reconfiguring Canadian penality to accommodate substantive equality approaches (i.e., those that recognize and respond to certain differences and allow for different treatment) in an organizational context that is based on white male offenders as the norm and standard for conditional release policies and practices. Gender and diversity are appended to dominant structures and approaches as peripheral, rather than integral, to the NPB’s work.

The following details how this research advances studies of punishment, the NPB and its program of conditional release, and potential areas for further research in the area.

Primary Contributions

This dissertation contributes to the literature on penal transformation by providing a local case study of responses to gender and diversity within one penal institution. It advances the literature by detailing a history of changes to conditional release and parole law in Canada and showing how gender and diversity become issues of concern for the NPB. This study documents the institutionalization of diversity within the organization’s policies and practices and how only certain framings of diversity (i.e., female and non-white) were included, thereby reflecting a selective reading of difference. Through this study, I also fill a gap in the literatures on penal change that have yet to examine the racialized and gendered
aspects of changes brought about through the recognition of gender and diversity issues. This research indicates that the changes to Canadian penalty since the 1970s are reflective of how the penal system tries to be more responsive to offender differences but that these efforts are limited by the penal structure itself. In particular, certain offenders are over-determined by one facet of their identities (e.g., culture or gender) because penal policies and practices cannot work with heterogeneity.

The combination of anti-racist feminist and critical organizational literatures to document how gender and diversity are used in conditional release policies and practices advances our understanding of parole in Canada. By connecting these literatures to the study of punishment, I offer an interdisciplinary and nuanced analysis of my research questions about how certain offender differences are selected for accommodation and the process of producing ‘culturally appropriate’ and ‘gender responsive’ policy and practice. This study provides a counterpoint to much of the writing that focuses on broad penal transformations and does not consider in any depth how issues of gender, race, and culture factor in or are constituted in these processes. This study of the reconfigurations of Canadian penalty through the recognition of certain differences contributes to a small, but growing body of scholarship examining the development and implementation of gendered and racialized penal practices.

This dissertation also advances the scholarship on penal change as it problematizes how concepts like gender and diversity are institutionalized within the NPB. I show that without clear definitions, the incorporation of these concepts into conditional release policy reflects narrow and somewhat uncomplicated understandings of difference. The organization’s defining of gender and diversity does not adequately capture the complexities and nuances of these constructs. This study also reinforces the importance of tracing the creation and implementation of these responses over time as past debates and framings inform current thinking and approaches. It allows us to better understand how certain facets of difference (and not others) are selected and constituted as relevant to the conditional release process.

Additionally, this study advances the scholarship on penal change by identifying the complexities of changing organizational policies and practices to rectify discrimination and be more inclusive of difference in the context of punishment. My findings signal the need for
further consideration of attempts to change penal policies and approaches so as to limit discriminatory impacts. It also encourages critical reflection on how these seemingly progressive efforts produce new, often unanticipated, practices of punishment and governing offenders.

Finally, this dissertation contributes to the study of punishment by offering a unique methodological approach to tracing penal transformations. My use of the ATIA to collect data otherwise publically unavailable enabled me to trace how the NPB has taken up and selectively incorporated issues of gender and diversity over time, as well as the internal struggles around the inclusion of these differences. This methodological approach, while imperfect, provides some options for future studies on penal institutions where researchers encounter access restrictions.

Implications for the NPB

In undertaking this research project, it was not my intent to make policy recommendations or offer advice on how the organization’s policies or approaches to issues of gender and diversity could be ‘improved’. I am cognizant of my privilege as a researcher to ‘observe’ without having to make determinations of what should or could be done differently in practice as to achieve ‘better’ effects in the punishment of female and/or racialized offenders. I am also very aware of the organizational constraints in which gendered and diversified conditional release policies and practices are developed and implemented; this study by no means intends to detract from the work of committed individuals to improve offenders’ treatment within the penal system.

However, this dissertation does have some implications for the NPB’s policies and practices, and for those who work in the organization, including how diverse offenders are evaluated and how decisions are made. The primary implication relates to the importance of taking care in defining concepts such as gender and diversity, as well as the limitations of these constructs in terms of how they can be incorporated into policy and practice. This type of critical reflection was evidenced by at least one internal document (see NPB 2009i) that considered both the advantages and limitations of the term ‘ethnocultural’ in how it is applied to certain racial minority offenders. This report presented a more sophisticated understanding of ethnic and racial diversity. The challenge for the NPB is how to incorporate
a nuanced understanding of difference, one that recognizes the multiplicity and simultaneity of various identities, experiences, and social contexts that shape the individuals appearing before board members.

Areas for Further Research

I considered how notions of gender and diversity are incorporated into organizational policies and initiatives that aim to be responsive to differences. Future research can study how these initiatives operate in practice and their outcomes. More specifically, these studies could examine how the ideas or intents, as articulated within policies or internal documents, translate into actual practices that take place among or between NPB personnel and offenders, such as through hearings involving elders or cultural interpreters as assistants to board members. For example, research could examine how EAHs or CAHs take place and analyze board members’ decisions to see how (or if) cultural or racial knowledges are drawn upon to make or justify decisions. I am cognizant of the possible disjuncture between what is articulated and represented in policy documents and what happens in practice. Certainly, the assessment or evaluation of the outcomes or effects would be beneficial, not to ‘correct’ my analysis, but to further develop it.

Additionally, interviews with board members could explain how these individuals engage with diversity-focused training materials, adapted hearing formats, and risk assessment manuals to make decisions on what are often challenging, complex cases. Another area for future research would be to examine how elders and other individuals designated as cultural interpreters understand and experience their roles, as well as their perspectives on assisted hearings. In particular, elders would be uniquely situated to comment on how notions of Aboriginality are taken up by the institution and translated into hearing contexts that are very much governed by the CCRA and the NPB’s decision-making policies. To fully understand the constitution of diversity and diversity initiatives, it is necessary to also consider how the targeted subjects respond to these changes and in turn work to shape what options are available or what diversity means within penal contexts.

Exploring how diverse offenders perceive and experience various organizational initiatives created to be more responsive to their differences would be instructive. Qualitative research into offenders’ perceptions and experiences with diversity initiatives could explain
whether or not the initiatives can meet the intended goals of being responsive to gender, cultural, and/or racial identities and needs. For instance, interviews with offenders who have participated in EAHs could provide insight into the degree to which these diversity initiatives are experienced as ‘culturally sensitive’. Similarly, offenders who were granted parole through a CAH could share their perspectives on this conditional release process and how they experience reintegration into the communities that have participated in, and potentially shaped, their release.

The research possibilities listed above could complement and extend my research. There are, of course, further areas that could be explored. I have described these four because they are avenues I would have liked to have pursued here. Although I determined that this was not viable, given the research access barriers and scope of this dissertation, these are potential avenues that can be developed in future research. I also raised these four areas because there currently is little research on how diversity initiatives work in practice or are experienced by penal populations and staff members tasked with their implementation and operation. Additional research could examine the interplay of how issues of power, knowledge, and identity play out within corrections and conditional release contexts.

Final Thoughts

Currently, the Canadian federal government is proposing a number of reforms to sentencing law that are expected to increase the federal offender population. The proposed reforms, and accompanying punitive rhetoric, raise questions about the staying power of current diversity initiatives at the NPB and throughout the correctional system, more generally, as well as the ability of these systems to continue to address issues of difference. If, as this dissertation has suggested, diversity initiatives tend to be framed as ‘special projects’ and as peripheral to the ‘real work’ of penal organizations or above and beyond that which is legally mandated, there is a possibility that these initiatives could be targeted for cost-saving cuts or abandoned for political reasons. Yet, at the same time, the proposed reforms may work to further increase the rates of incarceration of Aboriginal and other racialized offenders, thereby raising the possibility of future legal challenges of discriminatory treatment. This dissertation will advance the conversation about gendered and racialized penal regimes while encouraging
critical reflection on the complexities and challenges of incorporating gender and diversity within penal policies and practices.
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