



**Department of Justice**  
**PO Box 2703, Whitehorse, Yukon Y1A 2C6**

October 8, 2019

John Phelps  
Deputy Minister and  
Deputy Attorney General  
Department of Justice

Dear Mr. Phelps:

**Re: Letter of Report: Implementation Working Group for the WCC Inspection Report**

As set out in the letter of August 28, 2018, establishing the implementation working group to support the fulfillment of the Whitehorse Correctional Center Inspection Report (hereafter the implementation working group or the working group), we are providing the following as the fourth report (June 2019 through September 2019). This report acknowledges one full year of existence for the working group, which was brought about by the public release of the *Whitehorse Correctional Centre Inspection Report* of Mr. David Loukidelis by the Government of Yukon.

The presentation of this letter of report will provide the ongoing engagements of the working group during this period, the efforts undertaken in each of the three areas considered within the report, and provide insight into the anticipated work ahead for the implementation working group.

**Continued Engagement:**

During this reporting period there has been considerable effort put forward to address the area of separate confinement (recommendations #12-23 & 26, pp. 40-69). While the working group was party to early discussions referenced in previous letters of report, given the policy development requirements and the government prerogative over legislative change, specific engagement in this area by the working group has been limited.

In other areas of work, there have been focused engagements and further collaboration, which will be detailed in the 'Work to Date' section of this report. These focused efforts have identified specific opportunities for improvement, best practices, and approaches to enhance programs and services for inmates, establish appropriate security measures for both individuals and the facility, and ensure the

considerations of staff safety and development are continued to be held in high regard. The working group continues to realize all approaches undertaken for corrections in Yukon must reflect the unique characteristics of Yukon and those served within the correctional environment.

#### **Mental Wellness:**

The approach to improving mental wellness at the Whitehorse Correctional Centre (WCC) continues to build upon the recognition Mr. Loukidelis acknowledged in his report, that being “that the mental wellness challenges affecting many who enter the Whitehorse Correctional Centre do not start when they enter and do not end when they leave.” (Whitehorse Corrections Centre – Inspection Report, D. Loukidelis, QC, May 2018, P.5)

Reflecting upon the eleven specific recommendations referenced in the *Enhancing Mental Wellness Services* at WCC section of the *Report* (recommendations 1-11, pp 10-11 & 28-38) there is strong evidence of the significant strides taken to realize intent and purpose of these recommendations. Building upon the strengths established in the guiding document titled *Forward Together – Yukon Mental Health Strategy 2016-2026*, the Corrections branch and Health and Social Services (HSS) have worked very closely on improving mental health and addition services to inmates at WCC. Most significantly, the partnership with HSS and their Mental Wellness and Substance Use (MWSU) Unit has given way to the creation of the Forensic Complex Care Team. This team, which currently is comprised of a manager, fulfilling the coordination responsibilities, and three forensic counsellors providing enhanced “on-site and in-community mental wellness services and supports for WCC clients” (recommendation #1, pp.10 & 30). The successes of this team are beginning to be realized and additional term positions in the areas of counseling and social worker are being considered to enhance capacity to deliver the much needed services.

The Forensic Complex Care Team engages with corrections staff and provides enhanced screening of inmates, and where required, has the full capability to engage with registered psychologist services to provide in-depth screening and provide additional supporting services with clients on an as needed basis (recommendation #2, pp 10 & 30). These initial screenings, ongoing care, or later identification of inmate mental wellness issues, make up part of the individualized case management work of the inmate and is also included in the HSS Electronic Medical Record system (recommendation #6, pp. 10 & 35). This collaborative work contributes towards ensuring that individuals in custody receive appropriate care and programming as soon as practicable and that a continuity of care and programming, delivered through the same service providers, can be accessed upon the individual’s release from custody. In many cases, it is through the relationships developed during the institutional care that sees incarcerated individuals continue involvement in care programming and treatment post incarceration. This is an important aspect because once many individuals are released from WCC the ability to legally require treatment is lost.

With the Forensic Complex Care Team operating within the Mental Wellness and Substance Use area of HSS, the knowledge and ability to expeditiously refer or deliver clinical programming is enhanced through the integration of services provided by the team. This includes both programming delivered at WCC and



through the Sarah Steele complex in Whitehorse. Services provided by the Forensic Complex Care Team are extended to corrections clients at Yukon Community Corrections (probation services) as well. If residential treatment options are appropriate for the clients, these are available through the Sarah Steele facility in Whitehorse (recommendation #7, pp. 10 & 36). The access to these programs are an augmentation to the continued opportunity to undertake Alcoholics Anonymous and Narcotics Anonymous programming at WCC (recommendation #8, pp 11 & 36).

Although the Forensic Complex Care Team does not solely operate within a specific unit such as Mr. Loukidelis envisioned (recommendation #3, pp. 10 & 37), WCC utilizes the services of this specialized clinical team to support the needs of all WCC inmates regardless of which unit they reside in. This holistic service delivery model ensures that clinical services rendered benefit as many individuals as possible.

Another significant achievement during this reporting period is the release of the Fetal Alcohol Syndrome Disorder (FASD) Action Plan, supported by the Government of Yukon and made public on September 9, 2019. This plan ( <https://yukon.ca/en/yukon-fasd-action-plan-2019> ), developed through broad community consultation and partnership, will benefit WCC directly and indirectly from specific programming and supports for those persons identified as suffering effects of FASD (recommendations # 4 & 5, pp. 10, 33 & 34).

Finally, WCC has moved to provide individuals with greater outdoor access within the existing capacity of the facility. This has involved individuals getting access to the outside environment beyond what is provided in the fresh air yard of the individual units. The area includes plant life and a spiritual fire area with benches. Elders accompany the inmates when available, but their outdoor recreation time is not incumbent on an Elder being available (recommendation #10, pp. 11 & 37).

#### **Separate Confinement:**

The area of the Report related to separate confinement and segregation (pp. 39-68) has taken significant time and effort during this reporting period. In addition to the recommendations made by Mr. Loukidelis and supported in principle by the government, there have been a number of challenges in the courts of Canada in respect of this area of corrections. Few of these matters have been fully resolved making it difficult to ensure changes made today are lasting in nature and will stand the test of future legal outcomes. In respect of the legal challenges, Chief Justice Veale of the Yukon Supreme Court released his decision in the case of *Sheepway vs Hendriks et al* (Whitehorse Correctional Centre) on September 19, 2019. This case called into question the ability of WCC to create the Secure Living Unit, absent of legislation authority, and questioned whether Mr. Sheepway's confinement was unconstitutional and breached Section 7 of the Charter. This decision is germane to the issues of separate confinement as Chief Justice Veale found that the use of the Secure Living Unit, during the period under review when Mr. Sheepway was incarcerated at WCC, was tantamount to segregation and further found that WCC did not have the power to create the Secure Living Unit in policy where the legislation did not prescribe such units. On the matters specific to the questions of Charter compliance Chief Justice Veale declined to provide an analysis.

Legislative change is required to provide the flexibility to address the unique needs of individuals who cannot be safely managed within general population environments at WCC. This is consistent with the calls from Mr. Loukidelis to address a number of areas related to separate confinement. Both the response to the recommendations for legislative change and the decision of the Yukon Supreme Court must be consistent for effective change.

Department officials, working closely with experts and guided by accepted international standards, have provided strong rationale to the government for changes to the Corrections Act. The areas under consideration include:

- state that the least restrictive measures will be used when managing both inmates and offenders;
- define the terms “segregation” and “restrictive confinement” while placing upper limits on the use of these practices;
- prohibit the use of segregation for certain classes of vulnerable inmates; and
- allow for clear and expedient processes and bodies for internal review and external oversight of placements in segregation and restrictive confinement.

If accepted, these amendments would give the legislative changes required to implement in principle many of Mr. Loukidelis’ recommendations (recommendations #13, 14, 15, 16, 18, 19, 20, 21 & 23 requiring legislative or regulatory change). While a number of operational policies have already begun to change, should this legislation move forward there would be great impetus given, in some cases required, to advance operational change at WCC.

In the section of the Report related to separate confinement, Mr. Loukidelis also spoke to considering whether the Investigations and Standards Office (ISO) would be better served by having greater independence from the division of Justice responsible for Corrections (during Mr. Loukidelis’ investigation the ISO reported within the Community Justice and Public Safety Division of Justice) (recommendation #25, pp.13 & 66). During this reporting period, the Deputy Minister of Justice moved to restructure ISO’s reporting to have the functions of this office fall under the Director of Regulatory Services. This portfolio oversees a number of justice related quasi-independent functions such as the Coroner’s Officer. This change took place effective October 3, 2019.

#### **First Nations Individuals:**

Being ever conscious of the fact of overrepresentation of First Nations individuals in custody at WCC, the working group continues to be most interested in making meaningful changes to support First Nations individuals in custody. There continues to be changes in programming such as the continued development of the Sweat program. Indicated in the last Letter of Report (June 2019) WCC and CYFN are working closely with a Yukon First Nations Elder to construct and implement a Sweat program. This will take place in the outdoor area of WCC. While this will be initiated as a pilot, the intention is to create this program as a lasting cultural option at WCC.



In addition to the Sweat program, work continues to acquire First Nations cultural artisans to be able to provide carving and drum making options in as cultural programming for individuals in custody at WCC. Additionally, WCC in partnership with one of the facility's Elders, has undertaken to create a story telling program at the institution. This program involves the WCC First Nations Liaison and Elders facilitating story telling sessions and educating individuals on its importance in First Nations culture. This is augmented through a series of books available through the WCC library program that encourages story telling as a way to connect with an individual's culture.

Late in September, both the Director of Corrections and the Deputy Minister of Justice met with the Community Advisory Board (CAB) (recommendation #30, pp. 14 & 75). The discussions during these meetings included how to ensure the CAB was able to work independently, yet acquire the information they needed, to provide insight into opportunities for meaningful change in Corrections. This work will continue in the future, as the benefits of this group have not yet been fully realized.

Also during this reporting period, the function of managing the Gladue report process was assumed by CYFN. This undertaking is not directly related to Mr. Loukidelis' report (recommendation #36, pp. 15 & 81), but it does create the potential to provide dedicated management and authority over the creation of the Gladue reports. This development may begin to provide a more formal process through which WCC can gain access to, and appropriately apply Gladue principles to the myriad of correctional decisions that impact an individual's liberty interests. Yukon Community Corrections is collaborating with CYFN to explore how Probation Officers and Gladue Report Writers could work together to better support clients receiving Gladue reports as well as collateral contacts required to provide information for both Gladue Reports and Pre-Sentence Reports.

Furthermore, both Health and Social Services, and Justice have identified on-the-land healing and treatment as an area requiring more attention. This includes the need to work closely with First Nations to better understand the benefits of these cultural and spiritual experiences and determine how to operationalize these community initiatives. This work is in the early days of development but the working group looks forward to engaging in the development of these opportunities.

#### **Future Work:**

The working group will be reviewing the matrix of recommendations at the next meeting (October 2019). This will be an opportunity to better understand what recommendations have moved forward and where more effort is required. The working group is conscious of having meaningful input into the development of responses to the recommendations and will be considering a means to better define its functions as change progresses.

While there has been significant change in the provision of Mental Health Services through the Forensic Complex Care Team, the engagement of this team is only giving way to other opportunities to develop better integration and programming options. The work around separate confinement and segregation will need to operationalize any change that may come out of approved legislative amendments. This will require the development of regulations and operational policies and procedures. Finally, constant effort is

necessary to advance the needs and opportunities in program and service delivery for First Nations individuals who find themselves involved with corrections.

**Conclusion:**

Having been engaged with the change agenda within Corrections for over a year, the implementation working group has made some observations.

There have been significant advancements in the provision of integrated mental health services. This work continues to develop and it is expected that this work will only continue to improve over time. The working group has also been made aware of the potential changes in the separate confinement and segregation authorities, oversight and procedural fairness. While this is a complicated area of corrections administration and law, the working group looks forward to being more involved as this work advances. The working group also realizes that there have been some advances in the area of "improving outcomes for First Nations individuals"; this work needs to be adopted wholly into all aspects of policy, programming and services at WCC.

The working group also recognizes that since the receipt of the Report the average inmate count, including both sentenced and remanded inmates, has averaged 64 persons in WCC. The working group recognizes these numbers represent both opportunity and challenge to the changes required within corrections. For example, while fewer numbers within WCC allow for unique program opportunities sometimes the programs lack sufficient numbers to allow programming to realize the ideal outcome or a frequency that serves the population with enough regularity. There is no question that the systemic change called for in the Report will provide better accountabilities and oversight, which will ensure fairness and transparency in the administration of the facility. Furthermore, the continuing benefits of a respectful relationship with First Nations will ensure Yukon Corrections becomes leaders in correctional services.

Sincerely,

A handwritten signature in black ink, appearing to read 'Allan Lucier', with a stylized flourish at the end.

Allan Lucier  
Chair, Implementation Working Group

cc: Implementation Working Group