



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

December 2, 2020

John Phelps  
Deputy Minister and  
Deputy Attorney General  
Department of Justice

Dear John Phelps:

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

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As set out in the letter of August 28, 2018, establishing the Implementation Working Group to support the fulfillment of the Whitehorse Correctional Centre Inspection Report (hereafter the 'implementation working group' or the 'working group'), we are providing the following as the sixth letter of report.

The presentation of this letter of report will provide the ongoing engagements of the working group during the extended period of reporting, spanning January 2020 until the end of November 2020. As Chair of the implementation working group, I realize this report does not follow the regular reporting periods established. The delay in reporting is, in part, a result of the current and prolonged response to the COVID-19 global pandemic and the unusual requirements this has placed on the corrections environment. However, I wish to convey that, while there was a dedicated and focused approach to ensure institutional correctional clients and staff of the Whitehorse Correctional Centre were provided every protection possible from infection of the virus, there was also much work advanced in the three areas considered within Mr. Loukidelis' report. In addition to providing a current status of the implementation of the recommendations of the report, this letter will also provide insights into work undertaken and continued in response to the COVID-19 environment, provide a brief summary of the changes to the supports and services provided to justice-involved men in Yukon, and provide awareness of staffing efforts and leadership change at Whitehorse Correctional Centre. Finally, this letter will provide our recommendation that the work of the implementation working group be formally deemed complete and that the continued efforts in correctional reform and continuous improvement be transferred to the Corrections Branch. It is recommended that the Community Advisory Board provide review and recommendations regarding the administration of the *Corrections Act and Regulations* as well as any program established or to be established by the Corrections Branch, as contemplated in legislation.

## Report Recommendations:

To re-emphasize the approach undertaken by the implementation working group, the recommendations were divided into four categories. In the first category, the recommendations were related to undertakings and improvements in the area of mental health. This section included 11 recommendations. The second section included recommendations related to separate confinement and segregation. This section included 16 recommendations. The third category of recommendations was related to First Nations and cultural imperatives. This section included nine recommendations. Finally, the fourth category was deemed recommendations related to Justice System matters. In this section there were four recommendations. It has been the position of the working group that while numerically, the WCC Inspection Report had 40 recommendations, there were two recommendations that had sub-recommendations, namely recommendation 7, in the section related to mental health, and recommendation 33, in the section related to First Nations, bringing the total consideration of recommendations to 42.

A detailed matrix of recommendations and responses is appended to this report to provide specific information on the status of each recommendation. Each recommendation is identified as complete, underway, under consideration, not started or not advanced. It is particularly important to recognize that in some cases the working group has considered work complete, in essence meaning the corrective action has been made, the anticipated results achieved, and no further work is required at this time. In some cases where recommendations are considered underway, this may indicate efforts that have begun and work is not yet complete, or the use of this term may indicate that efforts in this area are ongoing and indicate the need to continue to review and work on improving various elements over time on this issue. In each of the four categories, this letter will provide highlights of work worth noting.

### 1. Mental Health

Under the category of Mental Health, the working group considers seven of the recommendations complete, with four underway and one under consideration.<sup>1</sup> It must be acknowledged that much of the work to advance these recommendations came through the previously reported relations developed between Corrections and the Forensic Complex Care Team of the Mental Wellness and Substance Use Branch of the Department of Health and Social Services. This relationship continues to provide benefits to correctional clients. The partnership also joins Health and Social Services to Justice in common purpose. While the genesis of this work was centred on the needs of correctional clients, the benefits have gone far beyond these expectations.

It is important to note that the working group has been advised that the Whitehorse Correctional Centre has undertaken the development of individualized care plans for each client in custody; both convicted and pre-trial. This establishes individual and specific means to address client needs. However, to create a specific unit, such as is contemplated in recommendation 3, additional consideration and policy clarity is required. The decision of Justice Veale, in *Sheepway vs Hendriks*, heightens the need to ensure that the correctional centre has the authority to create such alternative units. As such, this work continues.



It is worth noting as well that while the majority of the recommendations under this section are complete or underway, the working group sees recommendation 11, (referencing WCC as a designated hospital under the *Criminal Code* and the need for the establishment of a new secure forensic unit at Whitehorse General Hospital) to be particularly complex in its scope, requiring far greater government consideration and effort than was granted the implementation working group.

## **2. Segregation**

The focus of the second category of recommendations was segregation. The working group considers 13 of the recommendations in this category complete, and one underway. As a category of recommendations, the nature and complexity of creating new legislation to restrict and clarify the use of segregation practices within Corrections required the implementation working group to rely heavily on external guidance to help understand the intent of such restrictions. At the same time the working group worked with local officials to understand the application of such changes at the Whitehorse Correctional Centre. Adding emphasis to this work was the Yukon Supreme Court decision in *Sheepway v. Hendriks* where Chief Justice Veale added expectations in his ruling that greater adherence to legislated authorities was required in establishing living units within the correctional centre.

The result of these efforts has seen the amended legislation and new regulations come into effect this past summer (2020). These legislative amendments are arguably the most progressive restrictions which set the limitation on the use of segregation in Canada. It is important to note that the legislation, while establishing law around the use of segregation, establishes the keystone principle of using the least restrictive measures for all correctional practice in Yukon.

## **3. First Nations**

The third category of recommendations centred on improving outcomes for First Nations individuals. This grouping of recommendations includes 10 action items when considering recommendation 33 has been interpreted as including two separate elements of work. The working group considers seven of the recommendations to be complete, two underway, and one where the consequences of implementation are not supported by the working group.

Of specific note, one of the recommendations in this section includes the revitalization of the Community Advisory Board (CAB) (recommendation 30). This work is well underway with new Terms of Reference having been created, constituting a new and more specified direction for the CAB. As indicated in the opening of this letter it is the recommendation of the implementation working group that the continued oversight of correctional change and improvement be shifted to the CAB. With this body having authorities in the *Corrections Act* it has the ability to provide independent advice and recommendations to the Minister on a regular basis.

The one recommendation that gave rise to complications in implementation was recommendation 35 – charging fees for phone services. The provision of phone services within the correctional centre does much more than just provide access to families on the outside. While connecting to family outside the

institution is extremely important and lends to the wellbeing of clients, First Nation and otherwise, the phone system must also provide protections to those who wish not to be contacted and those the courts have instructed cannot be contacted. The system must provide unfettered access to supports such as legal counsel, the Investigations and Standards Office, or the Human Rights Commission. The access and limitations provided by the phone system requires administration; a means of allowances and restrictions. The “pay-for-use” nature of the system also limits the influence of those on units who may impose “inmate-based” fees for the service. Access to families is extremely important. Most clients have means to afford the current system and for those who cannot afford the system there is the ability for the individual to earn an income through inmate work programs. In emergent situations, indigent access cards are provided. Through these means the protections afforded by the system remain in place and access to family can be provided.

#### **4. Justice System**

The final grouping of recommendations focused on required changes in the broader justice system and elements that support and interact with that system. This area included four distinct recommendations, one of which is considered to be complete, two considered underway and one which is under wider consideration.

The appended matrix details exact efforts on each of the recommendations. However, it is worthy to mention some elements of each of these recommendations. The efforts in bail reform continue with greater emphasis being placed on the interactions of participants and parties in the system and a means to develop mechanisms such as bail verification and judicial referrals, as contemplated in Bill C-75 amendments. The work to support and enhance the use of the Community Wellness Court has resulted in a significant increase in this option’s use. This provides the ability to engage alternative mechanisms to improve outcomes for clients and the system more broadly. The third of Mr. Loukidelis’ recommendations in this area spoke again about the benefits of residential treatment facilities. Both the Department of Justice and Health and Social Services recognize the benefits of such facilities, as do many, if not most First Nations partners. This work continues through discussions and negotiations of the various players and the implementation working group looks forward to seeing these options materialize in the near future. Finally, work continues to find the right solution to a data system that provides efficiencies and accuracies in correctional data collection and interpretation.

#### **Additional Information**

24/7 supervised community housing and programming for Justice-involved men:

Since the last letter of report, 24/7 supervised housing services and programming for justice-involved men outside the correctional facility has changed. It is understood that such services are not a statutory obligation of the government; meaning they are not required by an Act or regulation of the Government of Yukon. However, providing 24/7 supervised community services for persons who might otherwise find themselves incarcerated supports the principle of least restrictive measures, and provides opportunity to explore options that give way to lessening the chance of re-contact with the justice system.



It is for these reasons that the Department of Justice sought to ensure services continued after the Salvation Army chose to conclude its longstanding arrangement with the government at the Adult Resource Centre.

Through a Transfer Payment Agreement, the John Howard Society Pacific has assumed 24/7 supervised community housing, supports and programming for justice-involved men in Whitehorse. All residents are subject to general and specific conditions of release, and community, staff and resident safety is ensured through 24-hour staff who provide structure, monitoring and support. This new partnership utilizes a portion of unused space at the Whitehorse Correctional Centre, providing up to 20 single bed rooms. This programming continues the work envisioned in Mr. Loukidelis' report by ensuring supportive housing is provided for those who require it as condition of their participation in the Community Wellness Court.

#### COVID-19:

It goes without saying that since early 2020, normal response to any situation has been complicated by the emergence of COVID-19. Yukon Corrections has had to take extreme action and precaution given the dire outcomes of a potential outbreak in the Whitehorse Correctional Centre. While the efforts and outbreaks in other correctional environments in Canada have been topic of media reporting, it needs to be stated that institutional Corrections in Yukon presents a unique challenge. In all other jurisdictions in the country there are options available to fully or partially redeploy custodial clients should an outbreak erupt in an institution. In Yukon, while options could be exercised at the Young Offender Facility, Takhini Haven or other lesser correctional oriented facilities, there is no other place than Whitehorse Correctional Centre to maintain critical correctional operations. As such, the staff and management at the centre have had to put in place proactive precautionary measures to prevent COVID-19 from spreading to the staff or client populations at the Whitehorse Correctional Centre. These efforts ebb and flow given the recommendations of the Chief Medical Officer of Health, other institutional practices and the presence of the virus in the broader community

While some restrictions have had impacts in certain programming and usual activities, the efforts have ensured to date that no outbreak has threatened the clients or staff of the institution and the use of facility-wide lockdowns as a risk mitigation strategy has been avoided.

#### Final Word

Since August 2018, the implementation working group has shared in developing a common understanding of the complexities of corrections. We have explored opportunities that Mr. Loukidelis formulated in his recommendations. The working group has seen new partnerships develop and positive outcomes result for clients and Corrections.

The changes brought forward in the 2018 Whitehorse Correctional Centre Inspection report are almost all rooted in existing systems. As such, the working group realizes that surgical changes –

a tweak here, or a tweak there – will not result in the transformational change required to advance corrections practices. That is why the implementation working group supports the transition of this work from the implementation of change to continuous improvement. Furthermore, the working group believes this should be overseen by the Community Advisory Board, with its revised terms of reference and roots in legislation.

Should the Minister of Justice support this direction, the implementation working group would like to take this opportunity to thank the Minister and all those who have supported the work over the last 27 months.

Sincerely,



Allan Lucier  
Chair, Implementation Working Group

cc: Implementation Working Group

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<sup>i</sup> Recommendation 7 is considered by the Implementation Working Group to have two parts.