



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

January 8, 2020

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, that established a working group to support the implementation of the recommendations coming from the Whitehorse Correctional Centre Inspection Report (hereafter the 'implementation working group' or the 'working group'), we are providing this as the fifth quarterly report (September 2019 through December 2019).

The presentation of this letter of report will describe the ongoing engagements of the working group during this period, detail the efforts undertaken in each of the three areas considered by the report, and provide insight into future work planned for the implementation working group.

Continued Engagement:

During this reporting period, there have been many opportunities to engage with the improvements made by the Corrections branch and to observe the continued work of implementing the recommendations of the Whitehorse Correctional Centre Inspection Report.

To appreciate the effort that has gone into the implementation of the recommendations, the working group felt it was necessary to start with a general review of the work undertaken to date. To this end, the working group met twice during this reporting period to review each of the recommendations related to Mental Wellness and First Nation Individuals. This work will be followed in January with the working group's review of the completed work related to Separate Confinement. Once these focussed reviews are complete, the working group will provide an overall summary of all work completed to date.

During this reporting period, there have also been several executive leadership opportunities where the advancement of this important work has been recognized. The Minister herself has engaged Yukon Forum and the Yukon First Nations Leadership tables during this timeframe. On both occasions, she provided general updates that highlighted the legislative changes made to the *Corrections Act* of 2009; focusing on the specific improvements to the provisions for segregation and restrictive confinement. These meetings have been followed by the attendance of the Deputy Minister of Justice and the Assistant Deputy Minister of Community Justice and Public Safety at the Council of Yukon First Nations Justice Forum. These meetings provided an excellent opportunity to engage with First Nations justice practitioners from almost every First Nation and community in Yukon. The insight gained from these meetings helps the work of Corrections and guides the implementation working group to align their work with the realities of Yukon communities.

Given that the changes underway in Yukon are at the forefront of correction reform in Canada, the working group has taken this opportunity to engage with external experts to share our early work with related communities of practice. In early October, during the first reading of the *Bill to Amend the Corrections Act*, Howard Sapers engaged with Corrections' senior staff, members of the Human Rights Commission, and First Nations partners in an organizational learning opportunity related to Human Rights. In this work, Mr. Sapers emphasized why Corrections, as a societal institution, needed to give greater consideration to appropriate use of segregation. This aligned with the amendments announced in the *Bill to Amend the Corrections Act* on October 8. Further to these efforts, Ms. Andrea Monteiro, Director of Corrections, attended the Federal/ Provincial/Territorial Heads of Corrections conference in November. Here she participated in national discussions where the use of segregation was at the forefront of the agenda. Finally, Yukon's attendance at the Federal/Provincial/ Territorial Deputy Ministers' of Justice meeting in Montreal in December offered a similar opportunity: This body of senior Justice Administrators has had a standing agenda item, related to the use of segregation, over a number of meetings. During this last meeting, the Yukon model of legislating limitations for the use of segregation was presented.

The working group continues to realize the benefit of engagement to inform the direction taken by Yukon Corrections, and a requirement to educate others in relation to the knowledge applied to enhancing correction practices in Yukon.

Mental Wellness:

The attention being paid to enhancing supports related to mental wellness for persons at the Whitehorse Correctional Centre, in conjunction with other changes to the use of segregation and programming for First Nation individuals, ensures that the continuity of programming and the consistency of care afforded to individuals in custody is now higher than it has ever been.

In the working group's review of the first 11 recommendations presented in the Whitehorse Correctional Centre Inspection Report, six of the recommendations (recommendations 1, 2, 7, 8, 9, and 10) related to enhancing mental wellness services at WCC have been completed (pp 10-11 & 28-38). While significant work has been advanced, and developments are underway to complete the implementation

of four of the remaining recommendations (recommendations 3, 4, 5 and 6), it must be noted that, neither the Corrections branch nor the working group sees the term "complete" as meaning that further effort will not be required to continue this improvement in the future. Rather, the use of the term "complete" signals that the specific intent of the recommendation has been met. Much of the work that is complete, or that is otherwise in the process of implementation, has required significant support from Health and Social Services. Without this partnership, improving services, programming and supports to clients within the corrections environment, and after release, would not have been possible. Further to this, four previous Letters of Report have already described the other work in this area, which is now complete. As such, and not wishing to repeat those details, we will allow those reports to stand as record of the work accomplished.

The review by the working group found that only one of the recommendations (number 11) in the section related to Enhancing Mental Wellness Services still required consideration. This relates to the establishment of a secure forensic unit at the Whitehorse General Hospital, and to the removal of Whitehorse Correctional Centre's statutory designation as a hospital. It is the assessment of the working group that neither of the two elements of this recommendation may be accomplished simply. To the first point, creating a new secure forensic unit within Yukon would require significant capital construction and additional staffing. Yukon would then need to develop the professional capacity to attend those who may find themselves requiring the services of such a facility. The frequency of forensic needs in the territory is relatively low and each case is extremely complex. This increases the difficulty associated with establishing, staffing and supporting such a facility within the territory. To the second point, removing the statutory designation of the Whitehorse Correctional Centre as a hospital may be of limited benefit. The working group has learned that WCC gets used infrequently as a hospital. In fact, only twice in the time since the current Correctional Centre has been in existence has this designation been employed for any significant period. The main purpose of the hospital designation is to enable short duration accommodation for persons who require secure medical custody. Infrequent use is typically related to individuals receiving treatment in a southern jurisdiction that must return to Yukon for in-person review by the Yukon Review Board. In such cases, stays are short. With increased supports provided through the Forensic Care Team (from Health and Social Services) at the Whitehorse Correctional Centre, such individuals receive care consistent with secure facilities elsewhere.

Notwithstanding these significant issues related to recommendation 11, the working group is aware that discussions continue between Justice, Health and Social Services and the Yukon Hospital Corporation to look at options.

Separate Confinement:

In the last Letter of Report (October 8, 2019) the working group advised that amendments to the Corrections Act were under consideration and would focus on changes that would include:

- use of the least restrictive measures when managing both inmates and offenders;
- definition of the terms "segregation" and "restrictive confinement";

- placing upper limits on the use of these practices;
- prohibiting the use of segregation for certain classes of vulnerable inmates; and
- allowing for clear and expedient processes for internal review with external oversight of placements in segregation and restrictive confinement.

In that letter, the group explained that if these amendments were accepted, this would give way to the implementation, in principle, of nine of the Inspection Report recommendations (# 13, 14, 15, 16, 18, 19, 20, 21 & 23) related to the use of segregation and restrictive confinement at the Whitehorse Correctional Centre.

On October 8, 2019, Bill 6 (of the Third Session of the 34th Legislative Assembly), an Act to Amend the Corrections Act, 2009 was granted first reading. This Bill made sweeping changes to the use of segregation and restrictive confinement by Yukon Corrections. The changes proposed above, and also acknowledged by the October 2019 Letter of Report, were conveyed into legislative form. Specifically, the amendments provided the following:

- expanding the application of the principle of least restrictive measures to inmates, police prisoners, and persons who have been granted judicial interim release;
- defining segregation and restrictive confinement;
- imposing limits on which inmates may be held in segregation, and the number of days that an inmate may be held in segregation;
- requiring that the circumstances of inmates that are held in non-disciplinary segregation or non-disciplinary restrictive confinement be reviewed in accordance with the regulations;
- providing for the appointment of adjudicators to review the circumstances of inmates that are held in non-disciplinary segregation or non-disciplinary restrictive confinement; and
- requiring that certain provisions, relating to segregation and restrictive confinement, be reviewed within five years of this enactment coming into force.

Currently, no other jurisdiction in Canada has such legislative proscription in respect to the use of segregation. The Bill received Assent on November 27, 2019. Response to the legislative initiative taken by Yukon received acknowledgment from authorities on corrections such as Mr. Ivan Zinger, Canada's Correctional Investigator and media such as the October 28, 2019, Globe and Mail (B.C. Edition) front-page headline "Yukon to place strict limits on solitary".

The working group acknowledges that much work still needs to take place in the form of regulation reform and developing operational policies to realize fully the reforms embodied by the legislation. As mentioned earlier in this letter, the working group has not fully reviewed this section of recommendations. This work is planned for January 2020.

First Nations Individuals:

The working group also wants to take this opportunity to provide an update on the First Nations Sweat Program that was highlighted in the last Letter of Report (October 2019). Through ongoing support from the Council of Yukon First Nations, funding and expert resources have enabled the realization of a Sweat Program at Whitehorse Correctional Centre. The first sweat took place on October 31, 2019. Since that time, four additional sweats have taken place at the Correctional Centre with approximately 60ⁱ inmates participating to date. The Sweat Ceremony includes not only the ceremony itself but also traditional teaching in the preparation of each inmate for the sweat. The traditional teacher is currently preparing Corrections Staff for a sweat in early 2020.

On December 3, 2019, the working group reviewed the work to date on the nine recommendations specifically related to First Nations (# 28-36). Of these recommendations, the working group determined that five recommendations had been completed (# 28, 29, 31, 32, and the second part of # 33). In the review, the working group took note of the significant work that was underway to complete four of the remaining recommendations (# 27, 30, 34, and the first part of 33).

The working group provides the following perspective concerning the two remaining recommendations: #35 - the free access to telephone services, and #36 - using Gladue reports in correctional adjudications. The working group acknowledges that the Correctional Centre has not amended its service contract nor its policies related to offering free phone service to all inmates. The working group recognizes that communication with family, loved ones and friends outside the institution provides support that increases the likelihood of successful reintegration. However, providing free phone access to all clients will also increase the cost to government while diminishing benefits provided to victims that are funded, in part, by funds generated through the fees charged for access to the correctional phone system. Inmates who cannot afford phone access can request phone cards from the institution. This affords them limited but free access to the phones. These practices place all inmates on an equal footing with respect to phone use: those who can afford phone calls, pay for them, and those who cannot afford phone calls have access to an alternative means to maintain contacts outside the institution.

The working group supports the continued efforts of Yukon Corrections to acquire and employ information from Gladue reports on behalf of individuals who find themselves before an adjudicator. With that said, this recommendation is proving difficult to implement. The first consideration in incorporating a Gladue report, if one exists, is to ensure lay adjudicators have been provided instruction on how to use the information provided. Currently, there is very little instruction available to adjudicators on how to interpret the information contained by such reports. Another element related to Gladue reports, is that they take a significant time to gather the factors, consider the interplay of the factors, and then create a written report detailing the impact of those factors on an offender's life. This time is not typically present during the expeditious deliberation of administrative adjudications in the correctional environment. All this notwithstanding, Corrections and First Nations partners, including the Council of Yukon First Nations - the current administrators of the Gladue process in Yukon, continue to examine means to integrate the benefits of understanding social and systemic factors in correctional adjudication.

Future Work:

As detailed earlier, the implementation working group will convene again in January 2020 to review the recommendations related to separate confinement in the wake of the recent legislation amendments. They will then provide a comprehensive overview of all work to date on the 40 recommendations of the Whitehorse Correctional Centre Inspection Report.

As part of this final report, the working group will evaluate whether the mandate of the group has been met, while placing an emphasis on how Yukon may ensure that a culture of continuous improvement is fostered within Yukon Corrections.

Sincerely,

A handwritten signature in black ink, appearing to read 'Allan Lucier', with a long horizontal stroke extending to the right.

Allan Lucier
Chair, Implementation Working Group

cc: Implementation Working Group

ⁱ A single inmate may have participated in more than one Sweat Ceremony.