

Honourable Tracy-Anne McPhee

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May 4, 2020

Dear Minister McPhee, Assistant Deputy Minister Lucier, Director Monteiro, and Mr. Miller:

RE: Replacement Plan for the Yukon Adult Resource Centre

On behalf of Pivot Legal Society, we are writing to the Yukon Ministry of Justice and the John Howard Society of the Lower Mainland (“JHSLM”) to express concerns about a newly-announced community corrections program in Whitehorse: the JHSLM Supervised Residential Housing Program. Locating a community facility focused on rehabilitation and reintegration inside an operating prison undermines the purposes of the correctional system; exposes clients to harm, stigma and discrimination; and may infringe their constitutionally-protected right not to be subjected to any cruel or unusual treatment or punishment. We urge you to halt your plan. Several recommendations can be found at the close of this letter.

About Pivot

Pivot is a non-profit legal advocacy organization that works to undo the social stigma faced by marginalized people. Through our criminalization and policing campaign, we call attention to the disproportionately punitive outcomes for people who are over-criminalized, including Indigenous peoples, poor peoples, people who use drugs, and people who participate in criminalized economies. Most recently, Pivot has intervened in two cases relevant to the rights of prisoners: *R v Zora* (Supreme Court of Canada) and *Simons et al. v Minister of Public Safety et al.* (Ontario Superior Court of Justice).

Our organization believes that the rights of prisoners cannot be separated from a broader struggle for human rights and social justice. Pivot takes a responsive approach to community needs through direct consultation with people most affected by laws, policies and actions that entrench poverty and stigma. While our office is

located in BC, we note that due to limited resources, criminalized people from the Yukon may need to be transferred to BC to access appropriate community-based facilities and programming.

Plan to Replace ARC

In February 2020, the Yukon Adult Resource Centre (“ARC”), a community corrections site, announced that it was set to close due to highway expansion and safety improvement.¹ The facility replacement plan for the ARC is disturbing. In a press release dated May 1, 2020, the JHSLM describes the program as “co-located” with the Whitehorse Correctional Centre (“WCC”).² The Supervised Residential Housing program, however, actually repurposes an existing unit of the WCC (E-Unit). This approach is completely at odds with best practices for reintegration into society, which is identified as an integral part of community correctional services in the Yukon.³

We recognize that providing correctional services in Northern communities poses unique challenges and requires government and non-profit agencies to pursue creative solutions. We note that there have been significant shifts towards reform in recent years by the Director of Corrections, through establishing more transparent relations with Yukon First Nations,⁴ facilitating access to First Nations cultural programming,⁵ and amendments to the *Corrections Act* specific to the use of segregative and restrictive confinement.⁶ We further recognize the longstanding expertise of the John Howard Society, which advocates for “effective, just and humane responses to the causes and consequences of crime.”⁷ A rehabilitative and therapeutic model, however, does not involve repurposing a carceral institution as a residential facility. This plan is a completely inappropriate intervention done with very little transparency and public engagement. To our knowledge, the decision to transfer ARC to WCC was made without meaningful community consultation, on a short timeline. We further recognize that there is an enduring gap in services for women (cis- and trans-) whose needs are not currently met within the criminal justice system.⁸

Furthermore, we are concerned that repurposing E-Unit has led to conditions of rotating lockdowns as a primary population management strategy within the WCC due to a constrained ability to separate vulnerable populations. The ARC’s new location impacts not only ARC residents, but all WCC inmates.

The Yukon Director of Corrections has stated that E-Unit will be de-commissioned as a custodial corrections site. Despite this assertion, the ARC - a community corrections site - will still be situated at a location purpose-built as a carceral facility, specifically designed for “enhanced direct supervision,” including over 400 cameras designed for continuous monitoring, aimed at advancing a “style of supervision that promotes communication

¹ “Updated: More info on plans for ARC closure needed, say Yukon opposition parties, lawyer,” online: <https://www.yukon-news.com/news/more-info-on-plans-for-arc-closure-needed-say-yukon-opposition-parties-lawyer/>

² “John Howard Society opens new Supervised Residential Housing program in Whitehorse,” online: <https://johnhowardbc.ca/lower-mainland/wp-content/uploads/sites/2/2020/05/JHS-Statement-RE-Whitehorse-Supervised-Residential-Housing-05.01.2020.pdf>

³ Yukon *Corrections Act*, 2009, SY 2009, c.3 at s.9 (1)

⁴ “New sweat lodge program at WCC an opportunity for teaching, healing, officials say,” online: <https://www.yukon-news.com/news/new-sweat-lodge-program-at-wcc-an-opportunity-for-teaching-healing-officials-say/>

⁵ “Indigenous cultural practices, sweat lodge brought in for Whitehorse jail,” online: <https://nationalpost.com/pmn/news-pmn/canada-news-pmn/indigenous-cultural-practices-sweat-lodge-brought-in-for-whitehorse-jail>

⁶ “Amendments to Corrections Act tabled,” online: <https://yukon.ca/en/news/amendments-corrections-act-tabled>

⁷ John Howard Society of Canada, online: <https://johnhoward.ca/>

⁸ Charlotte Hrenchuk & Judie Bopp (2007) “A LITTLE KINDNESS WOULD GO A LONG WAY A STUDY OF WOMEN’S HOMELESSNESS IN THE YUKON,” online: <https://www.homelesshub.ca/sites/default/files/attachments/A%20Study%20of%20Women%27s%20Homelessness%20in%20the%20Yukon.pdf>

between staff and inmates while creating a safe, secure and efficient operation.”⁹ It is unreasonable for the Director of Corrections to expect that rehabilitation and transformation can take place in former cells, on the same premises as RCMP holding cells, Admitting and Discharging facilities, and custodial units.¹⁰

De-commissioning E-Unit will not erase the traumatic history of the WCC, which includes:

- 2012-2017: A prisoner reported he was repeatedly placed in solitary confinement and, on one occasion, dragged naked before a judge for a routine video hearing¹¹
- 2018: A prisoner was left in a cell covered in his own feces for hours, despite recommendations from a nurse to remove him from the unsanitary conditions”¹²
- 2016-2018: A remanded prisoner spent the majority of his time at the Secure Living Unit, a separate confinement unit which the WCC did not have the legal foundation to establish¹³

Impact on Prisoners and their Rights

Pivot’s foremost concern is the impact of Corrections’ operational decision on people who are serving custodial or community sentences at the WCC and ARC.

When the closure of the ARC was initially announced, the spokesperson for Yukon Legal Services Society noted that the slated closure was greatly concerning, as it is used to house vulnerable clients, including people experiencing “homelessness, poverty, trauma, victimization, and disabilities such as FASD.”¹⁴

In the 2018 report *Project Inclusion: Confronting Anti-Homeless and Anti-Drug User Stigma in British Columbia*, Pivot researchers note that *any* incarceration leads to stigma: “beyond the significant harm to the health and security of people cycling in and out of our correctional institutions [...] bouts of incarceration and criminalization drive stigma against people, decreasing their resources to reintegrate into communities.”¹⁵

While the decision to repurpose E-Unit harms everyone, it has a particularly discriminatory impact on Indigenous people. As a result of colonial and genocidal systems, Indigenous people experience disproportionate interaction with the criminal justice system in the Yukon, including incarceration.¹⁶ It would

⁹ Justin Piché, Shanisse Kleuskens & Kevin Walby (2017) “The front and back stages of carceral expansion marketing in Canada,” *Contemporary Justice Review*, 20:1, 26-50, DOI: [10.1080/10282580.2016.1262769](https://doi.org/10.1080/10282580.2016.1262769)

¹⁰ “Yukon Corrections: Adult Custody Policy Manual”, online: http://www.justice.gov.yk.ca/pdf/WCC_D_1_1__Arrest_Processing_Unit_Redacted.pdf

¹¹ “Yukon to place limits on solitary confinement that would be strictest in Canada”, online: <https://www.theglobeandmail.com/canada/article-yukon-to-place-strict-limits-on-solitary-confinement/>

¹² “Whitehorse Correctional Centre left inmate in feces-covered cell in 2018”, online: <https://www.yukon-news.com/news/whitehorse-correctional-centre-left-inmate-in-feces-covered-cell-in-2018/>

¹³ “WCC did not have authority to create secure living unit, judge finds”, online: <https://www.yukon-news.com/news/wcc-did-not-have-authority-to-create-secure-living-unit-judge-finds/>

¹⁴ “Updated: More info on plans for ARC closure needed, say Yukon opposition parties, lawyer”, online: <https://www.yukon-news.com/news/more-info-on-plans-for-arc-closure-needed-say-yukon-opposition-parties-lawyer/>

¹⁵ Darcie Bennett & DJ Larkin (2018) *Project Inclusion: Confronting Anti-Homeless and Anti-Drug User Stigma in British Columbia*, online: https://www.pivotlegal.org/project_inclusion_full at page 81

¹⁶ “Spotlight on Gladue: Challenges, Experiences, and Possibilities in Canada’s Criminal Justice System”, online: <https://www.justice.gc.ca/eng/rp-pr/jr/gladue/p2.html>

reasonably follow that Indigenous people are also disproportionately serving non-custodial sentences, which may include conditions to reside in community correctional facilities.

Furthermore, the incarcerated population in the Yukon is also disproportionately impacted by a high prevalence of mental health issues, substance use, and fetal alcohol spectrum disorders.^{17,18,19}

Further institutionalizing people who are no longer serving custodial sentences undermines their ability to safely reintegrate into broader society and further stigmatizes people who may need additional supports as they transition back into the community. In the Whitehorse Correctional Centre Report, David Loukidelis QC notes the importance of bridging between community and corrections: “it is important for all WCC clients who need them to have continuity of care in mental wellness services, with counselling and addiction services being provided in the community and not just at WCC.”²⁰ Plans to re-institutionalize former prisoners from WCC in a WCC unit as clients of ARC’s community-based corrections programs severs the continuum of supports that people require for success upon release.

There are longstanding concerns about the Yukon Department of Corrections’ ability to meet the needs of criminalized people, including inadequate access to evidence-based rehabilitation programs in the community.²¹ The 2015 Report of the Auditor General found that the Department was not adequately managing community supervision and people serving sentences under community supervision were not receiving adequate community support.²²

Despite attempts to “de-institutionalize” E-Unit, by changing hygiene facilities and furniture, we fear that clients will – reasonably - experience the program as an extension of their incarceration at WCC. Community-based corrections should offer clients opportunities to develop new skills, abilities, and tools for coping in the community, not at a correctional centre.

Under s. 12 of the *Canadian Charter of Rights and Freedoms* WCC and ARC residents are protected against cruel and unusual treatment or punishment. Repurposing a unit and creating rotating lockdowns for other units arguably infringes residents’ constitutional rights.

COVID-19

While the plan to set up a community correctional facility at an existing correctional centre would cause concern at the best of times, in light of COVID-19 and the public health emergency declared by Dr. Brendan Hanley, Yukon’s Chief Medical Officer of Health, we must reiterate that prison is no place for a pandemic. Correctional sites effectively amount to mass congregations, where prisoners cannot self-isolate or socially-

¹⁷ Report of the Auditor General of Canada to the Yukon Legislative Assembly—2015, online: http://publications.gc.ca/collections/collection_2015/bvg-oag/FA3-94-1-2015-eng.pdf

¹⁸ David Loukidelis QC, *Whitehorse Correctional Centre Inspection Report*, online: <http://www.justice.gov.yk.ca/pdf/wcc-inspection-report-david-loukidelis.pdf> at page 7

¹⁹ Kaitlyn McLachlan, Final Report to Yukon Justice: *Estimating the Prevalence of FASD, Mental Health, and Substance Use Problems in the Justice System*, online: <https://yukon.ca/en/fetal-alcohol-spectrum-disorder-yukon-corrections>

²⁰ David Loukidelis QC, *Whitehorse Correctional Centre Inspection Report*, online: <http://www.justice.gov.yk.ca/pdf/wcc-inspection-report-david-loukidelis.pdf> at page 8

²¹ Report of the Auditor General of Canada to the Yukon Legislative Assembly—2015, online: http://publications.gc.ca/collections/collection_2015/bvg-oag/FA3-94-1-2015-eng.pdf at page 13

²² Report of the Auditor General of Canada to the Yukon Legislative Assembly—2015, online: http://publications.gc.ca/collections/collection_2015/bvg-oag/FA3-94-1-2015-eng.pdf at page 11

distance. Across Canada, there have already been deadly outbreaks of COVID-19 in various detention facilities.²³ This is no time to be increasing density at a correctional facility.

Calling for A Just Response

The proposed ARC community correctional facility is at odds with Corrections' duty under the Yukon *Corrections Act, 2009*'s to consider rehabilitation, healing and reintegration²⁴ and the obligation of the Director of Corrections to ensure access to programs and services offered by community-based resources to support rehabilitation and healing and facilitate clients' reintegration into the community.²⁵

JHSLM describes itself as a dynamic, innovative social service organization that strives to create safe, healthy, and inclusive communities for all.²⁶ Overseeing a program that repackages an institutional setting as a rehabilitative environment conflicts with this mandate, and the overall mission and values of the John Howard Society of Canada – specifically “effective, just and humane responses to the causes and consequences of crime.”²⁷

Recommendations

- (1) Yukon Director of Corrections and John Howard Society of the Lower Mainland must suspend the Supervised Residential Housing program within Whitehorse Correctional Centre and immediately identify an appropriate external facility to serve remanded and sentenced individuals who are eligible for release into the community (i.e. temporary absence, work program, voluntary treatment program, probation, judicial interim release or conditional release).
- (2) Yukon Director of Corrections, John Howard Society of the Lower Mainland, and any other non-profit partners must undertake resource and asset mapping in conjunction with all Yukon First Nations to ensure culturally safe and appropriate facilities and programming.
- (3) Yukon Director of Corrections and John Howard Society of the Lower Mainland must operationalize an appropriate and non-stigmatizing residential program, outside of the WCC.
- (4) Yukon Director of Corrections and the John Howard Society of the Lower Mainland must work with criminalized people with lived/living experience of the correctional system to develop residential- and community-based resources, and work with harm reduction partners to ensure prisoners and program clients can access appropriate supplies and programming, to prevent the risk of overdose and other adverse health outcomes associated with substance use.

²³ “Confirmed COVID-19 Cases Linked to Canadian Carceral Institutions (v3.4 revised)”, online: http://tccp-canada.blogspot.com/2020/04/confirmed-covid-19-cases-linked-to_26.html

²⁴ Yukon *Corrections Act*, 2009, SY 2009, c.3 at s. 2(c)

²⁵ Yukon *Corrections Act*, 2009, SY 2009, c.3 at s. 11

²⁶ About John Howard Society, online: <https://johnhowardbc.ca/lower-mainland/about-jhs/>

²⁷ John Howard Society of Canada, online: <https://johnhoward.ca/>

- (5) Yukon Director of Corrections and John Howard Society of the Lower Mainland must utilize a stigma audit²⁸ before finalizing any operational plans, to identify the impact of stigma and prejudice on law, policy-making, and programming.

We urge you to respect residents' rights and work with community partners and people with lived/living experience to chart a better way forward.

Sincerely,

Pivot Legal Society

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²⁸ Darcie Bennett & DJ Larkin (2018) *Project Inclusion: Confronting Anti-Homeless and Anti-Drug User Stigma in British Columbia*, online: https://www.pivotlegal.org/project_inclusion_full at page 124