

May 4, 2020

Honourable Tracy-Anne McPhee  
Minister of Justice  
Yukon Government  
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Whitehorse, YT Y1A 1B2  
Via email: Tracy.McPhee@gov.yk.ca

Allan Lucier  
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Andrea Monteiro  
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Dear Minister McPhee, Assistant Deputy Minister Lucier, Director Monteiro, Ms. Flegel, and Mr. Miller:

**Re: Proposed Transfer of Yukon Adult Resource Centre (ARC) to E-Unit at the Whitehorse Correctional Centre**

We write as lawyers and members of the Yukon bar in response to an article in the Yukon News<sup>1</sup> informing members of our community of the proposal for the John Howard Society of the Lower Mainland to partner with Yukon Corrections to relocate the Yukon ARC to the Whitehorse Correctional Centre (WCC). The point of a halfway house is to transition to the community. Therefore, the plan to move this service into a prison is at odds with that rehabilitative goal.

While the transfer of the ARC to WCC may be understandable if it were a short-term solution, the press release from the Yukon Government (“YG”) described this in a manner that suggests it is a permanent plan for the future. We are writing to raise our concerns and opposition to this proposal.

We are concerned:

1. about the lack of consultation with Yukon First Nations about the plan to situate a community residential facility in a unit at WCC, as well as the lack of consultation with community stakeholders;

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<sup>1</sup> <https://www.yukon-news.com/news/refurbished-whitehorse-jail-unit-john-howard-society-proposed-to-replace-salvation-armys-arc/>

2. that this plan does not accommodate women in the community;
3. about the impact that a decommissioned unit at WCC will have on conditions of confinement for the existing population of prisoners housed at WCC; and, most significantly
4. that a community residential facility should not be located in a prison complex.

## **1. Consultation with Yukon First Nations**

In the Yukon, the majority of people incarcerated at WCC are Yukon First Nations (YFN). YFN make up 62-70%<sup>2</sup> of the population at WCC. The overrepresentation of Indigenous peoples and systemic racism in the criminal justice system is a national and Territorial crisis.

The *Corrections Act* and the Yukon First Nations' Final Agreements mandate meaningful consultation<sup>3</sup> with YFN about future directions of Corrections in the Yukon, yet this has not occurred. Based upon YFN rates of incarceration, the majority of people who require community residential support services in the Territory are YFN. It is essential that YFN perspectives are at the forefront of any plans for healing and reintegration into the community for their citizens. The timeline was short to find an alternative, and meaningful consultation was therefore not possible. Any longer term plan to address the ARC closure must occur only with meaningful consultation.

## **2. Services for Women**

There is no halfway house for women in Yukon. Indigenous women are the most over-incarcerated group in Canada, and the Yukon has not committed to addressing this national crisis.

Women who may require a supervised residence in order to achieve bail have no choice but to remain in WCC since there is no equivalent to the ARC available for them. Many women who are presumed innocent of their charges remain detained on remand solely due to the lack of a suitable bail plan. By contrast, men may request to live at the halfway house while on bail. The same situation presents itself for women on federal parole or Long-Term Offender orders, which often compel the person to live in a supervised halfway house.

This results in women living far away from their families and communities. Many of these women have children who they cannot see for months or years. This is directly contrary to the sentencing goals of rehabilitation and restorative justice, which have been long-recognized by Canadian courts.

It is a violation of human rights legislation and equality under the *Canadian Charter of Rights and Freedoms* to provide services to men and not to women. This also violates Indigenous women's rights to remain connected to their cultures and communities. For them, the inability to maintain cultural connections to their communities and their land can be especially traumatic and harkens back to a time when Canada systematically set out to destroy Indigenous cultures. Rather than providing healing and rehabilitation, the removal of female offenders from the Territory perpetuates a legacy of colonialism, and, in many cases, contributes to the intergenerational trauma that many have already experienced.

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<sup>2</sup> Government of Yukon, "Department of Justice." *Corrections Statistics - Department of Justice- Government of Yukon*, [www.justice.gov.yk.ca/prog/cor/CorrectionsStatistics.html](http://www.justice.gov.yk.ca/prog/cor/CorrectionsStatistics.html)

<sup>3</sup> "Umbrella Final Agreement." *Council of Yukon First Nations*, [cyfn.ca/ufo/](http://cyfn.ca/ufo/)

"consult or consultation means to provide to the party to be consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter; a reasonable period of time in which the party to be consulted may prepare its views on the matter, and an opportunity to present such views to the party obliged to consult; and full and fair consideration by the party obliged to consult of any views presented."

The lack of community residential supports for women is a long-standing issue, representing a serious service gap for this extremely marginalized group of women. If Yukon Justice is working to find new solutions for community-based corrections with the closure of the ARC, women finally must be included.

### **3. Whitehorse Correctional Centre & Impact on Existing Prisoners**

Whitehorse's new jail cost \$75.3 million and can house up to 190 prisoners<sup>4</sup> with an annual \$10.6 million operating budget.<sup>5</sup> WCC was built and designed to be a high security prison. It is best characterized as concrete, cold, and sterile, with secured entry and hallways of locked doors. There are very limited opportunities for prisoners to access fresh air and the outdoors. The fresh air spaces resemble cages. Cells have metal beds with thin mattresses, open toilets and sinks, no closet space and very little room in which to move around. These spaces do not feel safe, warm or rehabilitative. They feel institutional and psychologically oppressive. The current structure conflicts with the values underpinning reconciliation, restorative justice, reintegration, rehabilitation, and healing.<sup>6</sup>

The prison has never been at or near capacity, and it is positive to know that a large super maximum prison is not required. While it is understandable that Yukon Justice sees an opportunity to use such a large building, creating a halfway house inside a prison is not a solution.

Furthermore, there are existing issues at WCC for which E-Unit would provide a more appropriate solution. Historically, Unit E has been used to house other vulnerable members of the population, including sex offenders. Advocates have previously asked that this unit be re-purposed as a second women's unit, to alleviate frequent lockdowns due to population incompatibles. We are concerned that these more restrictive measures will only become worse for all units at WCC with the diminished flexibility to use that unit. Since there is only 1 women's unit, rotational lockdowns for management disproportionately affect women. We have heard reports from our clients in the men's population that they are experiencing more rotational lockdowns with the recent closure of E-Unit.

### **4. Halfway Houses must be Outside of Prisons**

We understand that re-purposing E-Unit may seem like an innovative solution for those in policy who view this as an opportunity to make use of underutilized infrastructure, however we are very concerned that the members of our community who have experienced incarceration will be unlikely to share this view.

Former prisoners are more likely to perceive the E-Unit as a slightly nicer prison unit and a further form of incarceration. For this population, prisons represent physical coercion, including traumatic memories of humiliation through strip-searching, violence, solitary confinement and overall degradation. Prisons are not safe places for many, nor are they places of healing and reconnection with community. In the context of rehabilitation, the perspectives and subjective experiences of prisoners are essential to the success of reintegration measures.

Using WCC as a halfway house would undermine the objectives of community residential programs that make community release options safer and more successful. Prisoners leaving one unit in WCC for a slightly

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<sup>4</sup> (Al Foster/CBC) <http://www.cbc.ca/news/canada/north/new-yukon-jail-to-open-in-february-1.1218451>

<sup>5</sup> "Corrections in Yukon-Department of Justice." Government of Canada, Office of the Auditor General of Canada, 2015 March Report of the Auditor General of Canada, [www.oag-bvg.gc.ca/internet/English/yuk\\_201503\\_e\\_40251.html](http://www.oag-bvg.gc.ca/internet/English/yuk_201503_e_40251.html).

<sup>6</sup> Before the current WCC structure was built, there was a comprehensive consultation about a vision for the new prison. "Moving Forward" (2006) was co-written by the Yukon Government and CYFN.<sup>6</sup> This report is very detailed and extensively focuses on healing.

nicer unit with a different front door will not view this as living in a community; this will be living in a lower security prison.

A halfway house is the last step to rehabilitation, providing previously incarcerated people opportunities to live in the community with support. They are meant to normalize and replicate the experience of living in the community as closely as possible. This transition step allows individuals to model what their experience will be when they are no longer subject to the terms and conditions of parole. In the past for the ARC, clients were accepted from the Federal System and the Territorial System for bail, parole, Long Term Supervision Orders, and DVTO or Wellness Court.

It may not be realistic for all people to be able to return to their communities in the Yukon outside of Whitehorse, but returning to WCC should not be the only option. Best practices would suggest that many smaller homes throughout the Territory - Whitehorse, and non-Whitehorse-based - would be the best solution.

Further, for those of us who are defence lawyers, we question the value of bringing judicial interim release applications for our clients if their destination is E-Unit at WCC. What is the utility of applying for bail, only to have the client move from one of the regular units to E-Unit, rather than into the community? If presented with the option to apply for bail with a condition to live at the new ARC on E-Unit, we anticipate that many of our clients would understandably prefer to remain in their regular units at WCC so that they can continue to receive pre-sentence credit for their time in prison.

### **Recommendations:**

We call upon the Yukon Government:

1. To stop plans for re-purposing WCC as a community residential facility.
2. To implement proper consultation with Yukon First Nations and all stakeholders, particularly with those who will use the resource, and their communities.
3. To review available community spaces in Whitehorse and throughout Yukon communities to identify potential land or existing structures for community residential facilities, in consultation with Yukon First Nations.
4. To finally consider women in plans for community residential programs, as well as culturally appropriate services for Yukon First Nations and services for people with multiple barriers including mental health disabilities.
5. To immediately implement plans for using E-Unit as a facility to alleviate the reliance upon restrictive and punitive population management strategies, such as rotational lockdowns.

Yours truly,

Bruce Warnsby, Tr'ondëk Hwëch'in Citizen

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