

WHITEHORSE CORRECTIONAL CENTRE

David Loukidelis QC

May 2018

*INSPECTION
REPORT*

Whitehorse Correctional Centre Inspection Report

May 14, 2018

Lesley McCullough
Deputy Minister of Justice
Yukon Department of Justice
2134 Second Avenue
Whitehorse
Yukon Y1A 5H6

Dear Lesley McCullough:

Inspection of the Whitehorse Correctional Centre—submission of report

As directed by the Minister of Justice, the Honourable Tracy-Anne McPhee, under section 36 of the *Corrections Act* I have conducted an inspection of the Whitehorse Correctional Centre. This inspection was completed according to the terms of reference issued by the Minister, which became effective January 1, 2018. As the Minister directed, I am submitting to you my report of findings and recommendations flowing from the inspection.

Sincerely

David Loukidelis

David Loukidelis QC
David Loukidelis QC Law Corporation

TABLE OF CONTENTS

GLOSSARY	4
PREFACE	5
INTRODUCTION	7
SUMMARY OF RECOMMENDATIONS	10
CONTEXT FOR THIS REPORT	16
First Nations and the criminal justice system	17
Mental wellness challenges at WCC	21
Existing mental wellness services at WCC	24
ENHANCING MENTAL WELLNESS SERVICES AT WCC	29
Past efforts	29
Enhancing mental wellness screening	31
Creation of an onsite mental wellness unit	31
Improving FASD diagnosis and treatment	34
Integrated case management for all WCC clients	35
Addictions treatment and counselling	36
Ensuring appropriate mental wellness training	37
Time out of doors	38
A new secure forensic unit at Whitehorse Hospital	38
IMPACT OF SEPARATE CONFINEMENT ON MENTAL WELLNESS	40
ASSESSMENT OF SEPARATE CONFINEMENT AT WCC	46
What is separate confinement?	46
Present use of separate confinement at WCC	48
Decline in overall use of separate confinement	48
Explaining the decline in use of separate confinement	49
Separate confinement and behaviour management	50
Existing legislative and policy framework for separate confinement	51
Overview of the legislative framework	51
Segregation at WCC	53
Administrative separate confinement at WCC	53

Whitehorse Correctional Centre Inspection Report

Separate confinement to protect against self-harm	55
Secure supervision placement at WCC	60
Disciplinary separate confinement at WCC (“segregation unit”)	63
Overhauling the separate confinement regime for WCC	65
Observations about WCC’s administration of separate confinement	66
Improving transparency about use of separate confinement	67
Restorative justice and discipline at WCC	68
IMPROVING OUTCOMES FOR FIRST NATIONS INDIVIDUALS	70
Appointment of a First Nations services officers at WCC	72
Mandate for WCC management	73
Community advisory board	74
Culturally relevant programs	76
Access to the care and guidance of elders	78
Access to treatment facilities	79
Time out of doors	79
Culturally-informed correctional officer training	80
Telephone calls	81
<i>Gladue</i> principles and disciplinary sentencing	81
JUSTICE SYSTEM INITIATIVES	83
Continuing to reform conditional release practices	83
Community Wellness Court	86
Residential treatment facilities	88
Data collection, analysis and reporting	88
CONCLUSION	90
APPENDIX A—Inspection terms of reference	91
APPENDIX B—ISO 2016 inspection report findings & recommendations	93

GLOSSARY

The following terms are used in this report:

“client” refers to an individual who is held at WCC;¹

“Corrections Branch” refers to the Corrections Branch of Yukon Justice;

“*Corrections Act*” means the *Corrections Act, 2009*, SY 2009, c 3;

“CSC” means the Correctional Service of Canada;

“FASD” means fetal alcohol spectrum disorder;

“Health and Social Services” means the Department of Health and Social Services, Government of Yukon;

“ISO” means the Investigations and Standards Office, a statutorily-created office within Justice;

“Justice” means the Department of Justice, Government of Yukon.

“Mandela Rules” refers to *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, approved by United Nations General Assembly Resolution GA Resolution 70/175, annex, adopted December 17, 2015. Canada ratified these rules in 1977;

“mental wellness” has the meaning given in the introduction to this report;

“person in charge” is the term used in the *Corrections Act* for the person in charge of WCC, who is known as the Superintendent;

“*Corrections Regulation*” means the *Corrections Regulation*, YOIC 2009/250, made under the *Corrections Act*;

“WCC” means the Whitehorse Correctional Centre.

¹ This term is used instead of “inmate” because a high majority of individuals held at WCC on any given day are remanded in custody pending trial, which means they have not been convicted and are presumed to be not guilty. The British Columbia Corrections Branch also uses this term. Use of this term may be controversial to some, but it is appropriate for this report’s purposes.

PREFACE

This report was commissioned by the Yukon government through terms of reference issued by the Minister of Justice, the Honourable Tracy-Anne McPhee, effective January 1, 2018, to conduct an inspection of the Whitehorse Correctional Centre under section 36 of the Yukon *Corrections Act*. The inspection terms of reference, which are found in Appendix A to this report, instructed me to “inspect the policies and practices of the Whitehorse Correctional Centre which involve, affect or may impact the mental health of clients”, adding that the inspection was to include “the use by the Whitehorse Correctional Centre of separate confinement and segregation of clients with mental illnesses.”

The *Corrections Act* does not define what an “inspection” entails. I have not approached my work as an audit or investigation: the terms of reference exclude any mandate to make findings about the actions or conduct of any individual relating to any individual. I have approached the matter as a review, and this report contains a number of general findings about policies and practices at the Whitehorse Correctional Centre and about indisputably related matters.

I make recommendations for change at the Whitehorse Correctional Centre, but also for broader change. The wider recommendations recognize 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. The impact of the Whitehorse Correctional Centre’s policies and practices on mental wellness simply cannot be viewed in isolation, as if there no wider factors are at play.

Preparation of this report involved a range of activities. It included review of a large volume of statistics, reports, policies and procedures, legislation, academic sources and other materials. These are local, national and international in nature. Another key aspect of the work involved speaking with dozens of individuals from across Yukon and outside Yukon about the issues addressed in this report. I spoke with representatives of many First Nations governments, Yukon government officials, public servants elsewhere in Canada, and many Yukon community organisations and advocacy groups.

Most important, I spoke with many current and former clients of WCC, who willingly shared their experiences with me and contributed enormously to my work. Their intelligent and thoughtful stories gave me a much richer and clearer picture than I could otherwise have hoped for. They readily shared their often very painful life experiences, which moved me greatly. I would honour their contributions by name, but, for obvious reasons, promised them confidentiality (as I did for others with whom I spoke).

Whitehorse Correctional Centre Inspection Report

I am very grateful to everyone who assisted my work. The Yukon government was open and supportive, notably the Minister of Justice and the Ministry's executive. All Yukon First Nations governments I was able to speak with were equally supportive and open, as were the community organisations I spoke with.

Although I discuss it further below, one aspect of this report's preparation deserves special mention here. This is the two-day conference, Exploring Justice: Our Way, that the Council of Yukon First Nations organized and hosted. This was a vitally important opportunity for me to hear from, to speak with, dozens of First Nations individuals and First Nations representatives from all over Yukon over the course of two very full and rewarding days. The sharing of traditional justice perspectives and personal testimony greatly enriched my understanding of the experience of First Nations individuals and First Nations communities with the criminal justice system. I am grateful to the CYFN's leadership for organizing this event and to the CYFN's staff for their excellent work.

It is also important to assure everyone with whom I spoke over the course of this report's preparation that I have listened carefully and tried hard to incorporate everyone's knowledge and perspectives in this report. It is not possible to explicitly mention all of their knowledge or all perspectives in relation to each topic covered. Nor is it possible to state all of the dozens of recommendations observers urged me to make. I hope they will understand that their perspectives have been valuable, that I listened, and that their valuable contributions underpin this report.

It is important to underscore that every Corrections Branch official I dealt with, including the management and staff of the Whitehorse Correctional Centre, impressed me with their dedication and good faith. I give full credit to them for being open and cooperative throughout, including by providing all of the information I requested.

This report's observations or recommendations call for change in a number of areas, but this is not to be interpreted as being implicitly critical of anyone. All government institutions and programs must be reviewed periodically. This can identify needed improvements, and improvements are often driven by circumstances or evolving knowledge. Consistent with this, a key theme of this report is that improved, and better-targeted, resources will help Corrections Branch staff provide the enhanced programs and services that the Whitehorse Correctional Centre's clients need.

The views expressed in this report are mine alone and any errors or omissions are solely my responsibility.

INTRODUCTION

Early in the inspection it became obvious that, as is true for other correctional facilities in Canada, there is a very high incidence of mental illness, FASD and trauma among individuals held at WCC. This true for individuals held on remand and those who have been sentenced. There is also a very high incidence of alcoholism and other addictions. Individuals affected by one or more of these challenges are vulnerable and may have difficulty coping with incarceration. These challenges can affect behaviour, notably the ability to comply with rules. This has implications for when and how separate confinement is used. As this report shows, change is needed in the use of separate confinement in recognition of the fact that WCC deals with individuals who suffer from sometimes significant mental wellness challenges.

This report uses the term “mental wellness”, not “mental health” or “mental illness”. This is consistent with the definition adopted in *Forward Together—Yukon Mental Wellness Strategy 2016-2026*: “The term ‘mental wellness’ is inclusive of health, mental health, mental disorders, trauma, mental health problems, mental distress and substance use, substance misuse, and substance abuse issues”.² Brain injury and non-specific cognitive delay are also sources of mental wellness concerns. As the *Yukon Mental Wellness Strategy* notes, the World Health Organization “defines mental health as a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community”.³ Consistent with these definitions, this report treats individual trauma, whether it originates in the residential school experience or in related family trauma, as a mental wellness concern.

This understanding of mental wellness is well-recognized by many expert sources, as this passage illustrates:

Mental wellness is a balance of mental, physical, spiritual, and emotional. This balance is enriched as individuals have: purpose in their daily lives whether it is through education, employment, care giving activities, or cultural ways of being and doing; hope for their future and those of the families that is grounded in a sense of identity, unique First Nations values, and having a belief in spirit; a sense of belonging and connectedness within their families, to community, and to culture; and finally a sense of meaning and an understanding of how their lives and those of their families and communities are part of creation and a rich history.⁴

² *Forward Together—Yukon Mental Wellness Strategy 2016-2026* [Yukon Mental Wellness Strategy], at page iv. <http://www.hss.gov.yk.ca/pdf/mentalwellnesstrategy.pdf>.

³ *Ibid.*

⁴ Assembly of First Nations and Health Canada, *First Nations Mental Wellness Continuum Framework* (2015), at page 4. http://www.thunderbirdpf.org/wp-content/uploads/2015/01/24-14-1273-FN-Mental-Wellness-Framework-EN05_low.pdf. A very similar understanding of what mental wellness means is used in B. Perrin and R. Audas, *Report Card on the Criminal Justice System*, MacDonald Laurier Institute (2018) [*Report Card on the Criminal Justice System*]. https://macdonaldlaurier.ca/files/pdf/MLI_JusticeReportCard_Final_web2.pdf.

These considerations apply to all individuals, but they are especially noteworthy given the fact that First Nations individuals are greatly over-represented in the WCC population on any given day. The situation is similar across Canada. The challenges that First Nations individuals continue to face cannot be ignored. Many of these challenges play a role in mental wellness and substance abuse. These concerns make it even more important that, like all others at WCC, First Nations individuals should have timely and meaningful access to mental wellness services and supports. Linked to this is a need for First Nations individuals at WCC to receive better culturally-appropriate programming, as well as meaningful access to the guidance of elders, traditional learning and spiritual practices.

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. This can undoubtedly be challenging for a number of reasons, including the multi-agency, public-private model of service delivery that exists in Yukon like elsewhere. Coordination and collaboration in service delivery are difficult to plan and implement across boundaries of responsibility. The fact that the average stay at WCC is relatively brief does not, however, negate the need to take a broader approach to treating mental wellness and addictions.

The need for an enhanced integrated approach is underscored by the fact that a material number of WCC clients are in and out of the facility more than once, some of them regularly. There should ideally be no discernible gap between services available to them at WCC and those available in the community. Integrated services are already available, to be sure, but improvements are needed in the extent, nature and coordination of services. This is necessary to help individuals recover, reduce recidivism and improve communities. Improving integration of care can also help ensure that all individuals, not just those who come to WCC more than once, have well-resourced care in the community.

There is no quick fix to these enduring challenges. The justice system is only one part of a complex system that involves many independent players. Many of the system's participants enjoy independence from others. Experience shows that it can be very difficult to create timely and meaningful collaboration in this context. But the scale and scope of the mental wellness needs of individuals who come into contact with the justice system, including at WCC, mean that action is called for.

All participants are urged to work hard collaboratively to implement solutions. All relevant agencies of the Yukon government, the courts, the prosecution service, the criminal defence bar and the health care system need to build on existing collaborative efforts in order to effect change. The vital role that First Nations governments must play in this collaborative enterprise cannot be overstated. Community organisations and service providers must also be involved.

Whitehorse Correctional Centre Inspection Report

This is necessary if Yukon hopes to identify and implement meaningful changes in how individuals with FASD or other mental wellness challenges are dealt with in the justice system overall, not just at WCC. Serious offences require serious responses, but too many individuals who become enmeshed in the criminal justice system could be more effectively, and more humanely, dealt with through diversion and alternative measures, and with health care and other services supporting their recovery and reducing the risk of their re-offending. Commendable initiatives already exist, notably the Community Wellness Court and Domestic Violence Treatment Option Court, but more is needed.

SUMMARY OF RECOMMENDATIONS

1. The Corrections Branch should, collaborating with Health and Social Services, expeditiously plan and implement enhanced on-site and in-community mental wellness services and supports for WCC clients and former clients. This should include creation of an on-site mental wellness coordinator position.
2. Noting the Corrections Branch's current plan to enhance mental wellness services for WCC clients, it is recommended that, in consultation with mental wellness professionals, the branch should review its mental wellness screening process, and who delivers it, to ensure that appropriate in-depth mental wellness screening occurs on admission to WCC, administered by a registered psychologist.
3. The Corrections Branch should create a mental wellness unit at WCC along the lines of Nova Scotia's transitional day room program.
4. The FASD strategy for corrections in Yukon should, given the incidence of FASD-affected individuals at WCC and the behavioural implications of FASD, ensure that appropriate FASD-related services and supports are provided to WCC clients in a consistent, professionally-informed, manner. This should include training for all correctional officers in how to work with individuals with diagnosed or suspected FASD.
5. Given the high incidence of FASD at WCC, the Corrections Branch should implement a program for managing the behavioural difficulties that FASD clients exhibit, including in relation to use of separate confinement for disciplinary purposes. The program should be informed by the FASD in Yukon Corrections strategy as it moves forward and be informed by best healthcare practice.
6. The government should direct Justice and Health and Social Services to work with the Corrections Branch to conduct a comprehensive review of the approach to client case management, with case management being available to all clients, both sentenced and remanded. The goal should be to design, fund and implement, at the earliest opportunity, a modern, comprehensive, multi-agency program for integrated case management that meets the needs of clients while at WCC and to transition them back into their communities, with special regard to mental health and addictions services for those who need them.
7. The Corrections Branch, both WCC and probation services, should work with Health and Social Services, and other stakeholders, to continue to enhance the addictions treatment services delivered to WCC clients, both at WCC and in communities. Programs and services

at WCC should be provided to both sentenced and remanded clients. The government should assess the need for additional residential healing and treatment facilities in Yukon.

8. The Corrections Branch should review the present availability of Alcoholics Anonymous and Narcotics Anonymous groups at the facility to ensure that, with the participation of community organisations, these peer support groups are regularly available to all clients who wish to participate.
9. WCC should review its current mental wellness training for correctional officers and enhance it as necessary in light of training approaches elsewhere.
10. WCC should, subject to supervision and other appropriate security measures, permit clients who wish to do so to spend their outdoor time in the WCC yard and not their unit's fresh air yard.
11. The government should continue to work toward establishing a new secure forensic unit at the Whitehorse General Hospital as soon as practicable. The government should at this time remove WCC's statutory designation as a hospital, without waiting for creation of a new secure forensic unit at the Whitehorse General Hospital.
12. WCC should review its rules of conduct for WCC clients, with a view to ensuring they are truly necessary in the interests of safety and proper order, are communicated clearly in plain language, and are explained to clients who require clarification.
13. The legislative amendments recommended in this report should include a definition of separate confinement, whether called disciplinary, administrative or secure supervision placement, as confinement of an individual apart from others for more than 18 hours a day.
14. The Corrections Act and Corrections Regulation should be amended to provide a clearer, more comprehensive, framework to govern use of separate confinement at WCC. The amendments need to define what "separate confinement" is, when it may be used, and how it is regulated. This is necessary even if the substantive changes recommended in this report are not implemented.
15. Even if the recommended overhaul of the separate confinement scheme does not proceed, the Corrections Branch should amend the Corrections Regulation, and Corrections Branch policies and standing orders, to ensure consistency in the grounds for administrative separate confinement, notably respecting the nature and degree of risk that must be present before administrative separate confinement may be used.

16. Because separate confinement can cause or exacerbate mental illness concerns, the Corrections Regulation and Corrections Branch policies should be amended to remove mental illness as a ground for placing an individual in any form of separate confinement. The Corrections Branch should, pending those amendments, immediately undertake not to place anyone in any form of separate confinement on this ground.
17. Very short-term administrative separate confinement to protect an individual, including a mentally-ill individual, from a risk of suicide or other serious self-harm should be permitted, but it should be used only as a last resort where other measures, notably mental health interventions, are not reasonably likely to keep the inmate safe from imminent self-harm, notably suicide. Even in these cases, separate confinement on this basis should not exceed a maximum of 48 to 72 hours, with the choice between these two limits to be made in consultation with mental health professionals who have expertise in separate confinement and mental wellness.
18. The Corrections Regulation should be amended to eliminate risks to the “management” or “operation” of WCC as grounds for use of non-disciplinary administrative separate confinement. Administrative separate confinement should be limited to real and imminent safety needs grounded in clear evidence. Confinement on this ground should be for no longer than is necessary to remove or sufficiently mitigate the threat. At the very least, the existing grounds, set out in the Corrections Regulation and WCC policy, need clarification.
19. The Corrections Regulation and Corrections Branch policy should be amended to provide an expeditious and independent external review process for decisions to place individuals in both short- and long-term administrative separate confinement, with reviews being completed as soon as practicable, with a 24-hour turnaround being optimal.
20. The Corrections Regulation should be amended to prohibit use of any kind of separate confinement for more than 15 days in any one-year period, running from the date on which an individual is first placed in separate confinement. Pending this change, the Corrections Branch should undertake that no individual will ever be held in separate confinement of any kind other than in compliance with this recommendation.
21. Consistent with the above recommendation regarding administrative separate confinement, if secure supervision placement is to continue, the Corrections Branch should provide for independent external review of decisions to place someone in secure supervision placement. A maximum 24-hour turnaround for review decisions is optimal. The Corrections Branch should implement this change, preferably, through amendments to the Corrections Regulation.

22. Consistent with the above recommendations, “jeopardizing the management, operation or security” of WCC, or being a risk to the management, operation or security” of WCC, should not be a ground for placement in segregation after a disciplinary conviction. Disciplinary separate confinement should be reserved for more serious offences, being those involving actual harm to others or a real risk of it. If this recommendation is not accepted, it would be desirable to clarify what is intended by “jeopardizing the management, operation or security” of WCC and to restrict its use as a sanction to the greatest extent possible.
23. The legislative framework for separate confinement should be amended to implement the recommendations in this report.
24. All ISO inspection and investigation reports, and government’s responses and progress tracking reports, should be published in a timely manner.
25. Government should consider whether ISO’s reporting lines should be changed, to provide clearer assurance of its independence. Government also could consider, in consultation with the Ombudsman, examining how her office and ISO might work together to coordinate their functions and activities.
26. The Corrections Branch should enhance its reporting on the use of separate confinement by publishing statistics and analyses at least quarterly, in the interests of accountability, public understanding and trust.
27. The Corrections Branch should direct WCC’s superintendent to support the work of the First Nations services officers and to report on that work, with the specific duties including those recommended in this report.
28. The Corrections Branch should create policies and procedures requiring WCC to take a restorative justice approach to disciplinary offences before disciplinary charges are laid against a WCC client. These should acknowledge that both offender and victim must be willing to participate in a restorative justice process. The process should also involve, where possible, use of a sentencing circle participated in by all willing residents of the living unit where the incident occurred. One-on-one resolution should be used where a sentencing circle is not possible (e.g., because the offender and victim do not wish it or because others decline to participate). This process should also be applied where the client has broken a WCC rule, such that there is no individual victim. Formal disciplinary charges should be laid, or proceed to hearing, only where reasonable efforts to resolve the matter in this way have failed.

29. The Corrections Branch should appoint a full-time First Nations services officer for WCC to help improve outcomes for First Nations individuals at WCC, whose specific duties should include those recommended in this report.
30. The Minister should refresh the mandate of WCC's community advisory board, giving it clear direction to review and make recommendations on programs that WCC operates and on new programs. The board should be able to retain experts as necessary for its work from time to time. The Minister also should ensure that the Corrections Branch responds to the board's recommendations, and reports on progress in implementing them. The Minister should either establish a new First Nations advisory board for WCC or enhance First Nations representation on the existing board, including to ensure good representation of First Nations from across Yukon. All advisory board reports and recommendations should be published in a timely way, as should Corrections Branch responses and progress reporting.
31. The Corrections Branch should redouble its efforts to offer improved culturally-appropriate programs and services at WCC. The focus should be on better supporting spiritual renewal and healing, and connection with traditional knowledge and practices, including to improve mental wellness outcomes. Programs that exist or are in development in other jurisdictions should be considered and adapted to Yukon needs. The branch should consult with WCC clients, elders and First Nations. This work should be supported by the First Nations services officer for WCC. This recommendation should implement improvements in access to elders and to spiritual practices such as smudging and sweats. This should include serious consideration of re-purposing unused portions of WCC for First Nations programs and supports, including smudging and sweat facilities.
32. The Corrections Branch should, with the support of First Nations, work to increase the complement of elders who visit WCC and ensure that they are able to do so as often as needed to meet the needs of WCC clients who wish to see them.
33. As part of the efforts recommended below to enhance and expand a whole-of-system approach to helping suited individuals to resolve such challenges, the government should examine the feasibility of building further treatment centres such as the Jackson Lake facility and program, operated by Kwanlin Dun First Nation. It should also examine the feasibility of re-purposing unused portions of WCC, to provide First Nations programs and supports, including smudging and sweat facilities.
34. The Corrections Branch should ensure that WCC staff, notably correctional officers, have adequate training in First Nations matters, and also training in trauma-informed approaches to corrections clients.

35. The Corrections Branch should cease charging clients for local or long-distance calls, in order to enhance ongoing connections between clients, their families and their communities.
36. The Corrections Branch should take measures to ensure that, if a First Nations individual at WCC is to be sentenced for a disciplinary offence, any existing *Gladue* report that is available is used in the sentencing. If one is not available, the Corrections Branch should be required to provide the adjudicator with information sufficient to enable the adjudicator to consider *Gladue* factors in fashioning an appropriate sentence. The Corrections Branch also should ensure that disciplinary adjudicators are provided with training and information necessary to enable them to apply *Gladue* factors in disciplinary proceedings.
37. The government should immediately initiate properly-resourced efforts by the Bail Reform Subcommittee, in consultation with First Nations governments and others, to study the use of release conditions and make recommendations for alternatives to abstention conditions that are consistent with real public safety needs.
38. The government should, working with all relevant parties, ensure that the resources available to the Community Wellness Court are adequate, including with a view to ensuring stable housing and expert supports are available to all participating individuals.
39. The government should undertake an urgent expert assessment of the need for more residential treatment facilities such as Jackson Lake and create such facilities as are shown to be necessary.
40. The government should design and implement appropriate program data collection systems, as well as supporting analytical measures, to support program planning and evaluation, and evidence-based public policy decisions. The government should also make the raw data and related analyses publicly-available, in the interests of transparency.

CONTEXT FOR THIS REPORT

This part of the report describes contextual considerations for the later findings about mental wellness challenges at WCC and recommendations for improvements. This is necessary because it is impossible to assess WCC's policies and practices that involve, affect or may impact the mental wellness of its clients without recognizing that WCC plays only a small role in the overall criminal justice system, where mental wellness issues loom large. It is also necessary to offer an overview of First Nations experiences with the criminal justice system, including because of the mental wellness challenges associated with those experiences.

No individual, First Nations or non-First Nations, is held at WCC unless a court orders it, whether the individual is remanded while awaiting trial or a court has sentenced the individual to incarceration. In sending individuals to WCC, the courts are in turn playing only one role in the system. The police and prosecution services also play a role. Each of these system participants has a degree of independence from the others. None of them can directly affect larger social conditions in any direct way, yet social conditions influence the challenges that each of these system participants, including WCC, must grapple with.

As discussed below, it is safe to conclude that a high proportion of individuals held at WCC suffer from one form or another of mental wellness challenge, and many suffer from more than one mental wellness challenge. There is clearly a high incidence of co-morbidity with alcoholism and other addictions. These phenomena are also experienced in other Canadian correctional systems, which have experienced significant increases in these challenges in recent decades. These same challenges exist for police, prosecutors and judges.

The causes are debatable, but many knowledgeable observers have drawn a link between the closure of mental health facilities late in the last century and the rise in mental wellness issues within correctional systems. A recent report argues that “the overrepresentation of persons with mental health issues among those who have contact with the police and justice system has trended upward since the deinstitutionalization of mental health treatment and hospitals”.⁵ Deinstitutionalization was based on the idea that individuals with mental illness would be served better in the community.

However, “it is well documented that since the closure of institutions serving individuals with mental illness and developmental disabilities, many unintended consequences arose [*sic*], including difficulty accessing mental health treatment, a shortage of supportive housing units,

⁵ John Howard Society of Ontario, *Unlocking Change: Decriminalizing Mental Health Issues in Ontario* (2015), at page 7.
<http://www.johnhoward.on.ca/wp-content/uploads/2015/07/Unlocking-Change-Final-August-2015.pdf>.

and the inadequate resourcing of community-based services.”⁶ As a consequence, “the criminal justice system has become a repository for individuals who lack adequate resources to cope with living in the community”, leading to “criminalization of mental health issues “.⁷

Criminal justice system participants have recognized this trend in recent years. There are increasing calls for change, and actions have been taken. One response, which is seen in Yukon, is creation of specialized courts such as the Community Wellness Court. Some jurisdictions have enhanced mental health crisis services and other community-based services, with improved case management approaches also being implemented. Yet the reality, according to some observers, is that the criminal justice system is now a key point of access for mental health treatment and supports.⁸ Observers could be excused for thinking this is the inverse of how society ought to deal with our mentally unwell citizens.

The observations in this report about mental wellness services and supports at WCC must be assessed in this wider context of the intersection between mental wellness and the criminal justice system. To a great degree, WCC is expected to play a role that it would not be expected to fulfil in a perfect world. Perfection is of course not attainable, but this report’s recommendations aim to improve the situation for individuals at WCC and in their communities. The recommendations also recognize the need for all Yukon criminal justice system actors to work together to improve mental wellness services and outcomes for individuals and their communities.

The following passages set the stage for the findings and recommendations about mental wellness at WCC. An overview of the experiences of Yukon First Nations with the justice system is followed by an overview of mental wellness challenges and the justice system.

First Nations and the criminal justice system

The over-representation of First Nations individuals at WCC is striking. For the year ending March 31, 2018, the Corrections Branch advised, First Nations individuals made up 62% of all admissions to WCC, while the proportion of First Nations residents of Yukon is about 23%. As a recent study notes:

Yukon represents a unique tapestry of culture relative to the rest of Canada, as there is a much higher proportion of First Nations residents (23.1%) within Yukon’s population, compared to the overall Canadian population (4.3%) (Statistics Canada, 2011). Research has long established the overrepresentation of First Nations persons in correctional

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

settings across Canada (Royal Commission on Aboriginal Peoples, 1996; Tait, 2003; Waldram, Herring, & Young, 2006). This is also the case in Yukon, where between two-thirds and three-quarters of adults incarcerated at the Whitehorse Correctional Centre, and approximately half of probation admissions in the territory, are identified as First Nations/First Nations.⁹

Essentially everyone interviewed for this report was very clear that a high proportion of WCC clients of *all* backgrounds experience mental wellness challenges of varying severity. They also were very clear, however, that many First Nations individuals held at WCC are deeply affected by the inter-generational trauma of residential schools and other adverse experiences affecting First Nations.

Numerous observers expressed this view. WCC clients present and past, First Nations governments, Yukon government officials, health care professionals and community organisations attested to this. They testified about the prevalence among WCC clients, including First Nations clients, of PTSD, FASD, psychological trauma, depression and other mental illness, and the prevalence of addictions. The *Yukon Mental Wellness Strategy* acknowledges this:

Mental health and substance use issues continue to be a priority concern for many First Nations communities. In recent years, there has been growing recognition and acknowledgment of the legacy and effect of colonization and residential schools on First Nations families and communities. Intergenerational trauma is seen in rates of substance abuse and violence that are greater among First Nations people than in other population in Canada (Health Canada, 2015).¹⁰

This reality was at the forefront at Exploring Justice: Our Way. Speaker after speaker from First Nations across Yukon and elsewhere spoke about it. Several courageous individuals shared their suffering publicly, providing poignant, moving testimony.

This is not just a Yukon problem. Data from the federal corrections system are consistent with the experience of those who have been in WCC or who have direct knowledge of the

⁹ K. McLachlan, *Fetal Alcohol Spectrum Disorder in Yukon Corrections*, Yukon Justice, 2017 [*FASD in Yukon Corrections*], at page 12. The over-representation of First Nations individual in Canadian correctional facilities has long been recognized in commission reports. These include, to cite a few, Canadian Corrections Association, *Indians and the Law* (1967), Law Reform Commission of Canada, *The Native Offender and the Law* (1974), Public Inquiry into the Administration of Justice and Aboriginal People, *Report of the Aboriginal Justice Inquiry of Manitoba*, vol. 1, *The Justice System and Aboriginal People* (1991); Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide* (1996). The Supreme Court of Canada has taken notice of this: *R v Gladue*, [1999] 1 SCR 688, 1999 CanLII 679 (SCC) [*Gladue*].

¹⁰ *Yukon Mental Wellness Strategy*, at page 5.

challenges that First Nations face. The Correctional Investigator of Canada's 2014-2015 and 2016-2017 annual reports also attest to this.¹¹

The courts have also repeatedly spoken about this. As the Supreme Court of Canada has recognized:

The unbalanced ratio of imprisonment for aboriginal offenders flows from a number of sources, including poverty, substance abuse, lack of education, and the lack of employment opportunities for aboriginal people. It arises also from bias against aboriginal people and from an unfortunate institutional approach that is more inclined to refuse bail and to impose more and longer prison terms for aboriginal offenders.¹²

It must be remembered that, as the Truth and Reconciliation Commission has stated, a key principle of reconciliation is the need to take

... constructive action on addressing the ongoing legacies of colonialism that have had destructive impacts on Aboriginal peoples' education, cultures and languages, health, child welfare, the administration of justice, and economic opportunities and prosperity."¹³

The findings and recommendations in this report are framed with this principle in mind, and are also informed by this principle of reconciliation:

Supporting Aboriginal peoples' cultural revitalization and integrating First Nations knowledge systems, oral histories, laws, protocols, and connections to the land into the reconciliation process are essential.¹⁴

Another important guide is the Truth and Reconciliation Commission's call for "territorial and other governments to work with First Nations communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused."¹⁵

¹¹ *Annual Report of the Office of the Correctional Investigator of Canada 2014-2015* <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20142015-eng.pdf>. *Annual Report of the Office of the Correctional Investigator of Canada 2016-2017* <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf>. A 2015 report by the same office disclosed that, between 2005 and 2015, the number of federally-incarcerated First Nations population increased by 52.4% (from 2,296 to 3,500), while the overall federally-incarcerated population increased by 13.6%. *Administrative Segregation in Federal Corrections 10 Year Trends*.<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20150528-eng.aspx>. The increase in the federally-incarcerated black population was 77.5%.

¹² *Gladue*, at paragraph 65.

¹³ Truth and Reconciliation Commission of Canada, *What we have learned: principles of truth and reconciliation* (2015) at page 4. http://nctr.ca/assets/reports/Final%20Reports/Principles_English_Web.pdf.

¹⁴ *Ibid.*, at page 5.

¹⁵ Truth and Reconciliation Commission of Canada, *Calls for Action* (2015), at page 4. http://nctr.ca/assets/reports/Calls_to_Action_English2.pdf.

This report's recommendations relating to mental wellness services and supports apply to all WCC clients who face mental wellness challenges. However, the inter-generational impact of residential schools and other adverse experiences affecting First Nations must be kept front and centre in future.

The Corrections Branch has made efforts in this area, but more needs to be done to support First Nations clients at WCC and in the criminal justice system as a whole. Yukon should, and can be, at the forefront of the way forward for corrections reform. These efforts must be guided by the principles and calls to action established by the Truth and Reconciliation Commission, in partnership with Yukon First Nations.

Before moving on, it is important to acknowledge the valuable contribution made to this report by Exploring Justice: Our Way, the two-day conference that the Council of Yukon First Nations organized and hosted this April. A key goal was to enable First Nations representatives and First Nations individuals from throughout Yukon to share their knowledge and experience. While not exhaustive, the following points highlight key perspectives shared at Exploring Justice: Our Way:

- Every First Nations individual in Canada is negatively affected by the residential school experience, even those who did not attend a residential school. The associated inter-generational trauma is pervasive and severe.
- Principles of reconciliation must motivate how WCC treats First Nations individuals held there.
- Alternatives to separate confinement are needed. Restorative justice approaches, including circle sentencing, should be used wherever possible, to avoid use of separate confinement and to improve life at WCC. A pilot program for restorative justice is needed in the short term.
- There is a need for a revamped discipline committee within WCC, to deal with disciplinary issues specifically and generally.
- Meaningful consultation with, and involvement of, First Nations is needed at WCC. A revamped advisory body is needed to achieve this, and the Corrections Branch must be committed to its success.
- Elders were clear that greater access for elders to WCC clients is needed, and that the elders committee needs to be enhanced and given more say about WCC's operation.
- A sizeable number of WCC clients are young people and more needs to be done to work with them, at WCC and in their communities, to help them improve their lives. Traditional learning and law also need to be taught.
- WCC offers arts and crafts programs, but there are insufficient spiritual and cultural programs and supports. More is needed in these areas.
- Approaches taken at the Fraser Valley Institution for Women, a federal correctional facility, should be adapted at WCC. These include: meaningful First Nations programming,

Whitehorse Correctional Centre Inspection Report

spiritual care using traditional ceremonies and sacred objects, aboriginal liaison officers (who work with elders at the facility), re-integration plans, and culturally-appropriate training of facility staff.

- Healing villages such as those operated by CSC are needed in Yukon.
- Wherever possible, WCC clients should be given the support of families and peers to help them integrate back into their communities.
- The *Yukon Mental Wellness Strategy* must address the needs of those involved in the justice system.

Mental wellness challenges at WCC

Although incoming clients at WCC are screened for mental health issues, the Corrections Branch does not collect data on the variety and incidence of mental wellness challenges at WCC.¹⁶ Again, the clear consensus of those interviewed for this report is that of mental wellness challenges are prevalent at WCC, with high numbers of individuals facing multiple challenges. The challenges, again, can include mental disorders (diagnosed or suspected), PTSD, trauma, depression, cognitive delays (including due to brain injury), substance abuse and addictions.

Although the types and incidence of mental wellness challenges vary across facilities, it is reasonable to suggest that they are likely to be at least somewhat consistent with the federal experience. In 2015, the Correctional Investigator of Canada reported on the prevalence of various mental health disorders in the overall federal prison population:

Mood disorders	16.9%
Primary psychotic disorders	3.3%
Alcohol or substance use disorders	49.6%
Anxiety disorders	29.5%
Borderline personality disorder	15.9%
Antisocial personality disorder	44.1%
Pathological gambling	5.9% ¹⁷

The particular challenge of FASD as it affects WCC clients has already been mentioned. It is beyond doubt that FASD is a significant mental wellness issue at WCC. Observers noted that a large number of WCC clients have either been diagnosed with FASD or are strongly

¹⁶ Although WCC clients are screened for mental health issues during the intake process statistics on the incidence of mental health disorders or wellness challenges are not compiled. The Corrections Branch has advised that it is working to acquire the capacity to do so. This should be done as soon as practicable, including to provide the evidence needed to properly support mental health services.

¹⁷ *Annual Report of the Office of the Correctional Investigator of Canada 2014-2015*, at page 12.

suspected to suffer from it to some degree.¹⁸ *FASD in Yukon Corrections* concludes that 17.5% of participants in that study met the criteria for FASD, noting that this is a “high rate” of FASD—while fully 25% were confirmed to have been subjected to prenatal alcohol exposure.¹⁹

FASD in Yukon Corrections describes in stark terms the impact that FASD has on an individual’s ability to function, and the high rates of co-morbidity with mental health problems:

Individuals with FASD experience a range of neurocognitive deficits that include problems with overall cognition, attention, academic functioning, executive functioning, memory, communication and language. Though, individual profiles of deficits and strengths vary between affected persons. Difficulties related to the regulation of behaviour and emotion are also frequently observed, including challenges related to adaptive functioning. Comorbid mental health problems occur at high rates, with estimates ranging as high as 90% in some samples. Further compounding these difficulties, individuals with FASD experience additional pre and postnatal adversity at exceptionally high rates, including other pregnancy related complications such as prematurity and substance exposure. Later as children, frequent disruptions in caregiver placements, foster care system involvement, school failure, and criminal justice system involvement are among the myriad of adversities documented at high rates in this population. While research focusing on the experiences and outcomes of adults with FASD is limited, research suggests that individuals with the disability also experience problems in employment and independent living.²⁰

This speaks to the immense challenges many FASD-affected individuals can face in life. It also articulates some key challenges for WCC in its approach to dealing with of individuals at WCC who, on any given day, are affected by FASD.²¹

FASD is not, again, the only type of mental wellness challenge that individuals at WCC may face. The range of mental wellness challenges raises the question of whether there is a causal connection between such mental wellness challenges and behaviour that leads to

¹⁸ Clinical diagnosis of FASD involves steps that are challenging to take in the context of WCC, including because of the relatively short stays of both remanded and sentenced clients.

¹⁹ *FASD in Yukon Corrections* noted that 69.5% of clients studied did not have FASD.

²⁰ *FASD in Yukon Corrections*, page 14 (citations omitted). This is consistent with the situation in British Columbia, where approximately 60% of BC Corrections clients have a formal diagnosis of a mental disorder, a substance use disorder or concurrent mental and substance use disorders. There is no reason to think that the situation at WCC differs, and interviews suggest it is more pronounced.

²¹ In addition to *FASD in Yukon Corrections*, Appendix C to the 2015 report, *Yukon FASD Diagnosis and Case Management in Adult Corrections Population*, speaks to FASD training that could be provided to those who deal with individuals who have FASD. This appendix could be used to guide improved training for WCC staff and others who work with FASD clients who are or have been WCC clients. It is noted here that that this report also includes a copy of the 2015 protocol between Yukon Justice and Health and Social Services that is discussed below.

Yukon FASD Diagnosis and Case Management in Adult Corrections Population:
<http://www.hss.gov.yk.ca/pdf/fasddiagnosesmanagementreport2015.pdf>.

incarceration at WCC. They might reasonably suggest that appropriate mental health care, including addiction recovery services, could reduce incarceration rates and recidivism. Individuals' lives can be improved through appropriate and successful care. Care is in the public interest because communities are better off if their members receive appropriate and successful care, since everyone in a community is affected by offending behaviours that are linked to poor mental wellness and addictions.

The need to reform the criminal justice system in recognition of the diverse factors that cause individuals to become caught up in the system is now broadly acknowledged. The federal government recently consulted with governments, organisations and stakeholders across the country on possible changes to the system. As the recently-published outcome of that effort, *What We Heard—Transforming Canada's Criminal Justice System*, acknowledges:

Almost all participants agreed that the criminal justice system needs to better address mental illness and addictions. They said that roughly 70 percent of those who come in contact with the system have a mental health or substance abuse problem. Often people have other issues that make them more vulnerable, such as homelessness, poverty, or previous trauma. Sometimes, these challenges can translate into anti-social or criminal behaviour.

Participants identified the high number of accused in this group as one of the greatest issues facing the system. They also felt this area had the most potential to offer significant change. They noted that keeping justice, health and social services separate was considerably impeding effective responses.

Further, participants felt that the usual approach to criminal justice would continue to have a negative effect on the system's efficiency, on individual results, and on public safety. Therefore, they called for a very different approach to the mainstream justice system.²²

Existing mental wellness services at WCC

This raises the issue of whether the mental wellness services now available to WCC clients is sufficient to meet the challenges presented. Assessment of the services now offered through WCC leads to the conclusion that more is needed, and that the services provided need to be complemented by improved services and supports in the community. A more integrated and coordinated approach is needed.

As mentioned earlier, all WCC clients are screened for mental health issues as part of the intake process. The WCC nursing admission assessment form involves asking the client, on a yes-or-no basis, whether the client has experienced: a history of mental health treatment,

²² <http://www.justice.gc.ca/eng/rp-pr/other-autre/tcjs-tsjp/p1.html#s4>.

depression, thoughts of violence, suicide ideation, self-harm or a history of attempted suicide. Staff assess the client's eye contact, motor activity, affect, mood, attention and perceptual disturbances. Staff also assess whether the client's behaviour is cooperative, withdrawn, hyperactive or "other". They assess whether the client's "insight/judgement" is good, fair or poor.

In addition, staff ask the client whether, among other things, he or she believes that someone is controlling their mind or knows their thoughts, or if they have thoughts such as uselessness or that they are sinful. The client is asked whether she or he has lost weight recently or had trouble sleeping. The client is asked whether he or she is taking medication prescribed by a physician for emotional or mental health problems or has been hospitalised for such problems.

If the answer to two or more of certain questions is positive, the client is referred for further mental health evaluation. If the client is taking medication for any emotional or mental health problem or has been hospitalised for that reason, the client is referred for further evaluation. The screening staff member can also refer the client for further evaluation if the staff member feels it is necessary for any other reason.

The Corrections Branch described its mental wellness screening as a formal process, which it undoubtedly is given that questions specific to mental wellness issues are asked. However, several observers with knowledge and experience in this area expressed the view that the screening should be enhanced. They believe that a more in-depth assessment should be done, with a registered psychologist doing the screening.

Within 72 hours after admission to WCC, individuals are screened for their social history and housing situation. The former involves asking about the client's friends or acquaintances, mental health association, spiritual supports, and links with First Nations "organisations". The client is asked whether she or he has permanent housing of some kind (including whether the client is living with family members), is temporarily housed or is homeless.

Referral to non-forensic mental health services at WCC involves access to the contract services of a professional psychologist and a psychiatrist at WCC. These professionals have private practices in the community, with each of them having one day a week at WCC.

Some assistance, in the form of informal counselling, may also be provided by WCC case managers, WCC nursing staff, or by representatives of First Nations or others where access is granted. Spiritual care by elders may also assist with mental health issues. Assistance of this kind is not, however, medical care where diagnosed mental illness is concerned.

In addition, WCC correctional officers take a course called Mental Health First Aid, which is delivered by two certified trainers.²³ The Corrections Branch confirmed that a new version of this course, designed for northern First Nations populations, has been developed and that it is now being delivered to WCC staff. One of the WCC case managers has been certified in FASD case management and can train others in that area.²⁴ The Corrections Branch advised that the mental health training for correctional officers includes the following elements:

- identification of mental health problems and mental disorders;
- discussion of some of the gender-specific, community- and culturally-specific, and individual factors associated with mental health problems;
- demystification of mental health problems and the stigma attached to them;
- substance abuse related disorders and concurrent disorders;
- mood disorders and anxiety disorders;
- deliberate self-harm;
- psychotic disorders; and
- skills and tools for listening, understanding, and supporting individuals with mental health problems.

This is laudable, but the Corrections Branch should as soon as practicable survey mental wellness training available in other jurisdictions, and enhance its existing staff training as warranted. The goal should be to ensure that sufficient training and development are required for staff, on an ongoing basis, to ensure they can recognize mental health issues and treat clients appropriately from a trauma-informed and culturally-appropriate perspective.

Of course, correctional officers and other non-medical staff at WCC cannot be expected to be mental health caregivers. That is the job of professionals trained in the field. It is reasonable to expect, however, that WCC staff should be well-equipped to recognize mental health challenges as they arise (whether on admission or later, including in connection with separate confinement). They should also be equipped to promptly refer clients experiencing mental health challenges to appropriate mental health care and supports.

All external observers, and WCC clients, who were interviewed said that the amount of psychological and psychiatric services available to WCC clients is inadequate. There is no doubt that the psychologist and psychiatrist who provide these services are dedicated professionals and provide appropriate care. No one disputed this, but everyone observed that, given the

²³ Information about this course is found at: www.mentalhealthfirstaid.ca.

²⁴ The Corrections Branch advised that this case manager can provide FASD training to all correctional officers, but as of this date that training has only been offered once in Yukon. Consistent with other recommendations in this report, more is needed to equip WCC staff with the knowledge and skills needed to work with FASD clients, known or reasonably suspected, at WCC. Appendix C to the 2015 report, *Yukon FASD Diagnosis and Case Management in Adult Corrections Population*, discussed above contains material worth considering in identifying improved training opportunities.

significant incidence of mental wellness problems in the WCC client population, the amount of services provided is not adequate. Outside observers believe the need is greater than what has been made available, with clients sometimes waiting weeks to receive mental health services due to the demand.

The conclusion drawn is that WCC clients need more mental health services across a range of disciplines. There is a need for more psychological and psychiatric services than the present one-day-a-week arrangement for each. There is also a need for on-site expert counselling for mental wellness issues, and for addictions services through expert counselling.

The impetus toward increased mental wellness services for WCC clients is in part driven by wider considerations. Correctional services across Canada have recognized the need to improve such services. The *Mental Health Strategy for Corrections in Canada* lays out a strategy for improving mental health services and outcomes for corrections clients.²⁵ Its vision should guide the Corrections Branch as it moves forward:

Individuals in the correctional system experiencing mental health problems and/or mental illnesses will have timely access to essential services and supports to achieve their best possible mental health and well-being. A focus on continuity of care will enhance the effectiveness of services accessed prior to, during, and after being in the care and custody of a correctional system. This will improve individual health outcomes and ultimately contribute to safe communities.²⁶

To achieve this vision there is a need for “timely, appropriate, effective and person-centred mental health services”, which are “best achieved by using evidence-based practice to promote and support the safe transition and mental health of individuals with a mental health problem and/or mental illness upon return to the community and beyond sentence completion.”²⁷

Two key guiding principles of the strategy must also be honoured. The first is that mental health services are meant to be “client-centred, holistic, culturally sensitive, gender-appropriate, comprehensive, and sustainable.”²⁸ The second is that “[p]revention, de-escalation of behaviours associated with mental health problems and/or mental illnesses, interventions, and other mental health activities/services are critical to minimizing and managing the manifestations of mental health symptoms and promoting optimal mental well-being.”²⁹ This is significant given the use separate confinement where a client’s behaviour has roots in mental wellness challenges. It is also, of course, significant given the impact of

²⁵ <http://www.csc-scc.gc.ca/health/092/MH-strategy-eng.pdf>.

²⁶ Page 7.

²⁷ Page 7.

²⁸ Page 9.

²⁹ Page 9.

separate confinement on mental wellness. These considerations should be reflected in the treatment of, and outcomes for, WCC clients who have mental wellness challenges.

The Corrections Branch should also ensure that steps to improve services are consistent with these outcomes expressed in the *Mental Health Strategy for Corrections in Canada*:

1. Information about Services

Upon admission to a correctional facility, individuals receive timely and accurate information regarding available mental health services.

2. Staff Qualification

Mental health treatment, services, and supports are provided by health professionals who deliver such services.

3. Treatment Plan

Individualized treatment plans are written and regularly reviewed by health professionals for individuals with mental health problems and/or mental illnesses. A collaborative approach is used with individuals to optimize engagement in the treatment process.

4. Mental Health and Substance Use

Individuals with mental health problems and/or mental illnesses as well as a substance-related disorder will have access to a continuum of mental health and substance use services, either in the correctional facility or in another appropriate therapeutic setting.

5. Access to Medication

Individuals with mental health problems and/or mental illnesses have equitable and timely access to medication as clinically appropriate.

6. Emergency Services

Individuals have prompt access to emergency mental health services as required.

7. Environment

Individuals with acute or chronic mental health problems and/or mental illnesses are placed in an environment that offers a therapeutic milieu with the appropriate level of support.

8. Equivalence of Care

Individuals with mental health problems and/or mental illnesses will have access to community standards of care.³⁰

³⁰ Page 13. It should be noted here that the strategy contains of other important standards and outcomes that should guide government's work moving forward. They are too numerous to repeat here.

ENHANCING MENTAL WELLNESS SERVICES AT WCC

Past efforts

Before turning to what needs to be done to improve the mental wellness of, and outcomes for, WCC clients, it is appropriate to convey what the Corrections Branch advised it has done to implement the *Mental Health Strategy for Corrections in Canada*.

When asked for information about how it has implemented *Mental Health Strategy for Corrections in Canada*, the branch provided a two-page document, *Yukon Implementation of the Mental Health Strategy*. This was described as a briefing document, from several years ago, for the then senior management at Justice. The branch also advised that it had started implementing strategies consistent with *Mental Health Strategy for Corrections in Canada* long before that document was finalized.

It also described the *Mental Health Strategy for Corrections in Canada* as aspirational in nature, as setting out best practices for jurisdictions to strive towards, with the full understanding that some jurisdictions do not have the capacity to do so. The branch advised that it has worked to implement a strategy as far as resources have permitted at WCC and in Yukon more broadly. It acknowledged, however, that there is little more detail to report about implementation of the goals and guiding principles of *Mental Health Strategy for Corrections in Canada*.

The Corrections Branch did provide a 2015 protocol agreement, entered into between Justice and Health and Social Services, for collaboration on managing clients with complex needs. It is focussed on adults who have complex needs “due to the severity or nature of the adult's impairments, resulting in significant functional limitations and the need for multiple services or supports.”³¹ The protocol notes that complex needs may present in a variety of areas, including: behaviour; mental health; cognition and learning; memory, attention and executive functioning; social skills and communication; and self-help and adaptive functioning skills.

The protocol assigns case management responsibility to WCC case managers or probation officers. Once a WCC client is identified as having complex needs, the case manager and a case worker from the Services to Persons with Disabilities Unit of Health and Social Services are to collaborate in planning for community-based support services. Where an individual does not meet the criteria for services to persons with disabilities, the manager of the unit “will provide information on appropriate community-based services that may be

³¹ A copy of this protocol forms Appendix I to the 2015 report, *Yukon FASD Diagnosis and Case Management in Adult Corrections Population*, discussed above.

available from other governments or community agencies”.³² It would appear, therefore, that only a subset of WCC clients, those with significant complex needs that warrant their being placed in the hands of the Services to Persons with Disabilities Unit receive integrated or enhanced services. Those with needs not considered complex apparently receive referrals to outside agencies’ services.

It is important to acknowledge the positive developments under way, which offer cause for some optimism.

At a general level, senior executive management of the Corrections Branch has recently acknowledged that more needs to be done and has expressed a commitment to change. Of course, as noted earlier, that commitment is dependent on the will of government to properly fund change, and to ensure it is implemented, assessed and modified as time passes.³³

A more concrete reason for optimism is that the Corrections Branch has recently initiated steps to enhance mental health services for WCC clients. The branch advised that it intends, through a collaborative initiative with Health and Social Services, to provide materially-increased clinical psychologist and professional counselling services, including addictions counselling.³⁴

The branch cautioned that the details of this program remain to be worked out, but suggested the objective is to provide continuous collaborative, inter-disciplinary case management for clients engaged in the criminal justice system who have mental health or other complex needs, or both. The intention apparently is to have a clinical psychologist and four professional mental health workers with master’s degrees providing services. The goal would be to work in an integrated manner with case managers and supervision teams to meet the needs of WCC clients.

This program should include creation of an on-site mental wellness coordinator position. This position should be filled by a mental wellness professional (or a correctional officer with specialized training). The coordinator would provide support to clients with mental wellness needs that require support, in collaboration with other mental wellness professionals at WCC. This team also should function in the context of the on-site mental wellness unit recommended below.

³² Ibid., section 5.2

³³ This observation aligns with recommendation 79 in the 2015 audit of corrections in Yukon, conducted by the Auditor General of Canada Office of the Auditor General of Canada, *Report of the Auditor General of Canada to the Yukon Legislative Assembly—2015: Corrections in Yukon—Department of Justice* [OAG Report]. http://www.oag-bvg.gc.ca/internet/English/yuk_201503_e_40251.html.

³⁴ This initiative was recommended in the OAG Report, recommendation 79.

Recommendation: The Corrections Branch should, collaborating with Health and Social Services, expeditiously plan and implement enhanced on-site and in-community mental wellness services and supports for WCC clients and former clients. This should include creation of an on-site mental wellness coordinator position.

Enhancing mental wellness screening at WCC

As part of the intended enhancement of mental wellness services at WCC, the Corrections Branch should review the existing mental wellness screening process, and who delivers it. The outcome should be in-depth screening performed by a registered psychologist at the time of admission. In-depth screening of this kind could better support delivery of mental wellness services at WCC and better support in-community care and services.

Recommendation: Noting the Corrections Branch's current plan to enhance mental wellness services for WCC clients, it is recommended that, in consultation with mental wellness professionals, the branch should review its mental wellness screening process, and who delivers it, to ensure that appropriate in-depth mental wellness screening occurs on admission to WCC, administered by a registered psychologist.

Creation of an onsite mental wellness unit

In recent years WCC has operated far below its maximum capacity for clients. The past few months have seen daily counts in the range of 50-65 individuals on a given day. The facility can accommodate almost 200 individuals. Although capacity must be preserved if trends change and greater numbers of individuals are committed to WCC, it is very likely that WCC has room to spare for the foreseeable future.

As noted below, a degree of initial planning is underway for a new forensic unit at the Whitehorse hospital. Ideally, this project will come to fruition for the benefit of Yukon as a whole. Even if it does, however, such a secure forensic unit will only house individuals whose mental illnesses are sufficiently severe that they are committed to a secure unit. Such units are not suited to the needs of individuals whose mental illness is less serious. WCC clients may have mental illnesses that put them at risk or make them a risk to others, such that they need help, but a forensic unit is not the place for them. They may, therefore, fall between the cracks as matters stand.

WCC may use administrative separate confinement, voluntary or involuntary, to confine individuals in this situation. This is clear from the legislative framework, from WCC's policies and from interviews with WCC staff and others. The impact of this practice on mental wellness is known, but at present WCC staff really have few other viable options given the nature of the facility and existing resources.

While the efforts underway to enhance mental wellness care for WCC clients are commendable and should continue, the Corrections Branch should also re-purpose a WCC living unit to house clients with mental wellness challenges, where they can receive treatment designed to reduce risk and then return them to regular WCC units.

Such a unit has been functioning at the Central Nova Scotia Correctional Facility since 2015. It is known as the “transitional day room”.³⁵ It is intended to provide enhanced services to clients who are not sufficiently ill to be placed in the Nova Scotia Corrections mentally ill offenders unit.³⁶

The unit’s goal is to deal with ongoing challenges with placement of individuals who need more intensive supervision because they exhibit a pattern of behaviour, due to mental health concerns, that is unacceptable and potentially harmful to themselves and others. The program recognizes that many of these individuals will, after release from the facility, return to custody. The unit seeks to provide a safe living environment that is more geared to respond to these individuals’ mental health needs than a regular living unit can offer.

The unit is housed in a regular living unit in the facility, with the addition of more comfortable furniture and surroundings. Through direct supervision and specialized training for staff, offenders are housed together rather than segregated. Through collaboration between the Nova Scotia Health Authority and Nova Scotia Department of Justice, care and treatment are coordinated throughout an individual’s placement. Specially-trained correctional officers who have volunteered to work in the unit provide direct supervision. They are supported by case managers, who provide more intensive case management, as well as health care staff and program staff. Individuals in the unit receive mental health care, as well as programming for life skills and other behavioural needs.

Placement in the transitional day room is voluntary, and the client must agree to the placement requirements—including a requirement to take all programming on offer—before being placed in the unit. An individual can ask to be placed in the unit or a correctional officer can make the request. Significantly, the transitional day room program is available to both sentenced and remanded clients.

³⁵ The term “day room” is used by Nova Scotia Corrections for living units in its facility.

³⁶ This unit is co-located with the Nova Scotia Forensic Hospital. Clients are placed in the unit only when a psychiatrist at that hospital approves based on an examination of the individual. Individuals receive psychiatric care in the unit.

Staff assess whether the individual is at risk from other clients or is a risk to others due to behaviours that flow from:

- a chronic and persistent mental health disorder that significantly affects their ability to function within other units within the facility;
- a diagnosed brain injury that significantly affects their day-to-day functioning;
- developmental delays that significantly affect their day-to-day functioning.

After admission, the client meets with a case manager to discuss case planning and any special considerations for transition planning, including co-ordination with external service providers. The case manager retains ongoing oversight of the case plan. Individuals admitted to the unit also meet with a social worker, who will, in consultation with health services staff, assess the primary mental health issues for the individual. The social worker also provides correctional officers on the unit with strategies to employ when the individual's behavioural issues emerge, with coping and daily living skills being a key focus of the assessment and strategy. The correctional officers keep running logs of individuals' experiences and behaviour, and report to the case managers.

Nova Scotia Corrections staff report that it has significantly reduced risk for clients and staff. The reported early success of Nova Scotia's program offers clear support for the benefits of such a program and, as noted above, Yukon should follow suit in line with the above features of the Nova Scotia approach.

This should be planned and operated as part of the fully-integrated, well-resourced mental wellness program called for elsewhere in this report. This includes ensuring that case management is provided for clients placed in the transition unit, as well as ensuring that sufficient clinical psychological and counselling supports. WCC should ensure that correctional officers who work in this unit are suited to the work, likely by seeking volunteers, who should then be provided enhanced training to enable them to contribute to the program.

The program should be available, on a volunteer basis, to both sentenced and remanded clients. The relatively brief average remand of WCC clients should not be a barrier to their participation. The goal of such a unit would be to better manage and help individuals whose behaviour creates risks due to, primarily, mental wellness issues. It is reasonable to suggest that many of these individuals will, because of chronic mental wellness challenges, enter WCC again after release.

Providing better supports to them would acknowledge that individuals in this situation may be caught in a revolving door, cycling in and out of WCC and the community without sufficient continuity of supports and care. Providing individuals, whether sentenced or on remand, with

care and programming while at WCC could improve their outcomes and reduce risk at WCC, in the latter case as the Nova Scotia program illustrates.

Recommendation: The Corrections Branch should create a mental wellness unit at WCC along the lines of Nova Scotia's transitional day room program.

Improving FASD diagnosis and treatment

In light of *FASD in Yukon Corrections*, the Corrections Branch advised that Justice and Health and Social Services have been working with others to create a ten-year strategy to address FASD in Yukon. The terms of reference for this initiative state a mandate to create a strategy that includes plans for assessment and diagnosis of, and supports for, individuals who have FASD. The strategy is not complete, so it is not possible to assess the extent to which it will address the needs of WCC clients who suffer from FASD. The strategy undoubtedly should, given the incidence of FASD-affected individuals at WCC and the behavioural implications of FASD, ensure that appropriate FASD-related services and supports are provided to WCC clients.

As noted earlier, the Corrections Branch advised that one WCC case manager is trained to provide FASD training to all correctional officers. The branch advised, however, that this training has only been offered once. WCC staff require training in order to be properly informed in how to work with individuals who are known, or reasonably suspected, to suffer from some degree of FASD.³⁷

Recommendation: The FASD strategy for corrections in Yukon should, given the incidence of FASD-affected individuals at WCC and the behavioural implications of FASD, ensure that appropriate FASD-related services and supports are provided to WCC clients in a consistent, professionally-informed, manner. This should include training for all correctional officers in how to work with individuals with diagnosed or suspected FASD.

In addition, WCC should implement a program for managing behavioural difficulties exhibited by FASD clients. This program should be informed by the fact that, as noted earlier, FASD clients often cannot comprehend or recall rules of conduct or verbal directions given to them. The program should therefore ensure that the special circumstances involved with FASD warrant caution in disciplinary or corrective measures. The program should be informed by the *FASD in Yukon Corrections* strategy as it moves forward and be informed by best healthcare practice.

³⁷ Appendix C to *Yukon FASD Diagnosis and Case Management in Adult Corrections Population*, contains material worth considering in identifying improved training opportunities.

Recommendation: Given the high incidence of FASD at WCC, the Corrections Branch should implement a program for managing the behavioural difficulties that FASD clients exhibit, including in relation to use of separate confinement for disciplinary purposes. The program should be informed by the FASD in Yukon Corrections strategy as it moves forward and be informed by best healthcare practice.

Integrated case management for all WCC clients

Turning to other needs, a comprehensive, well-funded integrated case management program is needed for WCC clients, when they are at WCC and, to the greatest extent possible, when in their communities.

The collaborative efforts of Justice and Health and Social Services under the 2015 protocol mentioned earlier are worthy, but it is not clear that these efforts, or the resources allotted, have been adequate. A significant majority of those interviewed expressed the view that inadequate resources have been devoted to a comprehensive approach to integrated case management for WCC clients with complex needs. The strongly-held perception across the spectrum is that more is needed. Almost all observers believe that, while the goal of integrated case management is sound, a well-designed and adequately-resourced program is not yet in place. These observers are all just as clear in their conviction that such a program must be implemented in close collaboration with First Nations governments and with community organisations.

It is outside the scope of this report to suggest what such a program would look like or what level of resources is needed. Despite the good work being done in this area, the Yukon government should direct both Justice and Health and Social Services to design and fund, at the earliest opportunity, a comprehensive plan for integrated case management to meet the needs of WCC clients, at WCC and in their communities, with special regard to mental health and addictions services for clients who need them, again, at WCC and in communities.

As part of this, the Corrections Branch should ensure that integrated case management is provided to remanded and not just sentenced individuals. The Corrections Branch cannot force remand clients to participate in the activities this entails, but the services and supports should be available to them on a voluntary basis (and clients should be actively encouraged to participate).³⁸

³⁸ The short stay of clients on remand is no reason not to offer them case management and other services. For the year ending March 31, 2018, the average length of sentence for sentenced individuals was 77 days, but the average time that these clients actually served was 67 days. The average stay for individuals on remand was 44 days. As an aside, during this year, remanded individuals represented 65% of all clients, while sentenced individuals made up only 34%.

It should be noted here that this recommendation is consistent with a recommendation made in the OAG Audit.³⁹ That audit found gaps in the completion of needs and risks assessments for WCC clients, development of individual case plans (and their review and update), development of transition plans for all clients, and conduct of return-to-custody interviews of individuals who return to WCC. The Corrections Branch provided information about its progress in implementing this recommendation, the most recent update being dated March 31, 2017. While progress has been made, review and reform are needed in this area.

Recommendation: The government should direct Justice and Health and Social Services to work with the Corrections Branch to conduct a comprehensive review of the approach to client case management, with case management being available to all clients, both sentenced and remanded. The goal should be to design, fund and implement, at the earliest opportunity, a modern, comprehensive, multi-agency program for integrated case management that meets the needs of clients while at WCC and to transition them back into their communities, with special regard to mental health and addictions services for those who need them.

Addictions treatment and counselling

Many WCC clients suffer from alcoholism and other addictions. WCC offers substance abuse management and treatment programs, and Alcoholics Anonymous and Narcotics Anonymous hold sessions at WCC. The substance abuse management program materials that WCC uses are from the British Columbia Corrections Branch, and date from 2009. WCC also uses short-relapse prevention materials from British Columbia, and these date from 2004. WCC advised that it is now working on updating these materials and its substance abuse programming.⁴⁰

This is both commendable and desirable. A recurring theme voiced by many observers is the need for more addictions treatment facilities, as well as on-site services, for WCC clients, including residential healing facilities. A number of observers reported that the nature and level of these services has improved recently, including management of addictions and withdrawal at WCC. They reported that WCC staff continue to refer clients to treatment programs, although there is, observers reported, a long waiting list for services in the community (and not all communities have these services).

³⁹ OAG Report, recommendation 52.

⁴⁰ It should be noted here that WCC offers a number of other programs and educational opportunities for WCC clients, including through Yukon College, and these compare favourably to what is offered in other correctional systems. WCC is encouraged to continually review and as necessary update its offerings, the goal being to ensure that clients can upgrade their education and their skills, to help them succeed after release.

Recommendation: The Corrections Branch, both WCC and probation services, should work with Health and Social Services, and other stakeholders, to continue to enhance the addictions treatment services delivered to WCC clients, both at WCC and in communities. Programs and services at WCC should be provided to both sentenced and remanded clients. The government should assess the need for additional residential healing and treatment facilities in Yukon.

It is also desirable for the Corrections Branch to work with community organisations to support regular meetings of Alcoholics Anonymous and Narcotics Anonymous at WCC. Meetings now take place, but several observers reported that they are not frequent enough and also reported difficulty holding sessions. WCC should review the situation to ensure that, with the participation of community organisations, these peer support groups are regularly available for all clients.

Recommendation: The Corrections Branch should review the present availability of Alcoholics Anonymous and Narcotics Anonymous groups at the facility to ensure that, with the participation of community organisations, these peer support groups are regularly available to all clients who wish to participate.

Ensuring appropriate mental wellness training

Although correctional officers receive training in dealing with individuals suffering from mental wellness challenges, WCC should review this training in light of the training approaches elsewhere, to ensure that WCC staff benefit from the best possible training in this area.

The British Columbia Corrections Branch, for example, provides correctional officers with two-day training workshops on dealing with individuals who have mental wellness needs. The workshop trains correctional officers to recognize mental wellness needs and manage clients with these needs. It covers topics that include suicide risk assessment, concurrent disorders, and medication issues. Participants are also taught skills for communicating with clients who have mental wellness needs and for reviewing strategies and guidelines for communicating with other staff, including documenting progress and incidents. Another example worth examining is the training provided to Ontario correctional officers by the Centre for Addiction and Mental Health in Ontario.

Recommendation: WCC should review its current mental wellness training for correctional officers and enhance it as necessary in light of training approaches elsewhere.

Time out of doors

WCC's fresh air yards were inspected. They are relatively small and are enclosed on three sides by multi-storey grey cinder-block walls. They have concrete floors. The side facing the outdoors permits a view of the outside, but not a clear view. Metal meshing covers the top of each yard. These spaces can best be described as enclosures, not the outdoors. Time spent in the yard provides some fresh air, but by no stretch does it qualify as time outside.

This is not beneficial to any WCC clients, whether First Nations or non-First Nations. It is of special concern for First Nations clients, however, in view of the often-observed importance of their being on the land, being able to touch the earth.

WCC management is undoubtedly stuck with the fresh air yards, as that is how the facility is built, but WCC has sizeable outdoor spaces that are encircled by security fencing. When asked why clients could not spend time outdoors, WCC management advised that there have been incidents of contraband making its way over the fence, when correctional officers are not looking. Security risks of this kind no doubt exist and would have to be managed, but effective supervision of outdoor time can surely deal with them. Other correctional facilities in Canada are able to continue to permit true outdoor time and WCC should do the same for all clients.

Recommendation: WCC should, subject to supervision and other appropriate security measures, permit clients who wish to do so to spend their outdoor time in the WCC yard and not their unit's fresh air yard.

A new secure forensic unit at Whitehorse hospital

The Corrections Branch advised that preliminary assessment has recently been done for a possible new secure forensic medical unit at the Whitehorse General Hospital. This is at an early stage, but if the project proceeds it would apparently serve all of Yukon. It could also serve WCC clients, whose needs from time to time are forensic in nature. Several observers believe that, because the existing forensic unit at the Whitehorse General Hospital is not secure enough to confidently handle forensic patients, this may have played a significant role in Michael Nehass being separately confined at WCC. Government is encouraged to continue to work on a new secure forensic unit.

A related point arises. WCC is designated as a hospital under applicable legislation. No one interviewed believes this is appropriate, and the Supreme Court of Yukon has strongly recommended that WCC's status as a hospital be revoked.⁴¹ WCC is a correctional facility, not

⁴¹ "I strongly recommend that the Yukon government revoke the designation of the WCC as a hospital": *R v Nehass*, 2017 YKSC 49 at para 34.

Whitehorse Correctional Centre Inspection Report

a hospital. It has neither the equipment or staff to fulfil that role. The government should immediately remove WCC's statutory designation as a hospital.⁴²

Recommendation: The government should continue to work toward establishing a new secure forensic unit at the Whitehorse General Hospital as soon as practicable. The government should at this time remove WCC's statutory designation as a hospital, without waiting for creation of a new secure forensic unit at the Whitehorse General Hospital.

⁴² As noted elsewhere, work is being done to plan construction of a secure unit at the hospital. It should be noted here that such a unit would serve Yukon generally, not just WCC clients.

IMPACT OF SEPARATE CONFINEMENT ON MENTAL WELLNESS

The decision to place a person in segregation results in the most complete deprivation of liberty authorized by law. Such a significant restriction on individual freedom must be tightly controlled by a comprehensive, clear legal and policy framework.⁴³

This deprivation is more than merely physical because separate confinement has implications for the security of the person. Because separate confinement can easily affect someone's mental health it may have an impact on both the liberty and security of a person.

The terms of reference for the inspection direct a focus on policies and practices of WCC that involve, affect or may impact the mental health of WCC clients. They also state that the inspection may include consideration of "separate confinement and segregation of inmates with mental illnesses." It is important to understand the negative effects of separate confinement in order to assess how WCC's policies and practice affect mental wellness.

The possibly serious negative impact of separate confinement on mental wellness is broadly accepted. It is therefore perhaps not surprising that separate confinement has had a higher public profile, and courted controversy, in recent years.

In recent months two Canadian superior courts have on this basis, among others, weighed in on the constitutionality of separate confinement for sentenced prisoners in federal prisons.⁴⁴ A Manitoba fatality inquiry and Ontario coroner's inquest have examined the suicides of individuals placed in separate confinement. The Ontario Ombudsman has investigated the use of separate confinement and made recommendations, as has Howard Sapers, the highly-respected former Correctional Investigator of Canada.

These examples of domestic inquiries into separate confinement have recent counterparts around the world, and the United Nations has been active in setting international norms for separate confinement. Legislative and policy reforms are also accelerating across North America and around the globe. A significant example of policy changes is the Ontario government's consent earlier this year to an order that bans the use of separate confinement for individuals with a mental illness.⁴⁵

⁴³ H. Sapers, *Segregation in Ontario: Independent Review of Corrections in Ontario* (2017) [*Ontario Segregation Review*], at page 3. As the Supreme Court of Canada has said, the decision to transfer an inmate to a more restrictive institutional setting constitutes a deprivation of his or her residual liberty": *May v Ferndale Institution*, 2005 SCC 82, at paragraph 76.

⁴⁴ It bears mentioning, in passing, that these cases dealt with use of separate confinement for individuals who have been sentenced to incarceration, not individuals who are held on remand pending trial, and who are thus presumed to be not guilty of the offence with which they are charged.

⁴⁵ *OHRC v Ontario (Community Safety & Correctional Services)*, 2018 HRTO 60 (CanLII), at Appendix B, page 17. Separate confinement can be used in such cases if the government can demonstrate that alternatives have been

Correctional facilities are not treatment centres. They are places of punishment when they hold convicted individuals who have been sentenced to imprisonment. They are places of detention when a court has ordered an accused individual remanded in custody until trial. Correctional institutions, as the word “correctional” suggests, aim to correct, in the business of, among other things, rehabilitating people. Rehabilitation aims to reduce re-offending, to the benefit of the individual and society. Rehabilitation efforts can be applied to sentenced and remanded individuals, though the length of time in remand for an individual may be too short to allow much to be done.

At the same time, a correctional facility’s population is likely to include individuals who are a danger to others because they have committed serious violent offences or have been violent at the facility. Some individuals may be a danger to themselves, with a record of self-harm or who present a clear risk of self-harm. Other individuals may engage in disruptive behaviour. A correctional facility must therefore also be run with an eye to the personal safety of everyone in the facility, whether clients, staff or visitors. It must also be operated with a degree of order and good conduct.

Disciplinary measures may be needed to secure these goals. Removal of privileges may elicit most clients’ compliance, but such milder forms of discipline may not work with everyone. There may be extreme cases, such as where an individual has assaulted someone else, that require harsher measures. Physical separation from others may be needed to stop an individual from harming others or to protect vulnerable individuals. The offending individual may not be amenable to lesser discipline, and many would argue that punitive separate confinement is a reasonable sanction.

Debate rages, however, about the propriety and efficacy of separate confinement on any grounds. It is beyond serious debate that separate confinement for extended periods affects mental health, possibly seriously. Some observers have concluded that separate confinement for longer than a week can affect an individual’s mental health, and ill-effects can appear at only 48 hours.⁴⁶ The risks are more acute for an individual who suffers from a mental illness or has other mental wellness challenges, including alcohol or other substance abuse issues. This passage reflects a consensus on the impact of separate confinement:

It has been convincingly documented on numerous occasions that solitary confinement may cause serious psychological and sometimes physiological ill effects. Research suggests that between one third and as many as 90 per cent of prisoners experience adverse symptoms in solitary confinement. A long list of symptoms ranging from

considered and rejected because they would cause undue hardship (including reasons related to security or health and safety concerns, or both).

⁴⁶ College of Family Physicians of Canada, *Position Statement on Solitary Confinement* (2016), at page 1. http://www.cfpc.ca/uploadedFiles/Directories/Committees_List/Solitary%20Confinement_EN_Prison%20Health.pdf.

insomnia and confusion to hallucinations and psychosis have been documented. Negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions.

Individuals may react to solitary confinement differently. Still, a significant number of individuals will experience serious health problems regardless of the specific conditions, regardless of time and place, and regardless of pre-existing personal factors. The central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and well-being.

The use of solitary confinement in remand prisons carries with it another harmful dimension since the detrimental effects will often create a de facto situation of psychological pressure which can influence the pre-trial detainees to plead guilty.⁴⁷

The United Nations Special Rapporteur on human rights has said this about the mental health effects of separate confinement:

The weight of accumulated evidence to date points to the serious and adverse health effects of the use of solitary confinement: from insomnia and confusion to hallucinations and mental illness. The key adverse factor of solitary confinement is that socially and psychologically meaningful contact is reduced to the absolute minimum, to a point that is insufficient for most detainees to remain mentally well-functioning. Moreover, the effects of solitary confinement on pre-trial detainees may be worse than for other detainees in isolation, given the perceived uncertainty of the length of detention and the potential for its use to extract information or confessions. Pre-trial detainees in solitary confinement have an increased rate of suicide and self-mutilation within the first two weeks of solitary confinement.⁴⁸

Because of the impact of separate confinement on mental wellness, the College of Family Physicians of Canada has called for the abolition of non-disciplinary solitary confinement, stating that the “negative consequences of sensory deprivation can be seen as early as 48 hours after segregation. These include onset of mental illness, exacerbation of pre-existing mental illness and the development or worsening of physical symptoms.”⁴⁹

⁴⁷ Istanbul Statement, at page 2. The UN Special Rapporteur endorsed the Istanbul Statement in the UN Special Report and the Istanbul Statement is appended to it. There are many other expert sources, inquiry reports and international instruments that speak to separate confinement and its effects.

⁴⁸ UN Special Report, at paragraph 85.

⁴⁹ College of Family Physicians of Canada, *Position Statement on Solitary Confinement* (2016), at page 1. http://www.cfpc.ca/uploadedFiles/Directories/Committees_List/Solitary%20Confinement_EN_Prison%20Health.pdf.

The Ontario Superior Court of Justice last year ruled that administrative segregation in the federal prison system “imposes a psychological stress quite capable of producing serious permanent observable negative mental health effects.”⁵⁰ The Court concluded that the harm is recognized in federal legislation governing its use in federal prisons, and by reputable Canadian medical organisations, including the Canadian Medical Association, concluding that “there is no serious question the practice is harmful.”⁵¹

The Court concluded that the “documented negative effects described in the evidence” exceed the ordinary stresses and anxieties that an ordinary person would experience due to government action.”⁵² It concluded that the remaining question was whether “this level of psychological stress” infringes the security of the person and whether this is in accordance with the principles of fundamental justice guaranteed by the Canadian Charter of Rights and Freedoms.⁵³ After analysis, the Court concluded that federal administrative segregation for more than five working days is, given inadequate procedural safeguards in place under the federal *Corrections and Conditional Release Act*, unconstitutional.⁵⁴

Similar views were recently expressed by the Supreme Court of British Columbia, the Court saying this about administrative segregation in federal prisons:

[247] I find as a fact that administrative segregation as enacted by s. 31 of the [federal *Corrections and Conditional Release Act*] is a form of solitary confinement that places all Canadian federal clients subject to it at significant risk of serious psychological harm, including mental pain and suffering, and increased incidence of self-harm and suicide. Some of the specific harms include anxiety, withdrawal, hypersensitivity, cognitive dysfunction, hallucinations, loss of control, irritability, aggression, rage, paranoia, hopelessness, a sense of impending emotional breakdown, self-mutilation, and suicidal ideation and behaviour. The risks of these harms are intensified in the case of mentally ill clients. However, all clients subject to segregation are subject to the risk of harm to some degree.

[248] The indeterminacy of administrative segregation is a particularly problematic feature that exacerbates its painfulness, increases frustration, and intensifies the

⁵⁰ *Corporation of the Canadian Civil Liberties Association v Canada*, 2017 ONSC 7491 [*Canadian Civil Liberties*], at paragraph 89. The Court rejected, at paragraph 95, the expert evidence submitted by the federal government, specifically rejecting the expert’s evidence that “some clients will experience no serious permanent negative mental health effects from prolonged administrative segregation.”

⁵¹ *Canadian Civil Liberties*, at paragraph 97.

⁵² At paragraph 238 of *Canadian Civil Liberties*, the Court summarized expert evidence, and the expert sources supporting that evidence, about the effects of prolonged segregation, *i.e.*, administrative segregation for more than 15 days, calling the negative effects “foreseeable and expected” (paragraph 240).

⁵³ *Canadian Civil Liberties*, at paragraph 101.

⁵⁴ *Canadian Civil Liberties*, at paragraph 272. As noted in this report’s preface, no comment is intended anywhere in this report about whether the Yukon regime under the *Corrections Act* is or is not constitutional. That is the job of the courts, not this report.

depression and hopelessness that is often generated in the restrictive environments that characterize segregation.

[249] While many of the acute symptoms are likely to subside upon termination of segregation, many clients are likely to suffer permanent harm as a result of their confinement. This harm is most commonly manifested by a continued intolerance of social interaction, which has repercussions for clients' ability to successfully readjust to the social environment of the prison general population and to the broader community upon release from prison.

[250] Negative health effects can occur after only a few days in segregation, and those harms increase as the duration of the time spent in segregation increases. The 15-day maximum prescribed by the Mandela Rules is a generous standard given the overwhelming evidence that even within that space of time an individual can suffer severe psychological harm. It is, nevertheless, a defensible standard.⁵⁵

Consistent with these findings, the UN Special Rapporteur said this in the UN Special Report:

83. In the opinion of the Special Rapporteur, the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort. Regardless of the specific circumstances of its use, effort is required to raise the level of social contacts for prisoners: prisoner-prison staff contact, allowing access to social activities with other prisoners, allowing more visits and providing access to mental health services.

The acknowledged risks that separate confinement presents for individuals' mental health and wellness demand its abolition or, at a minimum, the greatest possible minimization of its use. There must be a calibrated, well-founded, and evidence-based approach to its use in only the most serious, compelling, cases, and then only as a last resort, as recommended later. This is a humane approach, but it is also important for frankly practical reasons. If an individual's mental health is affected by separate confinement, this could negatively affect the very safety that a correctional facility seeks to uphold. Moreover, the ill-effects of separate confinement can impede individuals' rehabilitation and perhaps increase their risk of recidivism. This hardly supports achievement of WCC's correctional goals.⁵⁶

The efficacy of disciplinary separate confinement in correcting behaviour may also be open to question in a correctional facility that houses individuals whose cognitive abilities are challenged. As *FASD in Yukon Corrections* notes, however, the cognitive deficits that often affect individuals with FASD can make it very challenging for them to understand or

⁵⁵ *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2018 BCSC 62 [BC Civil Liberties].

⁵⁶ On this point, section 16 of the *Corrections Act* requires the WCC's person in charge to assess an inmate upon admission, including the appropriate programs to support the inmate in "developing accountability and being rehabilitated, healed and reintegrated into the community".

remember, much less comply with, institutional rules or staff directions. Several individuals interviewed for this report confirmed this based on their experience working with clients at WCC. This included present and past corrections officers, WCC volunteers, health care professionals, community support workers and First Nations justice workers from across Yukon.

It is also possible that non-FASD clients who suffer from addictions will also face compliance challenges during withdrawal. This concern was shared by many of those interviewed for this report, as was the observation that non-FASD cognitively-delayed individuals face the same challenge.

Further, WCC has many conduct rules. It is not clear that all of them are necessary to protect the undeniably clear interest in maintaining order and safety for all concerned. Nor are they all expressed in plain, easily-understood, language.

The upshot of these factors is that WCC clients with impaired cognitive abilities may be disciplined for failure to follow directions that they cannot understand or remember. The effectiveness of corrective sanctions depends on deterrent effect. Yet if an individual with FASD-related or other cognitive challenges cannot understand or act on rules, their behaviour may not be susceptible to change through discipline.

At the very least, WCC should review revise its client behaviour rules to ensure that they are demonstrably necessary for order and safety, and that they are plainly stated and communicated, in writing and verbally where necessary.

Recommendation: WCC should review its rules of conduct for WCC clients, with a view to ensuring they are truly necessary in the interests of safety and proper order, are communicated clearly in plain language, and are explained to clients who require clarification.

The following assessment of separate confinement as administered by WCC proceeds on the basis that the mental wellness risks of separate confinement are well-established, and that these risks must be accommodated in any separate confinement scheme. This is necessary for humane reasons, but also to ensure that use of separate confinement does not undermine the recovery and rehabilitation of individuals held at WCC.

ASSESSMENT OF SEPARATE CONFINEMENT AT WCC

This part of the report describes the types of separate confinement in use at WCC and makes recommendations for change. The recommendations are founded on the universally-recognized need to ensure that separate confinement, given its risks for mental wellness, is used only as a last resort, after all other alternatives have been considered.⁵⁷ The recommendations also account for the fact that a correctional facility that is put into the position of having insufficient mental wellness services and supports for its clients may rely more on separate confinement to manage its population than should be the case and more than the facility's management might wish. WCC management and staff should not be left in this position.

It is important to note here that the following assessment of the use of separate confinement at WCC is not a legal analysis under the *Canadian Charter of Rights and Freedoms*. That is the role of the courts.⁵⁸

What is “separate confinement”?

Domestic and international sources frequently use the terms “separate confinement”, “solitary confinement” and “segregation”, and these are sometimes used interchangeably. There is, however, consensus around what lies at the core of these terms, regardless of which term is used.

An often-cited definition of “solitary confinement” is “the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day”, even where individuals are allowed out of their cells for exercise.⁵⁹ The *National Segregation Strategy for Corrections in Canada* observes that Canadian courts “refer to the separation of inmates from the general institutional population as segregation”.⁶⁰

⁵⁷ WCC's policies provide that separate confinement is to be used as a last resort.

⁵⁸ Courts in Ontario and British Columbia have recently ruled on *Charter of Rights* challenges to administrative separate confinement in the federal corrections system. In *Canadian Civil Liberties*, the Ontario Superior Court of Justice held that the fifth-day review of administrative separate confinement provided for under the federal *Corrections and Conditional Release Act* was an inadequate procedural safeguard to ensure that sentenced inmates are not unconstitutionally deprived of liberty or security of the person, contrary to section 7 of the *Charter of Rights*. The Supreme Court of British Columbia went even further in *British Columbia Civil Liberties*. Also see *Bacon v Surrey Pretrial Services Centre (Warden)*, 2010 BCSC 805.

⁵⁹ *Istanbul Statement on the Use and Effects of Solitary Confinement*, adopted on 9 December 2007 at the International Psychological Trauma Symposium, Istanbul [Istanbul Statement], at page 2 (citations omitted). The Istanbul Statement has been endorsed by the United Nations. UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: note / by the Secretary-General*, 28 July 2008, A/63/175 [UN Special Report]. <https://unispal.un.org/DPA/DPR/unispal.nsf/0/707AC2611E22CE6B852574BB004F4C95>, at paragraph 85.

⁶⁰ This strategy was developed with the participation of the Corrections Branch. The quote comes from page 3.

Consistent with these definitions, the Mandela Rules define separate confinement by reference to the conditions of confinement, not the label that is used. Rule 44 states that solitary confinement—the term used in the rules—means “confinement of prisoners for 22 hours or more a day without meaningful human contact.” Confinement without meaningful human contact for substantial periods of each day may therefore amount to separate, or solitary, confinement.

In this report, the term “separate confinement” denotes an individual’s separation of an individual from the general WCC population. As already noted, a consensus exists that “solitary confinement” involves confinement in a cell for 22 to 24 hours a day. This covers WCC’s use of disciplinary separate confinement and administrative separate confinement (short-term and long-term), both of which involve an individual being confined to his or her cell for up to 22 hours a day.⁶¹

An important question is whether, given the similarities between the in-cell nature of secure supervision placement, separate confinement and segregation, there is any meaningful difference given the risks for the mental wellness of clients. They each involve significant deprivation of the liberty to be out of one’s cell and thus interact with peers, underscoring the importance of this question.

As will be seen, in light of the consensus definition there is no doubt that administrative separate confinement, whether short- or long-term amounts to solitary confinement. This is also the case for disciplinary separate confinement. This conclusion applies whether any of these kinds of separate confinement are served in a regular living unit, the segregation unit or special living unit. Again, the labels attached to where someone is held are not the issue. The conditions of confinement are what matter for the mental wellness of individuals who are confined.

As is explained below in more detail, the third kind of confinement used at WCC, known as secure supervision placement, is a form of separate confinement within the consensus definition. Its features, notably the amount of time an individual spends confined to her or his cell on level one, make this clear.

Given the acknowledged risks for mental wellness associated with significant periods isolated from others, serious consideration should be given to defining separate confinement (solitary) as any confinement of an individual apart from others for 18 or more hours a day,

⁶¹ The features of disciplinary separate confinement and administrative separate confinement at WCC are discussed below as part of the assessment of the legislative and policy framework governing them.

regardless of whether the confinement is a disciplinary or administrative disposition.⁶² If the government does not accept this 18-hour recommendation, it should define separate confinement as isolating an individual from others for more than 20 hours a day. This would mean that the current forms of separate confinement—disciplinary separate confinement, administrative separate confinement and level one and level two secure supervision placement—qualify as separate confinement (solitary).⁶³

Recommendation: The legislative amendments recommended in this report should include a definition of separate confinement, whether called disciplinary, administrative or secure supervision placement, as confinement of an individual apart from others for more than 18 hours a day.

As will be seen later, the similarities between the grounds for secure supervision placement, administrative separate confinement and segregation placement also raise serious questions about the coherence, clarity and fairness of the current approach to confining clients apart from others. Governance issues arise in relation to use of all forms of separate confinement. Recommendations are made later about the need to address these and other issues meaningfully. Before doing so, it is useful to describe the current state of its separate confinement's use at WCC.

Present use of separate confinement at WCC

Decline in overall use of separate confinement

Published statistics on WCC's use of separate confinement which exclude secure supervision placement. The figures for administrative separate confinement and disciplinary separate confinement, however, speak to a significant, and commendable, decline in the use of these forms of separate confinement over the past few years. The following table illustrates this:

⁶² It should be acknowledged that other definitions that focus on conditions and not location adhere to the 22-hour-a-day period mentioned in the Mandela Rules. For example, Ontario's Ombudsman has proposed such a definition: *Out of Oversight, Out of Mind* (2017), at paragraph 59.

https://www.ombudsman.on.ca/Media/ombudsman/ombudsman/resources/Reports-on-Investigations/Out_of_Oversight-with_appendices-EN-accessible.pdf.

⁶³ The 18- or 20-hour limits would capture level two secure supervision placement at the outset of that stage, but as an individual's liberty increases with good behaviour, the placement would cease to be separate confinement (solitary).

Kind of Separate Confinement (by number of days)⁶⁴

YEAR	Administrative separate confinement (short-term)	Administrative separate confinement (long-term)	Administrative separate confinement (voluntary)	Separate confinement pending disciplinary hearing	Disciplinary separate confinement	Total
2014	184	119	265	98	468	1,134
2015	140	164	348	169	109	930
2016	136	127	141	89	41	534

As this table indicates, between 2014 and 2016 the number of days served in *all* of the above-mentioned types of separate confinement declined significantly, from a total of 1,134 days in 2014 to 534 days, with the 2016 total being less than half of the 2014 figure. Time served in the segregation unit, which many consider is the most restrictive and harsh form of separate confinement, also declined. For example, the statistics indicate that 1.2% of all bed days in 2017 were served in “segregation”, compared to 1.6% in 2016 and 2.86% in 2015. These figures compare well against those from other Canadian jurisdictions, and it is only fair to credit the fact that over the past three years the aggregate time spent in these kinds of separate confinement has declined significantly.

These figures do not, again, include time spent in secure supervision placement, which may reflect a belief that secure supervision placement is not a form of separate confinement. The Corrections Branch advised, however, that at the time of writing only two clients were in secure supervision placement (both were at level two), while four clients were under written warning that they risked secure supervision placement if their behaviour did not improve. This is discussed further below and, as with the other forms of separate confinement, further recommendations for change are made.

Explaining the decline in use of separate confinement

Returning to the decline in use of separate confinement, although figures predating 2014 were not provided, the downward trend in disciplinary separate confinement might perhaps be related to the relatively small number of violent incidents at WCC (*i.e.*, assault or attempted assault). The Corrections Branch provided information indicating that, for the 39 months between November 2014 and March 2018, 22 such incidents occurred. This information records 11 incidents described as “two inmates fought”, four described as attempted assaults on correctional officers (including a feigned punch and attempted

⁶⁴ This table is adapted from the table found in the 2016 ISO inspection report, the statistics for which were provided to ISO by WCC, with the 2017 figures being directly provided by WCC for this report.

tripping), five described as assault on a correctional officer (two of which involved spitting on a correctional officer), and two described as an inmate assault on another inmate.

It can therefore be argued that the rate of violence at WCC has, at least recently, not been high. Further, a material number of the incidents reported by the Corrections Branch appear to be at the less serious end of the spectrum. While none of these incidents is acceptable, and violence must be deterred, this apparently low rate of such incidents should influence how what incidents the legislative framework should treat as disciplinary in nature. It should also influence how WCC manages the population, ideally by using alternatives to separate confinement as the default response to such incidents.

Speaking of alternatives, a recent ISO inspection report suggests that the decline in use of separate confinement may be related to greater emphasis at WCC on de-escalation tactics and informal resolution of challenging behaviour.⁶⁵ This is a welcome development and WCC should continue its efforts in this area. Again, alternative measures should always be the first resort, including use of restorative justice methods such as circle sentencing.

Ongoing efforts to reduce the use of separate confinement should also keep in mind that separate confinement may not be effective in deterring misconduct, including assault, by clients who suffer mental wellness challenges, including FASD, trauma and cognitive deficits. This is another reason why WCC is encouraged to continue its efforts to manage such behaviour using alternatives to disciplinary separate confinement wherever possible.

Separate confinement and behaviour-management

Concern has been expressed that correctional managers have increasingly been using separate confinement to manage individuals exhibiting challenging or disruptive conduct. Both the Correctional Investigator of Canada and Ontario's Ombudsman have expressed their concern based on their investigations.⁶⁶

There are indications that the Corrections Branch regards separate confinement as a tool, for managing individuals' behaviour. Corrections Branch policy D4.5, which deals with secure supervision placement, states that it is "a case management strategy to address disruptive or dangerous conduct", and that it "may be used to enhance correctional centre security and increase the safety of everyone in the centre". On this policy's face, therefore, secure

⁶⁵ ISO Inspection Report 2016, at page 30, footnote 9.

⁶⁶ Office of the Correctional Investigator of Canada, Annual Report 2014-2015, at page 26. <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20142015-eng.pdf>. For Ontario, see the Ombudsman's remarks at paragraph 29, found here: <https://www.ombudsman.on.ca/resources/speeches-and-articles/speeches/2016/segregation-not-an-isolated-problem>.

supervision placement—which is a form of separate confinement—could potentially be used for behavioural management reasons.

Regardless of whether WCC actually uses separate confinement to manage behaviour, the clear priority should be to not do so wherever possible. To do this, WCC cannot be left in a position where it is ill-equipped to otherwise deal with challenging or disruptive behaviour of mentally unwell and addicted individuals. WCC needs to have a full array of measures with which to respond in these cases. Improved mental wellness services can help, as can alternative behaviour management techniques.

Existing legislative and policy framework for separate confinement

This part of the report gives an overview of the existing legislative framework for separate confinement in Yukon, while later discussion explains why the framework should be overhauled significantly. The recommendations for change are, of course, informed by the over-riding reality that separate confinement can be harmful to individuals' mental wellness.

As will be seen later, the grounds for placement in separate confinement, if it continues at all, must be narrow, clearly-articulated, and limited to cases where there is clear evidence of a pressing and substantial need, an absence of alternatives, and with meaningful external review. More transparency about the use of separate confinement is also needed.

For reasons given below, change is especially important in the cases of separate confinement and secure supervision placement. This is because an individual need not have been charged with, much less convicted of, a disciplinary offence to be placed in these kinds of separate confinement. It is strictly an administrative decision to place someone in what the Supreme Court of Canada forty years ago described as a “prison within a prison”.⁶⁷

Overview of the legislative framework

The *Corrections Act* is the statutory foundation for corrections in Yukon. It does not deal with either “separate confinement” or “segregation” in any meaningful way. The only mention of either term is in section 51(f), which provides that regulations may be made “respecting the separate confinement or segregation of inmates”. No further clarity, or guidance, is given as to what these terms mean, or the conditions they involve.

The *Corrections Regulation* refers to the term “segregation unit” but does not define what “segregation” or “segregation unit” mean. Section 28 refers to placement of individuals in “the segregation unit” pending a disciplinary hearing.⁶⁸ Section 33 authorizes an inmate’s

⁶⁷ *Martineau v Matsqui Institution*, [1980] 1 SCR 602, at page 622.

⁶⁸ It also refers to “confinement in a cell in the segregation unit.”

punitive confinement in the “segregation unit” after conviction for certain disciplinary offences. It provides that, depending on the type of offence, segregation unit confinement can last for up to 15 days or up to 30 days.⁶⁹

Nor does the *Corrections Regulation* usefully define the terms “separate confinement” or “segregation”. Sections 20, 21 and 22 each refer to an inmate being “confined separately from other inmates”, but do not elaborate on what this means. The *Corrections Regulation* also describes four types of separate confinement: short-term, long-term, pending disciplinary hearing, and voluntary.

WCC policies refer to long-term and short-term separate confinement as “administrative separate confinement” and offer a somewhat clearer understanding of “separate confinement” means. They also flesh out what “segregation” means. These policies, however, raise questions of legislative authority for their creation and administration, among other things.

At the very least, there is, on the foregoing basis alone, a pressing need for the legislative framework that defines and regulates separate confinement in Yukon to be overhauled. A clear definition is needed of what is meant by separate confinement (a definition that should encompass all forms of separate confinement, including confinement in the segregation unit). Clear legislative rules are needed to govern use of all kinds of separate confinement and to provide meaningful, timely oversight of its use.

Change is needed even if the government chooses not to implement the recommendations made below for substantive reform in the use of any kind of separate confinement. Even if the government decides to maintain the *status quo* for uses of separate confinement, in other words, there is still a pressing need for a clear and comprehensive legislative framework, including procedural safeguards across the spectrum of existing separate confinement methods.

Recommendation: The Corrections Act and Corrections Regulation should be amended to provide a clearer, more comprehensive, framework to govern use of separate confinement at WCC. The amendments need to define what “separate confinement” is, when it may be used, and how it is regulated. This is necessary even if the substantive changes recommended in this report are not implemented.

⁶⁹ Under section 33, punishment for minor offences cannot exceed 192 hours of “intermittent confinement in a cell, other than a cell in the segregation unit”.

Segregation at WCC

Corrections Branch policy B4.2 deals with the segregation unit, which is defined as an area of WCC that is separate from other living units, “with the highest levels of observation, security and resistance to damage”. The segregation unit is described as the place where clients are held under section 28 or 33 of the *Corrections Regulation*, i.e., pending a disciplinary hearing or as a disciplinary sanction. The policy states that clients in the unit have a right to be out of their cells for two hours daily, for “ablutions, fresh air and telephone calls”. This means clients in the segregation unit can be locked alone in a cell for 22 hours each day. This is undoubtedly “solitary confinement” as defined above.

Administrative separate confinement at WCC

Corrections Branch policy B4.3 deals with “separate confinement”. It acknowledges that separate confinement “is a mechanism for separating clients from one another in an environment that provides higher levels of security and physical separations”. It refers to separate confinement as involving isolation of clients for certain purposes, including so that an inmate’s mental condition can be assessed under the *Mental Health Act*. Unlike policy B4.2, this policy is silent on the number of hours a day that a client is locked in her or his cell. The Corrections Branch advised, however, that clients in separate confinement are locked in their cells for no more than 21 hours each day.⁷⁰

Section 20 of the *Corrections Regulation* authorizes the “person in charge” at WCC to order administrative separate confinement for up to 72 hours. This may be done where the person in charge believes on reasonable grounds that an individual:

- is endangering themselves or is likely to endanger themselves;
- is endangering another person or is likely to endanger another person;
- is jeopardizing the management, operation or security of the correctional centre or is likely to jeopardize the management, operation or security of the correctional centre;
- would be at risk of serious harm or is likely to be at risk of serious harm if not confined separately;
- must be confined separately for a medical reason; or
- suffers from a mental illness.

In addition, the person in charge may place someone in separate confinement where he or she “has requested an examination of the mental condition of the inmate for the purposes of

⁷⁰ Section 9 through 13 of policy B4.3 deal with review of “segregation placements” and refer to both separate confinement and segregation. These provisions should be clarified and, to the extent they should apply under policy B4.3, should be put into that policy. This comment also applies to sections 14 through 20 of policy B4.3, which address care of clients in “segregation”, including those with “mental health concerns”.

the *Mental Health Act*” or “has reasonable grounds to believe that the inmate has contraband hidden in the inmate's body.”

Before discussing specific concerns about the present separate confinement framework, it is important to note that policy B4.3, standing order G1.14 and section 20 of the *Corrections Regulation* all use slightly different language when describing the criteria for separate confinement. The grounds for separate confinement and the nature and degree of risk required to use it are inconsistently set out. This can lead to confusion and thus create the potential for inappropriate placement in separate confinement. Setting aside for now the over-arching recommendation for an overhaul of separate confinement, set out below, this aspect of the framework ought to be clarified and made consistent.

Recommendation: Even if the recommended overhaul of the separate confinement scheme does not proceed, the Corrections Branch should amend the Corrections Regulation, and Corrections Branch policies and standing orders, to ensure consistency in the grounds for administrative separate confinement, notably respecting the nature and degree of risk that must be present before administrative separate confinement may be used.

Section 20 of the *Corrections Regulation* authorizes placement of an individual in administrative separate confinement where there are reasonable grounds to believe that the individual suffers from a “mental illness”. This section explicitly refers only to mental illness, without any requirement that the individual is also a danger to themselves (a ground that is separately provided for in section 20). This makes it clear that mental illness alone can lead to someone being placed in administrative separate confinement.

This is a cause for serious concern given the implications of separate confinement for mental health. As noted earlier, clients in separate confinement at WCC are in their cells for the vast majority of each day. They are permitted some time out of their cell, including in the walled-in fresh air yard, but this is on its face for only one hour each day. These individuals have contact with correctional officers and other WCC staff, including health care staff. Although this is a form of regular human contact, it is not peer interaction. These confinement conditions are not conducive to good mental health.

The consensus that separate confinement negatively affects existing mental illnesses, and can cause new mental wellness challenges, after as little as 48 hours must be respected, noting that these concerns were also expressed by many observers familiar with the situation. Separate confinement should never be used to isolate individuals on account of mental illness alone. The Corrections Branch should move quickly to remove this ground for administrative separate confinement from the *Corrections Regulation*. Pending that change, the Corrections Branch should immediately commit to not place individuals in separate confinement on the

basis of mental illness alone. Other measures—notably, improved mental health care services—ought to be used to care for mentally-ill clients. These steps are also important given the international consensus that administrative segregation should not exceed 15 days in any case.

The same recommendation applies to placement of clients, under section 28, in the segregation unit pending a disciplinary hearing and individuals should not be placed on secure supervision placement because of mental illness alone. Put another way, mental illness alone should never be a basis for placing an individual in any form of separate confinement at WCC.

This is not to say that there is evidence that WCC is at present using separate confinement for mentally-ill individuals. The point is that this ground should not be available.

Recommendation: Because separate confinement can cause or exacerbate mental illness concerns, the Corrections Regulation and Corrections Branch policies should be amended to remove mental illness as a ground for placing an individual in any form of separate confinement. The Corrections Branch should, pending those amendments, immediately undertake not to place anyone in any form of separate confinement on this ground.

Separate confinement to protect against self-harm

A similar same issue arises in relation to the authority, under section 20 of the *Corrections Regulation*, to place an individual in separate confinement where the individual “is endangering themselves or is likely to endanger themselves”. Many of these cases will involve either temporary or permanent mental wellness issues. It is acknowledged that in such cases it may be necessary to place someone in separate confinement for their own safety. This s These features of secure supervision placement lead to the conclusion should only be done as a last resort, however, where no other measures are reasonably likely to keep the inmate safe from imminent self-harm, notably suicide.

The *Corrections Regulation* should be amended to ensure that separate confinement is not used on this basis except as a last resort, *i.e.*, unless other measures—notably mental health interventions—are not reasonably likely to keep the inmate safe from imminent self-harm, notably suicide. Further, separate confinement on this ground should not exceed the time needed to sufficiently mitigate the risk of self-harm, to a maximum of 48 hours or, perhaps, 72 hours.⁷¹ In the meantime, the Corrections Branch should commit that it will comply with the recommendations just made.

⁷¹ This flexibility is driven by recognition that correctional facilities are often criticised when someone commits suicide, on the basis that not enough was done to protect them. The choice between prescribing a maximum of 48 or 72 hours is left to the Corrections Branch to determine in consultation with mental health professionals.

Recommendation: Very short-term administrative separate confinement to protect an individual, including a mentally-ill individual, from a risk of suicide or other serious self-harm should be permitted, but it should be used only as a last resort where other measures, notably mental health interventions, are not reasonably likely to keep the inmate safe from imminent self-harm, notably suicide. Even in these cases, separate confinement on this basis should not exceed a maximum of 48 to 72 hours, with the choice between these two limits to be made in consultation with mental health professionals who have expertise in separate confinement and mental wellness.

As noted earlier, the *Corrections Regulation* and Corrections Branch policy and standing orders authorize placement of an individual in administrative separate confinement if the individual “is jeopardizing the management, operation or security” of WCC, or is likely to do so. Use of the term “jeopardizing” suggests there only needs to be a risk of harm, perhaps only mere interference with, the “management”, “operation” or “security” of WCC. Standing order G1.14 provides that clients will be considered for separate confinement under section 20 (or continued separate confinement under section 28) if the person in charge reasonably believes the inmate “poses an imminent risk to themselves, others or the safety and operation” of WCC.⁷²

The reference to security may, may, be acceptable, although it should be clarified and be limited to real risks to the facility’s security. The references to “management” and “operation” are, however, problematic as they stand. They are vague and potentially extremely broad. It does not matter how these concepts may have been applied in practice. It is easy to conceive of cases where only a minor concern about ill-defined operational or managerial interests could be used to justify potentially long-term separate confinement. This is the case whether the placement is in administrative separate confinement or secure supervision placement.

One reason for concern is the absence of effective procedural fairness, and oversight mechanisms, in relation to the use of non-disciplinary separate confinement. It is fair to suggest, despite the vagueness of the terms “operation” and “management”, that they apply to behaviour that amounts to misconduct, that merits discipline. It is noteworthy that the same behaviour can, under section 25 of the *Corrections Regulation*, lead to disciplinary sanctions. Section 25 makes it a disciplinary offence for an inmate to “engage in an activity that jeopardizes or is likely to jeopardize...the management, operation or security” of WCC.⁷³

⁷² The policy requirement for “imminent risk” is a higher standard than required under section 20, but, as noted earlier, this risks confusion.

⁷³ Section 25(2)(bb). Reference in this section to engaging in an activity requires an act, some positive step, whereas section 20 allows separate confinement without charge or conviction without requiring an act or activity. The different language is likely not intended to indicate a difference, but the language could be read this way.

It is not desirable for a correctional facility's management to be able, under section 20, to place an individual in administrative, not disciplinary, separate confinement for essentially the same conduct, but without charge, hearing or appeal, thus avoiding the formal disciplinary process altogether. The fact that section 33 of the *Corrections Regulation* limits disciplinary segregation to 30 days makes no difference, since separate confinement under section 20 could, if renewed, in theory exceed that maximum period.

The focus for any use of separate confinement should not be on the "operation" or "management" of WCC, even if those concepts were better- and more narrowly-defined. Instead, the focus ought to be on responding to real, serious risks to safety, *i.e.*, the focus should be on real and imminent safety needs grounded in clear evidence. Further, confinement on this new ground should be for no longer than is necessary to remove or sufficiently mitigate the threat.

This recommendation should be considered in light of the *National Segregation Strategy for Corrections in Canada*, which states that administrative separate confinement may be used to contribute to safety by maintaining security, but which does not contemplate "management" or "operation" of a facility as grounds for administrative separate confinement. This is particularly important because, as the *National Segregation Strategy for Corrections in Canada* notes, administrative separate confinement is to be used as "a temporary, preventative and non-punitive measure."⁷⁴

To be clear, it does not matter whether WCC has ever used this ground to place someone in administrative separate confinement, although that could well be the case. The issue is that these grounds are excessively vague, and potentially very broad, and there are no real safeguards for individuals in this position. In other words, the risk exists that these grounds could be used, and they should be eliminated.

Risks to WCC's "management" or "operation" as a ground for administrative separate confinement should be removed from the *Corrections Regulation*. Pending that change, WCC should confirm that it will not use administrative separate confinement under section 20 for jeopardizing the management, operation or security of WCC.

⁷⁴ Page 4.

Recommendation: The Corrections Regulation should be amended to eliminate risks to the “management” or “operation” of WCC as grounds for use of non-disciplinary administrative separate confinement. Administrative separate confinement should be limited to real and imminent safety needs grounded in clear evidence. Confinement on this ground should be for no longer than is necessary to remove or sufficiently mitigate the threat. At the very least, the existing grounds, set out in the Corrections Regulation and WCC policy, need clarification.

Another concern is the fact that there is no limit on the number of times the person in charge can renew successive 15-day terms of long-term separate confinement. Nor is there meaningful, timely independent review or oversight of these decisions. ISO’s 2016 inspection report, mentioned elsewhere, reveals concerns about WCC’s consistent adherence to the checks and balances that exist in policy and in the *Corrections Regulation* respecting use of administrative separate confinement. These concerns aside, as discussed below significantly improved checks and balances are needed, in the form of meaningful, timely external oversight and review.

Under section 21 of the *Corrections Regulation*, the person in charge can extend separate confinement for one or more periods of up to 15 days each. To do this, the person in charge must meet certain timelines and be satisfied that the circumstances that warranted separate confinement in the first place still exist. There is, however, no legislated limit on how many 15-day extensions are permitted. An individual could in theory serve almost an entire two-year-less-a-day sentence at WCC in administrative separate confinement. Whether this has happened, or is likely, does not matter. As the following discussion underscores, meaningful limits and safeguards are needed.

At present, the person in charge must give an individual notice of the intention to place him or her in administrative separate confinement. The person in charge must also give an individual who is in administrative separate confinement an opportunity to make submissions about why confinement should not continue, or should end earlier, but there is no meaningful review of decisions to place someone on either short-term or long-term separate confinement.

The right to make submissions after the fact to the same official who has already decided that the confinement is warranted is no substitute for independent oversight. Nor is the individual’s right to complain to the person in charge, since that is the same official who made the decision to place the client in separate confinement in the first place, since the complaint is dealt with by the same official who decided to apply administrative separate confinement.

Moreover, the person in charge has seven days to deal with the complaint, and only then—assuming the client has not already been released from separate confinement—can the client

ask the ISO to review the response to the complaint and, possibly, substitute its own decision. A client also may complaint to the Ombudsman, but the delays necessarily inherent in an Ombudsman investigation render that avenue of recourse, like an ISO review, illusory in practice.

What is needed is a legislative process that provides for expeditious and independent external review of decisions to place individuals in administrative separate confinement, with a maximum 24-hour turnaround for review decisions being optimal. This process should apply to both short- and long-term administrative separate confinement. This change should be implemented through amendments to the *Corrections Regulation*.

Recommendation: The Corrections Regulation and Corrections Branch policy should be amended to provide an expeditious and independent external review process for decisions to place individuals in both short- and long-term administrative separate confinement, with reviews being completed as soon as practicable, with a 24-hour turnaround being optimal.

A further change is needed to respect international consensus that placing an individual in separate confinement for longer than 15 days is a form of cruel, inhuman or degrading treatment. By this definition, if WCC were to place a client in long-term administrative separate confinement for even a second period of five days beyond the initial 15-day placement, the Corrections Branch, and thus the government, would fall afoul of this consensus. Further, prolonged detention in separate confinement at some point could cross the line into a form of torture, contrary to the opinion of the United Nations' Special Rapporteur on Torture.⁷⁵ These observations also recognize the mass of medical evidence that separate confinement for even 48 hours, much less successive 15-day periods, can quickly produce adverse psychological effects, even mental illness, and worsen the condition of those already suffering from these challenges.

The *Corrections Regulation* should therefore be amended to prohibit use of separate confinement, for any reason, for longer than 15 days in any one-year period, running from the date on which an individual is first placed in administrative separate confinement. For clarity, this should also apply to other forms of separate confinement at WCC, *i.e.*, disciplinary separate confinement in the segregation unit and any use of secure supervision placement at level one or level two.

⁷⁵ United Nations, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 28 July 2008, A/63/175

Recommendation: The Corrections Regulation should be amended to prohibit use of any kind of separate confinement for more than 15 days in any one-year period, running from the date on which an individual is first placed in separate confinement. Pending this change, the Corrections Branch should undertake that no individual will ever be held in separate confinement of any kind other than in compliance with this recommendation.

Secure supervision placement at WCC

Corrections Branch policy D4.5 deals with secure supervision placement, which it defines as “a case management strategy to address disruptive or dangerous conduct and may be used to enhance correctional centre security and increase the safety of everyone in the centre.” Secure supervision placement plans are developed to “provide inmates with opportunities to address their inappropriate conduct or those behaviours that cause significant peer issues.”

Policy B4.5 provides that a client “may be internally classified to SSP when identified as high risk” due to a pattern of: predatory or assaultive behaviour; aggressive, challenging or abusive behaviour; non-compliance; or damaging property. The policy also refers to secure supervision placement as a response to “inappropriate conduct” or “behaviours that cause significant peer issues”. These provisions make it clear that secure supervision placement is about more than “correctional centre security” and personal “safety”. Many of the criteria for “internally” classifying someone as high-risk speak to behavioural issues that do not present safety risks or other possibly material risks. This concern flows in part from the breadth of terms like “non-compliance” and “inappropriate conduct”, which are not defined.

Moreover, the policy’s grounds for placing someone in secure supervision placement overlap materially with those for administrative separate confinement. They also overlap with charges that may lead to time in disciplinary “segregation”. The policy states that a client also can be placed on that status if she or he is determined by a program correctional officer, in consultation with case managers, to be “high risk” because of a pattern of “predatory or assaultive behaviour”, “aggressive, challenging or abusive behaviour”, “non-compliance” or “damaging property”.⁷⁶ These kinds of conduct overlap with at least some of the disciplinary misconduct grounds.

Clients are assigned to secure supervision placement by a “program correctional officer” in consultation with case managers. The client is provided with an “[i]ndividualized” plan, to give the client “opportunities to address” the conduct by moving “at their own pace” through the plan, which “maximizes opportunities for positive change”. The policy acknowledges that “[e]xtended periods of restricted movement may initially be used to meet case management

⁷⁶ Presumably “non-compliance” means non-compliance with a correctional officer’s direction.

objectives". It also provides that a client may be kept on a "standard living unit or a living unit with heightened restrictions such as the Secure Living Unit."

Rather controversially, as will be seen, the policy declares that periods of "restricted movement" entailed by secure supervision placement "do not constitute a segregation disposition or separate confinement". This statement must be weighed against the substance of what secure supervision placement entails. A client in level one of this placement is, as the policy acknowledges, kept in her or his cell for up to 21 hours a day: "the scheduled period of personal time outside of their assigned cell for ablutions, personal phone calls, fresh air access and leisure shall be limited to a total of 3 hours daily". The Corrections Branch confirmed that there is no flexibility for correctional officers, such that individuals on level one secure supervision placement are unlocked for only three hours a day.

The policy also acknowledges that level one results in "reduced peer interaction". The Corrections Branch advised that clients on level one may be housed in the secure living unit, which is apart from the general population units. The branch also advised that current practice is to maintain placement in the living unit wherever possible. The fact remains, however, that regardless of which unit is used, a client on this level is in her or his cell for 21 hours a day at the outset and is isolated from others.

Nor do level one clients have access to employment opportunities, even in the unit. They do not, therefore, have an opportunity to earn money to pay for telephone calls or food from the canteen. The policy provides that the individual may be required "complete suitable programming". The Corrections Branch advised that clients on level one participate in criminogenic programming and spiritual programming.

If the client is considered to have consistently met "all expectations", the client can move to level two, where the restrictions are lighter, but still significant. On level two, a client is in his or her cell for 19 to 20 hours a day, depending on the client's plan (and subject to unspecified "operational requirements" permitting time out of cell). The Corrections Branch advised that, more often than not, clients on level two in practice start at five hours a day unlocked, meaning they are locked in their cell for 19 hours a day at the outset. Depending on a client's progress, the client can receive up to two hours more unlocked time each week.

Levels one and two also restrict peer interaction, with enhanced supervision by WCC staff. Program participation is permitted on level two, and specific programming may be imposed. The client is eligible for employment in the unit after a week of appropriate behaviour at level two. The policy states that standard inmate privileges and services are not withheld on secure supervision placement, but provides that each case plan may impose restrictions.

Once all expectations are being met, and there are no concerns about behaviour or peer interactions while on level two, the client moves to level three, with “full peer interaction” being permitted in the unit. The Corrections Branch advised that level three clients are on a regular routine and are monitored. There is a weekly review to ensure the case plan is being followed and, at the one-month period, there is a review to decide whether removal from secure supervision placement is “warranted”. Levels one and two also restrict peer interaction, with enhance supervision by staff in its place. The policy states that standard inmate privileges and services are not withheld on secure supervision placement, yet, as noted above, it expressly removes employment opportunities and implies restrictions on programming. Moreover, the policy provides that each case plan may impose restrictions.

These features of secure supervision placement lead to the conclusion that it should be treated as separate confinement by another name. It is, again, generally accepted that separate confinement (solitary) involves in-cell confinement for 22 to 24 hours a day. Level one secure supervision placement provides for 21 hours of in-cell time. Does one hour a day less than the 22-hour-a-day consensus transform secure supervision placement into something other than separate confinement?

Regarding time in cell, twenty-one hours is 88% of a day, so an individual on level one is, as with administrative separate confinement, spending the vast majority of the day locked in a cell. For level two, an individual may be alone in her or his cell for up to 20 hours a day, which is 83% of the day. Nineteen hours a day is also a significant period to be confined alone—it represents 79% of a day. These are significant amounts of isolation, even if a cell is located on the client’s regular living unit. By contrast, WCC confirmed, individuals in a general population living unit who are not on secure supervision placement or other restriction have their cells unlocked for 13 hours and 50 minutes on weekdays and 11 hours and 30 minutes on weekends and statutory holidays. It must also be remembered that the general population living units house two individuals at a time, so time in cell is not, when WCC is housing more clients, time alone for these individuals.⁷⁷

All these features of secure supervision placement must be assessed in deciding whether it is a form separate confinement by another name. A prominent consideration is the amount of time spent in cell aspect, which can only be described as significant at both level one and two. It is reasonable to suggest, in fact, that there is no material difference between 22 hours a day and 21 hours a day, and it can be argued that 19 to 20 hours a day does not make a meaningful difference, either.

This is because separate confinement affects mental wellness because it isolates individuals from other humans, because it deprives them of meaningful social interaction. Secure

⁷⁷ It must be acknowledged that, as WCC advised, WCC has the capacity to double-bunk general population clients, but the numbers of clients are such that each client gets her or his own cell.

supervision placement accomplishes this at levels one and two. As noted earlier, interaction with correctional officers, case managers or other WCC staff does not, no matter how well-meaning and positive these officials are, provide ordinary peer interaction that individuals need.

Further, it is clear that a degree of further restrictions exists, in the form of denial of employment opportunities on level one, and possible restrictions on programming that an individual might wish to take. There is also the open-ended discretion for WCC to create a plan that imposes further restrictions on programming.

Considered in the context of the international consensus on what amounts to separate confinement, these aspects of secure supervision placement lead to the conclusion that it is a form of separate confinement. It may not be as restrictive as administrative separate confinement or segregation at WCC, and it may have different objectives, but it is separate confinement. This is clear despite the assertion in policy B4.5 that secure supervision placement is not “a segregation disposition or separate confinement”.

Recommendation: Consistent with the above recommendation regarding administrative separate confinement, if secure supervision placement is to continue, the Corrections Branch should provide for independent external review of decisions to place someone in secure supervision placement. A maximum 24-hour turnaround for review decisions is optimal. The Corrections Branch should implement this change, preferably, through amendments to the Corrections Regulation.

Disciplinary separate confinement (“segregation unit”)

As already suggested, an inmate may be punished, after a hearing, for a disciplinary offence. Section 25 of the *Corrections Regulation* contains a lengthy list of offences, 28 in total. Several of these are sufficiently serious that the conduct could be grounds for a criminal charge. Others are much less serious, including disobeying a direction of a staff member, insulting or abusing someone unless provoked, and engaging in horseplay or rough-housing.

The more serious offences can, under the *Corrections Regulation*, result in lengthy confinement in the segregation unit. A summary of disciplinary decisions that the Corrections Branch provided suggests that adjudicators have, in the past four years, imposed segregation sentences at the very lower end of the available range. Fighting with another client, for example, has led to penalties of two, four and five days of segregation, sometimes with a further five days suspended, while assaults on correctional officers have led to slightly longer sentences.

WCC must, of course, be able to maintain order in the facility, for the wellbeing and safety of clients, staff and visitors. Rules are needed and these need to be back-stopped by disciplinary

measures. Section 33 sets out a range of disciplinary sanctions. These range from a warning or reprimand, to restrictions on activities or programs, all the way to placement in the segregation unit. The available penalties even contemplate use of a restorative justice process, including restitution for damage. A significant option, given the fact that First Nations individuals are often in WCC, is the requirement to, with the inmate's consent, participate "in a spiritual or ceremonial process or receive elder's teachings."

Corrections Branch policy B4.2 deals with use of the segregation unit. For the most part, the policy is to place an inmate in segregation only in more serious circumstances. These are for the most part entirely reasonable, but there are areas for improvement.

First, policy B4.2 should, as standing order G1.14 does, state that segregation is a last resort and is used only where less restrictive measures have not worked or are not reasonably likely to work.

Second, the policy, like the *Corrections Regulation*, permits an inmate to be sentenced to the segregation unit if the inmate is "jeopardizing the management, operation or security" of WCC, or is determined to be a "risk to the management, operation or security" of WCC. This language is, as noted earlier, unclear and leaves too much leeway for use of disciplinary separate confinement. It quite possibly sets too low a bar for use of segregation. It is also not clear what difference there is between "jeopardizing" and being a "risk to" the noted interests.

Third, policy B4.2 indicates that an inmate can be sentenced to the segregation unit under section 20, but there is no clear authority for this under section 20, which refers to separate confinement as distinct from, under sections 28 and 33, segregation.

Recommendation: Consistent with the above recommendations, "jeopardizing the management, operation or security" of WCC, or being a risk to the management, operation or security" of WCC, should not be a ground for placement in segregation after a disciplinary conviction. Disciplinary separate confinement should be reserved for more serious offences, being those involving actual harm to others or a real risk of it. If this recommendation is not accepted, it would be desirable to clarify what is intended by "jeopardizing the management, operation or security" of WCC and to restrict its use as a sanction to the greatest extent possible.

Overhauling the separate confinement regime for WCC

Again, there are significant similarities among the three kinds of separate confinement in use at WCC. Given the risks to mental wellness that separate confinement creates, the existing legislative scheme should be significantly overhauled.

First, legislation should define separate confinement as already recommended, *i.e.*, as any confinement of an individual apart from others, whether in a cell on a regular living unit, in a special living unit or in a segregation unit, for more than 18 hours each day.⁷⁸ Reference should be made to the earlier recommendation on this issue.

Second, to promote clarity and consistency, the concept of secure supervision placement should be eliminated, leaving a single kind of non-disciplinary separate confinement, known as administrative separate confinement. A single set of rules should govern the range of circumstances in which it is used, *i.e.*, the grounds on which it may be applied.

Third, the framework should prohibit use of any form of separate confinement other than as a last resort, even for disciplinary reasons. This is particularly important for individuals who are clinically mentally ill. The framework must ensure that alternatives to disciplinary proceedings are always attempted wherever possible, to the point of hardship for WCC in non-disciplinary cases. (Consistent with this, other deprivations, such as the removal of programming or employment opportunities, should be used as a last resort, where not imposing them would cause hardship to WCC).

Fourth, non-disciplinary separate confinement should be available on much narrower grounds, with the focus being on real and imminent risks, based on clear evidence, to safety or other compelling needs. Minor matters, such as the current “non-compliance” ground, should be grounds for non-disciplinary separate confinement.

Fifth, in recognition of the mental wellness risks that can appear as early as 48 hours, non-disciplinary separate confinement should be limited to no more than 48 hours in the first instance. Non-disciplinary separate confinement should be renewable in successive 24-hour periods, up to a maximum of 132 further hours, but only in the most exigent circumstances, such as continuing real and imminent threats to the safety of the individual in separate confinement or the safety of others. As recommended earlier, there should be a 15-day maximum for non-disciplinary separate confinement in the one-year period following first confinement.

⁷⁸ As noted earlier, 20 hours each day might be chosen, but this should only be stipulated after consultation with knowledgeable mental health professionals.

Sixth, disciplinary separate confinement should be limited to a maximum of 5 days for any single offence, and only for the most serious offences. Although many of the disciplinary offences under the *Corrections Regulation* are serious, notably violence against others, others are much less serious and fall at the “non-compliance with instructions” range. Lesser misconduct should yield lesser penalties, sanctions other than separate confinement (such as removal of privileges). No recommendations are made on which offences should lead to separate confinement, other than to note again that this penalty should be limited to violent offences or other similarly serious offences.⁷⁹

Last, non-disciplinary separate confinement decisions should be subject to the expeditious, external independent review mentioned above.

Recommendation: The legislative framework for separate confinement should be amended to implement the recommendations in this report.

Observations about WCC’s administration of separate confinement

This report makes no original findings about administration of separate confinement in practice at WCC. For one thing, this report is focussed on the mental wellness of WCC clients, which drives the above recommendation for a complete overhaul of the separate confinement scheme at WCC.

Another reason is that ISO has in the past few years investigated WCC’s administration of separate confinement on several occasions. Based on its in-depth file reviews and other investigative steps, ISO has consistently reported concerns about administration of separate confinement at WCC. Detailed discussions with ISO, and a careful examination of its reports, yield the conclusion that there is no need to repeat ISO’s efforts or to confirm its findings in this area. This view is supported by the fact that ISO’s personnel are clearly extremely knowledgeable, capable and dedicated to their work.

Most recently, the 2016 *Investigations and Standards Office Inspection Report* discloses that WCC’s practices continue to be problematic in some areas. The issues identified in that report are in many cases recurring problems. These findings, which repeat or echo findings in other jurisdictions, should be remedied at the earliest opportunity. A summary of ISO’s findings in recent years are set out in Appendix B to this report.

This is a convenient place to deal with concerns that some observers have about ISO’s independence. Some of these concerns may well be driven by the relative lack of public information about ISO’s work. Government’s practice has been to not routinely publish ISO’s

⁷⁹ These might include, for example, drug dealing or other behaviour that presents a risk to others even if it does not involve use of force or threats.

Whitehorse Correctional Centre Inspection Report

inspection or investigation reports. This should change, with all ISO inspection and investigation reports, and government's responses and progress tracking reports, being published in a timely manner.⁸⁰ This will enhance accountability for government and build trust in ISO's role.

Recommendation: All ISO inspection and investigation reports, and government's responses and progress tracking reports, should be published in a timely manner.

Regarding ISO's independence from government, it is true that ISO is located within Justice, in the Public Safety and Investigations Branch. This sets ISO apart from the Corrections Branch. Whether moving ISO to another department or branch would enhance public trust in its independence is an open question. Yukon's Ombudsman has a role in overseeing WCC through her complaints investigation function. Government might wish, in consultation with the Ombudsman, to examine how these two offices might work together to coordinate their functions and activities.

Recommendation: Government should consider whether ISO's reporting lines should be changed, to provide clearer assurance of its independence. Government also could consider, in consultation with the Ombudsman, examining how her office and ISO might work together to coordinate their functions and activities.

Improving transparency about use of separate confinement

In addition to improving administration of separate confinement processes at WCC, as recommended by ISO, the Corrections Branch should improve its data capture and reporting. The branch advised that it is attempting to procure a proper data management system and this effort should continue with urgency.

When it is in place, it should be used to capture better data on the use of separate confinement at WCC. For example, at present it is not possible to easily discover how many times an individual has had his or her administrative separate confinement extended by successive 15-day renewals. As noted elsewhere, in principle an individual sentenced to WCC could spend essentially an entire two-year-less-a-day sentence in administrative separate confinement, without charge or external review. Without better data and analysis, knowing what is happening on the ground, on all fronts, is a challenge. The Corrections Branch is right to want to improve this situation.

⁸⁰ ISO's 2013 through 2016 annual reports are available, providing some insight into its work as a review agency. <http://www.justice.gov.yk.ca/prog/cjps/iso.html>.

When the system is in place, the branch should enhance its reporting on the use of separate confinement beyond the annual statistics that it publishes. It should publish analyses at least quarterly, in the interests of accountability, while enhancing public understanding and, ideally, trust.⁸¹

Recommendation: The Corrections Branch should enhance its reporting on the use of separate confinement by publishing statistics and analyses at least quarterly, in the interests of accountability, public understanding and trust.

Restorative justice and discipline at WCC

This is an appropriate place to discuss alternatives to separate confinement at WCC, notably in relation to punitive disciplinary measures at WCC where a client's behaviour at WCC has harmed someone or their property.

As the Correctional Investigator of Canada, among others, has observed, there is no persuasive evidence that punitive separate confinement deters transgressions either generally or specifically. This could be because many incarcerated individuals suffer from mental wellness or cognitive challenges that make it difficult for them to regulate their behaviour. They may not be amenable to deterrent measures.

Much of the valuable and enlightening discussion at *Exploring Justice: Our Way* was about the need to incorporate First Nations law and principles of justice into the broader justice system. The federal Department of Justice has an First Nations Justice Program, with one of its objectives being to reflect and include First Nations values within the justice system.

Restorative justice is helpfully described here:

Restorative justice is commonly defined as an approach to justice that focuses on addressing the harm caused by crime while holding the offender responsible for their actions, by providing an opportunity for the parties directly affected by the crime – victims, offenders and communities – to identify and address their needs in the aftermath of a crime.

Restorative justice is based on an understanding that crime is a violation of people and relationships. The principles of restorative justice are based on respect, compassion and inclusivity. Restorative justice encourages meaningful engagement and accountability and provides an opportunity for healing, reparation and reintegration. Restorative

⁸¹ This recommendation aligns with the general recommendation, made at the end of this report, for improved data collection, analysis and reporting.

justice processes take various forms and may take place at all stages of the criminal justice system.⁸²

Restorative justice measures are increasingly being used to respond to offences, including in the criminal justice system and there is no reason not to use them at WCC.⁸³ Using restorative justice methods at WCC would also reflect the requirement to use disciplinary separate confinement as a last resort, when all other alternatives have failed. Further, as a justice system agency, the Corrections Branch has the opportunity to implement First Nations justice principles and values into disciplinary processes at WCC.

Recommendation: The Corrections Branch should create policies and procedures requiring WCC to take a restorative justice approach to disciplinary offences before disciplinary charges are laid against a WCC client. These should acknowledge that both offender and victim must be willing to participate in a restorative justice process. The process should also involve, where possible, use of a sentencing circle participated in by all willing residents of the living unit where the incident occurred. One-on-one resolution should be used where a sentencing circle is not possible (e.g., because the offender and victim do not wish it or because others decline to participate). This process should also be applied where the client has broken a WCC rule, such that there is no individual victim. Formal disciplinary charges should be laid, or proceed to hearing, only where reasonable efforts to resolve the matter in this way have failed.

⁸² Department of Justice of Canada: <http://www.justice.gc.ca/eng/cj-jp/rj-jr/index.html>.

⁸³ Section 717 of the *Criminal Code*, for example, authorizes use of alternative measures used if the offender accepts responsibility for the offence. These can include restorative measures (with monetary restitution being one of these).

IMPROVING OUTCOMES FOR FIRST NATIONS INDIVIDUALS

The adverse life experiences of many First Nations individuals in Yukon have already been discussed, as has the reality that First Nations individuals are over-represented in the WCC population. All WCC clients are separated from their families, friends and communities. However, many observers emphasised that First Nations individuals at WCC are often far removed from their communities across Yukon. They are not able to participate directly in the spiritual, cultural and social life of their community. They are cut off from the land, water and air. Yet many of them reported that they wish to remain connected with these vitally-important aspects of their lives, which are important to their identity and sense of belonging and can help with their recovery and reform.⁸⁴

Improving the variety and availability of programs and services for First Nations individuals at WCC is the right thing to do in the interests of individuals' mental wellness. It can also help their communities. Individual and community interests intersect because improved individual outcomes make for healthier and stronger communities. There is evidence that First Nations individuals experience better post-release and treatment outcomes if they have reconnected with their spiritual and cultural traditions, with culturally-specific and holistic supports also contributing to better outcomes.⁸⁵ Improved outcomes for First Nations individuals are also vitally-important for reconciliation in Yukon.

This is also part of the Corrections Branch's mandate. Section 2(b) of the *Corrections Act* states that the Corrections Branch is to work "in collaboration with Yukon First Nations in developing and delivering correctional services and programs that incorporate the cultural heritage of Yukon First Nations and address the needs of offenders who are First Nation persons". Section 2(d) stipulates that the Corrections Branch is to consider "the rehabilitation, healing and reintegration of offenders when making decisions or taking any action under this Act".⁸⁶ Corrections Branch stated policy is to collaborate with First Nations in "developing and delivering correctional services and programs that incorporate the cultural heritage of Yukon First Nations and address the needs of offenders who are First Nations persons".⁸⁷ These legislative and policy commitments should be kept in mind at every step in implementing the recommendations made below.

⁸⁴ This observation is based on numerous interviews, including with current and former WCC clients, elders and First Nations governments.

⁸⁵ *Annual Report of the Office of the Correctional Investigator of Canada 2014-2015*, at page 39, citing research done by the Correctional Service of Canada.

⁸⁶ Sections 79 through 84 of the federal *Corrections and Conditional Release Act* expressly require that federal First Nations inmates be provided with programs designed to address the unique needs of First Nations inmates.

⁸⁷ Policy A1.1 (revised March 2013).

Many observers are concerned that WCC does not offer an environment that helps First Nations WCC clients remain connected to traditional learning or spiritual life. These concerns were expressed by First Nations governments and First Nations individuals, but also by many other observers. Some observers acknowledged that, being a correctional facility, WCC is, by definition, not a warm or welcoming place. Many nonetheless expressed dismay that Yukon has what they described as a “super max” high-security prison, a facility that is not responsive to the generally lower-level offences that typically occur in Yukon. Others acknowledged, however, that serious violent offences such as murder do occur, and that a secure facility is needed. Many observers nonetheless felt that a 200-bed high-security facility is not needed, and that something less imposing and restrictive is needed.

Many of the concerns focus on what is seen as inadequate culturally-relevant programming, inadequate access to spiritual practices and elders, inadequate training for correctional officers about First Nations, and insufficient access to outside activities. Concern was expressed that this does not support mental wellness among First Nations individuals at WCC. Observers believe that better supports and services in these areas will improve mental wellness outcomes for First Nations individuals at WCC.

Based on these observations, and direct assessment of the First Nations services and supports now available through WCC, this part of the report recommends enhancement of services and supports for First Nations clients. All WCC clients need better mental wellness services and supports, as already noted, but the adverse experiences of First Nations clients, and the unique nature of those experiences, demand particular attention.

This is not a new idea. Beginning in 2013, the CSC mapped out a new approach to the services offered to First Nations inmates in federal corrections. This approach involves a continuum-of-care model that provides specific approaches to address the needs of First Nations individuals.⁸⁸ These include Pathways Initiatives, which now exist at several federal facilities across Canada, for both men and women. The goals of the Pathway Initiatives provide important context for the recommendations below, which to some degree build on the CSC’s approach to better outcomes for First Nations individuals:

...Pathways is first and foremost an Elder-driven intensive healing initiative, that reinforces a traditional Aboriginal way of life through more intensive one-to-one counselling, increased ceremonial access, and an increased ability to follow a more traditional Aboriginal healing path consistent with Aboriginal traditional values and beliefs....⁸⁹

⁸⁸ The First Nations program is governed by the CSC Commissioner’s Directive 702 and supporting policies. The directive is found here:

http://www.csc-scc.gc.ca/acts-and-regulations/702-cd-eng.shtml#D_Aboriginal_Corrections_Continuum_of_Ca.

⁸⁹ CSC Guideline GL702-1. <http://www.csc-scc.gc.ca/acts-and-regulations/702-1-gl-eng.shtml>.

Appointment of a First Nations services officer

One component of the CSC approach that should be adapted for WCC is the appointment of at least one full-time First Nations services officer, based at WCC.⁹⁰ That role should encompass the following duties and functions:

- Planning, coordinating and helping to deliver all programs and services for First Nations individuals, including those described later in this report, with the Corrections Branch remaining responsible, for fiscal reasons, for approval of proposed programs and services and changes to them;
- Meeting with First Nations clients to keep up to date on their needs and progress;
- Working with WCC case managers on case planning and management for First Nations clients;
- Liaising with each First Nations client's community, including its First Nations government, to support the client's transition back to the community (including by co-ordinating services and supports in the community);
- Liaising with Corrections Branch parole services, and with community organisations and service providers, to support a client's transition back to the community (including by co-ordinating services and supports in the community);
- Consulting with WCC management on programs and services for the general WCC population and making recommendations in light of the officer's experience with First Nations programs and services;
- Monitoring the delivery of First Nations programs and services and evaluating them on at least an annual basis;
- Membership on WCC's case management team, to inform the team about the participation of First Nations clients in First Nations programs and services, and to offer perspectives on how an individual's progress can be improved;
- Reporting in writing to WCC's community advisory board on First Nations programs and services, proposed changes to them and their evaluation.⁹¹

⁹⁰ This role builds on, but is not the same as, the role played by aboriginal liaison officers within CSC. This role combines aspects of the CSC aboriginal liaison officer role and other officials within CSC institutions, notably the aboriginal correctional program officer role. This role could if necessary be filled on a contractual basis.

⁹¹ To be clear, these are key responsibilities, but others could well become apparent.

Recommendation: The Corrections Branch should appoint a full-time First Nations services officer for WCC to help improve outcomes for First Nations individuals at WCC, whose specific duties should include those recommended in this report.

Mandate for WC management

To ensure effective design and delivery of First Nations programs and services, including the work of the First Nations services officer, the Corrections Branch should direct WCC's superintendent to ensure the following:

- Correctional officers regularly communicate to First Nations clients that a First Nations services officer is available to assist them;
- Correctional officers regularly communicate to First Nations clients that First Nations programs and services are available to them and encourage their participation;
- Correctional officers advise the First Nations services officer whenever a First Nations client expresses an interest in participating in programs or services;
- The work of the First Nations services officer is facilitated, including by ensuring that all necessary facilities and supports are available to the officer;
- First Nations clients are provided with regular access to the services of an elder, while respecting the individual client's choice of elder (including gender) where practicable;
- Elders are provided with the facilities they require to deliver confidential spiritual care;
- Indoor and outdoor space is provided, with suitable facilities, for conducting traditional ceremonies and spiritual activities, including smudging and sweats;
- Facilitation on a regular basis of traditional ceremonies and spiritual activities, including smudging and sweats, and with the participation of elders where requested;
- All WCC clients are given daily access to the outdoors at WCC, not just the fresh air yards, subject to necessary security measures;
- Consultation on a regular basis with elders who work with First Nations clients, and also consultation with elders and the First Nations services officer before making decisions about traditional ceremonies or spiritual activities, including regarding use and storage of ceremonial objects and traditional medicines;
- Regular consultation with the First Nations services officer on all aspects of the planning, delivery and evaluation of First Nations programs and services;
- In consultation with the First Nations services officer, the superintendent reports in writing, at least semi-annually, to the director of corrections and the responsible assistant deputy minister on all aspects of the planning, delivery and evaluation of First Nations programs and services, with a copy of each report being provided to WCC's community advisory board and with copies being made available publicly online.

In addition to the superintendent's responsibilities described above, the Corrections Branch should direct WCC's superintendent to do everything necessary to support the success of First

Whitehorse Correctional Centre Inspection Report

Nations programs and services at WCC, the goal being to improve outcomes for First Nations individuals. The Corrections Branch therefore should direct the superintendent to do the following:⁹²

- Be responsible for the effective and efficient planning, delivery and evaluation of First Nations programs and services at WCC;
- Meet regularly with the First Nations services officer and take into consideration all information, observations and recommendations that the First Nations services officer provides;
- Ensure that correctional officers and other WCC staff who deal directly with First Nations clients are:
 - culturally-competent for that role, including through appropriate First Nations training;
 - knowledgeable about First Nations services and programs at WCC, communicate their availability to clients, and encourage clients to participate;
- Ensure that the availability of First Nations services and programs at WCC is communicated verbally and in writing to clients when they arrive at WCC, and regularly in the living units, with clients being encouraged to participate;

Recommendation: The Corrections Branch should direct WCC's superintendent to support the work of the First Nations services officers and to report on that work, with the specific duties including those recommended in this report.

Community advisory board

Many of those interviewed expressed support for the idea of an advisory board while expressing concern that the board's present mandate, representativeness and functioning need attention. Some of those who have been involved in the past felt that the board had little impact on WCC's operation. They felt that Corrections Branch management of some years ago—not management at the time of writing—had not wanted the board to have any real impact. Many felt that, despite branch management changes and a more positive approach by the branch, there is a clear need to reinvigorate the board's mandate and composition.

Section 43 of the *Corrections Act* authorizes the Minister to create one or more community advisory boards, to “review and make recommendations in respect of” the legislative scheme and “any program established or to be established under this Act or the Regulations.” A board must have at least two members who represent First Nations.

⁹² These are some key responsibilities that should be assigned to the superintendent, but there will be others as the Corrections Branch implements specific changes in response to the superintendent's general responsibility to do everything necessary to ensure the success of First Nations programs and services at WCC.

A number of this report's recommendations deal with establishment of new programs or enhancement of existing ones. Much of the work reflected in this report could be monitored by an enhanced mandate for the board. Its members, as community representatives, could provide timely and informed feedback on the operation of programs, and suggest changes to programs or suggest new programs.

The Minister, who is responsible for establishing the board, should review the board's existing mandate and ensure that it has the responsibility for monitoring existing programs and for recommending changes to programs or new programs. This mandate should specifically enable the board to, as contemplated by section 45(3) of the *Corrections Act*, retain experts as needed to assist the board in fulfilling this function. Consistent with this, the Minister should also direct the Corrections Branch to consider all recommendations of the board and respond to the board in writing, indicating any proposed action to be taken as a result of board recommendations.⁹³

The board at present has the required First Nations representatives. Section 43 authorizes the Minister to establish more than one advisory board, so it would be open to the Minister to create a new board dedicated to First Nations matters. This could, of course, raise practical challenges, including co-ordinating the work of two boards, but it may merit consideration, in consultation with First Nations.

An alternative would be to ensure that the board's membership consists of more First Nations representatives than the minimum of two that the statute requires. Consideration should be given to ensuring good representation of First Nations from across Yukon, noting that the experiences of their citizens at WCC and in relation to community supports and services vary.

The Minister should also ensure that the director of corrections meets at least quarterly with the advisory board, to report to the board and to hear the views of the board.

Last, all advisory board reports and recommendations should be published in a timely way, as should Corrections Branch responses and progress reporting.

⁹³ Section 46(2) already requires Justice to do this, but a specific direction from the Minister would demonstrate the government's commitment to the board and its value in supporting programs at Whitehorse Correctional Centre.

Recommendation: The Minister should refresh the mandate of WCC's community advisory board, giving it clear direction to review and make recommendations on programs that WCC operates and on new programs. The board should be able to retain experts as necessary for its work from time to time. The Minister also should ensure that the Corrections Branch responds to the board's recommendations, and reports on progress in implementing them. The Minister should either establish a new First Nations advisory board for WCC or enhance First Nations representation on the existing board, including to ensure good representation of First Nations from across Yukon. All advisory board reports and recommendations should be published in a timely way, as should Corrections Branch responses and progress reporting.

Culturally-relevant programs

WCC staff reported ongoing efforts to fashion and deliver culturally-appropriate services and programs for First Nations clients. They reported challenges in doing so, including finding First Nations individuals able to deliver them. The efforts of staff are acknowledged, but, as already noted, better First Nations programming is needed, which will require government support.

The following components of WCC's programs have some relevance to First Nations clients as well as other WCC clients:

- I Am a Kind Man (Kizhaay Anishinaabe Niin), created by the Ontario Federation of Indian Friendship Centres (2006), which focusses on understanding and preventing violence toward First Nations women;
- Respectful Relationships, a program of the British Columbia Corrections Branch (2013);
- Violence Prevention, a program of the British Columbia Corrections Branch (2005);
- Substance Abuse Management.⁹⁴

The British Columbia Corrections Branch advised that it the Respectful Relationships and Substance Abuse Management programs now have an First Nations cultural component and are co-facilitated with First Nations justice workers. WCC should consider adopting these versions of the British Columbia programs, with delivery being facilitated by First Nations.

The following other programs and services are now offered to WCC's First Nations clients:

- Smudging;
- Spiritual and cultural counselling by elders;
- Availability of a healing room for clients;

⁹⁴ This program and the two preceding it are, of course, relevant to all WCC clients, not just First Nations clients, and are delivered as such. No one has suggested that these programs are only relevant to First Nations clients.

Whitehorse Correctional Centre Inspection Report

- Use of a recently-constructed outdoor fire circle;
- Arts and crafts programs such as making drums, beading, sprit rattles, baskets, painting and other items.

Numerous observers were of the view that WCC does not do enough to provide culturally-appropriate programs and services for First Nations clients. A great many believe there are barriers to smudging and other spiritual opportunities. Although some observers could not articulate these concerns with precision, there was a high degree of agreement that more spiritual programs are needed.

It was acknowledged that WCC has a healing room and outdoor fire circle, and that smudging does occur, but observers were of the view that more needs to be done in these areas. Many of them commented that the healing room is sterile and not conducive to spiritual contemplation or renewal. (Inspection of the healing room supports the view that this room could be made more welcoming for users, and WCC should make efforts to do so, in consultation with First Nations and with First Nations clients.) There were also reports of difficulty smudging when a client most needed it, and that sweats were not available in any meaningful way.

The Corrections Branch should redouble its current efforts to enhance its culturally-appropriate programs and services for First Nations clients. The focus of this quest should be on better supporting spiritual renewal and healing, and connection with traditional knowledge and practices.⁹⁵ It should consult with WCC clients, elders and First Nations governments from across Yukon. It should consult with elders, including those who have selflessly volunteered at WCC over the years, about which programs and supports are needed. Last, the First Nations services officer mentioned in this report could, at the outset, work with WCC management to survey other correctional services programs and adapt them to Yukon.

Programs in other jurisdictions could either be adapted to Yukon's needs or serve as a guide for locally-produced programs. As an example, CSC has a 64-session program for First Nations individuals. WCC staff noted that, since the average stay at WCC is relatively short, this program is too long to deliver to WCC clients. This may well be the case, but WCC could consider adapting this program in a form that is appropriate for Yukon First Nations individuals and that enables its delivery within the parameters of the average stay.

⁹⁵ One form of programming WCC should consider is theatrical performances and story-telling workshops with First Nations themes and content. In 2014, a local theatre company provided day-and-a-half-long story-telling workshops, with emphasis on honouring First Nations traditions, including through reading of First Nations plays. WCC could consider hosting further performances and workshops, noting the value of art for individual healing.

Whitehorse Correctional Centre Inspection Report

Another example is the work being done at the Fraser Valley Institution for Women, a federal correctional facility. It is clear that a lot of impressive work is being done, and this should be studied for adaptation of relevant components to Yukon.

Last, the British Columbia Corrections Branch advised that it is working to improve its own First Nations programming and has indicated a willingness to speak with Yukon officials in support of efforts in Yukon.

Recommendation: The Corrections Branch should redouble its efforts to offer improved culturally-appropriate programs and services at WCC. The focus should be on better supporting spiritual renewal and healing, and connection with traditional knowledge and practices, including to improve mental wellness outcomes. Programs that exist or are in development in other jurisdictions should be considered and adapted to Yukon needs. The branch should consult with WCC clients, elders and First Nations. This work should be supported by the First Nations services officer for WCC. This recommendation should implement improvements in access to elders and to spiritual practices such as smudging and sweats. This should include serious consideration of re-purposing unused portions of WCC for First Nations programs and supports, including smudging and sweat facilities.

Access to the care and guidance of elders

Many elders have selflessly devoted time over the years to visiting First Nations individuals at WCC, offering traditional learning, guidance and spiritual support. It is clear, however, that challenges exist in ensuring that WCC has a sufficient complement of elders who can visit as often as First Nations clients need. Given the importance of the elders' work, the Corrections Branch should work with First Nations to identify and support elders who wish to volunteer at WCC. This will require the cooperation and support of First Nations, who are encouraged to assist the branch in what should obviously be an ongoing effort.

Recommendation: The Corrections Branch should, with the support of First Nations, work to increase the complement of elders who visit WCC and ensure that they are able to do so as often as needed to meet the needs of WCC clients who wish to see them.

Access to treatment facilities

A significant call for action from the Truth and Reconciliation Commission is to “eliminate barriers to the creation of additional Aboriginal healing lodges” in corrections facilities.⁹⁶ Again, many observers commented that Yukon does not need a “super max” facility like WCC. They believe that, apart from the Jackson Lake facility, Yukon lacks treatment facilities to enable First Nations individuals to connect with the land, and with traditional practices and learning, in support of their recovery and healing. This is the kind of facility they believe Yukon needs more of.

Whether Yukon now needs a roughly 195-bed high security facility to house individuals who pose a safety risk is not within the scope of this report. It does appear, however, that many of the individuals at WCC need something other than high-security detention alone. They require treatment for mental wellness and addictions challenges.

Accordingly, as part of the efforts recommended elsewhere in this report to enhance and expand a whole-of-system approach to helping individuals, the government should examine the feasibility of building further treatment centres such as the Jackson Lake facility, operated by Kwanlin Dun First Nation. The government should also examine the feasibility of re-purposing unused portions of WCC as a facility for First Nations programs and supports, with smudging and sweat facilities being included.

Recommendation: As part of the efforts recommended below to enhance and expand a whole-of-system approach to helping suited individuals to resolve such challenges, the government should examine the feasibility of building further treatment centres such as the Jackson Lake facility and program, operated by Kwanlin Dun First Nation. It should also examine the feasibility of re-purposing unused portions of WCC, to provide First Nations programs and supports, including smudging and sweat facilities.

Time out of doors

Observers were unanimous in the view that, for First Nations clients, being on the land and in the open air is essential for their wellbeing and healing. They were adamant that WCC’s on-unit fresh air yards are woefully inadequate and do not allow First Nations clients to connect with the land. The above recommendation about giving all clients actual out-of-doors time has special resonance for First Nations clients, as noted by First Nations observers, making this change all the more important.

⁹⁶ *Ibid.* This call for action is directed at the federal corrections system, but it is equally applicable to Yukon.

Culturally-informed correctional officer training

As discussed elsewhere, the vast majority of observers acknowledged that many, many WCC clients have experienced trauma in their lives, and suffer its ill-effects, whether it originates in the residential school experience or has other sources. Knowledgeable observers, including health care professionals and former WCC employees, emphasized the need for correctional officer to be well-trained in First Nations history, cultures and experiences, but also to be trained to bring a trauma-informed perspective to their daily work.

The Corrections Branch already provides First Nations training for correctional officers, but the branch should assess the work being done in other correctional systems on this front, to ensure it is offering WCC staff, notably correctional officers, the right training and the right amount of it. The efforts of CSC and of Ontario's corrections branch and British Columbia Corrections clearly merit consideration, and possible adaptation to the Yukon context.

It is equally important to ensure that correctional officers, in particular, are trained in trauma-informed practice when dealing with WCC clients. Trauma, which often manifests in stress and PTSD—and sometimes more serious mental wellness challenges—requires improved understanding of how to work with individuals suffering from trauma. Many correctional systems across North America have recognized this and have created programs to support their staff in dealing with individuals who suffer from trauma. As an example, CSC has conducted research into trauma-informed approaches to inmates who self-injure.⁹⁷

Resources, programs and on-site training can be found for WCC staff.⁹⁸ The Corrections Branch should ensure that WCC staff, notably correctional officers, have appropriate training in trauma-informed approaches to corrections. This could help improve safety and reduce incidents of misbehaviour, which in turn could reduce the use of disciplinary separate confinement and improve outcomes for clients.

Recommendation: The Corrections Branch should ensure that WCC staff, notably correctional officers, have adequate training in First Nations matters, and also training in trauma-informed approaches to corrections clients.

Telephone calls

⁹⁷ Information about this research is found at <http://www.csc-scc.gc.ca/research/r-388-en.shtml>. Also see Miller, Niki & Najavits, Lisa. (2012). Creating trauma-informed correctional care: A balance of goals and environment. *European journal of psychotraumatology*. 3. 10.3402/ejpt.v3i0.17246.

⁹⁸ For example, in 2013, the British Columbia Provincial Mental Health and Substance Use Planning Council published a guide to trauma-informed practice, *Trauma-Informed Practice Guide*, which offers examples of this approach in a variety of settings. http://bccewh.bc.ca/wp-content/uploads/2012/05/2013_TIP-Guide.pdf. Also see the online trauma-informed practice resource available through the Edmonton and Area Fetal Alcohol Society. <https://edmontonfetalalcoholnetwork.org/category/trauma-informed-care-online-learning-series/>.

Whitehorse Correctional Centre Inspection Report

Visits and other communications with families and friends occur, of course, and this can to a degree help WCC clients keep in touch with their communities. The fact remains, however, that WCC clients are to a large degree cut off from their social connections.

One way to improve connections is to change the current policy of charging clients for local and long-distance calls. It appears this is the policy in other jurisdictions. It may have originated at a time when long-distance services were costlier than they are now. It may be intended to ration calls, though there are other ways of controlling this.

Many present and former clients, and observers with knowledge of this, reported that they are often forced to choose between connecting with loved ones by phone or using their scarce funds to purchase food from the canteen.⁹⁹ Setting this undoubtedly real concern aside, the cost to WCC of permitting free calls to family members is unlikely to be substantial, though no figures were sought on this point. The Corrections Branch should change its policy and permit clients to place calls to family and friends free of charge.¹⁰⁰

Recommendation: The Corrections Branch should cease charging clients for local or long-distance calls, in order to enhance ongoing connections between clients, their families and their communities.

Gladue principles and disciplinary sentencing

The Supreme Court of Canada has repeatedly affirmed the importance of recognizing mitigating social factors and historical circumstances of First Nations individuals when fashioning a proportionate sentence for their offence.¹⁰¹ This “recognizes that the systemic disadvantages and marginalization faced by First Nations people inform moral blameworthiness and therefore the proportionality of sentences for First Nations offenders.”¹⁰² The courts have recognized that it is necessary “to craft sentences that are sensitive to the experiences of First Nations offenders...including by considering approaches to correction other than incarceration if they are appropriate and available.”¹⁰³ The *Corrections Act* principles outlined above, which the Corrections Branch must respect in administering that Act, closely align with the policy underlying the *Gladue* principles.

⁹⁹ A sizeable number of present and former clients, and others, reported that the long period between dinner, which is scheduled at an early time, and breakfast means individuals may well go hungry unless they purchase snacks from the WCC canteen.

¹⁰⁰ Calls to lawyers representing clients are already free.

¹⁰¹ *Gladue*, and see *R v Ipelee*, 2012 SCC 13 and *R v Boutilier*, 2017 SCC 64.

¹⁰² *Boutilier*, at paragraph 108.

¹⁰³ *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130, at paragraph 31.

This should be a leading consideration in disciplinary proceedings involving First Nations individuals at WCC. It is obvious that separate confinement for a disciplinary infraction is penal in nature—it is a punishment. As a matter of principle *Gladue* factors should inform all decisions to punish an First Nations individual by separate confinement.¹⁰⁴

This does not mean that each disciplinary sentence will require a *Gladue* report comparable to those prepared for criminal sentencing purposes. If an First Nations individual at WCC is to be sentenced for a disciplinary offence and a *Gladue* report is already available, it should be used in the WCC sentencing. If one is not available, the Corrections Branch should be required to provide the adjudicator with information sufficient to enable the adjudicator to consider *Gladue* factors in fashioning an appropriate sentence.

The Corrections Branch advised that disciplinary adjudicators receive the Yukon First Nations History and Culture Training program, but they should also be provided with training and information necessary to enable them to apply *Gladue* factors in disciplinary proceedings.

Recommendation: The Corrections Branch should take measures to ensure that, if a First Nations individual at WCC is to be sentenced for a disciplinary offence, any existing Gladue report that is available is used in the sentencing. If one is not available, the Corrections Branch should be required to provide the adjudicator with information sufficient to enable the adjudicator to consider Gladue factors in fashioning an appropriate sentence. The Corrections Branch also should ensure that disciplinary adjudicators are provided with training and information necessary to enable them to apply Gladue factors in disciplinary proceedings.

¹⁰⁴ In *Hamm v Attorney General of Canada (Edmonton Institution)*, 2016 ABQB 440, the Court commented in passing on *Gladue* factors in relation to segregation decisions in the federal correctional system.

JUSTICE SYSTEM INITIATIVES

In several places this report has noted the need for integrated initiatives that provide support and services to WCC clients, at WCC and in their communities. This will, again, require collaboration among the Yukon government, First Nations governments, the judiciary, the prosecution service and police. They are each urged to continue to work toward integrated, cross-sectoral supports and services for those with mental wellness and addictions challenges. The two initiatives discussed below illustrate areas in which existing good work can continue, and be enhanced through added resources.

Continuing to reform conditional release practices

The issue of the mental wellness of WCC clients cannot, as other portions of this report attest, be confined to their experience at WCC alone. Adverse social and economic conditions contribute to their being placed in WCC. The same conditions can, and almost certainly do, affect their mental wellness outside WCC. In many cases, mental wellness challenges contribute to individuals' poor social and economic conditions when they are not at WCC.

Mental wellness therefore cannot be addressed at WCC alone, especially because a large majority of WCC clients are at WCC awaiting trial. A client who is not mentally well at WCC is almost certainly not going to return to her or his community in a healthy mental state. The brevity of their stay, and the chronic nature of so many mental wellness issues, makes this highly unlikely. Interviews for this report indicate that a sizeable proportion of WCC clients come and go from WCC on multiple occasions. This cycling in and out of a correctional facility can contribute to mental wellness challenges or reflect mental wellness concerns. It can illustrate both.

One area of concern, which has been at the forefront for some years, deserves discrete attention—the role that breaches of bail conditions, release on recognizance conditions and probation conditions play in populating WCC. There are no available statistics speaking to the proportion of WCC clients who are incarcerated for breach of conditions, but knowledgeable observers, and a sizeable body of literature, point to the conclusion that a significant proportion of WCC clients at any given time are incarcerated either because they have been found guilty of violating conditions or have been charged with doing so.

This may not be surprising, since Yukon has a high rate of probation breaches, with more than 140 breaches per 1,000 offences, the third-highest rate in the country.¹⁰⁵ Yukon also experiences one of the country's highest rates of failure to comply with court orders.¹⁰⁶

¹⁰⁵ *Report Card on the Criminal Justice System.*

¹⁰⁶ *Ibid.*

Although remand accounts for a high proportion of incarcerated individuals across the country, Yukon has the fifth-highest proportion, at over six individuals on remand per 1,000 offences.¹⁰⁷

It is vitally important to protect public safety, but imposition of overly-strict, indeed unrealistic, conditions on individuals can ensnare individuals, as can willingness to charge and individuals for violating conditions where no real and pressing public safety interest exists. Such practices can have perverse effects, since individuals who are already struggling with mental wellness challenges or substance addictions—and very often they suffer from both—can be set up for failure, creating a revolving door that has no clear public interest benefits. As one judge aptly said, “Ordering an alcoholic not to drink is tantamount to ordering the clinically depressed to “just cheer up”. This type of condition has been characterized by some courts (at least in the context of a probation order) as ‘not entirely realistic’.”¹⁰⁸

Release conditions are increasingly under scrutiny nationally, with an evolving consensus that their overuse perpetuates problems for individuals and for society—not to mention unnecessary incarceration costs—without clear public safety benefits in many cases.¹⁰⁹ This has recently been recognized to a degree by Bill C-75, which would amend the *Criminal Code* in an attempt to address this concern.¹¹⁰

The idea that reform is necessary is further bolstered by a 2014 Canadian Civil Liberties Association report, *Set Up to Fail: Bail and the Revolving Door of Pre-Trial Detention*.¹¹¹ This report makes a strong case for reform, particularly in relation to conditions that accused individuals abstain from alcohol or drugs. Evidence cited in the report speaks to a surprisingly high use of abstention conditions, notably in Yukon:

In-court observations, as well as interviews with justice system participants, reveal that bail release orders frequently require individuals to abstain from consuming drugs, alcohol or both. Across all courts, a quarter of releases required the accused to not purchase, possess or consume any non-medically prescribed drugs, and 27.3% of releases required accused to abstain absolutely from the purchase, possession or consumption of alcohol. These conditions were most commonly required in Manitoba (40.9% for drugs, 45.5% for alcohol), Nova Scotia (45.2% for drugs, 45.2% for alcohol) and Yukon (71.4% for drugs, 85.7% for alcohol). Manitoba and Yukon also commonly

¹⁰⁷ *Ibid.*

¹⁰⁸ *R. v. Omeasoo*, 2013 ABPC 328 (CanLII) [*Omeasoo*] at para 37.

¹⁰⁹ *Omeasoo* and other court decisions acknowledge that there will be cases where a requirement to abstain from alcohol or drugs may be warranted, including where there is clear evidence that substance use has been, or may be, a trigger to violence against others.

¹¹⁰ An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, First Reading (March 29, 2018): <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-75/first-reading>.

¹¹¹ https://ccla.org/dev/v5/doc/CCLA_set_up_to_fail.pdf.

Whitehorse Correctional Centre Inspection Report

imposed the condition that accused are not to enter any establishment whose primary source of revenue is generated through the sale of alcohol (22.7% and 71.4%, respectively).

This passage reveals what is to all appearances an extremely common use—perhaps overuse—of such conditions in Yukon. As the above passage notes, across all courts, no-alcohol conditions were found in 27.5% of cases, but the figure in Yukon was 85.7%. Local conditions may explain this disparity to some degree, but this is no reason not to consider reforms, especially if there is no clear evidence that such conditions have a material public safety benefit in the aggregate.

The high incidence of abstention conditions in Yukon is of special concern given the view of the overwhelming majority of those interviewed for this report that adequate addiction recovery supports are not available in Yukon. This is a key reason for the recommendation in this report for urgent action to expand addiction support and recovery resources across Yukon, with all justice system participants contributing to planning and implementation.

The Corrections Branch advised that, after the Canadian Civil Liberties Association report was released in 2014, a bail reform committee was struck by the then Chief Judge of the Yukon Territorial Court. The branch also advised that the Bail Reform Subcommittee of the Territorial Court Users Committee has done work in this area. This is commendable, but it is not clear that real progress has been made. Concentrated, collaborative work is urgently needed in this area on the part of all concerned.

Recommendation: The government should immediately initiate properly-resourced efforts by the Bail Reform Subcommittee, in consultation with First Nations governments and others, to study the use of release conditions and make recommendations for alternatives to abstention conditions that are consistent with real public safety needs.

Community Wellness Court

Yukon's Community Wellness Court, which received its first referral in 2007, offers therapeutic alternatives to criminal sanctions for individuals who suffer from one or more of addictions, mental wellness problems, FASD and an intellectual disability. It is an admirable multi-party effort, and the Yukon government is to be commended for announcing permanent funding for it starting this fiscal year.¹¹²

Many individuals held at WCC are affected by the same challenges as those who pass through the Community Wellness Court. It is therefore worth describing how that court works because it offers the kind of comprehensive services that should be available to individuals who pass through WCC and back into the community.

The court's five goals merit reproduction here:

1. The "revolving door" of recidivism and re-offending is reduced for the individuals who participate in the CWC.
2. The safety of Yukon communities is enhanced by providing individuals who participate in the CWC with supports that reduce their risk to re-offend.
3. The needs of those victimized during the commission of the offence(s) before the CWC are adequately addressed.
4. The capacity of the core partners of the CWC is adequate to the roles they must play and partnerships are fostered with other key stakeholders in support of the Court's objectives.
5. The use of and effectiveness of alternative justice approaches in the Yukon, including community-based justice, therapeutic or problem-solving approaches and restorative justice, is increased.¹¹³

These goals are shared with WCC's correctional efforts, but also illustrate and reinforce the need to enhance those efforts by offering improved mental wellness and addiction services to all WCC clients, including those held on remand.

The court is available only to adults who agree to enter the program and are motivated to work on their problems with professionals. They must have been charged with a criminal offence, including a drug charge under federal drug law. They must be affected by one of the

¹¹² The court is a collaborative effort of the Yukon Territorial Court, Justice, the Public Prosecution Service of Canada, Yukon Legal Services Society, the Council of Yukon First Nations, the RCMP and Health and Social Services. This is the kind of collaboration across governments, branches of government and community organisations that other jurisdictions are increasingly creating, as they should.

¹¹³ As stated in J. Hornick, *An Evaluation of Yukon's Community Wellness Court: June 2007 to December 2013* (2014) [Community Wellness Court Evaluation 2014], at page x.
http://www.yukoncourts.ca/pdf/cwc_evaluation_june_2007_to_december_2013.pdf.

problems identified above. Those charged with sexual or other serious offences are not eligible.

They must plead guilty to the offence with which they are charge and waive the right to immediate sentencing. They have to comply with bail conditions, including drug testing. They must work with a case manager and treatment staff to complete a suitability assessment and case plan. They must then follow the treatment and support plan created for them. They are required to appear in court on an as-required basis, so the court can assess their progress. Failure to comply with the plan can lead to sanctions by the court. If an individual shows good progress, completion can take 12 to 18 months.

The supports and services available to participants are intended to be comprehensive. They include:

- Assistance with meeting basic needs (food, clothing and shelter)
- In-depth assessments for addictions, mental health, and FASD
- Addictions counselling
- Mental health stabilization and support, including psychiatric assessment
- Medical services
- Transportation support (getting to appointments)
- Referral and support to access community programs and services such as education programs, employment assistance programs, counselling, leisure and recreation activities.¹¹⁴

The court's wellness team provides some of these services and supports, while others are provided by a combination of community organisations, other government departments and First Nations.

The 2007-2013 Community Wellness Court Evaluation, which was done by an external expert, measured the court's success against the five objectives quoted above. The evaluation concluded that the program succeeded in reducing recidivism—including a substantial reduction in administration of justice offences—and enhancing community safety (objectives one and two). The evaluation found less success in meeting objective three, meeting the needs of victims, but reported good progress on objectives four and five. It is understood that an update to this evaluation has been done and shows generally similar outcomes.

The court has undoubtedly, as its evaluations indicate, led to improved outcomes, both for individuals and their communities. This is welcome and should be an incentive for ongoing efforts. Recognizing that the Community Wellness Court is not suitable for everyone, it is

¹¹⁴ Yukon Territorial Court, *Yukon Community Wellness Court*: <http://www.yukoncourts.ca/courts/territorial/cwc.html>.

Whitehorse Correctional Centre Inspection Report

nonetheless recommended that the government consider how to expand the program, noting (among other things) the needs for stable housing and more support services identified in the evaluation.

Recommendation: The government should, working with all relevant parties, ensure that the resources available to the Community Wellness Court are adequate, including with a view to ensuring stable housing and expert supports are available to all participating individuals.

Residential treatment facilities

As indicated earlier, many observers—notably those working with addictions and mental wellness—expressed concern that Yukon needs more residential treatment facilities. It is outside this report’s scope to assess the accuracy of this perception, noting that it was expressed by many knowledgeable observers. In this light, it is recommended that the government undertake an urgent expert assessment of the need for more residential treatment facilities such as Jackson Lake and create such facilities as that assessment shows are needed.

Recommendation: The government should undertake an urgent expert assessment of the need for more residential treatment facilities such as Jackson Lake and create such facilities as are shown to be necessary.

Data collection, analysis and reporting

A general recommendation that applies to all changes recommended in this report is the need for better data collection, analysis and reporting. As new initiatives are planned it is important that robust data collection, analysis and reporting mechanisms be part of each initiative. This applies to WCC’s programs and to other publicly-funded programs and initiatives. It is necessary for the Corrections Branch and other participants to collect program data and use the data to support evaluation, planning and evidence-based public policy decisions.

Both the raw data and associated analyses should be publicly available. Transparency of this kind underpins accountability, but it also enhances trust and avoids misunderstanding. Some of this is being done, but better data collection and reporting are needed.

Recommendation: The Yukon government should design and implement appropriate program data collection systems, as well as supporting analytical measures, to support program planning and evaluation, and evidence-based public policy decisions. The government should also make the raw data and related analyses publicly-available, in the interests of transparency.

CONCLUSION

This report makes many recommendations, many of which address the need for enhanced supports and services at WCC for the mental wellness challenges that individuals at WCC often face. Others are specific to the present scheme for separate confinement at WCC and identify changes needed there. Other recommendations are based on the reality that WCC's policies and practices that involve or affect the mental wellness of clients cannot be assessed in isolation. As has been shown, a great many of the individuals at WCC suffer from a range of mental wellness challenges, including addictions, that affect them in the community and may well affect them when they leave.

WCC cannot be expected to deal with these challenges and return healthy individuals to their communities. WCC is only one part of the justice system, and it is not a health care facility. The central theme of this report, however, is that WCC needs to be part of an integrated approach to the mental wellness of individuals who find themselves incarcerated there. That approach must be grounded in the fact that a correctional facility should not be, and should not be expected to be, a first-line provider of mental wellness services. As others have observed, changes in mental wellness services and supports has forced correctional services into that role. Yukon has a clear opportunity to lead the way in changing that situation.

APPENDIX A
Inspection terms of reference

WHITEHORSE CORRECTIONAL CENTRE INSPECTION
TERMS OF REFERENCE

1. Independent Inspection

In accordance with section 36 of the *Corrections Act, 2009*¹¹⁵, the Honourable Minister of Justice Tracy-Anne McPhee is providing for the inspection of the Whitehorse Correctional Centre (the Inspection).

An independent Inspector will be procured by the Government of Yukon (Department of Justice) to carry out the Inspection.

2. Mandate

The Inspector will inspect the policies and practices of the Whitehorse Correctional Centre which involve, affect or may impact the mental health of clients; the Inspection shall include but is not limited to the use by the Whitehorse Correctional Centre of separate confinement and segregation of clients with mental illnesses.

The Inspector will conduct the Inspection pursuant to section 36 of the *Corrections Act, 2009*, and as such the Inspector may at any time enter and access the Whitehorse Correctional Centre and examine any thing or any record, except a medical record of an inmate.

The Inspector may conduct interviews of Government of Yukon employees to give clarity to policies and practices subject to Inspection. The Inspector may also seek input from First Nation governments, community members, including First Nation citizens and other stakeholders to give context to the issues that arise from the Inspection.

The Inspector may not make any findings about the actions or conduct of any individual relating to any particular inmate.

The Inspector will commence the Inspection on or before January 1, 2018, and will report their findings, along with any recommendations, in writing to the Deputy Minister by March 29, 2018.

¹¹⁵ http://www.gov.yk.ca/legislation/acts/corrections2009_c.pdf

3. Relationship with the Department of Justice

The Inspector will report progress to the Deputy Minister of Justice on a regular basis. The Department of Justice will provide administrative and other support to the Inspector as agreed to in advance with the Inspector.

The Inspector may, at any time prior to final reporting, propose amendments to these Terms of Reference.

APPENDIX B

ISO's 2016 inspection report findings and recommendations about separate confinement

The following findings are extracted from the 2016 *Investigations and Standards Office Inspection Report*, discussed above. These findings are found starting at page 26 of the report. ISO's report makes other findings that need not be reproduced here. It also makes many recommendations that need not be set out here.

As noted above, these noteworthy findings should be remedied by the Corrections Branch at the earliest opportunity.

1. The average age of the 20 inmates was 38 years old; the average age of the 15 males was 40 years old, and the average age of the five female inmates was 30 years old. Three of the inmates were between the ages of 19 and 25, two were male and one was female. One young adult male spent time in separate confinement for three separate lengthy periods; the first period was 32 days which included short term, long term and disciplinary separate confinement; the second period was 27 days which included short term, long term and voluntary separate confinement; the third period was 22 days all of which was spent on voluntary separate confinement.
2. Of the 20 files selected, five were female inmate files. One female inmate with mental health issues accounted for 18 of all separate confinement cases reviewed; nine of those 18 cases were voluntary confinement cases.
3. Additionally, one male accounted for nine voluntary confinement cases out of the 25 total voluntary separate confinement cases identified. In other words, two inmates accounted for 18 out of the 25 voluntary separate confinement cases.
4. 53 of the 61 separate confinement forms had reasons provided. Eight forms had no reasons included on the form, and only cited the relevant sections of the Regulation. Policy B 4.3 "Separate Confinement" provision 19 states that it is not sufficient to only quote the *Regulation* and that written reasons are required. The Superintendent has informed ISO that he has met with the Deputy Superintendent of Operations to reinforce WCC's position and direction that detailed reasons need to be included on separate confinement forms. According to the Superintendent, this direction is also going to be conveyed to all Managers of Correctional Services at an upcoming meeting.
5. Section 20(2) of the *Regulation* states that the person in charge must release an inmate after 72 hours on short term confinement. The person in charge may extend the order for one or more periods of no longer than 15 days each, as per section 21, long term separate confinement. Policy G 1.14 provision 6 states that every weekday morning, the person in

charge will discuss the status and circumstance of each inmate housed in segregation and that the status and decisions made for each inmate will be documented. Policy B 4.3 provision 27 states that the case manager will conduct a review of section 20 prior to the expiry of the 72 hours being expired. If the case manager believes that there is a need to extend to section 21, they will make recommendations to the Deputy Superintendent. The case manager's review should be documented in the progress log and the electronic file.

6. The majority of cases lacked proper documentation and investigators were unable to determine if reviews between short term and long term periods of separate confinements and extensions of long term separate confinements were completed. Only two separate confinement forms documented that a review of placement had been completed. These two forms documented specific details indicating that circumstances still warranted separate confinement. The form lacks space to document whether a review has been conducted. The form only provides a place to note the upcoming review date and time. WCC management indicates that they conduct daily reviews of all inmates on separate confinements. Investigators reviewed "Morning Briefing Minutes", but found that only the inmate's name was documented; the details of the placement review discussion were not documented. There was no case managers' review of the placement recommendations found in the files reviewed.
7. Investigators could not determine by reviewing the separate confinement form whether an inmate had been released from segregation prior to the 15 day limitation. Investigators were only able to determine this by reviewing other documents. For example, one inmate's separate confinement forms indicated that she was separately confined for 18 days (three days short term and 15 days long term); however, her progress log indicated that she was placed on Secure Supervision Placement¹¹⁶ Level (SSP) 3, three days into her long term confinement.
8. There were 10 instances of long term confinement of the 59 reviewed; of those, five inmates were released prior to the expiration of the 15 day time period. Deficiencies in documentation remains a serious concern as it points to the possibility that inmates are in separate confinement longer than they should be or without lawful authority.
9. Furthermore, in more than one instance, an inmate had both long term confinement and voluntary confinement forms for the same time period. There was no way to indicate the change of status on the original long term confinement form; in some instances, it appeared that an inmate spent the full duration on long term separate confinement, when

¹¹⁶ As per Policy D 4.5 "Secure Supervision Placement": Secure Supervision Placement is a case management strategy to address disruptive or dangerous conduct and may be used to enhance correctional centre security and increase the safety of everyone in the centre.

in fact they had been transferred to voluntary separate confinement. There is no field on the separate confinement forms to document when the separate confinement has either ended or has been extended. Corrections management, when reviewing separate confinement documentation, should be able to review the form and find all requirements of the Act without having to cross reference other files. This is especially important for the mandatory review time periods.

10. There were also no documented reviews for long periods of voluntary separate confinement on the separate confinement forms. One male inmate was on short term confinement and voluntary separate confinement for 55 days consecutively; there were no documented reviews of his placement on his separate confinement forms.
11. One female inmate was on all types of separate confinement (sections 20, 21, 22, 28 and 33) over an 83-day consecutive time period. In this instance, there were multiple documented attempts and plans to reintegrate this female back into the regular unit; however, the separate confinement forms did not document these attempts. Investigators had to search other documents in order to determine these efforts were made.
12. While examining the separate confinement forms, investigators found that there were five different versions being circulated during the timeframe in question, and that there were different versions of those versions also in circulation. ISO has received and confirmed that a new form was developed and that it should now be the only one in use. This new form addresses and resolves ISO's finding that there was no way to know if the inmate received their written notification within 24 hours as per the *Regulation* as the new form has a space for the date and time of service to the inmate.
13. Per the *Regulation*, the signature of the person in charge is required in order to lawfully place an inmate in separate confinement. All separate confinement sections in the *Regulation* delegate authority only to the person in charge. To be clear, a Deputy Superintendent and or Manager of Corrections Services may act as the person in charge, for example, during the night shift or on weekends. The separate confinement form needs to clearly indicate whether the officer signing off on a separate confinement placement is either the person in charge or is the acting person in charge. Some forms had only names typed and no signature. On some of the different versions of forms, the person in charge signature was in the review section, not in the person in charge section. Furthermore, Policy B 4.3 "Separate Confinement" provision 28 stipulates that the Deputy Superintendent will determine if an inmate's short term confinement will be discontinued or if the inmate will be placed on section 21. This is not in accordance with the *Regulation*, section 21(1). Determination of an inmate's placement is the exclusive responsibility of the person in charge.

14. Of the six officers interviewed (Managers of Correctional Services and corrections officers in charge of the segregation/SLU), ISO determined that, when serving the separate confinement form to inmates, Officers in Charge (OIC) or their designates were not always providing a verbal explanation of the reasons for placement on a consistent basis, as per Policy B 4.3 “Separate Confinement” provision 19 which states that the OIC or designate will deliver all written separate confinement forms to the inmate, and will also explain the forms to the inmate verbally.
15. Policy G 1.14 provision 7 states that on weekends, the Manager of Correctional Services is to speak with all inmates housed in segregation before noon and document this discussion in each inmate’s progress log. Only one of the Managers of Correctional Services out of the three interviewed said that he usually attends all units on weekends before noon. The interview responses indicate that the practice is not being carried out consistently. Furthermore, there was no evidence that any discussions on weekends between inmates housed in segregation and the Manager of Correctional Services were being documented in any inmate’s progress log.
16. Policy B 4.3 provisions 30 and 31 dictate that case managers will meet with all inmates on section 21 and develop a transition plan; further, that they will also meet with all inmates on section 21 every three days and document a summary of these meetings in the inmate’s progress log. The policy does not elaborate on the purpose and intent of the meetings. The interviews with the case managers confirmed that they were not conducting these steps as per policy requirements. In response to this finding, the Superintendent indicated that there is no plan to amend these provisions, as the Deputy Superintendent of Programs has informed him that they are reviewing placements on a daily basis to ensure inmates are transitioned from segregation as soon as possible. The Superintendent recognized that the intention of all provisions detailing contact with inmates on segregation was to ensure meaningful contact and to establish ongoing communication; therefore, provision 31 would not be amended and case managers would be directed to meet with inmates every three days.
17. The Regulation, section 21(3)(b) affords inmates the right to appeal a decision that extends their separate confinement to long term confinement, or to request a shorter extension. Investigators found that there was no consistency in practice with respect to corrections officers informing inmates of their right to appeal; one corrections officer that was interviewed said that he was aware of the clause and that he had offered it in the past.
18. From the case file review and interview with the inmate on segregation, ISO found that all policies except for one were being adhered to. Paperwork was being properly filled

out, and the inmate was being served separate confinement forms, informed of his right to appeal, offered time out of his cell, and receiving visits from a nurse who attended and checked in on him. However, case management did not follow the policies and develop a transition plan or meet with the inmate every three days.