

SETTLEMENT AGREEMENT
HUMAN RIGHTS COMPLAINT
Panel of Adjudication Files 2015-03, 2014-04, 2015-04, 2014-03

BETWEEN THE "PARTIES" as follows:

[REDACTED]

(the "Complainants")

AND:

Government of Yukon, Department of Justice, Whitehorse Correctional Centre

(the "Respondent")

AND:

The Yukon Human Rights Commission

(the "Commission")

WHEREAS the Parties, on behalf of their heirs, executors, administrators, personal representatives, next of kin, successors, and assigns agree to resolve in good faith those parts of complaints brought by [REDACTED] (the "Complaints") alleging systemic discrimination and a failure to accommodate in connection to offering or providing services to the public, contrary to sections 7(a), (d) and (h), 8, 9(a) and 12 of the Yukon *Human Rights Act*, RSY 2002, c.116;

WHEREAS the term "inmate" refers to both remanded and sentenced persons who are housed at the Whitehorse Correctional Centre;

WHEREAS the Parties recognize and acknowledge that

- the Whitehorse Correctional Centre houses both sentenced inmates and inmates on remand;
- medical care, including mental health care, at the Whitehorse Correctional Centre is provided to inmates on consent: no mental health assessment can be done or mental health treatment can be provided to an inmate unless the inmate, or, where applicable, a substitute decision maker for the inmate, provides the necessary consent;
- medical decisions regarding appropriate assessment and treatment options for inmates must be made by qualified professionals in accordance with their own judgment and professional standards;

- medical care, including mental health care inclusive of assessment and treatment, at the Whitehorse Correctional Centre is provided to inmates by qualified professionals;
- information about the medical care, including any mental health assessment done or mental health treatment provided, of an inmate cannot be shared by the medical professionals providing that care, whether or not those medical professionals are employed by the Respondent, except as allowed under the *Access to Information and Protection of Privacy Act*, RSY 2002, c.1 and *Health Information Privacy Management Act*, SY 2013, c.16; and

WHEREAS the Parties recognize that placement in segregation and separate confinement can have an adverse impact on inmates with mental illness;

WHEREAS the Commission maintains the position that the use of segregation and separate confinement has particularly harmful effects on *Human Rights Act*-protected groups, including Indigenous prisoners and prisoners with mental illness, and that the use of this practice should ultimately be ended;

WHEREAS the Parties agree that segregation under section 28 of the *Corrections Regulation*, OIC 2009/250 and separate confinement under sections 20 and 21 of the *Corrections Regulation*, OIC 2009/250 must only be used as measures of last resort and under the least restrictive conditions possible with comprehensive monitoring and record-keeping, and in a manner that does not violate an individual's rights under the *Human Rights Act*; and

AND WHEREAS both Parties acknowledge that the Canadian corrections environment is in a constant state of development, and that common law or legislative changes may impact the obligations set out in this agreement. The Parties further acknowledge that events beyond the control of any party may impact their ability to perform the obligations created by this Agreement, or may delay the performance of such obligations.

NOW THEREFORE THE PARTIES AGREE:

1. **DEFINITIONS**

"Indigenous Social History" means the various circumstances that have affected the lives of Indigenous people due to their treatment in Canada. These circumstances include the following (note that this is not an exhaustive list):

- effects of the residential school system;
- "Sixties Scoop" into the adoption system;
- effects of the dislocation and dispossession of Inuit people;
- family or community history of suicide;
- family or community history of substance abuse;
- family or community history of victimization;
- family or community fragmentation;

- level or lack of formal education;
- level of connectivity with family/community;
- experience in the child welfare system;
- experience with poverty; and
- loss of or struggle with cultural/spiritual identity.

“mental health team leader” means the person in charge of the forensic mental health unit, and is a PhD clinical psychologist or psychiatrist, whose official job title is yet to be determined;

“mental health professional” means a clinical psychologist, psychiatrist, psychiatric nurse or social worker with forensic training;

“Secure Supervision Placement” means a case management strategy utilized by the Respondent and created by policy, in which an inmate may be separately confined in his/her cell no more than 21 hours per day.

“segregation” means the placement of an inmate in accordance with section 28 or section 33 of the *Corrections Regulation*, O.I.C. 2009/250;

“separate confinement” means the placement of an inmate in accordance with sections 20 and 21 of the *Corrections Regulation*;

“voluntary separate confinement” means the placement of an inmate in accordance with section 22 of the *Corrections Regulation*; and

2. MENTAL HEALTH CARE SERVICES TO INMATES

2.1 The Respondent will augment the mental health care currently provided to inmates at the Whitehorse Correctional Centre by

- within 12 months of the signing of this agreement, establishing a forensic mental health care unit within the Government of Yukon;
- establishing the provision of mental health care services to inmates as the primary mandate of this forensic mental health care unit;
- establishing the position of a mental health team leader who is integrated into the senior management of the Whitehorse Correctional Centre; and
- staffing this forensic mental health care unit with qualified mental health professionals.

2.2 The forensic mental health care unit will:

- in keeping with the Respondent’s current stated practice (via its nursing staff), provide, or where necessary train and supervise nursing staff in, screening for mental health issues to all inmates within 24 hours of

admission to the Whitehorse Correctional Centre, and as needed on an on-going basis following admission;

- (b) in keeping with the Respondent's current stated practice (via its nursing staff and contractors), provide a mental health assessment by the mental health team leader or their designate, as appropriate for the particular case, for all inmates who screen positive for mental health issues;
- (c) in keeping with the Respondent's current stated practice (via its nursing staff and contractors), provide individualized, evidence-based, gender-responsive and culturally appropriate mental health care services and treatment to inmates at the Whitehorse Correctional Centre, as needed;
- (d) be involved in case planning for individual inmates, including taking primary responsibility for case planning for individual inmates with mental health issues;
- (e) in keeping with the Respondent's stated current practice in respect of inmate checks, meet, or train and supervise nursing staff as necessary in meeting, at least once every 24 hours with any inmate placed in segregation or separate confinement for the purpose of ensuring that the inmate's mental health care needs are met, and in keeping with any applicable professional standards and requirements will make and retain clinical notes of the meeting; and
- (f) in keeping with the Respondent's stated current practice (via its nursing staff and contractors), as well as any applicable professional standards and requirements and any requirements established by law, maintain records of all mental health screening, assessments, treatment, case planning and other consultation undertaken at the Whitehorse Correctional Centre.

2.3 The Respondent will also record the date and time of any contact an inmate has with the forensic mental health care unit or nursing staff, including where that contact took place.

2.4 The mental health team leader and forensic mental health care unit will review and provide recommendations to the Respondent regarding the improvement of

- (a) the mental health screening tools used for inmates at the Whitehorse Correctional Centre;
- (b) the use, including the triggering of repeat use, of the mental health screening tools used for inmates at the Whitehorse Correctional Centre;
- (c) case planning and case management for inmates with mental health issues or mental illness;

- (d) use of the Secure Supervision Placement program for inmates with mental health issues or mental illness, with a view to identifying and minimizing any differential impact of cell confinement on those inmates; and
- (e) training provided to staff and management of the Whitehorse Correctional Centre regarding mental health issues in corrections.

3. **INDIGENOUS INMATES**

3.1 The Respondent will also, in consultation with the Commission and appropriate Indigenous resources, seek recommendations regarding the further consideration of Indigenous Social History into the policies and practices at the Whitehorse Correctional Centre, and particularly in, but not limited to, the following areas:

- (a) case planning and case management for Indigenous inmates;
- (b) use of the Secure Supervision Placement program for Indigenous inmates;
- (c) training provided to staff and management of the Whitehorse Correctional Centre; and,
- (d) training for independent hearing adjudicators, including the use of pre-existing "Gladue" reports.

4. **PLACEMENT IN SEGREGATION**

4.1 The Respondent will amend any applicable policies in order to give effect to the following:

- (a) In keeping with the Respondent's stated current practice of consulting with its nursing staff and contractors, where an inmate is alleged to have breached a rule as specified in section 25 of the Corrections Regulation, and where the inmate has provided consent, the Person In Charge or their delegate will
 - i. consult with the mental health team leader or their designate to determine whether the inmate's behavior may be linked in whole or in part to mental health issues experienced by the inmate;
 - ii. if so, consult with the mental health team leader or their designate regarding the appropriate course of action, including whether a therapeutic alternative to discipline is available for that particular inmate;
 - iii. document any consultation with the forensic mental health care unit and the outcome of such consultation; and

- iv. offer the inmate the choice to consent to the release of information about the mental health issues experienced by that inmate as part of the information to be considered by the Person In Charge or an adjudicator, as the case may be;
- (b) in keeping with the Respondent's stated current practice, if an inmate has been charged with a breach of the rules that inmate will not be placed in segregation pending a disciplinary hearing unless all possible alternatives to segregation have been explored, exhausted and rejected because they would cause undue hardship, including but not limited to reasons related to security and/or health and safety concerns;
- (c) the Person in Charge or their delegate will document the consideration and determination of factors causing undue hardship leading to the placement of an inmate in segregation pending a disciplinary hearing, within 24 hours;
- (d) Within 12 months of the date of execution of this Agreement, the Respondent will establish an "alternative measures panel" under section 32 of the Corrections Regulation;
- (e) in recognition of the independence of the adjudicators appointed under section 26 of the *Corrections Act, 2009*, the Respondent will bring to the attention of the adjudicators the interest of the Commission in the potential representation of inmates by non-lawyers at disciplinary hearings held under section 29 of the *Corrections Regulation* and will make any policy or operational changes necessary to reasonably facilitate that representation, including by permitting such advocates, where allowed by the adjudicator, to have access to inmates and to attend disciplinary hearings the Whitehorse Correctional Centre.

5. **SEPARATE CONFINEMENT**

5.1 The Respondent will take any steps necessary to ensure that:

- (a) in keeping with the Respondent's stated current practice, an inmate with a mental health issue and/or mental illness, including an inmate actively engaging in self-injury which is deemed likely to result in serious bodily harm or an inmate at elevated or imminent risk of suicide, will not be confined separately unless the Respondent has explored and exhausted all possible therapeutic and other alternatives to separate confinement in consultation with the mental health team leader or their designate, subject to the inmate's consent, and rejected them because they would cause undue hardship, including but not limited to reasons related to security and/or health and safety concerns.

- (b) the Person in Charge or their delegate will document the consideration and determination of factors causing undue hardship leading to the separate confinement of an inmate with a mental health issue or mental illness within 24 hours.
- (c) an inmate is informed that they are permitted to make, or have a representative on behalf of the inmate make, timely written or, where reasonable verbal, submissions to the Person in Charge for consideration by the Person in Charge on their review of longer-term separate confinement under s. 21 of the Regulations.

6. TRAINING

- 6.1 The Commission will develop an orientation session (approximately one hour in length) on Human Rights for delivery to staff of the Whitehorse Correctional Centre as part of the Corrections Officer Basic Training program.
- 6.2 The Commission, or the Commission's contractor, will, in cooperation with the Respondent, deliver the orientation session on Human Rights to the participants in the Corrections Officer Basic Training program whenever that Training program takes place.
- 6.3 The Commission will develop a four to five hour high-level session on Human Rights for delivery to management of the Whitehorse Correctional Centre.
- 6.4 The Commission, or the Commission's contractor, will, in cooperation with the Respondent, deliver the high-level session to management of the Whitehorse Correctional Centre with a reasonable agreed time after the signing of this Agreement and whenever the Commission and Respondent mutually agree.
- 6.5 The Commission and the Respondent will together develop a "train the trainer" program aimed at facilitating the future delivery by select staff and/or management of the Whitehorse Correctional Centre of the orientation session and high-level sessions to staff and management of the Whitehorse Correctional Centre.
- 6.6 All training delivered by the Commission under this agreement will be provided on a cost-recovery basis.

7. REVIEW AND POLICY COMPLIANCE

- 7.1 The Respondent will track, collect and aggregate all records regarding the use of segregation and separate confinement, where permissible under the applicable legislation include the records regarding consideration of mental health issues and mental illness in the placement of inmates, as required by this Agreement.

- 7.2 The Respondent will continue to make available all records relating to the use of segregation and separate confinement for a particular inmate available to that inmate at their request or at the request of their designate.
- 7.3 The Respondent will continue to keep records of the amount of time any individual spends in cell confinement under the Secure Supervision Placement program, in order to ensure that it does not exceed 21 hours per day.
- 7.4 In keeping with the Respondent's stated current practice, the Respondent will, collect and where permissible under the applicable legislation, make public statistics regarding the use of segregation and separate confinement within the Whitehorse Correctional Centre.
- 7.5 The Respondent will also collect and, where permissible under the applicable legislation, make public statistics regarding the placements of inmates with mental health issues and mental illness in segregation or separate confinement at the Whitehorse Correctional Centre keeping in mind the protection of the privacy of inmates and the utility of such statistics in a jurisdiction with a very small population.
- 7.6 The Respondent will notify the Deputy Minister of Justice if any inmate has been placed in segregation or separate confinement for more than 30 days in any calendar year.
- 7.7 The Respondent will, within six months of the date of signing of this Agreement, create a workplan for the implementation of the matters agreed in this Agreement, that workplan to include implementation of recommendations for improvement in the areas set out in clauses 2.3 and 3.1 of this Agreement as well as a plan for regular updates to the Commission regarding the implementation.
- 7.8 The Parties agree that this Agreement may be reopened with the consent of both Parties, in the event of a relevant material change in the corrections environment.

8. WITHDRAWAL OF COMPLAINT AND RELEASE

- 8.1 The Complainants will withdraw their demands for systemic remedies from the Board of Adjudication relating to the segregation or separate confinement of inmates with mental health issues by each filing a Form 6 Notice of Settlement, and providing a copy of same to the Respondent.
- 8.2 The Complainants agree that this settlement is entered into without any admission of liability or wrongdoing on the part of the Respondent with respect to the allegations in the Complaints.
- 8.3 The Complainants and Respondent acknowledge participating in the settlement of the systemic aspect of the Complaints voluntarily, without threat or pressure, and in full understanding of the terms that have been agreed to.
- 8.4 The terms of this Agreement are intended to be contractual and the Complainants and Respondent have had the opportunity to obtain independent

legal advice with respect to the Complaints and the terms of this Agreement, if they so wish.

- 8.5 The Parties agree that this Agreement may be executed in counterpart and the Agreement and the Release may be delivered by facsimile or email to the Commission offices to the attention of Lynn Pigage at 867-667-2662 (fax).

Complainant Witness Date

Complainant Witness Date

Complainant Witness Date

Respondent Witness Date

Jessica Lott Thompson, YHRC Witness Date

