

Segregation North of Sixty: Meaningful Reform in Yukon Corrections

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The inappropriate use of segregation to manage inmate behaviour has gained considerable attention over the last decade. Across jurisdictions, correctional services are being criticized for the overuse, and prolonged use, of segregation and restrictive housing conditions. Despite legal and humanitarian requirements for change, few organizations have managed to operationalize meaningful correctional practices aimed at humanely managing the day-to-day needs of complex clients.¹ This article outlines the progressive segregation reform completed in Yukon, Canada from 2019-2021.

WHAT IS SEGREGATION? WHO'S IN SEGREGATION? WHY ARE THEY THERE?

Internationally, and within Canada, the definition of segregation varies. Some jurisdictions define it as a physical place, others as a condition of confinement. Some define it in law, some in regulations, and some in operational policies. Common to all definitions and practices is the restriction segregation places on an individual's association with others. The definition, however, is critically important as it directly impacts operational practice.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) define segregation as "the confinement of prisoners for 22 hours or more a day without meaningful human contact" (UN General Assembly, 2015, p.14). Despite this helpful guidance, many jurisdictions continue to define segregation as a specific place rather than a condition of confinement that can occur anywhere within the facility. When segregation is

defined solely as a place, individuals with residual trauma stemming from racism, discrimination, and poverty or complex mental health needs, may be confined to their cells for 22 hours or more a day in "specialized housing units" (Maki, 2020; IROC, 2017). Since these individuals are housed outside of the "segregation unit" or "segregation area", they may not be identified as being in "segregation", thereby resulting in the underreporting of people who are at a heightened risk of being negatively impacted by physical and social isolation because of their pre-existing trauma and/or mental health condition (IROC, 2017; Loukidelis, 2018).

Independent reports in Ontario and in Yukon once suggested that most people in segregation should not be there. In many cases, segregation or restrictive housing conditions are used as the default tool to manage individuals with complex physical or mental health needs, including those at risk of self-harm or suicide, those with disabilities, or those requiring mobility assistance devices,

because the correctional system lacks resources, integrated wellness supports, and/or operates using an inappropriate staffing model (IROC, 2017; Loukidelis, 2018).

THE IMPETUS FOR CORRECTIONAL REFORM

The need for correctional reform in Yukon became obvious following the release of the Whitehorse Correctional Centre Inspection Report in 2018. This independent report examining the territory's only correctional facility was prompted by a highly publicized and controversial case involving an inmate with significant mental wellness issues who spent time in segregation while incarcerated (Morin, 2017). The Inspection Report highlighted several troubling issues, including concerns with the use of segregation, a lack of mental health supports for clients, and limited First Nations programs and cultural services, all of which provided impetus for reform (Loukidelis, 2018)². Additional pressure for change came from an ongoing legal dispute in which the Petitioner, a former correctional officer, challenged the legality of the Secure Living Unit, where he was housed for almost two years while incarcerated at the Whitehorse Correctional Centre (*Sheepway v. Hendricks*).³

LEADERSHIP IN TIMES OF CORRECTIONAL TRANSFORMATION

Sound, competent, and dedicated leadership is crucial for the successful implementation of large-scale correctional transformation, especially in times of intense legal and public scrutiny. Correctional heads must have the political and bureaucratic savvy to foster trust and support for legal change while securing tools and resources to safely augment daily operations. The ability to conjure a vision for reform and develop a step-by-step guide for its implementation requires subject matter expertise as well as strategic and situational leadership skills. One must also be prepared to accept the legal responsibility that accompanies the role of the correctional head and be able to discharge the duties owed to staff, clients, and the public, since failure to do so can lead to physical and/or psychological harm to others as well as damage to one's reputation as a result of being personally named in legal proceedings and/or criticized online and in the media.

With a commitment to provide the requisite political and bureaucratic support necessary to create meaningful change, in mid-2019, the Government of Yukon hired a new Director of

Corrections whose principal objective was to develop a progressive, individualized, person-centred approach to correctional services that was in line with, and reflective of, the principle of least restrictive measures. This new approach to corrections would position Yukon as an industry leader in segregation reform, improve relationships with key stakeholders and Yukon First Nations, bolster community safety, rely less on rigid custodial practices, and promote trauma-informed and restorative cultural practices to better support the rehabilitation, healing, and safe reintegration of justice-involved clients.

PAVING THE PATH FOR CORRECTIONAL CHANGE IN YUKON

Yukon's segregation reform began with a comprehensive review of the territory's *Corrections Act and Regulation*, given that the 2018 Inspection Report highlighted the need for significant amendments to both⁴. To implement change, input from staff, managers, and inmates was critical; therefore, the Director of Corrections regularly toured the correctional centre to solicit information about day-to-day operations as well as processes requiring modification. Additionally, every staff member was offered an opportunity to meet privately with the Director. These meetings exposed that many managers and front-line staff excelled in the difficult work they performed and that they were committed to direct supervision⁵, which allowed them to truly know and properly care for their clients. Moreover, interactions with front-line staff revealed that many longed for their leadership team to provide them with a singular vision for change, recognize their contributions, provide them with the requisite tools and supports to carry out their duties efficiently and safely and, when required, hold correctional employees accountable.

Likewise, the Director of Corrections consulted with justice stakeholders, including defence lawyers and Crown prosecutors, and proactively engaged with the corrections union to foster positive working relationships and inform all parties of reforms underway. Additionally, the Director met with the Council of Yukon First Nations leadership to seek input regarding concerns or suggestions around future initiatives and continued to keep Yukon First Nations apprised of progress by attending Yukon Forum, Council of Yukon First Nations Justice Caucus meetings, and presenting at the latter's annual conference. With this critical foundation laid, Yukon was able to amend its

territorial legislative and regulatory framework governing segregation⁶, review and revise associated operational policies, and implement changes in just thirteen months. Proactive, targeted training delivered to managers, who were then able to deliver the training to front-line staff, was essential to the seamless implementation and operationalization of these changes on the day that the legislation and regulations came into force.

IMPLEMENTATION OF INDIVIDUALIZED CARE PLANS

A cornerstone of surmounting these interconnected problems is proactive, individualized, person-centered care; once the specific needs of a client are ascertained and addressed, it is possible to prevent, or at least mitigate the harmful effects of placement in non-disciplinary segregation. To achieve this, the practice of preparing individualized care plans

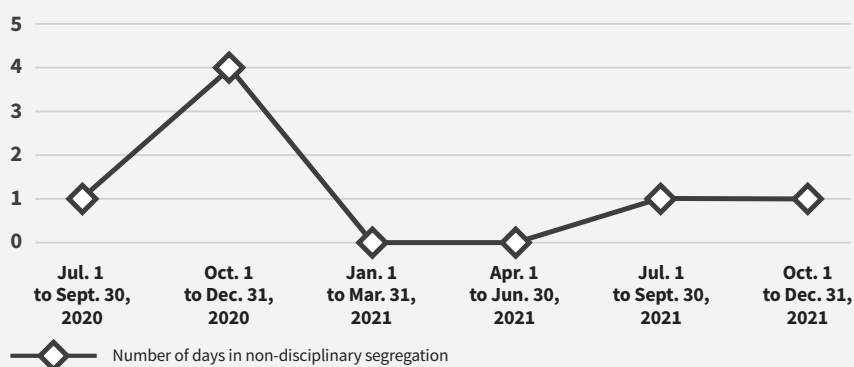
for every client, both sentenced and those on remand, was adopted and made mandatory in Yukon’s correctional policies and operational procedures. These fluid documents are initiated upon admission and updated as the needs of an individual change over the course of their incarceration. The dynamic nature of the individualized care plans allows for the unique needs of each client to be met as they evolve over time and inform institutional placement, suitability for programs, discharge planning, and any additional safety measures that may be required. This approach is premised on the notion that an individual may change while in custody

and basing decisions on the person’s current presenting behaviour results in more responsive care and safer outcomes than when such decisions are simply based on legal holding status. Moreover, recognizing the potential for change during incarceration may have the added benefit of fostering a strength-based approach that empowers clients and furthers their rehabilitative potential.

To streamline front-line officer work, as well as inform the content of individualized care plans, and aid with dynamic institutional placement, new forms were created to capture relevant behavioural observations of each client on a daily basis. While adopting this practice led to a slight increase in the amount of documentation staff performed per shift, recording significant observations about,

Number of Days Spent in Non-Disciplinary Segregation

Whitehorse Correctional Centre / July 1, 202 to December 31, 2021



NOTE: non-disciplinary segregation refers to segregation other than that which is imposed by a hearing adjudicator in respect of an inmate as a penalty for a breach by the inmate of the regulations or the rules of the correctional centre.

These numbers reflect the total number of days spent in non-disciplinary segregation during the period indicated. Between October 1 to December 31, 2020, the total number of days spent in non-disciplinary segregation was accrued by three different individuals, with two of them spending one day each in non-disciplinary segregation and the third individual spending two days in non-disciplinary segregation.

SOURCE: yukon.ca/en/statistics-and-data/corrections/find-whitehorse-correctional-centre-segregation-statistics#segregation-instances-post-2019-legislative-changes-to-corrections-act-july-2020-onward

LINKAGES FOR SUCCESSFUL SEGREGATION REFORM

A clear, comprehensive legal and policy framework is fundamental to meaningful segregation reform. However, amending these guiding structures alone is insufficient to bring about total transformation because the overuse, and prolonged use, of segregation and restrictive housing conditions is a symptom of a much larger issue involving a host of interconnected problems within corrections. Since most individuals housed in segregation are often, by default, housed as such because of shortcomings in other areas, “[t]rying to ‘fix’ segregation in isolation is futile” and potentially unsafe if the segregation-specific problems are not addressed in conjunction with broader, system-wide changes (IROC, 2017, p.13).

and any noticeable patterns or changes in, an individual's behaviour improves the quality of client care, mitigates against legal liability, and fosters a safe work environment for staff. One noteworthy, collateral outcome that arose from the implementation of this practice at the Whitehorse Correctional Centre was the ability for the institution to effectively abolish protective custody.

Consistent with the principle of least restrictive measures, individualized care plans also inform decisions regarding suitability for temporary absences. To ensure that all individuals in custody were housed in accordance with the principle of least restrictive measures, the practice of proactively conducting detailed reviews of the personal circumstances of both sentenced and remanded clients was put into effect.

TRANSPARENCY, ACCOUNTABILITY, AND OVERSIGHT

Given the nature of the correctional environment, where most of the work happens out of public scrutiny, meaningful segregation reform must also be premised on the principles of transparency, accountability, and oversight. To ensure that these ideals were reflected in practice, several measures were incorporated, either into legislation, regulation, policy, or daily operations. These included publishing all revised operational policies online, ensuring that all clients received written notifications of, and reasons for, various procedural outcomes, such as institutional placements, including those in conditions that amounted to segregation⁷ or restrictive confinement⁸, and establishing an internal system of checks and balances in addition to the external oversight mechanism enshrined in legislative and regulatory amendments.

IMPLEMENTATION OF BROADER CORRECTIONAL SUPPORTS

Finally, implementing broader supports to enable the provision of trauma-informed, individualized care without jeopardizing the safety of staff, clients, or the public was critical to Yukon's success in correctional transformation. The introduction of a body scanner was a major support for both clients and staff, given that it eliminates the need to subject many clients entering the correctional centre to the potentially triggering and traumatic experience of being strip searched. In turn, this relinquishes staff from their duty to routinely carry out an inherently objectifying process that may also be triggering for them. Similarly, the procurement

of an integrated, electronic client management system was a significant initiative as the technology promotes continuity of care while reducing inefficient and redundant administrative work that encumbers staff from performing their other duties and adversely impacts morale.

Innovative thinking and commitment to operationalizing the principle of least restrictive measures also fostered a unique collaboration with the John Howard Society to fill a gap in alternatives to custody for justice-involved men in Yukon and promote community reintegration. This initiative enabled the John Howard Society to establish 24/7 supervised housing and programming services in an unused and decommissioned portion of the Whitehorse Correctional Centre. The program provides up to 20 single-occupancy rooms for individuals either on remand or serving a sentence, who do not need to be incarcerated but would benefit from enhanced community supports to assist in their successful rehabilitation and/or maintain routine community ties.

CONCLUSION

In theory, reform is simple. Often, a problem is identified following a highly publicized event that triggers public and political awareness and elicits a desire for change. Papers, independent reports, and recommendations ensue and the solution to the issue appears obvious and easy to achieve.

Operationalizing the solution in a way that results in meaningful reform, however, is usually more complicated. This is particularly true in corrections, where modern institutions primarily house individuals with complex needs that reflect failings by other social services. This generates a host of issues that the correctional system was never intended to address but that necessarily become interrelated with problems arising in daily operations and require broader, system-wide initiatives to bring about change.

The correctional reforms completed in Yukon, Canada between May 2019 and October 2021 were inspired by an underlying philosophy that emphasized the principles of restraint in the use of lawful authority, the use of least restrictive measures, individualized person-centred care for clients, and a commitment to the protection of human rights while ensuring staff safety. The vision for reform was guided by correctional best practice, recommendations made by subject-matter experts,

legislative and constitutional requirements, and international standards.

The successful implementation and operationalization of correctional reform in Yukon was the product of several factors that can be replicated in other jurisdictions, including the federal correctional systems or bureaus. Effective leadership, a singular vision for change, the implementation of individualized care plans for every client, and proactive consultation and education to ensure buy-in by key stakeholders all played an important role. This, however, was followed by ensuring that correctional staff were supported with the right tools, resources, and training to carry out humane operations and that, throughout the process, the correctional union was supportive of the changes taking place.

The role front-line staff play in implementing reform initiatives cannot be understated; they operationalize the theoretical principles and report recommendations in the discharge of their daily duties. It is therefore paramount that staff understand how and why creating a humane environment for clients fosters a safe and healthy work environment for employees. To achieve this, those in positions of authority must support front-line staff by being competent leaders, providing clear direction and guidance, maintaining appropriate front-line staffing levels, and ensuring that staff have the tools, training, and resources to succeed. When staff have the support they need, meaningful correctional reform is achievable. ■

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NOTES

1. For example, the passing of Bill C-83 in June 2019 led to the establishment of "Structured Intervention Units" in federal penitentiaries run by the Correctional Service of Canada. However, the implementation of these units, and their success in abolishing segregation, remains controversial, as reported by Professor Emeritus Anthony Doob and Dr. Jane Sprott. See, for instance, Doob & Sprott (2020), Sprott & Doob (2020), and Sprott & Doob (2021).

2. The Whitehorse Correctional Centre Inspection Report contained 40 wide-ranging recommendations related to: mental health services, the use and effects of segregation, improving outcomes for First Nations individuals, and justice system initiatives. Of these recommendations, 12 specifically relate to segregation (recommendations 12-23).
3. The judgment in *Sheepway v. Hendriks* drew attention to the prolonged use of restrictive housing conditions that, de facto, amounted to segregation under a different name.
4. Recommendation numbers 13-16, 18-21, and 23 of the Whitehorse Correctional Centre Inspection Report all deal with legislative or regulatory amendments to the framework governing segregation. For example, number 14 recommends "The *Corrections Act* and *Corrections Regulation* should be amended to provide a clearer, more comprehensive, framework to govern use of separate confinement at [the Whitehorse Correctional Centre]. 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".
5. Direct supervision refers to a model of inmate supervision where correctional officers are stationed inside inmate living units to promote direct, continuous, and barrier-free interactions with inmates. Through these exchanges, staff control the unit and have the capacity to actively manage behaviour before a situation escalates.
6. These amendments included:
- Defining segregation as a condition of confinement;
 - Imposing prohibitions on which individuals may be held in segregation and the number of days during which an individual may be held in segregation;
 - Requiring that the circumstances of individuals who are held in non-disciplinary segregation be reviewed in accordance with requirements set out in the Regulations;
 - Providing for the appointment of independent adjudicators to review the circumstances of individuals who are held in non-disciplinary segregation; and,
 - Expanding the application of the principle of least restrictive measures.
7. Yukon's *Corrections Act* defines segregation as any type of custody where an inmate's association with other persons is significantly restricted for a period or periods that total, in a particular day, 22 hours or more.
8. Restrictive confinement refers to any type of custody where an inmate's association with other persons is significantly restricted for a period or periods that total, in a particular day, at least 18 hours but less than 22 hours. This term was intentionally included in the amendments to Yukon's *Corrections Act* and defined as such to provide an extra layer of accountability and ensure that the spirit and intent of the amendments was not flouted by significantly restricting an inmate's association with others for a period or periods of 21.9 hours in a particular day.

RÉSUMÉ

Segregation North of Sixty: Meaningful Reform in Yukon Corrections

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Depuis dix ans, le recours inapproprié à l'isolement pour gérer le comportement des détenus a suscité une attention considérable. Dans toutes les provinces et tous les territoires, les services correctionnels sont critiqués pour le recours excessif et prolongé à l'isolement et aux conditions de logement restrictives. Bien que des changements soient exigés, aussi bien pour des raisons juridiques qu'humanitaires, peu d'établissements arrivent à adopter des pratiques correctionnelles permettant de gérer humainement les besoins quotidiens de clients difficiles. Dans cet article, les auteurs décrivent comment le Yukon s'y est pris, entre 2019 et 2021, pour procéder à une réforme progressive de la pratique de l'isolement.