

Citation: *R. v. Herman*, 2021 YKTC 12

Date: 20210312  
Docket: 19-00936  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Judge Cozens

REGINA

v.

CLAUDE JOSEPH HERMAN

Appearances:  
Noel Sinclair  
Amy Steele

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR SENTENCE**

[1] Claude Herman was convicted after trial of having committed the offence of sexual assault. Sentencing submissions were made and judgment was reserved. This is my judgment.

[2] At trial I found as follows:

- The victim, N.T. was having a conversation with a third party, L.B. outside the Little Salmon Carmacks First Nation Main Administrative building in Carmacks, Yukon;
- Mr. Herman, who was highly intoxicated, approached the two of them. Mr. Herman made sexually inappropriate and suggestive comments to

N.T., who then started up the ramp to enter the building. Mr. Herman followed her up the ramp quickly, causing N.T. to speed up in order to try to put distance between herself and Mr. Herman;

- As N.T. was stepping into the building through the exterior door, Mr. Herman reached out and grabbed N.T. by the bum. N.T. testified that Mr. Herman grabbed her forcefully enough that his hand reached between her legs and partially into her vaginal area. Mr. Herman squeezed N.T.'s bum and vagina. She said that this hurt her and was quite painful.

[3] I accepted the evidence of N.T. as being what occurred.

### **Victim Impact**

[4] This offence has had a significant negative impact on N.T., as she has described in the Victim Impact Statement. As an Indigenous woman, this offence against N.T. has occurred within the larger backdrop of the victimization of Indigenous women in Canada.

[5] The Supreme Court of Canada has said that, in sentencing an Aboriginal offender, the application of s. 718.2(e) of the *Code* requires that I take into account the systemic and background factors of the offender before me, and Aboriginal peoples in Canada in general.

[6] In a sentencing hearing, it would be remiss of me, when assessing the impact of an offence on a victim of Indigenous/Aboriginal heritage, to fail to consider that this

impact occurs in the same backdrop of systemic and individualized factors that courts need to be mindful of with respect to an Aboriginal offender. The importance of doing so is why s. 718.04 of the *Code* exists, which states:

When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances – including because the person is Aboriginal and female – the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

[7] I say this, not to state that the sentence for the offender, in this case Mr. Herman, must necessarily be increased as a result, but that the impact upon the victim, in this case N.T., must be fairly and properly considered in the appropriate context and in accord with the purpose and principles of sentencing.

### **Positions of Counsel**

[8] Crown counsel submits that a sentence of five to six months' custody is appropriate.

[9] Counsel points to Mr. Herman's criminal record for offences committed both before and after this offence as an aggravating factor. Counsel notes that Mr. Herman has three prior offences of violence, although not of a sexual nature.

[10] Since committing this offence, Mr. Herman has been convicted of several breach charges for contravening conditions designed to protect the safety of his domestic partner.

[11] Counsel also notes that s. 718.04 requires that the principles of denunciation and deterrence of the conduct of Mr. Herman are to be given primary consideration, as N.T. is Aboriginal and female.

[12] Counsel is opposed to any term of imprisonment being served conditionally in the community.

[13] Counsel for Mr. Herman submits that he should receive a conditional sentence of three to four months. He would reside at the John Howard Society, which currently has a placement for him.

[14] Counsel notes the ***Gladue*** factors (*R. v. Gladue*, [1998] 1 S.C.R. 688) that are present in Mr. Herman's life, as he is of Aboriginal heritage and ancestry. These factors go beyond those that are systemic in nature, and include the tragedy and dysfunction he has personally encountered.

#### **Circumstances of Mr. Herman**

[15] Mr. Herman is 42 years old. He is a member of the Chipewyan First Nation from the Fort McMurray area of Alberta.

[16] He has a criminal record with two prior convictions for assaults, one for uttering threats, ten for breaches of court orders, one failure to attend court, two resist arrests, one mischief, one unlawfully at large and one refusal. In addition he has the three breach of court order charges and the mischief for which he was sentenced in February of this year.

[17] His grandmother attended residential school and shared some of her experiences with him.

[18] His 15/16 year old sister was murdered by her boyfriend. His 34 year old sister went missing after giving birth. Her children were taken into care as a result.

[19] Both of Mr. Herman's parents drank alcohol and Mr. Herman has had to intervene when his father was assaulting his mother.

[20] His mother told him that she drank when she was pregnant with him, although he has never been assessed to see whether he suffers from Fetal Alcohol Spectrum Disorder ("FASD").

[21] Many people in Mr. Herman's community drank when he was growing up.

[22] Mr. Herman has been an alcoholic since he was a teenager.

[23] He has been homeless for the past year.

[24] Mr. Herman has a grade 10 education. He has struggled with reading and writing. English is his second language and he has required special education assistance.

[25] He has been in a common-law relationship for approximately 13 years. He has a son from this relationship. I note that his common-law partner is the victim of some of Mr. Herman's recent criminal convictions for breaches of a court order.

[26] Since Mr. Herman has been in custody as a result of his time on remand and his most recent convictions, Mr. Herman has participated in programming, including

attending Alcoholics Anonymous, Courage to Change, and Challenge. He has provided four Certificates of Completion and Participation with respect to the Courage to Change and Challenge programming.

[27] Counsel for Mr. Herman states that he has been a model prisoner during his recent incarceration. A Remission Awards documented generated by Whitehorse Correctional Centre (“WCC”) noted that Mr. Herman was awarded full remission for February 2021, with no concerns noted.

[28] He has been involved with counselors and he hopes to attend at the Mental Wellness and Substance Use Services programming as well as the Jackson Lake Healing Camp.

[29] Mr. Herman spoke during his sentencing hearing. He said that he regrets his actions and is embarrassed by them. He is sorry for having disrespected N.T. I note that during his testimony at trial, Mr. Herman admitted, during his direct examination, to having touched N.T. on her bum. He acknowledged his intoxication and his inability to recall the details of some of his interactions with N.T. at the time of the offence.

[30] I have been provided with a House Rules Handbook for the John Howard Society (the “Handbook”). The John Howard Society is a Supervised Residential Housing Program located proximate to WCC. All incoming residents are provided a copy of the Handbook, have the rules reviewed with them, and are required to sign a duplicate copy of the Handbook indicating that “they have received, reviewed, understand, and agree to be held to the terms outlined in the handbook”. A copy of the Handbook is attached as an Addendum to this decision.

## **Analysis**

[31] There is a wide range of sentencing available for an offence of this nature. The ranges in the cases before me are from conditional discharges to lengthy periods of custody.

[32] Sentencing is an individualized process and, as such, I must impose a sentence on Mr. Herman that takes into account the circumstances of the offence, including the impact on N.T., the circumstances of Mr. Herman, and the purpose, principles and objectives of sentencing, including the aggravating and mitigating factors.

[33] At the heart of all sentencing is the principle of proportionality; that the sentence must be proportionate to the gravity of the offence committed by Mr. Herman, and the degree of responsibility which he bears.

[34] It is statutorily aggravating that N.T. is a female of Aboriginal ancestry. As such deterrence and denunciation are to be emphasized in sentencing Mr. Herman.

[35] It is also statutorily aggravating that the offence had a significant impact on N.T. (see *R. v. G.A.*, 2015 ONCA 159).

[36] It is also aggravating that Mr. Herman comes before the Court with a record of criminal convictions. I note, however, that there are no prior convictions for offences of a sexual nature.

[37] In mitigation is the fact that Mr. Herman is of Aboriginal ancestry and heritage, and his personal history is marked by tragedy and dysfunction, in both his family and his own struggles with alcohol addiction and learning.

[38] Mr. Herman's level of intoxication is a factor that must be considered. The jurisprudence states that the intoxication of an offender can be either an aggravating, mitigating, or neutral factor in sentencing.

[39] As stated in *R. v. L.P.*, 2020 QCCA 1239:

111 In *Régimballe c. R.*, our Court wrote that intoxication may be treated as a mitigating or aggravating factor in sentencing, depending on the circumstances, but generally, for violent crimes, alcohol intoxication will be considered an aggravating factor, or in the best case scenario, a neutral factor. The consideration of substance or alcohol intoxication in sentencing may thus be considered a mixed factor -- aggravating or mitigating, with the emphasis depending on the circumstances.

112 The circumstances may include whether the accused knew that, while intoxicated, he may become aggressive or violent but nonetheless kept drinking [or] failed to meaningfully address an addiction. In such a context, the accused's blameworthiness is higher and the consumption of alcohol may become an aggravating factor.

113 In the present matter, while the respondent's heavy drinking problems and associated violent behaviour cannot be dissociated from the *Gladue* considerations discussed above, given the particular circumstances of this case, his consumption of alcohol should be considered an aggravating factor. His high level of intoxication cannot be considered a mitigating factor. It is, at best, a neutral factor.

[40] In Clayton Ruby et al, *Sentencing*, 8th ed (Markham: Lexis Nexis, 2012) at pp.

296 and 298, the authors summarize the effect of intoxication in the sentencing process as follows:

The cases do not suggest that intoxication or addiction are an excuse for crime, but they are a circumstance to be taken into account sometimes in aggravation, sometimes in mitigation in assessing sentence.

A person under the influence of liquor, who is otherwise of blameless reputation, may do something quite out of character, and the liquor may be both an explanation and a factor in mitigation. In such cases, lenient treatment may be justified in anticipation of rehabilitation. However, *some*



*persons become more dangerous while under the influence of intoxicants, and the penalty may reflect that dangerousness.*

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However, in crimes involving violence, the use of alcohol may be treated as an aggravating factor or, at best, a neutral one. [Emphasis added]

[41] In Mr. Herman's situation, I am not satisfied that it is an aggravating factor. As this is his first offence of a sexual nature, it cannot be said that his history has shown that he is at greater risk of committing a sexual offence when he is drinking. Therefore, his moral culpability is not increased because he chose to become intoxicated.

[42] I will not consider it to be a mitigating factor, however. This offence is one of violence, as all sexual offences are by their very nature. Mr. Herman has a criminal record which, as I understand, is related to his struggles with alcohol. He should know that when he chooses to drink, he is more likely to find himself committing criminal acts.

[43] This said, Mr. Herman's struggles with alcohol are connected to his Aboriginal ancestry and heritage. His decision-making ability has, to some extent, been impacted as a result. It may be that, if he is assessed for FASD, the extent of the impact upon Mr. Herman's ability to make choices will be better known. His moral culpability is therefore somewhat diminished.

[44] I am satisfied that any mitigation that could be said to result from Mr. Herman's state of intoxication as connected to his Aboriginal ancestry and heritage, at the time he committed this offence, would be more appropriately dealt with in accordance with my consideration of the application of s. 718.2(e).

[45] Counsel for Mr. Herman has stressed that Mr. Herman's decision to take the matter to trial cannot be treated as an aggravating factor. There is no question as to this being true. It is not an aggravating factor that Mr. Herman pleaded not guilty and a trial was conducted.

[46] However, as a result of Mr. Herman's not guilty plea, he is unable to take advantage of any mitigation that accepting responsibility and entering a guilty plea would have been made available to him. N.T. was required to testify in court to the very difficult personal experience of being sexually assaulted.

[47] As a result, Mr. Herman has lost the benefit of mitigation and the potential impact such mitigation may have had upon the sentence to be imposed upon him. To be clear, he has not "gained" a sentence that is to be aggravated by his choice to take the matter to trial.

[48] One of the difficulties that presents itself in this case is the tension that exists between imposing a harsher sentence on Mr. Herman that stresses denunciation and deterrence because of the circumstances of N.T. as an Aboriginal woman, and the statutory requirement, as explained by the Supreme Court of Canada in cases such as *Gladue*, and *R. v. Ipeelee*, 2012 SCC 32, that I consider all options other than imprisonment for Mr. Herman that are reasonable in the circumstances and consistent with the harm done to N.T.

[49] The over-incarceration of Aboriginal offenders in Canada is well known and documented, and much effort has been made to attempt to highlight the importance of trying to address and ameliorate this problem.

[50] As I stated in part in *R. v. Quock*, 2015 YKTC 32, in reviewing the Summary Report of the Truth and Reconciliation Committee, in para. 116:

116 Including within the Summary Report was a section entitled "Call to Action". The Call to Action in the area of justice included the following:

30) We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.

...

31) We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.

...

[51] The above competing tensions are to be resolved by trying to achieve an appropriate balance in order to reach a just and fair result that does not overly emphasize one factor above the other. This balancing of sentencing purposes, principles and objectives is required in all sentencing proceedings, but the statutory requirements for Aboriginal offenders adds an additional layer, as is also the case when the victim is an Aboriginal female.

[52] In consideration of the circumstances of this offence, the impact upon N.T., the circumstances of Mr. Herman, and the purposes, principles and objectives of sentencing, I am satisfied that a sentence of imprisonment is required for Mr. Herman.

[53] The question for me is whether this sentence of imprisonment can be served conditionally in the community.

[54] If I accede to the sentence suggested by Crown and impose a sentence of six months custody to be served at WCC, Mr. Herman will be likely released into the community in four months, less the 15 days credit he has for his time on remand waiting for sentence to be imposed.

[55] Mr. Herman will then go from his enforced period of sobriety since he was incarcerated on December 12, 2020, to serve out the probationary portion of his February 2, 2021 sentences in the community. Where he will live is uncertain.

[56] If I impose a six-month sentence of imprisonment to be served conditionally in the community, with residency at the John Howard Society, Mr. Herman will be bound by the conditional sentence order for the full six months. He will go from his current custodial status, to a somewhat lengthy period of strict supervision and monitoring with a stable residence, to then enter into the probationary term of his prior sentences. The transition will be more graduated.

[57] Section 742.1(a) of the *Criminal Code* reads:

742.1 If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under section 742.3, if

- (a) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2;

[58] What of the risk that Mr. Herman poses to the community if he is allowed to serve his sentence of imprisonment under the relative freedom of a conditional sentence order?

[59] Mr. Herman's struggles with alcohol, and his criminal convictions for breaching court orders, would certainly allow for a conclusion to be reached that Mr. Herman would be at a high risk of failing to comply with the conditions of his conditional sentence order. I agree that there is a risk in this regard.

[60] Would the safety of the community therefore be endangered if Mr. Herman were to be granted the opportunity to serve his sentence conditionally in the community?

[61] It depends on the lens through which this is viewed. The short-term safety of the community would be more at risk if Mr. Herman is serving his sentence under a conditional sentence order than it would be if Mr. Herman were in custody at WCC.

[62] However, if Mr. Herman is released into the community after a relatively short period of custody, without any transitional experience towards him living in the community, and while potentially homeless, then there is potentially an additional risk to society.

[63] If Mr. Herman is released into the community under the strict supervision of a conditional sentence order, including the rules and requirements of the John Howard Society while living in their residence, the risk to the community in the short-term still exists, but does so at a lower level than the risk would be without this strict level of

supervision, and than it would be without the almost immediate consequences that would result for a breach of a conditional sentence order.

[64] Further, if Mr. Herman is able to comply with the rules and requirements of residency at the John Howard Society, then there is a benefit to society in the reduction of the longer-term risk he poses, through his rehabilitation.

[65] Some risk, however, regardless of how much it can be reduced, may still be too much of a risk to take. Is this such a case?

[66] If Mr. Herman were to fail to comply with the terms of a conditional sentence order, what is the risk of harm that would likely ensue?

[67] I am satisfied that N.T. is not at a risk of harm by Mr. Herman. The circumstances of the offence show that she was more of a victim of opportunity than otherwise. There is no evidence that she was targeted by Mr. Herman with forethought and a resultant predatory set of actions. There is no reason to believe that Mr. Herman would want or be expected to have any contact with N.T.

[68] There is no indication, based upon Mr. Herman's lack of a criminal history for sexual offences, that he poses any significant risk of committing further sexual offences against women. There is a lack of evidence to support a determination that he is a sexual predator.

[69] Crown counsel has provided me with the details of Mr. Herman's most recent breaches in order to show the nature of the actions of Mr. Herman with respect to his

common-law partner. He asserts that Mr. Herman's conduct in these breaches shows an elevated level of risk than would arise from simply routine breaches.

[70] I agree that Mr. Herman's conduct in committing these breaches is illustrative of a heightened risk that he poses to his common-law partner if he fails to comply with court orders in respect of her. As I understand it, however, she lives in Carmacks, not Whitehorse. His contact with her is also restricted to the terms of the probation order that followed the February 2, 2021 sentencing. These terms prohibit Mr. Herman from having contact if either he or his common-law partner have consumed alcohol, or have alcohol in their bodies, and if she requests him to leave her home he must do so for a minimum of 12 hours.

[71] I do not see there being any substantial risk that Mr. Herman would pose a risk of harm to any other members of the community. His prior offences of violence were a s. 267(a) in Fort McMurray, Alberta for which he was sentenced to 60 days imprisonment in 2008, a s. 264.1(1) in Whitehorse for which he was sentenced to 30 days custody in 2014, and a s. 266 in Carmacks for which he was sentenced to 30 days custody in 2018.

[72] In my opinion, the safety of the community is not endangered by allowing Mr. Herman to serve his sentence in the community, with residency at the John Howard Society and compliance with its rules and requirements as the foundation for the order. In fact, in my opinion there is a realistic potential for such an order to reduce the risk of harm to society that outweighs any short-term risk that exists.

[73] Would such a sentence be consistent with the fundamental purpose and principles of sentencing?

[74] In *R. v. Proulx*, 2000 SCC 5, the Supreme Court made it clear that a conditional sentence order can meet the objectives of denunciation and deterrence. The terms and length of the conditional sentence order could place as the paramount consideration the purposes of denunciation and deterrence, therefore addressing the aggravating factor of s. 718.04.

[75] In addition, such an order provides the best opportunity for rehabilitative progress to be made by Mr. Herman. He will have a stable residence with strict conditions placed upon him. If he breaches any of the terms of the conditional sentence order, including a condition that would require him to abide by the rules of the John Howard Society, he will be arrested and brought into custody, where a portion or the entirety of the conditional sentence order can be required to be served at WCC.

[76] There is therefore an immediate consequence for a breach of a conditional sentence order. Mr. Herman's personal circumstances do not lead me to believe that he would be at any risk of absconding entirely beyond the ability for him to be quickly arrested and brought before the court.

[77] In addition, such a sentence addresses the concerns pointed out in the cases of *Gladue*, *Ipeelee*, and numerous other cases that have addressed the need for sentencing judges to take into account the overrepresentation of Aboriginal offenders in custodial facilities in Canada in trying to explore all available sanctions, other than



imprisonment, that are reasonable in the circumstances in accordance with the requirements of s. 718.2(e).

[78] It also addresses some of the recommendations in the Summary Report of the Truth and Reconciliation Commission, which I wrote about in more detail in *Quock*.

[79] Therefore, I am satisfied that the imposition of a conditional sentence order for Mr. Herman is in accordance with the purpose and principles of sentencing in ss. 718 – 718.2.

[80] I am aware that Mr. Herman has 15 days custody to his credit. I will not, however, grant him any credit for this time in custody in the sentence I am imposing. I have simply taken it into account as one of the factors to be considered in imposing sentence.

[81] Mr. Herman is sentenced to a period of custody to be served conditionally in the community for a period of six months. The terms will be as follows:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Report to a Supervisor immediately upon your release from custody and thereafter, when required by the Supervisor and in the manner directed by the Supervisor;
4. Remain within the Yukon unless you have written permission from your Supervisor;

5. Notify the Supervisor in advance, of any change of name or address, and, promptly, of any change of employment or occupation;
6. Have no contact directly or indirectly or communication in any way with N.T. except with the prior written permission of your Supervisor and with the consent of N.T.
7. Do not go to any known place of residence of N.T.
8. Do not go to any known place of employment of N.T. if you are under the influence of alcohol.
9. Reside at the John Howard Society, 25 University Drive, Whitehorse, Yukon, abide by the rules of that residence and do not change that residence without the prior written permission of the Court.
10. Not possess or consume alcohol and/or illegal drugs that have not been prescribed for you by a medical doctor.
11. Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub.
12. Not attend in the community of Carmacks, Yukon without the prior written permission of your Supervisor in consultation with the RCMP and Victim Services.
13. Attend and actively participate in all assessment and counselling programs as directed by your Supervisor, and complete them to the satisfaction of your

Supervisor, for the following issues: alcohol abuse, and any other issues identified by your Supervisor, and provide consents to release information to your Supervisor regarding your participation in any program you have been directed to do pursuant to this condition.

14. Participate in such educational or life skills programming as directed by your Supervisor and provide your Supervisor with consents to release information in relation to your participation in any programs you have been directed to do pursuant to this condition.

[82] In addition, Mr. Herman will be placed on a probation order for a period of one year on the following terms:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify the Probation Officer, in advance, of any change of name or address, and, promptly, of any change in employment or education.
4. Have no contact directly or indirectly or communication in any way with N.T. except with the prior written permission of your Probation Officer and with the consent of N.T.;
5. Not attend any known place of residence of N.T.;
6. Not attend any known place of employment of N.T. if you are under the influence of alcohol;

7. Report to a Probation Officer immediately upon completion of your conditional sentence and thereafter, when and in the manner directed by the Probation Officer.

[83] As this is a designated offence under s. 490.011(a), Mr. Herman will be subject to a Sex Offender Information Registration Act Order pursuant to s. 490.012. The duration of this Order will be for 10 years, pursuant to s. 490.013(a).

[84] Mr. Herman will provide a sample of his DNA as this is a primary designated offence under s. 487.04.

[85] I decline to impose a discretionary s. 110 firearms prohibition. I do not believe that this is necessary.

[86] I have considered the personal circumstances of Mr. Herman and, as this is a sentence that is intended to have a rehabilitative component, and through which Mr. Herman will hopefully be able to become accountable for his past and future actions, I will impose a \$100 victim surcharge. He will have 12 months time to pay this surcharge.

[87] Through the paying of this surcharge, Mr. Herman will be further held accountable for the commission of this offence; it will further remind him, even in a somewhat minimal way, that his offence had a negative impact on N.T., and he will benefit from making this payment as a further act of contrition.

# John Howard Society

Supervised Residential Housing Program

25 University Drive

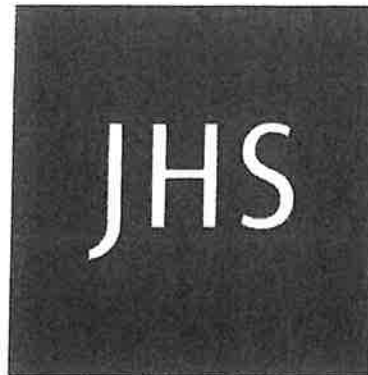
Whitehorse, Yukon Territory

**Office: 633.6296**

**Backup Line: 689.9308**

**Resident's Line:**

## HOUSE RULES HANDBOOK



## WELCOME!

*The following **House Rules Handbook** is an introduction to the policy and procedures of the JHS Supervised Residential Housing program (the program) and will serve to answer some of your immediate questions. The following rules apply to all persons residing in the program.*

A copy of the **House Rules Handbook** is provided to each resident upon admission to the program. A staff member reviews these rules with the resident during their intake meeting. **The resident signs a duplicate copy of the House Rules Handbook** (for their file) indicating they have received, reviewed, understand, and agree to be held to the terms outlined in the handbook.

### Part One: Residents' Rights

All residents have certain rights and privileges as part of participation in the program. Staff are available to answer questions and address concerns related to these rights at any time. Should a resident's rights be infringed on, a grievance process is in place to address any issues which may have arisen.

1. During their stay, each resident shall be provided with **shelter, food, reasonable privacy, telephone, and laundry facilities.**
2. Each resident shall be treated **in accordance with the Mission Statement and guiding principles of the John Howard Society of the Lower Mainland.**
3. **Grievances** can be pursued in the following order:
  - a) Raised at a **Program Meeting** if the issue a general house concern
  - b) Raised with a **neutral staff member** unattached to the concern
  - c) Raised to a **specific staff member if the resident is comfortable**
  - d) Taken to the **Program Manager** if further action is required
  - e) Taken to a supervising **Director** if conflict of interest requires it

### Part Two: Basic House Rules

1. **No alcohol, drugs, drug paraphernalia, or pornography is allowed on the premises.**
2. **Violence will not be tolerated under any circumstances.** Violence is defined as physical, psychological, emotional, verbal, or sexual abuse. The exhibition of any such forms of violence will result in immediate termination of residency.
3. **All residents and staff are expected to respect the ethnicity, culture, religion, gender, sexual orientation, and opinions of all other persons within the residence.**
4. **Theft will not be tolerated under any circumstance.** If a resident is caught stealing, their program/ residency will be terminated, and criminal charges will be pursued.
5. **Detailed room searches may be conducted where there is suspicion of illegal activity.** These searches will be done in the presence of the resident along with two staff members, only if possible.
6. To ensure **general upkeep** of the rooms and **to document who is present** in the house throughout the day, staff on all shifts will conduct room checks and checks in the

common areas. The checks performed at night are **proof of life checks**. Staff must see signs of life before they can move on.

7. A **FREE** room key will be provided to each resident. If lost, each resident is expected to pay a deposit for the replacement key (**\$10 in total**) and it will be refunded upon return of the key.
8. **Linens are issued to each resident.** Residents are responsible for looking after their own linens. **They must be washed at least once per month.** When departing, the resident must wash, fold, and return the linens to the staff on duty. **If linen is missing, the resident will be required to pay for the replacement of missing items.** Residents are encouraged to purchase their own linens and have this noted on their file.
9. **Dishes are accessible in the kitchen to every resident.** Residents are responsible for cleaning all dishes they use and placing them back in the appropriate place. If this is not being followed, dishes will no longer be available. Dishes are not to be kept in the resident's rooms.
10. **Each resident is provided with their own private room.** Basic upkeep of rooms for the sake of cleanliness, hygiene, and to demonstrate a resident's ability to self-manage is required. **Dry food can be kept in the resident's room, but perishable food items cannot be kept in rooms and must be labeled and put in the appropriate area.** **Garbage is not to be kept in rooms for longer than 24hrs.** Residents are also asked to keep their effects organized and clothes off the floor to a reasonable degree. Residents are not to put any holes or screws in the bedroom walls. Room checks are every 3<sup>rd</sup> Wednesday.
11. Each resident will be assigned a chore. Residents must **complete their chore either on Wednesdays or with prior permission from the Program Manager for another day.** Only the Program Manager or staff can adjust when residents can complete their chore. Not completing the assigned chore will result in a house confinement. Upon completion of the chore, clients must notify staff to have it verified.
12. **Residents can have visitors between 10am and 8pm.** Visitors are expected to sign in with staff upon entering the building. Residents must remain in the common areas with their visitors. However, due to the current situation with COVID-19, visits must be held in the parking lot area. Residents must still inform staff about any visitors during this time.
13. Above and beyond a basic chore, **residents are responsible for cleaning up any mess they create.** This includes washing/drying/putting away dishes, putting garbage, recycling, or cigarette butts in proper containers, wiping down tables they use, cleaning microwave, cleaning up any counter, sink, shower, etc.
14. **The default curfew system for residents of the program is as follows:**
  - a. **Any member of the Case Management Team (CMT), Program Manager, or staff may impose additional curfews** if deemed necessary.
  - b. **Extensions on curfews may be granted** for work or school but **prior approval** must be obtained from the Program Manager and the Resident's Probation Officer and/or Case Management Team

- c. **The RCMP will be notified 10 minutes past designated curfew hours if a resident is not in-house or has not communicated with the staff.** If a resident knows they will be delayed in returning on time, it is important for them to call and explain to staff. The more information staff have, the better they can advocate on the resident's behalf with the RCMP.
15. **Residents must sign in and out when leaving or returning to the program.** The Sign In / Out folder for each resident is kept in the Staff Office. When leaving, the resident **writes down specific destinations on their sign out sheet.** A business name and street name is required, a full number address is acceptable, and if need be cross streets or streets which frame a general area can be used. In the event a resident does not know enough information, they can sign out to the name of a location and call in the address in for staff when they arrive.
16. **Residents must phone in** when they are going to any location that was not recorded on their Sign In / Out sheet at the time they departed. **If 4 hours goes by without the need for a resident to call in a location change, residents are required to call simply to check-in.** These 4 hour check-ins are mandatory for all residents. The Program Manager can waive call-ins during work hours. If waived, residents **must** call in once finishing work. The after work call would **restart** the four-hour check ins.
17. **The default check-in system for residents of the program is as follows:**
- a) During the **FIRST WEEK** of residency, residents will check-in every two/three hours either by cell phone, landline, or returning to the program for a physical check in. There is a mandatory physical check-in at 5pm.
  - b) During the **SECOND WEEK** of residency, residents will check-in every three hours either by cell phone, landline or returning to the program.
  - c) If there are no concerns then at the starting of the **THIRD WEEK** of residency, regular 4 check-ins will apply via cell phone, landline or returning to the program. **Cell phone use must be authorized by conditions and/or the Case Management Team.** The alternative is to make all call-ins to the program by landlines in the community. Also, cell phone and home numbers must be provided to both house staff and a resident's probation officer so the resident can be contacted by CMT members.
18. There is a telephone available for resident use and it is shared with the staff line. Residents must be considerate of others while using the phone and limit conversations to a reasonable time frame and return the telephone if a staff member requests it back.
19. **There is a MANDATORY House Meeting** held on the third Wednesday evening of every month at 1800. The only valid reasons for missing a meeting is due to a regularly scheduled work obligation or programming or legal obligation. The Program Manager is the only staff that can excuse a resident from the meeting. Proper notice must be given if a client cannot make the meeting.
20. **Residents must inform staff of any medication they are taking or in possession of.** Prescription medications are kept in the Office in a locked cabinet. Staff will not dispense medication but, will provide access. **Residents are required to fill out a log entry on a Medication Form** for each medication they access which will indicate how much they



are taking in the moment as well as for carry. Residents are also expected to let staff know any allergies they may have.

21. Certain prescriptions (example: ointments, antacids, etc.) and non-prescription medications **which do not pose a risk for abuse** may be kept in a resident's room **if permission is given by the Program Manager**. Residents must also provide staff with a list of the medications in their bedroom.
22. All residents are asked to **reduce the volume of their electronics and voices after 2200** as many co-residents are sleeping and work early in the morning.
23. **Television is only between 7am-Midnight (Sunday-Thursday) and 7am-2am (Friday and Saturday, with possible exceptions on long weekends/holidays)** in the Living Room area. Residents should be respectful of other persons in the house and be mindful of volume and not dominating TV use.
24. **Residents must supply staff with a copy of their driver's license and of valid insurance** for one vehicle parked on the program property. Vehicles void of valid insurance are not permitted on the property and will be towed if deemed necessary by the program. Only one vehicle is allowed per client.
25. Residents must **be aware of fire exits**, the location of **fire extinguishers**, and assist in ensuring these are not blocked at any time. In the case of a fire, residents will leave by the closest exit and meet in the resident parking lot, as far away from the building as possible. There is a fire extinguisher located in the staff office.
26. **This building is a smoke free environment**. No smoking or vaping of any kind is permitted inside the house. Smoking is only acceptable in the designated area. These areas will have an ashtray nearby. Staff, residents, and guests will be responsible for disposing their cigarette butts in the ashtray. Residents are given a **smoke curfew of midnight**.
27. Residents are not permitted to travel outside of Whitehorse unless they are provided permission by their Probation Officer, Justice Wellness Worker, and/or the Case Management Team.
28. **Police reporting may be required** by the RCMP for residents living in the area. Police reporting must be initiated within the first 48 hours of a resident's arrival to the program. After the initial report, residents must report to the police station once every calendar month. Community policing stations cannot approve monthly reporting.
29. **The John Howard Society of the Lower Mainland is not responsible for any items that are lost, stolen or damaged in any way during residency**. Property left at the house upon a resident's departure is immediately secured and itemized. Such property will be returned to or will be released to an **authorized Next of Kin** as identified by the resident.
30. **A resident is permitted to bring a total of 5 boxes of their possessions** (including their television set if applicable) into the program. A client **cannot** have a television that is more than 60". If the resident has more personal effects, these will be required to be stored off the premises at the personal cost of the resident **unless they receive permission for the Program Manager to exceed that standard amount**.

31. **Any resident with a special condition to abstain from alcohol use or drug abuse is required to participate in urinalysis (UA) testing.** as per the direction of their supervising probation officer or justice wellness worker. Notification will be given directly to the resident or relayed through staff shortly before testing is required.
32. **Residents will not engage with individuals currently residing at Whitehorse Correctional Centre.** Residents will not engage with individuals at WCC through the fenced areas, through windows, or any other open spaces while outside the building. This includes individuals being admitted or released to/from the facility through the Arrest Processing Unit area.
33. **All residents must participate in a breath scan with the breathalyzer.** Staff can request a breathalyzer at any time, including when residents wake up in the morning, when residents return to the building/property after being out in the community, or request breath scans/ participation in the breathalyzer at random.
34. **All residents are subject to searches of any bags, backpacks, duffle bags etc., upon entering the building, or upon the request of staff.** Anything found during the search that is not allowed in the program as per the program rules, will be confiscated by staff. The Program Manager in consultation with the Case Management Team, will determine whether the items will be returned when the resident is discharged from the program. Any item/items that are illegal, will not be returned at any time. All items confiscated will be reported to the Probation Officer, Justice Wellness Worker, Case Management Team, and/or the RCMP.
35. **Residents residing in the program will be expected to use their time in a meaningful way.** This refers to things like participating in programming, working, employment searches or training, educational/vocational upgrading, volunteering, support groups, addressing health/mental health concerns, cultural / spiritual activities, personal development, housing searches, or planning for the end of residency in other productive ways.

### **Part Three: Restrictions & Consequences**

**Successfully completing a term of residency requires the adherence to all conditions as well as to program rules.**

**Failure to abide by rules and conditions may result in restrictions** being placed on a resident if the issue is considered serious enough to warrant them.

**Such restrictions may include but are not limited to:**

- a) Reduced curfews or house confinement
- b) Reduced or cancelled overnight pass privileges
- c) Restricted activities in-house and/or in the community
- d) Additional chores

**Program termination can only be authorized by Program Manager or their immediate supervising Director.** The decision is made in consultation with Community Corrections and the Case Management Team whenever possible. The program operates independently of government authorities and can terminate residency by withdrawing program support at any

time. Government authorities or the Case Management Team **does not need to approve of the decision.**

**All violations of any conditions will be reported** to a resident's probation officer, Case Management Team, or any other government entity including the RCMP. This includes the possession of stolen items.

**Part Four: Case Management (residents will be working with Program Manager upon arrival. However, residents will be assigned a key worker when they become available.)**

**Each resident will be assigned a Key Worker 10 days after their arrival to the program. The resident is required to meet with their Key Worker for a Case Plan Meeting every 30 days.** These meetings are to develop a Resident Action Plan (RAP) and to review / adjust that plan as needed (RAPR).

The RAP / RAPR provides the resident an opportunity to outline their goals and progress towards those goals in various prosocial areas. It also summarizes the main points of a resident's month in the program (highlights, challenges, etc.) as well as their strengths, barriers, health updates and discharge plan. **If a resident takes advantage of the opportunity to participate fully,** the RAP / RAPR serves as a positive report which can be used to justify positive adjustments to restrictions during residency or even to accelerate a positive end to residency. **A good RAP / RAPR demonstrates a resident doesn't need residency and can assist with having conditions and/or residency removed.** However, the lack of participation would be outlined in the case work. Residents who do not participate in case work will receive consequences.

Residents are provided with, and sign a copy of, their RAPR each month. **The RAP / RAPR is also shared with the resident's Case Management Team to provide context to a resident's progress.** In addition to the formal Case Plan meeting, residents should feel free to discuss their plans in an informal manner with staff on a regular basis. This will make the formal meeting easier and less time consuming.

**Part Five: Policy Regarding Emergency/Disasters (such as Fire or Earthquake)**

**The whereabouts of residents is primary concern in the event of a major disaster** as that information is key for emergency response personnel. Examples of emergencies are a flood, earthquake, fire, gas line explosion, etc.

**In the event of an emergency at the building/program all residents are to meet next door at the parking lot.** Remain in the gathering area until "All Clear" is announced or until you have been requested to move to an alternate location.

**If an emergency / disaster occurs while a resident is away from the program, residents are expected to return if it is safe to do so.** If it is not, residents are required to stay at a destination that staff have been made aware of and contact program directly to update the CMT on their status.

**Part Six: Medical/Dental/Prescription Drug Services**

**Residents must obtain authorization from their Case Management Team before incurring any medical, dental, or prescription drug, except in emergency situations.**

**Residents must provide any medical information related to COVID-19 immediately. Residents must comply with any orders/directives given by health authority and government.** Residents must agree to share information about symptoms, any direction provided to the them by the territorial health authority, 811, a medical professional, and if tested, must share the results of a COVID-19 test. Residents must also comply with direction to self-isolate, and follow **all** self-isolation protocols, directions and restrictions. **Residents must also agree to follow all protocols and procedures implemented by the program related to COVID-19.**

**In emergency situations** (such as on the job accidents, vehicular collisions, broken limbs, a bear mauling or a heart attack) **residents are asked to seek medical or dental attention as soon as possible.** The CMT must also be informed as soon as possible.

*By signing below, you are indicating you understand the rules listed on the previous pages, it is your responsibility to re-read this document as needed to clarify any confusion around these rules. you will notify the CMT if you have any remaining questions about these rules, you are willing to comply with all the listed rules, and claims of ignorance of the above detailed rules will not be considered a valid reason for breaking them. You **also** acknowledge that all the information below is accurate.*

<b>Resident Name:</b>	<b>Staff Name:</b>
<b>Date of Birth:</b>	<b>Signature:</b>
<b>Signature:</b>	<b>Signature:</b>
<b>Date:</b>	<b>Date:</b>