

BETWEEN:

**FEDERAL COURT**

**AMANDA JOY COOPER**

and

**APPLICANT**

**ATTORNEY GENERAL OF CANADA**

**RESPONDENT**

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**WRITTEN REPRESENTATIONS ON BEHALF OF THE  
RESPONDENT, THE ATTORNEY GENERAL OF CANADA**

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## OVERVIEW

1. The Applicant seeks to strike numerous statements from the Respondent affidavits of Elizabeth Burns and Sarah Byron. The objections largely allege that the impugned statements are opinion, speculation, hearsay, or irrelevant. None of these objections withstand scrutiny.
2. The affidavits at issue were sworn by senior CSC officials who have extensive professional expertise in offender management, gender accommodation, and institutional safety. Their statements are grounded in personal knowledge of the Applicant's case, CSC's operational records and policies, and their professional responsibilities. In several instances, the challenged statements reflect institutional risk assessments, consultations, or offender statements made directly to CSC staff. These are all proper subjects of affidavit evidence.
3. The motion attempts to exclude contextual and operational evidence that is essential for the Court to understand CSC's decision-making. Affidavits in judicial review proceedings are not restricted to bare fact testimony; they may contain professional assessments and information pulled from policy where relevant to the decision. The courts have recognized that non-expert witnesses may provide opinion evidence where it arises from their professional experience and direct involvement in the matter. Similarly, references to CSC Commissioner's Directives ("CD"s) are not impermissible statements of law but factual descriptions of the framework in which CSC operates.
4. The challenged statements address matters that are central to the matter, namely, the Applicant's institutional adjustment, the risks posed by her placement, and the policy environment governing CSC's accommodation of gender-diverse offenders. They are relevant, admissible, and necessary for the Court to fairly assess the reasonableness of the impugned transfer decision.

5. At most, the Applicant's criticisms go to weight, not admissibility. Striking these statements would deprive the Court of crucial context and risk distorting the evidentiary record. The motion to strike should therefore be dismissed.

### PART I – RESPONDENT'S POSITION ON OBJECTIONS

6. The Respondent makes the following answers to the Plaintiff/Applicant's objections:

Affidavit of Elizabeth Burns, affirmed September 9, 2025				
Para	Impugned Statement	Grounds for Objection	DOJ Position	Arguments
Para 12	The design and operational model of women's institutions, centered on autonomy, empowerment and open environments could result in a significant 'culture shock' for the applicant... However, she has not developed the necessary skills to function safely and successfully in such an environment. Without the ability to manage the emotional impact of this transition, she remains vulnerable to experiencing major depressive symptoms.	Opinion, speculation	Permissible non-expert opinion grounded in professional experience and observed behaviour; not speculation.	<p>The affiant is a CSC professional with direct knowledge of the operational differences between men's and women's institutions and of the offender's institutional history.</p> <p>The statement is grounded in observed fact: the offender's historic inability to integrate, repeated SIU placements, and documented psychological challenges. It is an inference from facts within the knowledge of the affiant's professional role as the Applicant's parole officer, as tasked with managing various aspects of the Applicant's incarceration, not a medical diagnosis.</p>

Para 17	CSC has a duty to accommodate the needs of gender diverse offenders unless there are overriding health or safety concerns that cannot be resolved.	Assumes a point of law	Describes CSC policy as factual context; not a legal conclusion.	<p>This is a factual description of CSC policy and the operational framework within which CSC staff are trained. The statement contextualizes CSC's decision-making.</p> <p>For example, CD-100 at section 42 states as follows: "All transfer requests to a different institution type (i.e., men's to women's or vice versa) are assessed on a case-by-case basis and require an Assessment for Decision that includes a security classification review and a transfer recommendation. The Assessment for Decision will also document the results of the Security Reclassification Scale (SRS)/Security Reclassification Scale for Women (SRSW) and identify any health or safety concerns (including mitigation strategies and accommodation measures considered at both sites, and why these measures were accepted or rejected and deemed sufficient or insufficient)."</p>

				However, the policy should be read as a whole to capture the context of all accommodation measures.
Para 19	Overall, CSC believes that the applicant's gender identity, hormone treatments, and gender affirming surgery have in no way mitigated her risk to reoffend.	Opinion, speculation, belief not within personal knowledge	Summarizes institutional risk assessments within affiant's knowledge; proper factual reporting.	<p>This statement emanates from the risk assessments, program participation records, and security intelligence known to the affiant. CSC routinely evaluates whether various interventions reduce risk. CSC's reporting of that evaluation is a fact within the affiant's institutional knowledge.</p> <p>The use of "believes" is shorthand for CSC's institutional assessment, not personal speculation.</p>
Para 20	She denies that the offence cycle that currently exists is accurate, believing that the offence cycle belongs to her dead self. This claim does not show accountability from the offender as she places the blame on her dead identity rather than her current self.	Opinion, hearsay and does not cite source of belief	Reports offender's own statements (admission) and professional assessment; not hearsay.	<p>The statement reports what the offender herself has said and the affiant's assessment of that statement in light of correctional case management standards.</p> <p>Not hearsay. The source is the offender's own words to CSC staff. The affiant is entitled to draw conclusions about accountability</p>

				based on interactions and case notes.
Para 27	CSC's Gender Considerations Secretariat has been consulted to ensure that the applicant's gender-related needs, safety and overall well-being will be addressed at and by Millhaven Institution.	Hearsay, does not cite source of belief	Records fact of consultation with Secretariat; admissible to show process, not for truth of contents.	This is not inadmissible hearsay; it records the fact of institutional consultation, which is directly relevant to showing that gender identity factors were considered.  The affiant, as case manager, has personal knowledge that the consultation occurred; the Secretariat's advice is not being tendered for the truth of its contents but to show process integrity.

Affidavit of Sarah Byron				
Para	Impugned Statement	Grounds for Objection	DOJ Position	Arguments
Para 16	The language "overriding health or safety concerns that cannot be resolved" assists decision-makers in rendering fair and well-reasoned decisions in response to requests for accommodation from gender diverse offenders. It is defined in Annex A of CD-100 and intended to operationalize and simplify the notion of "duty to accommodate to the point of undue hardship".	Assumes a point of law	Quotes policy language from CD-100; factual background, not legal submission.	The affiant is describing policy language from CD-100. This is not a legal submission but factual background about how CSC operationalizes accommodation.  CSC can amend this paragraph to append a policy statement reflecting this fact.

Para 18	Accommodations under CD-100, including institutional placement, may only be denied when overriding health or safety concerns cannot be effectively mitigated, ensuring that denial is reserved for cases meeting the threshold of undue hardship.	Assumes a point of law	Explains operational threshold under CSC policy; proper context.	This is a factual description of CSC's policy framework. It explains the operational threshold CSC staff apply when adjudicating gender accommodation. This is relevant and necessary context.  As above, please refer to CD-100.
Para 22	As of July 26, 2025, CSC identified a total of 125 gender diverse individuals in custody, representing approximately 0.84% of the total incarcerated population (n = 14,837) [footnote citation omitted]. Of these, 88 are transgender women, with 82% (n = 72) housed in men's institutions and 18 % (n = 16) housed in women's institutions.	Relevance	Relevant systemic statistics; situates Applicant within broader correctional population.	The evidence is relevant because it situates the Applicant's placement within the broader operational reality CSC faces. Courts recognize the probative value of systemic context, particularly where accommodation claims are raised.  Any relevance objection should be rejected. The statistics show that CSC has experience managing transgender offenders in both types of institutions.
Para 23	... For example, placing an offender in an institution predominantly composed of individuals who match their victim profile may pose significant risks to	Opinion, speculation	Professional assessment rooted in criminological principles and case knowledge;	This is a professional assessment grounded in criminological principles and CSC's operational expertise.  The statement connects established

	<p>the broader population; particularly if the offender remains active in their offence cycle, has not addressed underlying risk factors, or demonstrates limited insight into their current level of risk or the strategies required to manage it. In this case, such a placement could jeopardize institutional safety, increase the likelihood of reoffending, and undermine rehabilitative efforts for the individual and others.</p>		admissible non-expert opinion.	<p>facts (Applicant's offence cycle, lack of insight, risk assessments) to institutional safety concerns.</p>
Para 26	<p>A substantial portion of women offenders have exposure to adverse or traumatic life events, and they are more likely to be victims of gender-based violence than women in the general population.</p>	<p>Relevance, no source cited for belief/opinion</p>	<p>Relevant context: women offenders' trauma profile is well-documented in CSC operations.</p>	<p>This statement contextualizes why transferring a high-risk offender convicted of gender-based violence into a women's institution poses unique risks.</p> <p>While no specific citation is included, CSC staff are trained on offender profiles, including the well-documented prevalence of trauma among federally sentenced women. The affiant's professional knowledge is sufficient to support her statement.</p>
Para 27	<p>Women are more likely to develop a higher intensity of symptoms of post-</p>	<p>Relevance speculation, opinion,</p>	<p>Institutional knowledge of women offenders'</p>	<p>The statement reflects accepted research and CSC's correctional knowledge base.</p>

	<p>traumatic stress disorder (“PTSD”) than men. Women offenders are more likely to experience substance use, self-injurious behaviour, and mental health concerns due to this PTSD. Given the unique social histories of women offenders, enhanced supervision to mitigate the risk of the transfer of offenders who have been convicted of gender-based violence or violence toward children may be inappropriate, as excessive security presence can create apprehension and fear.</p>		<p>needs; explains why supervision models differ.</p>	<p>It is relevant to show why enhanced supervision strategies that might work in a men’s institution may be counterproductive in a women’s institution. This evidence assists the Court in understanding operational impacts.</p>
Para 28	<p>Given that women’s institutions operate under a communal living model with limited direct oversight, mitigation strategies such as constant and direct supervision of certain incarcerated individuals would not be appropriate at these sites. Implementing stricter controls or surveillance of offenders to mitigate the risk associated with an accommodation measure would conflict with the principles outlined in “Creating Choices”, such as promoting the empowerment, autonomy and</p>	<p>Relevance speculation, opinion,</p>	<p>Factual description of women’s institutional model under <i>Creating Choices</i>; directly relevant.</p>	<p>This is a factual description of how women’s institutions are designed.</p> <p>It explains why placement of the Applicant, given her risk profile, may be operationally incompatible with the design of women’s institutions.</p>

	rehabilitation of federally sentenced women.			
Para 32	Transgender women have different patterns of criminality than cisgender women and require different interventions and supports.	Relevance speculation, opinion,	Reflects CSC's operational experience with offender profiles; relevant to placement considerations.	This directly addresses why transgender women may require different interventions than cisgender women, which is crucial to assessing the appropriateness of placement.  The affiant's statement is drawn from CSC's accumulated data and professional experience.

## PART II – POINTS IN ISSUE

7. The only issue in the present motion is whether the challenged statements are admissible in the proceedings.
8. The Respondent submits this question should be answered in the affirmative.

## PART III – LAW AND ARGUMENT

### A. Non-Expert Opinion Evidence Is Permissible

9. The Applicant objects to several statements as impermissible opinion or speculation. These objections should be rejected.

10. Limited opinion evidence from non-expert affiants is permissible where it flows from their personal knowledge and, in the case of CSC’s affiants, professional experience.<sup>1</sup> Rule 81(1) of the *Federal Courts Rules* also permit statements as to the deponent’s belief:

Content of affidavits

81 (1) Affidavits shall be confined to facts within the deponent’s personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent’s belief, with the grounds for it, may be included.

11. CSC staff are trained professionals whose daily work requires them to evaluate offender risk, institutional adjustment, and accommodation needs. Their assessments, expressed in affidavit form, are not speculation but informed professional judgments rooted in observed fact.
12. The affidavits in question reflect professional evaluation of the Applicant’s behaviour, institutional environment, or systemic risks.<sup>2</sup>

**B. References to CSC Policies Provide Proper Context**

13. The Applicant challenges several paragraphs on the ground that they “assume a point of law.” This objection misconceives the purpose and nature of the evidence.
14. Affidavits may properly describe the policy framework within which decisions were taken.<sup>3</sup> In the affidavits in question, CSC staff are explaining the operational meaning of terms such as “overriding health or safety concerns” as defined in CSC Commissioner’s Directives appended to their statements. This is necessary context for the Court to understand how CSC decision-makers approached the Applicant’s accommodation and

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<sup>1</sup> *R. v. Graat*, [1982] [2 S.C.R. 819](#); *Canada (Attorney General) v. Mosaic Forest Management Corporation*, [2022 FCA 216](#), para. [17](#)

<sup>2</sup> See Affidavit of Burns paras. 12, 19, 20; Affidavit of Byron paras. 23, 26–28, 32

<sup>3</sup> *Canadian Civil Liberties Association v. Canada (Attorney General)*, [2023 FC 118](#), paras [39-41](#).

transfer requests and constitutes “general background information to assist in understanding the issues relevant to the judicial review.”<sup>4</sup>

15. The affidavits in question take care to describe internal CSC policy language. This is admissible factual background, not legal submission.<sup>5</sup>

### **C. Relevance of Institutional and Systemic Context**

16. The Applicant objects to portions of the affidavits as irrelevant, including statistics on gender-diverse offenders and descriptions of women offenders’ profiles. The Respondent submits these objections should be rejected.

17. Relevance is a low threshold. Evidence is relevant if it tends to "increase or diminish the probability of the existence of a fact in issue."<sup>6</sup> Here, the impugned statements provide critical context for assessing CSC’s decision-making, including:

- the operational realities of managing transgender offenders (Byron para. 22);
- the risks posed by placing high-risk offenders into women’s institutions given the trauma profiles of women offenders (Byron paras. 26–28); and
- the systemic considerations CSC must balance when accommodating gender identity while maintaining institutional and public safety.

18. This contextual evidence directly informs whether CSC’s transfer decision was reasonable and whether the Applicant’s requested injunction is appropriate.

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<sup>4</sup> Ibid., para. [41](#).

<sup>5</sup> See Affidavit of Burns para. 17; Affidavit of Byron paras. 16, 18

<sup>6</sup> *R. v. Arp*, [1998 CanLII 769](#) (SCC), para. [38](#).

**D. No Inadmissible Hearsay**

19. Some statements are challenged as hearsay.<sup>7</sup> The Respondent submits these objections should be dismissed.
20. CSC officials may properly recount offender statements made directly to them in the course of case management. These statements do not amount to inadmissible hearsay when reported by a CSC affiant.<sup>8</sup>
21. Evidence of internal consultations<sup>9</sup> is not offered for the truth of the Secretariat's advice but to show that CSC did consult them and considered gender identity factors.

**E. Overall Admissibility and Weight**

22. Even if some statements include elements of evaluative language, they remain admissible.
23. The appropriate remedy for concerns about weight or scope is to accord such evidence limited weight, not to strike it entirely.

**F. Conclusion**

24. The Applicant's motion to strike seeks to excise the very evidence necessary for the Court to understand CSC's operational context and decision-making framework. The challenged paragraphs fall within the permissible scope of affidavit evidence. They reflect CSC staff's direct knowledge, professional expertise, and institutional processes. The motion to strike should be dismissed.

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<sup>7</sup> Affidavit of Burns paras. 20, 27

<sup>8</sup> Affidavit of Burns, para. 20

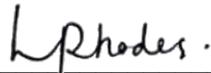
<sup>9</sup> Affidavit of Burns, para. 27.

**PART IV – ORDER SOUGHT**

25. The Respondent requests that this Honourable Court dismiss the present motion to strike portions of the Respondent affidavits.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED,**

**DATED** at Halifax, in the Province of Nova Scotia, this 7<sup>th</sup> day of October, 2025.

  
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**PART V – LIST OF AUTHORITIES****Statutes and Regulations**

1. *Federal Courts Rules*, [SOR/98-106](#)

**Jurisprudence**

2. *Canadian Civil Liberties Association v. Canada (Attorney General)*, [2023 FC 118](#)
3. *Mosaic Forest Management Corporation*, [2022 FCA 216](#)
4. *R. v. Arp*, [1998 CanLII 769](#)
5. *R. v. Graat*, [1982] [2 S.C.R. 819](#)