

22-Oct-19

REGISTRY

No. S219280
New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

Haedyn Patterson

Petitioner

and

Warden of Alouette Correctional Centre for Women,
Warden Surrey Pretrial Services Centre, and BC Corrections

Respondents

RESPONSE TO PETITION

Filed by: Warden of Alouette Correctional Centre for Women, Warden of Surrey Pretrial Services Centre, and BC Corrections (the “Respondents”)

THIS IS A RESPONSE TO the petition filed on September 24, 2019.

Part 1: ORDERS CONSENTED TO

The Respondents **DO NOT** consent to the granting of the orders set out in Part 1 of the petition.

Part 2: ORDERS OPPOSED

The Respondents oppose the granting of **ALL** of the orders set out in Part 1 of the petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Respondents take no position on the granting of **NONE** of the orders set out in Part 1 of the petition.

Part 4: FACTUAL BASIS

A. Introduction

1. The petitioner is a transgender inmate who identifies as female. She is being held in provincial custody pending extradition to the United States, where she is wanted on charges of first degree murder, first degree robbery and theft of a motor vehicle.

2. On August 14, 2019, the petitioner had a violent outburst in which she injured three correctional staff at the Alouette Correctional Centre for Women ("ACCW") where she was then being housed. Later that day the wardens of ACCW and the Surrey Pretrial Services Centre ("SPSC") jointly agreed that the petitioner should be reclassified and transferred back to SPSC. SPSC primarily houses male inmates, but also houses transgender inmates on occasion. The wardens were of the view the petitioner's placement at ACCW was not supporting her and was jeopardizing the safety and security of ACCW, which houses female inmates and is staffed by female frontline correctional officers.

3. Since September of 2018, when she was first transferred from SPSC to ACCW, the petitioner had routinely engaged in disruptive behaviour that breached ACCW's rules. These behaviours ranged from horseplay, prohibited intimate relationships with other inmates, disobeying staff direction and behaving in an abusive manner toward others. Her behaviour had become increasingly unmanageable and had a detrimental impact on both the staff and other inmates at ACCW.

4. After she returned to SPSC the petitioner was provided with detailed reasons for the reclassification/transfer decision. She then requested that the decision be reconsidered and provided written submissions (including submissions by her legal counsel) explaining why, in her view, she ought not to have been transferred from ACCW to SPSC. On October 17, 2019, the petitioner's reconsideration request was denied.

5. The petitioner now seeks judicial review of the decision to reclassify/transfer her to SPSC. She argues that the decision was unreasonable and breached the duty of procedural fairness. These arguments ought to be rejected firstly as the decision fell within the range of possible, acceptable outcomes in light of the impact that the petitioner's persistently destructive behaviour at ACCW had on herself, ACCW staff, and other inmates, the fact that the petitioner has access to the same services and programs at SPSC as at ACCW and the fact that the petitioner's placement at SPSC is effectively meeting her needs while also ensuring the safety of others.

6. In deciding to reclassify/transfer the petitioner from ACCW to SPSC, the respondents also discharged the duty of procedural fairness. While an imminent threat of violence on the part of the petitioner prevented the respondents from giving her notice and an opportunity to be heard before the August 14, 2019 decision was made, the petitioner was subsequently provided with extensive participatory rights as part of the reconsideration process.

7. As such, the respondents respectfully submit that the petition should be dismissed.

B. Overview of BC Corrections

8. Provincially operated correctional centres in British Columbia are governed by the *Correction Act*, SBC 2004, c 46, the *Correction Act Regulation*, BC Reg 58/2005 ("CAR"), and the Adult Custody Policy (the "Policy") of the Adult Custody Division, Corrections Branch, Ministry of Public Safety and Solicitor General.

9. As a general matter, females are housed separately from men in British Columbia's correctional system. As is explicitly acknowledged by BC Corrections in a document entitled "Statement of Philosophy – Correctional Service for Women," female inmates tend to have backgrounds, needs, and safety concerns that are distinct from male inmates. Notably, many female inmates have historically suffered abuse at the hands of men, and as a result of this trauma are more vulnerable and susceptible to ongoing and future trauma and abuse.

10. In recognition of this, BC Corrections has developed a Cross Gender Staffing Policy, which seeks to protect the dignity of women offenders by greatly limiting the extent to which they may be supervised by correctional officers of the opposite sex.

11. There are ten provincial correctional centres in British Columbia, of which three house female inmates. ACCW houses female inmates and both Prince George Regional Correctional Centre and Okanagan Correctional Centre have small separate female units despite predominantly housing male inmates. All ten provincial correctional centres, including SPSC, may house and accommodate transgender inmates.

CORNET Client Log

12. BC Corrections maintains a CORNET Client Log (“C-Log”) for each inmate. The C-Log is a running record of staff’s observations and assessments on the activities of inmates. The C-Log notes an inmate’s progress and behaviour as well as any significant incidents or concerns staff may have.

13. BC Corrections staff are responsible for maintaining the C-Logs of inmates and making entries in the usual and ordinary course of business. C-Log entries are recorded contemporaneously by staff members that have personal knowledge of the matters recorded.

Classifying Inmates

14. As is set out in sections 4.1.3 and 4.2 of the Policy, BC Corrections staff who are specially trained and certified as classification officers assess and classify inmates when they are admitted to a correctional centre, when they are transferred from one correctional centre to another, and at specified intervals that are determined by each correctional centre.

15. An inmate’s classification determines the inmate’s security level, supervision, control and programming. Inmate classification typically occurs as soon as possible after an inmate is sentenced and admitted to a correctional centre. Inmates who have

not been sentenced and are admitted on warrants of remand are similarly reviewed for risk assessment and direction with respect to placement and programming.

16. As is set out in section 4.5 of the Policy, correctional centres are categorized according to secure, medium, or open classifications. Inmates may be classified to secure custody in a number of different circumstances. For example, inmates may receive a secure classification when they are dangerous to the community or correctional centre, they are likely to attempt to escape, their behaviour presents a serious management problem, or there is insufficient information to determine the level of security required for the inmate.

17. As is set out in 4.5.3 (11) of the Policy, inmates classified to secure custody may be transferred between secure correctional centres to address inmate management problems related to behaviour or security.

18. Inmates may be directly classified to particular correctional centres.

19. An inmate may be reclassified. Reclassification may occur for many reasons, including: an inmate is moved to or released from segregation, placed on or removed from an Enhanced Supervision Placement (“ESP”), a transfer between correctional centres is being considered, an inmate or staff requests a classification review, an inmate demonstrates significant behavioural issues, staff have safety or mental health concerns or where significant incidents take place that may warrant reclassification.

20. Both ACCW and SPSC house inmates – such as the petitioner – that are classified to secure custody.

Case Management

21. As is set out in section 4.1 of the Policy, BC Corrections uses case management to ensure inmates use their time in custody effectively. Among other things, case management includes institutional placement, risks/needs assessment, reclassification, and transfer of inmates.

22. Case management is an ongoing process and may lead to a review of the inmate's classification and a potential transfer. Placement of an inmate within a correctional centre is based on safety, security, bedload capacity and inmate profiles.

Transferring Inmates

23. As is set out in section 4.9 of the Policy, BC Corrections has the legal authority to transfer inmates from one correctional centre to another by virtue of section 10 of the *Correction Act*.

24. Section 4.9 of the Policy specifies that a transfer may take place after an inmate is sentenced (i.e. "sentence management") or for "administrative reasons." Administrative reasons for a transfer include managing population levels, facilitating court appearances, protecting other inmates or staff, and managing behavioural issues. Under section 4.9.6 of the Policy, a warden or her designate has the authority to approve administrative transfers, the reasons for which must be noted in an inmate's C-Log.

Transgender Inmates

25. At all material times, section 4.10 of the Policy contained a number of provisions that specifically dealt with the incarceration of transgender inmates (the "Transgender Inmate Policy"). The Transgender Inmate Policy has undergone changes over time.

26. Under the Transgender Inmate Policy, there is a multi-disciplinary team that is involved in the placement and transfer decisions respecting transgender inmates. In practice, the multi-disciplinary team generally includes medical personnel, staff from the correctional centres involved and a policy analyst.

27. The Transgender Inmate Policy addresses situations where a transgender inmate makes a request to be placed in or transferred to a particular correctional centre. The Transgender Inmate Policy in place when the petitioner was transferred from ACCW to SPSC states in part:

4.10.4 Placement

1. A transgender inmate may be accommodated by a transfer to a different correctional centre, or they may be accommodated within the institution where they are currently housed if appropriate services and accommodation can be provided. Placement decisions require consultation with a multi-disciplinary team and input from the inmate.
2. When a transfer is requested, an individualized assessment is required to determine appropriate placement. The individualized assessment involves consultation with a multi-disciplinary team which includes medical personnel from Correctional Health Services, the deputy wardens responsible for placement and classification at the holding centre and the possible receiving centre, and may include representatives from BC Corrections headquarters and other correctional staff.

...

5. Following the preliminary placement plan, centre-based base managers refer the placement request to the multi-disciplinary team. When considering placing an inmate whose sex assigned at birth is male in a female institution or female unit, assessment of safety and security implications of such a transfer on the individual as well as on the entire inmate population and staff is required. The multi-disciplinary team will consider gender expression and all relevant behaviour during review of the placement request [emphasis added].

28. In other words, the Policy provides that inmates are not assigned on the basis of either their birth gender or self-identified gender identity alone. Rather, the policy directs that gender is but one of a number of factors to be considered in placement.

C. Overview of ACCW

29. ACCW is an open, medium, and secure custody provincial correctional centre located in Maple Ridge, British Columbia. It is operated by BC Corrections. It is a facility for women who are serving provincial sentences or who are remanded into custody.

30. ACCW is divided into medium and secure custody sections. There are four secure custody living units at ACCW. In addition to the living units, there is a segregation unit.

31. Inmates classified to communal living units will be assigned a cell within the units. Most inmates are single bunked and do not share a cell, although this will vary depending on the inmate population. The units have common areas, where inmates may socialize, participate in programs, consume meals, use the phones, showers and other unit amenities.

32. The number of inmates on each unit at ACCW is on average about 20 but can range up to 42 inmates as the population varies.

33. From 2016 to 2019 there were at least 15 transgender inmates housed at ACCW.

Management of Safety and Security at ACCW

34. In accordance with the Cross Gender Staffing Policy, all front-line correctional officers at ACCW are female. These officers are responsible for supervising the inmate population on the units, doing visual safety checks of inmates in all areas of the centre, including individual cells, performing physical searches, taking escorts into the community, facilitating programs, etc. The few male staff members at ACCW are either supervisors or managers.

35. The majority of the inmates at ACCW have suffered from violence or other forms of abuse by men, tend to be marginalized, are more likely to be easily controlled or overpowered by men, and have high levels of trauma.

36. There are many challenges to managing the inmate population at ACCW. Ensuring the safety and security of staff and inmates in the context of a correctional centre is a complex balancing act. One of the biggest challenges staff face is managing the interaction among inmates to prevent or minimize tensions and conflict among them, and to protect vulnerable inmates from being taken advantage of.

37. Negative behaviours by inmates jeopardize the management of ACCW. If staff do not address and try to manage the negative behaviours, it indicates to other inmates that such behaviour is acceptable and leads to escalation. In addition, the negative

behaviour of the particular inmate will likely continue and escalate, which results in staff having to spend time managing that particular inmate instead of attending to the rehabilitative programming and safety and security of other inmates.

38. When an inmate has established a negative pattern of behaviour that has the potential to jeopardize the safety and security of ACCW, ESP (i.e. “Enhanced Supervision Placement”) may be used. In such circumstances, staff closely monitor the inmate’s peer and staff interactions and promote positive behavioural change with the goal of facilitating integration back into the mainstream inmate population.

39. ESP provides structure to inmates who may have trouble integrating with other inmates on the unit, as well as those who have serious behavioural issues. ESP is a more structured placement. Inmates on ESP are given guidelines and a case plan to follow in order to transition back into general population. While on ESP, an inmate lives in her cell on a living unit and spends a certain number of hours out of her cell and interacting with other inmates. The number of hours an inmate spends out of her cell while in ESP is less than that of an inmate on regular status. Unlike separate confinement, while on ESP, an inmate may still be able to access programming and socialize with other inmates.

40. Michelle Bryson, Correctional Supervisor of Inmate Management at ACCW, is responsible for overseeing the management of inmates in separate confinement, those placed in ESP, as well as the case management of any inmates with complex needs. Ms. Bryson develops case management plans for the inmates with whom she works, details problematic behaviour and seeks to find ways to address such behaviour by working with inmates.

41. This may include direct supervision (for example, one-on-one staffing), daily and weekly reviews in which issues or problems that have arisen with an inmate are discussed, developing behavioural plans, or recommending an alternative form of placement (e.g. in separate confinement or ESP). Ms. Bryson also identifies triggers for inmates so that staff members are provided with all the necessary information to

manage individuals and to hopefully offset, avoid and better handle particular situations. Ms. Bryson monitors inmates' progress and behavioural changes and regularly reports back to them on their progress.

42. To ensure the safety and security of staff and inmates, BC Corrections has a number of emergency response codes that may be called in different situations, such as a "Code Yellow." When a Code Yellow is called, it indicates potential harm to staff or an inmate, and designated responding staff arrive at the scene to assist with the emergent situation. The responding staff members at ACCW are made up of a number of female correctional officers on duty at the time. When a Code Yellow is called, these officers leave whatever they are doing and immediately attend to the scene.

D. Overview of SPSC

43. SPSC is a secure custody remand centre in Surrey, British Columbia. Though it primarily houses male inmates who are remanded while they await their trial or sentence, SPSC also houses transgender inmates with accommodations determined on a case by case basis.

44. SPSC contains 18 living units of varying sizes. Some living units have as few as six cells and others have up to 36 cells. SPSC also has two segregation units: one with a capacity of 21 and another with a capacity of 60.

45. Inmates are assigned to a cell within a living unit. Most cells contain two bunks and inmates may need to share a cell, depending on capacity and operational needs. The number of inmates on each living unit varies with the size of the living unit and the current inmate population at SPSC.

46. A living unit officer is assigned to each unit. Other support staff and supervisors may also be present on a living unit. Each living unit has common areas where inmates may socialize and a servery area where inmates may prepare hot water, toast, or other

items. Each living unit also has communal showers. Newer living units also contain a small gymnasium, an exercise yard and program space.

Accommodation of Transgender Inmates at SPSC

47. Consistent with the Transgender Inmate Policy, SPSC has on occasion housed transgender inmates. From 2016 to 2019 there were approximately 10 transgender inmates who identified as female housed at SPSC. During that time there was also a transgender inmate who identified as male who was briefly housed at SPSC.

48. Transgender inmates may be accommodated at SPSC in a number of ways, depending on the individual needs of the inmate. A transgender inmate may be placed on a regular unit without restrictions, or may choose to be voluntarily placed on separate confinement under section 19 of the CAR. Voluntary separate confinement means that the inmate continues to live in a cell on the regular unit, but is not out of their cell at the same time as other inmates.

49. Transgender inmates at SPSC receive private shower times that are separate from other inmates. They are also single bunked, ensuring they have a private cell.

50. Transgender inmates at SPSC receive many of the items that they would at a women's institution, such as canteen items that are gender-specific and undergarments that align with their gender identity. Their undergarments are washed separately from other inmates' laundry to ensure the inmate's privacy. While some canteen items may differ between correctional centres, such items are not gender-specific. For example, while ACCW prohibits scented items, SPSC does not. As a result, there is some discrepancy between soaps and other items available at ACCW and those at SPSC.

51. Transgender inmates at SPSC are welcome to wear wigs or prosthetics in accordance with their gender expression, though BC Corrections does not supply these items. All inmates at SPSC must, however, wear the same outer clothing for safety and security reasons.

Allegations of Sexual Assault at SPSC

52. On occasion, allegations of sexual assault are made at SPSC. When this occurs, staff members take these allegations very seriously and seek to respond appropriately.

53. In response to an allegation of sexual assault, SPSC staff will undertake an investigation. As part of their investigation, staff will review any available video footage, conduct interviews of the complainant, accused, and potential witnesses. In cases where the allegations could constitute a criminal offence, SPSC staff provide the complainant with the opportunity to contact the police in order to report the allegation. Staff will then follow up with police and obtain the police file number.

54. After the investigation is concluded, SPSC staff will respond in writing to the complainant and set out the findings of their investigation. If the allegations are unsubstantiated, no further steps will be taken. If the allegations are substantiated, SPSC takes steps to address the risk, which may include internal disciplinary charges and/or reclassification to a different living unit.

E. The Petitioner's Incarceration at SPSC and ACCW

55. The petitioner, who is now approximately 25 years old, has been held in provincial custody since 2014. She is being held pending extradition to the United States, which seeks to extradite her to stand trial in Washington State on charges of first degree murder, first degree robbery and theft of a motor vehicle. It is alleged that the petitioner murdered her roommate (who died of multiple skull fractures that were inflicted by a shovel), stole her roommate's identification, credit cards and BMW and entered Canada illegally by driving through a barbed wire fence.¹

56. Despite being incarcerated pending extradition since she was approximately 20 years old, the petitioner already has a substantial criminal record that includes first

¹ *United States of America v. Patterson*, 2015 BCSC 579 at paras. 6-12.

degree criminal trespass, fourth degree assault, custodial assault, second degree theft, forgery, first degree identity theft, and second degree identity theft.²

57. Since her most recent incarceration, the petitioner has made no less than eight submissions to the Minister of Justice seeking to avoid surrender to the United States on a variety of bases, each of which has been unsuccessful. For example, in November of 2017, the petitioner submitted to the Minister that she “identifies as homosexual” and had been sexually assaulted while serving prison terms in the United States and that – as a result – the Minister must seek assurances that she would be placed in special protective custody if extradited. In March of 2018, the petitioner submitted to the Minister that she is also “transgendered” and that – as a result – the Minister must seek assurances that she can be protected from violence if extradited to the United States.³

58. The petitioner has repeatedly sought to judicially review the Minister of Justice’s surrender decision. Each of these attempts has to date been rejected by this Court, as well as the BC Court of Appeal and Supreme Court of Canada.⁴

59. In late 2017 (i.e. after three years in custody), while incarcerated at SPSC, the petitioner informed BC Corrections for the first time that she identifies as female. The petitioner was transferred from SPSC to ACCW on September 12, 2018.

60. Prior to her transfer to ACCW, the petitioner was required to sign a “Behavioural Expectations Contract”. These are sometimes used where an inmate has demonstrated negative behaviour and BC Corrections staff determine a behavioural expectations contract may assist in correcting that behaviour. The terms of the contract ensure inmates have a clear understanding of what is expected of them and to provide a clear behavioural plan for the inmate to follow.

² *United States of America v. Patterson*, 2015 BCSC 579 at para. 16.

³ *Patterson v. Canada (Minister of Justice)*, 2018 BCCA 493 at paras. 5-18.

⁴ See *United States v. Patterson*, 2015 BCSC 1018; *United States of America v. Patterson*, 2017 BCCA 52; *Patterson v. Canada (Minister of Justice)*, 2018 BCCA 493; *Kevin David Patterson v. Canada (The Minister of Justice), et al.*, 2018 CanLII 12962 (SCC); *Kevin David Patterson, et al. v. Canada (Minister of Justice), et al.*, 2019 CanLII 62571 (SCC).

61. By signing the Behavioural Expectations Contract the petitioner agreed, among other things, to: be respectful to staff and other inmates, adhere to all medical treatment recommendations related to her gender transition, or if she did not consent to a recommended treatment to immediately advise a shift supervisor and to follow the rules and regulations at ACCW, including following staff direction.

62. The Behavioural Expectations Contract also stated in bold print that failure to comply with any of the outlined behavioural expectations will result in an immediate classification review and alternate placement may be considered, which may include other correctional centres.

63. The terms of the Behavioural Expectations Contract were in place to ensure the safety and security at ACCW. The petitioner's behavioural history at SPSC suggested she may not be respectful to staff and other inmates and may not follow the rules and regulations at ACCW or follow staff direction. The petitioner was transferred to ACCW on the basis that she had been undergoing medical treatment related to her gender transition. This medical treatment mitigated the safety and security risks the petitioner may otherwise have presented and also mitigated the impact the petitioner's presence had on other inmates at ACCW.

64. During her stay at ACCW, Ms. Bryson worked closely with the petitioner to manage her behavioural issues and to support her compliance with the behavioural expectations at ACCW, as set out in her Behavioural Expectations Contract. Nevertheless, the petitioner's behaviour proved extremely difficult to manage.

65. Throughout her time at ACCW, and despite Ms. Bryson's efforts to work with the petitioner, the petitioner routinely engaged in disruptive behaviour that breached ACCW's rules. These behaviours ranged from horseplay, prohibited intimate relationships with other inmates, disobeying staff direction, and behaving in an abusive manner toward others. By the time that she was transferred back to SPSC, there were 288 negative entries in her C-Log related to her time at ACCW.

66. In addition to these more routine examples of negative behaviour, there were four serious incidents involving the petitioner during her time at ACCW. These incidents, which took place on January 30, April 3, July 24 and August 14, 2019, demonstrated a pattern of repeated and significant misbehaviour that put the safety and security of the petitioner, ACCW staff, and other inmates at risk.

January 30, 2019 Incident

67. On January 30, 2019 the petitioner refused to comply with staff direction to be moved to segregation. Her refusal to comply quickly escalated. She became verbally aggressive and threatened to harm staff. She repeatedly stated that she had “nothing to lose” and stated that she would “not go quietly” and may as well “go out with a bang”. She told staff to “bring it” and when told a code would be called, she laughed and stated “women are going to take me out? Bring it”.

68. The petitioner eventually complied with the direction to be moved to segregation, but once in the segregation holding cell she escalated and refused to follow any further staff direction. She covered the camera and cell door in order to obstruct her cell from staff vision. She refused to be moved from the holding cell into a regular cell.

69. The Emergency Response Team was called in to assist due to the petitioner’s refusal to comply with direction, the nature of the comments she was making, and the petitioner’s heightened and aggressive behaviour.

70. This incident was particularly concerning to ACCW staff. As noted above, the petitioner is facing extradition to the United States on a charge of first degree murder. One way to defeat an extradition proceeding is to be charged in Canada with a crime of equal or greater severity. Given this context, the petitioner’s comments “don’t forget I have nothing to lose” were taken very seriously.

71. The petitioner’s behaviour on January 30, 2019 resulted in a disciplinary charge under section 21 of the CAR for behaving in an insulting or abusive manner toward a

person. She pled guilty and was placed in segregation for seven days for disciplinary reasons.

72. On February 1, 2019, following this incident, Lisa Martin, Warden at ACCW, wrote to the petitioner and advised that her placement at ACCW was under review due to concerns the petitioner was not complying with the terms of the Behavioural Expectations Contract.

73. On February 15, 2019 Ms. Martin wrote to the petitioner and advised there would be no change in her current placement at ACCW. She explicitly stated that there remained concerns about the petitioner's behaviour and her failure to comply with the clear expectations set out in the Behavioural Expectations Contract.

April 3, 2019 Incident

74. On April 3, 2019, the petitioner put an unknown substance on the camera in the segregation holding tank. She was directed to remove or wipe off the substance and continuously refused to do so. She was advised that it was a chargeable offence to refuse to comply with staff direction to remove or wipe off the substance on the camera. She continued to refuse to comply. The camera was cleaned and the petitioner covered it a second time.

75. The petitioner's behaviour on April 3, 2019 resulted in a disciplinary charge, under section 21 of the CAR for disobeying a direction from staff. After a hearing she was found guilty and placed in segregation for seven days for disciplinary reasons.

76. After the incidents on January 30, 2019 and April 3, 2019, Ms. Bryson conducted a review of the petitioner's file. After reviewing the petitioner's C-Log, previous disciplinary charges, and history of problematic behaviour, she recommended the petitioner remain on separate confinement on a living unit in order to assess her ability to function at the unit level on a long-term basis. This recommendation was based in part on the

demonstrated history of the petitioner returning to aggressive and non-compliant behaviour after a short period of time on regular unit placement.

July 24, 2019 Incident

77. On July 24, 2019, the petitioner was verbally aggressive and challenging toward one of the nurses responsible for distributing medication. This aggression escalated quickly. She was belligerent, engaged in grandstanding behaviour, was swearing and yelling at staff, and told the Assistant Deputy Warden to “fuck off”. A Code Yellow was called and eventually the petitioner complied and locked herself up in her cell.

78. After locking up in her cell, the petitioner blocked all lines of sight in and out of her cell by covering the window with envelopes. She then pressed the call button in her cell, which is used to speak directly to staff in case of an emergency. She informed staff she had swallowed a razor blade. This behaviour caused further concern for ACCW staff and health care staff. Staff were concerned for the health and wellbeing of the petitioner as well as the risk that she may still have a weapon. Due to the possibility of a weapon and the petitioner’s self-harming behaviour, the Emergency Response Team was called to remove the petitioner from her cell and move her to the hospital.

79. The aggressive and non-compliant behaviour by the petitioner on July 24, 2019 resulted in a disciplinary charge under section 21 of the *CAR* for disobeying a direction from staff. After a hearing she was found guilty and placed in segregation for ten days (which was later reduced to eight days) for disciplinary reasons.

August 14, 2019 Incident

80. On August 14, 2019, Dr. Nader Sharifi, Medical Director of Correctional Health Services emailed ACCW’s Warden, Lisa Martin. Dr. Sharifi indicated that the petitioner had not been adhering to her transcare medication and that felt obligated to inform Ms. Martin of that fact as, in his view, it could endanger the safety at ACCW and its operations.

81. Also on August 14, 2019, the petitioner was being held in separate confinement as she had been found guilty of behaving in an abusive manner toward a person, contrary to section 21 of the *CAR*. She was very angry and attempted to cover her cell window so that staff could not see in.

82. ACCW staff wished to move her to a different cell so she could be medically observed. The petitioner refused to cooperate with the move. Eventually she complied with being moved. However, almost immediately after being moved, she began to attempt to cover up the cell windows and camera in the new cell with a mattress and other items from her cell. She was unsuccessful due to the high ceiling in this cell.

83. The petitioner then attempted to choke herself with her sweater. Staff entered her cell and directed her to remove the sweater from around her neck, but she refused to comply.

84. A Code Yellow was called and additional responding staff attended the scene. The petitioner was non-compliant and combative with staff. It eventually took eight staff members, including staff who are members of the Emergency Response Team, to restrain the petitioner with a “wrap” and move her to a harm reduction cell.

85. As a result of the petitioner’s combative behaviour on August 14, 2019, three staff members submitted Worker’s Compensation Claims for various injuries sustained during the code response including scratches, swelling, and injuries to the neck, knees, and back.

F. The August 14, 2019 Decision

86. After receiving the aforementioned email from Dr. Sharifi and learning of the incident in which the petitioner had injured three ACCW staff, Ms. Martin participated in a conference call with Lyall Boswell, Warden at SPSC, Stephanie Macpherson, Provincial Director of BC Corrections and Micheal LaRocque, Policy and Programs Analyst. Ultimately, Ms. Martin and Mr. Boswell decided that, for safety and security

reasons, the petitioner should be reclassified and transferred from ACCW to SPSC (the "August 14 Decision").

87. As noted above, the petitioner had continuously demonstrated problematic behaviour, which had continued to escalate during her time at ACCW. She repeatedly disobeyed staff direction, disregarded the rules of ACCW, and was verbally aggressive toward staff. Her behaviour became increasingly unmanageable and had a negative impact on the staff and other inmates at ACCW.

88. After the petitioner's violent outburst on August 14, 2019, it became evident that the petitioner's placement at ACCW was not supporting her and was jeopardizing the safety and security of ACCW.

89. Another concern was that the petitioner had continuously breached the terms of her Behavioural Expectations Contract and all other behavioural plans that staff had attempted to establish with the petitioner.

90. Ms. Martin and Mr. Boswell also concluded that there was no longer any therapeutic benefit to the petitioner being housed at ACCW, and that her presence was having a detrimental impact on the therapeutic programming to other inmates. The petitioner was not accessing programming at ACCW that was not available at SPSC. She was not fully socializing with other inmates as much, because her continuous problematic behaviour resulted in her constantly being placed in separate confinement.

91. Mr. Boswell, Ms. Macpherson, Mr. LaRocque and Ms. Martin discussed these factors and determined that ACCW staff had exhausted everything they could do to work with the petitioner. Her behaviour was proving to be unmanageable and her presence was negatively affecting the staff, other inmates, and overall environment at ACCW. As a result, the August 14 Decision was made and the classification of the petitioner was reviewed, which resulted in a transfer to SPSC.

92. The petitioner was not provided notice of the August 14 Decision before it was made and thus she did not have an opportunity to make submissions in advance of the transfer/reclassification. This was due to safety and security concerns. As noted above, the petitioner had been actively resisting and fighting with staff for a lengthy period of time that day. After the petitioner was secured she continued to indicate that she would not be compliant. If she had been informed she was going to be transferred to SPSC, Ms. Martin believed (and continues to believe) that she would again have become extremely combative and would have actively resisted the transfer. This, in turn, would have created an unacceptable safety risk to staff, the community, and the petitioner herself.

93. After her return to SPSC, Ms. Martin sent the petitioner a letter enclosing a Classification Review Summary that had been prepared by Ms. Bryson. This document detailed the reasons for the petitioner's reclassification/transfer to SPSC.

G. The Petitioner's Return to SPSC

94. On August 16, 2019 the petitioner completed an Inmate Complaint Form complaining about her transfer from ACCW and requesting a transfer to Okanagan Correctional Centre ("OCC"). Inmate Complaint Forms are standard forms used by BC Corrections to facilitate an inmate's ability to exercise their right under section 37 of the CAR to make written complaints to a person in charge and receive a written response.

95. On August 23, 2019, Mr. Boswell (SPSC Warden) wrote to the petitioner and acknowledged receipt of her request to be transferred to OCC. He invited her and her counsel to provide further information at any time.

96. On September 3, 2019, Mr. Boswell received submissions from the petitioner respecting the request to be transferred. On September 5, 2019, he received correspondence from her legal counsel respecting the request to be transferred. As noted above, transfer requests made by transgender inmates are governed by section 4.10.4 of the Policy.

97. On September 6, 2019, the multi-disciplinary team met to review the petitioner's request to transfer to OCC. The team consisted of Lisa Martin (ACCW Warden), Matt Lang, Deputy Provincial Director, BC Corrections; Dawne McNaughton, Acting Deputy Warden of Classification and Case Management at SPSC, Dr. Maureen Olley, Director, Mental Health Services, BC Corrections, Micheal LaRocque, Acting Policy and Program Analyst, BC Corrections and Mr. Boswell. The team reviewed the petitioner's transfer request, her written submissions and the correspondence from her legal counsel. The team concluded that the petitioner had received appropriate services and accommodation at SPSC and as a result her transfer request was denied.

98. In arriving at this decision, the multi-disciplinary team considered a number of factors. They noted that the petitioner had displayed little to no progress toward healthier social behaviours on the living unit at ACCW. She was no longer adhering to feminizing hormone therapy. There was a pattern of behavioural outburst and disobedient behaviour, and her placement at ACCW had not modified the petitioner's disruptive behaviour. As well, the petitioner had displayed an increasing disregard for following staff direction, jeopardizing safety and security on multiple occasions. She had also made several comments that indicated a willingness to harm herself or others in order to delay her extradition. As a result of all these considerations, the team decided not to approve the request to be transferred to OCC.

99. On September 17, 2019, Mr. Boswell wrote to the petitioner and advised her of the multi-disciplinary team's decision to deny her request to be transferred to OCC.

The Petitioner's Reconsideration Request

100. On September 25, 2019, the petitioner wrote a letter to Mr. Lyall Boswell requesting that her reclassification and transfer from ACCW to SPSC be reconsidered. The letter included submissions to the multi-disciplinary team. On October 3 and 12, 2019 the petitioner wrote additional letters making additional submissions to the multi-disciplinary team.

101. On October 17, 2019, Mr. Boswell participated in a conference call as part of the multi-disciplinary team to reconsider the petitioner's reclassification and transfer from ACCW to SPSC. The following people participated in the call and were part of the decision-making process: Mr. Boswell, Ms. Martin, Mr. LaRocque and Deputy Warden Jasbir Natt.

102. The team reviewed all of the petitioner's submissions. They discussed the petitioner's progression toward more stable behaviour since she returned to SPSC, which contrasted with her negative behaviour at ACCW. They also discussed the impact her behaviour at ACCW had on herself, ACCW staff, and other inmates. They noted that the petitioner had access to the same services and programs at SPSC as she had at ACCW. They discussed the fact that the petitioner's placement at SPSC was effectively meeting her needs while also ensuring the safety of others. The team decided to affirm the original decision and not transfer the petitioner to ACCW.

The Petitioner's Sexual Assault Allegation

103. As is set out at para. 13 of her affidavit dated September 20, 2019, the petitioner alleges that she was sexually assaulted by an SPSC staff member on August 30, 2019. In particular, she alleges that the staff member pressed his body up against hers from behind and used the term "tranny" in reference to her, revealing her gender identity to other inmates at SPSC. An advocate with Prisoners' Legal Services submitted a complaint to Mr. Boswell to that effect by email on September 3, 2019 and he responded by advising that "[t]his will be fully investigated."

104. Upon receiving the petitioner's allegation of sexual assault, Mr. Boswell tasked Assistant Deputy Warden Joyce Oates with investigating the allegation. Ms. Oates did so. In so doing, she interviewed the petitioner, the accused staff member, and potential witnesses. Ms. Oates also reviewed the petitioner's C-Log and video footage of the alleged incident that was captured by SPSC's video surveillance system.

105. Ms. Oates concluded the petitioner's sexual assault allegations were unsubstantiated. A witness with a direct visual of the alleged incident recalled seeing

space between the petitioner and the staff member. The only witness that had corroborated the petitioner's allegations did not have a direct visual of the alleged incident. As well, in the video footage of the alleged incident, the petitioner did not appear to react or acknowledge the presence of the staff member behind her. There was also no evidence supporting the allegation that the staff member had used the term "tranny" in reference to the petitioner.

106. On October 1, 2019, Ms. Oates wrote to the petitioner and informed her of the results of her investigation.

107. Despite concluding that the allegations were unsubstantiated, given their serious nature, Ms. Oates arranged for the petitioner to report the allegations to the Royal Canadian Mounted Police ("RCMP"). On September 7, 2019, the petitioner did so. The status of the RCMP's investigation into the allegations is not known to the respondents.

Part 5: LEGAL BASIS

A. Overview of the Respondents' Position

108. The petitioner alleges that the decision to reclassify/transfer her from ACCW to SPSC was unreasonable and not taken in a procedurally fair manner. These arguments ought to be rejected firstly the decision was eminently reasonable in light of the impact that the petitioner's persistently destructive behaviour at ACCW had on herself, ACCW staff, and other inmates, the fact that the petitioner has access to the same services and programs at SPSC as she had at ACCW and the fact that the petitioner's placement at SPSC is effectively meeting her needs while also ensuring the safety of others.

109. In deciding to reclassify/transfer the petitioner from ACCW to SPSC, the respondents also discharged the duty of procedural fairness that was owed to the petitioner. While an imminent threat of violence on the part of the petitioner prevented the respondents from giving her notice and an opportunity to be heard before the decision was made, the petitioner was subsequently provided with a detailed set of

reasons for the decision and an opportunity to make extensive submissions in support of a request for reconsideration.

B. Statutory Framework

110. Provincially operated correctional centres in British Columbia are governed by the *Correction Act*, which has two purposes. The dominant purpose is to provide officials with the authority to ensure the safety of individuals in provincial correctional centres, including inmates and BC Corrections employees, and the public, by ensuring that inmates remain separated from society. A second purpose of the *Correction Act*, which is subject at all times to the first, is to provide inmates with adequate living standards and an opportunity to rehabilitate and prepare for their return to society.⁵

111. Section 10 of the *Correction Act* gives broad discretionary authority to wardens to receive and transfer inmates from one correctional institution to another:

10 (1) Subject to subsection (2), each correctional centre may receive inmates from any part of British Columbia.

...

(3) Despite any order made under this section and the terms of any custodial disposition to the contrary, the person in charge of a correctional centre may direct that prisoners confined in one correctional centre be moved to another correctional centre.

112. The accompanying regulation, the *CAR*, govern the custody of inmates including security measures, discipline, inmate complaints, and programs and services for inmates. The relevant provisions of the *CAR* are as follows:

- (a) Section 21 of the *CAR* sets out the rules governing the conduct of inmates. For example, it provides that an inmate must not disobey a direction of a staff member or person in charge, enter a cell or living unit that is not assigned to that inmate without the permission of a staff member, engage in an indecent act, assault or threaten another person, or engage in an

activity that jeopardizes or is likely to jeopardize the safety of a person, or the management, operation or security of the correctional centre. An inmate who breaches a rule may be disciplined.

(b) Sections 22 to 29 of the CAR deal with breaches of the rules and the discipline hearing process. This process includes giving the inmate written notice of the alleged breach, a hearing, prescribed penalties for breaches, written reasons for decision, and the ability to request a review of the decision.

(c) Section 37 allows an inmate to make a written complaint to a staff member who must forward it, as soon as practicable, to the person in charge. The person in charge must, within 7 days of the receipt of the complaint, investigate and advise the inmate in writing of the results of the investigation as soon as practicable.

113. The decision to reclassify/transfer the petitioner from ACCW to SPSC was not a disciplinary matter under the CAR. It did not involve a change in security level that resulted in any deprivation of the petitioner's liberty. Rather, it was a multifaceted discretionary decision as to whether the petitioner's placement at ACCW was effectively meeting her needs while also ensuring the safety and security of other inmates and correctional staff.

114. In making this assessment, the various relevant provisions of the Policy were taken into account, including the Transgender Inmate Policy.

C. Fundamental Principles of Judicial Review

115. The role of the Court on judicial review is a narrow one – to supervise the jurisdiction exercised by a statutory tribunal and ensure a decision maker acted within the confines of its legal authority. The Court's role is not to re-weigh the evidence, interfere with the tribunal's evidentiary and fact-finding functions, or otherwise substitute

⁵ *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309 at para. 432.

its decision for that of the decision-maker. The Supreme Court of Canada has described judicial review as follows:

Judicial review is the means by which the courts supervise those who exercise statutory powers, to ensure that they do not overstep their legal authority. The function of judicial review is therefore to ensure the legality, the reasonableness and the fairness of the administrative process and its outcomes.⁶

116. Consistent with the narrow role of the court on judicial review, a Court will generally not consider a new issue when the applicant could have raised the issue before the tribunal but failed to do so.⁷ The general rule, as articulated by the Supreme Court of Canada in *Alberta Teachers*, reflects the fundamental difference between an administrative decision maker and a reviewing court.⁸

117. Further, in keeping with the limited role of the reviewing court, judicial review of a decision must generally be based on the record before the tribunal. The general rule is that to admit extrinsic evidence that was not before the tribunal would amount to a *de novo* hearing and would improperly usurp the role of the administrative decision maker.⁹

D. The Standard of Review is Reasonableness

118. The parties agree that the standard of review to be applied to the impugned decision is the deferential reasonableness standard. Decision-makers within a correctional facility have expertise in the unique and dangerous environment of

⁶ *Dunsmuir v. New Brunswick (Board of Management)*, 2008 SCC 9 (“*Dunsmuir*”) at para. 29; see also para. 28. See also *Lang v. British Columbia (Superintendent of Motor Vehicles)*, 2005 BCCA 244 (“*Lang*”) at paras. 22-24.

⁷ *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61 (“*Alberta Teachers*”), at paras. 22-23.

⁸ *Alberta Teachers*, at paras. 24-26; See also: *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2014 FCA 245, at paras. 37-57.

⁹ *Albu v. The University of British Columbia*, 2015 BCCA 41, at para. 36; *Actton Transport Ltd. v. British Columbia (Director of Employment Standards)*, 2010 BCCA 272 at para. 19-23; *C.S.W.U., Local 1611 v. SELI Canada Inc.*, 2011 BCCA 353; *Kinexus Bioinformatics Corporations v. Asad*, 2010 BCSC 33 (“*Kinexus*”) at para. 17. See also

the facility in which they make decisions and as such their decisions are entitled to deference. As the Supreme Court of Canada stated in *Khela*:

Determining whether an inmate poses a threat to the security of the penitentiary or of the individuals who live and work in it requires intimate knowledge of that penitentiary's culture and of the behaviour of the individuals inside its walls. Wardens and the Commissioner possess this knowledge, and related practical experience, to a greater degree than a provincial superior court judge.¹⁰

119. In assessing the reasonableness of a decision on judicial review, the Court is not limited to an examination of the reasons provided by the decision maker but must also look to the reasons that could have been offered in support of the decision. A reviewing court must first seek to supplement reasons before it seeks to subvert them. Additionally, the Court may, if it finds it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.¹¹

E. The Decision was Reasonable

120. The decision to transfer the petitioner from ACCW to SPSC was reasonable. The decision-maker applied the relevant provisions of the Policy, obtained input from multiple sources of relevant information (including, on reconsideration, the petitioner). There was ample evidence upon which to base a reasonable belief that the reclassification/transfer was necessary under the circumstances.

121. The decision to reclassify/transfer the petitioner from ACCW to SPSC was supported by the fact that she had continuously demonstrated disruptive behaviour, which had continued to escalate during her time at ACCW. She repeatedly disobeyed staff direction, disregarded the rules of ACCW, and was verbally and physically aggressive toward staff. Her behaviour became increasingly unmanageable and had a

Judicial Review Procedure Act, RSBC 1996, c 241, s. 1, definition of “record of proceeding”.

¹⁰ *Mission Institution v. Khela* 2014 at para. 76.

¹¹ *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras. 15-16.

negative impact on the staff and other inmates at ACCW. In so doing, the petitioner had continuously breached the terms of her Behavioural Expectations Contract and all of the other behavioural plans that staff had attempted to establish with her.

122. After the petitioner's violent outburst on August 14, 2019, the respondents reasonably concluded that the petitioner's placement at ACCW was not supporting her and was jeopardizing the safety and security of ACCW.

123. In addition, the respondents reasonably concluded that there was no longer any therapeutic benefit to the petitioner in being housed at ACCW and that her presence was having a detrimental impact on the therapeutic programming that was available to other inmates. The petitioner was not accessing programming at ACCW that was not also available at SPSC. She was not fully socializing with other inmates as much, because her continuous problematic behaviour resulted in her constantly being placed in separate confinement. She had also made several comments that indicated a willingness to harm herself or others in order to delay her extradition.

124. Finally, on reconsideration of the initial decision to reclassify/transfer the petitioner, the multi-disciplinary team noted the petitioner's progression toward more stable behaviour since she returned to SPSC, which contrasted with her disruptive behaviour at ACCW. It was reasonable for them to have concluded that the petitioner's placement at SPSC was effectively meeting her needs while also ensuring the safety of others.

125. When the impugned decision – which was a discretionary decision in a highly complex correctional context – is considered as an organic whole, the respondents submit that it falls well within the range of possible, acceptable outcomes.

F. The Decision Met the Requirements of Procedural Fairness

126. The respondents submit that the decision to reclassify/transfer the petitioner from ACCW to SPSC met the requirements of procedural fairness.

127. Any decision that decision is administrative in nature and affects “the rights, privileges or interests of an individual” is sufficient to trigger the application of the common law duty of fairness.¹² The content, however, of the duty is “eminently variable” and must be decided “in the specific context of each case.”¹³

128. The present day approach to determining the content of the duty of procedural fairness is set out in the Supreme Court of Canada’s decision in *Baker*. It is a contextual inquiry in which five non-exhaustive factors must be taken into account.¹⁴

129. The first contextual factor to be considered is the nature of the decision and process followed in making it. This factor considers how closely the following resemble judicial decision-making. The closer the resemblance to the judicial decision-making process, then the more likely it is procedural protections akin to those provided for in the court process will be required.¹⁵

130. In *Baker*, the Supreme Court found that an immigration decision regarding a humanitarian and compassionate exemption was “very different from a judicial decision, since it involves the exercise of considerable discretion and requires the consideration of multiple factors.” The same is true of the impugned decision in the case at bar.¹⁶

131. This was not a case of a decision aimed at imposing a sanction or a punishment for the commission of an offence. In this case, the decision to transfer/reclassify the petitioner was made for the sake of the orderly and proper administration of the institution. The applicable jurisprudence provides that such circumstances do not

¹² *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (“*Baker*”) at para. 20.

¹³ *Baker*, at para. 21.

¹⁴ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paras 21-28.

¹⁵ *Baker*, at para. 23.

¹⁶ *Baker*, at para. 31.

require a high degree of procedural fairness.¹⁷ As such, this factor militates in favor of less procedural fairness.

132. The second contextual factor is the nature of the statutory scheme and the “terms of the statute pursuant to which the body operates”. The role of the particular decision within the statutory scheme and other surrounding indications in the statute help determine the content of the duty of fairness owed when a particular administrative decision is made. Greater procedural protections, for example, will be required when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted.¹⁸

133. In this case, there is no appeal procedure provided to a placement/reclassification decision under s. 10 the *Corrections Act*, but as is evident from the facts of the case at bar, further requests (including requests for reconsideration) may be submitted. As such, this factor militates in favor of less procedural fairness, or is, at best, neutral.

134. The third *Baker* factor in determining the nature and extent of the duty of fairness owed is the importance of the decision to the individual or individuals affected. The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated.¹⁹

135. In this case, given the fact that both ACCW and SPSC are secure facilities with comparable or equivalent services and the fact that the decision was not punitive suggests that the decision ought to be considered *relatively* unimportant insofar as the petitioner’s life is concerned. By comparison, for example, the decision in *Baker*, which was found to be of “exceptional importance” to the claimant and her family, concerned a decision about whether she was to be deported and thereby separated from several of

¹⁷ See, for example, *R. v. Hamm*, 2016 ABQB 440, at para 64.

¹⁸ *Baker*, at para. 24.

¹⁹ *Baker*, at para. 25.

her children and denied access to certain ongoing medical treatment.²⁰ As such, this factor also militates in favor of less procedural fairness or is, perhaps, neutral.

136. The fourth factor is the legitimate expectations of person challenging the decision. If a petitioner has a legitimate expectation that a certain procedure will be followed, then the duty of fairness will require that this procedure be followed. The petitioner must show either the decision-maker made a promise or had such a regular practice of proceeding in a certain manner that it would generally be unfair for the decision-maker to act in contravention of representations as to procedure.²¹ The decision in this case was consistent with the procedures set out in the Policy and there is no evidence that the petitioner legitimately expected the procedure to be otherwise. As such, this factor again militates in favour of a lower level of procedural fairness.

137. The last *Baker* factor is the choice of procedure made by the decision-maker. This includes the expertise of an administrative decision-maker generally and the deference to be accorded to its decisions. Given the highly specialized nature of the statutory scheme, the wardens of ACCW and SPSC in conjunction with the multi-disciplinary team have greater expertise in determining suitability for placement in correctional facilities than the Court. Thus, this factor also militates in favour of a lower degree of procedural fairness.

138. Taking into account all of the foregoing, the decision to reclassify/transfer the petitioner from ACCW to SPSC was not one that required a high degree of procedural fairness. The process that was followed more than discharged that which was required under the circumstances.

139. While the initial decision on August 14, 2019 to reclassify/transfer the petitioner from ACCW to SPSC was made without notice and an opportunity to be heard, this was necessary in order to ensure the security and safety of the petitioner and the staff at ACCW. The petitioner had already injured three ACCW staff members that day and the

²⁰ *Baker*, at para. 31.

warden of the institution reasonably concluded that giving the petitioner an opportunity to be heard posed an impermissible risk to the petitioner and ACCW staff.

140. It is well established that – particularly in the correctional context – the duty of procedural fairness does not include a requirement to provide notice an opportunity to be heard in a situation where doing so would endanger the safety and security of the correctional institution.²²

141. In any event, the petitioner was subsequently provided with a detailed summary of the reasons for the decision and opportunity to provide submissions to the decision-maker on reconsideration. Thus, taken as a whole, the process employed by the respondents complied with the duty of procedural fairness.²³

G. No Costs should be Awarded to the Petitioner

142. The petitioner seeks an award of costs of the judicial review if she is successful but has set out no legal or factual basis for departing from the general rule that no costs are payable by an administrative decision maker to an applicant who is successful on judicial review.²⁴

143. There is thus no basis for an award of costs against the respondents in this case.

²¹ *Baker*, at para. 26.

²² See, for example, *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643 at para. 16; *Lord v. Canada*, 2001 FCT 397 at para. 87; *Conway v. Ontario (Attorney-General)* (1991), 86 DLR (4th) 655 (Ont. S.C.D.C.) at paras. 31-33.

²³ See, for example, *British Columbia Securities Commission v. Burke*, 2008 BCSC 1244 at paras. 64-68; *International Union of Operating Engineers, Local 882 v. Burnaby Hospital Society* (1997), 46 B.C.L.R. (3d) 97 (C.A.); *Interpaving Limited v. City of Greater Sudbury*, 2018 ONSC 3005 at paras. 40-42.

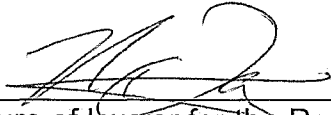
²⁴ See, for example, *18320 Holdings Inc. v. Thibeau*, 2014 BCCA 494 at para. 55.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Haedyn Patterson, filed September 24, 2019;
2. Affidavit #1 of Lyall Boswell, made October 18, 2019;
3. Affidavit #1 of Lisa Martin, made October 18, 2019;
4. Affidavit #1 of Michelle Bryson, made October 18, 2019;
5. Affidavit #1 of Joyce Oates, made October 18, 2019; and
6. All other pleadings in this matter.

The Respondents estimate that the application will take 1 day.

Date: October 21, 2019



Signature of lawyer for the Respondents
Robert Danay

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