

## PENITENTIARIES

Motion for interlocutory injunction ordering end to applicant's administrative segregation, transferring applicant to women's institution — Applicant inmate at Donnacona Institution, correctional institution for men — Applicant, however, trans person expressing female gender identity — Correctional Service of Canada (Service) refusing applicant's requests for transfer to women's institution because Service considering applicant to pose too great a risk, in particular risk of escape, to be placed in women's institution — Applicant filing application for judicial review of refusal; application not yet decided — Applicant already starting hormone therapy, more open since then about female identity in institution — Service becoming aware of threats against applicant's life, safety, placing applicant in administrative segregation to ensure safety — Applicant born in man's body, engaging in various criminal activities beginning in applicant's twenties — More recently, applicant charged with first-degree murder, receiving life sentence with no possibility of parole for 25 years — Applicant immediately transported to Donnacona Institution, maximum-security penitentiary, later assigned maximum-security classification — Once at Donnacona, applicant stating plan to undergo sex reassignment surgery — Afterwards, having first name, designation of sex changed on act of birth — Receiving threats of retaliation from other inmates, safety at risk in institution — Issue whether motion for interlocutory injunction should be allowed — Tripartite test (*prima facie* case, irreparable harm, balance of convenience) to determine whether appropriate to issue mandatory interlocutory injunction applied — Applicant arguing keeping her in men's institution discriminatory, violating Service's interim policy on transsexuality — Applicant referring to *Canadian Human Rights Act*, RSC 1985, c H-6 — Respondent arguing that because of applicant's high risk of escape, applicant's case raising overriding health or safety concerns which could not be resolved — Applicant demonstrating *prima facie* discrimination because of applicant's gender identity or expression, given she was denied transfer to women's institution, even though women's institution corresponding to applicant's current gender identity, gender expression, current designation of sex on act of birth — As well, interim policy adopted by Service based on idea that respecting trans people's right to equality requires respecting trans people's choice of men or women's institution — Applicant also subject to *prima facie* discrimination from safety perspective since, although all inmates undergo risk assessment to determine security classification, only in case of trans women does Service use assessment to deny possibility of being accommodated in women's institution — That fact another reason for finding of *prima facie* discrimination — Regarding justification for discrimination, respondent failing to demonstrate hypotheses about risk presented by trans women inmates justifying *prima facie* discrimination against applicant, thus preventing applicant from showing "strong *prima facie* case" — Respondent, bearing burden of proof on that matter, not convincing Court that transferring applicant to women's institution would impose undue hardship — Respondent's procedural arguments to counter applicant's demonstration of "strong *prima facie* case" not accepted — Applicant also demonstrating she would suffer irreparable harm if injunction not granted — Applicant describing personal safety-related harm from two sources: threats from other inmates, applicant's placement in administrative segregation — Whether placed in administrative segregation or remaining in general population at men's institution, applicant exposed to irreparable harm — Regarding balance of convenience, even though applicant's transfer to women's institution would cause inconvenience for Service, inconvenience not sufficient to outweigh harm applicant suffering as a result of current situation — Motion herein could only pertain to refusal to transfer applicant to women's institution, therefore no relief with respect to administrative segregation granted — Motion allowed in part.

BOULACHANIS V. CANADA (ATTORNEY GENERAL) (T-206-19, 2019 FC 456, Grammond J., reasons for judgment dated April 15, 2019, 29 pp.)