

Date Issued: March 24, 2015
File: 8956

Indexed as: Dawson v. Vancouver Police Board (No. 2), 2015 BCHRT 54

IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

Angela Dawson

COMPLAINANT

A N D:

Vancouver Police Board

RESPONDENT

REASONS FOR DECISION

Tribunal Member:	Catherine McCreary
Counsel for the Complainant:	Lindsay Lyster and Melissa VanderHouwen
Counsel for the Respondent:	Gabrielle Scorer and Jennifer Devins
Dates of Hearing:	June 2-6 and 9, 2014
Location of Hearing:	Vancouver

I INTRODUCTION

[1] Gender. It may be the most significant factor in a person's identity. It is intensely personal. In many respects how we look at ourselves and define who we are starts with our gender. The sexes are commonly described as opposite; and mutually exclusive. It is thought that if you are male, you are not female, and *vice versa*. This is a case where the common perception of gender is questioned as along with the expectations of behaviour associated with that perception where those beliefs are not fulfilled.

[2] Angela Dawson is a transgender woman. Ms. Dawson's legal name is Jeffrey Allan Dawson. Ms. Dawson complains about the treatment she received from the Respondent Vancouver Police Board ("VPB") and says that treatment amounted to discrimination on the basis of her sex. Ms. Dawson claims that she is entitled to be treated by the police as a woman, in a manner that respects her identity and human dignity. She says that this case is about how the officers of the VPB interact with her, and the reality that the VPB's policies, practices and attitudes result in discriminatory behaviour that causes her harm because she is a transgender woman.

[3] Allegations are made concerning six separate incidents.

[4] Ms. Dawson asserts that she is entitled to be treated by the police as a woman, in a manner that respects her identity and human dignity, including having the police stop referring to her as "Jeffrey" and ascribing to her the male gender. She says that this case is about how the officers of the VPB interact with her, and the reality that the VPB's policies, practices and attitudes result in discriminatory behaviour that causes her harm because she is a transgender woman. Ms. Dawson's allegations concern six separate incidents.

[5] The VPB says that its treatment of Ms. Dawson was based on her own actions and not her sex, or the fact that she was transsexual or transgender.

[6] This case was heard by Tribunal Member Murray Geiger-Adams. He was not able to complete the matter. In accordance with the Tribunal's order and in light of the inability of the designated member to conclude the hearing, the parties provided written argument. The case is to be decided on the basis of the recording of the evidence, the

documentary evidence, and the parties' written submissions. I have been designated to conclude this matter.

[7] Ms. Dawson attempted to add Vancouver Coastal Health Authority ("VCHA") as a Respondent because it is the employer of nurses providing health care services in detention facilities. Ms. Dawson alleged that her interactions with those nurses also resulted in discrimination. The Tribunal refused her application to add the VCHA as a Respondent in *Dawson v. Vancouver Police Board*, 2013 BCHRT 241.

[8] The Respondent VPB applies to file additional argument claiming that Ms. Dawson has attempted to add allegations and argument in her Reply concerning an individual and that those allegations are new. I have allowed the Respondent's application and will consider the further submissions.

[9] In addition to the allegations of discrimination that took place in the six separate incidents, this decision also concerns the issue of systemic discrimination that Ms. Dawson says can be seen from those incidents.

[10] I will deal with common facts and issues at the outset of the decision, then with each of the incidents and, finally, with the issue of systemic discrimination.

II EVIDENCE

[11] A number of witnesses testified in the hearing. I have not catalogued the evidence of each witness. The following are my findings of fact from the evidence led at the hearing of this matter. I am entitled to accept some, none or all of a witness' testimony. Where there was a disagreement in the evidence, my findings and reasons therefore are set out. In resolving conflicts in the evidence, and determining whether to accept the evidence of any witness, in whole or in part, I have considered that I did not observe the witnesses' testimony. Demeanour is only one factor to be considered, and the least reliable. Consequently, I have still been able to apply the test set out in *Bradshaw v. Stenner*, 2010 BCSC 1398, at para. 186 (citations excluded):

Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides. The art of assessment involves examination of various factors such as the ability and opportunity

to observe events, the firmness of his [or her] memory, the ability to resist the influence of interest to modify his [or her] recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his [or her] testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally. Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time.

[12] I agree with VPB that credibility is a key determination in this complaint. Ms. Dawson's version of events with respect to each of the six alleged incidents sometimes differs from the version of events set out in the documents and in the evidence of the other witnesses. As well, there are differences between Ms. Dawson's evidence in this hearing, in her complaint, in her affidavits previously filed and in her complaints about some of the incidents to the Office of the Police Complaints Commissioner ("OPCC").

[13] Ms. Dawson frequently claims that her testimony and her statements are "100% true," which is itself an exaggeration. Ms. Dawson has responded to suggestions that she is mistaken by saying that she does not lie, that she is a hero and a celebrity.

[14] Ms. Dawson makes these claims while making contradictory statements within minutes of each other. As a result, I find that her evidence has limited reliability. I find that she remembers events generally and has little recall of details, especially details such as time and date. Despite not noting and remembering such details, Ms. Dawson appears willing to attribute evidence of general events to a particular date and time, notwithstanding that she is often completely wrong in her attribution. Additionally, I find that Ms. Dawson tends to exaggerate in her evidence, often by making the described events seem to have a more detrimental impact upon her.

[15] This willingness to "fill in the blanks" detracts from her evidence because it makes it difficult to tell where the line between observation and embellishment lies. However, that does not mean that I must reject all of her testimony. I note that some of her evidence is corroborated from other sources. Also, there are some events about which her testimony is consistent, time after time, which tends to have me believe what she says

about those events. Where that has occurred, I will note it when I accept Ms. Dawson's evidence on such points.

[16] Similarly, I compared the evidence of the police officers to that of others and to their notes. VPB claims that the officers who testified have no reason to shade their evidence. Ms. Dawson disputes that claim, noting individual complaints she has filed with the OPCC.

[17] Ms. Dawson argues that some officers on the witness stand displayed stereotypical and prejudiced attitudes towards her. At the very least, I note that, in the evidence of the police officers, there was generally no consistent approach to the fact that Ms. Dawson is transgender.

[18] Where findings of fact are required, I have set out below my material findings and the basis for them.

III COMMON FACTS

A. MS. DAWSON'S BACKGROUND

[19] Angela Dawson was born in 1968 and was named Jeffery Alan Dawson by her parents. She testified that she was born intersex, but that she was assigned the male gender designation at birth at her father's insistence. She says that since her teens, she has identified as female.

[20] Ms. Dawson says she had a difficult childhood, and was abused by her father as a child. She says that she escaped from her abusive home at around sixteen years of age. Ms. Dawson has limited education. She has never graduated high school and reads at a grade six or seven level.

[21] Ms. Dawson said, in an affidavit, that she is not violent or aggressive by nature. However, her criminal record shows that she has a criminal history with the police for violence, offensive weapons, B&E, theft, drugs, fraud, sex, other criminal code offenses, failure to attend, and arson. Ms. Dawson was also convicted of manslaughter. She spent at least ten years in a male penitentiary.

[22] Ms. Dawson says she was raped several times during her incarceration. While incarcerated, Ms. Dawson says she was diagnosed with gender dysphoria, and she began hormone therapy. When Ms. Dawson was released from prison, she was released in British Columbia. She says she came to BC because of the availability of gender-reassignment surgery through the Gender Dysphoria Clinic here.

[23] Ms. Dawson lives with a number of chronic physical and psychological conditions that are not relevant to this case and which I will not describe in order to preserve what little is left of her privacy.

B. MS. DAWSON'S GENDER-REASSIGNMENT SURGERY AND POST-OPERATIVE CARE

[24] Ms. Dawson received care from Ravensong Primary Care Clinic, a medical facility that specializes in the treatment and care of transgender people. Ms. Dawson worked with community home care nurses for over two years in order to get one of her chronic conditions under control. She was very motivated to do so as her gender-reassignment surgery could not occur while her other conditions needed treatment.

[25] Ms. Dawson receives general medical care from a physician from the Downtown Community Health clinic. That physician was Ms. Dawson's family doctor and was responsible for treating her chronic conditions. She was also responsible for referring Ms. Dawson to home care support to help her with cleaning, laundry, and grocery shopping.

[26] There were nurses on Ms. Dawson's Ravensong care team as well as a doctor who specializes in the care of transgender persons. He was responsible for prescribing Ms. Dawson's hormones, and for treating any complications that may have arisen after her gender-reassignment surgery

[27] In early March 2010, Ms. Dawson travelled to Montreal for her gender-reassignment surgery. A registered nurse accompanied her from Ravensong. The surgery, also called a vaginoplasty, involved using Ms. Dawson's male genitalia to create female genitalia, including a vagina. The surgery is a very delicate procedure and can only be performed by a highly-skilled physician. The nurses in Montreal taught Ms. Dawson about the post-operative care procedures she would be required to perform in order to

ensure the success of the surgery. Ms. Dawson testified that she was taught that it was very important to do these procedures or her surgery could fail.

[28] Ms. Dawson testified that she was given very clear and specific instructions by her doctors and nurses in Montreal not to show her new vagina to any males. There is no corroboration for this claim and it was first made in the course of these proceedings. Almost two weeks after the surgery, when Ms. Dawson returned to Vancouver, she was escorted home by a male nurse from Ravensong.

[29] After her surgery, Ms. Dawson received daily medical care and assistance from the community home care nurses who had worked with her before to help her manage her chronic conditions. Two particular nurses were responsible for most of Ms. Dawson's post-operative care. Over the course of her post-operative care, male home care nurses visited Ms. Dawson on occasion. The evidence was that a female nurse always accompanied male home care nurses. Ms. Dawson testified to turning unaccompanied male nurses away, and not choosing their treatment.

[30] As noted, there are very specific personal care procedures associated with post-operative care for gender-reassignment surgery. Adherence to these procedures was necessary to keep the surgical site clean and to prevent Ms. Dawson's new vagina from closing. One of Ms. Dawson's nurses testified that following the care regimen was important because the healing process takes up to a year, and the success of the surgery depends on maintaining the vagina the way it was formed. Therefore, it is critical to keep the surgical site clean and to avoid infection. Maintaining the vagina in its proper form requires lifelong maintenance. This includes dilating the neovagina with specially-designed instruments on a strict schedule.

[31] One of Ms. Dawson's community home care nurses testified that dilating involves inserting a long, tube-like instrument called a dilator into the vagina and leaving it there for a period of time. There are different sizes of dilators that are used at different times during the healing process. Dilations are necessary to keep the vagina open and to help it heal with the correct length, girth, and depth. Stopping dilations can result in the loss of the vaginal canal, which would be irreversible without further surgery such as a skin graft or a bowel transposition. Missing dilations could result in an infection that could also

compromise Ms. Dawson's healing process. The nurse also said that nothing, other than a dilator, can be used to dilate.

[32] Ms. Dawson was required to dilate four times per day for the first month following her surgery, plus perform other procedures to keep the area clean and free of infection. By June 2010, Ms. Dawson was required to dilate between two and three times per day.

C. DIRECTING TRAFFIC

[33] Ms. Dawson testified that she loves to direct traffic. She says that she directs traffic at busy intersections, including Main and Hastings, Broadway and Commercial, and Broadway and Cambie. She says that she began directing traffic after she saw a fatal accident between a truck and a pedestrian. She says she likes to help people cross the intersections, and feels that her role in the community is important.

[34] When directing traffic, Ms. Dawson always wears rollerblades and often wears big headphones and brightly coloured clothing. She testified that rollerblades are her primary method of transportation. She describes her rollerblades as "her life", wears them everywhere. She claims to be a very active and athletic person, and says physical activity helps her manage.

[35] Virtually all officers of the VPB who work in the Downtown Eastside ("DTES") testified that they know Ms. Dawson and they knew her as someone who likes to direct traffic on rollerblades. Usually they have spoken to her about the safety of her actions and some of them issued tickets to her.

IV COMMON ISSUES

A. DISCRIMINATION

[36] This is a complaint that the VPB has discriminated against Ms. Dawson on the basis of her sex. Therefore, the law concerning discrimination must be considered in the context of each incident as well as for the claim of systemic discrimination.

[37] There is no dispute that the VPB provides services customarily available to the public. This includes the detaining of people in jail, and provision of services related to the detention. In view of this, discrimination in the provision of these services falls under section 8 of the *Code* which provides:

- (1) A person must not, without a bona fide and reasonable justification,
 - (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
 - (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the publicbecause of the ...sex, sexual orientation ... of that person or class of persons.

[38] The requirements of a *prima facie* case of discrimination were affirmed by the Supreme Court of Canada in *Moore v. British Columbia* 2012 SCC 61. To demonstrate *prima facie* discrimination, complainants must show that they have a characteristic protected from discrimination; that they have experienced an adverse impact; and that the protected characteristic was a factor in the adverse impact. Once a *prima facie* case has been established, the burden shifts to the respondent to disprove or justify the conduct or practice.

[39] During part of the material time covered by the complaint, Ms. Dawson was transsexual. For the rest she is transgender. I shall simply refer to her as trans. It does not impact a finding that she is a member of a protected group whether she is transsexual or transgender. As a trans woman, Ms. Dawson has characteristics that are protected under the *Code*. I find that the first factor of the *prima facie* case is met.

[40] In order to establish the second factor of a *prima facie* case of discrimination, Ms. Dawson needs to show that she has been subjected to adverse impact. I will evaluate each alleged incident to determine whether Ms. Dawson was subjected to an adverse impact.

[41] Finally, Ms. Dawson must establish a nexus between the factors. Was Ms. Dawson's trans status any part of the reason for the imposition of any adverse impact alleged in the incidents?

[42] If Ms. Dawson establishes a *prima facie* case, then the burden shifts to VPB to justify its actions.

[43] If it is a policy that has led to the discrimination, in *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union* [1999] 3 S.C.R. and *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3. S.C.R. 868, the Supreme Court of Canada set out three requirements that a respondent must demonstrate to justify its conduct:

- 1) it adopted the standard for a purpose or goal that is rationally connected to the function being performed;
- 2) it adopted the standard in good faith, in the belief that it is necessary to the fulfillment of the purpose or goal; and
- 3) that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individuals sharing the characteristics of the claimant without imposing undue hardship (including impossibility, serious risk or excessive cost), upon the respondent (“*Meiorin*”, para. 54)

[44] In *Hydro-Québec v. Syndicat des employées de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, 2008 SCC 43, the Court also stated that the question is whether accommodation can be accomplished without undue hardship to the respondents.

[45] Thus, if Ms. Dawson establishes a *prima facie* case, the question for me to answer is whether VPB has established a *bona fide* and reasonable justification (“BFRJ”) for maintaining the naming and gendering and medical care practices that were used in respect of Ms. Dawson. VPB is required to demonstrate that accommodating the needs of Ms. Dawson would cause undue hardship.

[46] One requested accommodation concerns the police, when dealing with Ms. Dawson, stopping the use of the name Jeffrey and ascribing to her the male gender (“misgendering”). Other accommodations arise in respect of the conduct contained within each incident.

B. SYSTEMIC DISCRIMINATION

[47] Ms. Dawson claims that her misgendering by the police arises from systemic discrimination. Ms. Dawson argues that the lack of policies and training provided to officers and others acting on behalf of the VPB is part of a systemic failure on the part of the VPB to ensure that it does not discriminate against trans members of the community. Specifically, she argues that it forms the backdrop that has enabled Ms. Dawson to be the subject of repeated instances of discrimination on the basis of sex, including, most fundamentally, failing to recognize and treat her as a woman. She argues that, in light of the absence of any training or policies on how to deal with trans members of the public in a respectful and non-discriminatory manner, it is not surprising that the attitudes and conduct of individual VPB members run the gamut from entirely appropriate to offensive.

[48] VPB submits that there are no allegations in the complaint or amendment in respect of any other incidents regarding use of Ms. Dawson's legal male name or masculine pronouns, and there is no general allegation that the police referred to Ms. Dawson by her legal male name or using masculine pronouns and that it was discriminatory to do so. It argues that there is no foundation in the complaint for a review of any systemic discrimination. It argues that Ms. Dawson may not expand the Complaint through cross-examination and closing submissions.

[49] However, VPB acknowledges the opening statement of Ms. Dawson as identifying alleged differential treatment that included alleged targeting and harassment of the Complainant by the police and identifying Ms. Dawson as male on tickets and other documents. Ms. Dawson points out that she continuously alerted VPB of her intention to make arguments based on its policies and procedures for dealing with transgender persons throughout these proceedings. She says that, in correspondence from her counsel, she expressly stated that she intended to seek a policy-based remedy; specifically an order requiring the VPB to take steps and implement a program to ensure that it treats transgender individuals in a manner consistent with their right to be free from discrimination. Ms. Dawson also notes that, at the hearing, VPB's witness, Inspector de Haas, is a senior officer, presently in command of Court and Detention Services, and his

current responsibilities include oversight of jail and document services. He specifically testified about VPB's approach to trans individuals.

[50] VPB submits that Ms. Dawson cannot bolster her individual complaint by relying on allegations of discrimination in respect of VPB's policies. VPB argues that the only issue before the Tribunal is whether Ms. Dawson experienced discriminatory treatment as alleged in the complaint. If she did not, then the sufficiency of VPB's policies and training is irrelevant since there is no separate allegation of systemic discrimination or discriminatory policies.

[51] Ms. Dawson argues that she can make a systemic argument in her individual complaint and relies on the case of *British Columbia (Ministry of Public Safety and Solicitor General v Mzite*, 2014 BCCA 220, where the Court of Appeal made clear that systemic issues can be considered, and systemic remedies granted, in individual complaints. She says that the Court confirmed, "the Tribunal has held that, even where a complaint is made by an individual, not acting as a representative, it is able to consider and remedy systemic issues raised by the complaint." Ms. Dawson also points to *Kelly*, and *Gichuru v. The Law Society of British Columbia (No. 4)*, 2009 BCHRT 360; *A and B*; and *L v. B.C. (Ministry of Children and Family Development)*, 2011 BCHRT 214, (at para. 73).

[52] Ms. Dawson argues that, on this basis, the Tribunal can consider and remedy the systemic issues that her complaint raises even though she is an individual who is not acting as a representative in a group or class complaint. She says that the Tribunal has jurisdiction to consider and order remedies for the systemic problems with VPB's policies and practices regarding gendering and naming for transgender people.

[53] I am not persuaded by VPB's submissions. In her original complaint, Ms. Dawson said that, on June 10 (now assigned to June 29), the officer gave her a ticket that indicates she is a male despite her clear identity as a woman and having got sex-reassignment surgery. In the amendment, Ms. Dawson says that, on June 29, 2010, she was given another violation ticket that indicates that she is a male despite her clear identity as a woman and despite her recent sex-reassignment. In the amendment, she has a general allegation framed as:

I have received tickets stating that I am a male even though I am clearly a postoperative transsexual woman.

[54] Many times, when Ms. Dawson made complaints to the OPCC, she identified her misgendering as part of the reason for her complaint.

[55] The following description of systemic discrimination was adopted by Supreme Court of Canada in *C.N.R. v. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 1114 (better known as “*Action Travail des Femmes*”):

Discrimination ... means practices or attitudes that have, whether by design or impact, the effect of limiting an individual’s or a group’s right to the opportunities generally available because of attributed rather than actual characteristics ... It is not a question of whether this discrimination is motivated by an intentional desire to obstruct someone’s potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory.

That is why it is important to look at the results of a system (para. 34)

[56] In *British Columbia v. Crockford*, 2006 BCCA 360, the Court recognized that a complaint of systemic discrimination is distinct from an individual complaint of discrimination (para. 49), noting that the requirements for proof in each kind of discrimination are different:

...Establishing systemic discrimination depends on showing that practices, attitudes, policies or procedures impact disproportionately on certain statutorily protected groups: see *Radek [v. Henderson Development (Canada) Ltd.]*, [2005] B.C.H.R.T.D. No. 302]: at para. 513. A claim that there has been discrimination against an individual requires that an action alleged to be discriminatory be proven to have occurred and to have constituted discrimination contrary to the *Code*.

[57] The case of *Kelly v. British Columbia (Ministry of Public Safety and Solicitor General) (c.o.b. Fraser Regional Correctional Centre)* 2009 BCHRT 363 (“*Kelly*”) determined that evidence related to individual and systemic discrimination is often interwoven (at para. 29).

[58] In *Kennedy v. British Columbia (Ministry of Energy and Mines)*, 2000 BCHRT 58, the Tribunal stated (at paras. 5-6):

...systemic discrimination does not have to be expressly pleaded to be part of the complaint. The *Code* does not require complainants to describe the *type of discrimination, whether direct or adverse-effect*, covert or overt, systemic or individual, nor should it be a requirement...

In my opinion, if it is reasonable to argue that the alleged facts were the result of systemic policies or practices, it is open to the complainant to lead evidence to prove that case... [T]he word “systemic” does not have magical qualities. Its mere inclusion, express or implied, in the allegations does not open the hearing door to a challenge to any systemic issues related to the alleged ground of discrimination. The issues addressed at the hearing, systemic or otherwise, must be reasonably related to the complaint that is before the Tribunal.

[59] In *Pivot Legal Society v. Downtown Vancouver Business Improvement Assn.*, 2012 BCHRT 23, the Tribunal held (at para 573):

Thus, systemic discrimination can be established both where a “system” operates on the basis of presumed, rather than actual, characteristics; and also where the “system” fails to take into account the actual characteristics or circumstances of a particular protected group.

[60] The Tribunal has found that policies which are neutral for non-trans people, but have an adverse effect on trans persons, are discriminatory. See: *Sheridan v. Sanctuary Investments Ltd. (c.o.b. B.J.’s Lounge)*, [1999] B.C.H.R.T.D. No. 43, at para. 102.

[61] Following the above authorities, I conclude that an allegation of systemic discrimination need not be specifically set out in a complaint in order for the complainant to introduce evidence that at least part of the reason for the discrimination was systemic in nature.

[62] In this case, systemic issues are raised in at least one specific incident that forms part of her complaint and it will be considered there. Ms. Dawson also makes a general allegation about not recognizing her gender in respect of tickets, with no single incident being identified. In the course of the hearing much evidence was entered concerning the way the police deal with Ms. Dawson as a transgender person. Based on what was said in the hearing, I will consider the issue of whether the treatment of Ms. Dawson in respect to what she describes as misgendering shows any systemic discrimination by the VPB. I will also review the issue of systemic discrimination as it arises from the interaction with the jail concerning her need for medical care.

V SPECIFIC INCIDENTS

1. August 29, 2009

[63] This incident does not form part of the Complaint, but Ms. Dawson says that it is important background information.

[64] On August 29, 2009, Ms. Dawson assaulted a man outside a coffee shop. Ms. Dawson testified that the man was asking her questions about her gender and would not leave her alone.

[65] Sgt. Val Spicer responded to the call. She testified that the victim's version of events was that he approached Ms. Dawson while she was directing traffic, and asked her why she was directing traffic.

[66] In the narrative of her occurrence report of the incident, Sgt. Spicer refers to Ms. Dawson as "male party wearing pink tights and a summer coloured dress sitting in front of the waves", and as "he." Sgt. Spicer testified that, at the time of the incident, she was not aware that Ms. Dawson identified as a woman, but agreed that Ms. Dawson had always dressed as a woman. Sgt. Spicer's Occurrence Report for this incident indicates she met with Ms. Dawson at Bridge Housing when Ms. Dawson called 911 to report an assault by the victim.

[67] Ms. Dawson argues that, given that Bridge Housing is well-known to be an exclusively women's residence, it should have been obvious to Sgt. Spicer that Ms. Dawson was a woman.

[68] Ms. Dawson was convicted of assault in this incident and was sentenced to probation.

2. January 27, 2010

[69] On this date, Ms. Dawson claims she was chased and harassed by a man on the street near the police station on Main Street. She testified that the man was chasing her and insulting her, and tugging on her jersey, calling her names like "body boy." She says that she approached some police officers sitting in a car and asked them for help, but the

officers would not help her. Instead, they instructed her to go into the police station to make a statement.

[70] As directed by the officers, Ms. Dawson entered the police station at Main Street. She says she tried to explain what had happened outside. Ms. Dawson was wearing her rollerblades and was skating around the lobby in the police station. Sgt. Spicer was working and heard the commotion. She testified that she saw Ms. Dawson skating around the station and yelling. Sgt. Spicer asked Ms. Dawson to sit down, which she refused to do.

[71] Constables Jassal and Iucalino came into the police station while Ms. Dawson was there. Constable Jassal testified that he did not recall if they were called to the scene, or if they merely heard on the radio that Ms. Dawson was there. Constable Jassal testified that, earlier that day, he had seen Ms. Dawson skating on the road and that traffic was backed-up because of it. He said that drivers were yelling at her, making derogatory statements, and that Ms. Dawson gave them the finger. Constable Jassal then tracked down Ms. Dawson at the police station so he could issue her a by-law ticket for skating on the road.

[72] This ticket refers Ms. Dawson as “Jeffery” and indicates that her gender is “M.” Constable Jassal testified that he must have asked Ms. Dawson for her identification and filled out the ticket from that information. He testified that he would have asked Ms. Dawson her name and gender and filled in the ticket accordingly. Constable Jassal also testified that, prior to issuing the ticket, he knew Ms. Dawson as “Angela.”

[73] Ms. Dawson submits that Constable Jassal’s evidence that she told him her name was Jeffrey and that she was male must be rejected. She says that the evidence in this hearing conclusively demonstrates that Ms. Dawson would never willingly use the name Jeffrey to refer to herself, or refer to herself as male.

[74] I note that Constable Jassal did not say that he knew Ms. Dawson as “Jeffrey” and he also testified that he did not look her up on the computer before issuing the ticket. His evidence in this regard was open and straightforward and I believe him. Therefore, it seems to me that the only way Constable Jassal could identify Ms. Dawson as Jeffrey is if she identified herself with that name. I therefore find that, when asked by Constable

Jassal for her identity, Ms. Dawson gave her name as Jeffrey and, from that name, Constable Jassal surmised that her gender was male.

[75] Constable Jassal testified that, after he gave her the ticket, Ms. Dawson left the police station. She left before any police officer provided her with any assistance with respect to the incident that had caused her to go to the police station in the first place – the man harassing and chasing her and calling her discriminatory names such as “body boy.”

Adverse Impact

[76] Possible adverse impacts are argued to come from three aspects of this incident. First is the alleged refusal of the officers on the street to help Ms. Dawson, when she requested it. Second is the demand by Sgt. Spicer that Ms. Dawson should be seated and calm down before her information could be taken and processed. Finally, is the fact that the ticket for skating on the road was issued in the name of Jeffrey and the gender indicated as male.

[77] Ms. Dawson says that the officers said that they were not in the correct department, or even, maybe, that they were not Vancouver Police officers. No evidence was provided that they were Vancouver Police officers so I cannot conclude that they were required to do anything different than what they did. Ms. Dawson was directed to the police station, which was very near, and which she immediately attended. This cannot be seen to be an adverse impact for which VPB is responsible.

[78] With regard to her interaction in the police station, it was known to Sgt. Spicer that Ms. Dawson’s criminal record contained violent offences. Sgt. Spicer wanted to prevent violence by having Ms. Dawson sit down and calm down before taking the information from her about the incident that had so upset Ms. Dawson outside. Ms. Dawson admits that she refused to be seated and that she was quite upset. I cannot find that the interaction with Sgt. Spicer amounted to an adverse impact. Ms. Dawson was in control of her behaviour and she refused what I find to be a reasonable request. She also voluntarily left the police station before making a report.

[79] Finally, is the fact that Constables Jassal and Iucalino came into the police station while Ms. Dawson was there and gave her a ticket for her behaviour earlier that day. There was no real dispute that she had engaged in that behaviour. There was no evidence about whether she fought the ticket. The adverse impact is Ms. Dawson's claim that Constable Jassal misgendered her when he entered her legal name on the ticket. She did not specifically complain about this misgendering in her Complaint.

[80] I found that Ms. Dawson gave Cst. Jassal her legal name and it was that name he entered on the ticket. She says she would not have done so, but I have seen other instances when she does refer to her legal name, such as in this complaint where she describes herself as "Angela aka Jeffrey" Dawson.

Disposition

[81] I find that this incident did not violate the *Code*.

3. March 29, 2010

[82] Ms. Dawson was arrested and spent overnight in jail, eleven days after she returned from Montreal where she had her sex-reassignment surgery. There are many aspects to this part of the complaint; the arrest and search, the medical treatment she had in jail and the consequences, if any to her recovery from surgery.

Arrest

[83] Ms. Dawson testified that, on March 29, 2010, she was on her way home to perform her postoperative care regimen of dilating. Just before 4:00 pm, Ms. Dawson was approached by Constables Berceanu and Davies. They arrested her pursuant to an outstanding warrant for breach of probation.

[84] The officers informed her of the warrant, and walked her to the jail. Ms. Dawson testified that the officers walked her very quickly. This occurred despite her informing them that she had just undergone gender-reassignment surgery. She also informed the officers that she needed to dilate and explained the process to them. Ms. Dawson testified

that, when she told the officers she needed to go home to dilate, they responded with “too bad” and told her that she was going to be in jail overnight.

[85] Cst. Berceanu testified that Ms. Dawson told him she was “post-op” and needed to dilate while he was walking her to the jail. Both officers told her that the nurses in the jail could accommodate her medical needs.

[86] I accept the evidence of Cst. Berceanu that, when Ms. Dawson told him she had to go home and dilate, he told her that if she had medical concerns, the jail nurse would assist her.

[87] Cst. Berceanu testified that he had interacted with Ms. Dawson prior to the March 29, 2010 incident. During those interactions, he referred to Ms. Dawson as Jeffery or Jeff, and stated that he had probably called her a man. He also clarified that he learned she was a woman during this incident because of what she told him about the surgery. Despite having learned she was a woman during the incident, Cst. Berceanu wrote a narrative statement regarding the arrest in which he refers to Ms. Dawson as Jeffery, and refers to her using both gender pronouns. He also confirmed his knowledge that Ms. Dawson is post-op and states “he has no more male parts and goes by the name Angela.”

[88] In cross-examination, Cst. Berceanu admitted that, by the time he wrote this statement, he knew Ms. Dawson identified as a woman. Cst. Berceanu also filled-out the jail Arrest Report, in which he wrote “Angela” and “F” for female. He admitted that he did not require any formal name change document in order to do so.

The Sally Port

[89] The sally port is a garage-like secure area at the entrance to the jail where prisoners are presented and searched before gaining entrance. Vehicles may access the area.

[90] Ms. Dawson testified that, after she was walked to the jail, she was frisked by Constable Berceanu, in the sally port. She says that Cst. Berceanu told her that she was not “fully female” so a male could search her. This occurred immediately after Ms. Dawson arrived at the jail, before she was placed in a pre-hold cell.

[91] A DVD was provided of the sally port at the relevant time. The recording is a series of still photos taken at regular intervals, rather than a video recording of the area. The photos do not show Cst. Berceanu searching Ms. Dawson, nor does it show that Ms. Dawson was given a pat-down search in the sally port by a female member; Constable McCullogh. It does show a female member present in the sally port.

[92] On the jail Arrest Report, Cst. Berceanu's Personal Identification Number is the number written by him under the "Searched By" box on the Report. When it was drawn to Cst. Berceanu's attention that the information in the "Searched By" box showed that he searched Ms. Dawson, he said he must have made a mistake. Also, there was no reference to Cst. McCullogh in Cst. Berceanu's Duty Statement.

[93] Inspector de Haas testified that it is important for all documents submitted by officers to be accurate in all respects, to the knowledge of the officer who fills out the form. This includes the PIN number of the officer who searches the prisoner.

[94] Cst. McCullogh did not testify because she was on annual leave at the time of the hearing.

[95] Notwithstanding that the documentary evidence that Cst. Berceanu put his number in the box indicating he conducted a pat-down search of Ms. Dawson would support such a finding, the DVD evidence does not show a pat down search. The DVD evidence does show a woman officer present at the relevant time. There was no reason for a female police officer to be present except to perform the search on Ms. Dawson, if one were to be conducted.

[96] Consequently, I find that Cst. Berceanu did not conduct a pat-down search of Ms. Dawson in the sally port of the Vancouver jail. Further, I find that Cst. Berceanu did not make comments about Ms. Dawson not being "fully female."

Initial Search in Jail

[97] Ms. Dawson was put in a pre-hold cell, after she entered the jail through the sally port. In accordance with standard procedure at the jail, after she was taken out of the pre-hold cell, Ms. Dawson was further searched by two female jail guards; Constable

Perlstrom and Constable D'Andrea. There is no dispute that, during this search, Ms. Dawson asked to see a nurse because she had just had surgery and needed to dilate.

[98] Cst. Perlstrom testified that the nurses send prisoners to the hospital if the prisoner's medical care needs are beyond the scope of the care that can be given in the jail. Cst. D'Andrea's understanding of Ms. Dawson's needs was that she needed medication due to her recent surgery. Both of these witnesses confirmed that they did not make medical decisions.

[99] Constable Lowrie testified that he booked Ms. Dawson at the jail after her search, offered her the opportunity to call a lawyer at that time, and recorded her refusal on the jail log. His evidence in this regard was not challenged even though Ms. Dawson had claimed at one time, that she was prevented from accessing legal counsel.

Jail Nurses

(1) The Contractual Arrangement

[100] At the time of these incidents, VPB had contracted with VCHA to provide nursing services at the jail. VCHA was the legal employer of the nurses working in the Vancouver jail. When asked about the purpose of the Health Services Agreement, Inspector de Haas said that it was to provide the VPB with nursing, not medical, services in order to meet their duty of care to the inmates. Inspector de Haas acknowledged that the VPB policy on Responsibility for Prisoners states that VPD officers, including the arresting officers and wagon drivers, have a responsibility to communicate medical concerns to the nursing staff. That Policy states:

3. Whenever a person in custody is transferred to the charge of another person or facility, members shall ensure that all injuries, and any medical condition(s), are clearly explained to the person or agency taking charge of the prisoner.

[101] Inspector de Haas acknowledged that, if there was a crisis or an emergency, staff at the jail could take action, pursuant to the VPB's duty of care to its inmates. Accordingly, the Health Services Agreement states:

6. All Coastal Health personnel participating in the provision of the Services (the “Coastal Health Personnel”) will carry out their duties in performing the Services and will conduct themselves at all times at the jail strictly in accordance with all rules, policies, procedures, requirements and directions that the VPB, any VPD member and/or security personnel at the jail in any way bring to their attention or give to them in relation to jail security and safety in the handling and movement of prisoners within the jail.

[102] Inspector de Haas also testified that Sergeants, who are employees of the VPB, and not VCHA nurses, ultimately decide whether inmates are permitted to go to the hospital.

(2) Facts

[103] There is no dispute that Ms. Dawson was VERY concerned about undertaking her post-surgical dilations. It was at the top of her mind. There were serious long-term consequences for non-compliance. She seems to have spoken about it to everyone with whom she came in contact in the jail.

[104] Ms. Dawson saw Cheung Kwok Sun, a male nurse. The other nurse on duty was Nurse Muhammad Nadeem Mamdeen, who did not treat Ms. Dawson. Nurse Cheung did not take any action to allow Ms. Dawson to attend a hospital, or to get her the proper tools to do her dilations. He did not alert anyone else at the jail of her need.

[105] By agreement of the parties, Nurse Cheung’s statement to the officer investigating Ms. Dawson’s *Police Act* complaint was entered into evidence for the proof of the truth of its contents without the need to call him as a witness. Nurse Cheung’s statement says:

On 29 March 2010 at 1745 I did a health assessment on Dawson, Jeffrey. This inmate used alias name as “Dawson, Angela”, as he wrote his name on patient consent form.

During initial assessment, inmate told me that he just had a transgender surgery from male into female at a clinic In Montreal on 8 March 2010. And he told me that he needed to be dilated his vagina every 4 hours because it was a brand new surgery.

Inmate insisted to go to hospital for vaginal dilation but he refused letting me or other nursing staff for further physical examination including his genital part. Without checking his “vagina”, I did not know whether

inmate had a “real” surgery or not. This would imply to terminate our nurse client relationship. Based on my assessment and guidelines on the post transgender care from On-line resources, there was no subjective data to determine whether the client should send to hospital for vaginal dilation immediately.

[106] Ms. Dawson claims that Nurse Cheung’s discriminatory attitude towards her is illustrated by his use of quotation marks around “vagina” and “real”, and his consistent use of male pronouns and the name Jeffrey despite her use of the name Angela and her clear identification as a woman.

[107] Ms. Dawson admits that she refused to show Nurse Cheung her vagina. Ms. Dawson says that she was complying with very clear instructions by the medical staff in Montreal not to show her vagina to any males.

[108] VPB points out that, for the first time at the hearing, Ms. Dawson asserted that she had been told by a doctor not to show her vagina to any man. I also note that this reason is not advanced in the amended complaint. VPB argues that her evidence in this regard is not reliable and is uncorroborated. Ms. Dawson did not call, as a witness, the doctor who allegedly gave that advice to her.

[109] VPB argues that it is not credible that a doctor would have given that advice to Ms. Dawson prior to sending her home accompanied by a male nurse, and it is not credible that her explanation in this regard has come up now, four years after the incident about which she complains.

[110] VPB also points out that, although she has long been assisted by counsel and other advocates, that alleged advice on a crucial issue is not set out anywhere in the complaint, amendments, affidavits, or other records, such as the OPCC complaint. Also, she did not tell the jail nurse that she was refusing an examination for that reason. The evidence also demonstrates that Ms. Dawson consulted male doctors and that her surgery was performed, at least in part, by another male doctor.

[111] I am not persuaded that Ms. Dawson was told by any medical professional that she should not show her surgery to men.

[112] Despite that finding, I do find that Ms. Dawson clearly did not want Nurse Cheung to view the results of her surgery. Nurse Cheung chose not to believe what Ms. Dawson told her without making her prove that what she was saying was true. Nurse Cheung's approach was to then terminate the relationship. Whether or not Ms. Dawson had ever been told not to show her privates to male nurses, she did not want to do so here.

[113] I find that Nurse Cheung treated Ms. Dawson as a male and made no effort to investigate her claim any further. Apart from looking something up on the internet, which information he did not share with Ms. Dawson, Nurse Cheung did nothing to ease Ms. Dawson's concerns about her post-surgery care. In fact, Nurse Cheung's notes disclose that he would have nothing more to do with Ms. Dawson's claims of needing dilation. In spite of the availability of another nurse, Nurse Cheung sought no assistance and left Ms. Dawson with no medical assistance.

[114] Ms. Dawson was checked-on by jail guards a number of other times during the night. Nurse Mamdeen's statement is evidence that, at some point during her detention in the Vancouver jail on March 29, Ms. Dawson did in fact show her vagina to the nursing staff and an officer. Nonetheless, Ms. Dawson was still refused access to the medically-necessary equipment or released, either on her own or escorted to a hospital so that she could perform her post-surgery procedures.

[115] Ms. Dawson told staff at the jail that she needed to go to the hospital or be released so she could dilate. Neither Nurse Cheung nor Nurse Mamdeen, seem to have investigated whether the dilation could be accomplished short of the hospital trip. No one seems to have determined what the post-surgical dilation involved.

[116] While Nurse Cheung's statement states that he searched the internet and concluded that there was no subjective data to determine whether Ms. Dawson should be sent to hospital for vaginal dilation immediately, there is no evidence this information was passed on to Ms. Dawson nor any attempt made to allay her fears.

[117] Nurse Fong, the morning nurse, took more pity on Ms. Dawson and at least attempted to assist with what she recognized was Ms. Dawson's real concern: the need to dilate. Nurse Fong stated that:

[she] refused assessment according to the notes. This could have been for so many reasons. Her mood at the time or even the nurses looks or attitude - anything - we don't know but I would say at least we tried and offered. (personal opinion). I could also say we may have failed her most important/pressing problem and that was dilating her vagina - nothing else may seem to matter then.

... I recall only after reviewing the notes that I did offer her a glove and vaseline (as that is the only thing I could think of so that she can perform the vaginal dilation but she refused.

[118] The objects offered, while undoubtedly well-intentioned, by Nurse Fong, were ultimately insufficient and inappropriate for dilation purposes. As one of the home care nurses testified, neither a finger nor a tampon is long enough or wide enough to be used as a dilator. Ms. Dawson testified that she felt further denigrated and humiliated by these actions. This reaction is understandable.

(3) Adverse Impact

[119] Notwithstanding the following discussion about evidence of the physical consequences of missing any dilations, there is clear evidence from Ms. Dawson's testimony that she experienced emotional and psychological trauma as a result of her interaction with staff at the jail, particularly nursing staff.

[120] The VPB argues that, in the circumstances, her inability to dilate at the jail does not constitute an adverse impact as Ms. Dawson was frequently non-compliant with her post-surgical care instructions and she experienced no delay in her recovery as a result of her incarceration. The VPB also points out that, while Ms. Dawson asserted in her evidence that her recovery from surgery was held back as a result of her inability to dilate while she was in custody on March 29-30, the medical records do not reflect any delay in her recovery.

[121] Ms. Dawson counters, stating the fact that she has a precarious lifestyle and was experiencing some difficulty complying with her treatment regimen, as the VPB mentions, cannot be held to reduce or limit her entitlement to appropriate and necessary treatment when incarcerated.

[122] Ms. Dawson argues that there are no details about the extent of Nurse Cheung's research, yet VPB claims that Ms. Dawson did not need to go to a hospital because Nurse

Cheung could not find evidence that her condition required hospitalization. She points out that there is no evidence that Nurse Cheung believed that Ms. Dawson was in need of medical care for her vagina.

[123] Ms. Dawson submits that any evidence about the extent of the medical consequences she did or did not experience as a result of her treatment in the jail on March 29, 2010 should go to remedy, rather than a finding of discrimination. I agree.

[124] Nurse Cheung seems not to have believed what Ms. Dawson told him about the surgery and to seek to see for himself that what Ms. Dawson told him was true. He did not give *viva voce* evidence, so no one asked him this question, but I wonder what was in his mind about Ms. Dawson such that he concluded it was in her interest to lie about the sex-reassignment surgery and seek to obtain the means to undergo vaginal dilations if she did not have a vagina.

[125] I have no doubt that Ms. Dawson's interaction with Nurse Cheung can be described as an adverse impact. She had very recently undergone momentous surgery that is not an exaggeration to call life-changing. She had frequently and forcefully been cautioned how important it was to undertake post-surgery procedures, including dilating. She had been warned of the dire consequences of not following these procedures. Then, she had been arrested.

(4) Nexus

[126] Ms. Dawson argues that Nurse Cheung actively marginalized and dehumanized her by refusing to believe that she was a woman with a vagina, and by referring to her using male pronouns. She says that she cannot imagine language being employed by a medical professional that would have a more significant adverse impact on a trans woman's dignity than that used by Nurse Cheung. She says that it was Nurse Cheung's attitude that created a discriminatory barrier to Ms. Dawson's access to medical treatment, and not her own refusal to participate.

[127] VPB claims that Ms. Dawson was treated the same in this regard as any other woman at the jail. Ms. Dawson argues that she was not treated the same as any other woman at the jail as evidenced by Nurse Cheung's statement, where it is very clear that

his motivation in wanting to examine Ms. Dawson was to determine whether her vagina was “real.” Ms. Dawson argues that any other woman in the Vancouver jail would not have had to prove the existence of her vagina in order to receive gynecological treatment. She suggests that any other woman in the jail would not have been continually referred-to as “he” and “him” by the nurse caring for her. Ms. Dawson claims that Nurse Cheung’s blatant refusal to believe that Ms. Dawson was woman with a vagina, and resulting refusal to ensure that Ms. Dawson received needed medical care, was discrimination.

[128] Ms. Dawson also argues that, even if VPB had treated her in the same way as any other woman, this would constitute discrimination. She is not any other woman. She is a trans woman who had recently received surgery connected with her trans status, and she required treatment that differed significantly from any other woman in the jail. She argues that VPB cannot seek to defend its conduct on the basis of a retreat to formal equality. Ms. Dawson had special needs related to her transgender status that required different treatment in order for her to achieve equality.

[129] I have no difficulty determining that the adverse impact experienced by Ms. Dawson is related to her trans status.

(5) Reasonable Accommodation

[130] VPB submits that, to the extent it was required to accommodate Ms. Dawson’s disability or sex through the provision of medical care in the jail, it provided Ms. Dawson with a reasonable accommodation. It argues that any failures in that accommodation process were the result of Ms. Dawson’s unreasonable refusals to participate in the accommodation process. VPB submits that the duty to accommodate is a consultative and cooperative process. For example, in an employment situation the employer, the union and the employee all have complementary duties and obligations: *Central Okanagan School District No. 23 v. Renaud* (1992), 16 C.H.R.R. DI425. Similar principles are argued to apply in the context of complaints filed under section 8 of the *Code*: see *MacFadyen v. Halcyon Meadows and another*, 2013 BCHRT 222 at para. 25. The process described in *Renaud* is one in which all those involved are required to work together to find a solution that adequately balances the competing interests. The process

requires the party best placed to make a proposal to advance one. The other parties must then respond with alternative suggestions as necessary, and the exchange should continue until a satisfactory resolution is achieved, or it is clear that no such resolution is possible. See also: *Norton v. VCHA (No. 2)*, 2013 BCHRT 76, para. 16.

[131] VPB submits that Ms. Dawson failed to reasonably and cooperatively participate in the accommodation process and failed to accept the reasonable accommodation offered to her. VPB argues that Ms. Dawson was free to refuse to consent to a physical examination. The consequence of that refusal, however, is that there was no basis on which VPB or the jail nurses could assess her request for accommodation in the form of being released from jail to the hospital.

[132] VPB submits that Nurse Cheung reasonably requested to examine Ms. Dawson and, when she refused to consent, nonetheless took appropriate steps to investigate her claim for medical attention. VPB submits that the Tribunal ought not to be second-guessing the expert medical treatment decisions of Nurse Cheung.

[133] Ms. Dawson argues that medical care in the jail was a service that Ms. Dawson was entitled to receive without discrimination, but was not itself an accommodation. Ms. Dawson says that VPB was legally obligated to provide a service: medical care. However, VPB failed to provide this service in a non-discriminatory manner, and never offered her any accommodation to provide that service to her in a manner that recognized her needs and circumstances as a trans woman.

[134] Nurse Cheung's apparent refusal to believe that Ms. Dawson was a woman with a vagina, and resulting refusal to ensure that Ms. Dawson received needed medical care, foreclosed any possibility of accommodation.

[135] I agree with the argument put forward by Ms. Dawson. She is a trans woman who was in jail and needed to obtain post-operative treatment. Her claim that she needed that treatment was repeated to many employees of the VPB. Each of them deferred to the nurses at the jail and took no further part in ensuring that Ms. Dawson received the care she required.

[136] I find that Nurse Cheung refused to believe Ms. Dawson, did no independent investigation of whether her claims were true, once Ms. Dawson had refused the examination. Once Ms. Dawson refused to show her vagina, Nurse Cheung terminated their relationship. It is not at all clear that he had this option. The agreement with the VCHA does not limit VCHA's nurses to provide treatment, only if they choose to. General nursing services are to be provided "without limitation." Additionally, nurses are to follow VPB policies in providing treatment.

[137] There was no attempt at a reasonable discussion with Ms. Dawson to determine how her needs could be fulfilled in her circumstances. There was no attempt at accommodating her medical needs.

(6) Responsibility of VPB for actions of the Nurses

[138] Ms. Dawson argues that, if the nurses employed by VCHA were failing to comply with VPD policies, or with the *Code*, VPB had every legal means necessary to ensure compliance. She submits that everyone at the jail is subject to the authority of VPB and the officers it appoints to be in charge of the jail. She submits that s. 8 of the *Code* places, on the VPB, the responsibility for ensuring that there is no discrimination on part of the party that ultimately provides the service customarily available to the public.

[139] Sergeant Van Patten who worked as a jail Sergeant Non-Commissioned Officer in 2010, admitted that the VPB has a duty to provide medical care to the inmates in the Vancouver jail, and testified that the VPB contracted with the VCHA to fulfill this duty of care. The unique circumstances of this case are that the nurses employed by the VCHA are merely the means by which the VPB provided nursing care, but VPB remains ultimately responsible for ensuring that this service is provided in compliance with the *Code*.

[140] Sergeant Van Patten testified that, if it is obvious to the jail guards and officers that an inmate needs medical attention at the hospital, then the officers and jail staff can make that assessment. No such assessment was made concerning Ms. Dawson, notwithstanding her effort to involve other jail staff in the effort to allow her to undertake her dilations.

[141] Sgt. Van Patten testified that “it’s everyone’s responsibility to make sure people are well in jail”. He said that anyone can say this person isn’t well and make an assessment. He also said that, if someone needed transportation to the hospital, the staff Sergeant or jail Non-Commissioned Officer could arrange this. They could also delegate the task if they were busy. Sergeant Picard also testified that “all staff are responsible for the well-being of anyone visiting the jail” and that jail staff could raise obvious medical concerns with the nurses.

[142] VPB has a duty to provide medical care to the inmates in the Vancouver jail, and the VPB contracted with the VCHA to fulfill this duty of care. The circumstances of this case are that the nurses employed by the VCHA are merely the means by which the VPB provides medical care, but VPB remains ultimately responsible for ensuring that this service is provided in compliance with the *Code*.

(7) Further Submissions

[143] VPB seeks to provide further submission in this area, claiming that Ms. Dawson made new arguments in her reply. There may have been different emphasis on certain of Ms. Dawson’s arguments that compelled VPB to provide further submissions. As noted above, I allow VPB to make these submissions.

[144] VPB argues that, while Ms. Dawson states that there is no evidence as to Nurse Cheung’s training in trans-specific issues and he was therefore unqualified to provide her with medical care, it is Ms. Dawson’s burden to prove that VPB allegedly failed to provide a service in a non-discriminatory manner. VPB argues that Ms. Dawson did not call any evidence to demonstrate that the nurses working in the jail required any specific qualifications or lacked any required qualifications. There is no evidence, beyond Ms. Dawson’s bare assertion, that Nurse Cheung or other nurses at the jail were unqualified to provide medical treatment to Ms. Dawson or to assess her medical needs. The only evidence before the Tribunal is that Nurse Cheung attempted to provide Ms. Dawson with medical care. VPB argues that Nurse Cheung attempted to ascertain Ms. Dawson’s medical needs, but Ms. Dawson admittedly refused to participate in that process.

[145] VPB argues that, in the absence of Ms. Dawson's co-operation, Nurse Cheung attempted to determine whether Ms. Dawson required hospitalization but was unable to find any evidence that she required hospitalization. VPB adds that Ms. Dawson introduced no evidence that she required hospitalization. As well, VPB claims that there is no evidence that Ms. Dawson required hospitalization at any other time in respect of her surgical after care routine, even when she failed to comply with that routine. VPB notes that the implication of Ms. Dawson's argument is that the jail is required to simply accept the word of prisoners as to required medical care, including release from the jail to the hospital, without any ability to inquire into the necessity of the requested treatment.

[146] VPB submits that the *Code* does not require medical service providers to provide treatment on request without any ability to inquire into the necessity of the requested treatment. The *Code* also does not require the jail to simply release prisoners on request simply because they would prefer to be elsewhere.

[147] VPB submits that Nurse Cheung made appropriate attempts to determine Ms. Dawson's medical needs. VPB argues that there is simply no evidence to support Ms. Dawson's new allegations against Nurse Cheung with her pointing to Nurse Cheung's use of quotation marks in his clinical note to mean that he had a "discriminatory attitude" to Ms. Dawson and "actively marginalized and dehumanized Ms. Dawson."

[148] Ms. Dawson argues that VPB has inaccurately framed Ms. Dawson's allegations by suggesting that she refused to participate in an accommodation process when incarcerated in the Vancouver jail. Medical care in the jail was a service which Ms. Dawson was entitled to receive without discrimination, but was not itself an accommodation.

[149] Ms. Dawson argues that she was entitled to an accommodation that would give her meaningful access to the medical care service in the Vancouver jail. That accommodation is a means by which those with special needs are given meaningful access to a general service.

(8) Findings Regarding Nursing Care

[150] I conclude that the personnel at the jail deferred to the nurses who did not take Ms. Dawson's concerns seriously such that these concerns were not addressed. Ms. Dawson was given one option; to prove that what she said was true by showing her vagina to a man, even though he was a nurse. A female nurse was on duty but her assistance was not sought by Nurse Cheung, who treated Ms. Dawson as a man, anyway. It seems that Nurse Cheung did not believe Ms. Dawson's claims of her gender-reassignment surgery or her need for dilations.

[151] As far as the nurses and the jail staff were concerned, that was the end of the matter. No effort was undertaken by anyone at the jail to determine if Ms. Dawson's assertions were true about her surgery. Her claims about the need for the post-surgical care were dismissed.

[152] However, I note that Ms. Dawson required medication for another condition and the nurses determined the type of medication and arranged for it to be available to Ms. Dawson. I find that other options were available, if they needed proof of her gender reassignment. They could have contacted her doctor, either at Ravensong or at the Downtown clinic. She was searched on arrival at the jail at 16:15 hours. Immediately following the search Cst. D'Andrea escorted Ms. Dawson to see the on duty jail Nurse as requested. Thus, it appears that this accommodation may have been possible. It does also not appear to be an undue hardship to at least try to make such a call.

[153] No effort appears to have been made to see if Ms. Dawson could accomplish her goals of dilation without either a trip to the hospital or her release. Nurse Cheung looked on the internet and, not surprisingly, could not discover that dilation required hospitalization. This tends to provide more evidence that Nurse Cheung did not know what was being asked for in respect of the dilation.

[154] Concerning Ms. Dawson's request to be released to go home and perform the dilations, no analysis was done by anyone at the jail whether such a release would amount to a reasonable accommodation or an undue hardship.

[155] Ms. Dawson was very focussed on performing the procedures required for her post-surgery care. She was not able to do so in jail and jail personnel did not give enough emphasis to her concerns about doing so.

[156] VPB was legally obligated to provide a service: medical care. However, VPB failed to provide this service in a non-discriminatory manner, and never offered Ms. Dawson accommodation to provide that service to her in a manner that recognized her needs and circumstances as a trans woman.

[157] I find that the way that Ms. Dawson received medical treatment in the jail amounted to discrimination. Her claim that she needed to undergo post-surgical treatment was not taken seriously. No real effort was made to accommodate her needs and no evaluation was done by anyone at the jail as to whether such accommodation would amount to undue hardship. Nurse Fong appears to be the only person who tried to help Ms. Dawson and she was ultimately ineffectual because of the way matters had been handled before she became involved.

Post-Release March 30, 2010

[158] The next morning, Ms. Dawson appeared in Court. The proceedings against her were stayed. Those documents all refer to Ms. Dawson as Angela Dawson; not as Jeffrey.

[159] After appearing in Court, Ms. Dawson says she went home and tried to dilate. She says that her vagina started to bleed, and she called her home care nurses who came to see her. According to the home care nurses' notes from their visit, Ms. Dawson was "very upset about lack of care she was able to do in jail."

[160] Ms. Dawson has many versions of what happened after her release from jail. In an affidavit filed in these proceedings, Ms. Dawson asserts that, after being released from jail on March 30, 2010, she "immediately went home and dilated." She states that she "bled" and called her nurses, and they helped her go to Ravensong so that she could be attended-to by female nurses. Ms. Dawson asserted that she was "rushed" to the clinic.

[161] This claim is proven to be untrue by the medical records and the evidence of the nurses. The medical records show that Ms. Dawson called the community health nurses on March 30, 2010 after her release, and that the nurses did not attend at her residence

until almost 2 pm. The records also show that Ms. Dawson did not attend Ravensong until the next day.

[162] Neither the records of the community health nurses nor the records of Ravensong show that Ms. Dawson was experiencing any bleeding. I note that Ms. Dawson did have a concern that was recorded at that visit with respect to whether she had an infection. This concern is consistent with the procedures she was prevented from undergoing, which were to prevent infection.

[163] Ms. Dawson has also claimed that, as a result of her arrest on March 29, 2010, she was afraid to leave her residence and afraid to come into contact with the police. In her testimony, however, Ms. Dawson acknowledged that, shortly after her arrest, she resumed her regular activity of directing traffic, as well as other activities outside her residence, such as getting groceries. On April 2, 2010, the community health nurse notes reflect that Ms. Dawson was encouraged to stay home, as she was not doing so at that time.

[164] Ms. Dawson acknowledged in her evidence that, in addition to directing traffic, an activity that she knew would draw police attention; she regularly sought the assistance of police in the period after March 29-30, 2010. VPB argues this behaviour is inconsistent with her claim that she was afraid to come into contact with the police.

[165] I do not find that Ms. Dawson suffered the harm she claims about being afraid to go out and be in contact with the police. This is another example of her exaggeration. She led no evidence that any of her behaviour concerning the police changed. She continued to engage in rollerblading that attracted the usual attention from the police and she continued to make complaints to the police about her treatment at the hands of others. This is not consistent with her claim.

Disposition

[166] The Complaint concerning the medical treatment she received while incarcerated March 29-30 is upheld.

[167] The remainder of the complaint with respect to this incident is dismissed, except insofar as matters concerning misgendering are raised in the complaint.

4. June 10, 2010

[168] In her written argument, Ms. Dawson acknowledges that events that she said in her complaint had occurred on June 10 and June 18, 2010 can be determined from the evidence at the hearing to have occurred actually occurred on a single day: June 18, 2010.

[169] VPB argues, and I agree, that the events about which she complains to have occurred June 10 probably occurred on June 29, which was the date on which Cst. Rai gave her a ticket. These allegations are more similar to June 29, 2010 than they are to June 18, 2010. Accordingly, Ms. Dawson's claims attributed to June 10 shall be dealt with along with the claims concerning June 29, 2010.

5. June 18, 2010

[170] Ms. Dawson's evidence was that, on June 18, 2010, she was out rollerblading and someone on the street tried to pick a fight with her. She says she approached Constable Grewal and Sergeant Yamniuk, who testified that they were on foot patrol at the time.

[171] Ms. Dawson says that she was upset about the person who tried to trip her or fight with her. The officers saw that there were many people on the street that were vocally expressing interest regarding the events claimed by Ms. Dawson. The crowd was not supportive of Ms. Dawson and no one volunteered that they had witnessed the events of which she complained.

[172] The officers determined that the safest course of action would be for Ms. Dawson to leave the area and that would prevent her from getting hurt in any altercation, which looked likely to ensue. They told her to leave the area, and also told her that they would arrest her if she did not leave the area.

[173] Ms. Dawson said she wanted the police to deal with the person who tried to fight with her; and she would not leave until they had done so. Cst. Grewal testified that, even after Ms. Dawson was compliant, he took no steps to investigate her concerns about someone wanting to pick a fight with her. He said that Ms. Dawson had not been specific in pointing out the alleged assailant and he had no evidence from the bystanders about who that person may be. He thought that any such investigation would be fruitless. The police officers' evidence was effectively confirmed by Ms. Dawson's testimony when

she failed to testify about providing a description to the police and she did not describe the person in the hearing. This leads me to conclude that no useful description of the person was given to the police and the absence of a description reduced their ability to investigate her complaint further.

[174] Because they thought that Ms. Dawson was agitated to the point of causing a disturbance, the officers told her they were taking her into custody. Ms. Dawson did not want to go and she grabbed a nearby shopping cart. Cst. Grewal brought her to the ground using knee strikes, handcuffed her, and arrested her for breach of the peace.

[175] The VPB says that there was a struggle before Ms. Dawson was subdued and placed in handcuffs. Ms. Dawson's claim that she sustained bruising at the hands of the police. The home care nurses ran into Ms. Dawson on the street the next day after she was detained, June 19, and she told them about her encounter with the police the previous day and her night spent in jail. She showed them bruises on her arm that she said were from the police. I accept that this is true. There is evidence of the bruises in her medical file that she attributes to her arrest.

[176] The OPCC investigated because of a complaint by Ms. Dawson and concluded that reasonable force was applied to Ms. Dawson during her arrest. I have come to the same conclusion, although, I note that any use of unreasonable force must be related to her sex for it to amount to a violation of the *Code*.

[177] Ms. Dawson admitted that she was very upset and was urging the police to take action. She agreed that she did not follow their suggestion that she leave the area. She acknowledged resisting when they approached to handcuff her. She was on rollerblades and it was difficult for the police to control her movements. She agreed that, as soon as she was subdued, she was not subject to any further force.

[178] Cst. Grewal testified that the purpose of arresting a person for breach of the peace is to prevent a violent offence where there is violent behaviour or a tenor of violence. The individual is taken to jail, but is not charged with a criminal offence. The individual remains in jail until there is no longer a threat of a violent offence.

[179] Sgt. Yamniuk called for a wagon to come pick up Ms. Dawson. The officers also called for a female officer to come to the scene to search her. Ms. Dawson argues that Cst. Grewal's actions demonstrate VPB's lack of appreciation for Ms. Dawson's circumstances as a trans woman. She says that Cst. Grewal noted that she was dressed in female clothing so he decided to treat her as female for the purposes of a search, demonstrating that Cst. Grewal believed the choice was his – and not Ms. Dawson's.

[180] I reject this argument. Cst. Grewal called for a woman officer to attend to be able to conduct the search. If Ms. Dawson chose to be searched by a man, that search could have been performed by Cst. Grewal or Sgt. Yamniuk. With the arrival of Constable Quehl, the search could be conducted by a woman. I do not find anything in Cst. Grewal's actions in arranging for Cst. Quehl's presence, demonstrates VPB's lack of appreciation of Ms. Dawson as a trans woman; quite the contrary.

[181] Cst. Quehl conducted the search. She stated that she always referred to Ms. Dawson as Angela, that she knew Ms. Dawson lived in a women's shelter, and that, at the time of the search, Ms. Dawson was concerned about her vagina. Ms. Dawson was transported to jail in the paddy wagon by Constable Stokes. She remained at the jail for approximately 8 hours, from before 5 pm to just before 1 am the next day.

[182] Cst. Grewal testified that he did not know whether Ms. Dawson had male or female genitalia but he assumed she was female based on her demand that she had to dilate. On the arrest form, he indicated that Ms. Dawson was female with an "F(?)" because he was not sure how she would be treated in jail. He stated, with reference to the sex in the arrest report that he honestly didn't know what to put in the box. Although he had dealt with Ms. Dawson in the past, and knew of her previously as "Tammy", and she gave her name to him at the scene as "Angela", he referred to Ms. Dawson as "Jeffery" on the form.

[183] Cst. Grewal stated that he used the name Jeffery and male pronouns because of what he saw in PRIME, a police database that contains a person's name, aliases and their criminal record. Cst. Grewal testified that no one told him to do this, but that this was his practice. In his synopsis of the event, Cst. Grewal testified that, flowing from the information in PRIME, he uses male gender pronouns to refer to Ms. Dawson throughout

the report.

[184] Ms. Dawson testified that she was concerned about being held in jail again and not being able to dilate. She testified that she told the arresting officers about her need to dilate. When Ms. Dawson was detained, she was still recovering from her gender-reassignment surgery and was still required to dilate 2-3 times per day. Based on the amount of time she spent in jail, she would have missed at least one dilation that night.

[185] VPB points out that, except for the initial comments made to the arresting officers, there is no record that Ms. Dawson repeated her concern about dilating to anyone in the jail; not even the nurse on rounds.

[186] Ms. Dawson alleged that, when she was released from jail, she overheard an officer say “that freak can go”. It was clear there was some sort of commotion when Ms. Dawson was released. I believe the evidence of the Sgt. Van Patten and Sgt. Picard that they made no such remark, nor did they hear it being made by anyone else. I do not accept that the comment was made.

[187] Upon her release from jail, Ms. Dawson was concerned about her footwear. She was wearing her rollerblades when she was arrested and there was no other footwear for her when she was released. Sgt. Van Patten testified that, when she did not leave the jail, he took her rollerblades out and said that they were leaving, which caused Ms. Dawson to follow him and leave as well.

[188] After this incident, Ms. Dawson obtained a letter from her physician at Ravensong. His letter substantiated that Ms. Dawson required dilations as part of her post-operative care, and that surgical complications could arise if she was held in detention without access to the necessary medical equipment. She obtained this letter on June 28, 2010 and testified that she gave it to the police that same day.

Adverse Impact

[189] There are two aspects to what I have found occurred on this date that could be considered to be an adverse impact. First, is the use of the name Jeffrey and male pronouns to describe Ms. Dawson’s actions and property. As previously noted, Ms. Dawson testified that, when the police refer to her as “Jeffery” or use male gender

pronouns, it makes her feel embarrassed and humiliated. She testified that the police know her as Angela, yet called her Jeffrey. She thinks that, when the police treat her as a male, it gives other people the right to treat her as a male, to pick on her, and to humiliate her.

[190] Sgt. Van Patten testified that, in his previous experiences with Ms. Dawson, the best way to interact with her was to refer to her as “Angela” in a calm voice. If she was upset or agitated, using her preferred name and speaking calmly to her would allow “the situation to correct itself”. This knowledge, that Ms. Dawson prefers to be known as Angela, is reasonably well-known amongst officers, at least in the DTES.

[191] Ms. Dawson says she has not tried to legally change her name or gender because she says that the cost of doing so is prohibitive for her. However, I note that Ms. Dawson testified that she does not know how much it would cost nor what is involved in securing legal documentation reflecting the name Angela and the female gender.

[192] VPB argues that Ms. Dawson’s decision not to change her legal name and sex, although she is entitled to do so, has caused a disconnect between her self-identification and her legal identification. VPB argues that it is solely within Ms. Dawson’s control to rectify that issue and obtain a legal identity that matches her self-identification.

[193] In her argument, Ms. Dawson points to her testimony that she has been unable to change her identity documents because of financial difficulties and claims that this evidence was not challenged by VPB. However, it appears to me that there would be no reason to challenge her evidence in this regard because she said she thought it would be too expensive but she did not know how much it would cost or what would be involved in legally changing her name.

[194] I note that, in her original complaint, Ms. Dawson identifies herself as “Angela aka Jeffrey Dawson.” In a Notice of Claim at Small Claims Court that Ms. Dawson filed against the City of Vancouver and unidentified police officers, Ms. Dawson identifies herself as “Angela aka Jeffrey Alan Dawson.” Conversely, Ms. Dawson has made many complaints to the Office of the Police Complaint Commissioner. She was assisted by counsel in making these complaints. When she filled-out the forms for the complaints, Ms. Dawson identifies herself as Angela Dawson.

[195] The VPB officers have access to a number of ways to determine someone's identity. Often, they ask for identification from the person with whom they are dealing. VPB argues that police have a legal obligation, when issuing tickets or charges, to ensure that the identity of the offender is correct. The PRIME database identifies her as Jeffrey Alan Dawson and also identifies aliases of Angela and Tammy May. Her gender is identified as male.

[196] Officers will also rely on their own knowledge of the person and use that known identity to interact with the person. Some VPB officers interacted with Ms. Dawson using her preferred name of Angela. Police officers testified that, with official documents, it was important to use the legal name of the "entity" who is being identified. The "entity name" was considered to be the proper identification and, if the name Angela was ever used in official documents, VPB says it was the use of an alias.

[197] Ms. Dawson testified that, when the police give her tickets that use her male birth name and that refer to her as male, it is "really messed up" and she feels dehumanized.

[198] Ms. Dawson says that to have VPB use her preferred name or gender would not make tickets or other court documents inadmissible. She argues that the suggestion that there might be an issue identifying her for legal purposes is purely speculative. She points to the evidence of many VPD officers that Ms. Dawson was a well-known member of the community. She argues that she cannot overemphasize that VPB's proposition that it must use her legal name on tickets and other documents is simply unfounded. She says that there is evidence, including tickets and court documents that have been upheld despite using Ms. Dawson's preferred name and gender and this directly contradicts the notion that there is any actual need to use Ms. Dawson's legal name when processing her for violations.

[199] Second, is an allegation that Ms. Dawson was again prevented from being able to dilate. VPB notes that, although Ms. Dawson did not have a formal intake session with a nurse on June 18, 2010, the evidence demonstrates that she was not denied medical care because she did not request it at the jail. Nurses were present and conducted rounds.

[200] VPB also argues that it has not been shown that there was any delay in her recovery from being prevented from receiving treatment while in jail this day.

[201] That is not to say that the lack of access to dilation and other post-surgical treatment did not cause Ms. Dawson distress.

Nexus

[202] Supposing that the bruises were incurred in her arrest, I find Ms. Dawson has shown no relationship between the force used in her arrest and her transgender status.

[203] I find Ms. Dawson's general claim of misgendering, that is referring to her as a male, is related to her trans status.

[204] I also find that Ms. Dawson's claim that she was again prevented from having access to dilation is related to her sex.

Reasonable Accommodation

[205] VPB argues that, if Ms. Dawson required medical attention or medical accommodation, she should have requested such accommodation. VPB says that considering that she failed to do so, Ms. Dawson cannot now complain that VPB failed to accommodate her.

[206] Ms. Dawson did not testify that she asked again at the jail to be able to dilate.

[207] I find that the way in which VPB treated Ms. Dawson's requests for dilation on March 29-30 had an impact on how she expected such requests to be treated when she was incarcerated June 18. Her reaction to this is also reflected in her attending the clinic to get a note from her doctor that substantiated that she was required to do dilation exercises as part of her post-operative care, and that surgical complications could arise if she was held in detention without access to the necessary medical equipment.

[208] Ms. Dawson mentioned her need to dilate to the arresting officers and to Cst. Quehl when she was first searched. Sgt. Picard's evidence was that police staff are to alert the nurses to medical concerns raised by inmates. There was no evidence that this was done here.

[209] I completely understand why Ms. Dawson would not have bothered restating her need to dilate. She stated her need and there was no conversation on both sides that could

explore and determine if her need could be accommodated. Additionally, Ms. Dawson was not kept overnight in jail. She was released after about 8 hours. That may have been an accommodation but was not identified as such.

Disposition

- When the VPB referred to Ms. Dawson as male, it discriminated against her.
- When the VPB did not ensure that Ms. Dawson could undertake her post-surgical procedure of dilating, it discriminated against her.
- The remainder of the complaint with respect to this incident is dismissed.

6. June 29, 2010

[210] As noted above, in her complaint concerning events alleged to have occurred on June 10, 2010, I find that it is more likely than not that Ms. Dawson is referring to events that occurred June 29, 2010. Ms. Dawson said that, on June 10, she was:

on the sidewalk when a police officer pulled up and ordered me to come to his car. I said “why don’t you come here” as I was on the sidewalk. The officer handcuffed me while chatting to 3 other people assuring the other people “don’t worry I wouldn’t arrest you.” The officer gave me a ticket and left. The ticket indicates I am a male despite my clear identity as a woman and having got sex-assignment surgery. I am supposed to be recovered from the surgery but instead have had to deal with a pattern of police harassment.

[211] Ms. Dawson’s complaint alleges the following with respect to June 29, 2010:

I was given another violation ticket by an officer for “disobeying a traffic control device.” I have been repeatedly harassed by the police and or City Enforcement officers since 2008.

[212] Constable Rai testified that, on that date, he responded to 911-dispatch call for a female directing traffic on rollerblades at Main and Hastings. Constable Rai testified that he was a one-man unit at the time, in a car.

[213] Constable Rai testified that he knew Ms. Dawson’s name was Angela Dawson, and that he had interacted with her countless times. However, he claimed he did not know

if she was female and he did not ask. The ticket refers to Ms. Dawson's given name as "Jeffery", and her gender as male. In his Occurrence Report, he refers to Ms. Dawson as "Jeffery" and uses both female and male pronouns. Constable Rai stated that if he entered Ms. Dawson's information as "Angela" instead of "Jeffery", given that her legal name was Jeffery, he thought there would be administrative difficulties in the records department. Constable Rai's explanation for the use of both male and female pronouns was that he was writing the entry *very* quickly, and observed Ms. Dawson as female but the entity in the PRIME database was male.

[214] Ms. Dawson disputes this conclusion, given that other police and court documents refer to her as "Angela", and her gender as female, with no reported administrative difficulties arising. She says that Constable Rai was mistaken in his stated belief.

Adverse Impact

[215] While Ms. Dawson complains that the police target her for tickets, she does not deny engaging in the behaviour for which she received the tickets. She complains that others were not ticketed. These allegations are vague and unsubstantiated.

[216] Use of the name Jeffrey and male designation came up often in the evidence. This is the only instance that was raised explicitly in the complaint. I accept that use of the name Jeffrey and the male gender are matters which cause distress to Ms. Dawson and can be considered adverse. She says she has identified as a woman for a long time, she has gone so far as to have gender-reassignment surgery. She dresses and lives as a woman. I find that not to be treated as a woman is hurtful to her.

Nexus

[217] I find that nothing about the issuance of the traffic ticket has any nexus to Ms. Dawson's trans status. It is clear on the evidence that she routinely engages in the behaviour for which she was ticketed and she has provided no evidence that her trans status was the reason for her ticket.

[218] On the other hand, use of the name Jeffrey and designating her to be male when Ms. Dawson wants to be known as Angela and female has the required nexus to meet the test for a *prima facie* case of discrimination.

Reasonable Accommodation

[219] Ms. Dawson says that she is a trans person who identifies and lives as a woman, and she should be treated as a woman for all legal purposes. Given the adverse effect created by the practice (inconsistent as it is) of referring to trans people who have not legally changed their name by their birth gender and legal name, Ms. Dawson argues that the VPB has a duty to accommodate the needs of trans people. She says that VPB is therefore legally required to refer to Ms. Dawson using her preferred name, using her lived and felt gender identity, and using the pronouns that accord with her lived and felt gender identity.

[220] Ms. Dawson argues that the VPB is required to demonstrate that accommodating the needs of trans people by using their preferred name and gender would cause undue hardship. While VPB may try to suggest that concerns about matching the name and gender on the ticket with the correct individual would result in undue hardship were the police required to use a person's preferred name and gender, she says that the evidence shows the opposite. Ms. Dawson points to evidence where some officers, and the Provincial Court have referred to Ms. Dawson as Angela, and as female. She argues that there was no evidence that any identification or other legal problems have arisen as a result.

[221] Ms. Dawson also argues that VPB clearly does not need her to change her identity documents in order to be able to refer to her as Angela Dawson, and female, on tickets and other legal documents and in its interactions with her. Ms. Dawson says that VPB must accommodate her needs as a trans woman by recognizing her lived and felt gender identity, regardless of the name and gender on her legal documents.

[222] I find there was no discussion with Ms. Dawson about how she wanted to be treated or identified with respect to the traffic ticket. Cst. Rai relied on the VPB PRIME database to record Ms. Dawson's information. He made no attempt nor gave any

consideration of what accommodation may be appropriate and whether it would amount to undue hardship.

[223] Of course, it could prove to be problematic having police officers individually decide what accommodation they will give to Ms. Dawson and under what circumstances. More discussion about a systemic remedy for this type of discrimination follows below. However, in the absence of any attempt to accommodate Ms. Dawson's transgender status, I find that she has been subject to discrimination in this regard.

Disposition

- When the VPB referred to Ms. Dawson as male, it discriminated against her.
- All other allegations in the complaint about this incident are dismissed.

7. July 29, 2010

[224] Constable Mrcela was patrolling the DTES on foot. He observed Ms. Dawson directing traffic on her rollerblades at the intersection of Main and Hastings. Cst. Mrcela testified that he told her to get out of the intersection, or she would risk getting a ticket. She responded by saying "you can't touch me", and then, as per his warning, moved onto the sidewalk. Cst. Mrcela said he continued walking through the Intersection, and Ms. Dawson skated past, bumping him. According to Cst. Mrcela, Ms. Dawson bent over and slapped her buttocks, while looking directly at him. Both parties were still on the sidewalk. Cst. Mrcela then decided to pursue Ms. Dawson, grabbed the dress she was wearing from behind to bring her to the ground, brought her to her knees, and handcuffed her, tearing her dress. He issued her a ticket for "failure to use crosswalk" and "pedestrian leave curb when unsafe". She was then taken into custody.

[225] Ms. Dawson's written statement about this incident acknowledges that she was rollerblading on the street, doing her "normal thing of directing traffic." She said that a police officer ran after her and grabbed her dress and that she hadn't heard him because she had her headphones on. She said he tackled her and that he had a hard time getting her arm behind her back. She was put in handcuffs that she said were too tight. She was

put in the paddy wagon and Ms. Dawson's statement was that she was subjected to diesel fumes so she was banging on the paddy wagon to let them know about the fumes.

[226] The cash Ms. Dawson had on her was seized, and put in an envelope, and the envelope was labeled "DAWSON, Jeffery." She says that when she was arrested she had \$420 and when she was released only received \$360. There was no other evidence about this and I cannot find that the VPB was in any way responsible for what Ms. Dawson says are missing funds.

[227] The ticket from this incident refers to Ms. Dawson as "Angela", and states that her gender is female. In Cst. Mrcela's General Occurrence Hardcopy issued for the incident, Ms. Dawson is referred to as "Angela May". Cst. Mrcela uses both female and male pronouns to refer to Ms. Dawson in the synopsis. For example, Cst. Mrcela wrote that "DAWSON then bent down and pointed his buttocks towards PC MRCELA and then slapped his buttocks while looking at PC MRCELA." (emphasis added)

[228] Cst. Mrcela said he asked Ms. Dawson to move to the sidewalk and, when she did not heed his instructions, he put her in handcuffs and escorted her to the sidewalk. His report says that, while attempting to handcuff her, she actively resisted and would not allow her hands to be put in behind her back. Cst. Mrcela called for cover and waited for another unit to arrive so that Ms. Dawson could be taken into custody.

[229] Cst. Mrcela's Occurrence Report says that Ms. Dawson was arrested for resisting arrest and obstructing a police officer. She was also given a ticket for "pedestrian disobey traffic control device." She was arrested just after 14:00 and at 18:55 hours, Sgt. Van Patten released her on a Promise to Appear with a condition that she not go to the intersection of Main Street and Hastings Street.

[230] Ms. Dawson's version, in an affidavit, claims that she was held in jail, charged with resisting an officer and released the next day. This claim has been proven untrue by reference to the records and is another example of Ms. Dawson's disregard of details while exaggerating evidence.

[231] When asked about his use of male gender pronouns to refer to Ms. Dawson, Cst. Mrcela stated that he "always knew, or thought he knew that he was a man, and he was known as Jeffery on the street. He said that he didn't know that, at that point, she had had

a sex change operation. He said: “To me, I guess at the end of the day, it was a man dressed in women’s clothing”. He stated that he knew Ms. Dawson to be a man prior to this incident, because “everyone knew [...] he was a man dressed in female’s clothing. That’s just the way it is.” When asked why he alternately referred-to Ms. Dawson as he/his and she/her, Cst. Mrcela stated that “there was obviously some confusion about gender”.

[232] Cst. Mrcela testified that it is his understanding that, if a person has male genitalia, they are male and, that if they have female genitalia, they are female. According to Cst. Mrcela, a person who is born with male genitalia cannot be referred to as female until they have had gender-reassignment surgery.

[233] Ms. Dawson argues that, even on this understanding of gender identity, Cst. Mrcela appears to have acted improperly in referring to her with male pronouns, as this incident occurred after her surgery. Cst. Mrcela testified that he “probably” had sensitivity training on dealing with transgender persons at some point, but could not recall the content of the training or when it had occurred. I do not believe that he has had any such training. There was no evidence of any such training being offered by VPB.

Adverse Impact

[234] There is the question of whether Ms. Dawson was subject to undue force in her arrest before being arrested. I cannot find that Ms. Dawson was subject to undue force, given that she bumped into Cst. Mrcela when she was skating by him. If her arrest was improper, she could raise that defence in court on the charges of resisting arrest. No evidence was led in the hearing with regard to the disposition of these charges and I will not make any finding on the scant evidence before me.

[235] There is no issue with her identification in the ticket itself, as it was issued to Angela Dawson. In the criminal charges, Ms. Dawson was referred-to as Jeffrey Alan with respect to the charges of obstructing Justice. The Promise to Appear has her name as Angela.

[236] However, there is the question of the gender identification of Ms. Dawson by Cst. Mrcela in his notes of the incident that were never seen by Ms. Dawson, except through

this process. Both male and female genders were used and it is quite confusing how Ms. Dawson is described. This is in part due to the officers' reliance on the information in the PRIME database. But because the notes were never seen at the time, I find no adverse impact was suffered by Ms. Dawson as a result. Whether she saw them or not, does not affect their relevance to the question of systemic discrimination.

Nexus

[237] As in the instances above, Cst. Mrcela did not refer openly to Ms. Dawson as if she is a man and thus did not create a nexus with her sex and her status as a transgender woman. As such, she has not established a *prima facie* case of discrimination.

Reasonable Accommodation

[238] Ms. Dawson's need to have the name Angela used in charging her with traffic tickets was accommodated by Cst. Mrcela.

[239] Many police officers testified about the need to have the correct identity on charging documents. It may be that the charge of obstruction, under the *Criminal Code*, is one that needs to have the correct identity of the accused to prevent a claim that the wrong person was charged. Under the *Criminal Code*, proving the identity of the accused is an essential element of obtaining a conviction. Without that essential element being appropriately described, charged persons may not be convicted, even if they engaged in the impugned conduct. However, without more, I cannot conclude that using something other than a legal name when a criminal charge is laid amounts to an undue hardship.

Disposition

- VPB did not overtly refer to Ms. Dawson as male and thus did not discriminate against her. Private notes do not amount to discrimination.
- All other allegations in the complaint about this incident are dismissed.

VI DOES WHAT HAPPENED TO MS. DAWSON DISCLOSE SYSTEMIC DISCRIMINATION

A. IDENTIFICATION

[240] Earlier, I said that I would consider the issue of whether the treatment of Ms. Dawson in respect to what she describes as misgendering shows systemic discrimination by the VPB. Ms. Dawson argues that if an organization can, by acknowledging a trans person's preferred name and gender, reduce the harm that person experiences from using incongruent identification, then it must do so. She says that this is particularly the case where the individual faces barriers to changing their legal documentation. (I note that I have found that there is insufficient evidence that Ms. Dawson faces such barriers.)

[241] Inspector de Haas testified that the name of the person is important. The importance varies depending on whether it is a criminal offence, a traffic ticket or a breach of the peace. Inspector de Haas testified that the key concern was the proper identification of the person and need to match the individual with the information. He expressed concern that, if the "wrong" name or gender were written on a ticket, the case might be stayed because the Judge or Justice of the Peace may not be satisfied that the person on the ticket and the individual in front of them were the same person. However, he had no explanation as to why the documents refer to Ms. Dawson using a variety of names and genders, given that she had not legally changed her name or gender.

[242] Consistent with the evidence of Inspector de Haas, the VPB does not formally recognize that there might be any differentiation between addressing the trans person by their preferred name when they are interacting with them on the street and how that differs from how they should treat them while imposing a criminal or a lesser charge. I conclude this from my review of the documents and testimony concerning Ms. Dawson. VPB officers are not told of VPB's expectations of them when they interact with trans people and officers must fend for themselves. It is not surprising that there is such a wide difference in approach.

[243] Overall, the interactions between Ms. Dawson and members of the VPB show that there is significant inconsistency in approach of how officers deal with and identify Ms. Dawson. In many cases, members of the VPB have referred to Ms. Dawson with both

male and female pronouns; often in the same document. They will call her Angela or Jeffrey.

[244] I conclude that VPB has no policy with respect to the way to identify trans people, with whom it deals, either as victim, witness, or perpetrator. There has been no description of the circumstances under which officers should use the name and gender preferred by the trans person. There was no evidence of the VPB weighing the circumstances and identifying to its officers when using other than the legal name would be a reasonable accommodation, short of undue hardship.

[245] There is, however, evidence that citations have been issued in the name of Angela apparently without causing undue hardship. On June 18, Ms. Dawson was arrested on a breach of the peace. Sgt. Van Patten testified that there was no need then to use the legal name because it was not like a criminal charge.

[246] Other tickets are in her legal name, for example the one issued on January 27, 2010. While this was before her surgery, Ms. Dawson argues that, in order not to discriminate against her, she should always be called her preferred name by the police. I note that the VPB has no policy that differentiates its treatment of individuals depending on whether the surgery has occurred. I also wonder in what circumstances this should be an important factor in VPB's dealings with the individual.

[247] By contrast, there was a traffic ticket issued to Angela May Dawson, gender given as "F", on July 29, 2010. She knew she got a ticket and the ticket was in the name she preferred; that of Angela Dawson. There was no evidence that she contested the ticket or what the results might have been had she contested it on the basis of incorrect identity. It was not addressed whether her ability to do so might amount to an undue hardship.

[248] PRIME lists the legal name and criminal record of the person and also the aliases. I do not know if PRIME is the appropriate vehicle for information but I note that is the site officers go to for information. It says that Ms. Dawson is transgender but this information seems to have no effect on the officers who continue to describe her as male.

[249] Evidence was provided concerning the Aaron Webster Project where, in 2008, the VPB partnered with The Centre, A Community Centre Serving and Supporting Lesbian,

Gay, Transgender, Bisexual (LGTB) People and their Allies. Together they organized a series of public and community-specific forums to strengthen existing relationships between the Vancouver Police Department and local LGTB communities. After the forums, a number of suggestions were put forward. A report was generated and was entered into evidence here.

[250] The Aaron Webster report recognized that officers are to use legal names. The report also recommended:

- trans-specific training was needed so that police officers would have the tools to interact respectfully with trans communities. They noted that often service providers have good intentions when it comes to training on LGTB issues, but that when it comes to the “T” they don’t know the practicalities of how to do that.
- ensure that officers receive on-going training on LGTB communities with a focus on experiential training in addition to classroom learning
- ensure that police receive appropriate and adequate - training on trans issues - separate and in addition to LGB training
- inform LGBT communities about the training opportunities officers receive .

[251] Inspector de Haas testified that none of these recommendations have been implemented. As noted above, it seems to me that the VPB has virtually no policies or training of officers on how to appropriately deal with trans people without discrimination.

[252] I recognize and appreciate that policing is a difficult job; dealing with people in the most extreme circumstances. I do not say that police must be more concerned with appropriate forms of address than they are with doing their jobs, trying to keep residents safe. However, the VPB needs to deal with these concerns in a more comprehensive way to endeavour to not discriminate against trans people.

B. MEDICAL CARE

[253] In the foregoing analysis, I found that there has been discrimination at the jail when Ms. Dawson was treated in respect of her need to conduct post-surgical care. Was

there evidence that the discrimination experienced by Ms. Dawson with respect to her medical care at the jail was systemic such that a systemic remedy should be ordered?

[254] On March 29, Ms. Dawson told the arresting officers that she was post-op and needed to dilate. Both officers told her that the nurses in the jail could accommodate her medical needs. I have found that, when Ms. Dawson told Cst. Berceanu she had to go home and dilate, he told her that if she had medical concerns, the jail nurse would assist her.

[255] There is no dispute that, during the initial search, Ms. Dawson asked the jail guards to see a nurse because she had just had surgery and needed to dilate. One constable's understanding of Ms. Dawson's needs was that she needed medication due to her recent surgery. Both of the guards who conducted the initial search said that they did not make medical decisions.

[256] Nurse Cheung decided to terminate the relationship with Ms. Dawson when Ms. Dawson refused to prove that she had a vagina. No other effort was made to accommodate her needs and this caused significant distress.

[257] Also, on June 29, Ms. Dawson was arrested and held in jail for eight hours. She missed one dilation. This did likely not impact her recovery but Ms. Dawson was worried that she would not be able to undertake her care and her previous experience said that the staff at the jail would be dismissive of her concerns.

[258] I agree that the Nurses at the jail were qualified to perform their tasks. However, the nurses were only one group in a system that, overall, failed to recognize special needs that transgender inmates may have with respect to medical treatment. This failure seems to start with how trans are identified and spoken about. For example, Nurse Cheung appears to have been overly influenced by the description of Ms. Dawson in PRIME as Jeffrey, so much so that he did not accept that she had gender-reassignment surgery and needed to dilate. Reliance on the PRIME database and not the patient/inmate, is one of the problems that arose in the evidence here.

[259] I have concluded that the VPB needs to evaluate the way that it deals with trans persons, like Ms. Dawson. It needs to ensure that, if a person needs accommodation

because s/he is trans, that accommodation can be considered and applied, if there is no undue hardship. VPB officers deserve to have some guidance and training as to how to accomplish this.

C. SEARCH POLICY

[260] I did not find that there was any violation of the search policy or any discrimination when Ms. Dawson was searched. Accordingly, the search policy itself will not be reviewed for whether it is discriminatory. It is notable that this is the only policy put forward by the VPB that seems to acknowledge any accommodation of trans individuals.

[261] Inspector de Haas described his understanding of the policy and its purpose as requiring jail staff and sergeants to ask questions to determine whether a person's claim of being transgender is a legitimate one. Then, he acknowledged that the prisoner is permitted to choose the gender of the person searching them. However, he stated that the practice in the jail differs from the department policy. Specifically, he stated that it expands on the questions asked to determine whether a trans "claim" is "legitimate". He agreed that it was important for members of the VPD to know the policies so that they can act consistently. He also agreed that it would be wrong if a jail guard understood that a person's genitals determined the gender of the officer to search them; he agreed that a trans person gets to choose the gender of the officer conducting the search.

[262] The Vancouver jail's actual policy on searching transsexual people allows trans people to choose the gender of the person who searches them. This policy states:

Transsexual Prisoner Searches

- a. Where prisoners identify themselves as being transsexual, or members have reasonable grounds to believe that the prisoner is of the opposite sex to which they appear, transporting members or jail staff shall ensure that the jail NCO, jail Constable Intake Officer, or designate is notified of that information prior to leaving the prisoner at the jail.
- b. If the prisoner is to be strip searched and the NCO or designate is satisfied that the prisoner is a transsexual person, the prisoner may choose the gender of the person who will conduct the search. The prisoner may also choose to have a "split search."

- c. If the jail NCO or designate is uncertain as to whether the prisoner's claim of being transsexual is legitimate they may ask the following question in order to make a determination as to the legitimacy of the claim:
 - i. What name appears on your identity documents?
 - ii. What is your gender identity?
 - iii. Have you disclosed your gender identity to your friends and/or family?
 - iv. What steps are you taking to live full-time in a manner consistent with your gender identity? How can you demonstrate that you are living full-time in your gender identity?
 - v. Have you sought or are you seeking medical or professional guidance from a qualified professional? If so, can you give me the names of these people and their professional designations?
 - vi. What medical steps, if any, have you taken to help your body match your gender identity?
- d. The jail NCO or designate shall make the final determination as to whether the prisoner's claim is legitimate.

[263] Inspector de Haas' testimony recognized that the policy concerned the legitimacy of a transgender person's claim of trans status. His understanding was that the policy existed to help officers determine whether a person's transgender status is legitimate, and that the practice in the Vancouver jail, while derived from the policy, expanded a little on the questions to determine legitimacy to a trans claim.

[264] Inspector de Haas testified that these principles apply to both pat and strip-searches. There was some evidence that the policy was not always observed but I did not find any impact of such failures on Ms. Dawson in respect to the six incidents.

[265] As noted above, I make no findings that the search policy constitutes systemic discrimination.

VII APPLICABILITY OF A POLICY RELEASED BY THE ONTARIO HUMAN RIGHTS COMMISSION REGARDING DISCRIMINATION ON THE BASIS OF GENDER IDENTITY

[266] VPB submits that Ms. Dawson's reliance on this document is inappropriate, in the circumstances, as it was not introduced into evidence at the hearing, despite having been released by the Commission prior to the hearing dates. VPB submits that the Ontario policy is neither evidence of discrimination against Ms. Dawson nor a legal authority.

[267] I agree. While the findings in Ontario may be of interest to the VPB when they develop policies and training for their officers to reduce discrimination against trans people, I find that they are not material in this case. I have had no regard to the findings.

VIII REMEDIES

[268] Section 37(2) of the *Code* provides for remedies as follows:

- (2) If the member or panel determines that the complaint is justified, the member or panel
 - (a) must order the person that contravened this Code to cease the contravention and to refrain from committing the same or a similar contravention,
 - (b) may make a declaratory order that the conduct complained of, or similar conduct, is discrimination contrary to this Code,
 - (c) may order the person that contravened this Code to do one or both of the following:
 - (i) take steps, specified in the order, to ameliorate the effects of the discriminatory practice;
 - (ii) adopt and implement an employment equity program or other special program to ameliorate the conditions of disadvantaged individuals or groups if the evidence at the hearing indicates the person has engaged in a pattern or practice that contravenes this Code, and
 - (d) if the person discriminated against is a party to the complaint, or is an identifiable member of a group or class on behalf of which a complaint is filed, may order the person that contravened this Code to do one or more of the following:

- (i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the member or panel, the person was denied contrary to this Code;
- (ii) compensate the person discriminated against for all, or a part the member or panel determines, of any wages or salary lost, or expenses incurred, by the contravention;
- (iii) pay to the person discriminated against an amount that the member or panel considers appropriate to compensate that person for injury to dignity, feelings and self-respect or to any of them.

[269] I have found that Angela Dawson was discriminated against with her treatment by the VPB on March 29-30 when she was in custody and her concerns about undergoing her post-operative procedure of dilating were virtually ignored but, in any event, not seriously considered. She also had those concerns on June 18 but was not as vocal about them in the jail.

[270] I also find that, when Ms. Dawson was referred-to with male pronouns in the report of the occurrence on June 18, 2010, it amounted to discrimination on the basis of sex. Notwithstanding that her legal name was Jeffrey, she advised the officers that she was a transsexual female and was not treated as such. I declare that the conduct complained of is discrimination contrary to this *Code*. I order that:

- The VPB cease the contraventions and to refrain from committing the same or a similar contravention.
- VPB pay Ms. Dawson the sum of \$15,000 as damages for injury to dignity, feelings and self-respect.

[271] I find that the manner in which trans people are identified and dealt-with concerning their identity amounts to systemic discrimination on the part of VPB. In accordance with s. 37(2)(c), I order:

- Within the next year, that the VPB adopt policies that recognize and prevent discrimination of identification of trans people with whom the VPB deals, such that accommodations be made up to the point of undue hardship.
- That VPB officers are trained in how to implement such policies.

IX CONCLUSION

[272] The Complaint of Ms. Dawson concerning the six incidents is dismissed except for:

- The Complaint concerning the medical treatment she received while incarcerated March 29-30 and June 18 is upheld.
- When the VPB referred to Ms. Dawson as male, it discriminated against her, particularly with respect to the incident on June 18, 2010.

[273] Further to my authority under s. 37 of the *Code*, I order that:

- The VPB cease the contraventions and refrain from committing the same or a similar contravention.
- The VPB pay Ms. Dawson the sum of \$15,000 as damages for injury to dignity, feelings and self-respect.
- The VPB has engaged in systemic discrimination of trans people concerning their identification. Within one year, policies are to be adopted by VPB that allow identification of trans people without discrimination. Officers are to be trained in implementation of these policies.

Catherine McCreary, Tribunal Member