Federal Court Cour fédérale

Date: 20150812

Docket: T-2115-14

Citation: 2015 FC 965

Ottawa, Ontario, August 12, 2015

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

JEAN JAMES

Applicant

and

CANADA (ATTORNEY GENERAL)

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 18 of the *Federal Courts Act*, RSC 1985, c F-7 for judicial review of the decision of an Acting Senior Deputy Commissioner [Deputy Commissioner] with Correctional Services Canada [CSC], dated July 30, 2014 [Decision], which denied the Applicant's third level grievances under CSC's offender complaints and grievances process.

II. BACKGROUND

[2] The Applicant is an inmate at the Fraser Valley Institution. She began serving a life sentence for first-degree murder on November 4, 2011.

[3] The Applicant has been married to her husband for over forty years. They have one adult son.

[4] The Applicant first applied to the Private Family Visit [PFV] program in early 2012.

[5] On April 4, 2013, a parole officer completed a Community Assessment. The parole officer determined that the Applicant's husband and son were suitable candidates for the PFV program.

[6] On April 20, 2013, the Applicant's case management team [CMT] conducted an Assessment for Decision [A4D]. The CMT determined that the Applicant was an unsuitable candidate for the PFV program because of the "unmanageable" risk of family violence. The A4D outlined a number of factors that contributed to the Applicant being an unsuitable candidate (Certified Tribunal Record [CTR] at 57-58):

> Ms. JAMES was not scored on the Statistical Information on Recidivism – Revised 1 (SIR-R1) scale, as this tool has not been validated for use with female offenders. A CPIC review indicates no confirmed reports of domestic violence requiring police intervention. However, according to a Family Violence Risk Assessment completed 2012-02-09, Ms. JAMES is a suspected perpetrator of spousal assault. File information indicates that Ms. JAMES can be volatile when angry and she has allegedly been observed throwing things at her husband in a state of rage. File

information also indicates that Ms. JAMES' husband stayed in the marital relationship as he was afraid of Ms. JAMES; that is, he was scared to leave her. Ms. JAMES' husband's suspected marital infidelities allegedly culminated in Ms. JAMES making enquiries about murdering her husband with poison. She also allegedly made enquiries about obtaining a gun, which she would use to shoot and kill her husband. While family violence has been identified as a factor in the Correctional Plan, Ms. JAMES has yet to address this need area through programming, which is concerning to the writer in the context of this assessment for decision.

It is notable, however, that Ms. JAMES and her husband both deny any violence in their relationship. There is no provincial or federal institutional suspicion or evidence of abusive, threatening or controlling behaviour by Ms. JAMES towards family members during telephone calls or visits. It is also notable that Ms. JAMES lived with her husband for over 16 years post-index offence, and not only did she not kill her husband (notwithstanding the above-noted alleged enquiries made about killing her husband). Having said this, Ms. JAMES is now serving a life (25) sentence for an offence ostensibly related to her husband's marital infidelity with the victim. Ms. JAMES appears to have lived those 16-plus post-index offence years with her husband with the belief that she would not be held responsible for the murder of her friend. Ms. JAMES, therefore, had every reason to avoid the suspicion of police that surely would have arisen if her husband had also died as a result of foul play. This is apparent in light of the fact that, in 1992, Ms. JAMES was arrested (and later released) after becoming a prime suspect in the murder that she was ultimately convicted of in 2011.

What cannot be denied for the purpose of this risk assessment is the fact that Ms. JAMES was found guilty, beyond any reasonable doubt, of the pre-meditated first-degree murder of her former friend. This murder was particularly cruel and heinous in its execution; for example, the victim sustained myriad wounds from a sharp-bladed instrument and was nearly decapitated in the fatal attack. The damage inflicted upon the victim far exceeded what was necessary to meet the goal of murdering the victim. As such, Ms. JAMES has a confirmed history of pre-meditated violent behaviour against a person. Moreover, it is particularly concerning to the writer that Ms. JAMES has not yet begun the process of addressing her criminogenic factors through programming; that is, Ms. JAMES is currently an untreated violent offender. According to her Correctional Plan, "Until such time as Ms. JAMES is able to be accountable for her offence and become engaged in her

> correctional plan meaningfully, the level of risk for violence will remain High."

[7] The A4D also noted that the Applicant had allegedly attempted to contract out the assault of one or more inmates at the Fraser Valley Institution and that the Applicant was suspected of tampering with inmates' food. The A4D also referenced the Applicant's escape risk. While the risk remained low, the Applicant had been investigated for making inquiries into obtaining a fake passport.

[8] The Applicant denies all of the suspicions and allegations. She says that she has never been violent towards her husband or her son. She believes that the allegations come from family members who suffer from dementia or from whom she is estranged.

[9] On April 23, 2013, a Visits Review Board denied the Applicant's PFV application.

[10] In early May 2013, the Applicant submitted a rebuttal to the Visits Review Board's decision.

[11] On June 10, 2013, the Applicant requested that the allegations of domestic violence be removed from her file. The Applicant was advised that she had submitted the request on the wrong form. The Applicant grieved this response.

[12] On June 24, 2013, the Fraser Valley Institution Warden [Warden] wrote a memorandum upholding the Visits Review Board's decision to deny the Applicant's application to participate

in the PFV program. This memorandum referenced the domestic violence allegations and noted that the Applicant had presented no new information to suggest that she was no longer at risk for family violence.

[13] Sometime before July 2013, the Applicant submitted a request to her Primary Worker to remove the allegations in the A4D that she had tampered with inmates' food and had attempted to contract the assault of another inmate because they were not true.

[14] On July 12, 2013, the Applicant's Primary Worker prepared a memorandum. The Primary Worker denied her request because the A4D referred to suspicions or allegations and noted that the Applicant had denied the allegations. The Primary Worker refused to amend the A4D because the statements did not suggest absolute statements of truth.

[15] On July 31, 2013, the Applicant submitted a written complaint in response to the memorandum [Complaint 11689]. She asked that the file be corrected so that her file information was accurate and up-to-date.

[16] On September 2, 2013, the Applicant was notified that the complaint was denied. However, the decision-maker said that a memorandum would be added to the Applicant's file to explain the results of the investigations into the allegations to clarify their validity.

[17] On September 9, 2013, the Applicant submitted a first level grievance [First Level Grievance 11689]. The Applicant reiterated her complaints about the allegations relating to food

tampering and the assault contract. She also raised an issue about the inclusion of the family violence allegations in the A4D.

[18] On September 12, 2013, the Applicant submitted a complaint about the Visits Review Board's decision to deny her access to the PFV program [Complaint 12301]. The Applicant reaffirmed her position that there had never been any family violence and that the decision was based on incorrect information. She also relied on the fact that there had never been any issues during her husband's many visits to the Fraser Valley Institution. The Applicant asked that she be reassessed for participation in the PFV program.

[19] On September 22, 2013, the Applicant submitted a first level grievance challenging the Warden's decision to uphold her denial into the PFV program [First Level Grievance 12459].

[20] On September 27, 2013, the Applicant elevated First Level Grievance 12459 to a second level grievance [Second Level Grievance 12459].

[21] On October 3, 2013, the Applicant received a response to First Level Grievance 11689. It stated that the Applicant's grievance was denied because the appropriate policy had been followed in declining to remove information from the Applicant's file. It also noted that the follow-up memorandum had already been added to her file to clarify the allegations.

[22] On October 11, 2013, the Applicant was notified that Complaint 12301 was denied.

[23] On October 12, 2013, the Applicant elevated First Level Grievance 11689 to a second level grievance [Second Level Grievance 11689].

[24] On October 23, 2013, the Applicant elevated Complaint 12301 to a first level grievance [First Level Grievance 12301].

[25] On November 1, 2013, the Applicant received a response to both Second Level Grievance 12459 and Second Level Grievance 11689. The Applicant's Second Level Grievance 11689 was upheld in part. The Warden agreed to amend the A4D to note that a formal correction to the allegations had been requested.

[26] On November 19, 2013, the Applicant elevated Second Level Grievance 12459 to a third level grievance [Third Level Grievance 12459]. This grievance combined elements of Complaint 12301 and First Level Grievance 12301. The Applicant reiterated that she had wrongly been denied access to the PFV program, and she complained that the appropriate policy had not been adhered to. She highlighted the fact that she had never been violent towards her husband, that there were no security concerns arising from her husband's many visits to the Fraser Valley Institution, that her behaviour at the Fraser Valley Institution had been exemplary, and that the decision was based on incorrect information. The Applicant also said that she had asked for more information about programming but had received "little to no information about the context of the program, the scope of the program, or the process for navigating those who are on Appeal." The Applicant asked that she be reassessed and given access to the PFV program.

[27] On November 19, 2013, the Applicant also elevated First Level Grievance 12301 to a second level grievance [Second Level Grievance 12301].

[28] On November 21, 2013, the Applicant was advised that First Level Grievance 12301 had been denied.

[29] On November 26, 2013, the Applicant elevated Second Level Grievance 12301 to a third level grievance [Third Level Grievance 12301].

[30] On December 6, 2013, the Applicant was advised to expect a response to Third Level Grievance 12301 at the end of the March 2014. The Applicant ultimately received two further letters extending the expected completion date because Third Level Grievance 12301 required further investigation.

[31] On February 26, 2014, the Applicant was advised to expect a response to Third Level Grievance 12459 in early April 2014. The Applicant ultimately received a further letter extending the expected completion date because Third Level Grievance 12459 required further investigation.

[32] On August 1, 2014, the Applicant's counsel asked that responses to Third Level Grievances 12301 and 12549 be provided immediately because the delay was prejudicial to the Applicant. The Applicant says that the delay caused her and her family stress and anxiety.

[33] The Applicant was provided copies of the responses to Third Level Grievances 12301 and 12459 on September 15, 2014.

III. DECISION UNDER REVIEW

[34] On July 30, 2014, the Deputy Commissioner denied the Applicant's grievances. The Deputy Commissioner responded simultaneously to Third Level Grievance 12301 and Third Level Grievance 12459 because they contained overlapping issues, in accordance with s 24 of the Commissioner's Directive 081 [CD 081]. It appears that Second Level Grievance 11689 was also reviewed because it was considered a related subject matter.

[35] In Third Level Grievances 12459 and 12301, the Applicant had complained that her PFV application was improperly denied because the policy had not been adhered to. She said there were no security concerns so there was no reason to believe that security concerns would arise during a PFV. In Third Level Grievance 12301, the Applicant had also complained that she had never received copies of her correctional plan and criminal profile report. She said that she did not recall meeting with her Primary Worker to conduct the criminal profile assessment. She also complained that she had not received information regarding programming.

[36] The Deputy Commissioner first addressed the rationale for denying the application for the PFV program. She agreed that there were no security concerns and no reason to believe that security concerns would arise during a PFV. She also acknowledged that the Community Assessment had determined that both the Applicant's husband and son were positive sources of support and were considered suitable candidates for the PFV program.

[37] The Deputy Commissioner also reviewed the A4D. She said that the purpose of the A4D was to determine the Applicant's eligibility to participate in PFVs in accordance with the eligibility criteria in s 8(a) of the Commissioner's Directive 710-8 [CD 710-8]. She noted that the A4D indicated that the Applicant is serving a life sentence for a particularly brutal murder. She noted that both the Applicant and her husband deny any violence in their relationship and that there is no institutional suspicion or evidence of abusive behaviour during the Applicant's husband's regular visits and phone calls. The Deputy Commissioner noted that, despite these positive factors, the Applicant's intake assessment indicated that she had a high need for improvement in the marital/ familial domain. Her Family Violence Risk Assessment also indicated that she was suspected of being a perpetrator of spousal assault. She can be volatile when angry and has allegedly been observed throwing things at her husband in a state of rage.

[38] The Applicant's Correctional Plan also indicated that she is required to participate in the Women Offender Correctional Program – both moderate and high intensity – to address her risk factors. She is required to successfully complete the recommended programming to address her history of abusive relationships prior to participating in PFVs with her husband. However, the Applicant has refused to participate in any programming. As a result, the Applicant is an untreated violent offender. The Correctional Plan indicates that she will be at a high risk of violence until she is accountable for her offence and becomes meaningfully engaged in her Correctional Plan.

[39] The Deputy Commissioner also pointed to the A4D's reference to the Applicant's escape risk. She has been investigated for making inquiries into obtaining a fake passport. With the

length of her sentence, there are concerns about her risk of escape if an opportunity presented itself.

[40] Ultimately, the Applicant's CMT determined that her risk for family violence was unmanageable in a PFV. The Applicant has yet to participate in any correctional programs. The Deputy Commissioner acknowledged that the Applicant denies any history of family violence; however, she said that s 3.1 of the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA] dictates that "the protection of society is the paramount consideration." As a result, CSC is required to consider all of the information in the Applicant's file. The Deputy Commissioner invited the Applicant to submit a file correction form if she believes there are any errors in her file.

[41] The Deputy Commissioner concluded that the Applicant was appropriately denied participation in the PFV because she is an untreated violent offender due to her refusal to participate in any programming. This portion of the grievance was denied.

[42] The Deputy Commissioner also reviewed the Applicant's grievances relating to information and records that she says she never received. However, the Applicant does not challenge these decisions on judicial review and so these portions of the Decision will not be reviewed.

IV. ISSUES

[43] The Applicant raises the following issues in this proceeding:

1. Did the Deputy Commissioner err in law by delaying her decision with regard to the Applicant's third level grievance for an unjustifiable period of time and without adequate explanation?
2. Did the Deputy Commissioner render an unreasonable decision in denying the Applicant permission to participate in the PFV program?
3. Did the Deputy Commissioner err by failing to conduct an independent and *de novo* assessment of the Applicant's grievance?

V. STANDARD OF REVIEW

[44] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[45] The Applicant says that the first issue involves breaches of procedural fairness and is reviewable on a standard of correctness: *Dunsmuir*, above, at paras 55, 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*]; *Hall v Canada (Attorney General)*,

2013 FC 933 at para 24 [*Hall*]. The second issue concerns the merits of the Decision and is reviewable on a standard of reasonableness: *Dunsmuir*, above, at paras 51-53; *Hall*, above, at paras 21-22. The third issue respecting the Deputy Commissioner's error in conducting an independent and *de novo* assessment is reviewable on a standard of reasonableness: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 30; *Hall*, above, at paras 21-22. The Respondent agrees with the Applicant's submissions on the standard of review for all three issues.

[46] The Court concurs. The first issue raises a question of procedural fairness and will be reviewed on a standard of correctness: *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Exeter v Canada (Attorney General)*, 2014 FCA 251 at para 31. The second and third issues raise questions of mixed fact and law and are reviewable on a standard of reasonableness: *Dunsmuir*, above, at para 53; *Johnson v Canada (Attorney General)*, 2008 FC 1357 at paras 35-39, rev'd in part on other grounds 2011 FCA 76.

[47] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": see *Dunsmuir*, above, at para 47; *Khosa*, above, at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[48] The following provisions of the CCRA are applicable in this proceeding:

Purpose of correctional system	**But du système correctionnel**
3. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by	3. Le système correctionnel vise à contribuer au maintien d'une société juste, vivant en paix et en sécurité, d'une part, en assurant l'exécution des peines par des mesures de garde et de surveillance sécuritaires et humaines, et d'autre part, en aidant au moyen de programmes appropriés dans les pénitenciers ou dans la collectivité, à la réadaptation des délinquants et à leur réinsertion sociale à titre de citoyens respectueux des lois.
[…]	[…]
(b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.	
Paramount consideration	**Critère prépondérant**
3.1 The protection of society is the paramount consideration for the Service in the corrections process.	3.1 La protection de la société est le critère prépondérant appliqué par le Service dans le cadre du processus correctionnel.
Principles that guide Service	**Principes de fonctionnement**
4. The principles that guide the Service in achieving the	4. Le Service est guidé, dans l'exécution du mandat visé à

purpose referred to in section 3 are as follows:

[…]

(d) offenders retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted;

[…]

l'article 3, par les principes suivants :

[…]

d) le délinquant continue à jouir des droits reconnus à tout citoyen, sauf de ceux dont la suppression ou la restriction légitime est une conséquence nécessaire de la peine qui lui est infligée;

[…]

Accuracy, etc., of information

24. (1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible.

Exactitude des renseignements

24. (1) Le Service est tenu de veiller, dans la mesure du possible, à ce que les renseignements qu'il utilise concernant les délinquants soient à jour, exacts et complets.

Correction of information

2) Where an offender who has been given access to information by the Service pursuant to subsection 23(2) believes that there is an error or omission therein,

(a) the offender may request the Service to correct that information; and

(b) where the request is refused, the Service shall attach to the information a notation indicating that the offender has requested a correction and setting out the correction requested.

Correction des renseignements

(2) Le délinquant qui croit que les renseignements auxquels il a eu accès en vertu du paragraphe 23(2) sont erronés ou incomplets peut demander que le Service en effectue la correction; lorsque la demande est refusée, le Service doit faire mention des corrections qui ont été demandées mais non effectuées.

[…]

Contacts and visits

71. (1) In order to promote relationships between inmates and the community, an inmate is entitled to have reasonable contact, including visits and correspondence, with family, friends and other persons from outside the penitentiary, subject to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons.

[…]

Grievance procedure

90. There shall be a procedure for fairly and expeditiously resolving offenders' grievances on matters within the jurisdiction of the Commissioner, and the procedure shall operate in accordance with the regulations made under paragraph 96(u).

[…]

Rapports avec l'extérieur

71. (1) Dans les limites raisonnables fixées par règlement pour assurer la sécurité de quiconque ou du pénitencier, le Service reconnaît à chaque détenu le droit, afin de favoriser ses rapports avec la collectivité, d'entretenir, dans la mesure du possible, des relations, notamment par des visites ou de la correspondance, avec sa famille, ses amis ou d'autres personnes de l'extérieur du pénitencier.

[…]

Procédure de règlement

90. Est établie, conformément aux règlements d'application de l'alinéa 96u), une procédure de règlement juste et expéditif des griefs des délinquants sur des questions relevant du commissaire.

[49] The following provisions of the *Corrections and Conditional Release Regulations*, SOR/92-620 [Regulations] are applicable in this proceeding :

80. (1) If an offender is not satisfied with a decision of the institutional head or director of the parole district respecting their grievance, they may appeal the decision to the Commissioner.	80. (1) Lorsque le délinquant est insatisfait de la décision rendue au sujet de son grief par le directeur du pénitencier ou par le directeur de district des libérations conditionnelles, il peut en appeler au commissaire.
(3) The Commissioner shall give the offender a copy of his or her decision, including the reasons for the decision, as soon as feasible after the offender submits an appeal.	(3) Le commissaire transmet au délinquant copie de sa décision motivée aussitôt que possible après que le délinquant a interjeté appel.
[…]	[…]
91. (1) Subject to section 93, the institutional head or a staff member designated by the institutional head may authorize the refusal or suspension of a visit to an inmate where the institutional head or staff member believes on reasonable grounds	91. (1) Sous réserve de l'article 93, le directeur du pénitencier ou l'agent désigné par lui peut autoriser l'interdiction ou la suspension d'une visite au détenu lorsqu'il a des motifs raisonnables de croire :
(a) that, during the course of the visit, the inmate or visitor would	a) d'une part, que le détenu ou le visiteur risque, au cours de la visite :
(i) jeopardize the security of the penitentiary or the safety of any person, or	(i) soit de compromettre la sécurité du pénitencier ou de quiconque,
(ii) plan or commit a criminal offence; and	(ii) soit de préparer ou de commettre un acte criminel;
(b) that restrictions on the manner in which the visit takes place would not be adequate to control the risk.	b) d'autre part, que l'imposition de restrictions à la visite ne permettrait pas d'enrayer le risque.

(2) Where a refusal or suspension is authorized under subsection (1),	(2) Lorsque l’interdiction ou la suspension a été autorisée en vertu du paragraphe (1) :
(a) the refusal or suspension may continue for as long as the risk referred to in that subsection continues; and	a) elle reste en vigueur tant que subsiste le risque visé à ce paragraphe;
(b) the institutional head or staff member shall promptly inform the inmate and the visitor of the reasons for the refusal or suspension and shall give the inmate and the visitor an opportunity to make representations with respect thereto.	b) le directeur du pénitencier ou l’agent doit informer promptement le détenu et le visiteur des motifs de cette mesure et leur fournir la possibilité de présenter leurs observations à ce sujet.

VII. ARGUMENT

A. *Applicant*

(1) Delay

[50] The Applicant submits that the unjustified delays in making and communicating the Decision were not fair or effective and breached the rules of natural justice and her right to procedural fairness: *Cardinal v Director of Kent Institution*, [1985] 2 SCR 643 at 653. The delay also violated her security of the person and did not accord with the principles of fundamental justice contrary to s 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982 c 11 [*Charter*].

[51] The CCRA and the Regulations require that grievances be resolved expeditiously and that decisions be rendered as soon as practicable: CCRA, s 90; Regulations, s 80. In addition, CD 081

specifics that decisions will be rendered within eighty working days, failing which the offender will be notified of the reason for the delay and provided with an expected completion date.

[52] The Applicant's grievance took three times as long. The Applicant received the Decision approximately nine months after she submitted the grievances and one year after she filed her first level grievance. The Applicant complains that the consultations completed on her file appear to consist simply of emails being sent back and forth. She says that each letter notifying her to expect a delay said that time was required to perform a thorough analysis but that no such analysis was taking place. She also complains that there are periods of two and a half and three months where nothing appears to have been done on her file.

[53] The content of the duty of fairness varies according to the five factors set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817; see also *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48 at para 5. The Applicant says that her participation in the PFV program is of the utmost importance to her. She is a senior citizen in a long-term stable marital relationship. The Decision goes to the core of her personal dignity and security of the person. Her family legitimately expected a decision in accordance with CSC's timeframes. She says the delay has resulted in serious psychological distress and anxiety to herself and her family in a way that infringed her *Charter* right to security of the person: *Charter*, s 7; *Boeyen v Canada (Attorney General)*, 2013 FC 1175 at paras 140-148.

(2) Unreasonable Decision

[54] The Applicant submits that the Decision does not fall within the range of possible outcomes and is not defensible in light of the facts and law.

[55] The discretion for making PFV decisions is set out in CD 710-8 and the Standard Operating Practice 700-12. They provide that inmates are eligible for the PFV program unless they are:

a. At risk for family violence;

b. Participating in unescorted temporary absences for family contact purposes;

c. In a special handling unit;

d. Recommended or approved for transfer to a special handling unit; or,

e. In a disciplinary segregation at the time of the scheduled family visit.

[56] The Applicant says that she does not fall within any of the exceptions. The Decision was based upon other factors and so is unreasonable.

[57] First, the Applicant says that the evidence supports her claim that she has never been involved in spousal or family violence. There is no institutional suspicion or evidence of abusive behaviour in any of the Applicant's visits or phone calls with her husband. She has never been charged with or convicted of an offence involving spousal or familial violence. There is no evidence to support the allegation that the Applicant was observed throwing things at her husband. It is not clear when the event is said to have taken place or whether anyone made any

inquiries to determine the details or accuracy of the information. The Applicant's husband and son have also denied any violence in the family.

[58] Second, the Applicant says that CSC has not taken all reasonable steps to ensure that the information in her file is accurate, up-to-date and as complete as possible: CCRA, s 24. The Decision should have assessed whether the Applicant currently poses a risk of spousal violence on the proven facts. The Deputy Commissioner should have conducted a *de novo* review to determine whether it was reasonable to rely upon the allegations in the A4D because the Applicant disputes the allegations. The Decision is supposed to assess her current risk of family violence but there is no evidence of any current concerns. There is simply a bare suspicion of past violence. The Applicant acknowledges that the murder she was convicted of was violent, but she says that it was nearly twenty-five years ago and there are no other proven allegations of violence. In addition, there is no suggestion in any of the documents or allegations that the Applicant poses a risk to her son, and yet the request to have PFVs with her son was also denied.

[59] Third, the Decision refers to the Applicant's escape risk, but CD 710-8 does not provide risk of escape as a basis upon which to deny a PFV application. Regardless, the conclusion is unreasonable and is not based on any information that was before the Deputy Commissioner. It is clear from the A4D that the escape risk was not considered a serious risk.

[60] Fourth, the Decision refers the Applicant to the file correction process to address her concerns about the allegations of spousal violence but had the Deputy Commissioner seriously reviewed the entire file, she would have seen the Applicant's efforts to have the file information corrected.

[61] Fifth, the Applicant says it is unreasonable to deny her participation in the PFV because she has not participated in programming for domestic violence. This is unreasonable because there is no evidence that she has ever committed acts of domestic violence. The Applicant points to the Court's decision in *Edwards v Canada (Attorney General)*, 2003 FC 1441 [*Edwards*] where the Court found it was unreasonable to deny an inmate access to PFVs until he completed a sex offender assessment when he had never been convicted of a sexual offence.

(3) *De Novo* Hearing

[62] The Applicant says that the Deputy Commissioner erred in failing to conduct a *de novo* hearing in relation to her complaint that she be permitted to participate in the PFV program. The Court has held that each level of the grievance procedure is to be conducted as a hearing *de novo* in which the grievor is entitled to have her grievance heard afresh and to present new evidence: *Hall*, above, at para 35; *Riley v Canada (Attorney General)*, 2011 FC 1226 at para 21 [*Riley*]; *Tyrrell v Canada (Attorney General)*, 2008 FC 42 at paras 37-38 [*Tyrrell*]. The Deputy Commissioner erred in simply reviewing the Warden's decision and response to the Applicant's rebuttal: *Hall*, above. She failed to consider the Applicant's submissions regarding the lack of compelling information regarding any history of family violence. If the Deputy Commissioner had actually reviewed the evidence in light of the Applicant's submissions, she would have been confronted with the lack of substantiated evidence in regards to the domestic violence issue. The Deputy Commissioner also failed to consider whether the Applicant is currently at risk of committing family violence given her history of exemplary family visits.

[63] The Applicant asks that the Deputy Commissioner's Decision be quashed and for a declaration that the grievance procedure in this case was not fair or effective due to the unjustified delays, a declaration that the delays infringed the her s 7 *Charter* rights, and an order of *mandamus* to order CSC to provide the Applicant with access to the PFV program.

B. *Respondent*

(1) Procedural fairness

[64] The Respondent submits that the delay in completing the final grievance does not constitute a breach of procedural fairness. The duty owed to the Applicant is on the low end of the spectrum: *Sweet v Canada (Attorney General)*, 2005 FCA 51 at paras 34, 37; *Yu v Canada (Attorney General)*, 2009 FC 1201 at para 27. It is an administrative decision and the impact on the Applicant is moderate because she can re-apply for PFVs.

[65] The Applicant complains about periods of time where nothing was done on her file, but the record reveals that the analyst was reviewing the claim, analyzing the underlying documentation and investigating the issues before determining what further information she required to respond to the grievances. The grievance response was then reviewed by the analyst's manager and director, after which it was submitted to the Deputy Commissioner for a final decision.

[66] CD 081 provides that high-priority grievances will be answered in sixty days. However, where further time is required to adequately respond to a grievance, the grievor may be notified of the delay and the reasons for the delay. In accordance with CD 081, the Applicant was

informed of each delay and the reasons for each delay. The delay did not render the process unfair: *Ouellette v Canada (Attorney General)*, 2012 FC 801 at para 28; *Wilson v Canada (Attorney General)*, 2012 FC 57 at paras 17-18; *Gallant v Canada (Attorney General)*, 2011 FC 537 at paras 19-22. The Applicant was consistently informed of the need for additional time to provide a decision and the reasons for the same. Her submissions were fully considered and answered through the grievance process.

(2) *De Novo* Hearing

[67] The Respondent agrees that a *de novo* review is required at each stage of the grievance process; however, a *de novo* review of an institutional head's decision is not always required. Section 91 of the Regulations provides that the institutional head, or his or her delegate, is responsible for decisions relating to visits. See also CD 710-8, s 20. The Deputy Commissioner cannot determine the Applicant's PFV application anew because it would usurp the institutional head's authority as provided for under the statute. As a result, it was reasonable for the Deputy Commissioner to give deference to the review board and the Warden's decision to deny the Applicant's PFV application and to focus on whether the decision complied with law and policy: *Spidel v Canada (Attorney General)*, 2012 FC 54 at para 30.

[68] The Respondent distinguishes the case law that the Applicant relies upon. In *Hall*, the governing legislation did not exclusively grant the power to make transfer decisions to the institutional head. The authority was granted to CSC generally. Consequently, the commissioner in *Hall* was statutorily empowered to make a decision on the transfer request anew. Similarly, the decisions in *Tyrrell* and *Riley* simply stand for the proposition that the grievance process

requires each subsequent decision-maker within the grievance process to review each grievance in a *de novo* manner. The decision-maker must apply an independent analysis to all of the information before him or her, including any new evidence: *Tyrrell*, above, at paras 37-38; *Riley*, above, at para 21. It is insufficient for each subsequent decision-maker to simply agree with the decision below.

[69] The Deputy Commissioner did not simply review the decisions of the lower level grievance decision-makers. She conducted an independent analysis based on a comprehensive review of the information before her. It is clear that the Deputy Commissioner placed greater weight on the A4D, the Applicant's need to complete programming, and the need for CSC to give paramount consideration to the protection of society. It is apparent that the Deputy Commissioner conducted a *de novo* assessment of the previous grievance proceedings but properly declined to substitute her own decision for that of those who are statutorily empowered to make the decision.

(3) Reasonableness

[70] The Respondent submits that the Decision is reasonable. The Deputy Commissioner properly applied the applicable criteria to the facts of the Applicant's case. Corrections officials must make decisions in keeping with the paramount principle of protecting society. CD 710-8 provides risk of family violence as a ground to refuse a PFV application.

[71] The Deputy Commissioner properly considered all of the evidence and submissions before her. It was reasonable for the Deputy Commissioner to note that CSC must consider all

file information, including information of suspected spousal or familial violence, the Applicant's Correctional Plan, and programming taken to date. The record shows that an analyst at the final grievance stage investigated the information on the Applicant's suspected involvement in spousal assault and confirmed that the source of the information was police reports and other individuals recorded in her file. The Applicant's argument essentially amounts to saying that the Deputy Commissioner should have put greater weight on her family's statements and the history of visits, but the Deputy Commissioner was entitled to review all of the evidence. A disagreement with the weight given to evidence does not render the Deputy Commissioner's decision unreasonable. The Court cannot reweigh the evidence on judicial review: *Khosa*, above, at paras 25, 59-63, 67.

[72] The Respondent also distinguishes the *Edwards*, above, proceeding. Not only had Mr. Edwards never been convicted of a sexual offence, he had also not been assessed as being at risk of sexual violence. In contrast, the Applicant's risk factors related to her offence are linked to the marital/ familial domain. Her Correctional Plan specifically identifies family violence as a high needs area to address through core programming. It was reasonable for the Deputy Commissioner to emphasize the Applicant's need to complete programming to address the risk of becoming involved in family violence prior to participating in a PFV: *Russell v Canada (Attorney General)*, 2007 FC 1162 at para 21. The Applicant claims that she wishes to complete her appeal before participating in programming, but her application for leave to appeal to the Supreme Court of Canada was refused in May 2013: *R v James*, 2013 BCCA 11, leave to appeal to SCC refused, 35252 (May 16, 2013).

[73] There is also no merit to the Applicant's complaint that the Deputy Commissioner concluded that the Applicant is an escape risk. The Deputy Commissioner simply reviewed all of the information before her and referred to the escape risk documented in the A4D as a concern raised by a security intelligence officer. Regardless, this was not a determinative, or significant, issue in determining the Applicant's grievance.

(4) Remedies

[74] The Respondent says that should the Court grant the Applicant's application for judicial review, the appropriate remedy is to send the matter back for reconsideration.

[75] There is no evidence upon which the Court could grant a declaration regarding the Applicant's *Charter* rights. She has conflated the issue of delay with the threshold issue of whether s 7 of the *Charter* is even engaged. The Court simply has a statement in the Applicant's affidavit that she has suffered stress, but there is no psychological or medical evidence before the Court to determine the s 7 *Charter* matter: *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at paras 46-48, 57 [*Blencoe*]; *Tyrrell*, above, at paras 23-24.

[76] The Applicant has not established that the necessary conditions exist for an order of *mandamus*. *Mandamus* requires a public duty to act clearly owed to the Applicant: *Apotex Inc v Canada (Attorney General)* (1993), [1994] 1 FC 742 (CA); *Kelly v Correctional Service of Canada (Pacific Region)* (1992), 56 FTR 166. The Decision at issue in this proceeding is subject to the Warden's discretion; *mandamus* cannot compel a particular result.

VIII. ANALYSIS

A. *Introduction*

[77] However it is dressed up, there is a fundamental issue at the heart of this application. Following her incarceration, the Applicant was assessed in the usual way and in her Correction Plan she was told that she required a "High Need for Improvement" in three (3) areas: Attitude; Personal Emotions; and Marital/Family. Specific programming was recommended so that she could address these issues and work towards reintegration. The Applicant has refused to take this programming. Obviously, this refusal was bound to cause a problem when she applied for PFVs.

[78] Everyone involved in this case appears to recognize that PFVs are crucial for the Applicant's reintegration into the community. However, that reintegration cannot begin until she confronts her issues and takes the programming recommended by her Correctional Plan (Applicant's Record at 205).

B. *Private Family Visits*

[79] The Decision states as follows (at 3):

> To address your dynamic factors, your Correctional Plan dated 2012-02-09 indicates that you are to participate in the Women Offender Correctional Program (WOCP) – Moderate Intensity, which focuses on all areas of a woman's life. Subsequent to completing the WOCP – Moderate Intensity Program, you are to complete the WCOP – High Intensity Program to further address your risk factors. As noted in the A4D, you would need to successfully complete recommended programming to address your history of abusive relationships prior to participation in PFVs with a partner; however, you have refused to participate in any recommended programming and, as such, you are an untreated violent offender. According to your Correctional Plan, until such time as you are able to be accountable for your offence and

> become meaningfully engaged in your Correctional Plan, the level of risk you present for violence will remain high.
>
> [Emphasis added]

[80] So the quickest way to PFVs for the Applicant could not be plainer. But she refuses to take it. Instead she has grieved the decision that has refused to grant her PFVs, and she now comes to the Court to have the Decision of the Deputy Commissioner reviewed by the Court. The essence of that Decision is fairly obvious given the Applicant's refusal to participate in the recommended programming (CTR at 6):

> Upon review of the above information, it has been determined that your application for participation in the PFV Program was appropriately denied as you have refused to participate in correctional programming and as a result you are considered to be an untreated violent offender. Therefore, the decision was rendered in accordance with section 3.1 of the *CCRA* [please see above] and paragraph 8(a) of CD 710-8 [please see above].
>
> In light of the above information, this portion of your grievance is **denied**.
>
> [Emphasis in original]

[81] The message could not be plainer. The Applicant needs to cooperate by taking the recommended programming so that she can qualify for PFVs that everyone thinks she requires to move towards reintegration.

[82] Rather than cooperate, the Applicant has chosen to grieve the refusals and to come before this Court to review the process she has been through and the Decision of the Deputy Commissioner. She says the Decision is unreasonable, that she was denied procedural fairness

because it took too long and her s 7 *Charter* rights were breached, and the Deputy Commissioner did not provide the kind of *de novo* review that the law requires in the circumstances.

C. *Reasonableness*

[83] The Applicant says that the Decision is unreasonable for several reasons:

a) The preponderance of the evidence supports the proposition that the Applicant has never been involved in any spousal or familial violence. Therefore, her failure to take the recommended programming should carry no weight in the final decision;

b) The Deputy Commissioner was obliged to assess the "current risk" of family violence and in this case there is no evidence of any current concerns and only a bare suspicion of past violence which has been unequivocally denied by the parties said to be involved (i.e. the Applicant's husband and son);

c) The Applicant is a seventy-five-year-old woman who was convicted of a violent murder of a non-family member. The offence occurred in 1992 when the Applicant was a considerably younger woman of fifty-three;

d) There is no suggestion in any document that the Applicant poses a risk to her son, and yet the Applicant is not permitted to have PFVs with him;

e) The Decision refers to the risk of escape as a basis for denying the Applicant's request for participation in the PFV Program and the Applicant cannot possibly be an escape risk;

f) The Applicant's case is similar to *Edwards*, above, where Mr. Edwards was denied PFVs because he refused to undergo a sex offender assessment which the

Court found unreasonable because Mr. Edwards had never been convicted of a sexual offence.

[84] Some of these grounds require little discussion. The escape risk was mentioned by the Deputy Commissioner as part of the review of the back file, but it was not used to deny the Applicant PFVs. As the Decision makes clear, she was refused PFVs because she refuses to take the recommended programming so that she remains an untreated violent offender.

[85] The Applicant's case is not similar to *Edwards*, above. The Applicant has not been convicted of a violent offence against a family member, but she has been convicted of a murder of a former friend which she carried out in a horrendously violent fashion, and where there is some suggestion of a connection between the victim and the Applicant's husband. The Applicant has shown herself to be capable of volatility that can manifest itself as extreme violence against another human being. The Applicant's husband and son are other human beings.

[86] The other issues raised are all related to what the Applicant calls "the preponderance of the evidence." This means they are questions of weight and it is not the job of the Court to reweigh evidence: see *Khosa*, above, at para 59. The Court can only interfere if the decision-maker has overlooked material evidence or taken evidence into account that is inaccurate or not material.

[87] In the present case, the Applicant says that there is just no evidence of family violence that could be used to deny her a positive PFV decision, particularly when it comes to her son.

She also points out that both her husband and son have themselves given evidence of an absence of such violence.

[88] It is clear from the Decision of the Deputy Commissioner that it is the Applicant's current status as an untreated violent offender that is examined, and it is violence against family members that is at issue. Current risk can only be assessed by looking at any evidence of past violence together with the Applicant's present status as a seventy-five-year-old incarcerated woman and her refusal to follow her Correctional Plan. The Deputy Commissioner also points out that the Applicant has presented no information to suggest that the risk had changed when the matter went before the Warden.

[89] A reading of the Decision makes it clear that the Deputy Commissioner was alive to and considered all of these matters. She points to the fact the husband and son were regarded as "positive sources of support" and were considered suitable candidates for the PFV program. She identifies that it is the risk of family violence (CD 710-8, s 8) that is the issue. She looks at the Applicant's history of past violence and points out that the index offence "was particularly brutal in nature." She acknowledges that both the Applicant and her husband denied any violence in their relationship and that "there was no provincial or federal institutional suspicion or evidence of abusive, or controlling behaviour by you towards family members during telephone calls." On the other hand, as documented in the A4D, during the Applicant's Intake Assessment she was assessed "as requiring a high need for improvement in the marital/family domain" and according to the Family Violence Risk Assessment completed on 2012-02-09 "you were a suspected perpetrator of spousal assault" and the "A4D indicated that you could be volatile when angry and that you had allegedly been observed throwing things at your husband in a state of rage." The

Deputy Commissioner also points out that "According to your Correctional Plan, until such time as you are able to be accountable for your offence and become meaningfully engaged in your Correctional Plan, the level of risk you present for violence will remain high."

[90] So the Applicant has been assessed as a volatile person (which she has not challenged before me) who is capable of extreme violence and who has refused to be accountable for her index offence and to meaningfully engage in the Correctional Plan. The suspicions of past family violence, which the Applicant and husband and son deny, are not without some evidentiary basis in the form of police reports and statements from other individuals recorded on file. The Applicant can deny all of this but the suspicion remains and the Deputy Commissioner was obliged to take it into account.

[91] Before me, the Applicant is essentially arguing that the Deputy Commissioner should have given more weight to the denial of family violence by the Applicant and her husband and son than to the other factors at play. I cannot see how the Deputy Commissioner could possibly have done this given the Applicant's refusal to become meaningfully engaged in her Correctional Plan and the evidence on the file record. The Applicant disagrees with the outcome of the weighing process, but it is obvious that the Decision itself is intelligible, transparent, and justifiable and falls within a range of possible acceptable outcomes which are defensible in respect of the facts and the law. See *Dunsmuir*, above, at para 47.

D. *Delay – Procedural Fairness*

[92] Even if the Decision was reasonable, the Applicant says that it was procedurally unfair and breached her s 7 *Charter* rights because of the delay in making it. She asserts that this delay caused her psychological stress, but there is no evidence before me as to what this means or how it was caused.

[93] In *Blencoe*, above, the Supreme Court of Canada had the following to say of relevance to the present case:

> [47] Section 7 of the *Charter* provides that "[e]veryone has the right to life liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Thus, before it is even possible to address the issue of whether the respondent's s. 7 rights were infringed in a manner not in accordance with the principles of fundamental justice, one must first establish that the interest in respect of which the respondent asserted his claim falls within the ambit of s. 7. These two steps in the s. 7 analysis have been set out by La Forest J. in *R. v Beare*, [1998] 2 S.C.R.387, at p. 401, as follows:
>
> > To trigger its operation there must first be a finding that there has been a deprivation of the right to "life, liberty and security of the person" and, secondly, that the deprivation is contrary to the principles of fundamental justice.
>
> Thus, if no interest in the respondent's life, liberty or security of the person is implicated, the s. 7 analysis stops there. It is at the first stage in the s. 7 analysis that I have the greatest problem with the respondent's s. 7 arguments.

[94] On the present facts, I have nothing more before me than the Applicant's assertion that the "denial of my application for PFV's has caused me extreme stress, anxiety and sadness. It has taken a huge toll on my relationship with my husband and son." This is not evidence to the "delay" she refers to. This was a result of the "denial." As regards the delay itself, she says in her affidavit that the "extremely long delay in receiving a response to Third Level Grievances 12301

and 124459 caused me to feel anxious and worried, and unsure of what I should do next" (at para 69). This is not sufficient for me to find that s 7 has even been triggered in this case as required under *Blencoe*, above.

[95] Nor do I think the delay was procedurally unfair in the conventional sense. The Applicant had every opportunity to make her case and all she is saying is that the decision should have been made sooner. The Applicant was given notice of the delays in accordance with the governing directive, but she says the notices did not explain the reasons for the delay or account for extensive periods of time when nothing was being done on the file. I have reviewed the steps in the process in the context of what was required on Applicant's file and the other files that the analyst was working on at the time, and I cannot say that the delay was unreasonable in this case. I can perfectly understand the Applicant's need to have PFVs with her husband and son and, at the age of seventy-five, she is obviously anxious that this should occur soon and is impatient with the grievance process. But it has to be remembered that those involved have significant caseloads to attend to besides the Applicant, and the Applicant herself is a cause of her own stress because she refuses to meaningfully engage in the re-integration process, thus inevitably prolonging the time it will take to be granted PFVs with her husband and son.

E. *De Novo Hearing*

[96] Finally, the Applicant says that, even if the Decision is procedurally fair and reasonable, a reviewable error occurred because the Deputy Commissioner failed to conduct the *de novo* review that is required for each step of the grievance process. She says that the Decision shows a

lack of independent analysis in which the Deputy Commissioner simply listed what others have said and then added a conclusion.

[97] The Applicant relies upon *Hall*, above, and her complaints are as follows (Applicant's Memorandum of Fact and Law at paras 131-138):

> 131. The Applicant respectfully submits that the ASDC did not conduct a hearing *de novo* in this case and that the Decision is therefore unreasonable.
>
> 132. It appears from the Decision that the ASDC reviewed a number of documents during her assessment including the Warden's decisions at the first instance and in response to the Applicant's written rebuttal. These documents are all summarized in the Decision.
>
> 133. It is clear however that the ASDC did not consider the Applicant's submission regarding the lack of compelling information regarding any history of family violence. It is submitted that if the ASDC had reviewed the record and actually weighed the evidence in light of the Applicant's submission that there had never been family violence, the ASDC would have been confronted with the lack of substantiated evidence in regard to that issue.
>
> 134. Further, the Applicant submits that the ASDC did not turn her mind to the question of whether the Applicant was currently at risk of committing family violence given the recent and corroborated history of exemplary interactions between the Applicant, her husband and her son, since the Applicant's incarceration.
>
> 135. The Applicant submits that the ASDC erred by asking herself the wrong question in considering the Final Grievance. Instead of personally assessing the Applicant's request *de novo*, the Applicant submits the ASDC simply asked whether the Warden had appropriately denied the application.
>
> 136. The last paragraph of the decision is reproduced here for ease of reference:
>
> > Upon review of the above information, it has been determined that your application for participation in the PFV program was appropriately denied as you

> have refused to participate in correctional programming and as a result you are considered to be an untreated violent offender. Therefore, the decision was rendered in accordance with section 3.1 of the CCRA [please see above] and paragraph 8(a) of CD 710-8 [please see above].

> 137. The Applicant submits that the very cursory reasons combined with this last paragraph make clear that the ASDC was merely reviewing the Warden's decision to determine whether it was supportable.
>
> 138. It is respectfully submitted that the ASDC asked herself the wrong question in this instance. Her task was to personally assess the Applicant's request to participate in the PFV program. Instead the ASDC determined that the Warden's decision was made in "accordance" with the appropriate law and policy.

[98] Some of these assertions are about the weight that the Deputy Commissioner should have given to the lack of evidence on family violence and current risk. These are issues that I have already dealt with in discussing the reasonableness of the Decision. In my view, then, this matter comes down to whether a *de novo* assessment was required in this context and, if it was, whether the Deputy Commissioner asked the wrong question and "[i]nstead of personally assessing the Applicant's request *de novo* […] the [Deputy Commissioner] simply asked whether the Warden had appropriately denied the application."

[99] First of all, I am not convinced that the distinction which the Applicant seeks to draw is meaningful on these facts. It is true that the Deputy Commissioner says that the Warden's denial was appropriate and was "rendered in accordance with section 3.1 of the CCRA … and paragraph 8(a) of CD 710-8 ...." But when these words are read in the context of the whole Decision they mean no more than that, after reviewing and assessing the whole back file, the Deputy Commissioner comes to the same conclusions as the Warden did.

[100] As the Applicant's arguments reproduced above make clear, what she is saying is that there could have been no independent *de novo* review here because the Deputy Commissioner declined to accept the Applicant's arguments and evidence that there was no compelling information regarding any history of family violence as being a conclusive reason to grant PFVs.

[101] As I have already made clear above, quite apart from the suspicions of past family violence and the police reports and statements upon which they are based, the Applicant was refused PFVs because she is a volatile person who has committed excessive violence in the past that she has refused to come to terms with and has refused to meaningfully move towards reintegration. In her view, this is irrelevant to the family context. But in the minds of those professionals who have assessed her, it is highly relevant and troublesome. And they are the qualified professionals, not the Applicant and not the Court.

[102] The Applicant could have submitted any evidence she wanted considered to the Deputy Commissioner but, in the end, the basis of her case was that volatility and excessive violence towards non-family members and a refusal to integrate are irrelevant considerations when it comes to family violence. The professionals thought otherwise, and they are the ones who are qualified to make these decisions.

[103] In my view, then, this ground of review is not sustainable. All the Deputy Commissioner can do is to conduct a paper review of the whole back file and any new evidence that the Applicant puts forward. The Deputy Commissioner does not deal personally with the Applicant and so must rely on the advice and conclusions of the professionals who have dealt with her. The Deputy Commissioner conducts a full review of the whole file and reaches a reasonable

conclusion. She then says that the Warden was right because the Applicant's application for participation in the PFV program was appropriately denied because the Deputy Commissioner has reviewed the whole file and, reasonably, has come to the same conclusions as the Warden.

[104] As the Applicant's arguments indicate, she is of the view that there was no independent review here because the Deputy Commissioner did not accept her position that the absence of direct evidence of family violence should have been conclusive. In my view, this argument is fallacious.

F. *Costs*

[105] Although she asked for costs in her written submissions – an "Order for the reimbursement of all costs and expenses and legal fees incurred in pursuing his [*sic*] legislated rights" – the Applicant backed off this position at the hearing before me and asked that each side bear their own costs. The Respondent continues to ask for costs.

[106] The Applicant wants access to PFVs. Those responsible for her well-being while she remains incarcerated have made it clear that the Applicant requires PFVs to achieve reintegration with the community. They have also made it clear to the Applicant that the way to PFVs requires meaningful engagement with her Correctional Plan and completion of the recommended programming. Instead of following this advice, the Applicant has come to the Court in an attempt to sidestep the recommendations of the professionals involved with her incarceration and reintegration. The Applicant would prefer to use the legal system to avoid the programming which the professionals say she needs. In doing so, she is postponing access to this programming

and the PFVs that she so obviously needs. She is not acting in her own best interests and the Court should not encourage her in this approach by failing to award costs in the usual way.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed with costs to the Respondent.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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DATED:	AUGUST 12, 2015

APPEARANCES:

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