

CANADA / JUDGMENT

Lidkea v. Correctional Service Canada

2026 CHRT 19

COURT

Canadian Human Rights Tribunal

DECIDED

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Lidkea v. Correctional Service Canada

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Date: March 12, 2026

File No. : HR-DP-2770-22

Between:

Timothy Lidkea

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service of Canada

Respondent

- and -

Council of Canadians with Disabilities and Canadian Association for the Deaf

Interested person

Decision

Member:

Athanasios Hadjis

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I. OVERVIEW [1] The Complainant, Timothy Lidkea, is Deaf. He filed a complaint against the Respondent, the Correctional Service of Canada (the CSC), regarding his treatment while in its care and custody at several institutions. Mr. Lidkea alleged that the CSC failed to accommodate his disability by, among other things, not providing him with sufficient access to an American Sign Language (ASL) interpreter or to technology that would enable him to communicate with others. He contends that this in turn prevented him from practising his Métis culture. He claims that after his conditional release into the community, the CSC again failed to provide him necessary access to interpretation services.

- [2] The CSC admits that it did not “completely and reasonably” accommodate Mr. Lidkea while he was in its care and custody during the periods of his incarceration, as well as while under its supervision in the community, contrary to section 5 of the Canadian Human Rights Act, R.S.C., 1985, c. H-6 (the CHRA).
- [3] However, the parties do not agree on the remedies that are warranted in this case. This decision addresses the issue.
- [4] The Canadian Human Rights Commission (the “Commission”) fully participated in the hearing and seeks remedies in the public interest.
- [5] I allowed a coalition composed of the Council of Canadians with Disabilities (the CCD) and the Canadian Association of the Deaf (the CAD) (jointly, the “Coalition”) to be recognized as an interested person regarding the inquiry into the complaint and to make final submissions on the case.
- [6] As Mr. Lidkea explained, and as reflected in a report prepared by the CAD that was entered into evidence, “deaf” is a medical term referring to people who have little or no functional hearing. The use of the word “Deaf” (with a capital “D”) is a sociological term that denotes individuals who are medically deaf or hard of hearing and who identify with and participate

in the culture, society, and language of deaf people, which is typically based on sign language. Accordingly, I have endeavoured to follow this usage in the decision and any reference to this term is intended to encompass all individuals who so identify.

II. DECISION [7] The remedial order contains an award of damages as well as a requirement that several individual accommodation measures be implemented for Mr. Lidkea. The order also includes a series of systemic remedies.

III. ISSUE [8] There is a single issue for me to decide in this case. What should the remedial order against the CSC include? The legal context giving rise this remedial order is set out below.

[9] Section 5(b) of the CHRA states that, in the provision of services customarily available to the general public, it is a discriminatory practice to differentiate adversely in relation to an individual based on one of the prohibited grounds of discrimination mentioned in section 3 of the CHRA. Mr. Lidkea alleged in his complaint the ground of disability, as a Deaf person, and the grounds of national or ethnic origin, race, and colour, as a Métis person.

[10] “Services,” within the meaning of section 5 of the CHRA, contemplate something of benefit being held out as services offered to the public (see *Watkin v. Canada (Attorney General)*, 2008 FCA 170 at paras 31–34). Not all actions in the performance of a statutory function constitute services. There must be some actual service involved, which can often be traced to the responsibilities that a respondent may have towards a complainant. The concept of “public” is defined in relational and contextual terms (see *Gould v. Yukon Order of Pioneers*, 1996 CanLII 231 (SCC), [1996] 1 SCR 571 at para 68 [Gould]). By this definition, the inmate and offender population for which the CSC is responsible can be considered the “public” within the meaning of section 5 of the CHRA.

[11] The CSC’s responsibilities regarding Mr. Lidkea and other inmates and offenders are set out in section 5 of the Corrections and Conditional Release Act, S.C. 1992, c. 20 (the CCRA), which, at the time Mr. Lidkea filed his complaint in August 2020, read as follows:

5 There shall continue to be a correctional service in and for Canada, to be known as the Correctional Service of Canada, which shall be responsible for

- (a) the care and custody of inmates;
- (b) the provision of programs that contribute to the rehabilitation of offenders and to their successful reintegration into the community;
- (c) the preparation of inmates for release;
- (d) parole, statutory release supervision and long-term supervision of offenders; and
- (e) maintaining a program of public education about the operations of the Service.

5 Est maintenu le Service correctionnel du Canada, auquel incombent les tâches suivantes :

- a) la prise en charge et la garde des détenus;

- b) la mise sur pied de programmes contribuant à la réadaptation des délinquants et à leur réinsertion sociale;
- c) la préparation des détenus à leur libération;
- d) la supervision à l'égard des mises en liberté conditionnelle ou d'office et la surveillance de longue durée de délinquants;
- e) la mise en oeuvre d'un programme d'éducation publique sur ses activités.

[12] "Inmates," to paraphrase the definition in section 2 of the CCRA, are persons who are in a penitentiary or only temporarily outside of one. "Offenders" encompasses not just inmates but also persons who are outside a penitentiary because of parole, a court order, statutory release, or other reasons.

[13] The CSC acknowledges that it has a duty to accommodate offenders with disabilities, including offenders who are deaf or hard of hearing who require ASL interpretation services. The CSC further admits that it did not completely and reasonably accommodate Mr. Lidkea on various occasions while he was in its care and custody or under its supervision in the community, contrary to section 5 of the CHRA. The CSC claims that since May 2021, which is about nine months after Mr. Lidkea filed this human rights complaint, it had "better accommodated" him. However, the CSC also acknowledges that there may have been some "isolated incidents" where its measures still fell below the standard of reasonable accommodation.

[14] On the facts of this case, and in light of the CSC's admission, I accept that many of Mr. Lidkea's interactions with the CSC fall within the scope of services under section 5 of the CHRA. The question of whether a given interaction constitutes a service is addressed in my reasons. This is consistent with the requirement in Gould at para 68 to identify what constitutes the service based on the specific facts of the case rather than generalities about the CSC's relationship to an inmate.

[15] Based on the CSC's admissions, I find the complaint to be substantiated. Accordingly, pursuant to section 53(2) of the CHRA, the Tribunal may make a remedial order against the CSC.

[16] I note that the CSC did not explicitly refer to Mr. Lidkea's other grounds of discrimination (national or ethnic origin, race, and colour, as a Métis person) in its admission, which focussed on his disability. The admission is sufficient to establish that a discriminatory practice occurred. Where relevant, I will deal with the impact of the other alleged discriminatory grounds in assessing the remedial claims.

IV. BACKGROUND [17] Mr. Lidkea is Métis. He has been deaf since he was a very young child, basically for as long as he can remember. He also has severe tinnitus and bilateral vestibulopathy, which affects his balance, memory, and ability to concentrate.

- [18] Mr. Lidkea's first language is ASL. As explained by Debra Russell, PhD, who testified as an expert witness on the experience of Deaf people when interacting with the criminal justice system, including the prison system, ASL is a visual-spatial language used by Anglophones in Canada and the United States. It relies on the movement of hands, body, and facial expressions to convey meaning, which is distinct from the auditory and vocal nature of spoken languages like English. ASL has its own grammar, morphology, phonology, syntax, and pragmatics. The structure and flow of sentences in ASL are fundamentally different from those in English. It is thus a distinct language. For someone raised in ASL, English would be a second language.
- [19] Dr. Russell also explained that communicating in writing is ineffective for someone for whom ASL is their first language. For them, writing is basically conversing in their second language. It creates barriers in terms of comprehending what is written and presented to them and expressing themselves. Communicating in writing does not convey a person's tone or their "cognitive load." For a Deaf person, it is only appropriate to communicate in writing for simple, short requests like returning something to a store for a refund. It is inappropriate where complex language needs are present, like medical visits and legal interactions.
- [20] Dr. Russell noted that lipreading is also an ineffective form of communication. She testified that only up to 30 percent of a conversation can normally be lipread between people who know each other well. Becoming a good lip reader is more relevant to people who have lost hearing later in life, are fluent in spoken English, and have extensive training.
- [21] As I will explain later in this decision, ASL interpretation does not need to be done in person with the interpreter and Deaf person in the same place. Interpretation can be done remotely using various technologies.
- [22] The CSC pointed to several inconsistencies or errors in Dr. Russell's evidence, mostly relating to certain details about technological standards and some semantics about the terms she used, to suggest that her entire evidence not be considered for want of reliability and objectivity. The CSC also submits that Dr. Russell does not have any medical expertise and that consequently any of her health-related evidence should be ignored. However, I have not relied on any evidence from her regarding health. The other issues that the CSC raised are insufficient to negate her evidence overall. They do not impact on her expertise regarding Deaf people or her knowledge about ASL and the available ASL interpretation technologies generally.
- [23] Mr. Lidkea first entered the federal correctional system when he arrived at Bowden Institution ("Bowden") near Red Deer, Alberta, in April 2018. ASL interpretation was not made available for his intake. During the four months he spent at Bowden from April to August 2018, Mr. Lidkea estimates that he received an interpreter only two or three times. He attended medical appointments without an interpreter. He communicated back and forth with the healthcare provider in writing using a paper pad. Mr. Lidkea testified that communicating this way hinders his ability to express himself as he is unable to expand on

what he wants to say.

- [24] Mr. Lidkea also testified that during his time at Bowden, he did not even have access to the communication technology known as TTY, which in any event, as the evidence shows, is an unsatisfactory means of communication. Dr. Russell explained that TTY is one of the earliest forms of text-based communication. TTY machines are basically typewriters that are used to communicate typed messages from point to point through a simple electronic communications channel. Both parties must have a TTY machine to communicate.
- [25] Operators receive text-based calls from TTYs and place calls to hearing people relaying the messages between the deaf, hard-of-hearing or speech-impaired person and a hearing person. Everything must be typed back and forth, which is time-consuming. Mr. Lidkea testified that what would ordinarily be a 20-minute exchange can take one hour using TTY. There are frequent technical malfunctions causing garbled and mistake-filled text. Dr. Russell noted that since the parties do not see each other, the tone and emotional affect of the communication is absent. In 2017, the CAD submitted the findings of a national research project to the Canadian Radio-Television and Telecommunications Commission (the CRTC), which indicated that only 37 percent of survey respondents still used TTY.
- [26] Thus, for his four months at Bowden without access to TTY, Mr. Lidkea's ability to communicate was severely restricted. He testified that he had to rely on passing written messages to his lawyers through CSC staff. This meant that these communications were not confidential and he was reluctant to speak freely.
- [27] Mr. Lidkea was transferred to Mountain Institution ("Mountain") near Agassiz, British Columbia, on August 14, 2018. Mr. Lidkea testified that he was told that there would be a staff member skilled in ASL at Mountain but this turned out not to be true. Mountain is also much farther away from available interpretive services than other institutions in the CSC's Pacific Region, making it more difficult for interpreters to attend.
- [28] Mr. Lidkea testified that during his time at Mountain, he was taken outside the institution for a medical appointment and there was an interpreter present. However, CSC staff refused to remove Mr. Lidkea's handcuffs, so he was unable to communicate with the interpreter. Mr. Lidkea testified that this was like "putting a gag in somebody's mouth."
- [29] Mr. Lidkea did not have access to TTY for the first three weeks he was at Mountain because the CSC had restricted the telephone relay number required to use it. Even when it was functional, Mr. Lidkea had problems accessing TTY due to staff not facilitating his calls. His access to ASL interpreters at Mountain was also very limited and he did not receive any interpreter services until September 2018, a month after he arrived there.
- [30] In response to a request for a steady supply of paper for basic communication with staff, he was told to go the institution's canteen and buy his own paper. At Mountain, Mr. Lidkea's first interview with his parole officer was without ASL interpretation. There was interpretation at his second interview.

- [31] Mr. Lidkea testified that shortly after arriving at Mountain, he was sexually assaulted by his cellmate, so he sought to be put in isolation for protection. However, as the CSC failed to provide an interpreter, Mr. Lidkea had to communicate with the mental health worker using pen and paper and he believes that the mental health worker did not understand what had happened to him. Mr. Lidkea was sent back to the cell with the individual who assaulted him.
- [32] Mr. Lidkea went on a hunger strike after the assault. His medical documents indicate that he was feeling “isolated, depressed and exhausted due to the fact that he can’t communicate due to his hearing loss” and that he was suicidal while at Mountain.
- [33] Mr. Lidkea testified that he made formal requests to have ASL interpretation for an information fair for inmates but he was denied. The CSC’s reason for the denial was that the fair did not involve a case management or medical issue and it was not necessary to support his integration into society.
- [34] On September 24, 2018, Mr. Lidkea was transferred to the Psychogeriatric unit at the Regional Treatment Centre (the RTC), also known as the Pacific Institution, in Abbotsford, British Columbia. Mental health monitoring notes taken shortly after his arrival state that he “continues to experience some isolation due [to his] hearing impairment.”
- [35] Mr. Lidkea testified that his access to interpreters at the RTC was again very limited. Mr. Lidkea sent in multiple requests for interpreters while at the RTC, many of which did not yield a response, including requests to meet with an Elder or attend cultural events in the institution, as well as events like information fairs and other activities for inmates. He described his frustration with not being able to meaningfully meet with Elders.
- [36] In response to a grievance related to not being provided an interpreter, the CSC stated that Mr. Lidkea was “encouraged to communicate by writing during [his] meetings/interactions with staff.”
- [37] Mr. Lidkea also testified that his access to TTY at the RTC was limited and that when he did have access, there would often be problems using it. He was not able to use TTY on evenings and weekends, despite other incarcerated people having access to telephones at these times. Tarmara Holdal, who is employed by the CSC as Chief of Clinical Interventions at the RTC, confirmed in her testimony that TTY is a cumbersome and awkward system that often generated garbled messages when it was used by Mr. Lidkea.
- [38] Mr. Lidkea described the isolation and lack of communication he experienced while at RTC as “starving for any kind of interaction or communication.”
- [39] Mr. Lidkea was released on day parole in November 2020. He was required to reside in a Community-based Residential Facility (CBRF), commonly referred to as a halfway house. Section 133(4) of the CCRA states that offenders may be required to reside in a CBRF as a condition of their parole or unescorted temporary absence.

- [40] CBRFs provide a bridge between the correctional institution and the community. They can consist of CSC-operated Community Correctional Centres (CCCs) or privately operated CBRFs, which can include hostels, private home placements, satellite or supervised apartments, treatment centres, and independently run operations called Community Residential Facilities (CRFs). The CSC explains these options on its website on a page entitled “Community-based residential facilities.”
- [41] The CSC referred Mr. Lidkea to a CRF in Vancouver, British Columbia, called Rising Sun Community Residential Facility (“Rising Sun”).
- [42] On December 24, 2020, a community mental health nurse completed a suicide and self-injury report at the request of Mr. Lidkea’s parole officer. The interview was conducted by having the mental health worker ask questions over the phone to a Rising Sun staff member who then wrote them down for Mr. Lidkea to read. Mr. Lidkea wrote down his responses and the staff member relayed them to the mental health worker over the phone.
- [43] Mr. Lidkea communicated with Rising Sun staff through pen and paper as he was not provided interpreters. He described this as very frustrating. Mr. Lidkea requested interpreters for meetings offered by the Circles of Support and Accountability (COSA), which is a support group for offenders who have been convicted of sexual offences. It was a program that Mr. Lidkea contends that the CSC expected him to attend while on parole, but no interpretation was provided. COSA had no budget for interpreters.
- [44] Mr. Lidkea’s day parole was suspended in January 2021. He was briefly returned to Mountain before being moved to the Mission Institution in Mission, British Columbia.
- [45] Mr. Lidkea’s parole officer conducted her first post-suspension interview with him without interpretation because the interpreter was unable to join the meeting by video due to technical difficulties. At their next meeting, there was an interpreter present. However, the parole officer had already written her report by that point recommending that Mr. Lidkea’s parole be revoked.
- [46] Mr. Lidkea was released back to the community in May 2021 where he remained until January 2023, residing at a CRF in Vancouver called Harbour Light, which was run by the Salvation Army (“Harbour Light”). Mr. Lidkea was provided interpreters only for his meetings with his parole officer. No interpreters were provided for his interactions with Harbour Light staff, though they could attend and use the interpretation services reserved for the parole officers if any time was available after that meeting. He was also not provided with interpreters for community support groups such as COSA.
- [47] After Mr. Lidkea’s release was suspended again in January 2023, he was sent to Matsqui Institution (“Matsqui”) in Abbotsford, British Columbia. Mr. Lidkea’s intake interview was completed without an interpreter and using pen and paper. He testified that his mental health was low when he arrived at Matsqui and he felt exhausted, frustrated, and ready to end his life. He went on a hunger strike for five weeks.

- [48] Mr. Lidkea communicated with mental health staff at Matsqui through pen and paper about his hunger strike and mental health, including his desire to kill himself.
- [49] An Inmate Accommodation Plan (IAP) was completed for Mr. Lidkea at Matsqui by his parole officer. It stated that the institution would attempt to provide him with ASL interpreters, without requiring his request, for:
- i) Interviews with his case-management team, work supervisors, on-site Chaplains, Elders, and Indigenous Liaison Officers;
 - ii) Correctional program sessions;
 - iii) Parole meetings wherein his adherence to his correctional plan and/or disciplinary measures are discussed;
 - iv) Parole Board of Canada hearings;
 - v) Healthcare appointments that require ASL medical certified interpreters; and
 - vi) Mental health appointments.
- [50] Mr. Lidkea testified that he was initially told that he would have an interpreter two times per week at Matsqui but that this was later switched to only one booking per week, as confirmed in his correctional documents. Mr. Lidkea put in a request to increase the number of minimum weekly bookings to two but was told that it had been agreed that there would only be a minimum booking of once per week. He spoke about having to choose between different activities such as communicating with his lawyer or meeting with Elders. Mr. Lidkea is unaware of why the amount of interpreter bookings changed from a guarantee of two bookings to one.
- [51] Mr. Lidkea says that while at Matsqui:
- i) his sign language deteriorated because of his limited ability to communicate with others in ASL;
 - ii) he was only able to meet with the Elder at Matsqui usually once per month; and
 - iii) staff would urge him to attend medical appointments without interpreters.
- [52] During an outside medical appointment on March 27, 2023, there was no interpreter present but the escort officers refused to remove Mr. Lidkea's handcuffs, so he was not even able to write back and forth with medical staff. Mr. Lidkea testified again that this felt like being gagged as he was unable to communicate.
- [53] Mr. Lidkea states that he was never provided with interpreters for social purposes. He would spend most days entirely in his cell. He had no support and was unable to pick up on environmental cues, which could be dangerous because of the prison environment. He felt isolated and was "starving for communication with anybody" and to use his language.

- [54] Mr. Lidkea was given statutory release on July 18, 2024, on the condition that he reside at Harbour Light.
- [55] Mr. Lidkea was provided an updated IAP the day after he was released to the community. Mr. Lidkea testified that, despite what it states, he was not consulted for the plan and there was no room for negotiation. He was simply told what he would be getting in terms of accommodation.
- [56] From his July 2024 release until his testimony in October 2024, Mr. Lidkea had only been provided with interpreters for his mandatory meetings with his parole officer and other CSC staff, for a total of nine interpreter sessions. Mr. Lidkea testified that his Harbour Light caseworker had attended a few of these sessions but that the rest of his communication with his caseworker was through writing back and forth. Any meetings that Mr. Lidkea attended with Harbour Light's mental health or outreach workers occurred without interpretation.

V. ANALYSIS [57] As I already mentioned, the issue to be determined in this case is what should be included in the Tribunal's remedial order. I will analyze each type of remedy that Mr. Lidkea and the Commission have requested. The order at the end of the decision sets out the specific remedies awarded.

- [58] I begin the analysis with the claims regarding compensation for pain and suffering (see section 53(2)(e) of the CHRA) and special compensation (see section 53(3) of the CHRA). There is a complication regarding these two claims because Mr. Lidkea contends that the CSC already admitted that it owed the maximum under both categories (\$20,000) and that the remedial order should reflect this. The CSC contends that the discussion about a maximum award was only made in the context of settlement negotiations and that awards of slightly lesser amounts should be ordered. For the following reasons, I accept the CSC's argument.

A. Compensation for pain and suffering (section 53(2)(e) of the CHRA) and special compensation (section 53(3) of the CHRA) [59] Section 53(2)(e) of the CHRA provides that if the Tribunal finds that the complaint is substantiated, it may order that the person found to have engaged in the discriminatory practice compensate the victim by an amount up to \$20,000 for any pain and suffering that the victim experienced as a result of the discriminatory practice.

- [60] Section 53(3) of the CHRA provides that the Tribunal may order a respondent to pay up to \$20,000 in compensation to the victim if it is satisfied that the respondent engaged in the discriminatory practice wilfully or recklessly.

- [61] For brevity, I will refer to these claims together as claims for damages.

- (i) The CSC's alleged admission that the maximum amounts of damages are owed [62] Mr. Lidkea seeks an order for the maximum amount under both provisions with interest as of the date of his complaint. He claims that the CSC admitted that it owed the maximum in its exchanges with his lawyers before the hearing started.

- [63] The debate over this question relates to a series of emails sent between counsel before the start of the hearing. The Tribunal had reserved dates for about four weeks of hearings to take place in fall 2023. On May 12, 2023, the CSC's counsel sent an email informing the Tribunal that it "concedes liability" in Mr. Lidkea's complaint. The CSC proposed that, as a result, only two weeks would be needed for the hearing on remedies, if the parties were unable to negotiate or mediate a settlement before then.
- [64] The parties participated in a mediation session with a Tribunal-appointed mediator on September 19, 2023. The mediation did not resolve the case.
- [65] On October 17, 2023, the CSC emailed a letter (the "With Prejudice Letter") to the Tribunal requesting a case management conference call (CMCC) with several proposed agenda items that included how to narrow the scope of matters requiring a hearing. The CSC reminded the Tribunal that it had already admitted liability in this matter.
- [66] The CSC then added the following:

In order to facilitate the informal, expeditious and fair determination of this matter and in order to facilitate a discussion with the Tribunal and parties on how to further narrow matters that require the Tribunal's consideration, the Respondent wishes to provide the following information to the Tribunal and the parties on a WITH PREJUDICE basis.

- [67] The "information" referred to in this excerpt was organized under two headings. Under the heading "With respect to liability," the CSC acknowledged that it had a duty to accommodate Mr. Lidkea and other offenders with disabilities, including those who are deaf and hard of hearing, requiring sign language interpretative services. The CSC also reiterated its admission that it failed to reasonably accommodate Mr. Lidkea on multiple occasions while incarcerated, contrary to section 5 of the CHRA.
- [68] The letter then continued with five topics set out over about another three pages, all under the heading "With respect to remedies." For item 1, the CSC acknowledged that it needed to take action and improve efforts to reasonably accommodate offenders with disabilities. Under item 2, the CSC then addressed the question of damages, which I further discuss below. Under item 3, the CSC listed several actions that it had already taken to improve Mr. Lidkea's and other offenders' accommodation. Items 4 and 5 describe the actions that the CSC "is planning to make best efforts to do" to further improve the accommodation for Mr. Lidkea and other offenders with disabilities.
- [69] Regarding item 2 involving the issue of damages, the CSC articulated its position as follows:
2. CSC acknowledges and agrees the complainant should be provided compensation pursuant to ss. 53(2)(e) and 53(3) of the CHRA. CSC is prepared to provide the maximum amount of \$40,000 in compensation pursuant to these sections.

[70] I convened a CMCC one week after the CSC sent this letter. The parties asked that I hold a mediation session with them on the understanding that if the case did not settle, I would continue as the member conducting the inquiry into the complaint (that is, a mediation-adjudication or “med-adj”). I held the med-adj on November 27 and 28, 2023, but the case did not settle.

[71] On December 7, 2023, the CSC’s counsel wrote to Mr. Lidkea’s counsel expressing frustration with the latter’s position in the negotiations (the “December Email”). The CSC claimed that Mr. Lidkea’s counsel were “calling into question [the CSC’s] concession of liability and [its] agreement to pay a maximum award of damages.” The CSC’s counsel then wrote the following:

My intention when I put the “with prejudice” offer on the table in Lidkea was that it was intended to stand no matter what, because we think that it is the right thing to do. CSC has committed to taking these steps on other files, so they are happening. The intention was that it would hopefully lead to settlement or in the least narrow whatever outstanding issues remain. To me that would mean no need for any evidence about pain and suffering, wilful or reckless conduct, no discussion about compensation and hopefully no discussion regarding systemic remedies. That means, the only outstanding issues would be non-financial individual remedies.

[72] Mr. Lidkea’s counsel sent the following response the next day:

Thank you for your response. We just wanted to confirm that it was [the Department of Justice’s] intention to implement these with prejudice measures regardless of whether we reached a settlement so we could ensure we were providing our client with the most accurate information. We will consult with our client and get back to you.

[73] The record before me does not include any other correspondence on the issue until almost one year later. On September 17, 2024, the CSC’s counsel sent an email to Mr. Lidkea’s counsel, further to the CSC’s original letter of October 17, 2023. The email reads as follows:

1. CSC’s offer to settle this litigation for \$40,000 expires at 5 pm on Friday, September 20, 2024. CSC continues to admit liability. This was an offer to avoid the time and expense of proceeding to hearing. If this matter proceeds to hearing, our \$40,000 offer is withdrawn. Mr. Lidkea will need to establish his damages. I expect that there will need to be an additional 5-10 days of Mr. Lidkea’s testimony. We can discuss next steps at our Case Planning Conference Call scheduled for September 23, 2024, if our offer is not accepted.
2. By separate cover, on a without prejudice basis, I will contact Mr. Lidkea’s counsel and Commission counsel with the remaining terms of CSC’s settlement offer today.

[74] After another unsuccessful med-adj attempt in late September 2024, the hearing opened on October 15, 2024.

- [75] Therefore, the question to be determined is: Do the CSC's statements regarding damages mean that an award for the maximum quantum of damages must be ordered irrespective of any assessment that the Tribunal would otherwise have made? The answer is no.
- [76] The CSC did clearly intend to bind itself and implement some of the remedies listed in the With Prejudice Letter, as is apparent from the statement in the December Email's statement that the "CSC has committed to take these steps and they are happening," and that the steps would "stand no matter what." This comment certainly applies to the actions under item 3 in the With Prejudice Letter, which the CSC claimed it had already taken. Arguably, there is some commitment to implement items 4 and 5, though the CSC did reserve itself an option not to follow through with them, having only promised to make best efforts to take the listed actions.
- [77] However, regarding the damages provision (item 2), I note a distinction in the language used. The passage is not about actions already taken or to be taken. Rather, the CSC acknowledges Mr. Lidkea's entitlement to damages, which is a clear admission, but then merely states that it is "prepared" to provide the maximum amount of \$40,000 in damages. There is no commitment to pay the sum, just an indication of a willingness to pay it.
- [78] I am mindful of the context of this remark. The CSC was proposing in the letter that further negotiations towards settlement be undertaken, and indeed, at the ensuing CMCC, the parties agreed to participate in the med-adj. The CSC noted in the December Email that its intention was that its "with prejudice" offer would "hopefully lead to a settlement" or at least narrow any outstanding issues. The word "offer" is prominently there.
- [79] Does the CSC's use of the term "with prejudice" affect the analysis? None of the parties presented any authority dealing with this term in the context of the CHRA. At the hearing, I referred the parties to a line of jurisprudence from the British Columbia Human Rights Tribunal (the BCHRT) addressing "with prejudice offers." The BCHRT dismisses complaints under section 27(1)(d)(ii) of British Columbia's Human Rights Code, RSBC 1996, c. 210 (the "BC Code"), if it determines that the BC Code's purposes would not be furthered by proceeding with a complaint where respondents have made reasonable settlement offers and complainants have rejected them (see for example, *Issa v. Loblaw*, 2009 BCHRT 264 at paras 33 and following). However, as the parties correctly pointed out, this case law is specific to that BC Code provision. The CHRA does not have any analogous provision and thus the BC Code jurisprudence is not helpful.
- [80] The CSC contends that the reference merely meant that the terms set out in the With Prejudice Letter were not to be treated as confidential. However, I do not see how that conclusion can be drawn just from those two words.
- [81] Ultimately, I can only infer the term's meaning from the context of the With Prejudice Letter and related correspondence overall, as I have done above, and conclude that the CSC was merely making a settlement offer.

- [82] Accordingly, I do not find the CSC's statement in item 2 of the With Prejudice Letter to be an admission that \$40,000 in damages is owed to Mr. Lidkea, nor that I am bound to issue an order for that amount.
- (ii) Assessment of the quantum for pain and suffering [83] The Tribunal can order the payment of up to \$20,000 for any pain and suffering that Mr. Lidkea experienced because of the CSC's discriminatory practice. As observed in *Christoforou v. John Grant Haulage Ltd.*, 2021 CHRT 15 at para 98, *aff'd* 2022 FCA 182, the Tribunal tends to reserve the maximum amount of \$20,000 for the very worst cases or the most egregious of circumstances.
- [84] I find that Mr. Lidkea's circumstances approach the worst of circumstances. The obstacles to having adequate access to ASL interpretation extended over the entire course of his interactions with the CSC. While the frequency of available interpretation increased over time, the lack of communication services at the initial stages of his incarceration, whether through ASL interpretation or even TTY, was particularly acute.
- [85] As a Deaf inmate without the ability to effectively communicate with others, especially in his own language, the isolation that Mr. Lidkea experienced was significant. The CSC's healthcare professionals who assessed him observed that he was developing suicidal ideation. Mr. Lidkea testified that his ASL language skills began deteriorating. He maintains that the CSC staff dealt with him insensitively, whether by handcuffing him at medical appointments and effectively "gagging" him, or by not even providing him a supply of paper for basic exchanges, or more concerning, failing to understand his fears of being placed in a cell with someone who posed a danger to him. These actions were particularly impactful to him. Mr. Lidkea also points to the compounding effect for him as a Métis person who was prevented from engaging with his Indigeneity through the unavailability of interpretation services for exchanges with Elders or for cultural and spiritual events.
- [86] The CSC contends that some of the pain and suffering that Mr. Lidkea describes is questionable due to issues regarding his credibility. The CSC referred to Mr. Lidkea's criminal history as a sex offender and specific instances in his testimony where he allegedly was an uncooperative witness or contradicted himself. I find these alleged evasive answers or contradictions to be immaterial to the determination of his pain and suffering. They are for the most part minor, insignificant, or taken out of context. For instance, Mr. Lidkea's contesting in cross-examination the relevance of the nature of his offences to the issue of whether he was reasonably accommodated is understandable. The references to his testimony where he allegedly deflected questions by blaming the CSC for his woes, were usually in response to questions that were not relevant to the human rights complaint, and particularly to his pain and suffering.
- [87] The CSC also argues that no medical or other expert evidence was adduced to document the pain and suffering he experienced. However, complainants are not required to provide medical evidence as to their pain and suffering (see *Luckman v. Bell Canada*, 2022 CHRT 18 at para 100; and *McFee v. Canadian Pacific Railway Company*, 2019 CHRT 28 at para 135).

- [88] Mr. Lidkea's experience as a Deaf person who was prevented from being able to communicate is objectively observable irrespective of any biases or ill feelings that he may have towards the CSC or his criminal history.
- [89] The CSC cites in its submissions the pain and suffering or general damages awards from three cases involving human rights complaints filed by Deaf complainants (\$10,000 awarded in *Vlug v. Canadian Broadcasting Corp.*, 2000 CanLII 5591 (CHRT) [Vlug]; \$1,500 awarded in *Howard v. University of British Columbia* (No. 2), 1993 CanLII 16516 (BCHRT); and \$35,000 awarded in *Dunkley v. UBC*, 2015 BCHRT 100 [Dunkley]). I note that only Vlug is decided under the CHRA, the other cases being under the BC Code. Based on these figures, and adjusting for inflation from the time they were awarded, the CSC submits that an award of \$15,000 is warranted.
- [90] Mr. Lidkea argues that Dunkley is most analogous to his situation but that the aggravating facts in his case are more severe and that therefore, an award at the maximum amount of \$20,000 is justified. However, I note that since 2002, there have not been any maximum caps under the BC Code as there are under the CHRA, and that according to the case law under the CHRA, the maximum pain and suffering award is reserved for the very worst cases.
- [91] I am aware of some other decisions under the CHRA regarding Deaf persons. In *Stringer v. Treasury Board* (Department of National Defence), 2011 PSLRB 110 [Stringer], the Public Service Labour Relations Board (the PSLRB) dealt with a grievance filed by a federal public servant who alleged that he was discriminated against during his employment. The grievor was "born hearing impaired," as the decision described him, and ASL was his first language. The PSLRB found that the grievor was denied ASL interpretation at work-related meetings. Hurtful comments were made by the employer's representative at one of those meetings. The PSLRB awarded the grievor \$10,000 for pain and suffering.
- [92] In another more recent arbitral award ruling, *Association internationale des machinistes et des travailleurs et travailleuses de l'aérospatiale (Section locale 140) v. Air Canada*, 2024 CanLII 65435 (CA SA) at para 132, the arbitrator awarded an unjustifiably dismissed Air Canada employee who was profoundly hard of hearing \$5,000 in pain and suffering compensation under section 53(2)(e) of the CHRA. The grievor was repeatedly denied sign language interpretation at the disciplinary proceedings that had led to his dismissal. He was unable to defend himself by being deprived of effective communication.
- [93] Returning to the present case, I find that although Mr. Lidkea experienced hardship and isolation from the denial of adequate interpretation services, the experience did not quite extend in the same manner over the entire period. About a third of the time from 2018 until the 2024 hearing, Mr. Lidkea was on conditional release, and while he was entitled to some additional interpretation services than what were provided to him during this period, he was nonetheless "at large" within the meaning of the CCRA as I explain later in this decision, and no longer subject to the isolation that he experienced while incarcerated. Furthermore, as Mr. Lidkea acknowledged in cross-examination, the nature and severity of his criminal

offences has also contributed to some of his social isolation both in and out of prison.

[94] Taking all these circumstances into account, I find that an award of \$18,000 for pain and suffering is warranted, with interest as of the date of the complaint (see section 53(4) of the CHRA).

(iii) Assessment of the quantum for special compensation [95] The Tribunal can order up to a maximum of \$20,000 in special compensation if it finds that the respondent has engaged in the discriminatory practice wilfully or recklessly (see section 53(3) of the CHRA). This is “a punitive provision intended to provide a deterrent and discourage those who deliberately discriminate” (see *Canada (Attorney General) v. Gallinger*, 2022 FCA 177 at para 66, citing *Canada (Attorney General) v. Johnstone*, 2013 FC 113).

[96] As noted in *Christoforou* at paras 106–111, a finding of wilfulness requires an intention to discriminate and to infringe a person’s rights under the CHRA. Recklessness usually denotes acts that disregard or show indifference to the consequences, such that the conduct is done wantonly or needlessly. A finding of recklessness does not require proof of intention to discriminate. In determining the appropriate award under this section, the Tribunal must focus on the respondent’s conduct and not on the effect that the conduct has had on the complainants.

[97] The CSC admits that an award under this head of damages is appropriate and submits that it should be \$15,000. Mr. Lidkea argues that the maximum sum of \$20,000 should be awarded. He points out that he made it clear upon his sentencing that he needed to be accommodated while incarcerated. Yet, no accommodation was put in place upon his entry into the CSC’s prison system. He claims that he faced hostility and indifference from prison staff, who dismissed his needs, having concluded that communicating with him by pen and paper was sufficient. The indifference extended to the insistence that he remain handcuffed during medical appointments, which effectively prevented him from communicating with the healthcare professional.

[98] Mr. Lidkea contends that even after the CSC admitted liability in 2023, it continued to not fully accommodate him. He still attended several appointments without interpretation being made available to him. His Residential Action Plan at the CRF said that he was supposed to meet with a mental health worker once per week, but no interpretation was provided.

[99] He also points out that as of the hearing, the CSC had yet to adopt a formal policy for the accommodation of prisoners with disabilities.

- [100] The CSC submits that any analysis under this head of damages should consider the reality of the difficulty in securing ASL interpretation services, particularly at certain locations where Mr. Lidkea was incarcerated. Erica Holtzman, CSC Regional Manager, Information Management and Administrative Services, testified that from 2018 to 2023, the supply of ASL interpreters in the CSC's Pacific Region was very limited and it was difficult to find a steady supply of ASL interpreters.
- [101] The CSC's decisions were also influenced by its overriding concerns for the safety and security of all persons present in prison institutions. The CSC also pointed out the age of its prisons' buildings and infrastructures, which prevent it from easily implementing some of the latest interpretation technologies as I elaborate on later in this decision. Finally, the CSC submits that after 2021, Mr. Lidkea was given more access to ASL interpretation services than before. From May 2021 until August 2024, he was provided 176 ASL "events," which works out to about four to five events per month.
- [102] There is no evidence that the CSC willfully discriminated against Mr. Lidkea, as he acknowledged through counsel in final arguments. However, the CSC was unquestionably reckless in its treatment of him. It knew that he required accommodation to effectively communicate with CSC staff and others but neglected to provide those services to him, particularly upon his entry into its system. Even considering some of the structural and operational difficulties in securing ASL interpretation services, more could have been done, particularly through the use of remote interpretation tools, as discussed later in this decision. Consequently, I find that a significant award for special compensation is warranted, especially as a deterrent, though not the maximum. I set the quantum at \$17,500, with interest as of the date of the complaint (see section 53(4) of the CHRA).

B. Individual accommodations for Mr. Lidkea [103] Mr. Lidkea seeks an order directing the CSC to provide him several "individual accommodations." Section 53(2)(b) of the CHRA allows the Tribunal to order that a respondent make available to the victim of the discriminatory practice the rights, opportunities, or privileges denied as a result of the discrimination at the first reasonable occasion. Mr. Lidkea submits that these measures would accommodate his needs and effectively make him whole.

- (i) ASL interpretation for all correctional services falling under section 5 of the CCRA [104] Mr. Lidkea's request is straightforward. He seeks an order that ASL interpretation be provided to him for "all correctional services falling under section 5 of the CCRA."

- [105] The CSC acknowledges its duty to accommodate Mr. Lidkea, and by extension, other inmates like him. The CSC states that it has already implemented or is in the process of implementing several remedies to accommodate individuals and prevent any further discrimination. The CSC adds that it is willing to work with the Commission to further redress any systemic discriminatory practices that have emerged from this case.

- [106] However, it is still important to reasonably specify the services about which the CSC has a duty to provide ASL interpretation to Mr. Lidkea, and secondly, how the interpretation should be provided.
- [107] When Mr. Lidkea testified at the hearing, he was no longer incarcerated and was on conditional release. He was required to reside at a CRF. I have no knowledge of his status since then. His sentence was scheduled to end in 2025. Therefore, I will address these requested remedies to cover off the possibility of further incarceration or continued conditional release of Mr. Lidkea, dealing with each circumstance separately.
- [108] To better understand the available remedial options, I must first elaborate on the various possible means of communication with him.
- (a) Methods of communication that are available [109] There are various means available for Mr. Lidkea to communicate with others, as I set out below.
1. TTY [110] As I mentioned earlier, TTY is an old technology based on typing messages back and forth, which in practice is ineffective. It is error-prone, slow and time-consuming, and requires specialized machines to be used at each end. Dr. Russell noted that having complex conversations can be very difficult using TTY, particularly for those who struggle to use English as a second language. She described TTY as being obsolete technology, especially in comparison to the newer available technologies described below.
 2. Video Relay Service (VRS) [111] Video Relay Service (VRS) is a service that the CRTC mandates telecommunication service providers to provide. It became operational in September 2016. VRS enables people to conduct telephone calls using sign language. VRS connects a sign language user with another party via an operator who can interpret between sign language and spoken language.
- [112] A VRS call involves the caller and the person called, one of whom is a sign language user, as well as the relay operator (the VRS operator). The sign language user makes or receives a video call via a computer or other Internet-enabled device using video conferencing tools based on Internet technology, like a computer, a smartphone, or a tablet. The video call connects the sign language user to an operator who is connected to the other party via a voice telephone call. The operator relays the conversation from sign language to spoken language and vice versa, for example from ASL to English or from Langue des signes québécoise (LSQ) to French.
- [113] VRS service is free. It is administered by the Canadian Administrator of Video Relay Service Inc. (CAV), a not-for-profit telecommunications services company. CAV has a mandate from the CRTC to design, implement, and oversee the delivery of VRS in Canada.

- [114] VRS is available seven days per week, 24 hours per day. CAV contracts with several companies to provide the actual service. People must register to use it and they must adhere to CAV's user agreement. One of the agreement's terms is that VRS is not to be used to converse with a hearing party who is in the same room as the Deaf person (excluding emergency 911 calls). This implies that the two persons must be at different locations.
- [115] This restriction may impact on the CSC's ability to use VRS in one-on-one settings with Mr. Lidkea. The CSC suggested in its questioning of witnesses that even if the two persons are in the same building or location, the user agreement condition would be met as long as they are in separate rooms.
- [116] Kristen Pranzl, who is the manager of Vancouver Coastal Health, an organization that supports and advocates for Deaf persons and who is herself deaf, testified that while it is technically possible for people in two nearby rooms to use VRS, it is a practice that is not "encouraged." However, she did confirm that VRS has been known to be used for short interactions even in the same room where an ASL interpreter is not available on short notice. She explained that her understanding of the rationale for this rule is that, given the cost of interpretation services, CAV does not want VRS to become a no-cost replacement for in-person ASL interpretation, such that it ends up effectively paying for this service.
- [117] An FAQ web page prepared by CAV was entered into evidence on which it is noted that VRS is not intended to replace "community or VRI interpreting."
- [118] Dr. Russell testified that the VRS interpreters may hang up if they find out the parties are in the same room. It is also her understanding that using the service from two rooms in the same building would not be considered permitted use. She noted that in contrast, the alternate technology known as VRI allows the use of the service in the same room. However, as I explain in the next section, VRI is not free.
- [119] Mr. Lidkea was quite adamant that he would not dare test the limits of what CAV's user agreement provides given that it clearly stipulates that a user's account may be suspended or terminated if any of its conditions are violated. He testified that at a workshop he had recently attended, he was informed that if VRS was used in the same room, the user's account could be revoked.

3. Video Remote Interpreting (VRI)

- [120] Video Remote Interpreting (VRI) is a paid service that uses a sign language interpreter to facilitate communication between a Deaf and hearing person via video using a smartphone, tablet, or computer with webcam. Using spoken language, the sign language interpreter conveys what the Deaf customer is communicating through sign language to the hearing person and vice-versa. VRI can occur in several ways, with the Deaf and hearing person in the same physical location and the interpreter remotely providing the service, or the Deaf person and interpreter can be in the same location and the hearing person be in another location, or all three parties can be in different locations.

- [121] In Canada, several interpreting service providers provide VRI services by appointment or on-demand, which are accessed from a smartphone, tablet, or webcam-equipped computer. VRI can be offered using a proprietary app or through public platforms such as Zoom and Microsoft Teams.
- [122] There was some debate in the evidence about whether VRI can also run on the Webex platform. Webex is readily used in the CSC's facilities, particularly at the video visitation kiosks that are made available for all inmates to use. However, Mr. Lidkea testified that his experience was very poor when using Webex at the video kiosks.
- [123] Dr. Russell suggested in her evidence that, from an ASL interpreter's perspective, Zoom is preferred over Microsoft Teams or Webex, which she said do not have the same features as Zoom. On cross-examination, it was revealed that some of Dr. Russell's assertions were based on her understanding of a 2019 standard that was replaced in 2022 with a new standard with which she was unfamiliar, all of which calls into question her opinion on this point.
- [124] Two witnesses familiar with the CSC's information technology, Eric Deschenes, CSC Information Technology Director in Software Solutions and Database Management, and Kelly Shaw, Regional Director of Information Management Systems, Pacific Region, stated in their evidence that CSC institutions have had issues in the past with internet bandwidth limitations. Consequently, any connection quality issues using the Webex-based platform in the video visitation kiosks would have affected the Zoom and Microsoft Teams platforms in the same way. Ms. Shaw notes that the CSC had already begun the process to increase network connectivity and bandwidth across its institutions. Testing of VRI at the video kiosks was conducted in 2022 and 2023 at two British Columbia institutions successfully, despite certain initial technical difficulties. There were no connection or video quality problems reported.
- [125] Given these explanations, I am not persuaded on a balance of probabilities that Webex is any less appropriate a platform than any of the other available options.
- [126] According to Dr. Russell, while VRI has tremendously improved communication access for Deaf Canadians, there is still a need for on-site interpretation. VRI is suitable in some contexts, for example, for routine interactions like seeking a prescription refill, or in a hospital emergency until an on-site interpreter can arrive. There are other contexts where on-site interpreting is required, for example in medical or mental health assessments, or during complex legal appointments.
- [127] Ms. Holtzman, in her capacity as Regional Manager, has been involved with the contracting of interpretation services for the CSC. She confirmed in her evidence her understanding that ASL interpretation is most effective for incarcerated individuals when provided in person. She stated that the CSC tries to provide "live" or in-person ASL interpretation wherever possible.

4. Live (on-site) ASL interpretation [128] Live ASL interpretation is a service where the sign language interpreter is provided on site. Dr. Russell noted that the advantage of on-site interpreting is that the interpreter is physically present, which allows them to see all parties in the interaction, including the Deaf person using sign language. As a visual-spatial language that relies on movement of hands, body, and facial expressions, ASL's linguistic features can be subtle and more easily understood when the interpreter is physically present. According to Dr. Russell, being present in the room facilitates more effective interpreting especially for lengthier or more complex interactions, such as parole meetings, psychological assessments, psycho-social or educational programming, or medical assessments.
 5. Video visitation [129] Video visitation refers to visiting times that can occur via video communication that allows those incarcerated to maintain their connection to friends and family. At Matsqui, for instance, there are three kiosks, including one in a closed room, with a monitor and camera. Inmates may use the equipment in these kiosks to have video calls, which could range from court appearances and meetings with their lawyers to conversations with family. For Deaf inmates, video visitation allows for them to communicate with ASL-fluent persons, or alternatively, if the other person does not know ASL, access to the call can be given to an ASL interpreter who will interpret for the parties.
- [130] The video visitation systems are primarily located in kiosks within the Visits and Correspondence ("V and C") areas of the institutions, not necessarily close to the area where inmates are usually located. According to Ms. Shaw, this is intentional because the V and C areas are already set up with network connections and, from a visibility and supervision standpoint, it is easier for CSC employees to monitor an inmate's use of the system in that area. Inmates cannot have unsupervised and unrestricted access to the computers because they could potentially bypass the equipment's security protections, which would compromise the information and data of CSC employees and inmates.
- [131] At the time of the hearing, the evidence was that the video visitation systems in place were using the Webex platform for video calls.
- [132] The video kiosks' equipment could be used for VRS if the necessary software application was installed. However, according to Mr. Deschenes, the application would need to first go through a security assessment and accreditation process, which could take about six months.
- [133] The VRI testing that occurred at two British Columbia institutions, which I mentioned earlier, was conducted on video visitation systems.
- (b) Services while Mr. Lidkea is incarcerated 1. Effective Communication [134] The CSC acknowledged in its submissions that it exercises a great amount of control over inmates residing within its institutions such that prison authorities owe a duty to ensure reasonable care for the health and safety of inmates in custody.

- [135] To provide the services relating to this duty, effective communication with inmates is necessary, as was highlighted in *P.S. v. Ontario*, 2014 ONCA 900, at paras 147–148 [P.S.], a case involving the involuntary committal of a Deaf person under Ontario’s Mental Health Act, RSO 1990, c. M-7. The circumstances in P.S. are thus reasonably analogous to Mr. Lidkea’s case. The applicant in P.S. successfully argued that his equality rights under section 15(1) of the Canadian Charter of Rights and Freedoms (the “Charter”) were denied due to the failure to provide him adequate interpretation services. The Court held that the authorities detaining the applicant were required to provide the necessary and appropriate communication services to ensure that the applicant’s basic and fundamental personal needs as a detainee were fully understood and addressed, and that the applicant was able to communicate effectively to access the programs offered to hearing detainees.
- [136] For Mr. Lidkea, as a Deaf inmate under the CSC’s care and custody, ASL interpretation should similarly be furnished for the services that the CSC must provide to him. In his final submissions, his individual accommodation request asks simply that the CSC be ordered to provide him with ASL interpretation for “all correctional services falling under section 5 of the CCRA.”
- [137] This request is too vague to be workable as a Tribunal order, which Mr. Lidkea effectively acknowledged. His counsel agreed in final submissions that it is impossible to list every specific instance where such services must be provided. It was not suggested that Mr. Lidkea be provided ASL interpretation services 24 hours per day, seven days per week.
- [138] However, Mr. Lidkea submits that there are some contexts where it is clear that effective communication is necessary to ensure that he receive services equal to hearing offenders. In his written submissions, he listed the interactions in the context of his incarceration for which, according to the evidence, effective communication was hindered because ASL interpretation was not provided:
1. Medical appointments;
 2. Mental health assessments including suicide assessments;
 3. Correctional programs and support groups both while in custody and outside of custody;
 4. Meetings with Elders and other Indigenous cultural support staff;
 5. Intake interviews and institutional orientations;
 6. Post-suspension interview with his parole officer; and
 7. Interviews and meetings with correctional staff, including his parole officer, related to topics such as institutional grievances, disciplinary charges, case management and release planning, and his request for Medical Assistance in Dying (MAID).

[139] Interestingly, the IAP that the CSC developed at Matsqui setting out the services that the institution would “attempt to provide” to Mr. Lidkea with ASL interpreters, without requiring a request from him in advance, encompasses most of the areas mentioned in his submissions. This list, which I already set out earlier in this decision, includes:

1. Interviews with Mr. Lidkea’s case-management team, work supervisors, on-site Chaplains, Elders, and Indigenous Liaison Officers;
2. Correctional program sessions;
3. Parole meetings wherein his adherence to his correctional plan or disciplinary measures are discussed;
4. Parole Board of Canada hearings;
5. Healthcare appointments that require ASL medical certified interpreters; and
6. Mental health appointments.

[140] I am satisfied that the items in both lists constitute services within the meaning of section 5 of the CHRA that the CSC provides to Mr. Lidkea and for which ASL interpretation must be provided. I would add to these lists an item mentioned by Mr. Lidkea’s counsel in final arguments—access to any meetings that could impact his liberty or legal rights, including meetings with his legal counsel. However, in contrast to the IAP, the CSC must not merely be required to “attempt to provide” ASL interpretation services for these items, it must actually do so.

[141] The items appearing on these lists are reflected more fully in a list that the Commission submitted in the context of the systemic remedies that it requests, discussed later in this decision. For consistency, my order regarding Mr. Lidkea’s individual accommodation uses the terms that I adopted for the systemic remedies.

2. Meaningful Interaction [142] During his incarceration, in the CSC’s care and custody, the CSC controls Mr. Lidkea’s ability to interact with other persons. The fact that Mr. Lidkea did not have access to ASL interpretation or even TTY machines meant that he could not have any effective communication with anyone for days at a time. Mr. Lidkea testified about the isolation that this caused for him. It was analogous to being in a completely solitary environment. He often opted to stay in his cell alone. Dr. Russell described being Deaf in prison as having a “double sentence,” with isolation from general society and then isolation from other humans in terms of regular, daily communication.

[143] Mr. Lidkea called another Deaf inmate, Will Barton, to testify via video from Mission Institution where he is detained. His experience has been similar to Mr. Lidkea’s. He explained that he spent several years in solitary confinement before this form of detention was replaced a few years ago. He described that experience as being even worse for Deaf inmates than others. Hearing inmates would still be able to hear activity outside their cells such as conversations and public address announcements. Deaf inmates do not even

receive that input and are thus even more isolated than other inmates. However, Mr. Barton acknowledged that some of the isolation that he has experienced was due to the COVID-19-related lockdowns that were imposed throughout the institution.

- [144] Mr. Lidkea referred in his final submissions to the case law regarding solitary confinement, which holds that confining prisoners for 22 hours or more per day without meaningful human contact violates the Charter (see *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228 at para 167; and *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243 at paras 23–28 and 150). Mr. Lidkea testified that throughout his incarceration, he never consistently received two hours per day of meaningful interaction whether through ASL interpretation or TTY.
- [145] Following these decisions, the Structured Intervention Unit (SIU) regime was adopted to replace solitary confinement, whereby inmates are to be provided with an opportunity for meaningful human contact (see section 32(1)(b) of the CCRA). Inmates in the SIU must have the opportunity to interact with others for a minimum of two hours per day (see section 36(1)(b) of the CCRA).
- [146] Given the complete isolation that Mr. Lidkea experiences when he is alone and unable to converse with anyone else, the CSC must ensure, by analogy to the SIU rules, that he have access to some means of effective communication with other persons for at least two hours per day, subject to any exceptional or unexpected causes that may prevent this from occurring, such as universal lockdowns for health, safety, or security reasons.
- [147] Any of the communication means that I listed earlier would be acceptable to meet this requirement (that is, via Live ASL interpretation, VRS, or VRI). TTY is not an acceptable means for providing meaningful interactions. If Mr. Lidkea is afforded the opportunity to engage with someone at the institution who is fluent in ASL and can converse directly with him, be it another inmate or someone else like an Elder, those interactions should also be taken into account in the allocation of the two-hour minimum daily interaction.
- [148] The requirement is only that access to such communication be made available to Mr. Lidkea. The CSC would not be in default if Mr. Lidkea opted not to use the available services on a given day, and any such decision cannot be used to accumulate hours on other days.
- [149] Mr. Lidkea referred in his submissions to the access that hearing inmates have to telephone systems on a fair and consistent basis for the purpose of maintaining family and community ties (see Commissioner's Directive 085: Correspondence and telephone communication at para 15). In providing Mr. Lidkea access to communication by VRS, VRI, or the video visitation service, it is understood that the CSC would be affording him the same opportunity as other inmates to maintain family and community ties.
- [150] Mr. Lidkea pointed out that the telephone systems in the medium-security institutions where he has been placed were typically located within the inmates' living units. Video visitation kiosks are located further away, in the V and C areas, and not as easily accessible.

Mr. Lidkea would like to have equally proximate access for his communications. However, the CSC points out that security and technical concerns have prevented the installation of the needed infrastructure for Internet connections in the areas where the telephone systems are installed. I do not think it is appropriate for me to resolve the technicalities around these issues in the context of this remedial order. What is significant is that the CSC must make that minimal meaningful contact available in one or the other acceptable forms and ensure that Mr. Lidkea has a reasonably similar opportunity to access his communication tools as the other inmates have for their telephone communications.

- [151] I take note of Dr. Russell's and Ms. Holtzman's evidence that Live ASL interpretation is preferred in some instances, particularly for medical and legal services engaging Mr. Lidkea's liberty. For such significant matters, the CSC should prioritize the use of Live ASL, as Ms. Holtzman testified the CSC has already undertaken to do. However, the CSC will now be required to implement access to VRS or VRI in some way, as a result of this order. Thus, even when Live ASL interpretation is not available, remote access through one of these tools must be provided as a minimum form of reasonable accommodation to Mr. Lidkea.
- (c) Services while Mr. Lidkea is on conditional release [152] Mr. Lidkea claims that the obligation to ensure effective communication through the provision of ASL interpretation extends not only to his meetings with parole officers and other CSC-associated staff, but also to all of his interactions at the CRF to which he is referred, such as meetings with mental health staff, case workers, outreach workers, and community support groups such as COSA.
- [153] The CSC challenges this claim, arguing that there is a clear distinction in its obligations towards inmates who are in its care and custody in a federal institution (see section 5(a) of the CCRA) and offenders on conditional release in the community who are only under the CSC's supervision (see section 59(d) of the CCRA). The CSC submits that the great amount of control that it has over inmates within its institutions, as expressed in the notion of "care and custody," no longer exists when the offender is on conditional release and merely under the CSC's "supervision." A condition requiring Mr. Lidkea to reside at a CRF does not put him under the CSC's care and control when he is in the community, nor does it make the CSC responsible for his basic and fundamental personal needs while he resides at the CRF. In contrast to the prison setting, the CSC does not exercise complete control over offenders that gives rise to a duty to ensure reasonable care for their health and safety while in custody.
- [154] Consequently, the CSC submits that it should only be responsible for providing ASL interpretation for events that it is required to provide for Mr. Lidkea's supervision but that the responsibility does not extend to other interactions including "voluntary events" that Mr. Lidkea wishes to attend.

- [155] The CSC contends that several legislative and regulatory provisions provide guidance as to what this supervision consists of. Section 128 of the CCRA states that offenders are entitled to be “at large” when they are on parole, statutory release, or unescorted temporary absence, in accordance with the conditions that may have been imposed. The CSC submits that, in this sense, the circumstances of offenders are no different than those of other Canadians.
- [156] All offenders released on parole or statutory release are subject to certain conditions that are set out in section 161 of the Corrections and Conditional Release Regulations (SOR/92-620) (the CCRR), such as the requirement that they remain at all times in Canada within the territorial boundaries fixed by their parole supervisor, that they report to their parole supervisor as instructed, and that they obey the law and keep the peace.
- [157] Section 133(4) of the CCRA specifies that a releasing authority can impose the additional condition of requiring the offender to reside in a CBRF, if the circumstances of the case so justify. Releasing authorities are either the Parole Board of Canada (the PBC), the CSC Commissioner, or the Institutional Head who is in charge of a penitentiary (see sections 2 and 133(1) of the CCRA).
- [158] Section 102 of the CCRA provides that a correctional plan must be maintained for inmates to ensure that they receive the most programs to prepare them for reintegration into the community, on release, as law-abiding citizens.
- [159] Read together, these legislative and regulatory provisions mean that the CSC is required to support the rehabilitation of offenders through the provision of programming, the purpose of which generally is to prepare inmates within a CSC institution for their parole or statutory release into the community. Inmates in facilities operated by the CSC have rights to programming, which the CSC has a duty to provide.
- [160] Section 76 of the CCRA requires the CSC to provide a range of programs designed to address the needs of offenders and contribute to their successful reintegration into the community (see *William Head Institutional Inmate Committee v. Canada (Corrections Service)*, 1993 CanLII 17020 (FC) at para 10). However, the CSC points out that there are no legal obligations requiring it to provide or maintain specific programs.
- [161] The CSC adds that there is no statutory mandate that requires it to pay for the costs of voluntary events, like the COSA program that Mr. Lidkea sought to attend. If an offender disagrees with a CSC decision not to provide them a given program, the offender can seek judicial review of the decision before the Federal Court.
- [162] According to the CSC, the scope of its supervisory responsibilities was explained by Mr. Lidkea’s parole officer supervisor, Shannon Plumpton, in her evidence. She stated that the CSC’s community parole officers manage federal offenders on conditional release and those subject to a long-term supervision order by ensuring compliance with their conditions and by supporting their reintegration into the community.

- [163] Ms. Plumpton noted that her involvement with Mr. Lidkea relates to his behaviour and his compliance with the parole conditions. ASL interpretation has been provided for all supervision meetings between Mr. Lidkea and his community parole officer and other “CSC required professionals,” which include the Indigenous Community Liaison Officer, the CSC Program Elder, and a social worker with the Mental Health Team. Supervision meetings between Mr. Lidkea and his community parole officer have also occurred at Harbour Light with CRF staff being invited (but not obligated) to attend. Once a supervision meeting is completed, the CSC has allowed Mr. Lidkea to use the remaining time with the ASL interpreter to develop and update his Resident Action Plan with Harbour Light staff and to meet with them as needed. Ms. Plumpton stated that Mr. Lidkea is expected to meet with a CRF case worker once per month to develop and update a Resident Action Plan, which lists an offender’s goals, what they are trying to achieve in the community, and how the CRF can support their efforts.
- [164] The CSC submits that Ms. Plumpton’s evidence is consistent with the CSC Commissioner’s Directive 715-1: Community supervision, which indicates that the primary responsibilities of a parole officer in supervising an offender involve developing and assisting offenders with the objectives of their correctional plans and monitoring the offender’s behaviour, release conditions, and compliance with court-ordered obligations.
- [165] However, are the CSC’s supervisory responsibilities limited to these sorts of interactions that the offenders have with their parole officers and the other “CSC required professionals?”
- [166] The Commission points out that one of the purposes of the federal correctional system, as set out in section 3(b) of the CCRA, is to contribute to the maintenance of a just, peaceful, and safe society by 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. This purpose should be read together with sections 5 and 76, to understand the scope of the CSC’s responsibilities. It is for this statutorily mandated purpose that the CSC contracts with and provides funding to CRFs to provide accommodation, programming, counseling, and supervision of offenders. Merely because the CSC hands off these elements of its responsibilities to a private CRF does not mean that they are no longer its responsibility.
- [167] In fact, the CSC expressly sets out these elements in its standard agreement with CRFs. At paragraph 25 of the Statement of Work included in the agreement with Harbour Front, for instance, the CSC stipulates that the CRF “must provide the following support services”:
- a) Monitor and support offender activities against the Community Strategy, [Resident Action Plan] and Correctional Plan;

- b) Assist residents, through ongoing support, in areas that include, but are not limited to, crisis management, personal or family problems, education, literacy, employment, budgeting, life skills, recreation, spiritual and cultural activities;
- c) Assist residents to secure services appropriate for their needs or for public safety requirements, such as substance abuse services, income support, employment services, medical (including mental health) and dental services; and
- d) Provide residents a supportive group living environment through activities such as periodic house meetings.

[168] For these services and assistance to be provided, effective communication is needed, which for a Deaf person like Mr. Lidkea entails the use of one of the means for ASL interpretation explained earlier. Harbour Light lacked the resources to provide Mr. Lidkea with ASL interpretation to the necessary extent while he was a resident there. The CSC contends that the CRF bears the duty to arrange for these means of communication and that the CSC should not be held “vicariously liable” for the CRF’s failures to fulfil that duty.

[169] I disagree. The Commission is correct in its assertion that these “support service” responsibilities are the CSC’s, under the CCRA. The use of a privately operated resource like the CRF does not relieve the CSC of these responsibilities (see *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada* (for the Minister of Indian and Northern Affairs Canada), 2016 CHRT 2 at para 84). Notably, had Mr. Lidkea been placed in a CSC-run CCC instead of a privately operated CRF, then this discussion would be unnecessary since the CSC would be providing the services and no third party would have been involved.

[170] In other words, the CSC has passed on the delivery of these services to Harbour Light, which it funds. To prevent Mr. Lidkea from being denied effective communication in accessing these services, the CSC needs to ensure that ASL interpretation is available, even if that means requiring its contracting party, the CRF, to provide it.

[171] It is not my role to explore the details and intricacies of any given program or meeting to determine if it comes under the list of “support services” that a CRF is contractually bound to provide. It suffices for me to state that “supervision,” as the term is used in section 5(d) of the CCRA, extends to any activities that the CSC assigns to privately run CRFs and compels them to provide. I am referring here to the services that CRFs must provide, such as “assistance” to obtain healthcare in the community. Of course, the CRF does not have the responsibility to provide the actual healthcare, and therefore, any ASL interpretation accommodation for that purpose would be the health services provider’s responsibility, not the CRF’s or the CSC’s.

- [172] Fortunately, many of the technological and security challenges and restrictions arising in institutional settings are not present at CRFs. There is access to computers, tablets, and smartphones. It is the CSC's responsibility to ensure that the resources be there for a CRF to be able to access the necessary means for effective communication with Mr. Lidkea regarding these support services, using these technologies and traditional "live" means.
- [173] The CSC has already made efforts in this direction. As mentioned, any extra unused time with ASL interpreters after meetings with parole officers and other CSC professionals has been made available to Mr. Lidkea to interact with CRF staff, for instance. It also seems that Mr. Lidkea has been given supervised access to VRS via the computers within the Harbour Light CRF Learning Centre five days per week for most of the day. His use of the computers is supervised because of conditions imposed by the PBC restricting his access to the Internet and communication devices. For times outside of those hours, Mr. Lidkea has supervised access to the VRS application on Harbour Light staff tablets. The CSC submits that if meetings between Harbour Light staff and Mr. Lidkea are required, nothing prevents him from having those meetings conducted remotely via VRS, as long as they are not in the same room together while the VRS call is occurring. However, this is not necessarily an appropriate option given the terms and conditions in CAV's user agreement. The CSC may need to explore with the CRF the possibility of using VRI, at the CSC's cost.
- [174] Returning to the issue of conditions imposed on the use of electronic devices by a releasing authority, the CSC's obligation to reasonably accommodate Mr. Lidkea in providing ASL interpretation must take into account these restrictions, which may require the development of protocols, such as a requirement that he give sufficient advance notice for an acceptable form of ASL interpretation to be arranged. Again, it is not my role to decree rules for such possible issues that may arise in the future. The parties will have to work out the necessary arrangements mindful of the CSC's ultimate responsibility to ensure that ASL interpretation be available for the services it provides, within the meaning of section 5 of the CHRA.
- [175] Regarding access to meaningful interaction, which was a relevant issue while Mr. Lidkea was incarcerated, it is obvious that the CSC's responsibilities to Mr. Lidkea while on conditional release are not as extensive as when he is in its care and custody in prison. Offenders on conditional release are, after all, "at large," and no longer as dependant on the CSC. The concerns about meaningful interaction due to physical isolation are therefore no longer an issue and the CSC bears no responsibility in that regard.
- [176] I note in passing that the CSC claimed in its final submissions that Mr. Lidkea is not entitled to any remedy relating to his conditional release as he did not amend his Statement of Particulars (SOP), which he filed in May 2022, to seek specific remedies regarding Harbour Light and the other CRFs. I am not persuaded by this argument. Extensive evidence was led regarding the entire period of Mr. Lidkea's engagement with the CSC from 2018 until the hearing. It is evident that there were several periods during this time when Mr. Lidkea was on conditional release.

[177] At no time did the CSC make any objection as to the scope of the case that Mr. Lidkea was presenting. Indeed, the CSC led extensive evidence about the ASL interpretation that was provided to Mr. Lidkea while he was at a CRF. The CSC cannot now, at the end of a long hearing that clearly dealt with Mr. Lidkea's experience while at the CRFs, argue that he cannot seek remedies relating thereto.

[178] Besides, Mr. Lidkea's and the Commission's SOPs clearly referenced claims for systemic remedies regarding periods when offenders are under community supervision. The remedies that Mr. Lidkea is seeking are encompassed in those being sought for all offenders.

(ii) Letter of assurance of no further similar breaches [179] In his final submissions, Mr. Lidkea asked for a "letter of assurance" from the CSC that it will not commit any further similar breaches of the CHRA. This letter resembles orders for the issuance of letters of apology that complainants have sought from the Tribunal in the past. The Federal Court has held that the Tribunal does not have the authority to order the issuance of apology letters (see *Canada (Attorney General) v. Stevenson*, 2003 FCT 341 (CanLII), at paras 27–35), and, in my view, the same restriction would extend to the type of letter that Mr. Lidkea is seeking.

[180] Besides, this decision's reasons are public and should constitute sufficient direction to all the parties of their obligations under the CHRA. Non-compliance could trigger the enforcement mechanisms set out in the CHRA (see section 57).

[181] This request is denied.

[182] However, I note that the CSC stated in its submissions that it agrees to provide a letter to Mr. Lidkea expressing regret for a failure to accommodate his disability. The CSC will ensure that the letter be placed in Mr. Lidkea's healthcare files and is flagged in a prominent manner. While I cannot order the CSC to prepare the letter, I do order it to place any such letter in Mr. Lidkea's files once it has followed up on its undertaking to prepare it.

(iii) Removal of negative information and insertion of memo in Mr. Lidkea's records [183] Mr. Lidkea asks that the CSC be ordered to remove from his records within six months all negative information stemming from its failure to accommodate his disability, including any assessments for decision, correctional plans, individualized accommodation plans, and psychological risk assessments.

[184] This request is too broad and vague. For instance, although Mr. Lidkea testified that a 2018 psychological risk assessment, which was made without any ASL interpretation, allegedly contained errors, it was not entered into evidence and there is no evidence to confirm whether his claims of erroneous entries are accurate. Moreover, as the CSC points out, the CCRA sets out a complaint and grievance process for contesting errors or omissions in the information in the CSC's possession, and any decisions arising therefrom can be judicially reviewed. It would be inappropriate for the Tribunal to issue orders that would circumvent this process, especially in the absence of any detailed evidence regarding these alleged

errors.

[185] This request is denied.

[186] Mr. Lidkea also asks that the CSC place a memo in his file that outlines the Tribunal's findings and cautions staff about relying on information that was obtained from interactions with him that occurred without an interpreter or that is connected to the failure to understand or accommodate his disability.

[187] In contrast to his other request under this heading, the instances where Mr. Lidkea dealt with correctional staff without the assistance of ASL interpretation appear to be discernable. A request that a notice be inserted in his file stating that the information collected during these interactions should be viewed with some caution is reasonable.

[188] Furthermore, a copy of this decision should be included in Mr. Lidkea's file, given its obvious relevance to his experience with the CSC. The CSC agreed in its submissions to ensure that the Tribunal's decision is placed in Mr. Lidkea's correctional and healthcare files and is flagged in a prominent manner. I will not impose a requirement that the decision be summarized. A plain-language summary of the decision may eventually be available from the Tribunal's website, which should also be added to Mr. Lidkea's file once it becomes available.

(iv) Application of the Tribunal's order to future sentences [189] Mr. Lidkea requests that the Tribunal's order apply to all future sentences that he may incur resulting in his being subject to the CSC's supervision or custody.

[190] My findings have not been limited to any specific offence or conviction involving Mr. Lidkea. They relate to all of his interactions with the CSC. One would hope for him that there would not be any such occurrences in the future, but if there were, the order would still apply because it concerns his relationship with the CSC, not any particular offence or conviction.

C. Systemic remedies [191] Mr. Lidkea and the Commission seek several systemic remedies, many of which are similar to the individual remedies that he sought. In those instances, my order is for the most part aligned with the individual remedial orders.

(i) A commitment to providing ASL interpretation for the provision of services under section 5 of the CCRA [192] Mr. Lidkea asks that the CSC be ordered to provide ASL interpretation to all individuals who require it in its provision of services contemplated under section 5 of the CCRA. He notes specifically that interpretation should be provided for a Deaf person's intake interview and orientation within 24 hours after arriving at an institution.

[193] The Commission similarly requests that the CSC make “all reasonable efforts to provide deaf individuals who communicate with ASL or LSQ, a trained, qualified interpreter for events that impact their rehabilitation, reintegration, programming, health, safety, liberty interests, and legal rights.” The Commission proposes that these events include, but are not limited to:

- 1) Meetings that impact the individual’s liberty interests, their case management, or in which the person is required to make or consent to a decision;
- 2) Intake interviews and orientation;
- 3) Meetings or appointments with medical staff or health services, including mental health services, program staff, treatment staff, parole staff, Elders, and Chaplain;
- 4) Proceedings before administrative tribunals, including the PBC, institutional Disciplinary Court, and interviews conducted under the offender grievance procedure;
- 5) Programs, including correctional programs identified in the individual’s correction plan, employment programs, educational programs, social programs, and recovery programs; and
- 6) Meetings with legal counsel.

[194] The Commission also reiterates Mr. Lidkea’s request that the CSC be ordered to ensure that sufficient ASL interpretation be contracted for, adding that the CSC must ensure that all staff are aware of the interpretation services that are available.

[195] The CSC does not seem to disagree with many of the requested items. In its final submissions, it confirmed that it would implement the systemic remedies that it had already committed to doing, which include the creation of an Interim Policy Bulletin (IPB) related to individuals with disabilities, including offenders who are deaf or hard of hearing. Katherine Belhumeur, CSC Director General of the Offender Programs and Reintegration Branch, testified that the CSC was committed to completing the IPB within one year. She explained that IPBs are formal policy instruments that the CSC uses when there is an identified policy gap and the CSC has been unable, given time constraints, to complete a full Commissioner’s Directive or other policy instrument process. The IPB would likely incorporate an acknowledgment that the CSC has a duty to accommodate all individuals with disabilities and that all reasonable efforts would be made to assure them a barrier-free access to services.

[196] The IPB would probably be based on a Memorandum issued by the CSC’s Assistant Commissioner, Correctional Operations and Programs, dated April 23, 2024, entitled Duty to Accommodate Offenders (the “Memorandum”). The Memorandum states that to ensure an offender can effectively communicate, the CSC may have the obligation to provide sign language interpretation services in circumstances “such as” those mentioned in items 1, 4, and 6 of the Commission’s remedial request list above. Regarding healthcare, the

Memorandum refers only to non-emergency appointments. The Memorandum also only mentions programs that are identified in the offender's correctional plan. Notably, the Memorandum's list ends with the term "etc.," suggesting that the list is not exhaustive.

[197] Elsewhere in the Memorandum, it is indicated that an offender's intake interview should be conducted with the assistance of an interpreter (item 2 in the Commission's request), particularly when an individualized accommodation plan needs to be developed.

[198] The Memorandum does not mention a specific time frame for the interview with ASL interpretation to occur. Mr. Lidkea indicated that it should be within the same 24-hour period as prescribed for all inmates, in Commissioner's Directive 705-3: Immediate Needs Identification and Admission Interviews. Meeting this deadline may have posed a challenge to the CSC when it considered Live ASL interpretation as its only option. But with the requirement that the CSC implement additional interpretation tools, namely VRI and VRS, I see no reason why the same standard cannot be applied to Deaf inmates.

[199] ASL interpretation should be made available for the events listed in item 3 of the Commission's list, though the CSC's proposed exception for urgent or emergency appointments is reasonable, mindful that even in those circumstances, with the availability of remote ASL interpretation, it would be expected that the CSC would use those tools as soon as possible when such events occur.

[200] Overall, I am satisfied that the Commission's requested list consists of reasonable measures to ensure that while incarcerated, Deaf inmates have access to effective communication for services that the CSC provides, within the meaning of section 5 of the CHRA.

[201] Mr. Lidkea's and the Commission's request referred to offenders on conditional release as well, though their submissions regarding the systemic remedy did not formally address the circumstances of offenders on conditional release residing at CRFs. However, given my findings regarding Mr. Lidkea's accommodation while at CRFs, other Deaf inmates should be similarly accommodated, and my order below reflects this.

(ii) Meaningful interaction [202] The remedy awarded to Mr. Lidkea in this regard should also apply to other Deaf inmates. They are also entitled to access the same amount of meaningful interaction each day.

(iii) Contracts with a sufficient number of ASL interpretation providers [203] Mr. Lidkea and the Commission ask that the CSC be ordered to contract with a sufficient number of VRI and Live ASL interpreters to ensure reliable and consistent access to interpreters for Deaf people in custody and on conditional release. The Commission adds that the CSC must be required to ensure that all its staff are aware of the interpretation resources that are available.

- [204] The CSC states that it is committed to implementing regional VRI contracts for interpretation services to provide on-demand interpretation using existing video visitation systems in CSC institutions. Ms. Belhumeur said that the CSC would make all reasonable efforts to obtain these VRI services, subject to the availability of VRI service providers to provide the contracted services, and once set up, subject to operational availability.
- [205] The CSC's undertaking to make "all reasonable efforts" is not satisfactory. The CSC must find a way to ensure that ASL interpretation is made available for the services that it is responsible to provide, within the meaning of section 5 of the CHRA, by whatever necessary means, be they regional, national, or any other form of contracting, whether for Live interpretation or the likely more easily accessible VRI service. The requirement extends to the services that the CSC must ensure is available to offenders on conditional release.
- [206] Notably, Mr. Deschenes and Ms. Belhumeur testified that all VRS and VRI options can technically be implemented at institutions, mindful that certain security concerns would first need to be addressed. The CSC witnesses indicated that it is facing financial constraints like other sectors of the public administration. However, the evidence did not establish that implementing these measures to ensure ASL interpretation services for the handful of Deaf offenders for which the CSC is responsible would cause it any undue hardship. According to an affidavit signed by Ms. Holtzman in October 2024, at that time, there were seven offenders in the CSC's national population who use sign language, of whom five were incarcerated in federal institutions and two were in the community under some form of supervised release.
- [207] I note that the CSC contends that it will fulfil its obligations regarding incarcerated inmates by providing VRI access through the video visitation equipment. However, that is not an option for effective communication in certain circumstances such as medical visits or perhaps for participation in some in-person programs. The CSC must ensure that the ASL interpretation is available in whatever form is appropriate for the circumstances.
- [208] The CSC should of course also explore the use of VRS wherever possible. VRS is a free service, and the CSC likely does not need to enter into a formal contracting process as is required to procure Live or VRI interpretation commercially. The Memorandum explicitly encourages CSC Regional Heads and Institutional Heads to explore the feasibility of implementing both VRS and VRI.
- [209] Ultimately, the CSC must ensure that some means of effective communication for Deaf offenders are available for the services that it is required to provide them.

(iv) Implementation of a VRS or VRI service equivalent to the telephone communication access that hearing inmates have. [210] Mr. Lidkea and the Commission ask that the CSC be ordered to implement VRS or an equivalent VRI service as an alternative to the inmates' telephone system, to ensure equal access to the telephone communication for deaf people in custody. The Commissioner's Directive – 085: Correspondence and telephone communication states that

access to telephones through an inmate telephone system should be provided on a fair and consistent basis to help maintain family and community ties and to provide a direct link with families in the event of an emergency.

[211] As I mentioned earlier, the telephone systems are typically located near the inmates' living units. There is apparently little concern of misuse of the special telephone systems that are installed, and the phone numbers that can be called are controlled and verified. Consequently, inmates can basically walk up and use the phones at any time. The CSC states that for security reasons, it cannot give the same level of access to computer equipment for VRS and VRI use. This is the reason that Mr. Lidkea had to make his video calls at the kiosks situated in the V and C area.

[212] As I held earlier, it is not my role to assess and determine how technologically the CSC will go about assuring Deaf inmates have reasonably equivalent access to communications. Instead, I agree with the Commission's proposed order regarding this question with a slight variance. The CSC must independently implement a communications system that provides Deaf federally sentenced individuals with access that is reasonably similar to the inmate telephone system including:

- The ability for sign language users to communicate in their first language, with fluency, range of expression, ease, and speed;
- cost;
- regular hours of availability;
- availability in cases of emergency; and
- quality of service.

[213] An order to this effect provides sufficient guidance.

(v) Individualized Accommodation Plans [214] The Commission and Mr. Lidkea ask that the CSC be ordered to develop meaningful accommodation plans for Deaf people who enter CSC custody or who are already in prison or on conditional release and supervision. The IAP would outline the person's accommodation needs in relation to the disability and would be created in collaboration with the person, and with the assistance of ASL interpretation. The IAP would be reviewed at least annually and updated if needed.

[215] I note that Mr. Lidkea sought in his submissions to extend this remedy to "all Deaf, hard of hearing or Deafblind people." Mr. Lidkea filed his complaint as a Deaf person. In addressing this remedial request, I must focus on the specific disability Mr. Lidkea alleged in his complaint. It would seem obvious that the adoption of IAPs for persons who are deaf should logically also extend to others with similar or related disabilities. That said, my order will solely address Mr. Lidkea's protected characteristic, as alleged in his complaint.

- [216] Mr. Lidkea further asks that when Deaf persons are on release in the community, the IAP should also provide for appropriate accommodation technologies that the person can use to communicate to hearing people in the community (such as a smartphone, a tablet, or a laptop, and access to VRS at their CRF).
- [217] The CSC states in its submissions that it is committed to develop an IAP for offenders with a disability who require and wish to have one. The IPB is expected to provide guidance on the development, use, updates, and adherence to the terms of IAPs.
- [218] I take note of the CSC's commitment. It simply makes sense that, with a Deaf offender's consent and ASL interpretation, an IAP be developed collaboratively with the offender, which will provide clear guidance as to what the offender's needs are. I also observe that the CSC said that it had developed IAPs for Mr. Lidkea in consultation with him. He claims that he was not consulted, but, in any event, the parties seem to agree that a proper IAP can only be developed collaboratively, and obviously with the assistance of ASL interpretation.
- [219] As for the request that IAPs always contemplate the provision of appropriate communication technologies, given the range of options as well as the reality of any restrictions on the use of electronics that a court or releasing authority may have imposed, I need not include any such direction in the order. It suffices to say that the CSC must ensure that the Deaf offender has access to ASL interpretation in some acceptable form considering all factors that may apply to the given individual and the circumstances of their conditional release.

(vi) Public policy on accommodating Deaf federally sentenced individuals [220] The Commission and Mr. Lidkea ask that the CSC be ordered to adopt a policy instrument that is publicly available on respecting the duty to accommodate Deaf individuals.

[221] The Commission is more specific in the content of the requested policy, stating that it should include the following elements:

- A description of the scope of events requiring ASL interpretation or accommodation;
- The policy must be informed by consultations with various stakeholders, including the Commission, but also community disability rights organizations, experts on the experiences of people with disabilities, and other relevant stakeholders;
- Guidance on the development, use, updates, and adherence to the terms of IAPs; and
- A commitment that within 24 hours of notification or arrival at a federal institution, the CSC will make all reasonable efforts to arrange for ASL interpretative services for intake interviews and orientation.

[222] The Commission submits that offenders must have access to any policies regarding accommodation of disabilities.

- [223] The CSC responded in its submissions that it is working on creating an IPB relating to individuals with disabilities, including offenders who are deaf. The CSC added that it is “agreeable” to consulting with the Commission to redress any systemic discriminatory practices.
- [224] The Tribunal's authority to issue a policy-related order is found in section 53(2)(a) of the CHRA, which states that it may order a respondent to take measures, in consultation with the Commission on the general purposes of the measures, to redress the discriminatory practice or prevent it from recurring in the future. Consequently, there is no question that the Commission can be involved in the development of the new policy. However, there is no authority in the CHRA for me to order the Respondent to consult with anyone else.
- [225] The Commission may consult whomever it wishes as part of its consultative role, but my order will only require the Respondent to consult with the Commission. That said, nothing prevents the CSC from consulting other stakeholders, if only to build a more comprehensive and better policy, and simply work more efficiently.
- [226] Aside from the third-party participation, I find the content of the Commission's proposed policy-related order to be satisfactory and that it addresses some of the failures to accommodate Mr. Lidkea that are in evidence.
- [227] The Commission has included in its systemic remedies request a reference to the Inmate Handbook that is given to inmates upon their arrival at an institution. A copy of Matsqui's handbook was entered into evidence. The handbook is intended to serve as a general information guide that defines the institution's expectations of inmates and is meant to assist new inmates in their orientation. According to the Commission, the handbook does not include information on accommodating inmates with disabilities. There is no specific mention of the availability of interpretation services for Deaf inmates. The Commission asks that the handbooks reflect and reference any new policies that the CSC implements on accommodating Deaf individuals. I find that this is a reasonable request that will also serve to prevent discriminatory practices in the future.
- (vii) Psychological risk assessments for Deaf individuals [228] Mr. Lidkea asks that the CSC be ordered to ensure that psychological risk assessments of Deaf individuals be completed by a psychologist with expertise and experience in working with deaf and hard-of-hearing people, or, if not, that the psychologist consult with a Deaf expert who possesses this knowledge.
- [229] This request is denied. To begin with, this complaint is centred on the absence of means for effective communication for Mr. Lidkea, and ASL interpretation in particular. The only evidence I have regarding psychological risk assessments was about the absence of adequate ASL interpretation during his assessments. As for the quality of the assessments themselves, and the qualifications of the experts involved, these are issues for which there is a review process to which I alluded earlier. I have no evidence regarding these issues and, in any event, they do not relate to the ASL interpretation question that is before me.

(viii) Awareness sessions on Deaf culture [230] Mr. Lidkea and the Commission ask that the CSC be ordered to provide awareness sessions on Deaf culture at all institutions where persons who are deaf or hard of hearing reside, and all parole officers who supervise such persons must attend. The Commission adds that the training should be provided by external experts on Deaf culture and should include information on how to work with interpreters to respond effectively to Deaf persons' needs. The training should also reference the rights and obligations set out in the CHRA, particularly in relation to the accommodation of individuals' needs.

[231] The CSC agrees that awareness sessions should be given. Ms. Belhumeur stated that the CSC had already undertaken to provide mandatory awareness sessions to the staff at all institutions where Deaf or hard-of-hearing persons are incarcerated by October 2025, a year after she gave her evidence. These sessions are similar to the training previously given at Matsqui by Ms. Pranzl, from the Vancouver Coastal Health program.

[232] Providing training is a measure that will serve to prevent any similar discriminatory practice from occurring in the future. An order mandating the training is warranted.

(ix) Requirement of ASL-fluent staff at institutions with Deaf inmates [233] Mr. Lidkea asks that the CSC be ordered to ensure that there is at least one parole officer and healthcare provider who is fluent in ASL and familiar with Deaf culture at each institution where a Deaf person resides and that penitentiary placements for Deaf prisoners take into account the location of other Deaf prisoners.

[234] In light of the other orders in this decision compelling the CSC to provide access to effective communication tools and to enable Deaf inmates to have meaningful interaction on a daily basis, it is not necessary to specifically require the presence of two individuals at each institution who are ASL-fluent. Their presence is not necessary for Deaf persons to be reasonably accommodated given the other measures that the CSC is required to take. This request is denied.

[235] That said, it would certainly make sense for the CSC to take into account the location of other Deaf prisoners for the purposes of placement as that would be an effective way to help fulfil its obligation to ensure that those individuals have access to meaningful interactions every day. However, an order compelling the CSC to do so is not warranted, especially when considering the other factors that it must take into account such as the accessibility of the penitentiary relative to the inmate's home community and family (see section 28(b)(i) of the CCRA).

(x) A request that the Tribunal remain seized of the matter [236] The Commission and Mr. Lidkea ask that the Tribunal remain seized of this matter and retain jurisdiction to receive evidence and make further orders as required, until the parties confirm that the remedies ordered have been implemented. They point out that the Tribunal has the authority to retain jurisdiction (see *Canada (Attorney General) v. Grover*, 1994 CanLII 18487 (FC) at para 32) and submit that remedial orders that address systemic discrimination can be difficult to implement and may therefore require ongoing supervision. Mr. Lidkea observes that the

CSC did not follow through with several of the items mentioned in the With Prejudice Letter. For instance, the CSC had written that it would make best efforts create an IPB relating to individuals with disabilities within one year. Yet, that period had expired by the date of the hearing and an IPB had yet to be issued.

[237] Given these delays or failures to implement promised remedies to date, the Commission and Mr. Lidkea submit that the Tribunal needs to retain its authority to “step in” where the CSC fails to implement any of the remedies in the present order.

[238] I disagree.

[239] As Chairperson Khurana noted in *Starr v. Stevens*, 2024 CHRT 127, at para 158 [Starr], section 53 of the CHRA, while open-ended in describing the scope of the Tribunal’s discretion to order remedies that will stop discrimination and prevent it from happening again, does not transform the Tribunal into an enforcement body. It is neither the Tribunal’s expertise nor role to supervise the detailed implementation of its own remedial orders.

[240] As Starr correctly points out, there is an enforcement mechanism built into the CHRA, at section 57, which allows parties to file a Tribunal order made under section 53 with the Federal Court, for the purposes of enforcement.

[241] Mr. Lidkea’s counsel acknowledged during final submissions that if a Tribunal order is sufficiently clear, there is no need for it to retain jurisdiction to ensure enforcement. I am satisfied that my order is as clear and detailed as warranted. The CSC knows what its responsibilities are and it must follow through with them, failing which it risks triggering the enforcement mechanisms incorporated in the CHRA.

[242] The request that I retain jurisdiction is denied.

[243] I have delayed the application of some portions of the order below to take into account the time that the CSC may need to implement some of the remedies.

VI. ORDER A. Damages [244] Within 30 days of this decision, the CSC is ordered to pay the following to Mr. Lidkea:

\$18,000 for pain and suffering experienced as a result of the discriminatory practices (section 53(2)(e));

\$17,500 in special compensation (section 53(3)); and

Simple interest that has accrued on these sums until payment, at a rate equivalent to the bank rate established by the Bank of Canada calculated on a yearly basis beginning August 16, 2020 (the date when the complaint was received by the Commission). The interest is not limited to the statutory caps of \$20,000 (see Starr at para 144).

B. Individual accommodation during Mr. Lidkea's incarceration [245] The CSC shall provide the following to Mr. Lidkea while he is incarcerated:

- a) ASL interpretation (VRS, VRI, or Live) for:
 - i. Meetings that impact the individual's liberty interests, their case management, or in which the person is required to make or consent to a decision;
 - ii. Intake interviews and orientation;
 - iii. Meetings or appointments with medical staff or health services, including mental health services, program staff, treatment staff, parole staff, Elders, and Chaplain;
 - iv. Proceedings before administrative tribunals, including the PBC, institutional Disciplinary Court, and interviews conducted under the offender grievance procedure;
 - v. Programs, including correctional programs identified in the individual's correction plan, employment programs, educational programs, social programs, and recovery programs; and
 - vi. Meetings with legal counsel.
- b) Access to effective communication with other persons for at least two hours per day in accordance with the terms set out in paragraphs 142 to 151 of this decision.

C. Individual accommodation while Mr. Lidkea is on conditional release [246] The CSC must ensure that while Mr. Lidkea is on conditional release, he is provided with ASL interpretation (VRS, VRI, or Live) for matters relating to his supervision as well as any support services that the CSC requires the CRF to provide to him, as explained in paragraphs 152 to 178 of this decision.

D. Other individual remedies a) Within 30 days of this decision, the CSC must insert a notice in Mr. Lidkea's file stating that any information obtained from him by CSC staff during interactions without ASL interpretation should be viewed with caution.

- b) Within 30 days of this decision, the CSC must insert a copy of this decision in Mr. Lidkea's file.

E. Systemic remedies A) As soon as practicable and no later than 12 months after this decision, the CSC shall provide the following to Deaf inmates while incarcerated:

- a) ASL interpretation (VRS, VRI, or Live) for:
 - i. Meetings that impact the individual's liberty interests, their case management, or in which the person is required to make or consent to a decision;
 - ii. Intake interviews and orientation;
 - iii. Meetings or appointments with medical staff or health services, including mental health services, program staff, treatment staff, parole staff, Elders, and Chaplain;

iv. Proceedings before administrative tribunals, including the PBC, institutional Disciplinary Court, and interviews conducted under the offender grievance procedure;

v. Programs, including correctional programs identified in the individual's correction plan, employment programs, educational programs, social programs, and recovery programs; and

vi. Meetings with legal counsel.

b) Access to effective communication with other persons for at least two hours per day in accordance with the terms set out in paragraphs 142 to 151 of this decision, as adapted (*mutatis mutandis*).

B) As soon as practicable and no later than 12 months after this decision, the CSC must ensure that Deaf offenders on conditional release who are residing at CRFs are provided ASL interpretation (VRS, VRI, or Live) for matters relating to their supervision as well as any support services that the CSC requires the CRF to which they are referred to provide them, as explained about Mr. Lidkea by analogy, in paragraphs 152 to 178 of this decision.

C) As soon as practicable and no later than 12 months after this decision, the CSC must procure a sufficient number of VRI and Live ASL interpreters to ensure reliable and consistent access to interpretation for Deaf people in custody and on conditional release as elaborated in paragraphs 203 to 209 of this decision.

D) As set out in paragraphs 210 to 213 of this decision, as soon as practicable and no later than 12 months after this decision, the CSC must independently implement a VRS- or VRI-based communications system that provides Deaf inmates access that is reasonably similar to the Inmate Telephone System.

E) As set out in paragraphs 214 to 219 of this decision, as soon as practicable and no later than 12 months after this decision, the CSC must develop meaningful individualized accommodation plans for Deaf inmates and offenders in which ASL interpretation is ensured for them in an acceptable form considering all applicable factors.

F) As set out in paragraphs 220 to 226 of this decision, as soon as practicable and no later than 12 months after this decision, the CSC must adopt a policy instrument that is publicly available on respecting the duty to accommodate Deaf individuals, after consulting with the Commission, which includes the following elements:

- A description of the scope of events requiring ASL interpretation or accommodation;
- Guidance on the development, use, updates, and adherence to the terms of IAPs; and
- A commitment that within 24 hours of notification or arrival at a federal institution, the CSC will make all reasonable efforts to arrange for ASL interpretative services for intake interviews and orientation.

G) As soon as practicable and no later than 12 months after this decision, the CSC must ensure that its Inmate Handbooks refer to and explain any CSC policies on accommodating Deaf individuals.

H) As soon as practicable and no later than 12 months after this decision, the CSC must ensure that awareness sessions on Deaf culture have been provided at all institutions where persons who are deaf or hard of hearing reside, and that all parole officers who supervise such persons have attended the sessions.

Signed by

Athanasios Hadjis

Tribunal Member

Ottawa, Ontario

March 12, 2026

Canadian Human Rights Tribunal

Parties of Record

File No.

: HR-DP-2770-22

Style of Cause: Timothy Lidkea v. Correctional Service Canada

Decision

of the Tribunal Dated: March 12, 2026

Date and Place of Hearing:

October 15-18, 2024 Vancouver, British Columbia

October 28 - November 1, 2024

March 14, 2025 Videoconference

Appearances:

Lisa Crossley, Jessica Magonet, Brodie Noga, and Katie Ussher,

for the Complainant

Edward Burnet, Samson Rapley, and Fred Wan,

for the Respondent

Sameha Omer for the Commission

Connor Bildfell, Morgan Rowe, Nico Rullmann, and Daniel Siracusa, for the Interested person

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