

Date Issued: April 19, 2024

File: CS-000332

Indexed as: Patrick v. B.C. Emergency Health Services (No. 2), 2024 BCHRT 124

IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, c. 210 (as amended)

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

BETWEEN:

Nancy-Ann Margaret Patrick

COMPLAINANT

AND:

B.C. Emergency Health Services

RESPONDENT

REASONS FOR DECISION
APPLICATION TO DISMISS COMPLAINT
Sections 27(1)(c)

Tribunal Member:

Christopher J. Foy

Counsel for the Complainant:

Madeline Harden

Counsel for the Respondent:

Kristal Low

I INTRODUCTION

[1] Nancy-Ann Margaret Patrick filed a complaint against her employer B.C. Emergency Health Service [BCEHS] alleging that they discriminated against her based on sex, and retaliated against her for filing a human rights complaint, contrary to the *Human Rights Code*.

[2] Ms. Patrick is an advanced care paramedic in a leadership role. At times through BCEHS' programs she was a mentor and preceptor (teacher) to students training to become paramedics. She alleges that she has been singled out and treated differently than her male co-workers on several occasions between 2017 and 2021. Ms. Patrick's allegations principally relate to BCEHS's response to complaints about her workplace conduct, how BCEHS conducted its investigations into her conduct and its imposition of discipline. Ms. Patrick says that she was treated differently by BCEHS because she is a woman, and in one instance involving a four-day disciplinary suspension, Ms. Patrick raises an alternative argument that the suspension was in retaliation because she filed a human rights complaint.

[3] BCEHS denies discriminating and applies to dismiss the complaint under s. 27(1)(c) of the *Code*. BCEHS argues that there is no reasonable prospect the complaint will succeed at a hearing. BCEHS argues that it is reasonably certain to prove that it has a solely non-discriminatory explanation for its actions: Ms. Patrick's performance and conduct in the workplace. BCEHS has put before the Tribunal extensive evidence regarding its ongoing concerns with Ms. Patrick's workplace conduct, and argues that on the whole of the evidence, Ms. Patrick has not taken her allegations out of the realm of speculation and conjecture.

[4] The issues I must decide are:

- i. Under Rule 28(5), whether to accept Ms. Patrick's further submissions as sur-reply;
- ii. Under s. 27(1)(c) of the *Code*, whether there is no reasonable prospect Ms. Patrick will establish at a hearing

that she was adversely impacted in her employment and that her sex was a factor in that adverse treatment; and

- iii. Under s. 43 of the *Code*, the retaliation complaint, whether there is no reasonable prospect that Ms. Patrick will establish a sufficient connection between BCEHS' decision in 2021 to suspend her and the fact she had filed a human rights complaint.

[5] While I do not refer in my decision to all the information filed by the parties in relation to this application to dismiss, I have considered it and thank the parties for their respective submissions. The following will not be a complete recitation of the parties' submissions, but only those necessary to come to my decision.

[6] Below I first set out the background to the complaint. I then address a preliminary issue regarding Ms. Patrick's application to file sur-reply. Finally, I set out my reasons for granting BCEHS' application to dismiss the complaint, in part.

II BACKGROUND

[7] The following background summary is taken from the parties' submissions. I make no findings of fact. I begin with a summary of the complaint allegations.

A. The Complaint

[8] The complaint was originally filed on September 30, 2019. Since then, Ms. Patrick has amended the complaint. The first amendment was made by way of application granted on March 18, 2021 in reasons indexed as *Patrick v. B.C. Emergency Health Services*, 2021 BCHRT 34 [Amendment Decision]. The second amendment was filed on May 21, 2021 and accepted for filing by the Tribunal on June 11, 2021.

[9] The gist of the complaint is that BCEHS singled Ms. Patrick out as a female first responder, treated her differently than her male co-workers in similar situations and failed to consider any gender analysis while investigating and ultimately disciplining her.

[10] More specifically, Ms. Patrick alleges that BCEHS discriminated against her on the basis of sex when:

- a. On December 19, 2017, BCEHS issued a written warning to Ms. Patrick regarding her conduct on October 20, 2017;
- b. On June 27, 2018, BCEHS revoked her status as a mentor;
- c. On May 8, 2019, BCEHS issued a three-day suspension to Ms. Patrick regarding her conduct between November 2018 and March 2019;
- d. On May 20, 2021, BCEHS issued a four-day suspension and required her to take a course, as a result of conduct on February 18, 2021; and
- e. Between September 2017 and February 2019, her unit chief's behaviour towards her was "bullying and sexist" as he treated her worse than her male colleagues, including not being considered for a placement into a day-shift only mentor car [**Juliette Car**], singling her out for being late, ignoring her, injecting himself into her business, and discrediting her in front of her colleagues

[11] Finally, the complaint alleges that the four-day suspension issued on May 20, 2021 was retaliation by BCEHS against Ms. Patrick for having filed a human rights complaint against it.

B. The Parties

[12] BCEHS, a division of the Provincial Health Services Authority, oversees the BC Ambulance Service and BC Transfer Services.

[13] Ms. Patrick has been employed with BCEHS for approximately 23 years. At the material time she was as an advanced care paramedic. This is a position of clinical leadership within BCEHS. Ms. Patrick is a member of the Ambulance Paramedics of British Columbia, CUPE Local 873 [**Union**].

[14] Ms. Patrick's employment is subject to the terms of a collective agreement between BCEHS and the Union. Articles 11.04 and 11.05 of the collective agreement set out the process for addressing concerns about employee conduct and workplace performance, including a workplace investigation process. The collective agreement also contains provisions for addressing interpersonal disputes between employees.

[15] BCEHS has a policy titled: "Fostering a Culture of Respect" which is designed to promote and maintain a work environment where people are treated with respect and dignity.

[16] BCEHS also has a "Code of Ethics" which provide guidelines for acceptable behaviour and is designed to promote "excellent patient care and interactions, respectful workplaces and public confidence".

C. The Letter of Expectation

[17] Ms. Patrick had been reminded by BCEHS of the Fostering a Culture of Respect policy and the Code of Ethics through a letter of expectation in September, 2017.

[18] On or about September 15, 2017, BCEHS issued to Ms. Patrick a non-disciplinary "Letter of Expectation – Respect in the Workplace" [**Letter of Expectation**].

[19] The Letter of Expectation specifically references the "Fostering a Culture of Respect" and "Code of Ethics" policies and states:

Employees should use good judgment and demonstrate the highest standards of personal and professional integrity and conduct in dealings with patients, the public, other employees and organizations.

D. The Written Warning

[20] On October 20, 2017, Ms. Shannon Mawdsley, a paramedic employed at BCEHS, made a complaint to BCEHS about Ms. Patrick and a male paramedic, Mr. Robert Long. Ms. Mawdsley's complaint sets out in part the following:

There have been a magnitude of incidents with rude comments, inconsiderate behaviour that have now progressed to intimidation and work place [*sic*] harassment (belittling and or threatening behaviour) and bullying conducted by specifically Nancy Patrick.

[21] Ultimately, BCEHS initiated an investigation of the complaint against Ms. Patrick under Article 11.04/11.05 of the collective agreement.

[22] BCEHS did not investigate the complaint against or interview Mr. Long. There is a dispute between the parties about why. Ms. Patrick alleges that sex was a factor, and that Mr. Long received more lenient treatment because he was a man. She alleges, "I believe I was singled out as I am [a] woman". BCEHS disagrees. BCEHS says it did not investigate Mr. Long because before it commenced its investigation, Ms. Mawdsley confirmed to Mr. Richard Simon, BCEHS' District Manager of Patient Care Delivery, that she had spoken with Mr. Long and resolved their issues. Accordingly, BCEHS says there was no need to proceed with the investigation regarding Ms. Mawdsley's complaints against Mr. Long, as it had been resolved.

[23] On November 7, 2017, BCEHS interviewed Ms. Mawdsley.

[24] On November 8, 2017, BCEHS provided an Article 11.04/11.05 investigation letter to Ms. Patrick regarding Ms. Mawdsley's allegations. The investigation letter set out in part the following:

BCEHS became aware of an ongoing pattern of concerning behaviours that you have alleged to have been involved in, which have occurred at Station 267. These allegations include:

- Cornering and interrogating an international ACP Student and PCP student in regards to preceptor at Station 267
- Rude and inappropriate comments during shift change (not one specific date but reoccurring events)

[25] On November 20, 2017, Ms. Rebecca Mayo, BCEHS' Manger of Human Resources Services, and Mr. Simon interviewed Ms. Patrick regarding Ms. Mawdsley's allegations.

[26] On December 7, 2017, Ms. Patrick filed a complaint against Ms. Mawdsley under Article 3.04 of the collective agreement, "Interpersonal Disputes" which states in part:

Where an interpersonal dispute arises between employees covered by this Agreement, an employee may take up the complaint in accordance with the procedures below. "Interpersonal Disputes" as used in this Clause shall be defined as a series of repeated and intentional incidents whereby one employee intimidates another.

[27] Ms. Patrick's Article 3.04 collective agreement complaint against Ms. Mawdsley was investigated and dismissed on or about June 1, 2018.

[28] Sometime in December 2017, BCEHS completed its investigation of Ms. Mawdsley's complaint about Ms. Patrick.

[29] Specifically, on December 19, 2017, BCEHS issued a Written Warning to Ms. Patrick [Written Warning]. In the Written Warning BCEHS advised Ms. Patrick that her conduct reflected poor judgement and violated BCEHS' policy on Fostering a Culture of Respect in the workplace. BCEHS explained that further conduct of a similar nature could result in discipline:

Ms. Patrick, your ongoing disrespectful behaviour is concerning and inappropriate. This behaviour shows poor judgement and self-reflection; instead it comes across as intimidating and disrespectful...I trust that you recognize the seriousness of these concerns and understand the severity of your actions as well as the violation of the Fostering a Culture of Respect policy...It is the employers [sic] expectation that having brought to your attention that actions of this nature are serious in nature and worthy of

discipline, that there will not be any similar incidents in the future. Further actions of a similar nature may result in discipline up to and including termination.

[30] Ms. Patrick asked the Union to grieve the Written Warning. The Union declined. Ms. Patrick then filed a complaint under s. 12 of the *Labour Relations Code* against the Union alleging it breached its duty of fair representation in not grieving the Written Warning. The BC Labour Relations Board dismissed the complaint, and denied her request for reconsideration.

[31] Later in June 2018, Ms. Patrick was advised by BCEHS that due to the Written Warning her status as a mentor was being revoked.

E. The December 24, 2017 Incident

[32] On December 24, 2017, BCEHS received an “Occurrence Report” from a paramedic alleging that Ms. Patrick had created a hostile work environment impacting multiple workers at one of BCEHS’ stations. The report alleged that Ms. Patrick was yelling, slamming doors and using profanity.

[33] By way of explanation, Ms. Patrick says she was “disheartened” with the way scheduling was handled on December 24, 2017 as she was being moved from one station to another for the shift.

[34] BCEHS initiated an investigation into the Occurrence Report, and on January 11, 2018, BCEHS issued an Article 11.04/11.05 investigation letter to Ms. Patrick.

[35] On or about January 16, 2018, Ms. Patrick went on a leave of absence.

[36] On February 26, 2018, Ms. Patrick sent an email to her Union requesting an opportunity to take a course in collaborative conflict resolution from the Justice Institute stating: “I think it would be beneficial”.

[37] The Union relayed the request to BCEHS, which was supportive, and approved registration of a three-day collaborative conflict resolution course for Ms. Patrick at the Justice Institute scheduled in May, 2018. Ms. Patrick completed the course.

[38] On July 10, 2018, BCEHS interviewed Ms. Patrick regarding the December 24, 2017 incident. During the interview Ms. Patrick advised that she found the Justice Institute course helpful, and on reflection of the events of December 24, 2017 she would have removed herself from the situation and given herself “a minute or 5 to calm down.”. Consequently, BCEHS decided to resolve the matter informally with no discipline issued to Ms. Patrick.

[39] In the complaint, Ms. Patrick takes issue with BCEHS’ handling of the December 24, 2017 Occurrence Report. She alleges that this Occurrence Report was “vindictive” because its author, fellow paramedic Mr. Don Hunt, was “bumped” by Ms. Patrick for a particular shift. Further, Ms. Patrick alleges that the use of “profanity is not uncommon in ambulance stations” and BCEHS “went to the extreme to call me in for a meeting (which can result in discipline) over language that is widely accepted in the ambulance service. I feel this tactic was used primarily to belittle and humiliate me.”.

F. Three Investigations and the 2019 Letter of Discipline

[40] In the months that followed from August 2018 to February 2019, BCEHS says that additional concerns arose regarding Ms. Patrick’s workplace conduct that required investigation.

[41] From November 2018 to March 2019, BCEHS conducted three additional investigations into Ms. Patrick’s conduct.

[42] The first of these investigations dealt with allegations about Ms. Patrick’s communications with third parties and colleagues in August 2018 and October 2018, and specifically allegations that:

- i. On August 11, 2018, Ms. Patrick told the fire department at a motor vehicle accident to stop CPR on a patient without getting a history or assessing the patient stating that she was the “ALS and I’m in charge of the call”;
- ii. On October 21, 2018, Ms. Patrick tried to cancel an air ambulance prior to laying eyes on all patients; and
- iii. On October 22, 2018, Ms. Patrick cancelled an air ambulance that had needed equipment on board. In addition, Ms. Patrick was “very vocal about your displeasure about the BCEHS memo regarding the cancelling of the helicopter.”

[43] Following an investigation into these allegations, BCEHS concluded that:

- i. On August 11, 2018, Ms. Patrick did appropriate patient triaging; and
- ii. On October 21-22, 2018, Ms. Patrick disrespectfully vocalized her opinion about operational procedures in front of a student and other crew.

[44] The second investigation dealt with allegations about Ms. Patrick’s treatment of a minor patient [AA] in January and February 2019, and specifically allegations that:

- i. Sometime between January 17-20, while at station 267, Ms. Patrick had a conversation with a mentorship student and Rob Long about a time when Ms. Patrick treated AA. Ms. Patrick stated: “[AA] doesn’t have real seizures, she is faking, they are pseudo-seizures. I would never treat her with midazolam. Last time I saw her and she was acting like that I gave her an injection of saline and she stopped seizing.”
- ii. On February 3, 2019, while on scene with patient AA, Ms. Patrick initially refused to provide sedation and got into a confrontation with AA’s parents. In addition, Ms. Patrick did not follow direction of her supervisor when asked to remove herself from the situation and wait for him in his vehicle.

[45] Following an investigation into these allegations, BCEHS concluded that:

- i. Ms. Patrick had not used a placebo, as confirmed by drug logs from the hospital; and
- ii. Ms. Patrick engaged in an aggressive manner with AA's parents and did not properly assess AA before making a clinical decision. Ms. Patrick was insubordinate to her supervisor.

[46] The third investigation dealt with an allegation that on February 20, 2019, Ms. Patrick failed to treat a patient with respect and dignity when she allegedly denied their request for oxygen and when she did give the patient the oxygen mask, she cut the tubing and spoke to the patient in a disrespectful manner.

[47] Following an investigation, BCEHS concluded that Ms. Patrick did cut the oxygen tubing but not in a malicious manner and had a conversation with the patient about it.

[48] On May 8, 2019, upon the completion of these three investigations, BCEHS determined that discipline was appropriate in the circumstances. Ultimately BCEHS imposed a three-day suspension. BCEHS issued Ms. Patrick a Letter of Discipline [**2019 Letter of Discipline**]. BCEHS advised Ms. Patrick that BCEHS was issuing her a three-day suspension to remain on her personnel file for 36 months, and that she was removed as a mentor and preceptor as a result of the November, 2018-March, 2019 investigation findings. The 2019 Letter of Discipline set out, in part, the following:

Ms. Patrick, based on the outcome of these investigations you have demonstrated a lack in judgement and poor self-reflection on your ongoing disrespectful behavior.

....

As an Advanced Care Paramedic, you are in a position of clinical leadership within the organization. BC Emergency Health Services (BCEHS) expects that clinical leaders employ exemplary judgement and decision making. BCEHS considers your acts to be a very serious matter and highly disrespectful, we expect that you strive to the utmost professionalism and standard of conduct, especially while working with mentees and students. Your actions

have severely breached the BCEHS Code of Ethics Policy as well as the BCEHS Fostering a culture of Respect policy.

[49] The Union grieved the three-day suspension. BCEHS and the Union agreed to resolve the grievance by reducing Ms. Patrick's suspension to two-days, which would remain on her personnel file for 30 months instead of 36.

[50] I understand Ms. Patrick to allege that the 2019 Letter of Discipline was discriminatory, as she was singled out for her conduct because she was a woman. For example, with respect to the February 3, 2019 allegations regarding Ms. Patrick's interactions with AA's family, Ms. Patrick says that a male colleague has had numerous conflicts with AA's family and "has never been questioned about his decisions, decision making, conflict with the family or how he assessed this patient.". Ms. Patrick claims that she was "treated very differently than my male colleague, Mr. Taylor, for making the same decisions and having the same issues with this family.".

G. Interactions with the Unit Chief: 2017 to 2019

[51] Concurrently with the events giving rise to the Letter of Expectation, Written Warning, and the 2019 Discipline Letter, Ms. Patrick alleges that she experienced discrimination at the hands of her BCEHS unit chief, Mr. Ryan Cooper. Ms. Patrick describes instances between September 2017 and February 2019 where she says the unit chief treated her differently than her male colleagues. These include allegations of not being considered for placement into the Juliette Car, being singled out for being late, ignoring her, "injecting himself" into her "business", and discrediting her in front of her colleagues.

[52] More specifically, Ms. Patrick alleges that:

- a. From on/about September, 2017 – December 19, 2017, her unit chief filled a temporary position for the day-shift mentoring car with male

colleagues, one of which was equally qualified compared to Ms. Patrick but had eight years less seniority to her;

- b. On June 4, 2018, Mr. Cooper emailed her, human resources and the area director that Ms. Patrick was two minutes late for work. Although Ms. Patrick admits to being late, she states: "I feel that I was singled out, as I have never heard of anyone else receiving a similar email for a single act of tardiness.";
- c. On June 5, 2018, Ms. Patrick raised an issue about the number of advanced care paramedics in the region with the area director. Ms. Patrick alleged that her unit chief was upset and told Ms. Patrick "You should have come to me...". Ms. Patrick alleges that "Often, [the unit chief] seemed to ignore me whilst he spoke with the other men in the station.";
- d. On July 5, 2018, the unit chief was "targeting" her and "injected himself into my business" regarding alerting Ms. Patrick to a schedule change coming into effect due to her receiving a Written Warning;
- e. On August 23, 2018, the unit chief told Ms. Patrick's work partner, Mr. Long, that she had failed her car swab inspection. Ms. Patrick believed the unit chief was trying to discredit her and single her out;
- f. On November 20, 2018, the unit chief allegedly told Ms. Patrick's co-worker that Ms. Patrick was a "shit disturber" when discussing Ms. Patrick's relationship with Ms. Mawdsley;
- g. On December 13, 2018, the unit chief allegedly told Ms. Patrick's union representative that "crews at 67 are complaining about Nancy"; and
- h. On February 3, 2019, while on scene with patient AA, the unit chief allegedly treated Ms. Patrick differently than a male co-worker in the same situation by ordering her to wait in his vehicle and advising that her partner would take over the call and take the patient to the hospital.

H. The May 2021 Suspension

[53] On March 29, 2021, BCEHS received a complaint from the Fire Chief of the Agassiz Fire Department regarding Ms. Patrick's conduct and communication at a suspected cardiac arrest emergency on February 18, 2021. The Fire Chief advised that Ms. Patrick was disrespectful to the fire crew, and this prevented thorough communication about patient information between the Agassiz Fire Department and the ambulance crew. The Fire Chief alleged Ms. Patrick said, "you can all go now, I know what I need to know, goodbye".

[54] BCEHS initiated an investigation into the allegations. On April 16, 2021, BCEHS issued Ms. Patrick an Article 11.04/11.05 investigation letter advising that it was investigating allegations that on February 18, 2021 she:

- a. was disrespectful and unprofessional to members of the Agassiz Fire Department; and
- b. did not allow the Agassiz Fire Department to complete a proper handover.

[55] Following an investigation which included interviewing several witnesses, BCEHS concluded that Ms. Patrick was not professional or respectful in her communications with the Agassiz Fire Department on that day. BCEHS concluded:

Taking into account all of the available evidence, on a balance of probabilities it is found that Nancy Patrick did react in a negative manner towards the firefighter that approached the ambulance. Nancy Patrick was not professional or respectful during her interactions of requesting for the Fire crews to clear the scene. Probability of "light and airy" behavior as she self describes when on scene was not supported by witness interviews.

[56] On May 20, 2021, BCEHS issued Ms. Patrick a four-day suspension and required her to take a course entitled, "Optimizing Communication for Excellence". **[May 2021 Suspension]**

[57] Ms. Patrick alleges that the four-day suspension is unjust discipline and “a further incident of differential treatment towards her as a female first responder in a male-dominated environment”. She says that she was disciplined in part for her “tone of voice and delivery of comments” and “treated differently than her male co-workers in similar situations”. Ms. Patrick alleges that at least two male paramedics have been subject to a complaint from a fire department, but BCEHS did not investigate. However, she provides no details regarding the situation.

[58] Ms. Patrick further alleges that the four-day suspension was retaliation by BCEHS because she had filed the human rights complaint against it.

III DECISION

A. Preliminary Issue – Sur-Reply

[59] Ms. Patrick applies to provide a sur-reply to “a new issue which she could not anticipate arising from the Reply”. That “new issue” was BCEHS asserting that Ms. Patrick’s response contained “new allegations”, and that BCEHS argued Ms. Patrick’s evidence is unreliable.

[60] The Tribunal may accept further submissions where fairness requires that a party be given an opportunity to respond to new issues raised in reply: Rule 28(5); *Kruger v. Xerox Canada Ltd (No. 2)*, 2005 BCHRT 24 at para. 17; or to address new information not available to the party when they filed their submission: Rule 28(6). The overriding consideration is whether fairness requires an opportunity for further submissions: *Gichuru v. The Law Society of British Columbia (No. 2)*, 2006 BCHRT 201, para. 21.

[61] Where there is no unfairness to a party, it is in the Tribunal's and the parties' interest that the Tribunal make decisions based on the submissions of the parties. I see no unfairness here, much of the additional argument provided by both Ms. Patrick and BCEHS is helpful in

giving context to both parties' arguments and submissions. I therefore allow the application to file the sur-reply.

B. Should the complaint be dismissed under s. 27(1)(c) of the Code?

[62] I begin by setting out the relevant legal principles.

[63] Section 27(1)(c) of the *Code* is part of the Tribunal's gate-keeping function. It allows the Tribunal the discretion to dismiss a complaint which does not warrant the time and expense of a hearing.

[64] The Tribunal assesses whether, based on all the material before it, and applying its expertise, there is no reasonable prospect the complaint will succeed at a hearing: *Berezoutskaia v. British Columbia (Human Rights Tribunal)*, 2006 BCCA 95 at paras. 9 and 27; *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 at para. 27 [*Hill*].

[65] To be successful under s. 27(1)(c), the burden is on the respondent to show there is no reasonable prospect of the complaint succeeding.

[66] If the Tribunal determines there is no reasonable prospect that the complainant will be able to establish one or more elements of the complaint at a hearing, it may dismiss the complaint. The threshold for proceeding to a hearing is low. In circumstances where the respondent disputes one of these elements, the complainant's only obligation is to point to some evidence capable of raising their complaint "out of the realm of conjecture": *Hill* at para. 27.

[67] I recognize that my task under s. 27(1)(c) is different than under s. 27(1)(b). I note this because in response to BCEHS' application to dismiss, Ms. Patrick asserts that the Tribunal has already determined in the Amendment Decision that her allegations amount to more than bare assertions. The difficulty with this argument is that I have a different task than what was at

issue for the Tribunal Member in the Amendment Decision. I must determine whether the complaint has no reasonable prospect of success, not whether the complaint alleges an arguable contravention of the *Code* or is timely.

[68] I begin my analysis with the elements Ms. Patrick would have to prove at a hearing to establish discrimination, recognizing that she need not prove these elements on this application, rather BCEHS must persuade me Ms. Patrick has no reasonable prospect of doing so.

1. Protected Characteristic

[69] There is no dispute that Ms. Patrick is protected from sex discrimination under the *Code* because of her identity as a woman.

2. Adverse Impact

[70] Ms. Patrick alleges she has suffered adverse impacts in her employment by being subjected to “heightened scrutiny and unjust discipline” resulting in stress, anxiety, being absent from work with further loss of status from no longer being a mentor and preceptor.

[71] BCEHS does not raise any arguments challenging that Ms. Patrick has experienced adverse impacts of a personal or professional nature, but instead argue that there are no facts beyond conjecture capable of establishing a nexus between her sex and any alleged adverse impacts.

[72] Given the evidence on this application, I am satisfied that Ms. Patrick has taken her allegations of adverse impact in employment out of the realm of conjecture.

3. Connection to Sex

[73] BCEHS argues that Ms. Patrick's has not taken her allegations of a nexus between her sex and the alleged adverse impacts she suffered out of the realm of speculation and conjecture.

[74] BCEHS argues that it has a non-discriminatory explanation for every aspect of Ms. Patrick's complaint. They argue that Ms. Patrick was not singled out "by management or human resources" with respect to her behaviour and they "simply followed BCEHS' policies and procedures in responding, addressing and investigating complaints brought to its attention."

[75] BCEHS says that Ms. Patrick has "exhibited repeated problematic and disrespectful behaviour, demonstrated a lack of insight into this behaviour, and has raised significant concerns from a patient care perspective." BCEHS says that at all material times, its conduct in relation to Ms. Patrick was a result of and in response to her workplace behaviour.

[76] On the whole of the evidence, I am not persuaded that Ms. Patrick's allegations of discriminatory conduct by BCEHS have been taken out of the realm of speculation and conjecture except with respect to some of her allegations regarding her unit chief, Mr. Cooper.

[77] The material before me satisfies me that BCEHS is reasonably certain to prove at a hearing a non-discriminatory explanation for its conduct and actions: *Lapansie v. Dr. Ralph Bieg Medical Corporation*, 2008 BCHRT 210. I address each of Ms. Patrick's allegations in turn.

i. The Written Warning

[78] Ms. Patrick alleges that BCEHS' handling of Ms. Mawdsley's complaint, in particular issuing the Written Warning was discriminatory. Ms. Patrick says this is because Mr. Long was not investigated or disciplined regarding Ms. Mawdsley's complaint. She says this is evidence that supports her allegation that BCEHS was singling her out because she was a woman.

[79] I accept BCEHS' submission that on the whole of the evidence, Ms. Patrick has not taken the allegation of a connection between her sex and any alleged adverse impact as it relates to the Written Warning allegation, out of the realm of conjecture.

[80] BCEHS's evidence is that Ms. Mawdsley and Mr. Long communicated and worked through their differences informally prior to the Article 11.04/11.05 investigation letter going out for either Mr. Long or Ms. Patrick. In addition, BCEHS' evidence is that Ms. Mawdsley's complaint raised specific concerns about Ms. Patrick's behaviour, separate and apart from Mr. Long's. In particular, it raised concerns about Ms. Patrick approaching Ms. Mawdsley's student, something Mr. Long was not alleged to have been involved in. Further, Ms. Mawdsley's complaint referred to allegations of "harassment (belittling and or threatening behaviour) and bullying conducted by specifically Nancy Patrick", not Mr. Long. (my emphasis)

[81] While Ms. Patrick emphasizes that Mr. Long was treated differently and that he is a man, on the evidence before me I am satisfied BCEHS is reasonably certain to prove a non-discriminatory explanation for the different treatment. Ms. Patrick says male employees are able to successfully resolve matters with BCEHS "informally" or have "fire side chats" where instead she was investigated and disciplined. I am not satisfied that this argument takes her allegation of nexus out of the realm of conjecture on the whole of the evidence before me. On the evidence before me the informal resolution appears to have occurred directly between two employees of BCEHS, not between BCEHS and Mr. Long. Further, I note that resolving matters informally is something Ms. Patrick benefited from when BCEHS decided not to discipline her for her actions on December 24, 2017.

ii. Revoking Ms. Patrick's mentor status

[82] On June 27, 2018, Ms. Patrick was advised by Tracie Northway, BCEHS' Director, Learning, Practice & Clinical Initiatives that due to the Written Warning on Ms. Patrick's file, her status as a mentor was being revoked. The Union grieved the matter claiming that Ms. Patrick

was being “singled out” and submitted that the BCEHS’ actions in revoking Ms. Patrick’s mentor status was unjust discipline and a double punishment for what had occurred with Ms. Mawdsley.

[83] I do not consider this evidence capable of raising Ms. Patrick’s complaint that her sex was a factor in Ms. Northway’s letter revoking her status as mentor. The evidence before me indicates that the letter was prompted by the Written Warning on Ms. Patrick’s record and the selection criteria and process for being a mentor was the requirement of a “satisfactory work record”. There is no evidence before me that Ms. Northway’s decision to revoke Ms. Patrick’s status was tainted by discrimination based on her sex. On the evidence before me I am satisfied BCEHS is reasonably certain to prove a non-discriminatory explanation for revoking Ms. Patrick’s status as mentor.

iii. The December 24, 2017 Incident

[84] Ms. Patrick alleges that BCEHS’ handling of the December 24, 2017 Occurrence Report was discriminatory claiming that it was frivolous and she was being singled out for her use of profanity. BCEHS argues that this allegation is pure speculation.

[85] Ms. Patrick claims her colleague’s complaint about her behaviour on December 24, 2017 was frivolous. However, the evidence before me demonstrates that her colleague’s complaint raised concerns about Ms. Patrick’s behaviour for BCEHS. Ms. Patrick had been issued the Written Warning a week prior and BCEHS says its concern was that there had been no change or reflection by Ms. Patrick of her behaviour. Ms. Patrick stated in her interview regarding the situation that she “walked in in a bad mood”, that “I’m sure I could have been yelling.”. Ms. Patrick did not deny swearing, only that it was the “culture I’m used to.”.

[86] Ms. Patrick complains that she was singled out for using profanity while others were not. As evidence she provides a photo of a “swear jar”, attests that her male colleagues swear

all the time and that a few years ago some male colleagues used profanities while teaching. I am not persuaded by Ms. Patrick's argument that this demonstrates evidence that raises her complaint out of the realm of conjecture.

[87] BCEHS sets out in their materials that there is a "zero-tolerance policy for disrespectful behaviour" which includes profanity, yelling and abusive language, and there have been numerous complaints against both male and female employees BCEHS has dealt with regarding inappropriate behaviour including the use of profanity. BCEHS' evidence indicates that their investigation regarding complaints for using profanity are not unique to Ms. Patrick.

[88] Ms. Patrick says that there are drawings of male anatomy which have remained on the walls of the Chilliwack station which run counter to BCEHS' "zero tolerance for profanity".

[89] Although Ms. Patrick has provided photos of the drawings, it is unclear whether they are drawings of male anatomy. Further, even if they were, there is no evidence that BCEHS was aware of the drawings and failed to address them.

[90] Finally, the colleague's complaint of Ms. Patrick's behaviour on December 24, 2017 was not solely alleging she was using profanity but included allegations that she was yelling and slamming doors impacting staff who commented: "I am scared", "we need to get out of here", and "watch out, she is on the war path again.". Consequently, based on all of the materials before me, I am not satisfied that Ms. Patrick has raised her claim out of the realm of conjecture that BCEHS investigating and interviewing her regarding the December 24, 2017 incident was frivolous or that she was being singled out for her use of profanity.

iv. Three Investigations and the 2019 Letter of Discipline

First Investigation – August 2018 and October 2018

[91] The first investigation dealt with Ms. Patrick's communications with third parties and colleagues in August 2018 and October 2018.

[92] Specifically, with respect to the August 11, 2018 incident which came to BCEHS' attention through an "Occurrence Report" from Ms. Patrick's partner, Gurbir Dherari, Ms. Patrick alleges that during the investigation BCEHS did not interview a student or other paramedics and this prejudiced her. I do not agree that BCEHS' choice of who to interview during the investigation of this incident takes Ms. Patrick's claims out of the realm of conjecture. The result was that BCEHS ultimately found that Ms. Patrick did appropriate patient triaging during this situation.

[93] With respect to BCEHS' investigation and discipline meted out to Ms. Patrick regarding the October 21-22, 2018 calls involving the air ambulance, Ms. Patrick complains that "I feel Mr. Billing treats me differently because I am not "one of the guys". Based on all of the materials before me, I am not satisfied that there is any evidence beyond conjecture to support this allegation. As stated in *Li v. Options Community Services* 2020 BCHRT 104 at para. 78:

Without a factual basis, a complainant's personal belief of discriminatory treatment, no matter how sincerely felt, "can only be said to be based on speculation and conjecture, rooted in feelings, suspicions and beliefs":
Ibrahim v. Intercon Security, 2007 BCHRT 201 at para. 80.

[94] Based on the materials before me, including a review of the investigation interviews and subsequent investigation report, it is evident that BCEHS preferred the evidence of Mr. Billing to that of Ms. Patrick. It was open to BCEHS to make findings that preferred Mr. Billing's evidence.

Second Investigation – February 3, 2019 Incident with AA

[95] With respect to BCEHS' investigation and discipline meted out to Ms. Patrick regarding the February 3, 2019 situation with patient AA and her parents, Ms. Patrick alleges that she was singled out by BCEHS. Ms. Patrick argues that a male colleague, Mr. Geoff Taylor, had difficulties with the patient and her family and he was not disciplined.

[96] A review of the investigation interviews and additional materials demonstrate that the investigators and the subsequent investigation report into the allegations of Ms. Patrick's behaviour involving the February 3, 2019 incident preferred the evidence of others over Ms. Patrick. It was open to the investigators to make findings that preferred the evidence of others over Ms. Patrick and find that Ms. Patrick was insubordinate for refusing to wait in Mr. Cooper's vehicle.

[97] There is not enough evidence on this application concerning Mr. Taylor's situation with AA and her family to support an inference that Mr. Taylor was not disciplined because he was a male or that he was somehow favoured because he was a male compared to Ms. Patrick who is female.

[98] The evidence does not indicate that Mr. Taylor pre-determined a treatment plan for AA prior to being on scene as was BCEHS' conclusion in Ms. Patrick's case. In Ms. Patrick's complaint she quotes from a text she sent to Mr. Cooper prior to being on scene stating:

come to this call if you can-Geoff was gonna send you an email about her-
She does not need sedation-I've dealt with her before along with many of
us. (emphasis added)

[99] The evidence does not indicate that Mr. Taylor was confrontational with AA's parent. Nor does the evidence indicate any insubordination on the part of Mr. Taylor by refusing a direction from his supervisor.

Third Investigation – February 20, 2019 Incident cutting the oxygen tubing

[100] With respect to the allegations concerning the February 20, 2019 call where Ms. Patrick cut the oxygen tubing and allegedly spoke to the patient in a disrespectful manner, Ms. Patrick complains that Mr. Cooper asked for an “Occurrence Report” from two of her colleagues and that in doing so he singled her out and treated her more harshly than he would have a male paramedic.

[101] The evidence is that Mr. Cooper received a call from the crew of 53A, Ms. Stephanie Mager and Mr. Taylor Erickson, who were requesting that Mr. Cooper allow them to go out of service as they were “very upset about how the 49A1 crew, particularly Nancy Patrick, had treated the pediatric patient with burns unprofessionally.”. Based on the evidence, Mr. Cooper requested the Occurrence Report pursuant to BCEHA policies and forwarded the Occurrence Report on to management.

[102] There is no evidence before me that Mr. Cooper requested the “Occurrence Report” regarding this incident to single out Ms. Patrick or that by requesting the Occurrence Report Ms. Cooper treated Ms. Patrick more harshly than a male paramedic. I am not satisfied that Ms. Patrick has taken this allegation out of the realm of conjecture.

2019 Letter of Discipline

[103] As a result of the three investigations related to incidents spanning August 2018 – February 2019, BCEHS suspended Ms. Patrick, ultimately for two days. BCEHS has provided a reasonable, non-discriminatory, explanation for why it suspended Ms. Patrick. After a Letter of Expectation and a Written Warning, Ms. Patrick’s performance continued to be below expectations. I am satisfied BCEHS is reasonably certain to prove a non-discriminatory explanation for issuing Ms. Patrick the 2019 Letter of Discipline.

v. May 2021 Suspension

[104] Regarding the allegations involving the February 18, 2021 incident with the Agassiz Fire Department which lead to the May 2021 Suspension, Ms. Patrick claims that she was unjustly disciplined because the discipline was based in part on the “tone” of her voice and delivery of comments and this was a clear example of “how an assertive female paramedic is perceived as being rude and unprofessional” and assertiveness from a male paramedic is considered appropriate.

[105] Ms. Patrick claims BCEHS did not complete a proper investigation because it would “stage interviews in order to gather enough evidence to impose a penalty”, failed to interview relevant witnesses and asked her leading questions during her interview. In addition, Ms. Patrick claims that BCEHS ignored her gender and that gender bias plays a large role in how female paramedics are perceived and treated.

[106] First, Ms. Patrick’s evidence regarding this situation was not that she was being assertive, rather she indicated she was “jovial and casual” and she was kidding around with the Agassiz Fire Department on February 18, 2021. However, it was reported that Ms. Patrick’s tone was “extremely condescending”, that she was not collaborative or professional during the call.

[107] The evidence before me would support a conclusion at a hearing that it was open to the BCEHS to reach the findings it came to based on all the evidence it had before it. There is no indication that the BCEHS’ investigation, including who it interviewed or what questions it asked, and its ultimate decision making was tainted by discrimination based on Ms. Patrick’s sex or any gender bias.

[108] Ms. Patrick claims that BCEHS’ treatment of her is based in part on her sex because BCEHS views her as too “assertive” or “aggressive”, “notwithstanding the fact that assertive behaviour in male first-responders is celebrated.”. Discrimination is often subtle rather than

overt. For this reason, discrimination is often proven by inference rather than direct evidence: *Durrani v. Insurance Corp. of British Columbia* 2022 BCHRT 100 at para. 106. However, any inference must be rooted in the evidence of the case. The problem with Ms. Patrick's claim is that there is no evidence beyond speculation that BCEHS celebrates assertive behaviour in male first-responders.

[109] Ms. Patrick further claims that she was singled out because she knows of at least two other instances where a male paramedic was subject to a complaint from a fire department and did not receive an Article 11.04/11.05 letter or discipline. However, Ms. Patrick has not provided any evidence, no names or dates or description of the circumstances, regarding these two other male paramedics or the nature of the complaints against them. The bald assertion from Ms. Patrick that there were two male paramedics who were subject to a complaint with no other evidence does not take her claim out of the realm of conjecture.

[110] Ms. Patrick relies on *Cybulsky v. Hamilton Health Sciences*, 2021 HRTO 213 to support her argument that BCEHS, in the context of a male-dominated workplace, failed to consider any gender analysis in how it responded to complaints about Ms. Patrick.

[111] I find *Cybulsky* distinguishable. In *Cybulsky*, Dr. Cybulsky was the only Head of a cardiac surgery service in Canada where female cardiac surgeons were a rarity. Dr. Cybulsky raised the stereotypes and biases faced by women in leadership and suggested how these could work against her. The employer ignored her concerns and did not turn their mind to the role Dr. Cybulsky's sex played when assessing her as a leader. The employer further did not meet with Dr. Cybulsky or provide her support regarding her leadership skills prior to deciding to seek expressions of interest from others for the role of head of cardiac surgery service.

[112] It is not disputed that women make up approximately 40% of the workforce at BCEHS. Nor is it disputed that Ms. Patrick didn't squarely raise concerns with BCEHS of the role her sex may have played when conducting its investigations and meting out discipline. However, I do

not think that it was a necessity on the part of Ms. Patrick to raise the role her sex may have played for BCEHS to turn their mind to this possibility.

[113] BCEHS' evidence indicates they considered whether there was gender bias with respect to the various complaints against Ms. Patrick, the investigations and discipline meted out. Ms. Machana, who was at the material time the Area Director and was a decision maker regarding the proposed level of discipline meted out to Ms. Patrick attests as follows:

In considering a discipline recommendation, I take special care to be alive to any potential issues of discrimination, such as racial or gender discrimination. As a female and visible minority myself, it is important to me that all decisions are made fairly and not be tainted by any prejudice. If I had any sense that there was a gender discrimination at play in BCEHS' dealings with Ms. Patrick, I would have insisted that it be addressed. In this respect it is important to me to lead by example and to correct any discrimination or prejudice I see.

[114] Further, the evidence before me demonstrates that unlike the *Cybulsky* case where the employer did not provide any feedback or support to the complainant in that case, the evidence in the application before me indicates that BCEHS was attempting to assist Ms. Patrick improve as an employee. BCEHS' discussion notes regarding the determination of the appropriate level of discipline resulting from the investigation into the complaint involving the Agassiz Fire Department are apposite as they canvass how BCEHS attempted to improve Ms. Patrick's performance through further educational courses:

Rebecca – Also we paid JIBC for her to take a conflict resolutions – two levels of conflict resolutions. Pushed so hard for her.

Karen – Is there an Effective communications course she can take to help. Thought BCIT had something, Emotional intelligence. Identifying people for assertiveness training. How to self-identify and reading others body language and communication. We are willing to put in this all for her to be the best employee one can be. Pay her to go – to classes. It is mandatory. Look at the JIBC course. Look for BCIT effective communication. Balance of

probability and previous same like behaviour – she was not communicate [sic] in a proper manner.

My experience from the labour movement had she not already have progressive discipline on file, this would have been a way lesser discipline. Using progressive discipline to correct the behaviour. Offer 1 block suspension and offer adjunct help, we offered it before and we will send again.

[115] BCEHS ultimately decided that in addition to the four-day suspension, Ms. Patrick was required to take the University of British Columbia course: “Optimizing Communication for Excellence”.

[116] On the whole of the evidence, I am not persuaded that Ms. Patrick’s allegations of gender bias and/or a failure to apply a gender analysis to her situation have been taken out of the realm of conjecture. I am satisfied BCEHS is reasonably certain to prove a non-discriminatory explanation for all the discipline issued to Ms. Patrick, including the Written Warning, the 2019 Letter of Discipline and the May 2021 Suspension.

vi Interactions with Mr. Cooper: 2017-2019

Juliette Car

[117] In Ms. Patrick’s complaint she sets out that during the months of September-December, 2017 there were two temporary positions open on the Juliette Car, the day-shift mentoring car. She says that Mr. Long was assigned one of those positions and that Mr. Hunt, who was qualified for the position but had less seniority than her, was assigned to the other position.

[118] Ms. Patrick’s concern is not that she ultimately didn’t get assigned to one of the two temporary positions in the Juliette car, because as soon as she spoke to Mr. Simon about the situation on December 19, 2017, Mr. Simon “immediately stated I could have the position”, rather her concern is “that I was not “one of the boys” and wasn’t even talked to about taking one of the positions if I had wanted.”.

[119] BCEHS argues that the Tribunal should dismiss this allegation because it is reasonably certain to prove that it had a non-discriminatory reason for the Juliette Car assignments. The evidence before me on this point is limited.

[120] Mr. Cooper's evidence on this point only explains why he offered the position to Mr. Long. Mr. Cooper's evidence doesn't mention Mr. Hunt. There is no evidence whether in filling the Juliette Car vacancies Mr. Cooper conformed to the requirements of the collective agreement. Nor does Mr. Cooper's evidence provide any explanation why he did not approach or talk to Ms. Patrick about being placed into one of the temporary Juliette Car positions.

[121] As a result, I cannot at this stage find that BCEHS has shown there is no reasonable prospect of success of Ms. Patrick proving that her gender was at least a factor in Mr. Cooper placing Mr. Hunt in a temporary Juliette Car position and not approaching Ms. Patrick about being placed in the position.

Late for work

[122] Ms. Patrick complains that Mr. Cooper singled her out for being late on June 4, 2018 by sending her an email to remind her that the start time was 6:00 a.m. and copying the email to human resources and the Area Director.

[123] Ms. Patrick texted her Union representative that a colleague "JD" was 15 minutes late on July 25, 2018 stating as follows:

Hey. Should anything be done about JD being at least 15 minutes late for the papa car today? In light of my [sic] email chastising [sic] me for my 2 minutes

[124] Her Union representative texted her that "The boys have a different set of rules."

[125] Since then, Ms. Patrick claims to have been keeping "informal notes when I notice someone arriving late to work". She has noticed at least 10 instances of someone arriving to work late and to her knowledge the employee was not spoken to about "tardiness by the

Employer.”. Ms. Patrick provides no details regarding the employee’s gender in these 10 instances or whether BCEHS was even aware of these employees being late.

[126] There is not enough evidence on this application concerning “JD”’s employee situation regarding his being 15 minutes late and allegedly not spoken to about it to support a conclusion that there was a different set of rules applied to male employees compared to female employees regarding being on time. Ms. Patrick has not provided any evidence that she raised the situation of JD being late with BCEHS or whether the Union did. Further, she had not provided evidence that Mr. Cooper was in a position to address JD’s alleged lateness on that day and didn’t. I can only consider information that is before me; I cannot consider what additional evidence might be given if there is a hearing: *University of British Columbia v. Chan*, 2013 BCSC 942 at para. 77.

[127] The facts are that Ms. Patrick was late on June 4, 2018, which she admits. There is evidence before me that Mr. Cooper had reminded her twice before verbally of the 6:00 a.m. start time and the third reminder was the June 4, 2018 email.

[128] In addition, the evidence sets out that Mr. Cooper has spoken to other crew members, both males and females about being on time given that employees need to be ready to respond to emergency calls.

[129] I am not persuaded that Ms. Patrick was singled out for tardiness or that there is evidence beyond conjecture of a different set of rules for male employees compared to female employees with respect to being tardy.

Being Ignored

[130] Ms. Patrick claims that because she spoke to the Area Director, Ms. Wendy Machana, on June 5, 2018 about the amount of Advanced Care Paramedics working in Ms. Patrick’s area, “ALS deployment”, that she “perceived that Mr. Cooper was annoyed” and ignored her.

[131] Mr. Cooper's evidence sets out that he was "not involved in any discussions with Ms. Patrick about ALS deployment". He doesn't address Ms. Patrick's claim that he ignored her.

[132] As a result, I cannot at this stage find that BCEHS has met their onus to show there is no reasonable prospect of success of Ms. Patrick proving that her gender was at least a factor in Mr. Cooper ignoring her.

Changes to Ms. Patrick's schedule

[133] Ms. Patrick claims that on July 5, 2018, Mr. Cooper made changes to her schedule that he did not have authority to do and this as an example of Mr. Cooper "targeting me" because of her sex. I am not satisfied that the evidence before me takes this allegation out of the realm of conjecture. First, on the evidence before me the changes to Ms. Patrick's scheduled were related to the revocation of her mentorship status which impacted her ability to be assigned to the Juliette Car effective July 1, 2018. This change in schedule was approved by Mr. Allen Mcilhargey, District Manager, Patent Care Delivery, on June 27, 2018. Mr. Cooper did not make that decision.

[134] Ms. Patrick further alleges that on July 5, 2018 Mr. Cooper "injected himself into my business" by "hunting me down at Surrey Memorial Hospital to alert me to this scheduling change". I am not satisfied that the evidence before me takes this allegation out of the realm of conjecture.

[135] The evidence sets out that the loss of Ms. Patrick's mentorship status resulted in a shift change for Ms. Patrick which saw her four 12 hour day shifts changed to two 12 hour day shifts and two 12 hour night shifts. Mr. Cooper, as Ms. Patrick's supervisor, sets out in his affidavit that this was a major change in Ms. Patrick's schedule that she needed to be aware of.

[136] The evidence before me establishes that Mr. Cooper had emailed Ms. Patrick about the schedule change but received no response. The evidence indicates that at the relevant time Mr.

Cooper was in the field and in his roaming supervisor car near Ms. Patrick's location at Surrey Memorial Hospital. Consequently, Mr. Cooper took the opportunity to tell her in person of the shift change in order to make sure she was aware of it given the significant impact on her schedule. As Mr. Cooper sets out in his affidavit:

I am surprised that Ms. Patrick has taken offence to my actions. I would have done the same for any other employee, male or female, as I see this as being part of my responsibilities as Unit Chief to ensure my crew is informed and aware of their shifts so they can be prepared to respond to calls.

[137] I am not persuaded that Ms. Patrick's evidence is beyond conjecture when she claims Mr. Cooper was "targeting" her or "injecting" himself into her business by letting her know in person of her schedule change given that he received no response to his earlier communication to Ms. Patrick and he was in the area.

Failed inspection

[138] On August 23, 2018, Ms. Patrick alleges that Mr. Cooper singled her out by telling her partner, Mr. Long, that she had failed her car swab inspection. There is no evidence beyond conjecture that Mr. Cooper was singling out Ms. Patrick.

[139] Mr. Cooper's evidence is that most crews will fail the car swab at some point and it has been the past practice at Station 267 and his practice to notify the acting Unit Chief, in this case Mr. Long, of the car swab results for all crew, not just Ms. Patrick. This evidence was uncontested.

Comments to others

[140] Ms. Patrick contends that Mr. Cooper discredited her in front of her colleagues, and this behaviour created a toxic workplace and was "bullying and sexist in nature".

[141] On November 20, 2018, Mr. Cooper allegedly told Ms. Patrick's colleague that Ms. Patrick was a "shit disturber".

[142] In addition, on or about December 13, 2018, Mr. Cooper spoke to the Union representative and allegedly told him that crews are complaining about Ms. Patrick.

[143] There is also evidence that Mr. Cooper told Ms. Patrick's colleague Steven Green, that Mr. Cooper thought Ms. Patrick was a "troublemaker" and that she "had an attitude problem".

[144] Ms. Patrick provided evidence from a paramedic who worked with Mr. Cooper while he was the Unit Chief at the Salmon Arm station. I do not find this evidence of any assistance as it is unrelated to Mr. Cooper and Ms. Patrick's working relationship.

[145] Mr. Cooper's evidence on this application sets out that he hasn't at any time "sought out of solicited complaints against Ms. Patrick". Mr. Cooper does not specifically deny that he made the alleged comments to others, instead he attests that he makes "efforts to ensure that staff are treated, and treat others, with respect and dignity in the workplace".

[146] In my view credibility of the parties is a live issue in this aspect of Ms. Patrick's complaint. In this case, I find that credibility is a foundational consideration on the alleged comments and requires a hearing to adjudicate. The Tribunal can only resolve conflicting evidence on key issues in a complaint at a hearing: *Francescutti v. Vancouver (City)*, 2017 BCCA 242 at para. 67.

Removing Ms. Patrick from the call involving patient AA

[147] Ms. Patrick says that she "felt humiliated" when Mr. Cooper "ordered me to wait in the car" and later reported her as insubordinate when she did not comply which formed part of her discipline. She alleges that sex was a factor in how she was treated by Mr. Cooper: she says he treated her worse than he treats male colleagues in similar situations.

[148] The evidence does not support an inference that Ms. Patrick's sex factored into Mr. Cooper's attempt to de-escalate the situation between Ms. Patrick and AA's mother by directing Ms. Patrick to wait in his vehicle. Mr. Cooper's affidavit sets out the following:

I observed through my windshield that Ms. Patrick was screaming at a person, whom I believed to be the mother of the patient, and the mother was yelling back.

I immediately got out of my vehicle and made efforts to disengage Ms. Patrick and the mother from one another to de-escalate the situation. As her direct supervisor, I directed Ms. Patrick to sit in the PRU vehicle to wait for me so that I would speak to the mother.

....

After the matter with the parents seemed to have de-escalated, I went to the PRU vehicle to speak to Ms. Patrick to hear her side of events. She was not sitting in the PRU vehicle.

[149] As earlier mentioned, there is not enough evidence on this application concerning Mr. Taylor's situation with AA and her family to support an inference that Mr. Taylor was not disciplined because he was a male or that he was somehow favoured because he was a male compared to Ms. Patrick who is female.

[150] In my view, there is no reasonable prospect of success Ms. Patrick will prove at a hearing that there is a nexus between her sex and Mr. Cooper's conduct, specifically, telling her to wait in his vehicle, and having someone else take over the call and report Ms. Patrick as insubordinate with respect to the situation with AA and AA's parents.

[151] The evidence further sets out that AA's mother was very upset about the exchange with Ms. Patrick, that AA's mother was crying and stated that she would be filing a complaint with BCEHS over Ms. Patrick's behaviour.

[152] On the evidence before me I am satisfied BCEHS is reasonably certain to prove a non-discriminatory explanation for the actions of Mr. Cooper regarding Ms. Patrick and the situation with AA and AA's parents.

Conclusion – Interactions with Mr. Cooper: 2017-2019

[153] I am mindful in my analysis that the Tribunal has found that individual incidents, viewed in isolation, may not constitute discrimination but may be viewed differently when considered together: *Rana v. P.B. Distribution and others*, 2005 BCHRT 166 at para. 41.

[154] In addition, I understand the British Columbia Supreme Court's caution against dismissing portions of a complaint under s.27(1)(c): *Byelkova v Fraser Health Authority*, 2021 BCSC 1312 at para. 115. However, viewing the matter as a whole, in my view there is efficiency gained by dismissing Ms. Patrick's allegations involving Mr. Cooper regarding "Late for work", "Changes to Ms. Patrick's schedule", "Failed inspection", and "Removing Ms. Patrick from the call involving patient AA".

[155] The allegations from Ms. Patrick concerning Mr. Cooper which remain: "Juliette Car", "Being Ignored", and "Comments to others", allow for the Tribunal to consider them together at a hearing.

vii Conclusion: 27(1)(c)

[156] After reviewing all the materials filed, and the allegations in the complaint, I have concluded that there is no reasonable prospect that the complaint will succeed except those related to Mr. Patrick's interactions with Mr. Cooper involving the "Juliette Car", "Being Ignored", "Comments to others".

[157] There is a considerable body of material on this application, including investigation interviews, investigation reports and affidavit material to support the conclusion that Ms.

Patrick's discipline had to do with issues unrelated to her sex. BCEHS has provided a reasonable, non-discriminatory, explanation for its discipline and dealings with Ms. Patrick. Mr. Patrick's arguments to the contrary do not go beyond conjecture.

C. Should the retaliation allegation be dismissed?

[158] Ms. Patrick claims, in the alternative, that the May 2021 Suspension and requirement to take the "Optimizing Communication for Excellence" course was in retaliation for filing the complaint.

[159] BCEHS argues that Ms. Patrick's retaliation allegation has no reasonable prospect of success. More specifically, BCEHS argues that she has no reasonable prospect of providing a sufficient connection between the filing of the complaint and the imposition of discipline, and that it is reasonably certain to establish a solely non-retaliatory explanation for the discipline.

[160] Section 43 of the *Code* protects people from retaliatory conduct for participating, or possibly participating, in a human rights complaint process and states as follows:

A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person complains or is named in a complaint, might complain or be named in a complaint, gives evidence, might give evidence or otherwise assists or might assist in a complaint or other proceeding under this *Code*.

[161] Section 43 is an important part of the *Code*. It protects the integrity of the complaint process, and is aimed at ensuring that people can exercise their rights under the *Code* without fear of prejudicial consequences: *JW v. LS*, 2023 BCHRT 30 at para. 55.

[162] Although Ms. Patrick does not need to prove her retaliation complaint in this application, to succeed at a hearing she would have to show: BCEHS was aware of her first complaint or that she might complain to the Tribunal; BCEHS engaged in or threatened to

engage in conduct described in s. 43; and there is sufficient connection between the impugned conduct and the first complaint: *Gichuru v Pallai*, 2018 BCCA 78 [*Pallai*], at para. 58

[163] At a hearing Ms. Patrick can prove the third element in one of two ways: *Pallai*, at para. 59. First, by proving BCEHS intended to retaliate. This is the most difficult option as respondents seldom acknowledge retaliation as such: *C.S.W.U. Local 1611 v SELI Canada (No. 3)*, 2007 BCHRT 423 at para. 17. Alternatively, Ms. Patrick can prove a sufficient connection by inference. This would require her to prove that BCEHS could be reasonably perceived to have engaged in the conduct as retaliation for the complaint. The "reasonable perception," is assessed from the point of view of "a reasonable complainant, apprised of the facts, at the time of the impugned conduct", and not from the point of view of the particular complainant who alleges retaliation: *Pallai* at paras. 58 and 66.

[164] The Tribunal has confirmed that unlike the discrimination analysis under other sections of the *Code*, the legal test is not whether a human rights complaint is "a factor" in the conduct, but whether there is a "sufficient connection" to prove or infer retaliation: *Brooks v Skyacres Turkey Ranch Ltd. and others (No. 2)*, 2022 BCHRT 73, at para. 234.

[165] There is no dispute that Ms. Patrick can make out the first two elements from *Pallai*. The sole issue before me is whether she has taken the allegation of sufficient connection out of the realm of conjecture.

[166] The evidence before me is that BCEHS had performance concerns regarding Ms. Patrick dating back to 2017, that BCEHS was applying progressive discipline in order to make sure that BCEHS' expectations were being met.

[167] Further, the evidence before me is that BCEHS did not initiate the complaint against Ms. Patrick. The complaint came from an outside source, the Fire Chief of the Agassiz Fire Department. The evidence before me is that given the nature of the allegations from the Fire

Chief, BCEHS was compelled to investigate the allegations and to address them. Employers are able to manage their employees, give instructions, directions and/or discipline in circumstances where the employee has filed a human rights complaint: *Malagoli v. North Vancouver (City)*, 2023 BCHRT 42 at para. 189.

[168] Ms. Patrick has not taken the allegation of sufficient connection between the May 2021 Suspension and her complaint out of the realm of conjecture and I dismiss her s. 43 complaint.

IV CONCLUSION

[169] BCEHS' application to dismiss Ms. Patrick's complaint based on s. 27(1)(c) is granted, in part. Only Ms. Patrick's complaint regarding her allegations involving Mr. Cooper which are related to the "Juliette Car", "Being Ignored", and "Comments to others" will proceed to a hearing.

[170] Ms. Patrick's retaliation complaint against BCEHS is dismissed.

[171] I encourage the parties to take advantage of the Tribunal's mediation services to try to resolve this matter by mutual agreement.

Christopher J. Foy
Tribunal Member