2616084
NO. ________
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MARIE BURGOYNE

PETITIONER(S)

AND:

INFORMATION AND PRIVACY COMMISSIONER OF BRITISH COLUMBIA and the MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION

RESPONDENT(S)

PETITION TO THE COURT

ON NOTICE TO:

INFORMATION AND PRIVACY COMMISSIONER OF BRITISH COLUMBIA, 4th Floor, 947 Fort Street, Victoria, British Columbia, Canada V8V 3K3
MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION, Ministry of Attorney General – Legal Services Branch 1001 Douglas Street, Victoria, British Columbia, Canada V8W 9J7

The address of the registry is:

850 Burdett Avenue, Victoria, British Columbia V8W9J2

The petitioner(s) estimate(s) that the hearing of the petition will take 300 Minutes.
This matter is an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below, by

the person(s) named as Petitioner(s) in the style of proceedings above.

If you intend to respond to this Petition, you or your lawyer must

(a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to petition described below; and

(b) serve on the Petitioner(s)

(i) 2 copies of the filed Response to Petition; and

(ii) 2 copies of each filed Affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for Response to Petition

A response to petition must be filed and served on the petitioner(s),

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the Petitioner(s) is: Marie Burgoyne Unit 210 3160 Albina St Victoria British Columbia Canada V9A 1 ZS Fax number address for service {if any) of the Petitioner(s): E-mail address for service {if any) of the Petitioner{s): marie.c.burgoyne@gmail.com
(2)	The name and office address of the Petitioner's{s') lawyer is:

CLAIM OF THE PETITIONER(S)

Part 1: ORDER(S) SOUGHT

1. An order quashing or setting aside the decision(s) of the Information and Privacy Commissioner ("OIPC") and its delegate as rendered in Order F26-66, dated July 28, 2026;

2. An order that this Honourable Court decide rather than remit the matter, in light of the procedural history between the Petitioner and all Respondents in this and another matter regarding a freedom of information request, which is pending

before the Court in a parallel judicial review involving the same program area of the public body, and the impugned decisions of multiple OIPC delegates, including the Director of Adjudication;

3. An order pursuant to section 58 of the Freedom of Information and Protection of Privacy Act ("FIPPA") that the Ministry:

   a. Cease collecting categorically exempt and non-asset information, including funds owned by other ministries or health authorities;
   b. Only collect information about conditionally exempt assets to the minimum extent necessary to determine that the condition has been satisfied;
   c. Destroy improperly collected information, including exempt asset values, program balances, reimbursements, credit availability and use, routine spending data, and discretionary trust-corpus values;
   d. Revise its monthly report form and related policies to remove requirements to disclose exempt or non-asset information;
   e. Provide staff training on statutory limits, discretionary trusts, Choices in Support for Independent Living ("CSIL"), and similar programs, and the "expressly authorized" and necessity requirements under s. 26;
   f. Report to the Court on steps taken to comply with the Court's order; with greater specificity in the following paragraphs;

4. Under s. 58(3)(a) and (d) of FIPPA, an order that the Ministry cease collecting trust-corpus information from beneficiaries in all cases. Where the Ministry is authorized to collect financial information about a non-exempt, non-discretionary trust, it must obtain that information solely from the trustees, who are the legal owners of the trust property;

5. Under s. 58(3)(c), an order that the Ministry must revise its policies, procedures, and staff guidance to reflect that beneficiaries cannot lawfully provide trust-corpus information, cannot authorize its disclosure, and cannot be used as a source to confirm the truth of such information; even if the beneficiary provides

contact information to obtain records, the accuracy of those records rests with the trustees exclusively;

6. Under s. 58(3)(d), an order that the Ministry must implement staff training on the legal distinction between trustees and beneficiaries, the limits imposed by trust law, and the requirements of ss. 26(a) and 26(c) of FIPPA. This training must emphasize that trust-corpus information may only be collected from trustees and only where authorized by statute or demonstrably necessary, and no distinct personal information about the beneficiary — other than that which may be incidental to the trust instrument itself — may be collected from trustees without further authorization. The Petitioner seeks a related further order that discretionary Henson trusts do not meet the threshold for necessity of financial records and transaction level information;

7. Under s. 58(3)(d), an order the the Ministry to revise its policies, procedures, and staff guidance to reflect that s. 10(1.1) of the EAPWDA authorizes the collection of information only where it is directly required to determine or audit eligibility, and does not authorize the non-incidental collection of exempt, irrelevant, or non-asset information, except to determine if a conditional exemption has been met;

8. Under s. 58(3)(d), an order that the Ministry must redesign its monthly reporting form so that it does not request disclosure of exempt assets, non-assets, reimbursements, CSIL funds, or any other information not authorized under FIPPA ss. 26(a) or 26(c).

9. Under s. 58(3)(d), an order that the Ministry must establish a protocol requiring staff to contact trustees directly for any trust-related information the Ministry is authorized to collect and for no other purpose, and prohibiting staff from requesting trust-corpus information from beneficiaries. Further, an order that the protocol must include guidance that transaction records or financial information about Henson trust is not permitted from anyone once it has been determined to be an exempt trust.

10. Under s. 58(3)(d), an order that the Ministry must implement a requirement that staff document the necessity analysis under s. 26(c) before requesting any personal information not expressly authorized under an Act, and to provide the specifics of that analysis to the affected client(s) upon request.

11. Under s. 58(3)(c), an order that the Ministry must destroy any exempt-asset, non-asset, reimbursement, program funds not owned by the client, trust-corpus or other unauthorized information collected through monthly reporting forms.

12. Under s. 58(3)(d), an order that the Ministry notify any individuals whose personal or trust information was improperly collected, and to inform them of the steps taken to destroy that information.

13. In the alternative, an order remitting the matter for reconsideration by a different adjudicator not involved in either judicial review, with directions to provide reasons and to consider all relevant evidence.

14. An order that the Petitioner is entitled to her costs of this application, as agreed or assessed;

15. Such further and other relief as the Court may deem just.

Part 2: FACTUAL BASIS

1. The Petitioner has been in receipt of Persons with Disabilities Benefits ("PWD") since 2006 as a result of congenital cerebral palsy and its impacts on the Petitioner's activities of daily living.

2. The Petitioner is also a client of the CSIL program, where the client holds funds provided by the health authority, in this instance Island Health, to administer the employment of personal support workers to support the Petitioner in personal care and related matters, and for no other purpose. Funds are restricted to spending on employee wages and specific categories without exception, and must be periodically reported and returned to the applicable health authority upon request or upon exiting the CSIL program.

3. The Petitioner is the beneficiary of a discretionary Henson trust and is not a trustee.

4. PWD is also known as disability assistance and is administered under the Employment and Assistance for Persons with Disabilities Act[1] ("EAPWDA") and the Employment and Assistance for Persons with Disabilities Regulation[2] ("EAPWDR") by the Ministry of Social Development and Poverty Reduction (the "Ministry").

5. PWD consists of both income replacement payments and medical services administered through the Ministry.

6. In or about April 2024, the Ministry directed that the Petitioner participate in an eligibility review pursuant to section 10 of the EAPWDA, to determine that the Petitioner continued to meet the income and asset requirements for PWD eligibility. The eligibility review took place by phone and through the Ministry's My Self-Serve messaging system between about April and June 2024, with many subsequent exchanges regarding the discretionary Henson trust.

7. For instance, the Ministry repeatedly insisted that the Petitioner had told Ministry staff that the trust in question had changed. The Petitioner repeatedly denied and attempted to correct that misinterpretation of prior statements, including explaining on numerous occasions that regardless of the Ministry's interpretations of prior conversations, that information was irrelevant because no information about the trust could be obtained properly from anyone other than the trustees as legal owners.

8. On or about April 27, 2024, the Petitioner wrote to the minister alleging that the collection of certain categories of personal information and distinct trust information during the eligibility review are not permitted pursuant to section 26

[1] Employment and Assistance for Persons with Disabilities Act, SBC 2002, c 41, https://canlii.ca/t/56c3r.
[2] Employment and Assistance for Persons with Disabilities Regulation, BC Reg 265/2002, <https://canlii.ca/t/56wb7>.

of the FIPPA as it relates the legislative scheme established under the EAPWDA and the EAPWDR.

9. The Petitioner made numerous contemporaneous objections and attempts to resolve the matter, and ultimately filed a complaint with the OIPC in or about August 2024.

10. In or about 2025, while the OIPC inquiry was active, the Ministry escalated their repeated demands to the Petitioner to provide trust corpus information or sign a third-party personal information release to contact the trustees. The Ministry purported to discontinue the Petitioner's eligibility for PWD — as it had been confirmed during 2024 — effective April 2025, for alleged "noncompliance". The Petitioner immediately applied to the Ministry for reconsideration of that decision, copying the OIPC, as well as the Ministry's solicitors through publicly available contact information of the Legal Services Branch of the Ministry of Attorney General. The discontinuance decision was stayed pending the outcome of the OIPC matter and the reconsideration application was closed.

11. The OIPC conducted an inquiry under OIPC file number F24-97905, and the delegate issued Order F26-66 on July 28, 2026, purporting to resolve the matter in the Ministry's favour.

12. The Petitioner requests that the Court consider the record of the OIPC inquiry, and all materials that were provided to the OIPC for the purpose of forming part of that record. If any portion of the record is incomplete, missing, or withheld, at the conclusion of 21 days from the effective date of service of this petition on the OIPC, the Petitioner may immediately seek the Court's assistance to compel production under the Judicial Review Procedure Act s. 17.

13. The issues raised in this proceeding concern:
    a. The interpretation and application of the purposive clause in section 10 of the EAPWDA;

b. The purpose and application of the various categorical and conditional asset exemptions and limits in the EAPWDR as they relate to the collection of personal information including financial information;

c. The purpose and application of the various categorical and conditional asset exemptions and limits in the EAPWDR as they relate to trust information;

d. The scope and meaning of "expressly authorized" for the purposes of FIPPA section 26(a);

e. The sufficiency and transparency of necessity assessments under section 26(c) of FIPPA;

f. The jurisdictional authority and obligation of the OIPC to consider Charter values arguments appropriately when raised by a party to a complaint;

g. The definition of "asset" as it relates to eligibility reviews;

h. The authority of a public body to interrogate the nature of personal information that it may receive incidentally during an eligibility review;

i. The obligation of public bodies to collect personal information only where authorized and using the least intrusive means available to achieve the objective; and

j. The extent to which an individual may be required to provide personal information in order to disprove an assumption by a public body, or otherwise to prove a negative, such as the nonexistence of a bank account with any given financial institution.

These issues may be determined on the basis of the existing record.

Part 3: LEGAL BASIS

14. The Judicial Review Procedure Act permits the Court to grant any relief that the tribunal could have granted and to make any order necessary for the resolution of the matters in issue. The record before the Court contains the materials required to determine the issues raised in this Petition.

15. The duty of procedural fairness owed by administrative decision-makers;

16. The requirement to provide intelligible and legally accurate reasons for decisions affecting parties' rights;

17. The obligation to consider all relevant evidence, and to do so correctly under the applicable legal test, without importing or creating material errors of fact, law or mixed fact and law into decision-making;

18. The Court's discretion to grant substantive relief where remittal would perpetuate unfairness or delay; and

19. The Court's discretion to provide guidance and comment on legal issues as they may arise.

20. The Petitioner specifically challenges Order F26-66 on the following points and expressly alleges that the entire decision is neither reasonable nor intelligible within the meaning of Canada (Minister of Citizenship and Immigration) v. Vavilov[3].

21. The Petitioner alleges that the delegate committed an error of law by interpreting EAPWDA s. 10(1.1) as a broad, unrestricted authority to collect any personal information the Ministry requests. The delegate failed to give effect to the statutory purpose clause limiting collection to information "for the purpose of determining or auditing eligibility." The Petitioner further alleges that the delegate's conclusion that all information requested was "expressly authorized" is inconsistent with existing OIPC jurisprudence, and further it contradicts the categorical exemptions in EAPWDR ss. 10 and 12, which remove exempt assets from any eligibility determination, and that the delegate thereby committed an error of law by treating exempt information as if it were inherently authorized for collection. To reiterate, the Petitioner alleges that the delegate fundamentally misinterpreted prior jurisprudence on express authorization.

[3] Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 (CanLII), [2019] 4 SCR 653, <https://canlii.ca/t/j46kb>.

22. The Petitioner alleges that the delegate committed an error of law by conflating categorical exemptions under section 10 of the EAPWDR with conditional exemptions requiring verification. The delegate stated that the Ministry may collect information about "purportedly exempt assets…from time to time" to determine whether they are exempt, but failed to adequately analyze whether the information at issue was used solely for that limited statutory purpose. The Petitioner alleges that once an asset is determined to fall within a categorical exemption, a conditional exemption is satisfied, or an item is demonstrated not to be an asset for eligibility purposes, the law requires that the Ministry cease further inquiry into that information, and the delegate erred in law by failing to apply those limitations to the facts at hand.

23. The Petitioner alleges that the delegate committed an error of law by failing to apply the OIPC's established "necessity" test under s. 26(c) after finding that it was not required because the findings under s. 26(a) were sufficient. The Petitioner alleges that the delegate failed to adequately consider the issue and implicitly accepted the implication of necessity without adequate evidence demonstrating:

    a. Why exempt assets values were necessary for the administration of the PWD program;
    b. Why non-assets (credit, reimbursements, CSIL funds, discretionary trust corpus, etc.) were necessary;
    c. Why less intrusive alternatives to gather necessary information were inadequate, such as prior monthly reporting and paystubs as opposed to full bank profiles.

24. The Petitioner alleges that the delegate committed an error of mixed fact and law by misapprehending the nature of the Petitioner's submissions around disabled clients of other programs such as ICBC and WorksafeBC. The Petitioner alleges that the delegate misapprehended their own jurisdiction to consider Charter values arguments related to allegedly excessive Ministry practices and unauthorized collection of personal information, as in this case Charter values relate to the

security of the person across a population sharing disability as a protected ground and receiving practically identical essential supports through similar public programs where no equivalent financial and asset review is required.

25. The Petitioner alleges that the delegate committed an error of law by treating a discretionary-trust corpus as the petitioner's personal information, and a further error of law by accepting the proposition that the trustees are third parties to the question of the Henson trust.

26. The Petitioner alleges that the delegate committed an error of fact by stating that the parties do not dispute that all of the information at issue is personal information and finding that "all of the information in dispute is personal information of the applicant." The Petitioner further alleges that in doing so, the delegate fundamentally misapprehended key tenants of the Petitioner's position.

27. The Petitioner alleges that the delegate committed procedural fairness errors by failing to adequately consider the implications of various submissions, including but not necessarily limited to the following:

    a. The April 27, 2024 complaint letter;

    b. The trustee affidavit;

    c. Evidence that CSIL funds are owned by Island Health and continued to be requested after this was known to the Ministry;

    d. Evidence that the Ministry escalated allegedly improper demands into a noncompliance finding during an active OIPC inquiry into the matter;

    e. Evidence relating to the Ministry's monthly report form, as it informs the Ministry's interpretation of eligibility for PWD and the reasonableness of a requested review.

f. The Supreme Court of Canada decision in S.A. v. Metro Vancouver Housing Corp[4], including the definition of "asset" and implications for eligibility reviews.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Marie Burgoyne made July 31, 2026.

Dated at the City of Victoria, in the Province of British Columbia, this 3rd day of August, 2026.

Marie Burgoyne

Signature of:
☒ Petitioner(s) ☐ Lawyer for Petitioners(s)
— AGENT

To be completed by the court only: Order made   ☐ in the terms requested in paragraphs .... of Part 1 of this petition   ☐ with the following variations and additional terms: ....

[4] S.A. v. Metro Vancouver Housing Corp., 2019 SCC 4 (CanLII), [2019] 1 SCR 99, https://canlii.ca/t/hx61p.

Date:	.... Signature of ☐ Judge ☐ Associate Judge