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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

EDWARD BUCKELS,	)	Allison Fenske
	)	Leif Jensen
applicant,	)	for the applicant
- and -	)	
THE ATTORNEY GENERAL OF CANADA AND CHRIS RITCHIE (WARDEN OF STONY MOUNTAIN INSTITUTION) AND JASON HOPE (DEPUTY COMMISSIONER, CORRECTIONAL SERVICE OF CANADA (PRAIRIE REGION),	)	Jana Vandale
	)	Erica Haughey
	)	for the respondents
	)	
	)	Judgment Delivered:
respondents.	)	November 20, 2024

TOEWS J.

INTRODUCTION

[1] This is an application for *habeus corpus* made by a federally incarcerated prisoner, Edward Buckels. The application arises as a result of the decisions made by the Correctional Services of Canada (the "CSC") to change Mr. Buckels' security classification at Stony Mountain Institution ("SMI") from minimum security to medium security.

[2] The respondents stated that the reclassification and transfer decisions were made in response to security intelligence information linking the applicant to the institutional drug trade and his alleged involvement with the introduction of contraband into the institution. Based on this intelligence, the respondents stated that a search was conducted and a package of illicit drugs with an institutional value of $57,000 was found in house 5, where the applicant resided at the SMI minimum security unit.

THE LAW

[3] As set out in ***Mission Institution v. Khela***, 2014 SCC 24 (QL), to bring a *habeus corpus* application, the applicant must:

a) Establish that there has been a deprivation of liberty; and

b) Raise a legitimate ground on which to question the legality of the deprivation.

[4] The respondents acknowledged that there has been a deprivation of the applicant's residual liberty interest. The sole issue is whether the deprivation of the applicant's residual liberty interest resulting from his security reclassification and involuntary transfer from minimum security into the more restrictive medium security facility is lawful.

[5] The CSC acknowledges that the respondents here have the burden of proof to establish that the deprivation of the applicant's residual liberty interest is lawful. As set out in ***Khela***, at para. 52, a decision resulting in a deprivation of liberty will be lawful if:

a) The decision maker has the jurisdiction to make the decision at issue;

b) The requirements of procedural fairness were met in the decision-making process; and

c) The decision was reasonable.

THE FACTS

[6] The CSC documents ("the Record") before the decision maker relevant to this application are attached as exhibit "C" to the affidavit of Lauren Perry, affirmed on June 26, 2024 and as exhibit "E" to the sealed affidavit of Security Intelligence Officer Howie Clark, affirmed on June 28, 2024 ("the Sealed Affidavit"). The details in the Sealed Affidavit are being withheld from the applicant by CSC on the basis that their release would jeopardize the security of individuals and the institution.

[7] The facts relied upon by the respondents which may be publicly disclosed are fairly summarized in its brief at paras. 6 through 27 as follows:

> 6. The Applicant is a 44-year-old Métis offender serving his fourth federal sentence of 11 years, 11 months and 1 day for three counts of possession of a Schedule I/II substance for the purpose of trafficking, two counts of failure to comply with probation, possession of property obtained by crime, possession of prohibited/restricted firearms with ammunition, and possession of a weapon contrary to Prohibition Order. The Applicant commenced his current sentence on January 31, 2020 and arrived at SMI on February 10, 2020.
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> 7. SMI amalgamated with Rockwood Institution in 2014 and is now a clustered institution containing all three security levels.
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> 8. On March 17, 2023, the Applicant was approved for transfer from SMI medium security to minimum security. The Applicant arrived at SMI minimum security Unit 7 on March 22, 2023.
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> 9. Since the commencement of the Applicant's sentence, there has been ongoing intelligence about his involvement in the institutional drug trade. The Applicant has been provided with the gist of this withheld information at different times during his sentence and given ample opportunities to respond or provide additional information to his Case Management Team.
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> 10. On November 30, 2023, following credible security intelligence information linking the Applicant to the institutional drug trade, a search was conducted of house 5, where the Applicant resided, at the SMI minimum security unit. The security intelligence information stated that the Applicant had arranged for a package of contraband to be brought into SMI minimum security.

During the search, a package of contraband was retrieved and found to contain TBH concentrate (Butane Hash Oil) with an institutional value of $57,000.

11. That same day, on November 30, 2023, the Applicant's Parole Officer and the Acting Manager of Assessment and Intervention ("MAI") at SMI minimum security, Lauren Perry, met with him to discuss the package of contraband that was seized. The Applicant denied his involvement, maintaining that the package of contraband did not belong to him, and expressed frustration that other inmates would have brought that into their house.

12. That same day, on November 20, 2023, the Deputy Warden, Correctional Manager, and Security Intelligence Officer Howie Clark met with the Applicant to discuss the incident and to provide the Applicant with a fulsome understanding of the case against him. The Applicant was advised that there was no information linking any other inmate to the package of contraband that was found. The Applicant continued to deny his involvement and maintained he did not have any knowledge regarding the incident. The Applicant did not provide any further information.

13. As a result, the Applicant was immediately moved to a medium security unit on a temporary basis while his security classification was reviewed by CSC. A Notice of Involuntary Transfer was issued on November 30, 2023. The Applicant was provided a copy that same day.

14. On December 4, 2023, the Applicant submitted a written rebuttal to the Notice of Involuntary Transfer that was issued on November 30, 2023.

15. On December 12, 2023, the Applicant's Case Management Team consulted the Security Intelligence Office ("SIO") department. Further credible security intelligence information was received and included information from a partnering law enforcement agency stating that while residing in minimum security, the Applicant was communicating with an outside member of the community who was involved in the introduction of contraband at SMI and the package of contraband that was found in the November 30, 2023, search was destined for the Applicant. The intelligence noted that information from multiple sources indicated that the Applicant had been in possession of a cell phone while in custody. This intelligence also states that the Applicant knew specific ways to bring in contraband, which only the Applicant and the community member were thought to know.

16. On December 12, 2023, an Assessment of Decision was completed, which provided reasons for recommending a change to the Applicant's classification from minimum to medium security. The Assessment for Decision addresses all the factors outlined in section 17 of the *Corrections and Conditional Release Regulations* ("*CCRR*") and relies on the knowledge of experienced CSC Staff. The assessment for Decision reflects a thorough assessment and recommendation as to the Applicant's security reclassification.

17. On December 14, 2023, the Applicant's Case Management Team finalized a Security Reclassification Scale which resulted in a score of 16.5, which is indicative of medium security.

18. CSC invoked subsection 27(3) of the *Corrections and Conditional Release Act* ("CCRA") and pursuant to that statutory provision did not disclose the full details of the security intelligence information relied upon to the Applicant. The Applicant was provided with a gist of the security information relied on in compliance with CSC's obligations pursuant to subsection 27(3) of the CCRA.

19. On December 14, 2023, the Applicant was served with the Notice of Involuntary Transfer Movement Recommendation, and the Security Reclassification Scale dated December 14, 2023, and Assessment for Decision dated December 12, 2023.

20. On December 18, 2023, following the Applicant's request for clarification regarding the November 30, 2023, incident, an Addendum was completed to provide additional information to the Assessment for Decision. The Applicant was provided the Addendum to the Assessment for Decision on December 18, 2023.

21. The Applicant sought an extension of time to provide his second rebuttal submission and was granted an additional 10 days by the Institutional Head. The Applicant submitted a written rebuttal via his legal counsel on December 21, 2022.

22. The Institutional Head, as the decision maker, issued the Referral Decision on January 2, 2024, finding that, in accordance with Commissioner's Directive ("CD") 710-6 and section 18 of the CCRR, the Applicant demonstrated behaviour causing moderate institutional adjustment concerns which required ongoing management intervention. As such, the Institutional Head approved the applicant's reclassification to medium security.

23. Pursuant to section 18 of the CCRR, in order for an inmate to be classified as minimum security, they need to be assessed as presenting a low probability of escape) but low risk to the safety of the public in the event of escape, and requiring a low degree of supervision and control within the penitentiary. The decision maker considered alternatives to the involuntary transfer to medium security (e.g. cautions from Case Management Team and Security Intelligence Officer), but deemed all alternatives insufficient to mitigate the risk that the Applicant's presence in minimum security continued to pose.

24. On January 2, 2024, the decision maker approved the Applicant's involuntary transfer to SMI Medium Institution (the "Decision"). The Applicant was provided the Decision on January 4, 2024.

> 25. The Applicant challenged the decision by way of grievance, and on January 19, 2024, made submissions in the Offender Final Grievance Presentation.
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> 26. On May 1, 2024, the Offender Redress Division – CSC provided the Applicant with the Final Grievance Response dated April 18, 2024. The Final Grievance Response contained fulsome reasons for upholding the Decision and denying the grievance.
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> 27. The Applicant filed the within *habeas corpus* application on June 6, 2024, challenging the Decision.

[8] The source citations relevant to each paragraph have not been reproduced in these reasons but are available in the brief of the respondents.

[9] The applicant points out that while serving his sentence, he has never received an institutional charge or been placed in administrative segregation or in a structured intervention unit. He has participated in several escorted temporary absences, with no noted concerns regarding his behaviour during those absences. Mr. Buckels is actively involved with the inmates' welfare committee and has a positive record. Despite allegations to the contrary, Mr. Buckels has always denied any involvement in the institutional drug trade.

THE POSITION OF THE PARTIES

[10] There is no dispute that the decision maker here has the jurisdiction to make the Decision and that Parliament has entrusted the CSC with the responsibility for assigning an offender's security classification by virtue of the ***Corrections and Conditional Release Act*** , S.C. 1992, c. 20 ***CCRA***:

> **30 (1)** The Service shall assign a security classification of maximum, medium or minimum to each inmate in accordance with the regulations made under paragraph 96(z.6).

> **(2)** The Service shall give each inmate reasons, in writing, for assigning a particular security classification or for changing that classification.

[11] The legislative basis for transfer decisions is found at subsection 29(c) of the ***CCRA***:

> **29** The Commissioner may authorize the transfer of a person who is sentenced, transferred or committed to a penitentiary
>
> ….
>
> **(c)** to another penitentiary, in accordance with the regulations made under paragraph 96(d), subject to section 28.

[12] The regulatory basis for the security classification is found at s. 18 of the *Corrections and Conditional Release Regulations* SOR/92-620 ("*CCRR*"):

> **18** For the purposes of section 30 of the Act, an inmate shall be classified as
> **(a)** maximum security where the inmate is assessed by the Service as
> **(i)** presenting a high probability of escape and a high risk to the safety of the public in the event of escape, or
> **(ii)** requiring a high degree of supervision and control within the penitentiary;
> **(b)** medium security where the inmate is assessed by the Service as
> **(i)** presenting a low to moderate probability of escape and a moderate risk to the safety of the public in the event of escape, or
> **(ii)** requiring a moderate degree of supervision and control within the penitentiary; and
> **(c)** minimum security where the inmate is assessed by the Service as
> **(i)** presenting a low probability of escape and a low risk to the safety of the public in the event of escape, and
> **(ii)** requiring a low degree of supervision and control within the penitentiary.

[13] The factors which the CSC is to consider in determining the security classification of an inmate are also set out in the *CCRR*:

> **17** For the purposes of section 30 of the Act, the Service shall consider the following factors in assigning a security classification to each inmate:
> **(a)** the seriousness of the offence committed by the inmate;
> **(b)** any outstanding charges against the inmate;
> **(c)** the inmate's performance and behaviour while under sentence;

> **(d)** the inmate's social, criminal and, if available, young-offender history and any dangerous offender designation under the *Criminal Code*;
> **(e)** any physical or mental illness or disorder suffered by the inmate;
> **(f)** the inmate's potential for violent behaviour; and
> **(g)** the inmate's continued involvement in criminal activities.

[14] There is no issue here in respect of the elements of the law governing *habeas corpus*. The two elements necessary for the granting of *habeas corpus* are a deprivation of liberty and an unlawful deprivation of that liberty. In an application for *habeas corpus* the burden of proof rests on the applicant to demonstrate the first element while the respondent must establish the lawfulness of the deprivation.

[15] Furthermore, CSC admits that the applicant has established the first element, namely that the transfer of the applicant from minimum security to medium is a deprivation of liberty. This concession is consistent with the case law. As noted by LeBel J. in ***Mission Institution v. Khela***, 2014 SCC 24, (QL), at para. 40:

> … on an application for *habeas corpus*, the legal burden rests with the detaining authorities once the prisoner has established a deprivation of liberty and raised a legitimate ground upon which to challenge its legality (*May*, at para. 71; Farbey, Sharpe and Atrill, at pp. 84-86). This particular shift in onus is unique to the writ of *habeas corpus*. Shifting the legal burden onto the detaining authorities is compatible with the very foundation of the law of *habeas corpus*, namely that a deprivation of liberty is permissible only if the party effecting the deprivation can demonstrate that it is justified. The shift is particularly understandable in the context of an emergency or involuntary inmate transfer, as an individual who has been deprived of liberty in such a context will not have the requisite resources or the ability to discover why the deprivation has occurred or to build a case that it was unlawful.
>
> [emphasis added]

[16] The submissions of both parties are focused on whether the Decision was both fair and reasonable.

A. The Applicant

i. The Deprivation of Liberty was unlawful

[17] The applicant raises several grounds related to procedural fairness which reflect four interrelated issues:

a) Whether the respondents properly relied on s. 27(3) of the ***CCRA*;**

b) Whether the respondents met its disclosure obligations;

c) Whether the respondents relied on unreliable evidence; and

d) Whether the respondents did its due diligence in investigating the matter.

[18] Section 27(3) of the ***CCRA*** provides:

> **3)** Except in relation to decisions on disciplinary offences, where the Commissioner has reasonable grounds to believe that disclosure of information under subsection (1) or (2) would jeopardize
> **(a)** the safety of any person,
> **(b)** the security of a penitentiary, or
> **(c)** the conduct of any lawful investigation,
> the Commissioner may authorize the withholding from the offender of as much information as is strictly necessary in order to protect the interest identified in paragraph (a), (b) or (c).

[19] Accordingly, the applicant argues that the court must consider whether the release of the information withheld:

a) poses a risk to the individual, penitentiary, or a lawful investigation,

b) whether that risk was sufficiently serious to constitute "jeopardy", and

c) whether only that information which was strictly necessary to address the risk was withheld.

[20] Furthermore, the applicant submitted that as a result of ***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65, the presumptive expertise of the decision maker has been replaced with a requirement of demonstrated expertise.

Accordingly, the decision maker here is not entitled to presumptive deference; rather, the decision maker is entitled to have their explanation considered and if the explanation demonstrates expertise, they are entitled to deference. In other words, appeals to the professional judgment of corrections staff – where that judgment is not expressly demonstrated – are not appropriate considerations.

ii. The Respondents unreasonably withheld information

[21] The applicant stated that there has not been an appropriate assessment of the reliability of some of the information relied on but if a reliability assessment was performed, the results have not been disclosed. Furthermore, failing to provide information to the applicant linking him to bringing drugs into the institution is a breach of his statutory rights under s. 27(1) of the ***CCRA***, and a breach of his right to procedural fairness.

iii. The Respondents unreasonably relied on unreliable evidence

[22] The applicant stated that of the various sources of information (23), only six (6) contain both a source who was believed reliable and information that is believed reliable. In every other case, either the source, the information or both are of unknown reliability. The applicant deals with the specific allegations made against him and while the respondents are entitled to withhold information for the reasons set out in s. 27(3) of the ***CCRA***, it is also required to explain in the sealed affidavit why the tips relied upon are considered reliable. In summary while the applicant stated it is impossible to determine how much the decision maker relied on unreliable evidence, it is evident from what has been disclosed to the applicant, there appears to be significant reliance on unreliable evidence, rendering the Decision unreasonable.

iv. The Respondents failed to do its due diligence

[23] The final argument raised by the applicant is that the respondents failed to conduct meaningful investigations into evidence from various sources that he stated is of unknown and doubtful reliability.

THE RESPONDENTS

i. Procedural Fairness

[23] The respondents pointed out that pursuant to s. 27 of the ***CCRA***, prior to a decision being made to transfer or reclassify an inmate, the inmate is entitled to receive, in a reasonable period before the decision is made, all the information to be considered in the making of that decision, or a summary thereof. The broad right to receive this information is curtailed by virtue of s. 27(3) of the ***CCRA***.

[24] The creation of policies concerning the management of prisons is also authorized by ss. 97 and 98 of the ***CCRA*** and those policies are set out in what are known as Commissioner's Directives (C.D.'s). These C.D.'s together with the ***CCRA***, and the ***CCRR***, not only make it clear that the CSC has the authority to make the decisions respecting security classifications and the transfer of offenders, but also to impose specific obligations on CSC staff with respect to procedural fairness.

[25] The respondents submitted that the applicant was provided with a summary of all the relevant information, and with a gist of the confidential information withheld pursuant to subsection 27(3) of the ***CCRA***. The respondents stated that the applicant knew the case against him, he was afforded multiple chances to provide rebuttals, and his responses were carefully considered by the decision maker. As for the reasons themselves, the respondents submitted, they are justified, reasonable and transparent.

ii. No breach of fairness due to reliance on confidential source information

[26] The respondents submitted that the decision maker correctly invoked s. 27(3) of the ***CCRA*** in the assessment for decision dated December 12, 2023, following which the applicant had the opportunity to submit two rebuttals. At the time of the second rebuttal, the applicant was aware of CSC's invocation of s. 27(3) and had an opportunity to make submissions on that issue prior to the Decision being made. The applicant therefore knew the case to be met and had a fair opportunity to respond.

[27] The respondents stated that a reliability assessment of the security intelligence was properly performed and while the applicant may have wanted more detailed information regarding the source linking him to bringing drugs into the institution, it was reasonable and appropriate for the CSC to withhold any further information for security reasons.

[28] In terms of the evaluation of what information is to be released or withheld, the respondents stated that the decision maker has the established expertise based on the information set out in the Sealed Affidavit. The categorization of the information was based on an assessment by the decision maker to determine the reliability of the source and the information in accordance with a specific C.D., namely C.D. 568-2. The respondents further submitted that a detailed explanation of why the intelligence was considered reliable is found in the Sealed Affidavit. The respondents submitted that the disclosure properly balances the right of an inmate to know the case against him as against the need to protect the safety and security of other inmates, third parties, and the security of the institution.

iii. The applicant was properly notified of the case to meet and had sufficient opportunity to respond

[29] The respondents submitted that the details of the applicant's reclassification and transfer are set out in the affidavit of Ms. Perry. This affidavit demonstrates that the applicant received all documents considered in making the decision, the gist of the information withheld pursuant to s. 27(3) of the ***CCRA***, and was given ample documentation and summaries to make comprehensive rebuttals. Accordingly, the respondents submitted the requirements of procedural fairness were met.

iv. The decision was reasonable

[30] The respondents stated that in assessing whether the Decision was reasonable, the judge reviewing the decisions must provide careful attention to the institutional expertise of the decision makers. A reasonableness review requires a balancing of the decision maker's unique knowledge of the institution, individuals, culture and related practical experience. The respondents submitted that in balancing all the relevant factors, the Decision here falls within the range of possible defensible outcomes, consistent with the facts and the law.

v. Standard for Security Classification

[31] In assessing the appropriate security classification for an inmate, the respondents argued that the decision maker is in the best position to access the credibility of information and determine whether a given source or informant is reliable. In this context, the decision maker may rely on information assessed as "believed reliable" and it is not necessary for the decision maker to be satisfied beyond a reasonable doubt.

vi. The Consideration of the Applicant's case

[32] The respondents submitted that the Decision made here properly considered the applicant's rebuttal, denials and counterevidence, pointing out that he was provided the opportunity to submit written rebuttals, the decision maker accurately summarized the applicant's arguments and addressed each one. In doing so, the decision maker expressly confirmed that all the information was reviewed and found nothing that would preclude the applicant's involuntary transfer to medium security. Even if the decision maker did not specifically address every aspect of the applicant's submissions, taking into account the whole of the reasons, the Decision is reasonable in view of the evidence before the decision maker.

vii. The Decision was justified, reasonable and transparent

[33] The respondents submitted that the reasons set out in the Decision are entirely sufficient, noting that the decision maker relied on numerous credible reports of the applicant's involvement in the institutional drug trade. Based on the material before the decision maker, the respondents submitted it was eminently reasonable to conclude the applicant requires a higher degree of supervision and control than is offered in a minimum security setting. Based on the evidence, including a consideration of the applicant's Indigenous background, the respondents submitted that the totality of the information before the decision maker supports the conclusion that the Decision was reasonable and made lawfully, fairly, reasonably and in a manner which best reflects the applicant's security requirements.

ANALYSIS AND DECISION

[34] By virtue of s. 27(3) of the ***CCRA***, the applicant does not know precisely the information available to, and considered by, the decision maker. However, notwithstanding that s. 27(3) of the ***CCRA*** prevents the applicant from receiving this information, it is incumbent upon the court to review the Decision, and guided by the relevant caselaw, ensure that the information has been properly withheld according to the relevant statutory and regulatory provisions.

[35] CSC acknowledges that the standard of review in assessing whether a decision was procedurally fair is the higher standard of correctness. In this regard, a person who will be affected by a decision is entitled to meaningfully participate in the decision-making process, is entitled to know the case he or she must meet, and an opportunity to make submissions to the decision maker.

[36] In the context of an involuntary transfer, including a reclassification, for a decision to be reasonable, ***Khela*** provides the following directions:

> **72** … an inmate may challenge the reasonableness of his or her deprivation of liberty by means of an application for *habeas corpus*. Ultimately, then, where a deprivation of liberty results from a federal administrative decision, that decision can be subject to either of two forms of review, and the inmate may choose the forum he or she prefers. An inmate can choose either to challenge the reasonableness of the decision by applying for judicial review under s. 18 of the *FCA* or to have the decision reviewed for reasonableness by means of an application for *habeas corpus*. "Reasonableness" is therefore a "legitimate ground" upon which to question the legality of a deprivation of liberty in an application for *habeas corpus*.
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> **73** A transfer decision that does not fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" will be unlawful (*Dunsmuir*, at para. 47). Similarly, a decision that lacks "justification, transparency and intelligibility" will be unlawful (*ibid.*). For it to be lawful, the reasons for and record of the decision must "in fact or in principle support the conclusion reached" (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R.

> 708, at para. 12, quoting with approval D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 304).
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> **74** As things stand, a decision will be unreasonable, and therefore unlawful, if an inmate's liberty interests are sacrificed absent any evidence or on the basis of unreliable or irrelevant evidence, or evidence that cannot support the conclusion, although I do not foreclose the possibility that it may also be unreasonable on other grounds. Deference will be shown to a determination that evidence is reliable, but the authorities will nonetheless have to explain that determination.
>
> **75** A review to determine whether a decision was reasonable, and therefore lawful, necessarily requires deference (*Dunsmuir*, at para. 47; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 59; *Newfoundland and Labrador Nurses' Union*, at paras. 11-12). An involuntary transfer decision is nonetheless an administrative decision made by a decision maker with expertise in the environment of a particular penitentiary. To apply any standard other than reasonableness in reviewing such a decision could well lead to the micromanagement of prisons by the courts.

[37] The following comments of the court in ***Athwal and Zakis v. Warden of Ferndale Institution et al.***, 2006 BCSC 1386 (QL), at paras. 49-51 are also instructive:

> **49** This Court should be careful to avoid a too fine reconsideration of the possible dangers that informants might face in the corrections system. A warden, making a decision while faced with knowledge of dynamics within the penitentiary, is better situated than this Court when it comes to assessing the level of threat to individuals and to the institution itself.
>
> **50** In the instant case, while it is possible to parse the information released by the Warden and decide that slightly more could have been given, this is not the Court's proper function. The information provided by the Warden satisfied the requirement of disclosing the case to meet, and should not be upset.
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> **51** I agree with the comments of Bouck J. in ***Bachynski v. William Head Institution***, [1995] B.C.J. No. 1715 (B.C.S.C.), at para. 37:
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> > Perhaps the Petitioner was not dealt with perfectly. But, the law does not demand perfection. This is because the system is run by human beings. Very rarely do any of us perform anything perfectly. Courts must always be vigilant in protecting the individual rights of an inmate who is dealt with in an unreasonable manner. On the other hand, we should realize the difficult situations that confront prison officials.

[38] Based on the statutory and regulatory provisions referred to in the briefs of counsel and reproduced, in part, in these reasons, I conclude that CSC has the legislative jurisdiction to order the reclassification and involuntary transfer of Mr. Buckels. Accordingly, these reasons will focus on the issue of procedural fairness and reasonableness.

[39] I do not accept the arguments of Mr. Buckels that CSC failed to meet the common law and statutory disclosure obligations sufficient to permit Mr. Buckels to respond to the allegations made by CSC. In my opinion, CSC has met the requisite standard set out in subsections 27(1)(2) and (3) of the ***CCRA***.

[40] My review of the Record and other information leads me to the conclusion that Mr. Buckels was provided with all relevant information or a summary of the information that was considered in making the Decision. With respect to the confidential information set out in the Sealed Affidavit, I have reviewed that information. It is my conclusion that any information withheld from Mr. Buckels was done in a manner that was compliant with s. 27(3) of the ***CCRA***.

[41] I am also satisfied on my review of the Sealed Affidavit, and the material provided to Mr. Buckels, that he was provided with an appropriate summary of the confidential information as it relates to his reclassification and transfer. The summaries provided to him were sufficient for him to know the case he had to meet and to provide written rebuttal argument. The disclosure of the material generally, and the summaries in particular, are properly balanced between the right of Mr. Buckels to know the case

against him as against the need to protect the safety and security of other inmates, third parties and the security of the institution.

[42] In respect of Mr. Buckels' position that the decision maker is prevented from relying on information that is based on questionable standards of reliability, in my opinion the legislative scheme provides significant guidance on security classification and as noted in ***Khela*** affords deference to CSC decision maker in recognition of the delegation of this duty to them by Parliament. In my opinion, the consideration of the information in this case and the decision based on the information considered by the decision maker in respect of the reclassification determination properly falls within the scope of the delegation granted by Parliament to a CSC decision maker.

[43] Not only do the decisions here fall within the scope of the delegation granted by Parliament, but the decision maker here demonstrates expertise and is entitled to deference. Even if the applicant is correct that as a result of the decision in ***Vavilov***, the presumptive expertise of the decision maker has been replaced with a requirement of demonstrated expertise (and I make no determination in that respect), the decision maker here demonstrates an expertise that is entitled to deference.

[44] In respect of the issue of the reasonableness of the decision rendered here by the decision maker, the decision of the court in ***Khela*** is instructive. It held at para. 73 that a transfer decision:

> **73** … that does not fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" will be unlawful (*Dunsmuir*, at para. 47). Similarly, a decision that lacks "justification, transparency and intelligibility" will be unlawful (*ibid.*). For it to be lawful, the reasons for and record of the decision must "in fact or in principle support the conclusion reached" (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 12,

> quoting with approval D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 304).

[45] Upon a review of the Record, including the sealed affidavit, I conclude the Decision here falls within the range of possible, acceptable outcomes "which are defensible in respect of the facts and law".

[46] Many of the arguments raised by the applicant in this proceeding were also raised in argument before me by the applicant in ***Zarichanski v. The Attorney General of Canada***, 2023 MBKB 158. As in ***Zarichanski***, the applicant here takes the position that the decision maker's decision is not reasonable because the decision maker did not address matters raised by him in his materials. In ***Zarichanski***, the arguments of the applicant included the position that the reclassification was not based on reliable evidence, and that because the decision to transfer was procedurally unfair, the result was a flawed security assessment. As in ***Zarichanski***, I have rejected that position here.

[47] I find the decision maker properly summarized Mr. Buckels' arguments and addressed each one to the extent required by law. I have also reviewed the contents of the Sealed Affidavit, and after doing so I have arrived at the conclusion that not only was the information contained in that affidavit properly withheld from him, but the information that was released to him was sufficient to provide him with the information required to respond to the case he had to meet. In my opinion, the applicant was properly notified of the case to meet and had sufficient opportunity to respond.

[48] In my view the balance that s. 27(3) of the ***CCRA*** attempts to achieve by providing guidance to the decision maker in any particular case was achieved here. I do not accept that the respondents unreasonably relied on unreliable information or unreasonably withheld information. Furthermore, on an examination of all the material, it is my opinion that the decision maker not only carefully considered the arguments advanced by the applicant in making the determination to reclassify and transfer him, but that the CSC exercised due diligence in considering the allegations impugning Mr. Buckels.

[49] As the case law establishes, the reasons and record of the decision must "in fact or in principle support the conclusion reached". (see: ***Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)***, 2011 SCC 62 (QL)). In my opinion, that standard has been met.

[50] In respect of the adequacy of the reasons provided by the decision maker, it is important to point out that in making my decision I may, if necessary, look to the Record for establishing the reasonableness of the outcome. As set out in ***Newfoundland and Labrador Nurses' Union***, the question of whether reasons are adequate is subsumed in the broader reasonableness analysis. In that decision, Abella J. at paras. 14 - 16 summarized this issue in the following manner:

> **14** Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses — one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at §§12:5330 and 12:5510). It is a more organic exercise — the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the

> qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).
>
> **15** In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.
>
> **16** Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, 1973 CanLII 191 (SCC), [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[51] As I concluded in ***Zarichanski***, the decision on its face here reveals a rational chain of analysis and provides sufficient clarity to understand the decision maker's reasoning. The reasons provided by the decision maker for each of the decisions that were required to be made satisfies the obligations to provide a rationale to reclassify Mr. Buckels' security level and transfer him to medium security. If it is necessary to say so, it is also my opinion that my review of the information before the decision maker confirms this conclusion.

CONCLUSION

[52] In conclusion, the material before me establishes that the decisions by CSC to reclassify and transfer Mr. Buckels from minimum security to medium security are reasonable. The CSC has met its onus to demonstrate that the decision to reclassify

Mr. Buckels as a medium-security inmate were made lawfully, fairly, reasonably, and in a manner which reflects his security requirements.

[53] In the result, Mr. Buckels' application for *habeas corpus* is dismissed. Each party shall bear their own costs.

_____ J.