

Issue to be Decided

[4] The issue in this application is whether the CSC’s decision to transfer the applicant from a minimum-security institution to a medium security institution was lawful. Since there is no dispute that the applicant has established a deprivation of liberty (see *Khela v. Mission Institution*, 2014 SCC 24 at para. 34), the issue to be decided is whether the respondent has met its onus in proving that the deprivation was lawful: *Khela*, at paras. 30, 40-41, 77 and 86. No issue is taken with any procedural aspect of the decision-making. Rather, the issue to be determined is whether the decision resulting in the transfer on June 7, 2024, was reasonable.

[5] The parties have been advised that I have determined that the application should be dismissed. This is because I am satisfied that the respondent has shown that the decision to transfer was based on reliable information and was reasonable in the circumstances. The decision to transfer the applicant to a medium security facility was therefore lawful. These are my reasons for arriving at this conclusion.

Overview of the Evidence

The applicant’s evidence

[6] The applicant was re-classified to minimum-security for the first time in July 2022, when he moved to the Joyceville minimum unit.

[7] While the applicant was incarcerated in the minimum-security unit at Joyceville, he resided in a shared townhouse with five other inmates. The applicant had his own room, his own living space, and enjoyed other freedoms such as unrestricted outside access between 7:00 a.m. and 10:30 p.m.

[8] The minimum-security rating also allowed the applicant to participate in Escorted Temporary Absences (“ETA”) which allowed him to complete community service work in the community. He did so on 37 occasions “without incident”.

[9] On June 6, 2024, correctional officers found tobacco and prescription drugs in the applicant’s shared housing unit. The applicant states he was not responsible for any of it.

[10] The applicant states that upon being questioned by correctional officers about who was responsible for the contraband, he exercised his right to remain silent. He says that later in the day, Correctional Manager Steele ordered the applicant and his housemates to turn over the house keys because they were being moved to double-occupancy cells. The applicant acknowledges that he refused the order. He was subsequently escorted to a holding cell.

[11] The applicant explained that he initially refused the order because he was frustrated at losing the single-occupancy cell he had worked decades to obtain. He says he felt that he was being moved to a double bunk as a punitive measure because he had not identified the source of the drugs.

[12] The applicant states that he rejects the characterization that he was a leader or spokesperson for his housemates during the investigation. He says their refusal to move was their choice and not directed by him.

[13] Later that day (June 6, 2024), the applicant's security rating was re-assessed to medium security. On June 7, 2024, he was involuntarily transferred to the medium-security range at Joyceville Institution.

[14] Ultimately, the applicant received an institutional charge for failure to comply with a direct order. He pleaded guilty and received a warning.

[15] The transfer to medium security has resulted in the loss of various freedoms the applicant previously enjoyed. He is now double bunked in a cell and his ability to leave his cell is severely restricted. He is subject to frequent lockdowns. The applicant states that the change in his security classification will also make it more difficult for him to "move through his sentence and to obtain parole".

[16] The applicant also states that he was the only inmate from the house in minimum security whose security classification was changed.

The evidence of Jennifer Nelson

[17] The Respondent relies on the affidavit of Jennifer Nelson, who is the Assistant Warden, Interventions at Joyceville Institution.

[18] In respect of the contraband incident and its aftermath, Ms. Nelson states that the applicant assumed a leadership role in coordinating resistance to CSC's efforts to reassign the applicant and his housemates. He was hostile towards staff involved in these efforts. Following the applicant's refusal of the order to move, staff had to physically escort the applicant to a holding cell.

[19] Ms. Nelson's affidavit also sets out that prior to this event, other concerns had emerged about the applicant. On September 13, 2023, during an ETA, the applicant was observed leering at women and making inappropriate inquiries about female correctional officers' personal information.

[20] On June 6, 2024, a multi-disciplinary meeting was held to assess the applicant's security level following the contraband incident. It was attended by the Deputy Warden, two Managers of Assessment and Intervention, a Manager of Programs, and a Correctional Manager. The participants in the meeting were unanimous in their recommendation to involuntarily transfer the applicant to medium security.

[21] Ms. Nelson explains further in her affidavit that "inmates in a minimum-security environment are expected to demonstrate motivation toward self-improvement. During the contraband incident, Mr. Eakin's resistant, hostile, and agitated behaviour indicated an inability to meet the behavioural expectations of a minimum-security setting. This is further evidence [*sic*] by his disobedience of direct orders and encouragement of other inmates to disregard staff direction".

[22] Ms. Nelson states that she believes that the applicant's transfer was carried out in accordance with "Commissioner's Directive 710-2: Transfer of Inmates". She notes that the applicant's security level was reviewed prior to the transfer, and this review returned a score within the medium-security range. Ms. Nelson also states that the applicant's programming requirements and health and psychological profile were considered during the decision-making process, as was his verbal rebuttal to his Notice of Involuntary Transfer.

[23] Ms. Nelson concludes that based on her review of the record, she is satisfied that Mr. Eakin's transfer to the medium-security unit at Joyceville on June 7, 2024, on an emergency and involuntary basis was "both appropriate and a necessary response".

The assessment for decision dated June 6, 2024

[24] An assessment for decision was completed on June 6, 2024, and recommended the applicant's transfer. The author of the report was a parole officer who was involved with the applicant and who completed an updated Security Reclassification Scale evaluation for the applicant on the same date.

[25] The assessment for decision outlines how, after correctional officers learned that a house meeting had taken place where the contraband seizure was discussed and all housemates agreed to not disclose who the owner of the contraband was, a decision was made that the individuals in the house would be reassigned to a new living unit to separate them during the investigation. The applicant resisted the order to move houses. A group of inmates, including the applicant, then went to the inmate committee to "continue their opposition to the move". When staff attended, they determined that a direct order could aggravate the situation, and so they commenced a negotiation. Staff reinforced for the inmates that this was a minimum-security institution and that their behaviour was not conducive to this open environment. The applicant was noted to be leading the opposition, and to have displayed resistance and hostility when he refused to move. After the applicant was physically escorted to the holding cell, the other inmates complied with the move.

[26] Following the multi-disciplinary team meeting where the decision was taken that the applicant's behaviour was no longer manageable in minimum security, the author of the assessment met with the applicant to inform him of the decision. The applicant was noted to "continue to display resistance and argue about his rationale for refusing to comply". It was explained to the applicant that "given his inability to interact effectively with staff, his behaviour no longer meets the criteria for a minimum-security setting as per CD 705-7".

[27] The assessment for decision also reviews the applicant's history and his index offences which included aggravated sexual assault, sexual assault, and robbery. The victims were both women who were unknown to the applicant. They were each staying at a hotel in Toronto when they were sexually assaulted by the applicant, and then robbed. When the author of the assessment met with the applicant in May of 2024, the applicant "presented with little remorse for his actions or victim empathy by continuing to deny sexually assaulting the first victim".

[28] The assessment for decision also notes that actuarial measures placed the applicant's risk for general and violent recidivism in the moderate range and his risk for sexual offence recidivism in the average range. The assessment for decision states that:

“[W]hile Eakin is credited for completing correctional interventions and psychological counselling, his recent behaviour on ETAs and his oppositional and hostile behaviour within this review period is indicative of regression in dynamic factors. As a result, the CMT [case management team] recommend that Eakin's public safety be increased to Moderate.”

[29] The assessment for decision concludes, under the heading “overall assessment”, as follows:

“The recommendation in this case is for Eakin's security classification to be increased to medium and for an emergency involuntary transfer to JI Medium to be approved. Eakin is no longer considered manageable within minimum security. *His actions during the 2024-06-07 combined with his previous incident while on ETA's* raises his institutional adjustment and public safety ratings to Moderate, which supports a medium security transfer. The Security Reclassification Scale classifies Eakin as a medium security offender” [emphasis added].

Legal Principles

[30] In *Mission Institution v. Khela*, [2014] 1 S.C.R. 502, the Supreme Court held at para. 72 that reasonableness is a legitimate ground upon which to question the legality of a deprivation of liberty in an application for habeas corpus. It held at para. 73 that “[a] transfer decision that does not fall within the “range of possible outcomes which are defensible in respect of the facts and law’ will be unlawful ... Similarly, a decision that lacks ‘justification transparency and intelligibility’ will be unlawful.” The court also held that:

- a. 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 [at para. 74];
- b. A review to determine whether a decision is reasonable, and therefore lawful, necessarily requires deference ... 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 [at para. 75].

[31] “Reasonableness” was more recently considered in *Canada v. Vavilov*, [2019] 4 S.C.R. 653. That case sets out various directives, including that:

- a. The particular context of a decision constrains what will be reasonable for an administrative decision maker to decide in a given case. This is what it means to

say that “[r]easonableness is a single standard that takes its colour from the context” [at para. 89];

- b. What is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review [at para. 90];
- c. In conducting reasonableness review, judges should be attentive to the application by decision makers of specialized knowledge, as demonstrated by their reasons [at para. 93];
- d. A reviewing court must develop an understanding of the decision maker’s reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision [at para. 99].

The positions of the parties

The applicant

[32] The applicant argues that his transfer from minimum-security to medium was unreasonable and therefore unlawful. The applicant notes that the decision has had a significant impact on his liberty rights and will continue to do so since it will now be more difficult for him to obtain parole. He argues that the decision was unreasonable given that there was no evidence he was responsible for the contraband, and his response to being asked to move was reasonable in the circumstances since he was facing consequences for the misdeeds of others. Through counsel, the applicant argues that while resistance to authority should not be condoned, a single incident of this kind does not justify the response of transferring him to medium security given the impacts of this decision on his liberty.

[33] The applicant also argues that there was no evidence to support the conclusion that he had been a ringleader or that he had directed the behaviour of other inmates. That the applicant only received a verbal warning as a result of his disobedience of an order confirms it was a minor offence. Further, there was no pattern of conduct as is routinely the case before a transfer will be initiated.

[34] As for the concerns relating to the ETA outing where the applicant was said to be leering at women, the applicant argues this was more than a year before the contraband incident and it had not resulted in any changes to his classification. The passage of time between the incidents is such that it is unreasonable to conclude that he demonstrated a pattern of ungovernable behaviour. In any event, the ETA incident did not impact on his ability to be managed in minimum-security.

The respondent

[35] The respondent accepts that the decision to transfer the applicant on June 7, 2024, has resulted in a deprivation of liberty. However, the respondent argues that the application should be dismissed because the applicant has not raised any legitimate basis to challenge the lawfulness of the decision to transfer the applicant to medium security.

[36] The respondent argues that the decision to involuntarily transfer the applicant was reasonable, particularly considered in the context of prison law and policies. The respondent emphasizes the deference that must be shown to decision-makers, particularly in this context, where knowledge of institutional dynamics is important. The respondent points to the case law which says that judges should not micromanage penitentiaries.

[37] In any event, the respondent submits that the decision to transfer was not only reasonable, it was necessary. The applicant scored within the medium security range on the Security Reclassification Scale (“SRS”), and his behaviour following the contraband incident was not consistent with the expectations for inmates in minimum security, as set out in CSC policy. There was sufficient and reliable information about his behaviour and the warden was entitled to rely upon it. The respondent submits that the warden’s reasons for the transfer were intelligible, transparent, and wholly justified the decision to transfer the applicant to medium security.

Analysis

[38] I find that the decision to transfer the applicant to a medium security range was reasonable, and therefore, lawful.

[39] I have considered the applicant’s argument about the sufficiency of the evidence. There is no dispute that he disobeyed a direct order made in the context of an investigation of a contraband incident. While this conduct alone is concerning behaviour, I find that there was also sufficient and reliable evidence which raised a valid concern that the applicant acted in a hostile manner in his interactions with CSC staff and incited others to disobey CSC staff.

[40] I make this finding because the information before the warden included reports of staff who witnessed the applicant declaring that he was speaking on behalf of others, and they were all refusing to move. One report also outlined how the applicant was belligerent and argumentative, and “bordering on aggressive and defiant” (see Statement/Observation report of J. Steele at p. 100 of the Respondent’s Record). It appears the applicant maintained his argumentative attitude when speaking with the parole officer who authored the assessment for decision of June 6, 2024, which provides some corroboration for the accounts of other staff about the applicant’s attitude during the contraband investigation. That the situation was defused after the applicant was physically escorted to a holding cell also provides some indication that he was acting as a “ringleader”. I find that the information received about the applicant’s conduct during the contraband investigation was “sufficient to raise a valid concern” and support the decision to transfer: *Gallant v. Canada*, [1989] CanLII 9463 (F.C.A.) at p. 343.

[41] Further, the rationale for the transfer decision was also based on other behaviour by the applicant during an ETA. While I appreciate that this incident occurred a year before the contraband investigation, it was not unreasonable for this incident to be considered in assessing

the appropriate security level for the applicant, particularly given the actuarial scores relating to his risk of recidivism, the nature of his index offences, and his ongoing minimization of his conduct. The warden was also entitled to rely on the updated SRS score, which, at 17, placed the applicant in the range of inmates requiring medium security.

[42] There is no evidence that the decision to transfer was in any way predicated on the idea that the applicant was responsible for the contraband. Rather, it was his behaviour during the investigation of the incident which, together with other concerns, led to the decision. That the evidence does not show the applicant was responsible for the contraband is immaterial since it was not the basis for the decision.

[43] As for the argument that a more pronounced pattern of problematic behaviour was required before the applicant might be transferred, I have been provided with no authority which suggests that a pattern of behaviour is required before an inmate may lawfully be transferred to an increased level of security. As I understand the law, the issue is simply whether the decision made was reasonable given the context in any individual case.

[44] I have also considered the applicant's argument to the effect that the decision to transfer him to medium security has disproportionate consequences for him as a dangerous offender, and further that the consequences of a transfer are disproportionately serious compared to his behaviour during the contraband incident. I agree with the respondent that the decision taken in this case was driven by the applicant's manageability in a minimum-security setting. That the decision may have consequences for the applicant's future parole eligibility does not render the decision to transfer unreasonable.

[45] I recognize the specialized knowledge of the decision-maker in this case. I am also satisfied the warden's decision to transfer the applicant was consistent with CSC policy, as outlined by Ms. Nelson. It was made following the updated application of an actuarial tool (the SRS) that supported a medium security classification for the applicant. It was made with consideration of the applicant's risk of recidivism (according to actuarial tools), his programming needs, and his health and psychological profile. I find the decision bears the hallmarks of reasonableness because it is justified, transparent and intelligible.

[46] Consequently, the applicant's habeas corpus application is dismissed.

Lacelle J.

CITATION: Eakin v. Attorney General of Canada, 2025 ONSC 6681
COURT FILE NO.: CR-25-250-00MO
DATE: 28 November 2025

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JAMES EAKIN

Applicant

– and –

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR DECISION
(*HABEAS CORPUS* APPLICATION)

Lacelle J.

Released: 28 November 2025