

CANADA / JUDGMENT

Willis v. Warden of Mountain Institution

2025 BCSC 1496

COURT

Supreme Court of British Columbia

DECIDED

2 July 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1496 Willis v. Warden of Mountain Institution

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Willis v. Warden of Mountain Institution,

2025 BCSC 1496

Date: 20250702

Docket: S257955

Registry: New Westminster

Between:

Treyvonne Anthony Warner Willis

Petitioner

And

Warden of Mountain Institution and

Warden of William Head Institution

Respondents

Before: The Honourable Justice Gottardi

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

M.A. McQuaig

Counsel for the Attorney General of Canada on behalf of the Respondents:

J. Mack

Place and Dates of Hearing:

New Westminster, B.C.

June 18-19, 2025

Place and Date of Judgment:

Port Coquitlam, B.C.

July 2, 2025

[1] THE COURT: These are the oral reasons.

Introduction

- [2] Treyvonne Willis is serving a life sentence for first degree murder. He has been incarcerated in the federal penitentiary system since April 24, 2015. In November 2023, Mr. Willis was voluntarily transferred to William Head Institution ("WHI"). Inmates in the federal penitentiary system are assigned to one of three security classifications: minimum; medium; or maximum security. Since 2023, Mr. Willis has been a minimum-security inmate. WHI houses minimum-security inmates.
- [3] On February 11, 2025, Mr. Willis was transferred, on an interim basis, to the medium-security unit of Mountain Institution ("Mountain Medium"). This was an emergency involuntary transfer pursuant to s. 13 of the Corrections and Conditional Release Regulations, SOR 92/620 ["CCRR"]. Being held at Mountain Medium places enhanced restrictions on Mr. Willis' liberty within the institutional setting.
- [4] The CCRR requires a hearing after the fact to determine whether an emergency involuntary transfer was justified. Prison authorities call this a warden's board hearing, and it took place on March 7, 2025. At the hearing, Warden Mitchell (the "Warden") considered Mr. Willis' evidence, both oral and written, and the assessment for decision dated February 13, 2025 ("A4D").
- [5] The Warden confirmed the transfer on the basis that Mr. Willis should be reclassified as a medium-security inmate, held in an institution offering a degree of supervision not possible at WHI. He issued two written decisions; one confirming the change of security classification and the other approving the involuntary transfer.
- [6] Mr. Willis now applies for a writ of habeas corpus with certiorari in aid, seeking his release from Mountain Medium and transfer back to WHI. He maintains that the Warden's decisions are substantively unreasonable and that the process leading to them was unfair.

Positions of the parties

Mr. Willis

- [7] In this application, Mr. Willis argued that his involuntary transfer to medium security was not procedurally fair because: (1) inadequate disclosure was provided of the actual incident, inhibiting Mr. Willis' ability to respond to the allegations; and (2) the Warden failed to verify the allegation that was summarized in the A4D.
- [8] Mr. Willis also argued that the Warden's decision confirming the transfer was unreasonable in several respects:
- (1) the Warden's decision was made on an incomplete record and failed to resolve questions of reliability in relation to the observations of the reporting staff member;
 - (2) that the Warden failed to grapple with the factual contradictions between Mr. Willis' oral evidence and the description of the incident contained in the factual summary of the A4D;
 - (3) the Warden failed to adequately explain why it was necessary to increase Mr. Willis' security classification;
 - (4) the Warden unreasonably concluded that, irrespective of whether the kiss occurred, Mr. Willis' conduct had crossed the boundaries of acceptable behaviour within the institution;
 - (5) the Warden failed to make clear factual findings in relation to key aspects of the incident, and, as a result, the decision is unintelligible; and, finally
 - (6) the Warden's conclusion that Mr. Willis should have brought his concerns about the relationship forward to staff are unreasonable, in that they fail to grapple with the existence of a significant power imbalance between Mr. Willis and the impugned staff member.

The Respondent's position

- [9] The respondent's position is that the Warden had the jurisdiction to make the decision; that the procedure followed was procedurally fair to Mr. Willis; and that the decision was reasonable. The respondent concedes that it has the onus of establishing these positions.
- [10] The respondent submits that the standard of review on procedural fairness is whether the reviewing court concludes that it was fair, and that the merits of the decision are reviewable on a reasonableness standard.

Background

- [11] On the evening of February 10, 2025, Mr. Willis was purportedly observed by a staff member (the "Correctional Officer") engaging in an embrace with a female correctional manager (the "CM") and kissing her in a locked and darkened room referred to in WHI as the CORCAN room (the "Incident"). At approximately 7:30 p.m. that evening, the Correctional Officer approached acting Warden Shea and reported what they had observed. The Correctional Officer followed up with an email which was sent to acting Warden Shea at 7:42 p.m. that

evening (the "reporting email").

- [12] On February 11, 2025, prior to his transfer from WHI, Mr. Willis was interviewed by acting Deputy Warden Anthony Baldo and manager of assessment and intervention Leanne Brown regarding the incident. This was what we will call (the "first interview").
- [13] During the first interview, Mr. Willis was questioned about kissing the CM, and a summary of the key points in this interview were summarized in the respondent's materials as follows:
- (a) Mr. Willis adamantly denied kissing the staff member. However, he admitted to hugging her on two occasions the evening of the incident. He acknowledged that the first hug occurred when they were alone in the CORCAN room; and a second hug occurred later that evening in the hobby shop in the presence of another offender, whose identity he declined to provide;
 - (b) Mr. Willis acknowledged that the hugs were long in duration and stated that he was trying to console the CM. The CM had shared some personal experiences and difficulties with Mr. Willis;
 - (c) Mr. Willis confirmed that he did not know the window was partially covered and stated the CM brought him in through the back door. He confirmed that the staff member had brought him through the back door in the past;
 - (d) Mr. Willis initially stated that he did not believe the boundaries had been crossed between staff and inmates, but, upon further questioning, Mr. Willis acknowledged that it was inappropriate to be hugging the CM;
 - (e) Mr. Willis also stated that he had received "a lot of heat" from other inmates due to the amount of time he was spending with the CM.
- [14] At the conclusion of the first interview, Mr. Willis received a written memorandum dated February 11, 2025 (the "memo"), which informed him that he was being transferred to Mountain Medium on an emergency involuntary basis, pursuant to Commissioner's Directive 710-6 ("CD 710-6"). The memo confirmed that he had a right to retain and instruct counsel and that he would be provided with transfer documentation within the next two business days. Mr. Willis acknowledged receipt of the memorandum by signing a copy of the document. Mr. Willis was then moved to Mountain Medium.
- [15] On February 12, 2025, Mr. Willis was interviewed by telephone by Parole Officer Jessica Seip, which we will refer to as (the "second interview"). During this interview, Mr. Willis made the following statements, which were also summarized in the respondent's materials as follows:
- (a) that he was uncomfortable with all of the contact that he had had with the staff member;
 - (b) that everywhere he went the staff member would show up;

- (c) that he acknowledged that he played a role in their dynamic, but stated that it spiraled and he did not know what to do;
- (d) and that he felt uncomfortable speaking up about how he was feeling; and that he enjoyed her company, but felt "stuck".

[16] On February 13, 2025, while at Mountain Medium, Mr. Willis was provided with the following documents:

- (a) the Security Reclassification Scale ("SRS") dated February 11, 2025;
- (b) the A4D; and
- (c) the notice of involuntary transfer dated February 13, 2025.

[17] The A4D was completed in consultation with MAI Brown, the security intelligence officer, and acting Deputy Warden Baldo, collectively referred to as (the "Case Management Team"). They recommended that Mr. Willis be involuntarily transferred from WHI to Mountain Medium, based on a reassessment of his institutional adjustment, which increased his security classification from minimum to medium.

[18] An important tool used by corrections staff in evaluating an inmate's security classification is the SRS. This scale consists of 15 questions, the answers to each of which is in a range of scores. The total score arrived at in this scale is very important in deciding what level of security is required for any particular inmate. When Mr. Willis was transferred to Mountain Medium, his score was consistent with him being housed in a medium-security institution. Specifically, his score after the incident was raised from 15.5 to 16.0, which put him in the mandatory medium-security category, although just barely. Mr. Willis was also provided with a functional specification showing how the scores for each of the questions on the SRS were determined.

[19] The A4D included the following summary of the correctional officer's observation of the incident on February 10, 2025:

As noted, a concern has risen regarding boundaries between Mr. Willis and a female staff member. On the evening of 2025/02/09, a staff member observed Mr. Willis and the female staff member kissing in a room in the [CORCAN] building. It was first observed that Mr. Willis leaned in and kissed the staff member on the lips and then what appeared to be a second quick kiss. This room is located in a part of the institution that is only accessible by staff that hold a key. It is noted that one of the two windows was partially covered, and Mr. Willis and the staff member were alone in the room. It was also noted that the lights were off in the room and it was nighttime.

The reporting email was not attached to the A4D, nor was it provided to Mr. Willis at any time prior to it having been filed as part of the petition record in the respondent's material.

- [20] Mr. Willis acknowledged receipt of these documents by initialling an information-sharing checklist update. Mr. Willis requested an extension of time to submit a rebuttal. On or about February 14, 2025, the Correctional Service of Canada ("CSC") granted a 10-day extension, allowing him to submit his rebuttal by February 27, 2025.
- [21] After delivery of these documents, Mr. Willis consulted with Prisoners' Legal Services ("PLS"), and, with their assistance, prepared an inmate's representations rebuttal and submitted it on February 21, 2025. This will be referred to as (the "rebuttal letter"). The rebuttal letter set out Mr. Willis' account of the incident, which was accurately summarized by the respondent at para. 47 of their written submissions as follows:
- a) The staff member involved was a Correctional Manager with power and authority over Mr. Willis.
 - b) "In the A4D it is reported that another staff member directly observed the kiss. However, Mr. Willis reports that the room was dark as it was night out and that this kissing never occurred."
 - c) He acknowledged that they hugged earlier in the day but stated that the CM is a friendly person who hugs many other people.
 - d) While agreeing that physical contact between staff and inmates is generally inappropriate, Mr. Willis argued that his transfer was a disproportionate response, and that it was the responsibility of staff to ensure appropriate boundaries.
 - e) He stated that the CM initiated the personal conversations that led to the alleged kissing.
 - f) Mr. Willis claimed that the CM directed him to follow her into the CORCAN building, and that when a staff member gives a direction, he has no choice but to comply.
 - g) As an inmate serving a life sentence, he is in an emotionally vulnerable state, and that the power imbalance between staff and inmates must be recognized. Mr. Willis "didn't know what to do" and felt "stuck".
 - h) The A4D does not demonstrate that reclassifying Mr. Willis as medium security is reasonably necessary or proportionate under sections 4(c) and 28 of the CCRA. Transferring Mr. Willis to another minimum-security institution would have accomplished the goal of ending their interactions without unduly restricting his freedom or setting him back further in his correctional progress by raising his security classification.
 - i) Mr. Willis should not be punished for the inappropriate actions of staff members who appear to be acting outside their ethical and legal duties by initiating physical contact with vulnerable inmates over whom she has significant power and authority. If anyone's action is threatening the safety and security of the institution, it is the staff member in question.
 - j) The staff observation is that the alleged kissing was consensual, which indicates that the staff member was a willing and active participant.

- k) It is disproportionate and unreasonable to transfer Mr. Willis to a higher security institution as a result of these allegations.
 - l) It is unreasonable to expect Mr. Willis to inform his Parole Officer of the behaviour of the CM, as Mr. Willis was concerned that his PO may protect their colleague or blame him.
 - m) Prior to the incident, Mr. Willis reportedly excelled in minimum-security and showed motivation in working toward his Correctional Plan objectives. He should be returned to William Head or another minimum-security institution to continue his rehabilitation.
- [22] A warden's review board hearing was held on March 7, 2025 to address the Case Management Team's recommendation to reclassify Mr. Willis as a medium-security inmate and involuntarily transfer him back to Mountain Medium (the "Warden's Board").
- [23] At the Warden's Board, Mr. Willis made oral submissions and a submission was filed on his behalf by PLS. A summary of the oral evidence given is contained in the Warden's decision approving Mr. Willis' transfer dated March 11, 2025. A summary of some of the key points arising from Mr. Willis' oral submissions is as follows:
- a) That Mr. Willis hugged the CM on two occasions, one of which was in a dimly lit room. Mr. Willis knew he was not permitted to be in this room with the CM. One of the hugs took place in the presence of other inmates and was not "sneaky".
 - b) The hugs were not romantic, but were supportive, as the CM was experiencing personal problems. Mr. Willis had observed the CM hug other inmates before.
 - c) Mr. Willis enjoyed the CM's initiative, attitude, and company, and said he was learning from her. She often approached him for assistance with projects, and he enjoyed helping.
 - d) Initially, Mr. Willis did not believe he was doing anything wrong and that his interactions with the CM were acceptable. He later admitted he felt uncomfortable with the amount of time the CM spent with him and her continued requests to spend time together.
 - e) Mr. Willis felt he had no choice but to comply because the CM was in a position of authority.
 - f) Mr. Willis described feeling "stuck", very uncomfortable, and "pulled in different directions" by Programs and the CM.
 - g) The other inmates gave him "a hard time" due to the amount of time he spent with the CM.
 - h) He did not realize his conduct could be viewed as suspicious, inappropriate, or problematic.
- [24] Shortly after the hearing, Mr. Willis was served with the two decisions at issue in this petition: the Offender Security Level Decision, dated March 11, 2025, setting out the reclassification of his security level from minimum to medium, which we will refer to as the ("OSL Decision"); and the decision approving the recommendation that Mr. Willis be involuntarily transferred to Mountain Medium, which we will refer to as ("Transfer Decision").

[25] In the affidavit material filed by then acting Warden Shea on this application, he averred to the following facts:

- (a) That the Warden reviewed and considered the following materials and information in making the transfer decision and the OSL decision:
 - (1) the A4D;
 - (2) the notice; and
 - (3) Mr. Willis' rebuttal letter and oral submissions.
- (b) That the Warden did not review or consider the reporting email prior to making his March 11, 2025 decisions to reclassify and transfer Mr. Willis.

Issues

[26] The following issues arise on this petition:

1. Did the process satisfy the requirements of procedural fairness?
2. Were the Warden's decisions to reclassify and transfer Mr. Willis reasonable?
3. What is the appropriate remedy if the petition for habeas corpus is granted?

Legal framework

Legislation

[27] CSC is the federal government agency responsible for administering court-imposed sentences of two years or more. CSC operates institutions of various security levels and supervises offenders under conditional release in the community.

[28] The operation of the federal penitentiary system is governed by the Corrections and Conditional Release Act (or the "CCRA") and the CCRR are enacted pursuant to the CCRA.

[29] Section 28 of the CCRA addresses the placement of inmates in penitentiaries, and it provides as follows:

28 If a person is or is to be confined in a penitentiary, the Service shall take all reasonable steps to ensure that the penitentiary in which they are confined is one that provides them with the least restrictive environment for that person, taking into account

- (a) the degree and kind of custody and control necessary for
 - (i) the safety of the public,
 - (ii) the safety of that person and other persons in the penitentiary, and
 - (iii) the security of the penitentiary;

- (b) accessibility to
 - (i) the person's home community and family,
 - (ii) a compatible cultural environment, and
 - (iii) a compatible linguistic environment; and
- (c) the availability of appropriate programs and services and the person's willingness to participate in those programs. [emphasis added]

[30] Section 11 of the CCRP requires an institutional head to inform an inmate in writing of the reasons for the inmate's placement in a particular penitentiary, and to offer the inmate an opportunity to make representations. Under s. 12, an inmate must be offered a reasonable opportunity to make representations in advance of a proposed transfer to another institution. Section 13, however, creates an exception to the rule in s. 12 by providing for emergency involuntary transfers. Under s. 13(1), the exception is engaged where a designated staff member "determines that it is necessary to immediately transfer an inmate for the security of the penitentiary or the safety of the inmate or any other person".

[31] Section 13(2) sets out the procedure for on an emergency involuntary transfer. In brief, the warden or a designated staff member must meet with the inmate within two days of the transfer and explain the reasons for the transfer and give the inmate an opportunity to make representations. The warden must receive the representations and give the inmate written reasons for the final decision within five days after it is made. The warden's board hearing procedure at WHI is established to satisfy these requirements.

[32] Section 27(1) of the CCRA imposes on the CSC an obligation to provide an inmate "all the information to be considered in the taking of the decision or a summary of that information". This information must be provided "a reasonable period before the inmate is scheduled to make representations". Section 27(3) establishes an exception to the obligation in s. 27(1). It states as follows:

(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).

[33] Section 30 of the Act deals with security classification and states:

Service to classify each inmate

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).

Service to give reasons

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

Commissioner to give reasons

- (4) The Commissioner or the staff member designated by the Commissioner shall give each inmate reasons, in writing, for assigning them to a subclassification or for changing that subclassification.

[34] The legislative basis for security classification is found at s. 18 of the Regulations:

For the purposes of section 30 of the Act, an inmate shall be classified as

- (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. [emphasis added]

[35] Under the CCRR, there are Commissioner's Directives that set out general behavioural expectations for inmates. CD 706 sets out the following general expectations:

- 2. Offenders are expected to:
 - a. conduct themselves in a manner that demonstrates respect for other persons and property
 - b. obey penitentiary rules and regulations
 - c. participate in programs, activities and/or interventions identified in their Correctional Plan.

[36] CD 706 goes on to set out more specific expectations for inmates in minimum, medium, and maximum institutions. The behaviour expectations for minimum-security institutions is as follows:

Behavioural Norms

2. Minimum security inmates are expected to:
 - a. interact effectively and responsibly with minimal monitoring
 - b. demonstrate a high level of motivation towards self-improvement by actively participating in their Correctional Plan.

Legal Principles

Habeas corpus

- [37] Habeas corpus is an extraordinary remedy which, if granted, results in an order for release to a previously enjoyed level of liberty. On a habeas corpus application, the following two-part test must be satisfied:
- a) The petitioner must show a deprivation of liberty; and
 - b) Where a deprivation of liberty is shown, the petitioner must raise a legitimate ground upon which to question its legality.
- [38] If the applicant does so, the respondent must show that the deprivation was lawful: *May v. Ferndale Institution*, 2005 SCC 82 at paras. 71, 74 and 77; and *Mission Institution v. Khela*, 2014 SCC 24 at paras. 30 and 41.
- [39] With respect to the first part of the test, the decision to transfer an inmate to a more restrictive institutional setting constitutes a deprivation of their residual liberty. *May* at para. 76. The notion of "residual liberty" recognizes that an inmate incarcerated pursuant to a valid warrant committal may still be subjected to additional degrees of restraint, which must be lawfully imposed.
- [40] Once a deprivation of liberty is proven, the analysis proceeds to the second part of the test, wherein they must raise a legitimate ground upon which to question the legality of the detention. If the applicant raises such a ground, the respondent then bears the onus to show that the deprivation of liberty is lawful. See *Moazami v. Kent Institution (Warden)*, 2023 BCSC 61, at para. 27.
- [41] A deprivation of liberty will only be lawful if it falls within the decision-maker's jurisdiction, was reached in a procedurally fair manner, and is reasonable. *Moazami* at para. 29.
- [42] In the case at bar, the respondent concedes that Mr. Willis suffered a deprivation of his liberty when he was involuntarily transferred from a minimum to a medium-security facility and that Mr. Willis is entitled to seek the remedy of habeas corpus in this court, notwithstanding that he could have sought judicial review of the transfer decision in the Federal Court. In *May*, the court held that inmates are entitled to choose whether to challenge an unlawful restriction of liberty by way of habeas corpus in a Provincial Superior Court or by way of judicial review in Federal Court.

Standard of review

Procedural Fairness is Reviewable on a Correctness Standard

- [43] The parties are *ad idem* that the applicable standard for reviewing whether the warden complied with the duty of procedural fairness is correctness. See *Khela* at para. 79.
- [44] CSC must provide the offender with all the information to be considered in the decision, or a summary of that information, within a reasonable time before the decision is taken. See s. 27(1) CCRA. This disclosure must be sufficient to allow the offender to understand and respond to the case being put forward. See *Khela* at paras. 92 to 94.

Reasonableness is the Standard for Transfer Decisions

- [45] The applicable standard of review for reviewing the substance of the Warden's decisions is reasonableness. A reasonable decision is one that is justified, transparent, and intelligible, based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law. See *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 16, 85, 99, and 125. The court should not reweigh or reassess the evidence unless there are "exceptional circumstances"; and it is not the function of the court to micromanage the administration of penal institutions: see para. 75.
- [46] In *Vavilov*, the Supreme Court of Canada described the need for administrative decision makers to provide reasons that are responsive. Importantly, the Supreme Court also highlighted the need for decision makers to actually address and grapple with submissions that are put to them:
- [127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker*, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.
- [128] [. . .] a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.
- [47] The court in *Vavilov* further underscored the need for administrative decisions to be justified based on the specific factual and legal constraints that bear on the decision and the need for administrative decision makers to account for the evidence before them:

- [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, at para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would also have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: *ibid.*
- [48] In *Khela*, the Supreme Court addressed the reasonableness standard as it applies to the involuntary transfer proceedings occurring under s. 29 of the CCRA. The court discussed how the standard applies. When a decision maker presides over an involuntary transfer proceeding, it is tasked with evaluating evidence:
- [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).
- [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.
- [49] In *Nguyen v. Mission Institution*, 2012 BCSC 103, the court emphasized that wardens who preside over involuntary transfer proceedings must "weigh and consider fairly" evidence given by an incarcerated person in response to the allegations which prompted the proceeding: at para. 63.
- [50] A transfer decision must be supported by reasoning that is both logical and rational. The reviewing court must be able to trace a coherent line of analysis from the materials available at the time of the decision to the conclusion ultimately reached. Reasonableness review is not a "line-by-line treasure hunt for error". (see *Vavilov* at para. 102.)

- [51] Vavilov confirmed that administrative decisions should not be overturned absent a fundamental flaw:
- [100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.
- [52] The court also clarified that cases decided before Vavilov should be read in light of the court's reasons. Cases which are inconsistent with Vavilov should not be followed. See Vavilov at para. 143.
- [53] The Supreme Court has cautioned against engaging in "disguised correctness review". The reviewing court's task is to determine whether the decision was unreasonable, not to ask whether the outcome was correct or to substitute its own decision. See *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 at para. 62.
- [54] A decision to transfer is not akin to a conviction for an offence. What is required on the part of the decision maker is a reasonable belief that the inmate should be moved for the sake of the orderly and proper administration of the institution. See *Fish v. Canada (Attorney General)*, 2013 ONSC 5545 at para. 15.

Discussion and application

Issue 1 - Did the process satisfy the requirements of procedural fairness?

- [55] Mr. Willis argues that CSC failed to provide him with enough information about the allegation made against him, which prevented him from being able to fully respond to it. He further takes the position that the failure to provide him with the reporting email or any other written account of the incident was a violation of the information-sharing requirements set out in s. 27 of the CCRA. Finally, Mr. Willis argues that the Warden failed to verify or corroborate the alleged observations summarized in the A4D with any originating document or other source.
- [56] I do not accede to these arguments.
- [57] The Supreme Court of Canada has confirmed that, in the administrative context, unlike the criminal context, the duty of procedural fairness requires the decision maker to disclose only the information they actually relied upon: *May* at para. 92. A fair hearing requires that the individual know the case they must meet and have an opportunity to respond to adverse information. *Athwal and Zakis v. Warden of Ferndale Institution et al*, 2006 BCSC 1386 at

para. 27. Procedural fairness requires the inmate be provided with information sufficient to know the case that he has to meet. *Lising v. Warden of Kent Institution*, 2007 BCSC 248 at para. 39.

- [58] In *Khela*, the Supreme Court emphasized that s. 27 of the CCRA does not require CSC to disclose all information in its possession, only the information considered by the decision maker. Disclosure is not required for materials that were not relied upon. Unlike the Crown's disclosure obligation in criminal proceedings under *Stinchcombe*, s. 27 requires only disclosure of considered materials and allows summaries to suffice. *Khela* at para. 83. The focus of the analysis is, therefore, adequacy, not completeness. *May* at para. 92 and *Lising* at para. 49.
- [59] Mr. Willis was not entitled to receive or be informed of any written account of the staff observation unless it was relied upon in the Warden's decisions. In accordance with s. 27(1) of the CCRA, Mr. Willis was provided with all information considered by the Warden in making the decision, including the A4D and the notice.
- [60] The Warden did not rely on or consider any undisclosed materials, including the reporting email. That email was sent to Acting Warden Shea and was never reviewed or relied upon by the Warden in making the reclassification or transfer decisions. The Warden relied solely on the incident summary in the A4D. As no additional material was considered, there was nothing withheld that would engage the disclosure requirements under s. 27(3). Mr. Willis was, therefore, provided with all information necessary to understand the case that he had to meet.
- [61] Further, if the question is whether the summary provided enough information to allow the inmate to understand the case and to allow them to properly respond to the allegation, then the record is clear that Mr. Willis understood the case to be met. Here, based on the summary contained in the A4D, Mr. Willis was able to provide a detailed response, which included a denial of the kissing, but an admission to hugging the CM on two occasions, including in the CORCAN building. He was able to provide his own version of events and highlight his reliability concerns related to the observed incident due to the time of night and the darkness of the room. Mr. Willis was also able to provide an explanation of the nature of his relationship with the CM.
- [62] Regarding his complaint about observer identity, the A4D identified the source as "a staff member", which was sufficient for Mr. Willis to respond to the allegation. I agree with the court in *Caouette v. Mission Institution*, 2010 BCSC 769 at paras. 92 to 94, that the fact that an applicant is not given sufficient information with respect to the informants to challenge the basis upon which the corrections officials accept such evidence as reliable will not give rise to such unfairness as to undermine the legality of the transfer.
- [63] In relation to Mr. Willis' assertion that the Warden erred by failing to verify the reported observation, I agree with the respondent's interpretation of the statutory regime and the accompanying jurisprudence. The warden, under s. 27(1) of the CCRA, is entitled to rely on

information provided to them, including a summary of facts. While I do not understand why the short reporting email was not provided to the warden or the inmate, I do not read the statute as requiring the warden to seek out confirmatory evidence to support or verify the information contained in the summary.

[64] The cases make clear that there is no basis to review the decision on the ground that further investigation ought to have been conducted. As this court affirmed in *Caouette*, at para. 89:

The Warden need not act as investigating officer on behalf of the applicant. Either the Warden has sufficient grounds for ordering a transfer or the Warden does not. There is no basis for a review of the Warden's decision on the grounds that further investigation ought to have been conducted.

[65] As reaffirmed by the Court of Appeal in *Foster v. Mission Institution (Warden)*, 2011 BCCA 451 at para. 14:

. . . a warden is not required to undertake an independent investigation into a contested incident . . .

[66] Mr. Willis' reliance on *Khela and Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 to support his argument is misplaced. Those authorities addressed procedural fairness where undisclosed information was actually considered by the warden. In this case, the Warden did not consider the reporting email or any other undisclosed material. In this regard, I agree with the respondent that Mr. Willis was not entitled to receive or be informed of any written account of the staff observation unless it was relied upon in the Warden's decisions. In accordance with s. 27(1) of the CCRA, Mr. Willis was provided with all information considered by the Warden in making the decisions, including the A4D and the notice.

[67] I find that procedural fairness was met in this case, because Mr. Willis was provided with the only information considered, the incident summary and the A4D, which enabled him to respond to the case to be met and to allow him to meaningfully respond.

Issue 2 - Were the Warden's decisions to reclassify and transfer Mr. Willis reasonable?

[68] As set out above, Mr. Willis raises several objections to the rationality, transparency, and intelligibility of the Warden's decisions. These concerns were stated more succinctly in his petition as follows:

- (1) the Warden did not address or consider Mr. Willis' response to CSC's allegation;
- (2) the Warden did not address key submissions advanced in Mr. Willis' rebuttal;
- (3) the Warden made unreasonable conclusions with respect to the power imbalance between Mr. Willis and the CM; and

- (4) the Warden's finding that Mr. Willis required the structure of a medium-security environment was not intelligible or justified.
- [69] The respondent, on the other hand, claims that the transfer decision was reasonable and that the Warden, as decision maker, is not required to address "all aspects" of the record or respond to every argument in detail. The respondent takes the position that:
- (a) the Warden considered the competing accounts of the incident and ultimately accepted the staff observation;
 - (b) the Warden was entitled to focus on the concern that Mr. Willis failed to maintain appropriate boundaries with staff, even where the staff member may also have acted inappropriately;
 - (c) the Warden implicitly considered and rejected the alternative that Mr. Willis should be transferred to another minimum-security institution; and
 - (d) the Warden's conclusion that Mr. Willis no longer met the expectations of a minimum-security environment was reasonable and clearly supported by the CMT's assessment.

[70] In brief compass, I reject the respondent's position and find that both the impugned decisions of the Warden were unreasonable. I do so for the following reasons:

- Reduced to their essence, Mr. Willis' arguments amount to a complaint that the Warden failed to consider his evidence and arguments, grapple with the key issues, and make clear findings of fact in relation to the disputed facts arising from the incident.
- In particular, Mr. Willis points out that the Warden does not make a clear finding of fact as to whether or not a kiss occurred on the night in question. To the extent that it may be argued that the reasons do disclose such a finding, Mr. Willis, quite correctly, points out that there is no discussion or explanation as to how or why the Warden comes to that conclusion.
- Further, Mr. Willis points out that the Warden does not meaningfully discuss his suggestion that an alternative solution to the problem would be to transfer him to another minimum-security institution.
- Finally, and most importantly, Mr. Willis argues that the Warden fails to grapple with the existence of a power imbalance between himself and the CM.

[71] These criticisms are well placed.

[72] In coming to my conclusion that the Warden's reasons in relation to transfer and security classification are unreasonable, I fully accept that I am not to engage in a line-by-line search for error. Equally, I accept that I am not to hold the decision maker's reasons up to a standard of perfection or to engage in a disguised correctness review.

- [73] That being said, the Supreme Court of Canada, in Vavilov, was clear that, "The principles of justification and transparency require a decision maker's reasons meaningfully account for the central issues and concerns raised by the parties". See Vavilov at para. 127. The concept of responsive reasons is inherently bound up in this principle, and a decision maker's failure to meaningfully grapple with key issues or central arguments may call into question whether the decision maker was sensitive to the matter before it: see Vavilov, at para. 128.
- [74] For a decision maker to be reasonable, it must be justified in light of the facts. When a decision maker has fundamentally misapprehended or failed to account for the evidence before it, the reasonableness of a decision may be jeopardized. In the final analysis, I must be satisfied that the shortcomings or flaws in the reasons are "sufficiently central" to render the decision unreasonable: Vavilov at para. 100.
- [75] In the case at bar, the existence of a power imbalance between Mr. Willis and the CM and its impact on his informed and voluntary decision-making process was a central feature of his argument before the Warden. This aspect of Mr. Willis' position was set out, in part, in the rebuttal letter as follows:

Mr. Willis reports that the correctional manager was the one who initiated the personal conversations leading up to the alleged kissing. He reports that she was the one that told him to follow her into the CORCAN building. He says when a staff member makes a request he does not have a choice, he has to listen. Mr. Willis, as an individual serving a life sentence, confined to a prison, is in an emotionally vulnerable state. However, CSC staff members have authority over prisoners, having the ability to invoke disciplinary, restrictive, and punitive protocol upon them. In the A4D, it is acknowledged that Mr. Willis "didn't know what to do" and that he felt "stuck". This power dynamic must be recognized.

Mr. Willis maintains that it was the correctional manager who suggested going into the CORCAN building and that she frequently hugs other incarcerated individuals. Mr. Willis should not be punished for the inappropriate actions of CSC staff members who appear to be acting outside their ethical and legal duties by initiating physical contact with the vulnerable people over whom she has significant power and authority [emphasis added]

- [76] At the Warden's Board, Mr. Willis argued that (1) the fact that the CM was a senior staff member discouraged Mr. Willis from reporting his discomfort with her behavior to other staff; and (2) that "the responsibility for ensuring interactions are appropriate between staff and prisoners ultimately lies with staff": see rebuttal letter.
- [77] The Transfer Decision is largely silent on the existence of a power imbalance between Mr. Willis and the CM. Indeed, it is conspicuous that nowhere in the A4D, or in either of the Warden's decisions, is there reference to or acknowledgment of the fact that the CM was a manager, acting in a supervisory capacity over both Mr. Willis and other staff. Throughout the CSC material and the Warden's decisions, the CM is simply referred to as "a staff member". The only place where the CM's position is a senior staff member, acting in a supervisory capacity, is expressly noted and emphasized is in the rebuttal letter.

[78] The Warden states that Mr. Willis does not present as naive and that he was aware that his peers had noticed the unusual amount of time that he and the CM were spending together. He then concludes as follows:

At some point he should have spoken with his CMT, or a psychologist, or a different manager to express his concerns, if he was entirely vulnerable and innocent, and that culpability should exclusively lay with the staff member, (as was suggested).

[79] The Warden's only other comment on Mr. Willis' concern about reporting the CM to staff was that such a statement was "dubious" and "a fallacious assumption that all staff lack values and ethics". (See the Transfer Decision at pages 3 and 4.) The Warden thereby determined that, in response to the CM's behaviour, Mr. Willis should have "stepped back and said no" or reached out to someone else for "advice and support". In response to the second argument, the Warden reasoned that Mr. Willis was "not entirely absolved of responsibility because the other person involved was a staff member and appeared to have behaved consensually".

[80] I agree with Mr. Willis that these conclusory statements do not adequately engage with Mr. Willis' legitimate concerns related to the CM's position of authority vis-à-vis his position as a prisoner under her control. See Vavilov at para. 128. At no point does the Warden grapple with the notion that, in situations involving persons in authority and significant power imbalances, the law often recognizes, as does common sense, that the vulnerable party does not have the ability to make a true choice devoid of expressed or implied pressure.

[81] This argument was not collateral or diversionary. The Warden's assessment of Mr. Willis's judgment, decision-making ability, and ability to take responsibility for his own actions was central to his acceptance that Mr. Willis needed a greater level of supervision going forward. This conclusion was the primary basis upon which Mr. Willis' institutional adjustment score was increased and his security classification was increased from one consistent with minimum security to that of medium security. If the Warden had properly engaged with the existence and impact of an enhanced power imbalance between Mr. Willis and a senior staff member who was acting in a supervisory capacity, he may have come to a different conclusion as to whether Mr. Willis' judgment and decision-making ability should be impugned to such an extent that it should result in his being reclassified as a medium-security risk. This failure to grapple with the petition's central argument significantly undermines the reasonableness of both the transfer decision and the OSL decision.

[82] There are other aspects of the Warden's Transfer Decision that are troubling. In particular, despite concluding that Mr. Willis should have notified other staff about this relationship with the CM, the Warden makes a note that Mr. Willis stated that he "had asked staff if he was doing anything wrong", and they said, "No". Aside from noting this aspect of Mr. Willis' oral evidence, the Warden does not refer to it again, nor does he reconcile this statement with his implicit conclusion that Mr. Willis did not tell anyone at CSC about this increasingly

awkward or inappropriate relationship.

- [83] In addition, I agree with Mr. Willis that the transfer decision does not include a clear finding of fact that kissing had occurred between him and the CM. At some point, the decision can be read as proceeding on the basis that the Warden was accepting that the relationship was inappropriate whether or not there was kissing involved. At other points in the decision, it seems as though the Warden may have disbelieved Mr. Willis' denials about the kissing and accepted the observation of the correctional officer. There is no discussion about the reliability of either version of events or an articulation of any reasons for rejecting Mr. Willis' narrative. These omissions clearly detract from the intelligibility of the decision.
- [84] At the end of the day, it seems clear that the Warden accepted the position advanced in the A4D that in minimum-security institutions there is less supervision of inmates and, as such, staff needs to be confident that the offenders in such facilities will exercise good judgment and interact appropriately with staff and other inmates.
- [85] The Warden's conclusion that Mr. Willis' conduct "crossed the boundaries of acceptable behaviour" for a federally-incarcerated inmate may be one that falls within the "range of possible acceptable outcomes". Conversely, it is arguable that it was not reasonable for the Warden to conclude that it was incumbent on Mr. Willis to establish boundaries to protect himself against a senior staff member from behaving in an unprofessional manner or that Mr. Willis' apprehension about doing so signalled a decrease in his manageability within the institution.
- [86] That question cannot properly be answered until the issue of the power imbalance is considered and applied to the facts of the case.
- [87] At this stage, the fundamental flaw in the impugned decisions is not necessarily the lack of a rational chain of reasoning; but rather, it is in the failure to give proper effect to the evidence and to expressly grapple with the petitioner's central argument.
- [88] For all of the reasons set out herein, I find the transfer decision and the related OSL decision to be unreasonable.

Issue 3 - What is the appropriate remedy?

- [89] In *Khela*, the court is careful to point out that the administration of a penal institution is complex, involving considerations of rights of prisoners; the safety of inmates and staff; and the interests of the general public. The court must be cautious when making an order which affects that administration. See *Khela* at para. 84.
- [90] The respondent argues that aspects of the proposed wording of the order sought by Mr. Willis are problematic and run counter to several judicial pronouncements. They argue, relying on *Bacon v. Surrey Pretrial Services Centre (Warden)*, 2010 BCSC 805 at paras. 332 to 333, that:

Any order directing Mr. Willis' specific placement, including "William Head Institution" or "another minimum-security institution in British Columbia", would go to the fundamental management of the correctional system and would impinge upon CSC's legal duty to assess and manage an inmate's risk under its governing legislation and policy.

[91] Applying the maximum degree of caution, as suggested in Khela, I will accede to the respondent's suggestion and order that Mr. Willis be released from custody at Mountain Medium and return to custody in a minimum-security institution.

Conclusion

[92] I hereby grant the following orders:

- (1) Mr. Willis' petition for relief in the nature of habeas corpus with certiorari in aid is granted. Mr. Willis is to be immediately released from custody at Mountain Institution and returned to a minimum-security institution forthwith.
- (2) The petitioner is entitled to costs in the cause.

"Gottardi J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/14/2025BCSC1496.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/willis-v-warden-of-mountain-institution-2025>

Prepared on 28 October 2026 · Esheria