Diane Knopf, Warden of Mission Institution, and Harold Massey, Warden of Kent Institution (appellants) v. Gurkirpal Singh Khela (respondent) and Canadian Association of Elizabeth Fry Societies, John Howard Society of Canada, Canadian Civil Liberties Association and British Columbia Civil Liberties Association (interveners)
(34609; 2014 SCC 24; 2014 CSC 24)

Indexed As: Khela v. Mission Institution (Warden) et al.

Supreme Court of Canada
McLachlin, C.J.C., LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner, JJ.
March 27, 2014.

Summary:

The Warden of Mission Institution decided to transfer a federal inmate (Khela) from the medium security Mission Institution to the maximum security Kent Institution on an emergency and involuntary basis. Khela made an application for habeas corpus in the British Columbia Supreme Court.

The British Columbia Supreme Court, in a decision reported at [2010] B.C.T.C. Uned. 721, granted the writ. The court held that on a habeas corpus application, a provincial superior court had jurisdiction to review a warden's transfer decision for reasonableness. However, the court held that it was unnecessary to address Khela's argument that the transfer decision was unreasonable, because the court found the transfer to be unlawful on the basis of insufficient disclosure to Khela. As a result of that failure to disclose, the court declared the Warden's decision "null and void for want of jurisdiction". The court ordered Khela's return to the general population of Mission Institution. The Warden appealed.

The British Columbia Court of Appeal, in a decision reported at (2011), 312 B.C.A.C. 217; 531 W.A.C. 217, allowed the appeal but only to the extent of limiting the order of the court below to read that habeas corpus was granted and that Khela should be returned to a medium security institution. The court found that it was unnecessary and undesirable to state that the transfer was "null and void for want of jurisdiction". In substance, however, the Court of Appeal largely agreed with the decision of the British Columbia Supreme Court. The Warden appealed.

The Supreme Court of Canada dismissed the appeal. Superior courts were entitled to review an inmate transfer decision for reasonableness on an application for habeas corpus with certiorari in aid. If a decision was unreasonable, it would be unlawful. Moreover, a superior court hearing a habeas corpus application could also review a transfer decision for procedural fairness. The Corrections and Conditional Release Act outlined the disclosure that was required for a reviewing court to find such a decision fair, and therefore lawful. In this case, the correctional authorities did not comply with the statutory disclosure requirements. The breach of the statutory requirements rendered the decision procedurally unfair, and therefore unlawful. The British Columbia Supreme Court properly granted habeas corpus.

Administrative Law - Topic 2617

Natural justice - Evidence and proof - Disclosure - [See **Habeas Corpus - Topic 1208**].

Courts - Topic 2286

Jurisdiction - Bars - Academic matters or moot issues - This appeal arose from a decision to transfer a federal inmate (Khela) from a medium security institution to a maximum security institution and the inmate's responding application for habeas corpus - The Supreme Court of Canada stated that "this appeal is now factually moot. On July 23, 2010, the Warden of Mission Institution made another decision to reclassify Mr. Khela as requiring maximum security. As a result of that decision, Mr. Khela was transferred back to Kent Institution, the maximum security facility. This second transfer was the subject of another habeas corpus application, which was dismissed by a judge of the British Columbia Supreme Court ... Mr. Khela did not appeal the dismissal of that application. The lawfulness of his current incarceration is therefore not before this Court. Despite being moot, this appeal merits a decision in the circumstances of this case. The nature of habeas corpus applications involving the transfer and segregation of inmates is such that the factual circumstances of a given application can change quickly, before an appellate court can review the application judge's decision. This means that such cases will often be moot before making it to the appellate level, and are therefore 'capable of repetition, yet evasive of review' ... the points in issue here are sufficiently important, and they come before appellate courts as 'live' issues so rarely, that the law needs to be clarified in the instant case" - See paragraphs 13 to 14.

Habeas Corpus - Topic 2

General - When available - [See **Habeas Corpus - Topic 1208**].

Habeas Corpus - Topic 1208

Grounds for issue of writ - Imprisonment - Change of conditions of (incl. transfers) - The Warden of Mission Institution decided to transfer a federal inmate (Khela) from the medium security Mission Institution to a maximum security institution on an emergency and involuntary basis - Khela applied for habeas corpus in the British Columbia Supreme Court - The Supreme Court of Canada held that the application judge properly granted habeas corpus - Section 27(1) of the Corrections and Conditional Release Act (CCRA) required that the offender be given all information to be considered in the taking of the decision or a summary of that information - The Warden, in making the transfer decision, considered information that she did not disclose to Khela - Nor did she give him an adequate summary of the missing information - The withholding of that information was not justified under s. 27(3) of the CCRA - The appellant correctional authorities did not invoke s. 27(3) or lead any evidence to suggest that their withholding of information related to concerns arising from the interests protected by s. 27(3) - The court agreed with the application judge that the failure to disclose information about the reliability of anonymous sources, the specific statements made by the sources, and the scoring matrix that informed Khela's security classification, rendered the transfer decision procedurally unfair - The Warden's decision did not meet the statutory disclosure requirements and was procedurally unfair - It was therefore unlawful - See paragraphs 91 to 98.

Habeas Corpus - Topic 2004

Powers of court issuing writ - General - Scope of review - The Supreme Court of Canada

held that provincial superior courts were entitled to review an inmate transfer decision for reasonableness on an application for habeas corpus with certiorari in aid - The court stated that "given the flexibility and the importance of the writ, as well as the underlying reasons why the jurisdiction of the provincial superior courts is concurrent with that of the Federal Court, it is clear that a review for lawfulness will sometimes require an assessment of the decision's reasonableness. ... Many of the same principles which weighed in favour of concurrent jurisdiction in May [v. Ferndale Institution (SCC)] apply to the determination of the scope of a provincial superior court's review power. First, each applicant should be entitled to choose his or her avenue of relief. If a court hearing a habeas corpus application cannot review the reasonableness of the underlying decision, then a prisoner who has been deprived of his or her liberty as a result of an unreasonable decision does not have a choice of avenues through which to obtain redress but must apply to the Federal Court. Second, there is no reason to assume that the Federal Court is more expert than the superior courts in determining whether a deprivation of liberty is lawful ... Third, if inmates are not able to obtain review of their potentially unreasonable loss of liberty under an application for habeas corpus, they will have to wade through the lengthy grievance procedure available under the statute in order to have their concerns heard. ... Fourth, the fact that inmates have local access to relief in the form of habeas corpus also weighs in favour of including a review for reasonableness. ... Fifth, the non-discretionary nature of habeas corpus and the traditional onus on an application for that remedy favour an inmate who claims to have been unlawfully deprived of his or her liberty. ... Ultimately, weighing these factors together leads to the conclusion that allowing a provincial superior court to conduct a review for reasonableness in deciding an application for habeas corpus would lead to greater access to a more effective remedy. Reasonableness should therefore be regarded as one element of lawfulness" - See paragraphs 51 to 65.

Habeas Corpus - Topic 2004

Powers of court issuing writ - General - Scope of review - The Supreme Court of Canada held that provincial superior courts were entitled to review an inmate transfer decision for reasonableness on an application for habeas corpus with certiorari in aid - The court stated that "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 [Federal Courts Act] 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. 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 ... Similarly, a decision that lacks 'justification, transparency and intelligibility' will be unlawful. For it to be lawful, the reasons for and record of the decision must 'in fact or in principle support the conclusion reached'" - See paragraphs 72 to 73.

Habeas Corpus - Topic 2004

Powers of court issuing writ - General - Scope of review - The Supreme Court of Canada held that provincial superior courts were entitled to review an inmate transfer decision for reasonableness on an application for habeas corpus with certiorari in aid - The court also stated that that the application of a standard of review of reasonableness should not change the basic structure or benefits of the writ - "First, the traditional onuses associated with the writ will remain unchanged. Once the inmate has demonstrated that there was a deprivation of liberty and casts doubt on the reasonableness of the deprivation, the onus shifts to the respondent authorities to prove that the transfer was reasonable in light of all the circumstances. Second, the writ remains non-discretionary as far as the decision to review the case is concerned. If the applicant raises a legitimate doubt as to the reasonableness of the detention, the provincial superior court judge is required to examine the substance of the decision and determine whether the evidence presented by the detaining authorities is reliable and supports their decision. Unlike the Federal Court in the context of an application for judicial review, a provincial superior court hearing a habeas corpus application has no inherent discretion to refuse to review the case ... However, a residual discretion will come into play at the second stage of the habeas corpus proceeding, at which the judge, after reviewing the record, must decide whether to discharge the applicant. Third, the ability to challenge a decision on the basis that it is unreasonable does not necessarily change the standard of review that applies to other flaws in the decision or in the decision-making process. For instance, the standard for determining whether the decision maker complied with the duty of procedural fairness will continue to be 'correctness'" - See paragraphs 77 to 79.

Habeas Corpus - Topic 3063

Practice - Hearing on issue of writ - Burden of proof - [See third **Habeas Corpus - Topic 2004**].

Prisons - Topic 1026

Administration - Powers re prisoners - Transfers - [See **Habeas Corpus - Topic 1208** and second **Prisons - Topic 1503**].

Prisons - Topic 1503

Discipline - Inmates - General - Inmate's right to information re alleged offence - [See **Habeas Corpus - Topic 1208**].

Prisons - Topic 1503

Discipline - Inmates - General - Inmate's right to information re alleged offence - The Supreme Court of Canada stated that "In order to guarantee fairness in the process leading up to a transfer decision, s. 27(1) [of the Corrections and Conditional Release Act] provides that the inmate should be given all the information that was considered in the taking of the decision, or a summary of that information. This disclosure must be made within a reasonable time before the final decision is made. The onus is on the decision maker to show that s. 27(1) was complied with. ... Section 27(3) provides that where the Commissioner has reasonable grounds to believe that disclosure of information under s. 27(1) or (2) would jeopardize (a) the safety of any person, (b) the security of a

penitentiary, or (c) the conduct of a lawful investigation, he or she may authorize the withholding from the inmate of as much information as is strictly necessary in order to protect the interest that would be jeopardized. A decision to withhold information pursuant to s. 27(3) is necessarily reviewable by way of an application for habeas corpus. Such a decision is not independent of the transfer decision made under s. 29. Rather, s. 27 serves as a statutory guide to procedural protections that have been adopted to ensure that decisions under s. 29 and other provisions are taken fairly. ... If the Commissioner, or a representative of the Commissioner, chooses to withhold information from the inmate on the basis of s. 27(3), the onus is on the decision maker to invoke the provision and prove that there were reasonable grounds to believe that disclosure of that information would jeopardize one of the listed interests. ... The Commissioner, or his or her representative, is in the best position to determine whether such a risk could in fact materialize. As a result, the Commissioner, or the warden, is entitled to a margin of deference on this point. Similarly, the warden and the Commissioner are in the best position to determine whether a given source or informant is reliable. Some deference is accordingly owed on this point as well. If, however, certain information is withheld without invoking s. 27(3), deference will not be warranted, and the decision will be procedurally unfair and therefore unlawful" - See paragraphs 81 to 90.

Prisons - Topic 1607

Discipline - Inmates - Disciplinary hearing - Procedural fairness - [See **Habeas Corpus - Topic 1208**].

Cases Noticed:

Borowski v. Canada (Attorney General), [1989] 1 S.C.R. 342; 92 N.R. 110; 75 Sask.R. 82, refd to. [para. 14].

May et al. v. Ferndale Institution et al., [2005] 3 S.C.R. 809; 343 N.R. 69; 220 B.C.A.C. 1; 362 W.A.C. 1; 2005 SCC 82, appld. [para. 14].

Cardinal and Oswald v. Kent Institution (Director), [1985] 2 S.C.R. 643; 63 N.R. 353, appld. [para. 14].

R. v. Miller, [1985] 2 S.C.R. 613; 63 N.R. 321; 14 O.A.C. 33, appld. [para. 15].

Morin v. National Special Handling Unit Review Committee, [1985] 2 S.C.R. 662; 63 N.R. 363, appld. [para. 15].

New Brunswick (Board of Management) v. Dunsmuir, [2008] 1 S.C.R. 190; 372 N.R. 1; 329 N.B.R.(2d) 1; 844 A.P.R. 1; 2008 SCC 9, refd to. [para. 24].

Bushell's Case (1670), 124 E.R. 1006; Vaughan 135, refd to. [para. 27].

Martineau v. Matsqui Institution Disciplinary Board, [1980] 1 S.C.R. 602; 30 N.R. 119, refd to. [para. 29].

Mooring v. National Parole Board et al., [1996] 1 S.C.R. 75; 192 N.R. 161; 70 B.C.A.C. 1; 115 W.A.C. 1, refd to. [para. 35].

R. v. Mitchell, [1976] 2 S.C.R. 570; 6 N.R. 389, refd to. [para. 35].

Gamble v. R., [1988] 2 S.C.R. 595; 89 N.R. 161; 31 O.A.C. 81, refd to. [para. 47].

R. v. J.P.G. (2000), 130 O.A.C. 343 (C.A.), refd to. [para. 52].

Jones v. Cunningham (1962), 371 U.S. 236, refd to. [para. 54].

Peiroo v. Minister of Employment and Immigration (1989), 34 O.A.C. 43; 69 O.R.(2d) 253 (C.A.), refd to. [para. 55].

Libo-on v. Fort Saskatchewan Correctional Centre (Director) et al. (2004), 362 A.R. 231; 32 Alta. L.R.(4th) 128; 2004 ABQB 416, refd to. [para. 63].

Goldhar v. R., [1960] S.C.R. 431, refd to. [para. 66].

Sproule, Re (1886), 12 S.C.R. 140, refd to. [para. 66].

Trepanier, Re (1885), 12 S.C.R. 111, refd to. [para. 66].

R. v. Secretary of State for the Home Department, Ex parte Cheblak, [1991] 2 All E.R. 319, refd to. [para. 68].

R. v. Secretary of Sate for the Home Department, Ex parte Muboyayi, [1992] 1 Q.B. 244, refd to. [para. 68].

R. v. Governor of Brixton Prison, Ex parte Armah, [1968] A.C. 192, refd to. [para. 69].

R. v. Secretary of State for the Home Department, Ex parte Khawaja, [1984] 1 A.C. 74, refd to. [para. 69].

Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board) et al., [2011] 3 S.C.R. 708; 424 N.R. 220; 317 Nfld. & P.E.I.R. 340; 986 A.P.R. 340; 2011 SCC 62, refd to. [para. 73].

Khosa v. Canada (Minister of Citizenship and Immigration), [2009] 1 S.C.R. 339; 385 N.R. 206; 2009 SCC 12, refd to. [para. 75].

Lake v. Canada (Minister of Justice), [2008] 1 S.C.R. 761; 373 N.R. 339; 236 O.A.C. 371; 2008 SCC 23, refd to. [para. 76].

R. v. Stinchcombe, [1991] 3 S.C.R. 326; 130 N.R. 277; 120 A.R. 161; 8 W.A.C. 161, refd to. [para. 83].

Ruby v. Royal Canadian Mounted Police et al., [2002] 4 S.C.R. 3; 295 N.R. 353; 2002 SCC 75, refd to. [para. 83].

Knight v. Board of Education of Indian Head School Division No. 19, [1990] 1 S.C.R. 653; 106 N.R. 17; 83 Sask.R. 81, refd to. [para. 83].

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817; 243 N.R. 22, refd to. [para. 83].

Chiarelli v. Minister of Employment and Immigration, [1992] 1 S.C.R. 711; 135 N.R. 161, refd to. [para. 83].

Québec (Ministre de la Justice) v. Therrien, J., [2001] 2 S.C.R. 3; 270 N.R. 1; 2001 SCC 35, refd to. [para. 83].

Charkaoui, Re, [2008] 2 S.C.R. 326; 376 N.R. 154; 2008 SCC 38, refd to. [para. 88].

Charkaoui v. Canada (Citizenship and Immigration) - see Charkaoui, Re.

Statutes Noticed:

Corrections and Conditional Release Act, S.C. 1992, c. 20, sect. 27(1), sect. 27(3), sect. 29 [para. 81].

Authors and Works Noticed:

Blackstone, William, Commentaries on the Laws of England (1768), vol. III, c. 8, p. 131 [para. 27].

Cromwell, Thomas, Habeas Corpus and Correctional Law - An Introduction (1997), 3 Queen's L.J. 295, p. 298 [para. 28].

Duker, William F., A Constitutional History of Habeas Corpus (1980), pp. 3, 4, 54 [para. 27].

Dyzenhaus, David, The Politics of Deference: Judicial Review and Democracy, in

Taggart, Michael, The Province of Administrative Law (1997), p. 304 [para. 73].

Farbey, Judith, Sharpe, Robert J., and Atrill, Simon, The Law of Habeas Corpus (3rd Ed. 2011), pp. 16 [paras. 27, 28]; 18 [para 37]; 45, 46 [para. 71]; 52, 53, 54 [paras. 37, 41, 78]; 55 [paras. 37, 78]; 56 [paras. 37, 69, 78]; 57 [para. 69]; 58 [paras. 68, 69]; 59 to 63 [para. 59]; 84, 85 [paras. 30, 40]; 86 [para. 40]; 239, 240 [para. 28].

Flood, Colleen M. and Sossin, Lorne, Administrative Law in Context (2nd Ed. 2013) 85, pp. 107 to 109 [para. 41].

Ford, Cristie, Dogs and Tails: Remedies in Administrative Law, in Flood, Colleen M. and Sossin, Lorne, Administrative Law in Context (2nd Ed. 2013), 85, pp. 107 to 109 [para. 41].

Halliday, Paul D., Habeas Corpus: From England to Empire (2010), pp. 2 [para. 27]; 239, 240 [para. 28].

Harvey, D.A. Cameron, The Law of Habeas Corpus in Canada (1974), p. 103 [para. 35].

Mullan, David J., Administrative Law (2001), p. 481 [para. 41].

Parkes, Debra, The "Great Writ" Reinvigorated? Habeas Corpus in Contemporary Canada (2012), 36 Man. L.J. 351, p. 352 [para. 27].

Sharpe, Robert J., Habeas Corpus in Canada (1976), 2 Dal. L.J. 241, p. 262 [para. 71].

Sharpe, Robert J., The Law of Habeas Corpus (2nd Ed. 1989), generally [para. 54].

Taggart, Michael, The Province of Administrative Law (1997), p. 304 [para. 73].

Wade, H.W.R., Habeas Corpus and Judicial Review (1997), 113 L.Q.R. 55, generally [para. 69].

Counsel:

Anne M. Turley and Jan Brongers, for the appellants;

Bibhas D. Vaze and Michael S.A. Fox, for the respondent;

Allan Manson and Elizabeth Thomas, for the interveners, the Canadian Association of Elizabeth Fry Societies and the John Howard Society of Canada;

D. Lynne Watt, for the intervener, the Canadian Civil Liberties Association;

Michael Jackson, Q.C., and Joana G. Thackeray, for the intervener, the British Columbia Civil Liberties Association.

Solicitors of Record:

Attorney General of Canada, Ottawa, Ontario and Vancouver, British Columbia, for the appellants;

Conroy & Company, Abbotsford, British Columbia, for the respondent;

Queen's University, Kingston, Ontario, for the interveners, the Canadian Association of Elizabeth Fry Societies and the John Howard Society of Canada;

Gowling Lafleur Henderson, Ottawa, Ontario, for the intervener, the Canadian Civil Liberties Association;

University of British Columbia, Vancouver, British Columbia, for the intervener, the British Columbia Civil Liberties Association.

This appeal was heard on October 16, 2013, before McLachlin, C.J.C., LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner, JJ., of the Supreme Court of Canada. The following judgment of the Supreme Court was delivered in both official languages by LeBel, J., on March 27, 2014.

Appeal dismissed.

Editor: Angela E. McKay

Administrative Law - Topic 2617

Natural justice - Evidence and proof - Disclosure - The Warden of Mission Institution decided to transfer a federal inmate (Khela) from the medium security Mission Institution to a maximum security institution on an emergency and involuntary basis - Khela applied for habeas corpus in the British Columbia Supreme Court - The Supreme Court of Canada held that the application judge properly granted habeas corpus - Section 27(1) of the Corrections and Conditional Release Act (CCRA) required that the offender be given all information to be considered in the taking of the decision or a summary of that information - The Warden, in making the transfer decision, considered information that she did not disclose to Khela - Nor did she give him an adequate summary of the missing information - The withholding of that information was not justified under s. 27(3) of the CCRA - The appellant correctional authorities did not invoke s. 27(3) or lead any evidence to suggest that their withholding of information related to concerns arising from the interests protected by s. 27(3) - The court agreed with the application judge that the failure to disclose information about the reliability of anonymous sources, the specific statements made by the sources, and the scoring matrix that informed Khela's security classification, rendered the transfer decision procedurally unfair - The Warden's decision did not meet the statutory disclosure requirements and was procedurally unfair - It was therefore unlawful - See paragraphs 91 to 98.

Habeas Corpus - Topic 2

General - When available - The Warden of Mission Institution decided to transfer a federal inmate (Khela) from the medium security Mission Institution to a maximum security institution on an emergency and involuntary basis - Khela applied for habeas corpus in the British Columbia Supreme Court - The Supreme Court of Canada held that the application judge properly granted habeas corpus - Section 27(1) of the Corrections and Conditional Release Act (CCRA) required that the offender be given all information to be considered in the taking of the decision or a summary of that information - The Warden, in making the transfer decision, considered information that she did not disclose to Khela - Nor did she give him an adequate summary of the missing information - The withholding of that information was not justified under s. 27(3) of the CCRA - The appellant correctional authorities did not invoke s. 27(3) or lead any evidence to suggest that their withholding of information related to concerns arising from the interests protected by s. 27(3) - The court agreed with the application judge that the failure to disclose information about the reliability of anonymous sources, the specific statements made by the sources, and the scoring matrix that informed Khela's security classification, rendered the transfer decision procedurally unfair - The Warden's decision did not meet the statutory disclosure requirements and was procedurally unfair - It was therefore unlawful - See paragraphs 91 to 98.

Habeas Corpus - Topic 3063

Practice - Hearing on issue of writ - Burden of proof - The Supreme Court of Canada held that provincial superior courts were entitled to review an inmate transfer decision for reasonableness on an application for habeas corpus with certiorari in aid - The court also stated that that the application of a standard of review of reasonableness should not change the basic structure or benefits of the writ - "First, the traditional onuses associated with the writ will remain unchanged. Once the inmate has demonstrated that there was a deprivation of liberty and casts doubt on the reasonableness of the deprivation, the onus shifts to the respondent authorities to prove that the transfer was reasonable in light of all the circumstances. Second, the writ remains non-discretionary as far as the decision to review the case is concerned. If the applicant raises a legitimate doubt as to the reasonableness of the detention, the provincial superior court judge is required to examine the substance of the decision and determine whether the evidence presented by the detaining authorities is reliable and supports their decision. Unlike the Federal Court in the context of an application for judicial review, a provincial superior court hearing a habeas corpus application has no inherent discretion to refuse to review the case ... However, a residual discretion will come into play at the second stage of the habeas corpus proceeding, at which the judge, after reviewing the record, must decide whether to discharge the applicant. Third, the ability to challenge a decision on the basis that it is unreasonable does not necessarily change the standard of review that applies to other flaws in the decision or in the decision-making process. For instance, the standard for determining whether the decision maker complied with the duty of procedural fairness will continue to be 'correctness'" - See paragraphs 77 to 79.

Prisons - Topic 1026

Administration - Powers re prisoners - Transfers - The Warden of Mission Institution decided to transfer a federal inmate (Khela) from the medium security Mission Institution to a maximum security institution on an emergency and involuntary basis - Khela applied for habeas corpus in the British Columbia Supreme Court - The Supreme Court of Canada held that the application judge properly granted habeas corpus - Section 27(1) of the Corrections and Conditional Release Act (CCRA) required that the offender be given all information to be considered in the taking of the decision or a summary of that information - The Warden, in making the transfer decision, considered information that she did not disclose to Khela - Nor did she give him an adequate summary of the missing information - The withholding of that information was not justified under s. 27(3) of the CCRA - The appellant correctional authorities did not invoke s. 27(3) or lead any evidence to suggest that their withholding of information related to concerns arising from the interests protected by s. 27(3) - The court agreed with the application judge that the failure to disclose information about the reliability of anonymous sources, the specific statements made by the sources, and the scoring matrix that informed Khela's security classification, rendered the transfer decision procedurally unfair - The Warden's decision did not meet the statutory disclosure requirements and was procedurally unfair - It was therefore unlawful - See paragraphs 91 to 98.

Prisons - Topic 1026

Administration - Powers re prisoners - Transfers - The Supreme Court of Canada stated

that "In order to guarantee fairness in the process leading up to a transfer decision, s. 27(1) [of the Corrections and Conditional Release Act] provides that the inmate should be given all the information that was considered in the taking of the decision, or a summary of that information. This disclosure must be made within a reasonable time before the final decision is made. The onus is on the decision maker to show that s. 27(1) was complied with. ... Section 27(3) provides that where the Commissioner has reasonable grounds to believe that disclosure of information under s. 27(1) or (2) would jeopardize (a) the safety of any person, (b) the security of a penitentiary, or (c) the conduct of a lawful investigation, he or she may authorize the withholding from the inmate of as much information as is strictly necessary in order to protect the interest that would be jeopardized. A decision to withhold information pursuant to s. 27(3) is necessarily reviewable by way of an application for habeas corpus. Such a decision is not independent of the transfer decision made under s. 29. Rather, s. 27 serves as a statutory guide to procedural protections that have been adopted to ensure that decisions under s. 29 and other provisions are taken fairly. ... If the Commissioner, or a representative of the Commissioner, chooses to withhold information from the inmate on the basis of s. 27(3), the onus is on the decision maker to invoke the provision and prove that there were reasonable grounds to believe that disclosure of that information would jeopardize one of the listed interests. ... The Commissioner, or his or her representative, is in the best position to determine whether such a risk could in fact materialize. As a result, the Commissioner, or the warden, is entitled to a margin of deference on this point. Similarly, the warden and the Commissioner are in the best position to determine whether a given source or informant is reliable. Some deference is accordingly owed on this point as well. If, however, certain information is withheld without invoking s. 27(3), deference will not be warranted, and the decision will be procedurally unfair and therefore unlawful" - See paragraphs 81 to 90.

Prisons - Topic 1503

Discipline - Inmates - General - Inmate's right to information re alleged offence - The Warden of Mission Institution decided to transfer a federal inmate (Khela) from the medium security Mission Institution to a maximum security institution on an emergency and involuntary basis - Khela applied for habeas corpus in the British Columbia Supreme Court - The Supreme Court of Canada held that the application judge properly granted habeas corpus - Section 27(1) of the Corrections and Conditional Release Act (CCRA) required that the offender be given all information to be considered in the taking of the decision or a summary of that information - The Warden, in making the transfer decision, considered information that she did not disclose to Khela - Nor did she give him an adequate summary of the missing information - The withholding of that information was not justified under s. 27(3) of the CCRA - The appellant correctional authorities did not invoke s. 27(3) or lead any evidence to suggest that their withholding of information related to concerns arising from the interests protected by s. 27(3) - The court agreed with the application judge that the failure to disclose information about the reliability of anonymous sources, the specific statements made by the sources, and the scoring matrix that informed Khela's security classification, rendered the transfer decision procedurally unfair - The Warden's decision did not meet the statutory disclosure requirements and was procedurally unfair - It was therefore unlawful - See paragraphs 91 to 98.

Prisons - Topic 1607

Discipline - Inmates - Disciplinary hearing - Procedural fairness - The Warden of Mission Institution decided to transfer a federal inmate (Khela) from the medium security Mission Institution to a maximum security institution on an emergency and involuntary basis - Khela applied for habeas corpus in the British Columbia Supreme Court - The Supreme Court of Canada held that the application judge properly granted habeas corpus - Section 27(1) of the Corrections and Conditional Release Act (CCRA) required that the offender be given all information to be considered in the taking of the decision or a summary of that information - The Warden, in making the transfer decision, considered information that she did not disclose to Khela - Nor did she give him an adequate summary of the missing information - The withholding of that information was not justified under s. 27(3) of the CCRA - The appellant correctional authorities did not invoke s. 27(3) or lead any evidence to suggest that their withholding of information related to concerns arising from the interests protected by s. 27(3) - The court agreed with the application judge that the failure to disclose information about the reliability of anonymous sources, the specific statements made by the sources, and the scoring matrix that informed Khela's security classification, rendered the transfer decision procedurally unfair - The Warden's decision did not meet the statutory disclosure requirements and was procedurally unfair - It was therefore unlawful - See paragraphs 91 to 98.