

Legal aspects of inmates' security classification

One of the first decisions made when an inmate is admitted to a federal institution is the assignment of a security classification. This classification is then regularly reassessed throughout the inmate's incarceration.

This article examines the legal basis for assigning the security classification and describes the factors that must be considered. It examines the decision-making process that the Correctional Service of Canada uses to make the assignment and the main difficulties associated with the procedure.

Legal basis

Section 30 of the *Corrections and Conditional Release Act*, adopted in 1992, requires the Correctional Service of Canada to assign each inmate a security classification of maximum, medium or minimum in accordance with the Regulations. Under the terms of section 18 of the Regulations, the Service assigns each inmate's security classification on the basis of assessed probability of escape, the risk to public safety and the degree of supervision and control required within the penitentiary. Inmates are assigned the lowest security classification that meets their individual needs, based on an assessment of these three main criteria. Commissioner's Directive 505, Security Classification of Inmates, further states that the inmate is normally placed in an institution with a security level that allows him or her to benefit from programs and privileges compatible with the assigned security classification. The Federal Court, in a case² in which an inmate with a maximum security classification had been placed in the Special Handling Unit (high-maximum security), ruled that an inmate's security classification does not necessarily identify or correspond with the classification of the institution.

Factors to be considered

Section 17 of the Regulations requires the Correctional Service of Canada to take the following factors into consideration when assigning a security classification:

- the seriousness of the offence committed by the inmate;
- any outstanding charges against the inmate;
- the inmate's performance and behaviour while under sentence;
- the inmate's social, criminal and, where available, young-offender history;
- any physical or mental illness or disorder suffered by the inmate;
- the inmate's potential for violent behaviour; and
- the inmate's continued involvement in criminal activities.

The Correctional Service of Canada must take these factors into consideration not just during the initial assessment of the inmate but during the classification review that must be conducted at least once a year and before making any decision (for example, on a transfer, temporary absence or work release).

The Commissioner's Directives, on occasion, specify certain elements to be taken into consideration when examining these factors. For example:

- paragraph 8 of the Commissioner's Directive 505 states that an inmate's history of substance abuse and urinalysis test results will be factors considered in making decisions regarding transfers to lower security and conditional release; and
- paragraphs 20 and 21 of the recently adopted Commissioner's Directive 576, Management of Gangs and Organized Crime, state that the Service must consider the risk posed by inmates considered gang and organized crime members or associates when establishing their security classification.

Decision-making procedure

Paragraph 2 of Directive 505 makes the institutional head the approving authority for the initial security classification and any subsequent reclassification. Under the terms of this same Directive, that authority can be delegated to the Deputy Warden.

Subsection 30(2) of the Act states that the Service shall give each inmate reasons, in writing, for assigning a particular security classification or for changing that classification. Directive 505 states that the reasons for a decision must be given within five working days of the classification or reclassification. The Service is also required to inform the inmate of the right to seek redress through the inmate grievance process.

Recently, this decision-making procedure was challenged in the courts in relation to an application for a writ of habeas corpus. In this case,³ the applicant's security classification was changed from medium to maximum. In the five working days following this change, the applicant received a notice of the change in the security classification along with a notice of an involuntary transfer. The inmate's attorney contested, in writing, the said transfer to a maximum security institution. The institutional head of the sending institution confirmed the recommendation for an involuntary transfer and, subsequently, the institutional head of the Regional Reception Centre⁴ authorized the applicant's transfer to a maximum security institution. The applicant argued that the decision concerning his transfer to a maximum security establishment was made by the institutional head of the Regional Reception Centre, whom he claimed had failed to exercise his authority by not reviewing the appropriateness of the decision to raise the security classification.

In his decision dated August 8, 1996, (currently under appeal), the Honourable Justice Louis De Blois, after reviewing the relevant provisions of the Act, Regulations and Commissioner's Directives, said that it states nowhere in the Act that the decision-making procedure with respect to the security classification must be exercised at different levels of the Correctional Service of Canada. The Court thus rejected the applicant's argument and concluded as follows:

The institutional head of the Regional Reception Centre cannot arrogate to himself the authority to

review the decision of an institutional head, who has the exclusive power to authorize the initial security classification and any reclassification. The powers and prerogatives of each body, described in the Act and the Commissioner's Directives, are clearly established and, in this instance, were followed to the letter. [translation]

The Court further noted that the applicant in this case had chosen not to contest the change to his security classification through the appropriate channel, that is, through a grievance, and that he could not, therefore, claim habeas corpus as a way of circumventing a well-established procedure.

This case illustrates the roles of the various decision makers who are involved when, following a change in an inmate's security classification, an involuntary transfer procedure is instituted. Annex A of Commissioner's Directive 540, which describes the standards for transfers of inmates, requires the decision maker, when assessing the merits of a transfer, to consider the behavioural norms set out in Commissioner's Directive 006, Classification of Institutions, as well as the requirements for security classification outlined in section 28 of the Act.

It is thus clear that, although the decision maker with respect to the transfer is not authorized to change the security classification previously established by the institutional head of the sending institution, he or she must nevertheless consider it, along with the other elements mentioned in the Commissioner's Directive, before making a final decision. This requirement illustrates the importance of having the various decision makers in the Correctional Service of Canada apply the same criteria in a consistent and uniform fashion when assigning or changing the security classification.

Other difficulties can arise during the initial assessment of the security classification of an inmate newly arrived in the federal correctional system. It can happen that the officers responsible for assessing the security classification have few facts or little background to work with when determining the level of risk that an individual represents. If, on the other hand, the inmate has a prior sentence, the information will be on file and will facilitate the assessment of the security classification.

Assigning security classifications to inmates is not an exact science; however, the Regulations establish objective criteria that the Service can use for assigning a security classification appropriate to both the inmate's behaviour and the level of risk represented. As long as these criteria are respected and the decisions are justified on the basis of these criteria, the courts will not intervene in these administrative decisions, unless the decision makers fail to fulfil their obligation to act fairly, or commit a serious injustice.

The duty to act fairly will be fulfilled if the Correctional Service of Canada rigorously follows the procedures set out in the Act and the Regulations with respect to the decision-making procedure and the reasons for the decision are communicated to the inmate.

1. 3 Laval Place, 2nd Floor, Room 200, Laval, Quebec, H7N 1A2.
2. *Shawn Murray versus S.H.U. National Review Board Committee of the Correctional Service of Canada and Michel Deslauriers* (Federal Court: T-3002-94, Trial Division; decision dated September 22, 1995).
3. *Jacques Nepveu versus P.-A. Beaudry, J. Dyotte, M. Gilbert, J.-C. Perron and the Attorney General of Canada* (Quebec Superior Court: 200-36-000306-969, unpublished ruling dated August 8, 1996).
4. In Quebec, the institutional head of the Regional Reception Centre is authorized to transfer inmates within the region under the terms of paragraph 5 of Commissioner's Directive 540, Transfers of Inmates.