SUPREME COURT OF NOVA SCOTIA

Citation: *Conteh v. Canada (Attorney General)*, 2026 NSSC 130

Date: 20260427
Docket: Amh SAM No. 550075
Registry: Amherst

Between:

Ishmail Conteh

Applicant

v.

Attorney General of Canada

Respondent

Decision

Judge: The Honourable Justice John Keith

Heard: March 17, 18 and 24, 2026, in Amherst, Nova Scotia

Written Decision: April 27, 2026

Counsel: Emma Arnold, for the Applicant
Erin Kennedy and Heidi Collicutt, for the Respondent

BY THE COURT:

BRIEF INTRODUCTION AND CONCLUSION

[1] On or about February 27, 2025, the Applicant, Ishmail Conteh, was transferred from a maximum-security correctional facility to the medium-security facility in Springhill, Nova Scotia.

[2] On January 7, 2026 and on an emergency basis, Mr. Conteh was reclassified as a maximum-security risk and involuntarily transferred back to a maximum-security facility.

[3] On January 14, 2026, Mr. Conteh filed an Application for *habeas corpus* challenging his security risk reclassification and return to a maximum-security prison.

[4] Mr. Conteh's Application is granted. His transfer to a maximum-security correctional facility constituted an unlawful deprivation of his residual liberty. The reasons are chiefly grounded in concerns around procedural fairness. In the unique circumstances of this case, a rippling effect arises out of these procedural problems such that it would be unsafe to uphold the reclassification decision and implicitly accept (or, worse, condone or promote) the manner in which the Attorney General presented sealed, confidential information in the circumstances of this case.

[5] I order that Mr. Conteh be returned to a medium-security institution. I obviously make no determination as to which medium-security institution which remains entirely within the operational control and discretion of Correctional Service Canada ("**CSC**").

SUMMARY OF FACTS

[6] Mr. Conteh was born on August 28, 1993 in Freetown, Sierra Leone.

[7] On June 6, 2010, Mr. Conteh was 16 years old when he began serving an indeterminate or life sentence for various violent offences, including first degree murder. He is now almost 33.

[8] Most of Mr. Conteh's sentence has been served in maximum-security facilities. The evidence suggests that Mr. Conteh struggles to comply with the rules and norms within the prison community. Nevertheless, on February 27, 2025, Mr.

Conteh was reclassified as a medium-security risk and transferred to the medium-security prison in Springhill, Nova Scotia (referred to in the filed materials as "**SI**").

[9] Mr. Conteh's time in SI lasted less than a year. In a Referral Decision Sheet for Involuntary Transfer dated January 7, 2026 (the "**Referral Decision Sheet**"), SI's Assistant Warden, Dawn Laite, approved Mr. Conteh reclassification as a maximum-security risk offender and as well, his emergency, involuntary transfer to the maximum-security correctional facility in Renous, N.B. (referred to in the filed materials as "**AI**").

[10] On or about January 9, 2026, Mr. Conteh was given a number of documents related to his emergency transfer including:

1. The Referral Decision Sheet;
2. A document dated January 9, 2026 called a "Gist" and authored by SI's Security Intelligence Officer, Steven Rose. A "Gist" summarizes the basic or essential information involving the Applicant that is contained in a security file maintained by the correctional facility's intelligence officers while, at the same time, withholding and protecting other information deemed sensitive and confidential under s. 27(3) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, as amended ("***CCRA***");
3. A Notice of Intended Transfer ("**NOIT**") dated January 9, 2026, recommending Mr. Conteh's immediate transfer and concluding that Mr. Conteh was "no longer considered manageable in a medium-security environment". The rationale included "institutional adjustment concerns" arising from Mr. Conteh's stated failure to be deterred from ongoing misconduct reflected in "incident reports, institutional charges and more importantly with [his] involvement in the institutional subculture"; and
4. An Assessment for Decision dated January 9, 2026, described in the materials as an "**A4D**". This document was prepared by Mr. Conteh's Parole Officer, Manon Dupuis, and approved by Morgan Wood, Acting Manager of Assessment Intervention for SI. This A4D form confirmed Mr. Conteh's recommended reclassification to maximum-security. It included a Security Reclassification Scale ("**SRS**") dated January 9, 2026 and prepared by Mr. Conteh's Parole Officer at SI,

> Manon Dupuis. Mr. Conteh's score in the SRS assessment was 24.5, which translates to a maximum-security risk.

[11] On January 14, 2026, Morgan Wood, Acting Manager of Assessment Intervention for SI, conducted a telephone call with Mr. Conteh to hear his verbal rebuttal to the reclassification decision. His comments were recorded in Mr. Conteh's Casework Record Log. Mr. Conteh strongly disagreed with the information regarding his conduct as recorded by SI, including the Gist. He stated that he may have been charged with various offences but was never actually found guilty of those charges; he was respectful towards staff and other inmates; and, where appropriate, he took responsibility for his involvement in any conflict. He also stated that his mental health was being adversely affected by the reclassification and transfer.

[12] Also on January 14, 2026, Mr. Conteh's legal counsel (Emma Arnold of PATH Legal) filed a Notice of *Habeas Corpus* alleging that his reclassification and transfer as a maximum-security risk constituted an unlawful deprivation of his residual liberty.

[13] On January 21, 2026, CSC (represented by the Attorney General of Canada) filed its Notice of Contest that states that its decision to reclassify Mr. Conteh was lawful, reasonable, and procedurally fair.

[14] On January 27, 2026, SI Warden Monik Cormier issued her final decision in a document entitled "Referral Decision Sheet for Offender Security Level". She upheld and approved Mr. Conteh's reclassification and involuntary transfer to a maximum-security facility.[1] She wrote:

> You have demonstrated a consistent pattern of poor behaviour throughout your sentence, including multiple incident reports and institutional charges related to contraband, unauthorized communication devices, assaults on other inmates, fights, and non-compliance with staff direction requiring administrative interventions.
>
> Since your transfer to Springhill Institution in March 2025, your institutional conduct has continued to be concerning with incident reports and institutional charges, despite your CMT's intervention efforts. Your ongoing involvement in

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[1] At the same time, Warden Cormier also completed a document entitled "Referral Decision Sheet for Institution Transfer (Voluntary)" responding to Mr. Conteh's pre-existing application for a transfer to the minimum-security facility at Dorchester, N.B. Prior to his involuntary transfer and against the advice of his Case Management Team, Mr. Conteh applied for a transfer to the minimum-security prison in Dorchester, N.B. Nevertheless, Mr. Conteh persisted. Warden Cormier denied the request, relying upon the same reasons resulting in Mr. Conteh's reclassification to maximum-security. This decision is not in issue.

> the institutional subculture, frequently coming to the attention of the Security Intelligence Department and disregard for behavioural expectations at a medium-security institution raise serious concerns about your ability to function safely and responsibly in this environment.

[15] On January 29, 2026, the Attorney General amended its Notice of Contest primarily to reflect Warden Cormier's final decision on January 27, 2026.

[16] The Attorney General conceded, and the Court determined, that Mr. Conteh successfully met the first two stages of a *habeas corpus* procedural life cycle:

1. At Stage One, the Court found that Mr. Conteh demonstrated that his reclassification and transfer from a medium-security facility to maximum-security constituted a deprivation of his residual freedom and represented a "… a substantial change in conditions [of confinement] amounting to a further deprivation of liberty…." (*Dorsey v Canada (Attorney General)*, 2025 SCC 38 ("***Dorsey***") at para. 40). This assessment was specific to Mr. Conteh but included a relative assessment of Mr. Conteh's change in circumstances in that the difference was more restrictive having regard to the general inmate population. (*Dorsey* at para. 43); and
2. At Stage Two, the Court found that Mr. Conteh demonstrated that there was "… some basis in fact and law that would allow the court to conclude that the continued deprivation of liberty is unlawful" (*Dorsey* at para. 46)

[17] Having passed the first two stages, the process moved to the third and final stage which compelled an expedited hearing to properly assess the alleged illegality of Mr. Conteh's detention (reclassification and transfer, in this case). At the third stage, the hearing judge is:

> …to determine whether a particular breach of the CCRA is unfair or whether a decision was truly unreasonable, having reviewed the full evidentiary record. As this Court stated in Khela, "not all breaches of the CCRA or the CCRR will be unfair. ...[T]he reviewing judge must determine whether that error or that technicality rendered the decision procedurally unfair" (para. 90). Likewise, decisions are not unreasonable merely because certain indicia point in the opposite direction, and it is for a hearing judge, with access to the full record, to make a holistic determination.
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> (*Dorsey*, at para. 50)

The burden of proof at this third stage shifts to the detaining authority (CSC, in this case).

[18] On or about February 9, 2026 and in response to its evidentiary burden at this stage of the *habeas corpus* Application, the Attorney General filed:

1. An affidavit affirmed on February 4, 2026 by Mr. Conteh's Parole Officer, Manon Dupuis, which included the Referral Decision Sheet, the Gist, the NOIT, A4D form (including the SRS score), and Warden Cormier's final decision; and
2. A confidential affidavit affirmed on February 5, 2026 by SI's Security Intelligence Officer, Steven Rose, contained the sensitive, source data which was authored by Mr. Rose and others and supported the information included in the Gist. Public disclosure of this information would jeopardize the safety of persons who work or live in the prison system and/or security concerns and/or the conduct of a lawful investigation. As such, it was properly sealed in accordance with s. 27(3) of the *CCRA*.

[19] On March 13, 2026, the Attorney General filed a Confidential Supplemental Affidavit affirmed by Security Intelligence Officer, Steven Rose. This affidavit contained additional source data supporting the information included in the Gist. This affidavit also contained sensitive information and was properly sealed in accordance with s. 27(3) of the *CCRA*.

[20] Mr. Conteh's *habeas corpus* Application proceeded to hearing on March 17 and 18, 2026. The hearing was extraordinary in a number of respects but, for present purposes, the more consequential event occurred on March 18, 2026, midway through the hearing. As indicated, the Gist distilled certain confidential source data that was otherwise sealed under s. 27(3) of the *CCRA* and only available for review by the hearing judge. It is neither advisable nor appropriate to examine the details of this confidential disclosure other than to say that certain information received by a confidential source on one particular day prompted an *in-camera* hearing in the absence of Mr. Conteh and his counsel and, in turn, led to a brief adjournment. It is essential that the identity of the confidential informant be protected. As such, I will provide additional reasons *in-camera* so that the Attorney General might better appreciate the more specific, confidential details which informed my decision.

[21] In any event, the hearing continued on March 24, 2026. The day before, on March 23, 2026, the Attorney General disclosed, for the first time, that the confidential source who provided the information which led to the *in-camera* hearing and subsequent adjournment had previously recanted the allegations.

[22] The recantation occurred after Warden Cormier's final decision to approve Mr. Conteh's reclassification, but many weeks before the hearing began on March 17, 2026

[23] On March 24, 2026, the *habeas corpus* hearing continued, beginning with the Attorney General filing a second confidential supplementary affidavit affirmed by Security Intelligence Officer Rose. This affidavit provided details of the recantation that was generally confirmed the day before, and it was properly sealed under s. 27(3) of the *CCRA*.

[24] Counsel for CSC pointed out that the late disclosure could not have affected the reasonableness of Warden Cormier's final decision to approve Mr. Conteh's reclassification because the decision-making process had concluded. That said, counsel for CSC acknowledged that post-decision information may, in rare circumstances, impact the Court's assessment of procedural fairness.

[25] In this case, counsel for CSC argued that no procedural unfairness arose because:

1. The recantation related to only a small number of confidential allegations made against Mr. Conteh. CSC argued that the allegation in question was a distinct and separate event which was not connected with the core concerns that led to the ultimate decision, rather it contended that the reclassification decision rested on a separate "cluster of confidential intelligence in December 2025 and early January 2026 from multiple sources" which reflected mutually reinforcing intelligence information and related to a different and more serious accusation regarding the Applicant's concerted efforts to arrange assaults on another inmate. Even if the Court were to disregard the recanted allegation entirely, the Respondent argues that ample, reliable intelligence remains to justify the maximum-security placement and that CSC's contemporaneous reliability assessments were reasonable under its structured internal policies and consistent with its expertise as recognized in *Mission Institution v. Khela*, 2014 SCC 24 ("***Khela***");

2. The recantation could be disregarded as unreliable. By letter dated March 23, 2026, it wrote that "… the Security Intelligence Officer [Mr. Rose] assessed the recantation as being of "Doubtful Reliability". In other words, CSC accurately represented to the Court that the allegations in question were reliable – even though those same allegations were retracted and even though the Court was only made aware of the retraction part-way through the *habeas corpus* hearing. This is because, in CSC's assessment, the attempt by the confidential informant to retract those same allegations is properly dismissed as unreliable; and
3. To mitigate any possible procedural unfairness, the Attorney General offered to recall Mr. Rose and provide Mr. Conteh or his counsel the opportunity to conduct a further cross-examination. On this, I note that Mr. Conteh elected not to pursue further cross-examination of Security Intelligence Officer Rose.

ANALYSIS

[26] In my view, CSC has failed to discharge its evidentiary burden and justify the legality of Mr. Conteh's detention (security risk reclassification and transfer back to a maximum security facility).

[27] I agree with CSC that the renunciation of sensitive information by a confidential source could not contaminate the original decision-making process or the original decision because the informant only withdrawn the allegations in question <u>after</u> Mr. Conteh had already been reclassified and transferred to a maximum-security facility and <u>after</u> Warden Cormier's final decision approving this reclassification. The one-directional march of time (from past to present to future) necessarily means that the quality of a decision should not be measured against information which did not even exist at the time.

[28] That said, CSC's counsel also fairly conceded that post-decision information is not necessarily rejected as irrelevant or immaterial. And I agree that that the circumstances in which post-decision information becomes relevant and material should be rare.

[29] However, here, the critical issue is neither relevance nor materiality. The post-decision recantation was, in my view, serious, relevant, and material. Indeed, CSC properly (albeit belatedly) made disclosure.

[30] Broadly speaking, the concern in this case focusses more on the nature of CSC's disclosure obligations when relying upon confidential sources of information and the manner in which the information was disclosed having regard to the demands of procedural fairness.

[31] Neither party provided in-depth legal submissions regarding procedural fairness or the legal analysis associated with concerns around procedural fairness. This was likely due to the sudden manner in within which the issue arose in this case and the related compressed period of time to address it.

[32] Very briefly, the Court examines the content of the duty of procedural fairness and then considers whether it was breached. *Communications, Energy and Paperworkers Union of Canada, Local 141 v. Bowater Mersey Paper Co. Ltd.,* 2010 NSCA 19, at paras. 30-31. In considering the first step (content of procedural duty), the Court is sensitive to issues around context and deference owing the decision-maker (*Burt v. Kelly*, 2006 NSCA 27 at para. 21).

[33] As to the content of procedural fairness, in *Dorsey v Canada (Attorney General)*, 2025 SCC 38, the majority described the judge's task at this final stage of the process as being "… to determine whether a particular breach of the *CCRA* is unfair or whether a decision was truly unreasonable, having reviewed the full evidentiary record". (at para. 50, emphasis added) In my view, the facts and related concerns listed in para. 31 above fall squarely within the Court's mandate to consider procedural fairness based on the "full evidentiary record".

[34] In this case, unique issues arise when the "full evidentiary record" includes protected information from confidential sources. The challenges which arise when rights of disclosure conflict with the need to protect confidential informants is not unique to *habeas corpus* proceedings. For example, confidential informants are commonly used in the investigation and prosecution of crime. In both cases (*habeas corpus* and criminal prosecutions), the Court seeks to appropriately balance the unique challenges which arise when valid and important demands for confidentiality arise in situations where an individual's liberty rights may be at risk.

[35] I hasten to emphasize that the jurisprudence around confidential informants in a criminal prosecution is very different from that involving a *habeas corpus* proceedings. The underlying purposes for using and protecting confidential informants change dramatically when the context shifts from investigating and

prosecuting crime to safely managing correctional facilities. The Supreme Court of Canada made this point clearly in para. 83 of *Khela*.[2]

[36] A comparison with disclosure in a criminal context is, therefore, of little value except to note that these separate branches of the law do expose a shared concern around the following two competing priorities:

1. The vital importance attributed to protecting confidential informants in certain contexts; and
2. The unique challenges which are created when confidential information is used in a manner that may potentially threaten an individual's liberty interest.

[37] These competing priorities impact the content of CSC's duty of procedural fairness.

[38] Focussing on the unique (and different) issues which arise in the context of an inmate's security risk reclassification, CSC's specific disclosure obligations are codified and reflective of the more administrative nature of the process. The prison officials is not obliged to disclose every possible piece of relevant information but, instead, must "…give the offender, forthwith after the decision is taken, <u>all the information that was considered in the taking of the decision or a summary of that information</u>." (s. 27(2) of the *CCRA*, emphasis added)

[39] Thus, the evidence before the Court is typically limited to the record prepared by the decision-maker and subject to the single standard of reasonableness when assessing administrative decisions. (*Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 ("***Vavilov***").[3]

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[2] In very general terms, disclosure in a criminal investigation is broad and governed largely by the common law. The general principle is that "… all relevant information must be disclosed subject to the reviewable discretion of the Crown. The material must include not only that which the Crown intends to introduce into evidence but also that which it does not. No distinction should be made between inculpatory and exculpatory evidence." (see *R v Stinchcombe*, [1991] 3 S.C.R. at para. 29). Within the confines of this general broad principle, disclosure still remains subject to relevance and any legitimate claim of privilege.

[3] The more recent Supreme Court of Canada decision in Dorsey v Canada (Attorney General), 2025 SCC 38 applied the *Vavilov* reasonableness standard in the context of a *habeas corpus* application. At para 50, the majority cited *Vavilov* in support of the proposition that "…it is for a hearing judge, with access to the full record, to make a holistic determination [as to whether a decision is unreasonable]". I note in *obiter* that it may be possible to supplement the evidence before the Court subject to the following considerations:

1. A *habeas corpus* proceeding is neither a trial *de novo* nor an opportunity to provide an alternative narrative nor a wide-ranging exploration into any possible issue surrounding the offender's circumstance of incarceration.

[40] That said, and returning to the issue of procedural fairness, I begin by noting that reclassifying a prisoner's security risk to maximum-security and involuntarily transferring that prisoner to a maximum-security facility is not small matter. *Khela* (at para. 34), *Dorsey* (at para. 6), and *May v Ferndale Institution*, 2005 SCC 82 (at para. 76) all confirm that these decisions constitute a deprivation of residual liberty. The impact may be profound. In my view, these cases attract greater precedential weight when assessing the issue of procedural fairness than those.

[41] As to the statutory scheme, the use of confidential informants in a correctional facility is also codified and, again, reflective of the more unique considerations which arise in the prison setting. S. 27(3) of the *CCRA* states:

> (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
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> (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).

[42] The policy reasons behind the legislature's desire to protect this confidential information is clear and is not challenged.

[43] Presuming proper disclosure and presuming s. 27(3) is properly engaged to protect confidential informants, CSC is entitled to deference. The Supreme Court of Canada confirmed at para. 74 of *Khela* that: "Deference will be shown to a determination that evidence is reliable, but the authorities will nonetheless have to explain that determination." I recognize that this statement was made in the context of determining whether the original decision was reasonable. However, it highlights

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It is focussed on the specific deprivation of residual liberty and the evidentiary basis upon which the decision-maker (who bears the evidentiary burden) is able to justify the decision which led to the deprivation in accordance with s. 27(2) of the *CCRA*. (See also *Khela* at paras. 35 - 36 and 72 - 73)

2. The non-exhaustive factors which bear upon whether additional evidence may supplement the record include:
   a. The extent to which the evidence in question is sufficiently specific, material and rationally connected to the lawfulness of the alleged deprivation; and
   b. The more unique considerations that may apply in the context of a *habeas corpus* process arising in a prison setting including the accelerated, urgent nature of the proceeding and the potential institutional and security risks where, for example, there is a request to compel testimony from other inmates.

not simply the need for deference, but also the requirement for the prison officials to properly disclose and explain why the evidence used in support of their decisions is considered reliable and provide the Court with a proper opportunity to assess that explanation.

[44] At para. 89 of Khela, the Supreme Court of Canada commented more specifically on s. 27(3) of the *CCRA* and observed that:

> Section 27(3) authorizes the withholding of information when the Commissioner has “reasonable grounds to believe” that should the information be released, it might threaten the security of the prison, the safety of any person or the conduct of an investigation. 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.
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> [Emphasis added]

[45] I also repeat the requirements of s. 27(3) of the *CCRA* which states that “as much information ***as is strictly necessary*** in order to protect the interest identified in paragraph (a), (b) or (c).” (emphasis added) The more emphatic wording “as is strictly necessary” underscores the caution which is exercised when confidential information may be used to compromise a liberty interest. Justice Hunt confirmed a similar conclusion in *Devlin v Canada (Attorney General)*, 2020 NSSC 389 when he wrote at para 31: “I have commented previously that it is important the use of confidential affidavits be limited to when they are strictly necessary, and their use can be strictly justified under the legislation”. In my view, the language equally underscores the statutory requirement that information which was relevant to the reasonableness of the decision or procedural fairness should be disclosed in a timely fashion - not withheld and only disclosed following inquiries from the Court on a different issue.

[46] Overall, the Court typically and properly extends deference to the correctional facility’s official and their risk assessments. But the Court’s deference is neither unqualified or unconditional deference. It is deference, not blind faith. The Attorney General’s explanation as to risk assessment and the related assessment as to the reliability of confidential sources must be reasonably complete and not misleading. The Court retains oversight and is entitled to a full explanation as to why confidential

informants are deemed reliable - not a partial explanation describing why information it relies upon is reliable while failing to mention that the information was retracted, let alone provide a timely explanation as to why any such retraction may be unreliable.

[47] The connections between procedural fairness and the Court's entitlement to a full, candid explanation as to the reliability of confidential sources is particularly compelling where (for legitimate reasons under s. 27(3) of the *CCRA*) the details surrounding the confidential information in question is not made available to the prisoner. For legitimate reasons designed to protect important intelligence gathering and preserve institutional safety, Mr. Conteh and his legal counsel cannot claim that they expected to receive and assess the confidential information. However, they may legitimately expect that the Court will be placed in a position to properly do so. This effectively means that the Court stands alone in its ability and obligation to properly examine all relevant information and ensure deference is properly afforded the prison officials. In my view, the unique protections afforded confidential informants reinforces the corresponding obligation to properly disclose the recantation well in advance of the hearing so as to better enable the Court to fulfill its mandate.

[48] On this, I also note that at para. 78 of *Khela*, the Supreme Court of Canada emphasized that the Court is not simply invited to conduct a proper assessment on whether the evidence being relied upon is reliable. It is obliged to do so. It wrote (citations removed):

> 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".
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> [underlining added]

[49] Overshadowing all of these conclusions is the fundamental importance of the affected interest: constitutionally protected, individual liberty rights. *Habeas corpus* is an ancient and fundamental safeguard of personal liberty. It enjoys distinct and explicit protection as an independent right under s. 10(c) of the *Canadian*

Charter of Rights and Freedoms. The scope of *habeas corpus* review is broad and overlaps with other *Charter* protections including s. 7 (the right to life, liberty and security of the person), s. 9 (the right not to be arbitrarily detained or imprisoned), and s. 12 the right not to be subjected to any cruel and unusual treatment or punishment). See para 21. of *Canada (Public Safety and Emergency Preparedness) v. Chhina*, 2019 SCC 29.

[50] It is because the writ of *habeas corpus* engages a fundamental liberty interest that these types of proceedings are prioritized on the Court docket and addressed on an expedited basis. At paras. 1 - 2 of *Dorsey*, the Supreme Court of Canada's majority introduced its decision by proclaiming its importance, particularly in the carceral context:

> …Long revered as the great writ of liberty, *habeas corpus* review remains an essential safeguard against unlawful detention and a cornerstone for the protection of prisoner's rights. This Court has repeatedly stated that "*[h]abeas corpus* has never been 'a static, narrow, formalistic remedy'; rather, over the centuries, it 'has grown to achieve its grand purpose - the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty'"
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> This Court has recognized that the writ, as both a right and remedy, must remain flexible and purposive in order to respond to unlawful deprivations of liberty. Moreover, the writ must remain available and accessible to those individuals whose liberty has been most restricted living within penitentiary walls. These individuals, already facing significant deprivations of their liberty, should have access to the expedient and effective relief long offered by *habeas corpus* where the deprivation of liberty becomes unlawful.

[51] Para. 33 of *Dorsey* similarly recognized the writ's constitutional importance:

> *Habeas corpus* is now enshrined in s. 10(c) of the *Charter*, but it also intersects and protects two of our most fundamental rights: the right to liberty of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice (s. 7); and the right not to be arbitrarily detained or imprisoned (s. 9)

[52] It was not clear whether CSC generally approaches all post-decision information as irrelevant and has made the broad procedural decision that this type of information is not subject to disclosure. Or, alternatively, whether this was a rare and exceptional anomaly and that ultimate disclosure reflected a belated recognition of an underlying disclosure obligation. Regardless, in my view, the recantation was relevant and material to the reliability assessment and subject to disclosure, consistent with what ultimately occurred.

[53] CSC refers to the following cases in support of its argument that the content of the procedural obligations regarding post-decision information is relatively low and that, in all events, no procedural defect arose in this case: *Association of Universities and Colleges of Canada* v *Canadian Copyright Licensing Agency*, 2012 FCA 22 at para. 20 ("***Association of Universities and Colleges***"); *Halifax Regional Centre for Education v NSUPE*, 2025 NSSC 6 ("***HRCE***") at paras. 27 - 28; *Sorflaten v Nova Scotia (Environment)*, 2018 NSSC 7 at para 13 ("***Sorflaten***"); and *Nova Scotia Union of Public & Private Employees, Local 13 v Halifax Regional Municipality*, 2021 NSSC 171 at para. 28 ("***Local 13***"). CSC argues that any obligations around procedural fairness were satisfied by its mid-hearing disclosure of the source's retraction in a supplementary confidential affidavit and offering to re-call Security Intelligence Officer Rose to answer any new questions that may have arisen. Thus, CSC says, the Court and Mr. Conteh were provided a fair opportunity to conduct the reliability assessment required under *Khela*.

[54] Respectfully, the cases relied upon by CSC are distinguishable. None of the cases relied upon by CSC arise in the context of *habeas corpus* or involve a question of individual liberty. In *Association of Universities and Colleges of Canada*, the Applicant sought judicial review of an interim tariff imposed by the Copyright Board. *HRCE* arose out of proceedings before the NS Labour Board regarding the composition of bargaining units. *Sorflaten* related to approval of a pilot project to burn recycled tires as fuel for a cement plant. *Local 13* considered the issue of fresh evidence in the judicial review of an arbitration decision related to anti-bullying signs.

[55] In sum and in my view, procedural fairness in this case included the obligations to disclose <u>in a timely fashion</u>:

1. All of the relevant and material information (including both a Gist and information sealed under s. 27(3) of the *CCRA*) that bears upon the decision and the reliability of the confidential informants CSC presented in support of its decision;
2. Whether any relevant and material allegations by confidential informants had been retracted prior to the hearing and, if so, relevant details around whether any additional reliability assessments occurred after the recantation, again subject to s. 27(3). If not, why not?
3. If additional reliability assessments occurred:

a. Whether the decision-maker continues to rely upon the confidential informant's original allegations as reliable or alternatively, whether the original allegations are being withdrawn having regard to the recantation; and

b. An explanation as to why the original allegations are (or are not) being relied upon as reliable

[56] As to whether the duty of procedural fairness was breached, the key facts might be briefly summarized as follows:

1. The retracted allegations were very serious, in my view. And they touched upon a key concern repeated frequently in the CSC decision: Mr. Conteh's alleged, problematic, and direct participation in the "institutional subculture";
2. CSC knew that the confidential informant had withdrawn the allegations in question several weeks before the *habeas corpus* hearing began on March 17, 2026;
3. Despite knowing that certain allegations had been withdrawn, CSC did not disclose the existence of the recantation to the Court or Mr. Conteh until midway through the *habeas corpus* hearing, after the Court raised questions regarding the original (and subsequently recanted) allegations and after Security Intelligence Officer Rose had testified; and
4. Prior to the Court's questions, the record before the Court clearly suggested that the confidential informant stood by the original allegations when, in reality, they had been retracted. On this, it also bears noting that the Court's questions regarding the original allegations did not anticipate the recantation but, rather, were related to other issues. The fact that the allegations had been withdrawn was unexpectedly revealed mid-way through the hearing, and only served to magnify the original concerns which the Court already raised regarding the allegations in question.

[57] CSC withheld information without advising the Court that it was doing so. CSC presented the Court with confidential information from a source without confirming that this same informant subsequently recanted the allegations in question. Instead, CSC withheld any details regarding the recantation and only disclosed in the middle of the hearing, after the Attorney General's intelligence

officer testified and after the Court engaged in a *voir dire* inquiring into the details around the confidential, sealed information. Again, the Court's inquiry was related to a different issue and did not involve a concern over whether the allegations had been withdrawn. The revelation that the allegations had been withdrawn was unexpected.

[58] There can be no doubt that the withdrawal of the allegations cast doubt as to the reliability or veracity of the allegation. And I accept that the security intelligence officers may make their own internal assessment as to the reliability of the recantation. However, respectfully, the Court was entitled to know about the recantation prior to the hearing, not mid-way through the hearing in response to certain different questions from the Court and after Security Intelligence Officer Rose testified. Indeed, the fact that the prison officials made the clear decision to create a detailed record as to why they still considered the original allegations reliable while rejecting the recantation as unreliable only highlights the connection between the recantation and the overall reliability assessment.

[59] In the circumstances, respectfully, this information ought not to have been withheld. Other simple and appropriate options were available to CSC. It could have provided timely disclosure of the subsequent withdrawal of the allegation against Mr. Conteh and provided an explanation as to why the allegation in question was withdrawn, including an explanation as to whether the information withdrawing an allegation was reliable or unreliable. This would have provided the Court and Mr. Conteh with a fair opportunity to assess reliability based on proper disclosure. Alternatively, CSC might have advised the Court that it was not relying on the confidential informant at all.

[60] CSC did not avail of either alternatives. Instead, it commenced the hearing and presented the evidence as though the confidential informant remained fully committed to their original allegation. Respectfully, this was not a viable or acceptable alternative. It generated a misleading sense of accuracy and reliability that was only corrected part-way through the hearing. On this, I refer back to para. 88 of *Khela* which confirms that the correctional authority must provide an explanation as to why they consider a source unreliable.

[61] In my view, it was insufficient in the circumstances of this case that the correctional facility attempt to remedy the problem by making further disclosure midway through the hearing - after the intelligence officer who presented the confidential information already testified (without volunteering the recantation); and

after the Court raised concerns regarding the confidential information as originally presented. The Court was entitled to better and timely disclosure to properly conduct a reliability assessment.

[62] It is similarly not an answer to now suggest that the confidential information in question was inconsequential; and that the reclassification decision might be upheld even if this information is entirely disregarded.

[63] I recognize that there was clearly other sensitive information that suggests serious misconduct on the part of Mr. Conteh. The record suggests that Mr. Conteh can exhibit difficulty with compliance and related challenges in peacefully integrating within the prison community. I neither accept, without reservation, everything Mr. Conteh has said in this proceeding nor do I reject everything CSC has presented in evidence. For example, the allegation that Mr. Conteh was responsible for arranging several assaults against another inmate is troubling – and I realize it arose immediately preceding Mr. Conteh's emergency transfer and was certainly the last piece of evidence that triggered Mr. Conteh's reclassification. To that extent, it may be tempting to argue that Mr. Conteh's alleged involvement in these assaults marked the end of SI tolerance and might be characterized as the proverbial "straw that broke the camel's back", precipitating Mr. Conteh's immediate return to a maximum-security facility.

[64] However, respectfully, the impugned confidential evidence was also very serious and spoke directly to ongoing concerns that Mr. Conteh was heavily involved in a potentially very destabilizing institutional subculture – a concern that permeated the evidence and was an important, broad consideration in the reclassification decision. Moreover, the evidence was presented for its cumulative effect and impact. In the circumstances, CSC cannot now say that the evidence should be dissected and considered as separate, individual pieces of data.

[65] If this information was tangential and can be easily ignored, then why did CSC disclose it in the first place? The reason is obvious: the information in question was relevant and material. CSC sought to rely upon it. For reasons discussed above, the recantation was similarly relevant and ought to have been properly disclosed. Respectfully, in these circumstances, I cannot accept that CSC's incomplete disclosure may be excused on the basis that the missing disclosure was not important enough. To do so would diminish the need for procedural fairness and unduly dissolve the fundamental importance of the liberty interests at stake.

[66] Finally, I wish to emphasize that I do not intend these reasons to be interpreted as overly critical of the Attorney General's counsel. My understanding is that counsel for the Attorney General disclosed the confidential information surrounding the recantation as soon as it became aware of it. However, this mid-hearing disclosure unfairly compromised the process in a way that should and could have been avoided. It also undermined the Court's faith in the process and, more specifically, its ability to fairly assess the deference otherwise owed to, among other things, CSC's assessments as to the reliability of its confidential informants.

CONCLUSION

[67] The impugned decision to reclassify Mr. Conteh is quashed. Mr. Conteh shall be returned to a medium-security institution.

Keith, J.