

Federal Court



Cour fédérale

**Date: 20250107**

**Docket: T-2601-23**

**Citation: 2025 FC 44**

**Ottawa, Ontario, January 7, 2025**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**MITCHEL TIMOTHY NOME**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Timothy Mitchel Nome, is detained at Edmonton Institution, a maximum security Correctional Services of Canada (“CSC”) facility. In February 2023, a warden at Edmonton Institution (“the Warden”) approved reclassifying Mr. Nome’s security classification from maximum security to medium security. A little over two months later, prior to a transfer to a medium security facility had taken place, the Warden reassessed Mr. Nome’s security

classification. The Warden now found, based on incidents that took place in the intervening period (March, April and early May 2023), that Mr. Nome's security classification should be changed from medium security to maximum security. Mr. Nome grieved the Warden's May 2023 security reclassification in two separate grievances. Both grievances were considered together by the Special Advisor to the Commissioner ("the Commissioner"). The Commissioner upheld the Warden's decision to reclassify Mr. Nome's security classification to maximum security. Mr. Nome challenges the Commissioner's decision on judicial review.

[2] Mr. Nome argues that the Warden and the Commissioner erred in finding that his behaviour had declined since February 2023. He argues that his behaviour during the relevant time was consistent with the information about his pattern of behaviour that had been before the Warden two months prior when Mr. Nome had been reclassified to medium security. Mr. Nome also argues the Commissioner erred in characterizing verbal threats as "expressions of violence". Lastly, Mr. Nome argues that since he had not been transferred to a medium security facility, he was not able to benefit from programming that the Warden had found could be of assistance to him as part of the Warden's rationale for reclassification to medium security in February 2023.

[3] Mr. Nome's arguments on judicial review are about the merits of the decision and not any procedural deficiencies. The parties agree, as do I, that in these circumstances the Court ought to review the Commissioner's decision on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 16).

[4] I am dismissing Mr. Nome's judicial review. I find Mr. Nome's arguments amount to asking this Court to reweigh the Warden and the Commissioner's assessments about the incidents that took place in March, April, and early May 2023. This is not the Court's role on judicial review. In light of the procedural history, I find the Commissioner's decision responsive to Mr. Nome's grievances. The Commissioner's decision is transparent, intelligible, and justified. Mr. Nome has not raised a sufficiently serious basis for the Court to interfere with the decision (*Vavilov* at para 15).

## II. Procedural History and Background

[5] Mr. Nome is Indigenous and practices the Jewish faith. He is approximately fifty years old and, for most of his life, has been incarcerated in juvenile, provincial, or federal custody. Mr. Nome is currently serving an indeterminate sentence at Edmonton Institution as a Dangerous Offender for assault causing bodily harm.

[6] The CSC must assign a security classification of maximum, medium, or minimum to each inmate and provide written reasons explaining the security classification or change of classification (sections 30(1) and 30(2) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA]). Section 18(a) of the *Corrections and Conditional Release Regulations*, SOR/92-620 [CCRR] sets out that for a maximum security classification, the inmate is assessed as "i) presenting a high probability of escape and high risk to the safety of the public in the event of escape, or ii) requiring a high degree of supervision and control within the penitentiary". The Commissioner's Directive 710-6 "Review of Inmate Security Classification" provides guidance for assessing the factors set out in section 18 of the CCRR, namely: a) institutional adjustment

(the required degree of supervision and control within the institution); b) escape risk; and c) risk to public safety. Part of this guidance includes additional factors to consider for reclassifying Indigenous inmates.

[7] Mr. Nome had been assigned the maximum security classification until February 2023. On February 23, 2023, the Warden approved the reclassification of Mr. Nome's security classification to medium security. The Warden explained that he was making this decision despite the recommendation from Mr. Nome's Case Management Team that he remain classified as a maximum security inmate. As part of the assessment, the Warden considered the factors in sections 17 and 18 of the CRR, including Mr. Nome's institutional adjustment, escape risk, and risk to public safety.

[8] The Warden did not adopt the Case Management Team's recommendation that Mr. Nome's "institutional adjustment" rating be high, but instead approved a moderate rating. The Warden approved the Case Management Team's recommendations that "escape risk" be assigned a moderate rating and "risk to public safety" a high rating. The Warden concluded that he had "concerns" that "maintaining [Mr. Nome] at a heightened security level will not necessarily provide [Mr. Nome] with the tools to address [his] outstanding criminogenic factors." Further, the Warden acknowledged that Mr. Nome had been involved in a "plethora of incidents" while incarcerated, but decided a medium security facility would provide him with a "greater chance of success of developing positive interactions while participating in interventions within a medium security institution."

[9] Approximately two months later, on May 4, 2023, the Warden reclassified Mr. Nome's security classification back to maximum security. The Warden acknowledged his February 2023 decision and explained that, because of the incidents since that decision, the Case Management Team had asked for a reassessment of Mr. Nome's moderate institutional adjustment rating and his overall security level. The Warden considered the incidents that had occurred in March, April, and May 2023, including making verbal threats, offering to pay other inmates to assault correctional officers with bodily fluids, and the possession of a prison-made stabbing weapon in Mr. Nome's cell. The Warden considered these recent security incidents and the responses required from correctional staff, including "enhanced security protocols" that involved "the use of restraints during escorts, biohazard protocols, the use of barriers during interactions", and the "video recording of all interactions between [Mr. Nome] with correctional officers". The Warden concluded that "due to the lengthiness of your institutional incidents, and the seriousness of your ongoing problematic behavioural patterns," he approved a high rating for institutional adjustment.

[10] The Warden referenced that he previously overrode the Case Management Team's recommendation for maximum security, but that he decided to approve the maximum security reclassification because he found that Mr. Nome's "behaviour has continued to decline, and has caused major Institutional Adjustment issues."

[11] I note that in Mr. Nome's grievance he disputes the way the incidents are characterized in the Warden's decision and he maintains this on judicial review. However, on judicial review, this issue - disputing the description of the March, April and May security incidents - was not raised

as an independent ground for challenging the Commissioner's decision. At the judicial review hearing, the Applicant's counsel acknowledged that due to the lack of evidence about the incidents and CSC's response, the arguments on judicial review are predicated on the assumption that the Warden's descriptions of the incidents are accurate.

[12] Mr. Nome filed two grievances dated May 26, 2023 and September 24, 2023. The Commissioner considered both and, in a decision dated October 24, 2023, upheld the Warden's decision to assign Mr. Nome a maximum security classification.

### III. Analysis

#### A. *Assessment of incidents in the intervening period*

[13] Mr. Nome makes two arguments about the Commissioner's assessment of the incidents that occurred in March, April, and May 2023.

[14] First, he takes issue with the Commissioner's use of the term "violent verbal outbursts". Mr. Nome argues that the Commissioner "erred in finding that verbal threats are equivalent to physical violence." I have carefully reviewed the Commissioner's decision and I find there is no merit to this claim. The Commissioner, like the Warden, acknowledges that since coming to Edmonton Institution, Mr. Nome "had not been involved in any physical altercations". There is no basis in the decision to find that the Commissioner is failing to distinguish between verbal threats/abusive language and physical violence. To the extent that Mr. Nome is asking that the Court evaluate the nature of Mr. Nome's "verbal outbursts" to determine whether they can be

characterized as “violent” or as the Applicant’s counsel describes “a strong verbal statement about his emotional state and his intentions”, this is not the Court’s role on judicial review. Moreover, even if it would have been preferable to not use the word “violent”, at most, this is a minor misstep and not sufficiently central to the decision to warrant it being set aside.

[15] Second, Mr. Nome disputes the Commissioner’s decision to uphold the Warden’s finding that his behaviour “had continued to decline... exhibited by [his] involvement in numerous security incidents since February of this year.” Mr. Nome’s view is that his behaviour in March, April, and May 2023 was consistent with his prior behaviour profile. The Commissioner had before them the Warden’s detailed description of the incidents and the correctional response required. The Commissioner also referred to the Case Management Team’s determination that Mr. Nome required a “highly structured environment with constant and direct supervision.”

[16] Mr. Nome has not demonstrated that the Commissioner “fundamentally misapprehended or failed to account for the evidence before it” on this issue. Mr. Nome is really asking this Court to reassess the evidence about the nature of the security incidents in March, April, and May 2023. This is not the Court’s role on judicial review (*Vavilov* at paras 125-126).

*B. Failure to consider the impact of failure to transfer to the medium security institution*

[17] Mr. Nome also argued that the Commissioner failed to address his argument that it was improper to raise his security classification when he had not even been given the opportunity to reside at a medium security facility because he had not been transferred at the time of reclassification in February 2023.

[18] The Respondent argued that this issue could not be argued on judicial review because it had not been raised in Mr. Nome's grievance. I do not agree that this issue was not raised. Mr. Nome stated in bold, underlined text as the subject line of his grievance "I AM GRIEVING THE DECISION TO RAISE MY SECURITY LEVEL FROM MEDIUM TO MAXIMUM AFTER 6 MONTHS OF CSC'S INABILITY/REFUSAL TO TRANSFER ME TO AN APPROPRIATE MEDIUM SECURITY SITE."

[19] In my view, the Commissioner addressed this issue by referencing the Warden's reasons explaining that Mr. Nome's security classification had to be reassessed because of the security incidents. The Commissioner referred to the Warden's acknowledgment that he had previously overridden the Case Management Team's maximum security classification recommendation, approximately two months prior on February 23, 2023. The Commissioner noted that the Warden explained that Mr. Nome's behaviour had "continued to decline since [his] last security classification review exhibited by [his] involvement in numerous security incidents since February of this year" and further that the Warden acknowledged Mr. Nome's "lengthy incarceration and the negative view of the criminal justice system that this had fostered" but that "this did not discount [his] mistreatment and behaviour towards Correctional Officers, staff and the institution as a whole."

[20] Reading the decision in its full context, taking into account the history of the proceedings, I do not find that Mr. Nome has raised any sufficiently serious shortcoming that requires this Court's intervention.



IV. Disposition

[21] The application for judicial review is dismissed. The Respondent has asked for costs but did not make substantive submissions on the necessity of a costs award. I am not satisfied that a costs award is appropriate in these circumstances and have therefore exercised my discretion to not award costs.

**JUDGMENT in T-2601-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed; and
2. No costs are awarded.

"Lobat Sadrehashemi"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2601-23

**STYLE OF CAUSE:** MITCHEL TIMOTHY NOME v ATTORNEY GENERAL  
OF CANADA

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** JULY 4, 2024

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** JANUARY 7, 2025

**APPEARANCES:**

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