NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia (Attorney General) v. Diggs and Wilband*, 2025 NSCA 20

Date: 20250313
Docket: CA 532264
Registry: Halifax

Between:

The Attorney General of Nova Scotia representing His Majesty the King in Right of the Province of Nova Scotia

Appellant

v.

Durrell Diggs

Respondent

and

The Nova Scotia Health Authority

Respondent

Docket: CA 532261
Registry: Halifax

Between:

The Attorney General of Nova Scotia representing His Majesty the King in Right of the Province of Nova Scotia

Appellant

v.

Ryan Taylor Wilband

Respondent

Judge:	The Honourable Justice David P.S. Farrar
Appeal Heard:	December 10, 2024, in Halifax, Nova Scotia
Facts:	Two individuals, detained at the Central Nova Scotia Correctional Facility (CNSCF), filed habeas corpus applications challenging the legality of rotational lockdowns due to staff shortages, which they claimed unlawfully deprived them of their residual liberty. The lockdowns for one individual occurred between

	September 13 and November 3, 2023, and for the other between October 17 and November 28, 2023 (paras 1-2, 7-11).
Procedural History:	*Diggs v. Nova Scotia (Attorney General)*, 2024 NSSC 11: The court declared the lockdowns of one individual unlawful (para 2). *Wilband v. Nova Scotia (Attorney General)*, 2024 NSSC 12: The court declared the lockdowns of the other individual unlawful (para 2).
Parties Submissions:	Appellant: Argued that habeas corpus was not appropriate for addressing systemic issues in the management of CNSCF and that the respondents were subject to the same conditions as the general inmate population, thus not unlawfully deprived of liberty (paras 3, 16). Respondents: Contended that the rotational lockdowns were unlawful and unreasonable, depriving them of their residual liberty (paras 1, 15).
Legal Issues:	Whether the judge erred in using habeas corpus as a proceeding to address systemic issues at CNSCF (para 26).
Disposition:	The appeals were allowed, and the declarations that the lockdowns were unlawful were set aside (paras 54-55).
Reasons:	Per Farrar J.A. (Bryson and Gogan JJ.A. concurring): The court found that the judge improperly used habeas corpus to address systemic issues at CNSCF, which was beyond the scope of such proceedings. The judge's approach effectively turned the habeas corpus applications into a review of operational decisions at CNSCF, which should be addressed through other legal avenues, such as Charter challenges or judicial review, rather than a summary habeas corpus proceeding. The court emphasized that habeas corpus is intended to address immediate deprivations of liberty, not historical or systemic issues (paras 28-53).

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 55 paragraphs.

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Respondent

Judges:	Farrar, Bryson, Gogan, JJ.A.
Appeal Heard:	December 10, 2024, in Halifax, Nova Scotia
Held:	Appeal allowed, without costs, per reasons for judgment of Farrar, J.A.; Bryson and Gogan, JJ.A. concurring
Counsel:	Andrew Hill & Caitlin Menczel-O'Neill, for the appellant

Hanna Garson and Benjamin Perryman for the respondents
Durrell Diggs and Ryan Taylor Wilband
Scott Campbell, for the respondent Nova Scotia Health Authority (watching brief only)

Reasons for judgment:

Introduction

[1] Ryan Taylor Wilband and Durrell Diggs made separate *habeas corpus* applications arguing rotational lockdowns caused by staff shortages at the Central Nova Scotia Correctional Facility (CNSCF) unlawfully deprived them of their residual liberty. The lockdowns for Diggs occurred between September 13 and November 3, 2023, and for Wilband between October 17 and November 28, 2023.

[2] The two motions were heard before Justice Peter Rosinski on November 27 and 28, 2023. By written reasons dated January 12, 2024,[1] he declared that the lockdowns of Diggs and Wilband were unlawful. Neither Diggs nor Wilband sought release as their remedy.

[3] The Attorney General appealed both decisions alleging, among other things, that *habeas corpus* was not an appropriate proceeding to address a systemic issue in the management of the CNSCF.

[4] By way of preliminary motion, Diggs and Wilband each filed a Notice of Motion to dismiss the Attorney General's appeals pursuant to *Civil Procedure Rule* 90.40(3), arguing this Court did not have jurisdiction to hear the Attorney General's appeal.

[5] The motions were heard before a panel of this Court (the same panel which subsequently heard the appeal on the merits). By Orders dated September 16, 2024 the Panel dismissed both motions with reasons to be given at the same time as the appeal proper.

[6] For the reasons that follow, I would allow the appeals. As will become apparent, the reasons for disallowing the dismissal motions and allowing the appeal are the same–the judge erred in using a *habeas corpus* proceeding to address operational policy decisions in the management of CNSCF, thereby exceeding his jurisdiction.

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[1] *Diggs v. Nova Scotia (Attorney General)*, 2024 NSSC 11 [*Diggs*]; *Wilband v. Nova Scotia (Attorney General)*, 2024 NSSC 12 [*Wilband*].

Background

[7] As a result of staffing shortages from 2021-2023, and particularly from April to November of 2023, the number of employees reporting to work at CNSCF on any given day was often insufficient to unlock the open living units per normal operations.

[8] The use of rotational lockdowns as a result of staffing shortages was the subject of a number of *habeas corpus* applications in 2023. In *Haynes v. Attorney General of Nova Scotia*, 2023 NSSC 311, Brothers, J. noted:

> [12] CNSCF's use of rotational lockdowns in the face of staffing shortages was a recurring theme in Crownside *habeas corpus* applications in May and June 2023. The use of these rotational lockdowns and their impact on those in custody have now been addressed by this court on numerous occasions.

[9] In *Mattinson v. Attorney General of Nova Scotia*, 2024 NSSC 231 Keith, J. does a thorough review of the history of rotational lockdowns in Nova Scotia.[2] I will not repeat that history here. The significance of the history is it resulted in what Keith, J. described as a "wave of applications for *habeas corpus*" following the rotational lockdowns. He identified the applications relating to the lockdowns:

> [24] A wave of applications for *habeas corpus* predictably followed in the wake of these post-pandemic lockdowns. The reported cases include: *Downey v. Nova Scotia (Attorney General)*, 2023 NSSC 204 ("***Downey***"); *Keenan, op. cit.*; *Springhill Institution v. Richards*, 2023 NSSC 220 ("***Richards***"); *Sempie v. Nova Scotia (Attorney General)*, 2023 NSSC 218 ("***Sempie***"); *Jennings v. Nova Scotia (Attorney General)*, 2023 NSSC 148 ("***Jennings***"); *Foeller v. Nova Scotia (Attorney General)*, 2023 NSSC 149 ("***Foeller***"); *Haynes, op cit.*; *Diggs v. Nova Scotia (Attorney General)*, 2024 NSSC 11 ("***Diggs***"), *Wilband v. Nova Scotia (Attorney General)*, 2024 NSSC 12 ("***Wilband***"), *R v. Wilband*, 2024 NSSC 128 ("***Wilband #2***"). The final two decisions (*Diggs* and *Wilband*) are currently under appeal.

[10] The evidence before the judge on these applications was similar to the evidence in the cases cited by Justice Keith. Management determined the lockdowns were necessary to maintain the safety and security of CNSCF for inmates and staff alike. CNSCF management had limited options, other than rotational lockdowns, to respond to these staffing shortages. On days when there

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[2] *Mattinson*, paras. 12 – 24.

were not enough staff to fully unlock the units, CNSCF management implemented rotational lockdowns.

[11] During rotational lockdowns, instead of all inmates being released from their cells together throughout the day, smaller groups of inmates were released from their cells in shifts. The size of the groups released and the length of unlock time would depend on the availability of staff. Inmate cells could only be unlocked if there were enough staff to do so safely. The result of these rotational lockdowns was that inmates spent more time than normal locked in their cells.

[12] From April to November 2023, when rotational lockdowns were particularly prevalent at CNSCF, management would meet at the start of each shift to assess staff turnout and establish a rotational schedule for the day. Management would deploy the available on-duty correctional staff to meet the facility's safety and security requirements that day. Staff had to be deployed in a manner that adhered to the recommendations of the CNSCF Joint Occupational Health and Safety Committee.

[13] In implementing rotational schedules, CNSCF management said they were trying to ensure inmates received as much time out of their cells as possible and that all inmates received comparable time out of their cells each day.

[14] Diggs and Wilband filed their Notices for *Habeas Corpus* on October 19, 2023 and October 30, 2023, respectively. At the time, both were remanded at CNSCF.

[15] Both respondents challenged the use of rotational lockdowns. Diggs alleged he had been subject to unlawful and unreasonable lockdowns since September 13, 2023, while Wilband alleged he had been subject to unlawful and unreasonable lockdowns since October 17, 2023.

[16] The Attorney General contested both applications on the basis that the respondents were subject to the same rotational lockdowns as the general inmate population at CNSCF. Therefore, based on *Downey v. Nova Scotia (Attorney General)*, 2023 NSSC 204, their residual liberty was not being deprived. In the alternative, any deprivation of residual liberty in the circumstances was lawful and reasonable to maintain the safety and security of the facility. In *Downey*, another decision of Brothers, J., she found:

> [90] The difficulty faced by Mr. Downey, and other individuals housed in CNCSF who seek to challenge the facility-wide rotational lockdowns, is that "deprivation of liberty" in this context means a form of detention "that is distinct and separate from that imposed on the general population" (*Miller, supra*, at para. 36). This is the "particular form of detention or deprivation of liberty which is the object of the challenge by *habeas corpus*" (*Miller, supra*, at para. 36). It is this comparatively more restrictive form of confinement that creates the "prison within a prison" described in the case law.
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> […]
>
> [92] According to the evidence from D/S Ross, which Mr. Downey did not dispute, when a decision is made to implement rotational lockdowns due to staffing shortages, those lockdowns are implemented across the entire facility. The general population dayrooms and the protective custody dayrooms are all given as close as possible to equal time outside their cells. As such, the remedy of *habeas corpus* is not available.

[17] The first teleconference relating to Diggs's application was held October 23, 2023. Following the teleconference, the judge sent two letters:

(a) One to the Attorney General dated October 25, 2023, directing that the appellant identify a representative of the Province, outside of CNSCF, to speak to the staffing issues across all provincial correctional facilities and the Province's response to the staffing issues. The judge anticipated he would be directing the appropriate person to file an affidavit and give evidence at the hearing. The letter provided:

> […] On reflection, given that the rotational lockdowns in issue in Mr. Diggs' case have been consistently attributed to the lack of staff available and attending for work at the CNSCF, which staffing issues have been almost continuously a problem since at least 2022, and persist to this day, ***I am directing you to ascertain who in government (and outside of the personnel directly associated with the CNSCF) is responsible for and can give evidence about staffing at all provincial correctional facilities in Nova Scotia, and specifically explain to the Court what measures have been taken to ensure that the CNSCF has robust staffing levels of sufficiently experienced correctional officers so that these rotational lockdowns in response to staffing inadequacies do not continue.***
>
> ***Once you identify the appropriate individual who can authoritatively answer the anticipated questions of the Court, I direct that you advise them that I have directed that they attend at the November 1, 2023, recorded telephone conference so that their schedule can be considered, in setting a hearing date for this habeas corpus matter since I envisage directing them to file an affidavit regarding the efforts made, and being***

> ***made, to ensure there will not continue to be staffing shortages at the CNSCF.***
>
> [Emphasis added]

(b) That same letter also confirmed the Nova Scotia Health Authority was to appear as he had directed it be a party to the application.

(c) The second letter was to PATH Legal dated October 30, 2023, inviting it to represent Diggs at the hearing, including for the purpose of cross-examining representatives of the Province and the Nova Scotia Health Authority.

[18] A second teleconference was held on November 1, 2023. A representative of PATH Legal appeared on behalf of Diggs. The judge found that there had been a *prima facie* deprivation of Diggs' residual liberty and ordered an in-person hearing take place on November 27, 2023. As contemplated in the October 25, 2023 letter, the judge directed Nova Scotia Correctional Facility's Chief Superintendent, Jeffrey Awalt, to testify on behalf of the Province. C/S Awalt is employed by the Province of Nova Scotia and works for the Correctional Services Division of the Department of Justice. He oversees all provincial correctional facilities.

[19] On November 9, 2023 a teleconference in Wilband's *habeas corpus* application took place. The judge again invited PATH Legal to represent Wilband and again directed C/S Awalt to give evidence concerning ongoing staffing challenges and the Province's response. The judge found there had been a *prima facie* deprivation of Wilband's residual liberty and ordered an in-person hearing take place on November 28, 2023.

[20] Prior to the hearings, Diggs was transferred to the Northeast Nova Scotia Correctional Facility ("NNSCF") in New Glasgow. He was initially assigned to an open living unit with no rotation schedule in effect. At the time of his *habeas corpus* hearing on November 27, 2023, Diggs was being housed in a private cell on the NNSCF Health Care Unit.

[21] Wilband remained at CNSCF at the time of the hearing.

[22] The Diggs and Wilband *habeas corpus* applications were heard on November 27 and 28, 2023 respectively. The respondents were both represented by PATH Legal at the hearings. The respondents both filed sworn affidavits and testified at their respective hearings.

[23] The AGNS called the same two witnesses at both hearings: C/S Awalt and CNSCF's Deputy Superintendent Ryan Hill. They provided evidence at both hearings by way of sworn affidavits and *viva voce* testimony. The judge found both witnesses to be credible. In addition to finding the witnesses credible, he found the senior staff at CNSCF were acting in good faith when making lockdown decisions and the decisions flowed necessarily from the Joint Occupational Health & Safety Committee's Agreement:[3]

> 8 I wish to be clear that I am satisfied that the senior staff at the CNSCF were acting in good faith when making these lockdown decisions which also flow necessarily from the Joint Occupational Health & Safety Committee's Agreement and the ensuing 2014 Directive of then Superintendent Paulette MacKinnon regarding minimum levels of staff required to safely unlock inmates. Nevertheless, there remained according to the evidence that I accept in this case, other approaches as noted in *Diggs*, that CNSCF staff and the Chief Superintendent did not attempt to exploit to avoid the markedly foreseeable daily lockdowns consequent to daily staffing shortages. In this latter respect, the daily decisions were not "reasonable".

[24] The judge released his written decisions in *Diggs* and *Wilband* on January 12, 2024. He found that both inmates had been unlawfully deprived of their residual liberty for a portion of the time periods in issue. Instead of ordering the respondents' release, the judge held he would issue declarations that they had been unlawfully detained by the lockdowns at CNSCF.

[25] Orders were issued by the Court on January 31, 2024 (*Diggs*) and February 1, 2024 (*Wilband*) containing the following declarations:

(a) The Order in *Diggs* states: "IT IS DECLARED that the lockdown of Mr. Diggs between September 13, 2023, to November 3, 2023, was unlawful."

(b) The Order in *Wilband* states: "IT IS DECLARED that the lockdown of Mr. Wilband between October 31, to November 28, 2023, was unlawful."

[3] *Wilband* at fn. 8.

Issues

[26] It is only necessary to address one issue in order to decide this appeal—that is, whether the judge erred in using *habeas corpus* as a proceeding to address systemic issues at CNSCF.

Standard of Review

[27] The issue involves the Court's exercise of its *habeas corpus* jurisdiction. The standard of review is correctness. In *Pratt v. Nova Scotia (Attorney General)*, 2020 NSCA 39 this Court held:

> 12 Issues that involve a lower court's exercise of its *habeas corpus* jurisdiction attract a correctness standard of review. It is well-established that if a provincial superior court improperly exercises or improperly declines to exercise jurisdiction this equates to an error of law and the correctness standard of review applies (*May v. Ferndale Institution*, 2005 SCC 82).

Analysis

[28] The matters under appeal were filed as notices for *habeas corpus* under *Civil Procedure Rule* 7.12. However, in substance, the judge conducted a review of the operation of CNSCF using the summary, individual process of *habeas corpus*. His approach was an improper exercise of the court's *habeas corpus* jurisdiction and constituted an error of law.

[29] The following illustrates how the judge's conduct of the hearing was beyond the scope of *habeas corpus*.

[30] At the teleconferences, the judge directed, on his own motion, the Attorney General provide evidence of what steps were being taken, not only at CNSCF, but at all provincial correctional facilities concerning ongoing staffing shortages. C/S Awalt, who gave evidence at the hearing, did not work at CNSCF and was not involved in the daily decisions to implement lockdowns at the facility. He could not speak to the discrete daily decisions leading to lockdowns at CNSCF, nor the circumstances of the individual respondents. He could only speak to systemic issues and the high-level operational and policy decisions taken by Correctional Services to address them.

[31] The judge's direction that C/S Awalt give evidence regarding the systemic issue of staffing challenges directly contradicted the judge's own view of what

evidence is relevant and appropriate in *habeas corpus* applications. In *Diggs*, the judge stated:[4]

> [26] […] **While contextual evidence relevant to the 51-day time interval may be helpful, going further and examining any systemic causes of why the required numbers of Correctional Services' staff were not present on specific days, thereby necessitating lockdowns, would require evidence about the systemic decisions made in advance of those days which is beyond the scope contemplated by a *habeas corpus* Application**. Evidence regarding systemic causes would be better suited to a more fulsome process, such as, for example: an Application seeking relief pursuant to the relevant sections of the *Canadian Charter of Rights and Freedoms*.

[32] Despite recognizing systemic decisions were beyond the scope of *habeas corpus*, the judge's approach was to consider evidence of systemic causes and use the evidence to inform his decision that the alleged deprivations of liberty in issue were unreasonable.

[33] The judge considered the reasonableness of the daily staffing decisions in Diggs' case. Although I am referring to the reasoning in *Diggs*, it is equally applicable to *Wilband*.[5] He found:

> [49] The evidence regarding the reasonableness of daily staffing decisions in Mr. Diggs case, is limited to generalized statements by Nova Scotia's witnesses to the effect that the process was that:
>
> > each day the number of Correctional Officers required for the day (19 "on the floor" of the jail) had been previously given notice that they are to muster on the morning of the assigned workday. If for some reason they did not appear for work as scheduled, there was insufficient time to have a replacement called out, and so there would be one or more of the minimum number of required staff "not present" for that day - and this would materially affect how much time inmates would receive out of their cells that day.

[34] He specifically noted the focus of his inquiry was the response of Correctional Services to the daily staff shortages:

> [52] It must be remembered that the "decision" that is the focus of the "reasonableness" analysis, is the daily response of Correctional Services to the ongoing pattern of daily staffing shortages.

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[4] *Diggs* at fn. 26.
[5] The judge incorporated his reasoning in *Diggs* in his reasons in *Wilband*, *Wilband* at fn. 2.

> [53] Ancillary thereto is the interconnected question of what reasonable steps were taken to avoid staff shortages each day, and thereby avoid altogether the need for lockdowns.

[35] After reviewing the evidence, the judge suggested what steps could have been taken by Correction Services to avoid lockdowns including "overstaffing", prisoner transfers and permitting prisoners to be placed on bail:

> [50] The evidence suggests that Nova Scotia could have taken more robust steps to avoid such lockdowns, such as:
>
> 1. "over staffing" i.e., given the near certainty of staffing shortages during the time periods relevant to Mr. Diggs, calling out more staff to muster than the minimum number that are ordinarily required each day, could have reasonably avoided altogether or reduced significant numbers of days (and length of time the inmates were confined to their cells) when there were lockdowns as a result of staffing shortages;
>
> 2. transferring inmates to other Provincial Correctional Facilities so that even with the foreseeably reduced staff numbers, CNSCF Correctional Officers could have reduced the number of days and length of time that inmates were confined to their cells (as Chief Superintendent Awalt noted in his affidavit at para. 48, such transfers of inmates to other Correctional Facilities were possible, but not used until November 3, 2023);
>
> 3. directly requesting that the Provincial and Federal Prosecution Services consider revisiting with Correctional Services, and Counsel for inmates on remand, permitting some inmates to be placed on bail pending their trials instead, or for those serving sentences permitting Temporary Absences, which were all used during Covid 19 to make CNSCF Public Health Protocol compliant.

[36] The judge went further to suggest staffing shortages should have been foreseen and how they could have been addressed. He expressed his views on how, operationally, Correction Services should have responded:

> [56] Therefore, where there have been staffing shortages for a sufficient number of days that a reasonably foreseeable trend had emerged, from which one could conclude that in the next number of days there is a reasonable prospect that there will be further staffing shortages, then the Superintendent of CNSCF should reasonably expect there to be further shortages of staff and plan therefor - e.g. by always calling out sufficient extra persons to muster on a daily basis, so that even if some call in as unavailable, at least a full complement will still be in place. If more staff than are minimally required work on a particular day, there likely will be work for them that needs to be done.

> [57] A potential practical solution would be to begin "over-staffing" in the future until there is no longer a reasonable prospect of the insufficient daily staffing situation.
>
> [58] Henceforth, should this overstaffing be feasible; there being a reasonable prospect of insufficient numbers of staff in the ensuing days; and the Superintendent does not "overstaff", then it may be fair for a Court to conclude that the Superintendent's decision/management of that issue was not "reasonable", if there was a consequent decision to impose lockdowns, creating a material deprivation of inmates' residual liberty on a particular day.
>
> [59] Importantly, I will add here that over-staffing is only a feasible solution, if there are in real terms sufficient relief or "backfill" Correctional Officers from which group the additional "overstaffed" personnel can be drawn on a particular day.
>
> [60] I was not satisfied on the evidence presented that Nova Scotia had established that it had considered this option and others proactively during the days relevant to Mr. Diggs incarceration - or that they were not feasible for other reasons.
>
> [61] I conclude that Correctional Services daily decisions regarding the use of lockdowns affecting Mr. Diggs, were not demonstrated by it to be within a range of reasonable outcomes in the continuing circumstances that prevailed at CNSCF between September 12 and November 3, 2023.

[37] He used his "potential practical solution" of overstaffing to inform his conclusion the daily decisions of Correctional Services regarding the use of lockdowns were unreasonable because they had not considered overstaffing and other proactive options.

[38] The Alberta Court of Appeal dealt with an analogous situation in *Trang v. Alberta (Edmonton Remand Centre)*, 2007 ABCA 263 (leave to appeal to the SCC refused, 32310, February 21, 2008). Although not a *habeas corpus* application, a number of inmates sought a declaration that the manner in which they were transported, by van, around Alberta breached their *Charter* rights. The judge found the method of transportation breached the applicants' right to life and security of person because of protrusions, sharp corners and edges, their side-facing seating configuration, the failure of staff to adequately bolt the inmate compartment to the frame of one van and the lack of handholds for handcuffed inmates.

[39] In allowing the appeal, the Alberta Court of Appeal found that an application was not the appropriate proceeding to address conditions at the Edmonton Remand Centre:

> [24] The parties have failed to heed this Court's warning that these proceedings should not be turned into a public inquiry. A similar warning was given in ***Borowski*** at pg. 365 and in ***Maltby v. Saskatchewan (Attorney General)*** (1984), 1984 CanLII 2546 (SK CA), 10 D.L.R. (4th) 745 (Sask. C.A.) at pp. 749-50. It appears that these proceedings have been turned into a general inquiry into conditions at the Edmonton Remand Centre. This is best illustrated by the observation of the trial judge at para. 150 of his reasons that "the parties did not invite me to redesign the seating, but I think they will find the following helpful." The trial judge then proceeded to give a number of recommendations about how prisoner vans might be better designed. <u>This, with respect, would be more appropriate coming from a Royal Commission than it is from a judge who is charged with deciding discrete controversies between individual parties.</u>
>
> [25] In all of these circumstances, this was not an appropriate case in which to grant the general declarations in issue, and the appeal should be allowed for that reason alone.
>
> [Emphasis added]

[40] The same rationale applies to these applications. The judge examined the responses to staff shortages at the CNSCF and made recommendations as to how they may have been addressed. Recommendations are the mandate of Royal Commissions. The judge's well-intentioned approach was not within his jurisdiction on a *habeas corpus* application.

[41] The judge then issued declarations that would have an impact not only on *Diggs* and *Wilband*, but on other comparable cases. In *Diggs* he wrote:

> [159] There is a remedy available to Mr. Diggs insofar as he seeks a declaration, because a declaration regarding his circumstances between September 13 and November 3, 2023, shines a light on the circumstances of his material deprivation of residual liberty, but also has implications for other inmates at the CNSCF, and elsewhere given that the lockdowns are still continuing.

[42] The judge, by issuing a declaration, sought to bring awareness to the systemic issue of rotational lockdowns and effect systemic change. Insofar as Diggs and Wilband were concerned, the declarations had no practical effect. Again, an inappropriate use of *habeas corpus*.

[43] Unlike Diggs, Wilband was still incarcerated at CNSCF at the time the application was heard. Although he was incarcerated, the judge did not release him, and the judge acknowledged *habeas corpus* was ill-suited to remedy Wilband's situation:

> [18] In any event, I note that even if a Court were to conclude that there had been a material deprivation of Mr. Wilband's residual liberty on many, if not all, of the days he claims that there was, *habeas corpus* is very ill-suited to remedy the present set of circumstances.
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> […]
>
> [42] On the other hand, I am prepared to issue a declaration, such as I did in Mr. Diggs's case, that:
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> > between October 31 and November 28, 2023, almost without exception, there have been daily substantial deprivations of Mr. Wilband's residual liberty, and a significant number of the daily decisions made by Correctional Services were not "reasonable", as that term is used in *Vavilov v Canada (Minister of immigration)* 2019 SCC 18.

[44] In granting the declaration, the judge purported to bind other Supreme Court Justices to making decisions consistent with his so long as the circumstances at the CNSCF remained comparable to those of Diggs:

> [160] Moreover, pursuant to the doctrine of horizontal *stare decisis*, my decision herein ought to be respected and considered binding, so long as the circumstances at the CNSCF remain comparable to those of Mr. Diggs, and that it is not otherwise incorrect in law per *R. v. Sullivan*, 2022 SCC 19.

[45] This, despite earlier finding he was not bound by the decisions of other judges of his Court who considered similar *habeas corpus* applications:

> [130] Respectfully, I am satisfied that I am not bound by the reasoning in previous cases, *viz*.: if all inmates are locked down - no single inmate can claim to have suffered a material deprivation of residual liberty.

[46] *Habeas corpus* is intended to address the "here and now". In *Diggs*, the judge quoted the following passage from *Heiser v. Bowden Institution*, 2022 ABCA 300:

> [25] […] *Habeas corpus* is only available to deal with existing "here and now" deprivations of liberty, not historical deprivations of liberty that have ended […][6]

[47] The judge did not follow that approach. Instead, in Diggs's case, he examined 51 consecutive days to assess the reasonableness of the specific daily decisions of CNSCF management.[7] It was improper for the judge to examine alleged historical deprivations of liberty instead of confining his review to the "here and now".

[48] All of the above indicates the judge's decision was not in the nature of *habeas corpus* but was in reality a review of operational decisions at CNSCF, as noted earlier, something the judge himself acknowledged was beyond the scope of *habeas corpus*.

[49] I agree with and adopt the comments of Justice Jamie Campbell in *Jennings v. Nova Scotia (Attorney General)*, 2023 NSSC 148:

> [36] *Habeas corpus* is intended as a prompt remedy for a situation involving the liberty of a person. Liberty is always an urgent matter. *Habeas corpus* applications take priority over any other business of the court because they involve liberty interests. *Habeas corpus* is usually a summary procedure to deal with those issues promptly. It should not be allowed to become routinely a drawn-out process of complex litigation.
>
> [37] ***Broader constitutional, political or policy issues can be addressed in the proper form. If a person claims that their constitutional rights have been infringed by what they claim to be the government's failure to adequately resource provincial jails, that would require substantial evidence and would have to be litigated in a way that is not summary in nature.***
>
> […]
>
> [40] A lockdown to respond to staffing shortages is a reasonable step. There are only a certain number of staff available. They must be deployed in a way that protects their safety and the safety of the inmates and the facility. ***Whether more staff should be hired or more resources provided to the CNSCF is not an issue for summary habeas corpus proceeding.***
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> [Underlining in original. Emphasis added]

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[6] *Diggs* at para. 96.
[7] *Diggs* at para. 55.

[50] Justice Campbell made similar comments in *Foeller v. Nova Scotia (Attorney General)*, 2023 NSSC 149, again emphasizing *habeas corpus* is not the proper forum to review government policy and priorities:

> [14] The rotational lockdowns were implemented because there were not enough correctional officers to safely operate the facility in the normal way. The administration of the facility can only make efforts to hire and train more people. Whether they should be allocated more resources to do that is not an issue for this *habeas corpus*.
>
> [15] A judge on a *habeas corpus* application would place safety and security at risk by ordering the end of the lockdown notwithstanding those staffing issues. Ordering that the government provide more resources to hire and train staff would involve the review of government policy and priorities which would not be appropriate particularly in the summary form of a *habeas corpus* application. The court can only assess whether those responsible for the jail acted reasonably given the circumstances that they faced.

[51] In *R. v. Haug*, 2011 ABCA 153, the Court also found *habeas corpus* was not a proper vehicle to monitor the activities of correction officials:

> [6] The appellant has overestimated the jurisdiction of the Court of Queen's Bench to monitor the activities of the Correctional Service of Canada. The appellant originally applied for *habeas corpus* as a method of attaining the relief he wanted. ***Habeas corpus is a specialized procedure that allows the court to review the legality of the detention of a prisoner, and to release the prisoner if his detention is unlawful***. While it has occasionally been used to review the conditions of detention of serving prisoners, ***it is not a general remedy to be used to supervise the conduct of corrections officials. In the federal system that responsibility primarily falls within the jurisdiction of the Federal Courts, and possibly some administrative tribunals with the appropriate jurisdiction.***
>
> [Emphasis added]

[52] Applications for *habeas corpus* are intended to be summary proceedings for inmates whose residual liberty has been unlawfully deprived. They are given high priority by the Court and are intended to address individuals' liberty interests on an expedited basis. *Habeas corpus* applications are not intended to be a review of how correctional facilities are managed.

[53] High-level operational and policy decisions of correctional facilities may be subject to judicial review or *Charter* challenges on a full evidentiary record – not in a summary *habeas corpus* proceeding.

Disposition

[54] As a result of the manner in which the judge conducted the *habeas corpus* applications, his declarations that the lockdowns of Diggs and Wilband were unlawful cannot stand and are hereby set aside.

[55] Both appeals are allowed without costs to any party.

Farrar, J.A.

Concurred in:

Bryson, J.A.

Gogan, J.A.