# SUPREME COURT OF NOVA SCOTIA

**Citation:** Blais v. Correction Service Canada, 2011 NSSC 508

**Date:** 20111129
**Docket:** Amh. No. 354951
**Registry:** Amherst

**Between:**

Michel Joseph Blais

Applicant

- and -

Correction Service Canada
(Springhill Institution)

Respondent

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| **Judge:** | The Honourable Justice Cindy A. Bourgeois |
| **Heard:** | November 29, 2011, in Amherst, Nova Scotia |
| **Oral Decision:** | November 29, 2011 |
| **Written Decision:** | February 29, 2012 |
| **Counsel:** | Michel Joseph Blais, self-represented<br>Sandra Doucette, for the respondent |

**By the Court**:

[1] I am prepared this afternoon to render my decision in relation to the jurisdictional issue that has been brought forward by the Attorney General of Canada, seeking this court to decline its jurisdiction to hear Mr. Blais' *habeas corpus* application. Again, I want to thank both Ms. Doucette and Mr. Blais for the helpful submissions that have been provided. The material that has been provided, most notably the case law, has been considered by me in reaching my decision this afternoon.

[2] Mr. Blais is currently an inmate at the Springhill Penitentiary which I understand is a medium security federal institution. He has brought an application before this court for *habeas corpus* with *certiorari*-in-aid. It appears to have been dated July 30th, 2011 and filed September 2nd, 2011. In a section of the application entitled "Relief Sought", Mr. Blais writes:

> "The applicant requests that the Honourable court order a full complete record of OMS, Offender Management System, including Parole Board of Canada recordings, transcripts and e-mail communications in English of the following hearing dates, 20101109, 20101207 and for Correction Services of Canada, Springhill, Nova Scotia to use all relevant, reliable and persuasive information to release Mr. Blais in accordance with the statutory release date 20110915 to a less restrictive sanction of liberty that is appropriate in the circumstances such as the return to the Moncton community based residential facility to assist with his reintegration back into his community where he has the support of his family and which would enable him to work towards becoming a productive law abiding member of society."

[3] I understand from the material that Mr. Blais has also filed a Notice of Application for judicial review in the Federal Court of Canada. That appears to be dated June 28th, 2011 and filed September 6th, 2011.

[4] Although the relief sought before the Federal Court is worded somewhat differently than the relief sought in this Court, it is clear that both applications centre around a common set of facts and concerns consistently and repeatedly expressed by Mr. Blais.

[5] It would appear that Mr. Blais had been granted day parole after having served federal time, I believe in the Westmorland Institution. He was in the Moncton area where he has family support.

[6] Based on the materials that I have reviewed, Mr. Blais while originally incarcerated, was described in very favourable terms by those in the prison community. He was described as being polite, respectful, a hard worker and a good student. All very good things. And likely those types of attributes contributed to him being granted originally day parole, which I understand was in or around September of 2009.

[7] I also understand that at some point his day parole was suspended, but then reinstated by the National Parole Board. However, on December 7th, 2010 Mr. Blais' day parole was once again revoked by the National Parole Board. Mr. Blais appealed this decision, as he is entitled to do, with the appeal division of the National Parole Board ultimately upholding the revocation on May 27th, 2011.

[8] Mr. Blais takes issue not only with those decisions, but with the information provided by Correction Canada personnel to the Parole Board. He asserts, and he has consistently done so, that the information provided to the Parole Board was incomplete and much of the information was inaccurate or misleading. He has been diligently attempting to obtain full disclosure of documentation he feels would be of assistance in establishing that the decision made by the National Parole Board was unjust.

[9] Today I have to decide whether this court should exercise its jurisdiction to hear Mr. Blais' *habeas corpus* application. It is clear, as acknowledged by counsel for the Attorney General of Canada, that this Court does have jurisdiction. It is further clear that provincial superior courts do have a role, in fact an obligation to diligently guard against the erosion of the *habeas corpus* remedy and in particular its continuing application in the prison context.

[10] This mandate was made clear by the Supreme Court of Canada in the decision of **May v. Ferndale Institution**, [2005] 3 S.C.R. 809 which I know both Mr. Blais and Ms. Doucette are familiar with. It is the interpretation of that decision and that court's direction as it relates to this Court's role in *habeas corpus* applications which is central to the jurisdictional issue I have to deal with today.

[11] All of the recent cases acknowledge that long gone are the days that an inmate in an institution is viewed as being without rights. Inmates have residual freedoms and liberties, notwithstanding the fact of their incarceration. The *Charter of Rights and Freedoms* apply with respect to those residual rights and freedoms as much as they apply to any other citizen. That has been taken into consideration and confirmed by many courts, and of course by the Supreme Court of Canada in **May v. Ferndale**.

[12] How **May, supra**, is to be interpreted and what it means in terms of whether or nor a provincial superior court should exercise its inherent jurisdiction has received a fair degree of interpretation. It has recently been addressed by the Ontario Court of Appeal in the decision **R. v. Graham***,* 2011 ONCA 138. There writing for the court Justice Blair states:

> "There is no dispute that provincial superior courts retain an important jurisdiction to hear *habeas corpus* applications brought by a prisoner alleging unlawful restriction of his or her liberty, and do so in spite of the fact that such allegations may also be challenged elsewhere. As *habeas corpus* is not a discretionary remedy, but rather one that issues as of right on proper grounds being shown, Superior Courts are - and should be - reluctant to decline such jurisdiction when called upon to exercise it. However, they may do so in some circumstances, and one circumstance where the Supreme Court of Canada has indicated it is appropriate to decline jurisdiction is where "there is in place a complete, comprehensive and expert procedure for review of an administrative decision:" *May v. Ferndale Institution,* [2005] 3 S.C.R. 809.

[13] At paragraph nine Justice Blair goes on and says:

> The rationale underlying the exceptions referred to above is rooted in the risks associated with parallel procedures and the ineffective use of public resources flowing from such procedures. Cory J. succinctly explained these policy reasons, in the National Parole Board context, in *Steele v. Mountain Institution,* [1990] 2 S.C.R. 1385:
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>> Since any error that may be committed occurs in the parole review process itself, an application challenging the decision should be made by means of judicial review from the National Parole Board decision, not by means of an application for habeas corpus. It would be wrong to sanction the establishment of a costly and unwieldy parallel system for challenging a Parole Board decision. As well, it is important that the release of a long-term inmate should be supervised by those who are experts in the field.

[14] Justice Blair goes on at paragraph 10 and states:

> The question here, then, is whether the CCRA provides "a complete, comprehensive and expert procedure" for administering the parole review process. In my view, it does.

[15] The Ontario Court of Appeal was also invited to consider and apply the reasoning of the British Columbia Supreme Court in **Woodhouse v. William Head Institution**, 2010 BCSC 754, a case which Mr. Blais has brought to the attention of this court. He relies upon **Woodhouse** in support of his argument that this Court should exercise jurisdiction, notwithstanding the fact that this is a parole matter. The Ontario Court of Appeal in the **Graham** decision rejected the reasoning in **Woodhouse**.

[16] The Ontario Court of Appeal also recognized that notwithstanding there being a complete and comprehensive parallel statutory regime in existence, that there could be circumstances where a provincial superior court should still go ahead and exercise jurisdiction.

[17] The Ontario Court of Appeal however indicates at paragraph 16 of its decision that:

> The CCRA establishes a complete and comprehensive procedural regime for the review and appeal of a parole officer supervisor's decision to suspend parole. In addition, the process is carried out at its various stages by experts in the parole field.

[18] The court goes on to indicate that because of that system that was put in place, *habeas corpus* matters could not be viewed as a type of exception that was being contemplated by the Supreme Court of Canada and other Court of Appeal authorities, in particular those pointed out by Ms. Doucette this morning. I adopt and agree with the views of the Ontario Court of Appeal.

[19] I further have reviewed a recent decision of this court in **Wilson v. Canada (Attorney General)**, 2011 NSSC 143 where Justice Wright declined jurisdiction in a *habeas corpus* application brought by a federal inmate, also challenging the validity of a National Parole Board decision in part based upon failure to provide

full documentary disclosure. The **Wilson** case and the present one, in my view are virtually identical in terms of the legal issues under review.

[20] I adopt the reasoning of Wright, J. in **Wilson** as being appropriate and further directly inline with the Ontario Court of Appeal's reasoning in **Graham** and the exception as outlined by the Supreme Court of Canada in **May v. Ferndale Institution**.

[21] Mr. Blais has legitimate concerns that need to be addressed with respect to documentary disclosure. However, for the reasons stated above, those concerns should be, and are better addressed in the Federal Court.

[22] The motion of the Attorney General requesting this Court to decline jurisdiction is granted. Ms. Doucette, I noted in the written submissions that your client was seeking costs in relation to this matter. In the circumstances, I am not inclined to consider costs in this matter.

J.