**SUPREME COURT OF NOVA SCOTIA**
**Citation:** *Cain v. Canada (Attorney General)*, 2023 NSSC 219

**Date:** 20230727
**Docket:** Hfx. No. 524898
**Registry:** Halifax

**Between:**

Percy Cain

v.

The Attorney General of Canada

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## DECISION ON JURISDICTION FOR *HABEAS CORPUS* APPLICATION

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| **Judge:** | The Honourable Justice Joshua Arnold |
| **Heard:** | June 30, July 12 and 20, 2023, in Halifax, Nova Scotia |
| **Counsel:** | Percy Cain, self-represented Applicant<br>Kristin Clarke, for the Respondent |

## Overview

[1] Percy Cain has applied for remedies under the writ of *habeas corpus*. He is on statutory release and has been ordered by the Parole Board of Canada to live at the Jamieson Community Correctional Centre, and to abide by certain conditions. He says that because he is on statutory release, and not parole, the PBC does not have any jurisdiction to tell him where or how to live. He also says that the PBC did not actually make the decision regarding his conditions and therefore the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, does not apply. He says the Jamieson Centre is a medium security prison, not a community correctional center, so the PBC had no authority to order him to live there under the *CCRA*.

[2] The Attorney General of Canada says the PBC has the proper legislative authority to do everything they have done that, the Jamieson Centre is a community correctional center as contemplated by s. 133 of the *CCRA*, and that, because the *CCRA* provides a complete, comprehensive, and expert procedure for review of the relevant administrative decisions, the Nova Scotia Supreme Court must decline jurisdiction in relation to the *habeas corpus* application. The AGC says that because of this, Mr. Cain's application to this court must not proceed to a full (Stage Two) hearing on the merits.

[3] Mr. Cain is 67 years old, visually impaired, and self-represented. Despite the court strongly encouraging him to seek legal representation, Mr. Cain did not want legal counsel and urged the court to proceed based on his self-representations.

[4] For the reasons below, I agree with the AGC. This is one of the rare occasions where the court must decline jurisdiction to hear Mr. Cain's *habeas corpus* application.

## Facts

[5] Mr. Cain filed an initial Notice of *Habeas Corpus* on May 16, 2023, which states:

> 1. The applicant, Percy Cain ("Mr. Cain"), is incarcerated at Jamieson Community Correctional Centre (the "Centre"), Dartmouth, Nova Scotia by statutory release.
>
> **2. The Centre is a medium security facility.**

3. The respondent, the Superintendent of the Centre, is unlawfully detaining Mr. Cain past his statutory release.

4. Mr. Cain was convicted for break and enter and sentenced to six years of federal incarceration and started his sentence in January 2019. Mr. Cain fully lost his sight in the fall of 2019 due to "VKH-Syndrome". He is now legally blind.

5. Mr. Cain should be released directly to his apartment rather than to the Centre because a) the conditions of his release are not connected to his offence and b) the Centre cannot accommodate his blindness disability.

[Emphasis added]

***Applicant requests review***

6. Mr. Cain requests a ***habeas corpus*** to compel the respondents to follow the proper procedures when formulating the conditions for his release into the community.

7. Mr. Cain requests an order directing the respondents, and any other person who has control of the applicant and receives notice of the order. to bring the applicant and all documents relating to the detention before the court.

***Grounds for review***

8. Mr. Cain says the deprivation of liberty is illegal and unduly restricts his liberty because:

> a. NO NOTICE: The release conditions were imposed on Mr. Cain and were communicated to him only on the day of his release. He was provided no notice for why he was placed in the Centre as an "undue risk to society" rather than placed in his own apartment.
>
> b. NO DECISION: According to CD 712-1 pam. 28 and Annex C and section 5 of Policy 5.1 of *the Decision- Making Policy Matinal for Board Members* [Parole Manual (which counsels the Board on how to provide an assessment for undue risk to society'), no formal decision (or notice of it) was made for Mr. Cain to he held at the Centre as an "undue risk to society.
>
> c. NO ACCOMMODATION: The Centre previously notified his parole hearing in December 2021 that they did not have the capacity to physically accommodate his blindness. (Mr. Cain has since been injured while at the Centre due to this lack of physical accommodation for his blindness.) There is no legitimate security reason for refusing to allow Mr. Cain to he released to his apartment which will he refitted/renovated with the help of the CNIB and his family.

> d. NO RELATION TO OFFENCE: Contrary' to case law the conditions imposed for Mr. Cain's incarceration at the Centre are unrelated to his offence. These conditions of release are: a) not to consume alcohol orb) drugs. There were no drugs or alcohol used or connected to the commission of the offence nor were there any problems with these issues during his incarceration. Such overbroad conditions are contrary to s. 133(3) of *Corrections and Conditional Release Act* (S.C. 1992. c. 20).

9. The decision is contrary to the *Corrections and Conditional Release Act* (S.C. 1992. c. 20. s.85-88 & s.l33.3), *Regulations* and Commissioner's Directives.

10. The decision is unlawful and contrary to the principles of natural justice.

***Remedy Sought***

11. Mr. Cain is seeking an order for his release directly into the community pursuant to CD 712- 1 para. 28 and Annex C.

12. Direction for the respondent to comply with their obligations under the Corrections and Conditional Release Act and regulations.

13. An order that this Habeas Corpus Order is without prejudice to Mr. Cain being able to:

    a. make a civil claim for negligence for his wrongful detention and

    b. make a claim for breaches of human rights.

14. For the respondents to pay for a hotel room until he has found a place in the community.

[As appears in original]

[6] He filed his second Notice of *Habeas Corpus* on June 1, 2023, which states:

1. The Applicant, Percy Cain is incarcerated at the Jamieson Community Correctional Centre (the "Centre") in Dartmouth, Nova Scotia, by statutory release, which commenced on 16 January 2023.

**2. The Centre is a medium security Facility.**

3. The Respondent, the Superintendent of the Centre, is unlawfully detaining the Applicant past his statutory release.

4. The Applicant was convicted for break and enter, and sentenced to six years of federal time. He began his sentence in January 2019.

5. The Applicant became blind in the autumn of 2019 due to VKH Syndrome.

6. The Applicant should be released directly to the community rather than to a medium security institution, due to the following factors:

> a) the conditions of his release are not connected to the offense
>
> b) the Applicant was told directly by the National Parole Board that he could not be released to the Ralston Halfway House nor to the Sir Sanford Flemming House in Halifax becuause neither of those locations could accommodate his disability. It's clear that the Centre cannot accommodate the Applicant's disability either. This acknowledgment of non-accommodation is a violation of the Applicant's rights under Section 15 of the *Charter*.

***Applicant's Request for Review***

7. The Applicant requests *habeas corpus* to compel the Respondents to follow the proper procedures in formulating the conditions of the Applicant's release into the community.

8. *Habeas corpus* in the *Charter* context must he administered in a liberal, flexible manner (*R. v. Gamble*, 1988 2 S.C.R. 595 at page 646). Where an Applicant is able to demonstrate that his or her detention fails to agree with the principles of fundamental justice or otherwise offends the *Charter*, a court may use its section 24(l) powers adjust or suspend technical rules that might otherwise defeat a petition for *habeas corpus*.

9. In the present case, the Applicant is able to show that his rights under Section 15 have been violated, and the inability of the system to guarantee him equality as a disabled person in the community is the sole reason why he is currently incarcerated at The Centre.

**10. The Centre is not a hallway house. It is, in fact, a correctional facility and the Applicant is, in fact, incarcerated there. Correctional Services Canada lists the Jamieson Community Correctional Centre as a correctional centre on its own official website.**

[Emphasis added]

***Grounds for Review***

11. The Applicant asks for a review on the following grounds. asserting that his liberty is at stake because he is being held for reasons that violate his rights under the Charter and that are contrary to the rules governing the Parole Board of Canada:

> a) Violation of Section 15 of the Charter – The Applicant asserts that his human rights under Section 15 of the Charter have been violated, because he was advised directly that his disability could not be accommodated in halfway houses in the community. Equally, the Centre has failed to accommodate his disability while

he is being housed there under their care and supervision, thus endangering him in a way far greater than any risk he may potentially pose in the community. If he were to be released to the community, he could be accommodated in a way that would be safe and that would not violate his human rights.

b) No Notice – Applicant's release conditions were communicated to him only on the day of his release and were essentially imposed on him with no reasons given. He was not told why he was placed at the Centre as a potential "risk to society" rather than being released into the community.

c) No Decision —CD 712—1 para. 28. and Annex C and Section 5 of Policy 5.1 of the Decision—Making Policy Manual for Board Members (''Parole Manual'') no formal decision, nor formal notice of decision that stated the Applicant should be held at the Centre as "an undue risk to society''. The Applicant was not invited before the Board to speak to anyone or to participate in any sort of hearing on this matter.

d) No Relation to Offense — The conditions imposed on the Applicant while incarcerated at the Centre are unrelated to his offense. The conditions include that the Applicant is not to consume alcohol or drugs. The Applicant was not using drugs or alcohol at the time of the commission of the offense, nor does the Applicant have any issues with addiction or substance abuse. He has had no problems with drugs or alcohol during his period of incarceration. These conditions are contrary to s.133(3) of the *Correctional and Conditional Release Act* S.C. 1992 c. 20

12. The decision is unlawful and contrary to the *Correctional and Conditional Release Act* S.C. 1992 c. 20

13. The decision is contrary to the principles of natural justice.

***Remedies***

14. The Applicant is seeking an order for release into the community, pursuant to CD 712-1 para. 28, and Annex C.

15. The Applicant seeks an order for the Respondents to comply with their obligations under the *Correctional and Conditional Release Act* S.C. 1992 c. 20

16. The Applicant seeks an order that habeas corpus will not prejudice the Application with respect to other proceedings such as:

a) a civil claim

b) a human rights complaint

17. The Applicant seeks an order for the Respondents to pay for a hotel room for him until he finds appropriate housing and supports in the community.

[As appears in original]

[7] Despite the initial application being at Stage One (the Motion for Directions), Mr. Cain also filed evidence, in the form of an affidavit date stamped June 1, 2023, which states:

1. I, Mr. Cain. of Dartmouth, Nova Scotia. am the applicant in this matter.
2. I have personal knowledge of the evidence affirmed in this affidavit except where otherwise stated to be based on information and belief.
3. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief in the source.
4. I have been in prison since January 2019. My release date was January 16, 2023.
5. **I am currently at the Centre, which is a medium security institution.**
6. I was provided no notice of the conditions of my release until the day I was released to the Centre on January I 6, 2023. On that day, they verbally told me where I was going. It was not until six weeks later, near the end of February 2023, that I was provided with the written conditions of my release.
7. I was never provided with a hearing to determine if I was an “undue risk to society" and therefore requiring conditions for my release.
8. I do not have in my possession the submissions from the Centre in 2021 to the parole board indicating that they could not accommodate my blindness at their institution. I have requested this information but CSC has refused to provide it to me. I know that the Centre rejected my request to stay there during my parole hearing because I was there and the parole board told me that this Centre. "Ralston half-way house in Dartmouth and the Sir Flemming half-way house in Halifax" were unable to accommodate my disability. (Everyone at the hearing agreed this was discriminatory.)
9. My index offence of break and enter did not involve the use of drugs or alcohol and I have no charges or convictions during my stay at Springhill Institution since 2019.
10. I am making this affidavit in support of my request for relief for *Habeas Corpus* application to be released into the community with conditions that accommodate my disability, that are consistent with my index offence and in compliance with the CCRA and regulations.

[Emphasis added]

[8] Because the matter was initially at Stage One (the Motion for Directions), aside from Mr. Cain's already filed affidavit, no evidence was called by either party and there was no hearing on the merits. Stage One took place on June 30, 2023.

[9] On July 10th the court sent the parties the following email:

> Good morning,
>
> Mr. Cain has made an application for *habeas corpus*. He says that he is on statutory release and is: 1) being improperly held in the Jamieson Centre, which he describes in his materials as a "medium security institution" and "not a halfway house"; and 2) has had improper conditions imposed on him.
>
> The Attorney General of Canada says that because the Parole Board of Canada has the statutory authority to impose conditions on offenders who are on statutory release, including requiring them to live at a community-based residential facility (and says that the Jamieson Centre is a community-based correctional facility), this court does not have jurisdiction to hear Mr. Cain's application.
>
> In *Pratt v. Nova Scotia (Attorney General),* 2020 NSCA 39, the Nova Scotia Court of Appeal directed the Nova Scotia Supreme Court not to make any determination at Stage One (or the Motion for Directions stage), on evidence/the merits. Evidence should only be heard if the matter proceeds to Stage Two (a full hearing in the merits).
>
> However, there has been no evidence or submissions as to whether the Jamieson Centre is classified or designated as a community-based correctional facility or a medium security facility, or falls into some other category. Jurisdiction will be fundamental to whether the application moves to Stage Two. The court would therefore like to schedule a very brief hearing in relation to jurisdiction only, in order to hear submissions and, if necessary, evidence, as to the correct characterization of the Jamieson Centre pursuant to the relevant provisions of the *CCRA* and regulations. After that determination the court can make a decision on the discrete issue of jurisdiction.
>
> The parties will receive a decision in relation to jurisdiction, and whether the matter will proceed to a full hearing on the merits, in due course following the jurisdictional hearing. …

[10] The hearing in relation to jurisdiction took place on July 12. The AGC called one witness, Shelly Hume, who has worked at CSC since 2007 and is the manager of the Jamieson Community Correctional Centre. On direct examination, Ms. Hume adopted her affidavit, and described the facility and Mr. Cain's placement there:

> Q: Can you tell me what Jamieson Community Correctional Centre is?
>
> A: Jamieson Community Correctional Centre is what's known as a community-based residential facility and is run by Correctional Services Canada, it is a federal umm living quarters. Umm it's umm it's not a medium security institution, it is noted as a minimum-security institution, but it is not run by like a minimum-security institution. Umm, it's a transition like a bridge between the institution and the communities, so generally speaking, offenders on release for day parole, full parole, statutory release with residency, UTA, long-term supervision orders, work releases, or sometimes temporary absences is a place for those offenders to be housed.
>
> Q: At paragraph 3 of the affidavit, it discusses Mr. Cain's placement at Jamieson. Can you tell me a little bit about that?
>
> A: So, the Parole Board of Canada would, when a person is coming up for statutory release, the Parole Board of Canada does a review and they actually put special conditions on offenders. So, when they apply those conditions, one of those conditions could be a residency condition of stat release if the individual meets the criteria which the Parole Board of Canada deemed him to meet that criteria. So, he is then placed at…we have two different types of community-based residential facilities in our area. So, the CCC Community Correctional Centres and we also have community residential facilities which are privately run, so those facilities actually have the option of denial. So, they can choose to accept an offender or choose to not. Generally speaking, they take less umm I guess risky offenders…offenders with less risk, umm day paroles or full paroles as their residency and would start at a community correctional centre like Jamieson and cascade down to a CRF. He was placed at a CCC because CRF did not accept him there.
>
> Q: Briefly summarize the Parole Board of Canada role versus the Correctional Services of Canada role. To provide us with that clear distinction.
>
> A: The Parole Board of Canada would take the recommendation from CSC, make the decision, apply the condition using…as outlined in the CCRA in their jurisdiction. So, they would impose that special condition, where as CSC would follow through with that special condition so they would do the placement and management of the offender once he is released.

[11] Ms. Hume confirmed that Mr. Cain's placement was the result of a Parole Board decision, implemented by CSC. She went on to describe in more detail the status of Community Correctional Centres:

> A: So, a community … a CCC is community-based residential facility that is known as a half-way house, transition housing umm monitoring that sort of thing of offenders when they are released. So sometimes if they were on a conditional release or a stat release with residency.
>
> Q: The security classification of Community Correctional Centres, so perhaps you could tell us a bit about that?
>
> A: Well, CCC's are classified as minimal security institutions but they are not necessarily run like a minimal security institution as there are no correctional officers, they have community access, they have you know weekend passes if they are provided… if they are given those by the Parole Board. There is some clear distinctions between institutions.

[12] Ms. Hume confirmed that the Parole Board decision indicated that Mr. Cain had previously been at Dorchester Penitentiary, a medium security institution. She went on identify the "Community Correctional Handbook for Offenders" that Mr. Cain would have received when he arrived. She described its contents:

> Q: Have you turn to what is marked as page 4 of the Handbook. Under General Information a summary of Jamieson Community Correctional Centre is provided. You can provide a refresher of what information is given to the offender in this section?
>
> A: Umm it speaks to describe the facility. It talks about being a 40-bed community correctional centre that is operated by CSC. It talks about the standard like units, there is bathrooms, laundry facilities, umm that it has wheelchair accessible rooms. It talks about CSC staff are available and it talks about the role of the Manager of CSC and also talks about the role of the parole officers.
>
> Q: I will direct you now to page 6 of the Handbook. Under the heading titled "Purpose of Residency at CSC" can you tell me a bit about what that first paragraph is telling us?
>
> A: Residency at CSC results as a special condition imposed by the Parole Board of Canada which is designed to improve the risk management while helping the offenders get re-integrated to society and promotes personal progress in addressing problems.
>
> Q: Direct you to Exhibit C of your affidavit. You recognize this document?

[13] Ms. Hume was also referred to Commissionaire's Directive number 706, which deals with classification of institutions:

Q: I will have you flip to paragraph 30 of the directive. At paragraph 30 of that Commissionaire's Directive, what information is provided to us there?

A: It explains that although a community correctional centre is classified as a minimum-security institution, due to their role and accommodating offenders on conditional release or on long-term supervision orders they are not required to conform to all forms of security standards which is outlined in the CD 714.

[14] On cross-examination, Mr. Cain suggested that his conditions had been imposed by a parole officer, not the Board:

Q: Who imposed the conditions?

A: Parole Board.

Q: Was he ever told provided with some documentation that said the Parole Officers made up all of the conditions and not the Parole Board?

A: No. He would have been given … so there is a … sorry I'm not sure. Decision is written would include community strategy and information from any community assessments that he would have gotten, that would be provided to him prior to being given to the Board to make their decision.

Q: So Parole Officers' recommendations would have been given to him before it went to the Parole Board, but then the actual conditions that were imposed were imposed by the Parole Board not the Parole Officer?

A: Absolutely.

Q: What is the residency requirement for Mr. Cain currently?

A: The residency requirement is currently until his warrant expiry date unless the Parole Officer and the offender umm are able to … if the offender can provide a release plan and progress then the Parole Officer can go back to the Parole Board and have the residency conditions amended.

Q: And then it is the Parole Board that makes the decision?

A: To resume it.

Q: And the residency requirement is that he live at the Jamieson Centre?

A: Or CSC.

Q: If he was accepted at one? Which currently he was not.

A: Right.

Q: Who imposed the residency requirement? The Parole Board or the Parole Officer?

A: Parole Board of Canada imposed.

Q: Please show her the Court Exhibit 2, Appendix 2.

A: Parole Board Decision.

Q: Jamieson is a medium-security correctional centre, is that true?

A: No, it is not. It is a minimum security.

Q: Can you show any documents that Jamieson is a residency and not a correctional facility?

A: I think that is, if you go back to the Commissionaire's Directive I believe. Sorry you want to know why it is ...

Q: Any documentation that identifies Jamieson as a halfway house?

A: So, it is a community…umm community correctional centre under the umbrella of community-based residential facilities. So, under the community-based residential facility you have CCC which is Jamieson, or you have a community residential facility which is privately run facilities. So, it falls under that umbrella.

Q: Can you show any documents that says the Jamieson Centre is a halfway house?

A: We don't use halfway house. It is a community-based residential facility which often is referred to as a halfway house.

Q: Can you show the Court that Corrections Canada does not run the Jamieson Centre?

A: Corrections Services Canada does run Jamieson.

[15] Ms. Hume's affidavit included a letter from the PBC to Mr. Cain dated January 16, 2023, which states, in part:

> Please find attached a copy of the Parole Board of Canada decision sheet dated January 12, 2023.
>
> You, or a person acting on your behalf, may appeal any decision regarding conditional release that is made by the Parole Board of Canada. The appeal must be sent to the Parole Board of Canada Appeal Division in Ottawa within **three** months of the date of the decision being appealed. Further information as well as the appeal forms may be obtained from your case management team.
>
> Please note that the time limit to submit an appeal has been extended from **two to three months** as a temporary measure in response to the COVID-19 pandemic.

[16] Mr. Cain called one witness, Judith Palmer, his Parole Officer at the Jamieson Centre, who addressed his suggestion that his release plan was imposed by a parole officer:

A: Okay. The release plan is created by a community parole officer. It is sent to the Parole Board with the recommendations that the community parole officer made, with respect to the conditions. The Parole Board ... I can recommend whatever the conditions are; the Parole Board has the last word. They can change the conditions, they can leave the conditions I recommended, right? So, I do not impose any conditions. No parole officer imposes any conditions ... only the Parole Board does. We only recommend. Does that ...

Q: That answers that question.

A: Okay.

Q: Is there any difference in that ... in this circumstance when an individual is on statutory release versus on parole (in relation to the involvement of the Parole Board of Canada and the imposition of conditions and living arrangements)?

A: No. The Parole Board always [inaudible] and imposes the conditions (doesn't matter if it's day parole, full parole or S.R., right. The parole officers only recommend in any of those cases. At the end of the day, the Parole Board has the ultimate decision to make whether they agree or disagree with me when I recommend ... when I make a recommendation.

Q: Okay.

A: The only difference is, on S.R., the Parole Board isn't deciding whether you get S.R. or not because that's automatic by law.

Q: Has to happen.

A: Correct, yeah. So, in a day parole, they can deny day parole; they can deny a full parole. You can stay in jail until you're S.R. So, that's kind of the difference with ... with that. The day and the full parole is earned released [sic]; your S.R. is ... is by law (we have to release you).

Q: Who imposed the residency requirement on Mr. Cain to live at the Jamieson Centre (the Parole Board or a parole officer)?

A: The Parole Board of Canada.

Q: Are you aware of the designation of the Jamieson Community Correctional Centre?

A: I've been at the Jamieson Community Correctional Centre since it opened.

Q: Which was when?

A: Approximately six years ago.

Q: Okay.

A: And it's always been called the Jamieson Community Correctional Centre. We have three CCCs in the Atlantic region and we are one of them.

Q: And what are the other two?

A: There's one in Saint John; there's one in Newfoundland. Off the top of my head, I can't remember what they're called, so ...

Q: Okay. And is there a step down from the CCCs?

A: Yes, the CRFs, the Community Residential Centres, which are operated by privately owned ... like Salvation Army, John Howard Society, E. Fry. The CCC is the only one that's operated by CSC.

Q: Okay. So, Jamieson Centre is operated by Corrections Canada.

A: Correct.

Q: But the ... the conditions imposed were imposed by the Parole Board of Canada.

A: Correct.

[17] On July 13, the court sent the parties a letter requesting submissions in relation to "the significance, or lack thereof" of *R. v. Bird*, 2019 SCC 7. The parties made submissions on July 20, 2023.

## Legislation

[18] Section 133 of the *Corrections and Conditional Release Act,* S.C. 1992, c. 20, states, in part:

**Definition of *releasing authority***

**133 (1)** In this section, ***releasing authority*** means

**(a)** the Board, in respect of

**(i)** parole,

**(ii) statutory release,** or

**(iii)** unescorted temporary absences authorized by the Board under subsection 116(1);

**(b)** the Commissioner, in respect of unescorted temporary absences authorized by the Commissioner under subsection 116(2); or

**(c)** the institutional head, in respect of unescorted temporary absences authorized by the institutional head under subsection 116(2).

**…**

Residence requirement

(4) Where, in the opinion of the releasing authority, the circumstances of the case so justify, the releasing authority may require an offender, as a condition of parole or unescorted temporary absence, to reside in a community-based residential facility.

**Residence requirement**

**(4.1) In order to facilitate the successful reintegration into society of an offender, the releasing authority may, as a condition of statutory release, require that the offender reside in a community-based residential facility or a psychiatric facility if the releasing authority is satisfied that, in the absence of such a condition, the offender will present an undue risk to society by committing, before the expiration of their sentence according to law, an offence set out in Schedule I or an offence under section 467.11, 467.12 or 467.13 of the *Criminal Code*.**

**Definition of *community-based residential facility***

**(4.2) In subsection (4.1), *community-based residential facility* includes a community correctional centre but does not include any other penitentiary.**

**Not necessary to determine particular offence**

**(4.3)** For the purposes of subsection (4.1), the releasing authority is not required to determine whether the offender is likely to commit any particular offence.

**Consent of commissioner**

**(4.4)** A condition under subsection (4.1) that an offender reside in a community correctional centre is valid only if consented to in writing by the Commissioner or a person designated, by name or by position, by the Commissioner.

**Duration of conditions**

**(5)** A condition imposed pursuant to subsection (3), (4) or (4.1) is valid for such period as the releasing authority specifies.

**Relief from conditions**

**(6)** The releasing authority may, in accordance with the regulations, before or after the release of an offender,

> **(a)** in respect of conditions referred to in subsection (2), relieve the offender from compliance with any such condition or vary the application to the offender of any such condition; or
>
> **(b)** in respect of conditions imposed under subsection (3), (4) or (4.1), remove or vary any such condition.

**Obligation — removal or variance of condition**

**(7)** Before removing or varying any condition imposed under subsection (3.1) on an offender, the releasing authority shall take reasonable steps to inform every victim or person that provided it with a statement referred to in that subsection in relation to that offender of its intention to remove or vary the condition and it shall consider their concerns, if any.

[Emphasis added]

[19] Section 147 of the *CCRA* authorizes an offender to appeal a decision of the Board to the Appeal Division:

> **Right of appeal**
>
> **147 (1)** An offender may appeal a decision of the Board to the Appeal Division on the ground that the Board, in making its decision,
>
> **(a)** failed to observe a principle of fundamental justice;
>
> **(b)** made an error of law;
>
> **(c)** breached or failed to apply a policy adopted pursuant to subsection 151(2);
>
> **(d)** based its decision on erroneous or incomplete information; or
>
> **(e)** acted without jurisdiction or beyond its jurisdiction, or failed to exercise its jurisdiction.
>
> **Decision of Vice-Chairperson**
>
> **(2)** The Vice-Chairperson, Appeal Division, may refuse to hear an appeal, without causing a full review of the case to be undertaken, where, in the opinion of the Vice-Chairperson,
>
> **(a)** the appeal is frivolous or vexatious;
>
> **(b)** the relief sought is beyond the jurisdiction of the Board;
>
> **(c)** the appeal is based on information or on a new parole or statutory release plan that was not before the Board when it rendered the decision appealed from; or
>
> **(d)** at the time the notice of appeal is received by the Appeal Division, the offender has ninety days or less to serve before being released from imprisonment.
>
> **Time and manner of appeal**
>
> **(3)** The time within which and the manner in which a decision of the Board may be appealed shall be as prescribed by the regulations.
>
> **Decision on appeal**
>
> **(4)** The Appeal Division, on the completion of a review of a decision appealed from, may
>
> **(a)** affirm the decision;
>
> **(b)** affirm the decision but order a further review of the case by the Board on a date earlier than the date otherwise provided for the next review;
>
> **(c)** order a new review of the case by the Board and order the continuation of the decision pending the review; or

> **(d)** reverse, cancel or vary the decision.
>
> **Conditions of immediate release**
>
> **(5)** The Appeal Division shall not render a decision under subsection (4) that results in the immediate release of an offender from imprisonment unless it is satisfied that
>
> > **(a)** the decision appealed from cannot reasonably be supported in law, under the applicable policies of the Board, or on the basis of the information available to the Board in its review of the case; and
> >
> > **(b)** a delay in releasing the offender from imprisonment would be unfair.

[20] The PBC's "Decision-Making Policy Manual for Board Members", Policy 11.1, sets out the policies in relation to the following topics: Legislative Framework, Right to Appeal, Process, Quorum, Decision and Reasons, and New Reviews Ordered by the Appeal Division. Specifically in relation to the limitation period, the policy states:

> 3. Pursuant to section 168 of the CCRR (Corrections and Conditional Release Regulations), the appeal must be received by the Board within two months after the date of the decision under appeal.
>
> 4. The Vice-Chairperson of the Appeal Division may accept an appeal that is received beyond the two-month timeframe in cases where they are satisfied that the delay was justified or that circumstances make it desirable that the appeal proceed on the basis of procedural fairness.

## Caselaw

[21] In *Pratt v. Nova Scotia (Attorney General)*, 2020 NSCA 39, Van den Eyden J.A. for the court, explained the importance of *habeas corpus*, and the challenges that face most applicants, who are usually self-represented, in pursuit of this critical remedy:

> [54] *Habeas corpus* is a fundamental remedy with historical and constitutional significance in our legal system. The oversight obligation of reviewing provincial superior courts is a very important function. This obligation cannot be given short shrift even if it may be, by times, challenging, cumbersome and inconvenient. The *Rules* expressly acknowledge that *habeas corpus* takes priority over all other business of the court (see *Rule* 7.13 (1)).
>
> [55] The principles that govern are well-known and not controversial. By way of a cursory overview they include:
>
> > • *Habeas corpus* is a "non-discretionary" remedy. It must be issued as of right by the provincial superior courts where the requirements are met.

- If the applicant proves a deprivation of liberty and raises a legitimate ground to question the legality of the deprivation the matter must proceed to a hearing.

- If the applicant has raised such a ground, the onus shifts to the respondent authorities to show the deprivation of liberty was lawful.

- The requirement for a legitimate ground has been characterised as "a legitimate doubt" or "some basis" to question the lawfulness of the detention. This requirement is different than actual proof that the detention is unlawful. The legal burden to prove lawfulness rests upon the respondent decision maker.

- An interpretation of the test for "legitimate ground" that increases the standard of proof, or imposes technical legal requirements, runs the risk of unduly narrowing the scope of this constitutionally protected remedy.

- Thus, when interpreting the legitimate ground requirement attention must be paid to avoid shifting the burden improperly. This is especially so in situations where the applicant claims lack of access to information or reasons concerning their detention.

- This interpretation of the content of the applicant's obligation to show "grounds" to question the lawfulness of a decision is consistent with the purpose of the remedy to hold authorities to account for incursions on personal liberty.

- A challenge to the fairness of the process may be based on procedural violations of either or both the common law or statute. In determining the fairness of the process, apart from transient or trifling complaints, respondent decision makers are not entitled to deference by the reviewing court.

- In short, the rules that govern can be said to favour the prisoner, requiring the respondent decision maker to introduce evidence to justify the deprivation where the prisoner has discharged their evidential burden by establishing a factual context that "bears upon" the legality of the imprisonment. A claim based on no disclosure or reasons for decision can meet that requirement.

See *May v. Ferndale Institution*, *supra*; *Mission Institution v. Khela*, 2014 SCC 24; *Ogiamien v. Ontario (Community Safety and Correctional Services)*, 2017 ONCA 839; J. Farbey, R. J. Sharpe and S. Atrill, *The Law of Habeas Corpus*, 3rd ed (Oxford: Oxford University Press, 2011).

[56] It is also important to recognize the additional challenges self-represented prisoners face in advancing their *habeas* claims. It cannot be seriously disputed that, as a general statement, prisoners face challenges in advancing litigation. These challenges are particularly pronounced for prisoners in restricted detention, such as

> solitary confinement. There are added challenges if the prisoner has underlying literacy and/or mental health issues.
>
> [57] Given the many prisoner appeals and chambers matters before this Court, I can take judicial notice of the challenges self-represented prisoners face in getting legal documentation prepared and filed, gaining access to legal research, and even receiving or sending mail pertaining to active matters.
>
> [58] There is a role for lower court judges to manage *habeas corpus* applications with particular regard to facilitating access to justice for self-represented applicants. Bourgeois, J. (as she then was) noted in *Blais v. Correction Service Canada*, 2011 NSSC 508:
>
> > [9] ... [P]rovincial 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.

[22] In setting out considerations that this court must keep in mind when in receipt of a *habeas corpus* application, Van den Eyden J.A. explained:

> [94] There were numerous material shortcomings in the handling of this application. This Court's identification and response to these shortcomings hopefully provides clarity respecting the proper procedures and legal principles to be employed by the reviewing court with respect to *habeas* applications and will guard against similar future errors and ensure that the remedy remains robust, as it should regardless of whether the applicant is in a provincial or federal prison.
>
> [95] As stated, lower courts must diligently guard against the erosion of the *habeas corpus* remedy in the prison context. Fair and speedy processes are necessary to ensure the urgent objective of hearing *habeas corpus* applications on an expedited basis is realized.
>
> [96] In *Beals c. Anctil*, 2018 QCCA 2000, the Quebec Court of Appeal calls upon judges, courts—both trial and appellate-level—to revise and correct their processes as necessary to ensure the urgent objective of hearing *habeas corpus* applications on an expedited basis is realized (¶39).
>
> [97] To protect the *Charter* right to detention review and to best facilitate access to justice for self-represented *habeas corpus* applicants, lower courts can play a helpful role by simplifying and clarifying their *habeas* process. As Beveridge, J.A. noted in *Springhill Institution v. Richards*, 2015 NSCA 40:
>
> > [159] For virtually all challenges to the actions of CSC, the applicant is self-represented. Simplicity in procedure is to be encouraged. ...
>
> [98] As a starting point, *Rule* 7 provides a fairly comprehensive framework for ensuring *habeas* applications get the priority mandated over the lower court's business. The employment of timely motion for directions via video or teleconference—desirable tools to help sort through many preliminary matters that

> may arise—provides a venue to work through some of the challenges self-represented prisoners face in marshalling their applications.

[23] The court in *Pratt* was critical of the trial judge for dismissing the application in that case at Stage One (a hearing without any evidence on the merits) and then later rendering a fulsome decision on the merits, based on evidence not tendered at the hearing.

[24] While no evidence was called at Stage One of the instant hearing, evidence was required to deal with the discrete issue of jurisdiction.

[25] In *May v. Ferndale Institution*, 2005 SCC 82, the court held that provincial superior courts (such as the NSSC), should decline to exercise their *habeas corpus* jurisdiction where there is in place a complete, comprehensive, and expert procedure for review of an administrative decision. The court stated:

> 44 To sum up therefore, the jurisprudence of this Court establishes that prisoners may choose to challenge the legality of a decision affecting their residual liberty either in a provincial superior court by way of *habeas corpus* or in the Federal Court by way of judicial review. As a matter of principle, a provincial superior court should exercise its jurisdiction when it is requested to do so. *Habeas corpus* jurisdiction should not be declined merely because another alternative remedy exists and would appear as or more convenient in the eyes of the court. The option belongs to the applicant. Only in limited circumstances will it be appropriate for a provincial superior court to decline to exercise its *habeas corpus* jurisdiction. For instance, in criminal law, where a statute confers jurisdiction on a court of appeal to correct the errors of a lower court and release the applicant if need be, *habeas corpus* will not be available (i.e. *Gamble*). **Jurisdiction should also be declined where there is in place a complete, comprehensive and expert procedure for review of an administrative decision** (i.e. *Pringle* and *Peiroo*). [Emphasis added]

[26] In *Mission Institution v. Khela*, 2014 SCC 24, the court reiterated this jurisdiction restriction on provincial superior courts:

> [42] Twenty years after the *Miller* trilogy, in *May*, this Court stressed the importance of having superior courts hear *habeas corpus* applications. The majority in *May* unambiguously upheld the *ratio* of *Miller*: ". . . *habeas corpus* jurisdiction should not be declined merely because of the existence of an alternative remedy" (para. 34). **In *May*, the Court established that, in light of the historical purposes of the writ, provincial superior courts should decline jurisdiction to hear *habeas corpus* applications in only two very limited circumstances:**

> . . . where (1) a statute such as the *Criminal Code*, R.S.C. 1985, c. C-46, confers jurisdiction on a court of appeal to correct the errors of a lower court and release the applicant if need be or **(2) the legislator has put in place complete, comprehensive and expert procedure for review of an administrative decision.** [para. 50]
>
> As was true in *May*, the first exception does not apply to the instant case. As for the second exception, the appellants have offered no argument to suggest that the transfer and review process of CSC has, since *May*, become a "complete, comprehensive and expert procedure" (paras. 50-51). [Emphasis added]

[27] Consistent with this direction, courts in this province have declined to exercise their *habeas corpus* jurisdiction when asked to review decisions of the PBC: *National Parole Board v. Finck*, 2008 NSCA 56; *Blais v. Canada (Attorney General)*, 2012 NSCA 109, leave to appeal refused, [2012] S.C.C.A. No. 488; *Gallant v. Springhill Institution*, 2014 NSSC 122. Courts in other jurisdictions have come to the same conclusion: *R. v. Graham*, 2011 ONCA 138; *John v. Canada (National Parole Board)*, 2011 BCCA 188, leave to appeal refused, 2011 CanLii 77187 (SCC); and *Little v. Canada*, 2022 ONCA 457.

[28] In *Finck*, the court stated:

> [15] The statutory appeal process to the NPB Appeal Division under s. 147 of the *CCRA* is a complete, comprehensive and expert procedure to challenge the decision of the NPB. The grounds of appeal stated in s. 147 (1) include the type of argument made by Mr. Finck on his *habeas corpus* application under appeal. Judicial review of a decision of the NPB Appeal Division is governed by the *Federal Courts Act*, R.S.C. 1985, c. F-7. There may be exceptional circumstances where a statutory appeal procedure, comprehensive on its face, is so ineffective as to warrant the exercise of judicial discretion by *habeas corpus*. Nothing of that sort exists here.
>
> [16] The Supreme Court judge had concurrent jurisdiction, but he should have declined to exercise it. In my view, the Supreme Court judge erred in law by deciding this matter that was within the complete, comprehensive and expert statutory appeal jurisdiction of the NPB Appeal Division.

[29] In *Blais*, the court stated:

> [3] The appellant says Justice Bourgeois was wrong to decline jurisdiction to hear his *habeas corpus* application. The principles governing the exercise of a court's *habeas corpus* jurisdiction are authoritatively set out in the decision of the Supreme Court of Canada in *May v. Ferndale Institution*, 2005 SCC 82. Applications for *habeas corpus* based on complaints about denial or revocation of parole have consistently been viewed as being properly dealt with in the

> processes set out in the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, with eventual recourse to the Federal Court of Canada by way of judicial review. As a consequence, requests to challenge restrictions on the liberty of inmates triggered by parole decisions fall within the admonition set out in *May v. Ferndale* that *habeas corpus* jurisdiction should be declined if there is in place a complete, comprehensive and expert procedure for review of an administrative decision (para. 44).
>
> [4] Appellate courts throughout Canada have consistently taken the view that the processes in the *Corrections and Conditional Release Act* meet that criteria, including this Court in *Canada (National Parole Board) v. Finck*, 2008 NSCA 56. See also: *Armaly v. Canada (Parole Services)*, 2001 ABCA 280; *Lord v. Coulter*, 2009 BCCA 62; R. v. Latham, 2009 SKCA 26; *John v. Canada (National Parole Board)*, 2011 BCCA 188, leave to appeal refused, [2011] S.C.C.A. No. 256; *R. v. Graham*, 2011 ONCA 138.

[30] In *Gallant*, Van den Eyden J. (as she then was), stated:

> [9] Courts have consistently upheld the above noted exception to jurisdiction; in particular where the "legislation has put in place a complete, comprehensive and expert procedure" such as the CCRA in parole and statutory release matters. I refer to our Court of Appeal *in National Parole Board v. Finck 2008 NSCA 56 and Blais v. Canada (Attorney General)* 2012 NSCA 109.
>
> [10] The deprivation of liberty Mr. Gallant asserts is a matter to be determined through the complete, comprehensive and expert procedure set out in the CCRA. In fact, Mr. Gallant availed himself of the process and is awaiting a decision on the issues he brought before this Court.
>
> [11] The law is clear. This is one of the limited exceptions in which a provincial superior court should decline jurisdiction. I so decline. Mr. Gallant's application for habeas corpus is dismissed.

[31] In *Bird*, the court was dealing with an offender who breached his Long Term Supervision Order. Moldaver J, for the majority, summarized the facts:

> **3** Mr. Bird was found to be a long-term offender and received a sentence comprised of a prison term and a period of long-term supervision in the community. Based in part on Mr. Bird's lengthy history of violence and numerous failed conditional releases, the Parole Board imposed a residency condition as part of Mr. Bird's LTSO. This condition required that he reside at a community correctional centre, community residential facility or other residential facility approved by the Correctional Service of Canada ("CSC"). CSC placed Mr. Bird in Oskana Centre, a community correctional centre. Less than a month after his long-term supervision commenced, Mr. Bird left Oskana Centre and did not return. He was eventually

> apprehended and charged under s. 753.3(1) of the *Criminal Code*, R.S.C. 1985, [page420] c. C-46, with having breached the residency condition of his LTSO.
>
> **4** Mr. Bird defended the charge at trial on the basis that the residency condition of his LTSO was not within the Parole Board's statutory authority and violated his s. 7 *Charter* rights. The trial judge accepted this argument and acquitted Mr. Bird, finding that the residency condition was invalid. On appeal, the Court of Appeal for Saskatchewan rejected this finding. In its view, the trial judge impermissibly permitted Mr. Bird to collaterally attack the residency condition. The Court of Appeal set aside Mr. Bird's acquittal, entered a conviction on the charge under s. 753.3(1) and remitted the matter to the Provincial Court of Saskatchewan for sentencing. Mr. Bird now appeals to this Court. He renews his s. 7 *Charter* attack on the residency condition. Additionally, he raises for the first time that the condition violates his *Charter* rights under ss. 9 and 11(h).
>
> **5** For reasons that follow, I agree with the Court of Appeal that Mr. Bird was not permitted to collaterally attack the residency condition of his LTSO. In view of that, I find it unnecessary to address the various Charter arguments he has raised in support of his position that the residency condition is invalid. Accordingly, I would dismiss the appeal.

[32] Justice Moldaver explained the law and issues in relation to that decision variously:

> **24** In sum, two principles underlie the approach to collateral attacks on court orders: (1) the importance of maintaining the rule of law and preserving the repute of the administration of justice; and (2) ensuring that individuals have an effective means to challenge court orders, particularly when these orders are challenged on the basis that they are not *Charter* compliant. As I will explain, the *Maybrun* framework accounts for these principles in the administrative context.
>
> **…**
>
> **34** The Parole Board imposed the residency condition on Mr. Bird's LTSO pursuant to s. 134.1(2) of the *CCRA*, which permits the Parole Board to "establish conditions for the long-term supervision of the offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender". An LTSO is a form of conditional release governed by the *CCRA*: *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, at para. 47. The sentencing court establishes only the length of an LTSO (*ibid.*, at para. 44). The specific conditions of long-term supervision are a combination of what the *CCRA* prescribes and what the Parole Board orders pursuant to its authority under s. 134.1(2) of the *CCRA* (C.A. reasons, at para. 22).
>
> **…**

**45 The Court of Appeal noted and the parties conceded that there is no right of appeal under the *CCRA* from a decision of the Parole Board concerning the conditions of an LTSO (C.A. reasons, at para. 52). I approach this matter on that basis.**

…

**48** Before this Court, Mr. Bird asserts that the residency condition in his case infringed his rights under ss. 7, 9 and/or 11(h) of the *Charter*. He argues that because a community correctional centre meets the definition of a penitentiary under the *CCRA*, the residency condition is not authorized under s. 134.1(2) of the *CCRA* and is inconsistent with the objectives of long-term supervision. He maintains that the purpose of long-term supervision is to release people into the community, not to a penitentiary (see transcript, at p. 23).

…

**49** To the extent that Mr. Bird seeks to rely on the *Charter* as a basis for challenging the residency condition, the record indicates that he had at least two and possibly three viable options open to him. First, Mr. Bird could have written to the Parole Board to ask it to vary or remove the condition. Second, he could have applied for judicial review in the Federal Court (although, as I will explain, this may not have provided an effective remedy). And third, he could have applied to the provincial superior court for habeas corpus. I therefore respectfully disagree with the assertion by the intervener Aboriginal Legal Services Inc. that Mr. Bird "had virtually no means to challenge the decision to any body anywhere" (I.F., at para. 30). Taken collectively, these mechanisms provided Mr. Bird with an effective means to challenge the residency condition.

…

**55** In sum, there is nothing to indicate that Mr. Bird could not have written to the Parole Board and requested that it reconsider its original decision on the basis that it did not comply with the *Charter*. It was open to the Parole Board to grant an appropriate remedy to Mr. Bird by varying or removing the residency condition. I accept that, in doing so, Mr. Bird would be asking the same body that made the decision to reconsider it, which is not the same as a right of appeal to a body which is independent from the original decision-maker, such as an administrative appeal tribunal, as was the case in *Maybrun* and *Klippert*. In those decisions, the Court specifically noted that the relevant statutory schemes provided a right of appeal to an independent specialized tribunal (see *Maybrun*, at para. 56; *Klippert*, at para. 17). But, as I will explain, Mr. Bird could have applied for *habeas corpus* in a provincial superior court. He could also have applied for judicial review in the Federal Court, subject to the concerns discussed below.

…

**62 Although Mr. Bird did not have a right of appeal from the Parole Board's decision to an independent administrative tribunal**, applying for *habeas corpus* in a provincial superior court would have given him the opportunity to ask for speedy relief from an independent body. *Habeas corpus*, which has been called the "Great Writ of Liberty" (see *May*, at para. 19), is a remedy designed to provide "swift access to justice for those who have been unlawfully deprived of their liberty" (*Mission Institution v.* [page443] *Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502, at para. 3). Once the applicant shows a deprivation of liberty and some basis for concluding that the detention is unlawful, the court will issue a writ of *habeas corpus*, which requires the detaining authorities to demonstrate at a hearing that the detention is justified (*ibid.*, at para. 41). Generally, courts give priority to *habeas corpus* applications as they are deemed urgent (*Brown v. Canada (Public Safety)*, 2018 ONCA 14, 420 D.L.R. (4th) 124, at para. 20), and a hearing of a *habeas corpus* application can be obtained more rapidly than a hearing of a judicial review application in the Federal Court (*May*, at para. 69; *Khela*, at para. 46; *Ogiamien v. Ontario (Community Safety and Correctional Services)*, 2017 ONCA 839, 55 Imm. L.R. (4th) 220, at para. 18). As this Court noted in *May*, *habeas corpus* is a crucial remedy in pursuit of ss. 7 and 9 rights under the *Charter* (para. 22). Given the long history of this remedy, its central role in safeguarding against unlawful deprivations of liberty, and the fact that it is enshrined in s. 10(c) of the *Charter*, Parliament would clearly have been aware of *habeas corpus* and its availability to challenge residency conditions that are not *Charter* compliant and thereby unlawfully deprive long-term offenders of their liberty.

**63** There is nothing in the record to indicate that Mr. Bird would have been unable to apply for *habeas corpus*. The essence of Mr. Bird's constitutional argument is that he had been deprived of liberty unlawfully by the Parole Board's order, which in its effect led to his residence at Oskana Centre. No issue was taken with the fact that Mr. Bird's residency condition amounted to a deprivation of liberty: see *R. v. Miller*, [1985] 2 S.C.R. 613, at p. 637; *May*, at para. 76. Moreover, this Court has recognized that *habeas corpus* is a remedy particularly well-suited for individuals in Mr. Bird's situation, who may be self-represented, "the quick resolution of ... issues" afforded by habeas corpus is important "if counsel is acting pro bono or on limited legal aid funding or if the prisoner is representing himself" (*May*, at para. 69). *Habeas corpus* is more accessible to [page444] self-represented litigants than judicial review in the Federal Court, as it provides access to local procedures "upon which [self-represented litigants] may more readily obtain some type of legal assistance and advice" (*Bowden*, at para. 40).

**64** Furthermore, there is no evidence that a provincial superior court would have declined its jurisdiction to hear Mr. Bird's application. *May* clarified that as a governing rule, a provincial superior court has the jurisdiction to hear an application for *habeas corpus*, despite the fact that alternative remedies are available in the

Federal Court (para. 50; *Khela*, at para. 42). As this Court noted in *May*, "As a matter of principle, a provincial superior court should exercise its jurisdiction when it is requested to do so. *Habeas corpus* jurisdiction should not be declined merely because another alternative remedy exists" (para. 44).

**65** The Court in *May* stated that provincial superior courts should decline jurisdiction to hear habeas corpus applications in only two very limited circumstances (para. 50; *Khela*, at para. 42). First, *habeas corpus* cannot be used to challenge the legality of a conviction (*May*, at para. 36). Second, where Parliament has put in place "a complete, comprehensive and expert statutory scheme which provides for a review at least as broad as that available by way of *habeas corpus* and no less advantageous", provincial superior courts should decline jurisdiction (*May*, at paras. 40 and 63; *Khela*, at para. 42; *Ogiamien*, at para. 13).

**66** In the circumstances of this case, there is nothing in the record to indicate that there was a mechanism which provided a form of review as advantageous as *habeas corpus*. While Mr. Bird accepts that he could have written to the Parole Board to ask it to reconsider its original decision, this would not have enabled him to seek relief from an independent body (see *May*, at para. 62). Furthermore, this Court in *May* and *Khela* set out five factors that militate in favour of a provincial superior court hearing a *habeas corpus* application, despite the availability of judicial review in the Federal Court. Four of these [page445] five factors are relevant to this case. First, a hearing of a *habeas corpus* application in a superior court can be obtained more rapidly than a hearing of a judicial review application in the Federal Court (*May*, at para. 69; *Khela*, at para. 46). Second, Mr. Bird would have greater local access to a provincial superior court than to the Federal Court (*May*, at para. 70; *Khela*, at para. 47; *Ogiamien*, at para. 18). Third, superior courts are "eminently familiar with the application of *Charter* principles", which are directly at issue when a person claims to have been unlawfully deprived of liberty (*Khela*, at para. 45; see also *May*, at para. 68). Fourth, unlike judicial review, habeas corpus is non-discretionary: a court must issue a writ of *habeas corpus* where the applicant has shown a deprivation of liberty and raised a legitimate basis on which to question the legality of the detention (*May*, at para. 71; *Khela*, at para. 48; *Ogiamien*, at para. 18).

**67** For these reasons, it is difficult to conceive of a remedy better suited to Mr. Bird's circumstances than *habeas corpus*, designed as it is to provide swift and easily accessible relief to persons challenging a deprivation of their liberty. Moreover, given the force of the first two *Maybrun* factors, which strongly indicate that Parliament did not intend to permit long-term offenders to launch collateral attacks against their LTSO conditions in criminal proceedings, if effective alternative mechanisms or forums exist, then it is axiomatic that Parliament would

> have intended that those alternatives be used, rather than permitting a collateral attack in criminal proceedings. To reason otherwise and to adopt the narrower approach advocated by my colleague would be to assume Parliament's ignorance of these effective alternatives - which, in the case of *habeas corpus*, is particularly difficult to imagine since the writ has existed for centuries (see *May*, at para. 19) and is enshrined in s. 10(c) of the *Charter*- or, if aware of them, that Parliament intended for some unknown reason that they not be used. I am not persuaded that either assumption is justified.
>
> [Emphasis added]

[33] In *Lesiewicz c. Procureur general du Canada*, 2019 QCCS 4210, the court noted that while jurisdiction should be declined where there is in place a complete, comprehensive and expert scheme for review, this does not apply to decisions by the PBC concerning LTSOs:

> **16** Le procureur général du Canada ne soutient pas qu'en l'espèce, le Tribunal peut décliner compétence en raison de la mise en place par la *LSCMLSC* d'une procédure d'examen complet, exhaustif et spécialisé d'une décision de la Commission imposant des conditions spéciales de surveillance à un délinquant à contrôler. Ainsi, l'exception à l'exercice de la compétence en matière d'*habeas corpus* qui trouve application lorsque la Commission impose des conditions restrictives de liberté à un délinquant obtenant une libération conditionnelle (voir *Del Balso* c. *Thibeault*, 2018 QCCA 1640; *Perron* c. *Tremblay*, 2017 QCCA 1407) ne vaudrait pas dans les cas où la Commission exerce le même type de pouvoir à l'égard d'un délinquant à contrôler. Cette position est conforme à celle adoptée par les parties dans le cadre de l'arrêt *Bird*, soit que la *LSCMLSC* n'offre pas de droit d'appel devant une division d'une cour d'appel de la décision de la Commission imposant des conditions spéciales d'*OSLD* (voir *Bird*, paragr. 45 et 46). La Cour fédérale en était arrivée à cette même conclusion dans *McMurray* c. *Commission nationale des Libérations conditionnelles*, 2004 CF 462. Selon elle, l'article 99.1 de la *LSCMLSC* privait, par exclusion implicite, les délinquants à contrôler du droit d'appel des décisions de la Commission prévu à l'article 147 [3] .

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> **3** Voir par ailleurs l'interprétation donnée à l'article 99.1 de la *LSCMLSC* par la Cour fédérale d'appel dans *Normandin* c. *Canada (Procureur générale)*, 2005 CAF 345, paragr. 30, laquelle s'écarte de l'interprétation retenue dans *McMurray* sans la mettre spécifiquement de côté; voir aussi *Saint-Pierre* c. *Canada (Procureur général)*, 2018 CF 1065, paragr. 52 à 54.

[34] In response to the court's inquiry about Mr. Cain missing the limitation period to appeal the decision to the PBC, the AGC filed *Boviz v. Canada (Attorney General)*, 2018 ABQB 215, wherein Henderson J. declined jurisdiction to hear a

*habeas corpus* application where the applicant had missed the appeal deadline to the PBC. Henderson J. stated:

> **15** Mr. Boviz also indicates he chose to seek *habeas corpus* because the sixty day period to appeal his statutory release revocation had expired.
>
> …
>
> **18** Second, Mr. Boviz acknowledges he has failed to appeal the Parole Board of Canada August 3, 2017 decision and that his appeal period has expired. In ***Ewanchuk v Canada (Parole Board)***, 2015 ABQB 707 at paras 87-88, aff'd on other grounds 2017 ABCA 145 Graesser J concluded that a failure to pursue alternative remedies in a timely manner closes access to *habeas corpus*.
>
> …
>
> **20** The written reply by Mr. Boviz clarifies that he is challenging decisions of the Parole Board of Canada, however his written reply does not explain why in law this Court has the jurisdiction to conduct *habeas corpus* review of decisions by that tribunal.
>
> **21** Instead, the law is clear that this Court should refuse to hear *habeas corpus* applications which challenge that Parole Board of Canada: ***Armaly v Canada (Parole Service)***, 2001 ABCA 280, 299 AR 188, leave to appeal to SCC refused, 29130 (3 April 2002); ***Lee v Attorney General of Canada***, 2018 ABQB 40 at paras 147-151. That includes decisions of parole officers: ***Latham v Alberta***, 2018 ABQB 141 at paras 26-27 [***Latham #2***].
>
> **22** A *habeas corpus* application which seeks to review the operation of the Parole Board of Canada is an abuse of the court's processes: ***Lee v Attorney General of Canada***, at para 151; ***Latham #2***, at paras 28-29.
>
> **23** This is a second, independent basis on which I dismiss Mr. Boviz's application.
>
> **III. Conclusion**
>
> **24** Mr. Boviz's February 2, 2018 *habeas corpus* application is dismissed *in toto*.

[35] Due to his visual impairment, the PBC gave Mr. Cain three months to file an appeal. He chose not to, and after that three month period, filed this application. Nonetheless, the PBC has the discretion to extend the appeal period. It is up to

Mr. Cain to determine whether he will choose to file an appeal. So while *Boviz* is not binding, or directly relevant to the instant case, it suggests that the issue of a missed appeal period should not carry much weight at this stage.

**Analysis**

[36] Mr. Cain was encouraged to seek counsel for this hearing (he declined). He had the opportunity to file foundational materials. He called evidence in relation to jurisdiction. He filed written submissions on all issues (with the assistance of Lisa Teryl, who was on a limited retainer and never appeared at a contested aspect of the application). Mr. Cain made several oral arguments throughout this application and called evidence at the jurisdictional hearing. He has not appealed to the PBC. The AGC was also an active participant at all stages of this application, and called evidence at the jurisdictional hearing.

[37] Despite Mr. Cain's efforts to show that his conditions were implemented by his parole officer and not the PBC, it is clear that his PO *recommended* his conditions, but the PBC *made the order* regarding his conditions. Similarly, despite Mr. Cain's efforts to convince the court that the Jamieson Community Correctional Centre is a medium security correctional facility, and not a community correctional center or a halfway house, the AGC has clearly proven that the Jamieson Community Correctional Centre is a minimum-security community correctional centre, run by Correctional Services Canada, and falls within the ambit of s. 133 of the *CCRA.*

[38] Mr. Cain is on statutory release. Section 133(4.1) of the *CCRA* gives legislative authority to the PBC to impose conditions on Mr. Cain, including the residential requirement of living at the Jamieson Community Correctional Centre.

[39] In *Bird*, because there was no means for reviewing the residency condition of someone on a LTSO, the majority determined that a *habeas corpus* application in a provincial superior court, like the NSSC, was a valid route to pursue a remedy. However, someone on statutory release, like Mr. Cain, is in a completely different situation. The *CCRA* clearly provides Mr. Cain with an appeal route to the PBC. He was told about the appeal route by way of letter from the PBC when the conditions were originally imposed.

[40] I agree with the AGC that although the cases from this province denying *habeas corpus* applications on jurisdictional grounds involved revocations of

parole or statutory release, rather than the PBC's imposition of conditions upon statutory release (as is Mr. Cain's situation), the law remains the same. Section 133 of the *CCRA*, combined with s. 147 of the *CCRA*, allows for an appeal, and provides that all Appeal Division decisions are subject to judicial review under the *Federal Courts Act*.

[41] The PBC has clear statutory authority to impose conditions (including residency conditions) upon individuals on statutory release, such as Mr. Cain. The PBC has a complete, comprehensive and expert procedure for review by way of appeal. In keeping with the clear directions from the NSCA, the NSSC should decline jurisdiction to hear *habeas corpus* applications regarding PBC decisions where there is a statutory route for review. This includes decisions regarding the imposition of conditions and residency requirements for offenders on statutory release, such as Mr. Cain.

[42] I have no choice but to decline jurisdiction. Mr. Cain's application for *habeas corpus* must be dismissed.

[43] As noted in the AGC's brief, if Mr. Cain wants to have his placement and conditions reviewed or appeal the PBC's decision, he has options:

> The AGC recognizes that each of the cases cited in support of the present jurisdictional argument involved a revocation of parole or statutory release, rather than the Parole Board's imposition of conditions upon statutory release. However, the law remains the same regardless of the content of the Parole Board decision in question: all such decisions are subject to appeal to the Board's Appeal Division under section 147 of the *CCRA*, and all Appeal Division decisions are subject to judicial review under the *Federal Courts Act*.
>
> The proper mechanism for challenging a decision by the Parole Board is by way of appeal to the Board's Appeal Division, and then judicial review in the Federal Court. The Applicant did not pursue an appeal with the Appeal Division.

[44] As noted above, I am declining jurisdiction to hear Mr. Cain's application and therefore dismissing it. The AGC asks for costs in relation to this matter. Mr. Cain is a 67-year-old, visually impaired, self-represented individual who has just finished a lengthy term of federal incarceration and is living in a community correctional facility. I find the AGC's position in relation to costs in this case to be misplaced. No costs will be ordered.

**Conclusion**

[45] The court must decline jurisdiction to hear Mr. Cain's application for *habeas corpus*. The matter will not proceed to Stage Two. It is dismissed. The parties will bear their own costs.

Arnold, J.