

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Rankin v. Nova Scotia (Attorney General)*, 2023 NSSC 267

**Date:** 20230825

**Docket:** *Hfx*, No. 523762

**Registry:** Halifax

**Between:**

Alan S. Rankin

v.

Nova Scotia (Attorney General)

***HABEAS CORPUS STAGE TWO DECISION***

**Judge:** The Honourable Justice Christa M. Brothers

**Heard:** May 19, 30, June 7, 16, 20, 22 and 27, 2023, in Halifax, Nova Scotia

**Counsel:** Alan S. Rankin, Self-Represented  
Duane Eddy, for the Attorney General

**By the Court:**

**Overview**

[1] On May 15, 2023, Alan S. Rankin filed a Notice for *Habeas Corpus* alleging that he was being subjected to arbitrary detention and punishment, deprivation of liberty, and denial of procedural fairness. Mr. Rankin was held by warrant of remand at the Central Nova Scotia Correctional Facility (“CNSCF”).

[2] The underlying facts involve Mr. Rankin being placed on a Behavioral Management Plan (“BMP”), on May 11, 2023, after serving a five-day disciplinary sanction for committing an assault in the dayroom. Mr. Rankin argues that it was unreasonable for him to be placed on a BMP, which constituted additional disciplinary sanctions and punishment, without allowing for a challenge or appeal of this decision. Additionally, he argues that he has not been given the proper amount of access to the airing court over the last month and a half. Lastly, Mr. Rankin alleges that there has been a refusal to provide timely access to necessary information, including:

- Appeal application form;
- Grievance application form;
- *Habeas Corpus* application;
- *Correctional Service Act* and Regulations;
- Correctional Services policies and procedures;
- Behavior Management plans; and,
- Documentation approving CNSCF’s use of the BMP.

[3] Mr. Rankin sought the following remedies:

1. A finding that he wrongfully and arbitrarily punished by being placed on the BMP and that those sanctions be removed.
2. An order that any and all individuals currently under a BMP be released.
3. An inquiry be ordered into the repeated violation of rights being suffered by the individuals detained at CNSCF.

[4] At the beginning of this process, I advised Mr. Rankin that the relief available on his *Habeas Corpus* application is narrow, and focuses exclusively on addressing any unlawful deprivation of his liberty. The court cannot consider the circumstances of anyone housed at CNSCF other than the applicant unless those individuals file their own proceeding. As a result, the court will not make an order relating to “any and all individuals currently under a BMP”, nor will it recommend an inquiry. The focus of the court’s decision is on Mr. Rankin’s placement on a BMP, as well as the amount of airing court time he was provided.

[5] By the time the second-stage hearing took place, Mr. Rankin was no longer on a BMP, which rendered the matter moot. However, the court concluded that it was appropriate to continue to deal with the merits of Mr. Rankin’s application, after having assessed the relevant issues (*Pratt v. AGNS*, 2023 NSSC 159).

## **Facts**

[6] Mr. Rankin was admitted to CNSCF on September 11, 2022. He was placed in the closed confinement unit before being moved to North 1, as per the Covid 19 admission protocols in place at the time. Once he was medically cleared, he was placed in the West 3 dayroom on September 23, 2022, where he has remained. The West 3 dayroom is an open protective custody dayroom.

[7] Mr. Rankin has been placed on two disciplinary reports during his custody term. One was related to disobeying a direct order, and the second to an assault on an inmate. Mr. Rankin was found not guilty of disobeying a direct order as the CCTV video evidence was not provided to the adjudicator when the disciplinary report was submitted.

[8] It is undisputed that on May 5, 2023, Mr. Rankin was placed in confinement on West 3 due to his involvement in an assault on another individual in custody. The incident occurred in the West 3 dayroom during a period of unlock. Based on CCTV video, the AGNS determined that Mr. Rankin had initiated the assault by punching the alleged victim in the head multiple times while the victim was walking away from him to receive his medication. Mr. Rankin was one of seven individuals who participated in the assault which left the victim with significant injuries requiring medical treatment in hospital. Responding officers had to use intermediate weapons to assist in dispersing the assaultive individuals, further elevating security and safety concerns.

[9] Mr. Rankin's adjudication for the assault was held on May 9, 2023. During the hearing, Mr. Rankin met with the adjudicator and was found guilty of breaching the rule of "Assault on Inmate". As a result, Mr. Rankin was sanctioned to five days confined to his cell for his participation in the assault. Since he had already been confined to his cell for four days before his hearing, the sanctions were to end on May 10, 2023, at 20:25 hrs. His loss of privileges was as per policy 43.00.00, section 10.3.

[10] There is a history of group assaults in the West 3 dayroom. Consequently, security concerns have been elevated. Upon completion of Mr. Rankin's disciplinary sanctions, and in light of concerns regarding his assaultive behaviour toward others, it was determined that additional security measures were necessary to address the heightened safety and security concerns in the dayroom. In an effort to not affect the entire dayroom as a whole, as other individuals had chosen not to participate in the assault, the decision was made to place those with a heightened level of culpability on BMPs – also known as Security Management Plans. The alternative would have been to place the entire dayroom on rotational unlocks, due to the number of individuals involved.

[11] Mr. Rankin was informed on the morning of May 11, 2023, that he would be subject to a BMP. He was given a "letter of expectation" by Assistant Deputy John Landry ("AD Landry") detailing why he was placed on the BMP, the expectations of management to be removed from the BMP, along with review date of May 18, 2023. The following are the relevant excerpts of that letter:

Upon completion of your sanctions, and because of concerns regarding your assaultive behavior towards others, it is determined that you will be placed on a Behavioral Management Plan (BMP) in West 3. A BMP is one measure implemented aiming to help individuals in custody that exhibit a pattern of behavior that is unacceptable and potentially harmful to themselves and others. These individuals will be subject to rotational unlocks. All individuals on this unit will be given the opportunity to socialize, clean, participate in programs and function together for a common purpose.

When placed on your BMP, you will be provided with access to the dayroom for a minimum of two hours daily. During this time out you will have access to exercise equipment, showers, phones, television, games including video games as well as a minimum of ½ hour in the airing court (please ask staff as early as possible to accommodate your request). You will have access to these amenities daily with at least one other peer for socialization whenever possible. Based on your recent history of group assault you will be placed on a four-hour morning rotation from 07h00-11h00, this may be affected by staffing levels, as in all other dayrooms. This

is due to your heightened level of security and risk toward others. While on SMP, your behavior will be documented for staff's reference. It is hoped that you will be able to be transitioned and reintegrated with your peers and removed from the BMP once you have demonstrated compliance with facility rules and expectations.

Your BMP will be reviewed on Thursday 18 May 2023, to reassess your progress and whenever deemed appropriate but at least once weekly every Wednesday. The length of time you will be on the BMP will be determined by your ability to follow facility rules and directions.

[12] Mr. Rankin refused to take the paperwork. His paperwork was given to him, and he threw it on his bunk.

[13] Mr. Rankin was able to submit a complaint or an appeal form regarding his BMP if he chose to do so. There was an internal procedure available to him to challenge the BMP. Although Mr. Rankin claimed in his Notice for *Habeas Corpus* that he was not given these documents, they were provided to him at some point and he did file a Notice of Appeal form on May 19, 2023.

### **Hearing**

[14] The Honourable Justice Denise Boudreau presided over the first stage of this *habeas corpus* and set the matter down for a hearing on May 30, 2023.

[15] The hearing was held and after Deputy Superintendent (DS) Critchley's direct examination, she was cross-examined by Mr. Rankin. At the end of her evidence, Mr. Rankin was seeking additional information, including current policies and procedures with regards to BMPs, as well as airing court logs. The court granted Mr. Rankin's request for an adjournment and to be provided with the additional information. The hearing was adjourned until June 7, 2023, when the court scheduled a telephone conference to discuss the AGNS's progress with gathering the additional documentation.

[16] On Thursday, June 1, 2023, two days after the hearing and six days before the June 7 telephone conference, I presided in Crownside where Mr. Rankin, through counsel, was looking to have a five day assessment ordered. That matter was adjourned for counsel to discuss. During Crownside, Mr. Rankin had indicated that he was having difficulty and had concerns about his mental fitness. As a result, on June 7, 2023, I raised the issue of fitness. Mr. Rankin advised that he was okay, that he was feeling better, and that he was simply asking for additional documentation. He asked to extend the dates for the airing court and rotational logs to May 5, 2023, and to be provided with a CD of DS Critchley's evidence so that he could listen to

it again to ensure that he had understood it. The court further addressed his mental fitness. He advised that he was having some emotional issues but was getting assistance with medication and felt capable of proceeding.

[17] The court held a further recorded telephone conference on June 16, 2023, to follow-up on the collection of documentation and Mr. Rankin's ability to access it. On June 20, 2023, the court held another recorded telephone conference to confirm that the materials had been gathered and provided, and rescheduled the continuation of the hearing. The hearing continued on June 27, 2023, with additional filed material from DS Critchley, Assistant Deputy Superintendent (ADS) Darren Pettipas, as well as two affidavits from Mr. Rankin, one dated June 23, 2023 and the other dated June 25, 2023, filed June 27, 2023.

## **Law and Analysis**

[18] The Superintendent derives the authority to place persons in custody on BMPs pursuant to ss. 74 and 75 of the *Correctional Services Act*, S.N.S. 2005 c. 37 and s. 79 of the *Correctional Services Regulations*, N.S. Reg 99/2006 Two recent decisions of the Nova Scotia Supreme Court identified this authority for BMPs *Ward v. Nova Scotia (Attorney General)*, 2023 NSSC 102, and *Pratt v. Nova Scotia (Attorney General)*, 2023 NSSC 159.

[19] When Correctional Services implement BMPs, they are guided by Standard Operating Procedure 43.00.00 section, which states:

### 12. Additional Measures

12.1 A Security Management Plan may be utilized to provide direction to staff regarding any additional security procedures that are required for the management of the offender while they are in close confinement, such as restrictions around

12.1.1 contact with other offenders

12.1.2 offender movement

12.1.3 special precautions, such as "no sharps"

12.1.4 interaction with staff

12.1.5 escort protocols

[20] Mr. Rankin did take advantage of the internal appeal on May 16, 2023, when he appealed the decision by AD Landry to place him on a BMP. Mr. Rankin stated that his placement on a BMP/SMP violated the *Correctional Services Act* and

policies concerning disciplinary procedures. He argued that he did not meet the process requirements for placement on a BMP/SMP and that being placed on the BMP and the process or the deficiencies in the process violated his Charter rights. He requested immediate removal from his BMP/SMP. On May 19, 2023, Mr. Rankin's appeal was dismissed. It was held that the decision to place Mr. Rankin on a BMP in order to establish good order and discipline was within the discretion of the unit managers and was a reasonable and appropriate one in the circumstances within the discretion of the unit managers.

[21] On this application, Mr. Rankin argues that he was adjudicated on the assault in the day room and given five days' closed confinement, and that should have been the extent of his punishment. Mr. Rankin did not disagree with the initial discipline sanctions. He stated in his original affidavit filed with the court on June 23, 2023:

48 Moving on, I will say that; any act of violence, for any reason, is surely a deplorable action on my behalf, but the adjudicator had fair options and opportunity to decide my reasonable punishment of up to 10 days cell time.

49 As mentioned prior in my Affidavit, the adjudicator deemed my appropriate penalty/punishment was five (5) days confinement to cell, with loss of all privileges.

[22] Mr. Rankin argues that CNSCF's decision to place him on a BMP as a further punishment for the assault was unfounded, unreasonable and without authority. Mr. Rankin also claims that, throughout his adjudication while on the BMP, he was not provided with his airing court time between May 5 and May 13. However, his letter of expectation from AD Landry made it clear that, while on his BMP, Mr. Rankin was required to ask staff as early as possible to accommodate his airing court. Additionally, if Mr. Rankin was not provided with his airing court, this was as a result of rotational lockdowns which were being employed throughout the facility. Unfortunately, with respect to access to the airing court, Mr. Rankin was treated the same as all other persons in custody throughout that time, which I have commented upon in *Downey v. Nova Scotia*, 2023 NSSC 204.

[23] Mr. Rankin relies on *Pratt v. Nova Scotia (Attorney General)*, *supra* for his argument that CNSCF did not have the authority to place him on a BMP. The court acknowledges that if BMPs are misused, they could perpetuate the overuse or extension of closed confinement inappropriately. There may be circumstances where BMPs are used to extend closed confinement in a way that violates the Charter rights of the person in custody. However, I cannot conclude that this has occurred in Mr. Rankin's case.

[24] Mr. Rankin filed a supplemental affidavit on June 25, 2023. In that affidavit, he commented on his mental state and the difficulty he was having in CNSCF. In the supplemental affidavit, Mr. Rankin discussed a personal difficulty he is experiencing, which is affected by the lockdown conditions at the facility, as well as the additional time he was confined to his cell under the terms of the BMP. The following statements made by Mr. Rankin in that affidavit are apt:

41 Even with a possible 20 hours a day, confined to conditions have had a severe impact on my general well-being. I have never felt so depressed and hopeless as I have these last few months of CNSCF.

42 I have been double bunkd [*sic*] throughout my remand, than [*sic*] again further confined with another individual on reduced liberties as well.

43 Confined to a cell that was originally built to house a single occupant, but now due to the lengthy periods of time confined to our cell, with overpopulation and staff shortages occurring on a daily basis since I arrived here, the further restrictions imposed by BMPs confinement to cell conditions has exacerbated the already onerous conditions suffered by my cellmate and I.

[25] Mr. Rankin makes note that he has been on remand and is being double-bunked, which exacerbates his difficulties. Mr. Rankin goes on to argue that the BMP sanctions on top of the already reduced recreation times during the constant lockdown periods made it more difficult for him. Mr. Rankin attached a diary to his supplemental affidavit showing his conditions of lockdown beginning April 12, 2023, and continuing until June 7. While Mr. Rankin has not challenged the rotational lockdowns, he certainly has provided evidence that the rotational lockdowns, coupled with the additional periods of confinement under the BMP, have negatively impacted his mental health. In fact, DS Critchley testified about observing Mr. Rankin's low mood.

[26] The conditions on West 3 were recently discussed by Justice Arnold in *Keenan v. Nova Scotia*, 2023 NSSC 217. The following comment in *Keenan, supra* is equally relevant to Mr. Rankin's case:

3 An inmate's mental health can be negatively impacted by closed confinement (*Winters v. Legal Services Society*, [1999] 3 S.C.R. 160, per Cory, J., in dissent but not on this point, at paras. 65-67; *Canadian Civil Liberties Association v. Canada* (Attorney General), 2019 ONCA 243, at paras. 72-77. See also: *British Columbia Civil Liberties Assn. v. Canada* (Attorney General) (2019 BCCA 228).



[27] For Mr. Rankin's application to be successful, he must establish that his liberty has been deprived. Once a deprivation of liberty is proven, Mr. Rankin must raise a legitimate ground upon which to question the legality of that deprivation. If he is successful, the onus then shifts to the AGNS to show that the deprivation of liberty was lawful.

[28] First, it is apparent that the use of BMPs is a lawful measure utilized by correctional facilities for the safety and security of the institution. As noted earlier, BMPs are permitted pursuant to s. 79 of the *Correctional Services Regulations*.

[29] While the BMP was placed on Mr. Rankin as a result of concerns surrounding his behaviour, he was provided liberties beyond those available to him during his discipline sanction. He was provided access to the day room for a minimum of two hours daily and a minimum of a half an hour airing court with periods of socialization. He was placed on a four-hour morning rotation from 7:00 am to 11:00 am due to his heightened level of security risk towards others. As of May 18, 2023, his behaviour was adjudged by the West management team as being favourable and, as a result, he was given extended time out of his cell while on his BMP. The time out of his cell was from 9:00 am to noon and from 2:30 pm to 5:30 pm daily. It was anticipated that, with good behaviour, the BMP would be removed as of May 25.

[30] Mr. Rankin's BMP was discontinued as of May 22, 2023, after a large-scale incident occurred on West 3. Due to the elevated security concerns, the day room was placed on a reduced rotation pending the investigation and all BMPs were suspended.

[31] While on the BMP, Mr. Rankin's daily living conditions were relaxed as compared to discipline sanctions; however, when the restrictions of the BMP were coupled with the rotational lockdowns, they had a significant impact on Mr. Rankin.

[32] Given the contextual background to the BMP and Mr. Rankin's assaultive behaviour, I find that the decision to implement the BMP was reasonable in the circumstances. However, I do have a corollary concern. When a person in custody is subjected to close confinement as a result of a disciplinary sanction, then immediately placed on a BMP, further restricting their access to the day room and airing court and time out of their cell, it is incumbent upon the facility to consider the extent to which rotational lockdowns are being implemented in the day room. Rotational lockdowns, due to staffing issues, coupled with BMPs, can have an inordinate impact on an inmate and, consequently, the two circumstances need to be considered by facility management to ensure that inmates are not being subjected to

overly burdensome living conditions. The facility must also ensure that the rotations placed on an individual on a BMP do not conflict with the time that airing court is available.

**Conclusion**

[33] In the circumstances, I dismiss Mr. Rankin's application.

Brothers, J.