


Chapter: **Facility Case Management**

Classification: **Public Document**

Subject: **Habeas Corpus Applications**

For: **Correctional Services Division**


Authorized by the Executive Director

Policy

- 1 A person detained in custody may apply to the court to review the legality of their detention by filing a notice for *habeas corpus*.

Authority

- 2 *Habeas corpus* is a longstanding common law process whereby a person on arrest or detention can have the validity of their detention determined by a judge. *Habeas corpus* can be characterized as either civil or criminal depending on the nature of the detention and the underlying proceedings.
- 3 Section 10(c) of the *Charter of Rights and Freedoms*; reads, “10. Everyone has the right on arrest or detention ... (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.”
- 4 In 2005, the Supreme Court of Canada ruled that persons detained in custody can choose to challenge the legality of their detention in a provincial superior court by way of an application for *habeas corpus*.
- 5 The Supreme Court of Canada has also affirmed in several cases that when a person detained in custody challenges their detention based on a prison disciplinary or transfer proceeding/decision the matter is civil in nature, not criminal.

Overview of Habeas Corpus


- 6 *Habeas corpus* is a court application which orders that a person being detained be brought before a judge for a hearing to decide whether their detention is lawful. An individual in custody, or person acting on their behalf, may apply to the court for an Order of the writ of *habeas corpus* to challenge what they believe to be any unlawful detention.
- 7 An individual has the right not to be unlawfully deprived of any liberty permitted to the general population of a correctional facility.
- 8 When the *habeas corpus* hearing is centered on the legality of a particular form of confinement, a judge may find it unlawful and grant a release from that form of confinement

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and order the return of residual liberties that are available to other individuals in custody.

Overview of the Court Process

- 9 If the court determines a hearing is required, the individual in custody is required to prove that they have been deprived of their liberty or the application for *habeas corpus* will be dismissed.
- 10 The correctional facility, as represented by Legal Services, is required to establish that the decision to restrict the individual's liberty within the correctional facility was based on lawful authority, such as a statute or regulation allowing for the imposition of penalties.
- 11 After reviewing and considering the record, any evidence, and submissions on the law, the judge determines whether the correctional facilities decision was reasonable and lawful in the circumstances. If so, the application is dismissed. If not, the judge has the authority to:
 - (a) order the release of the applicant from detention
 - (b) make an order to come into effect when certain conditions are met
 - (c) quash any decision made by an administrative decision-maker within the institution
 - (d) order full, partial or other relief as required
- 12 The timing upon which the order comes into effect is at the discretion of the judge.

Application Process

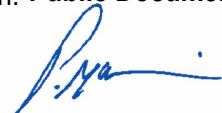
- 13 An individual seeking to challenge the validity of their detention is required to file an application with the Supreme Court of Nova Scotia using form 7.12 Notice of *Habeas Corpus*. This Notice can be found on the Courts of Nova Scotia website (See Section 7.12 http://courts.ns.ca/Civil_Procedure_Rules/CPRs_in_html/Rule_07.htm). Designated correctional facility staff will
 - (a) upon request by an individual in custody, provide them with the Notice form.
 - (b) immediately deliver any completed Notice form to the Deputy Superintendent or Assistant Deputy Superintendent.
- 14 The Deputy Superintendent and Assistant Deputy Superintendent responsible for oversight

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of the individual's living unit upon receiving a completed Notice form will:


- (a) ensure the Notice is forwarded to
 - i. the Supreme Court of Nova Scotia location nearest to the correctional facility where the individual is incarcerated
 - ii. legal services via fax and email
 - (b) review the application
 - (c) have a conversation with the individual who submitted the Notice to ensure they are provided with an opportunity to be heard
 - (d) take corrective action(s) that could immediately remedy the issue(s) as outlined in The Notice, followed by:
 - i. Advising the individual of the corrective action(s) to be taken. If the individual is satisfied with the remedy, they will be provided with an opportunity to sign a Notice of Discontinuance - [form 9.02](#); and
 - ii. Forwarding a completed Notice of Discontinuance to the same Supreme Court location as the initial Notice and also to legal services via fax and email.
- 15 The facility senior manager will notify the Director, Correctional Services of the application, any remedy being sought and whether any corrective action(s) have already taken place.
- 16 Once a Notice of *Habeas Corpus* has been forwarded to the Supreme Court of Nova Scotia, the facility's senior manager will procure the contents of the applicant's facility file and forward it to the court via Legal Services, showing the lawful reasons why the individual is detained, or why their liberty is further restricted in a facility. The contents include but are not limited to the following:
- (a) an individual's facility file during their current custody term or remand
 - (b) a current JEIN printout showing current charges, completed or pending
 - (c) admission card
 - (d) disciplinary reports
 - (e) signed copies of applicable warrants, committal orders or other legal documentation detaining an individual such as a Canada-wide arrest warrant
 - (f) JEIN alerts

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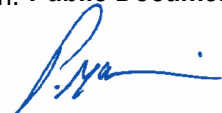
- (g) all reports, notices, close confinement reviews, and any documents regarding segregation or close confinement
 - (h) any other document made relevant by the terms of the application filed or requested by Legal Services
 - (i) a summary of the reasons and conditions of confinement outlining an explanation/justification for their current confinement alleged to be unlawful
 - (j) any Correctional Services policy being applied in reference to the current confinement e.g., breach of disciplinary rules established by the facility senior manager under Section 86, [Correctional Services Regulations](#) or under Section 74, Close Confinement, [Correctional Services Act](#)
 - (k) any protected information that adversely impacts the safety and security of an individual(s) or the correctional facility will be
 - (i) produced by the Security Risk Captain or corresponding staff member
 - (ii) reviewed and approved by the Criminal Intelligence Officer (CIO)
 - (iii) shared using a sealed envelope containing the confidential information included in [Form 34.06.00-A](#)
 - (iv) shared via Legal Services with the Judge.
- 17 Should an individual in custody, or person acting on behalf of that individual, apply to the court directly, the correctional facility may only become aware of the habeas corpus application when issued a form [7.13 Order for Habeas Corpus, from the Supreme Court of Nova Scotia](#) directing the facility to bring the individual before the court for the application.
- (a) Upon receipt of said form all documents relating to the detention will be brought before the court in accordance with number 16 of this policy.
- 18 When a [form 7.13](#) is issued by the Justice of the Supreme Court ordering the individual be brought before the court
- (a) sentence administrators are responsible to contact Sheriff Services to make transportation arrangements
 - (b) the individual's name will be added to the facility court docket
 - (c) JEIN activity notes and admission card shall be updated

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- (d) in the event of a video conference hearing, arrangements shall be made between the receiving court and the facility
- 19 Where it was not possible to remedy the issue immediately, or the facility only becomes aware of the issue via a [Form 7.13](#), the Deputy Superintendent and Assistant Deputy Superintendent will attempt to provide for a remedy in a timely manner, regardless of the issue being before the Supreme Court.
- 20 At any point after a Notice has been submitted the individual may submit a Notice of Discontinuance (Form 9.02). The Notice of Discontinuance will be forwarded to
 - (a) the management team
 - (b) legal services
 - (c) court services

Affidavit

- 21 The facility senior manager or designate will contact Legal Services as soon as possible to swear an affidavit proving the procured record(s).

Attendance at the Hearing

- 22 The facility senior manager or designate will attend court to be called as a witness during the hearing to authenticate the affidavit and to give evidence regarding the contents of the affidavit. This witness may also be questioned in court by the judge and applicant.

Facility Duties Following Court Decision

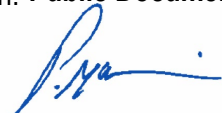
- 23 Upon receiving the rendered decision from the presiding judge, the facility will obey the decision.
- 24 If the decision orders a change in the conditions of confinement the facility senior manager or delegate will:
 - (a) review the reasons of the confinement with the appropriate officers responsible for the file

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- (b) review the reasons why the individual was placed in close confinement to learn of any changes
- (c) establish a plan to reintegrate the individual into a living unit (e.g., a behaviour management plan)
- (d) communicate the plan to reintegrate the individual to the appropriate officers
- (e) evaluate the effectiveness of the plan and modify the plan as necessary

Standard Operating Procedures (SOP)

25 The facility senior manager is responsible to establish Standard Operating Procedures (SOPs) with respect to this policy as follows

- (a) determining notification processes by designated staff when they receive a [form 7.12, Notice of Habeas Corpus](#), from an individual in custody
- (b) establishing a process and assigning staff to procure the contents of the applicant's facility file
- (c) ensuring applicable documents as per Section 16 of this policy are forwarded to Legal Services in a timely way
- (d) identifying staff (Deputy Superintendent or Assistant Deputy Superintendent) responsible for swearing an affidavit proving the procured record(s)
- (e) assigning staff (Deputy Superintendent or Assistant Deputy Superintendent) to attend Court as a witness
- (f) establishing a process for implementing the Courts decision when the decision requires a change in facility practice