

CANADA / JUDGMENT

Alam v. Matsqui Institution (Warden)

2022 BCSC 1115

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1115 Alam v. Matsqui Institution (Warden)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Alam v. Matsqui Institution (Warden),

2022 BCSC 1115

Date: 20220705

Docket: 32072

Registry: Vancouver

Between:

Tanzirul Alam

Applicant

And

Warden of Matsqui Institution and the Attorney General of Canada

Respondents

Before: The Honourable Justice A. Ross

Reasons for Judgment

The Applicant, appearing on his

own behalf:

T. Alam

Counsel for the Respondents:

G. Hallson

N. Omid

Place and Date of Trial/Hearing:

Vancouver, B.C.

May 19 and 24, 2022

Place and Date of Judgment:

Vancouver, B.C.

July 5, 2022

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- [1] Mr. Alam is an inmate in Matsqui Institution. In this proceeding he seeks an order in the nature of habeas corpus. His complaint relates to his access to computers and recreation time.
- [2] The respondent applies to dismiss this proceeding on the ground that it is bound to fail. Pursuant to the order of Duncan J., the respondent's application proceeded before the applicant's substantive hearing seeking habeas corpus. These reasons relate to the respondent's application to have the proceeding dismissed as having no real chance of success.

- [3] These reasons address the submissions of the Attorney General for Canada (the "Attorney General") on behalf of the proper respondent: The Warden of Matsqui Institution. When I refer to "the respondent", I mean the proper respondent, not the one named on the Mr. Alam's notice of application.
- [4] For the reasons set out below, I grant the respondent's application, and I dismiss Mr. Alam's proceeding in its entirety.

Nature of Preliminary Application

- [5] The respondent seeks an order striking or dismissing this application on the following grounds:
- a) It is frivolous.
 - b) It is fundamentally defective.
 - c) The court has no jurisdiction.
 - d) It is improperly brought.

The Original Notice of Application and Mr. Alam's Position

- [6] It is important for the whole of my reasons to set out the relief sought by Mr. Alam in his notice of application filed December 22, 2021. As discussed below, Mr. Alam's arguments have evolved to some extent since the filing. However, when he commenced this proceeding, he was seeking the following relief:
134. The Applicant is making application for following remedies from the Court:
- a) an order directing Correctional Services Canada [CSC] to immediately provide the applicant with a computer which is necessary for preparation of his legal documents;
 - b) an order directing CSC to immediately provide the applicant with at least ninety minutes (90 minutes) of exercise time/ yard time, every day;
 - c) a declaration that, CSC's practice of asking the applicant to select between his legal matters and integrity of mental health was unlawful;
 - d) a declaration that the phrase "Service shall ensure access to non-legal materials" used in section 97(3)(b) of the CCCR [Corrections and Conditional Release Regulations (SOR/92-620)] includes adequate and timely access to a computer if the computer is necessary for preparation of legal documents;
- in the alternative, a declaration that, CSC is statutorily/ under common law, mandated to provide inmates with adequate access to computers necessary for legal purpose;
- e) a declaration that, CSC's impugned action(s) contravened sections 49(c), (d) and (g); 69; 70; 86;(1)(a) and (b); 86(2) of the Corrections and Conditional Release Act [CCRA];

- f) a declaration that CSC's impugned action(s) contravened sections 83 (2) (d) and 90 (7) (b) of the Corrections and Conditional Release Regulations [CCRR].
 - g) A declaration that CSC's impugned action(s) breached administrative law principle(s) [e.g. Procedural fairness doctrine; bias; discrimination; legitimate expectation doctrine; unreasonableness; abuse of power or discretion; unreasonable exercise of discretion, etc.];
 - h) In relation to applicant's charter applications applicant is seeking any remedy under section 24(1) of the Charter as the court considers appropriate and just in the circumstances including,
 - i. A declaration that CSC's impugned action(s) breached applicant's charter rights tech it under section 7 [both liberty and security aspects] of the Charter and that, said violations of section 7 rights did not occur in accordance with the principles of the fundamental justice, more specifically CSC's impugned action(s) were arbitrary; grossly disproportionate; overbroad; procedurally unfair and discriminatory;
 - ii. A declaration that CSC's impugned action(s) reached applicant's Charter rights protected under section 15 of the Charter and that CSC's impugned action demonstrated both direct and substantial discrimination of the applicant;
- [7] In addition, Mr. Alam seeks a lump-sum costs award of \$300.
- [8] I note that, among the other allegations and forms of relief sought, Mr. Alam's notice of application does allege that his s. 7 Charter rights have been breached and that his residual liberty has been affected.
- [9] Although Mr. Alam sought the relief outlined above in his notice of application, his argument evolved by the time of the hearing. As noted, Mr. Alam seeks a remedy under the writ of habeas corpus. In his written argument, Mr. Alam described the relief he was seeking as follows:

This is an application for writ of habeas corpus with or without certiorari in aid, ordering the Respondent to release the Applicant into a less restrictive conditions (sic) of confinement which will restore two of the Applicant's most fundamental residual liberty interests - access to justice (to a level that was available prior to the imposition of Covid-19 related lockdown) and access to minimum recreation time (ninety minutes per day).

- [10] As I discuss below, I infer that, in the time between the filing of his notice of application and the completion of his written submission, Mr. Alam came to the realization that the writ of habeas corpus, although powerful, is restricted in the scope of its application and remedies. The declarations and orders contained in his notice of application are not available. Hence, he recast the relief he was seeking as a "release" from more restrictive conditions.
- [11] Following a brief recitation of the facts, I set out each party's position below.

Factual Background

[12] A very limited review of the factual background is necessary:

- a) Mr. Alam is a federal inmate at Matsqui Institution in B.C. He is serving a 12-year sentence (reduced to 8 years and 8 months due to time in pretrial custody).
- b) According to Mr. Alam, prior to the onset of the COVID-19 pandemic, all inmates had access to computers for:
 - i. four hours per weekday; and
 - ii. Nine and a half hours per weekend day.
- c) At the outset of the COVID-19 pandemic, the inmates were locked down, and access to computers was reduced to 90 minutes per day.
- d) If an inmate at Matsqui sought to avail himself of computer time, the only period that was available was the 90 minutes that would otherwise be allotted to recreation.
- e) Mr. Alam has several legal matters in process. None of those legal matters relate to his conviction or an appeal of that conviction.
- f) On May 3, 2021, he initiated a grievance (through a procedure discussed below) relating to the restrictions on computer use. Although he pursued that grievance, he did not follow it through all levels of appeal. The last step in that grievance procedure was the Warden's Response from Initial Grievance dated July 13, 2021. In that response, the Warden indicated that Mr. Alam had the same access to computers as all other inmates in the institution. (I discuss that grievance and the Warden's response, below.)
- g) Mr. Alam commenced this (civil) proceeding by filing his notice of application on December 22, 2021.
- h) Since December 2021, with the waning of the concern regarding the COVID-19 pandemic, access to computers at Matsqui has been increased. There is now a computer in the living unit where Mr. Alam is housed along with 80 other inmates. He has access to that computer at all times, subject to use by other inmates.

[13] Although I have set out the facts above, my decision in this matter does not turn on "the facts" per se. However, the facts are relevant for one part of my decision. To the extent Mr. Alam initially complained about the restriction on his access to computers and sought "release" to a less restrictive form of confinement, the restrictions that formed the basis of his original complaint no longer exist.

The Respondent's Position

[14] The Attorney General accepts that the test for this application is whether Mr. Alam's claim is "bound to fail".

- [15] The Attorney General submits that Mr. Alam's claim must be dismissed for several reasons, some of which overlap:
- a) Restriction of computer time does not rise to the level of "deprivation of residual liberty". Instead, a reduction in computer time represents an administrative decision in relation to inmate privileges. Hence, these facts do not fit within the scope of habeas corpus.
 - b) In order to be a "deprivation of liberty" falling under this Court's habeas corpus jurisdiction, the loss of residual liberty must be measured against the general inmate population of an institution. In other words, Mr. Alam's confinement must be more restrictive than other inmates in the general population. The Attorney General submits that the COVID-19 procedures were, by definition, applicable to all inmates.
 - c) The restrictions on computer use that formed the basis of Mr. Alam's application no longer exist.
 - d) Mr. Alam does not seek the habeas corpus remedy of "release". Instead, the remedy he seeks is in the form of mandamus. Mr. Alam seeks directions from this Court requiring Correctional Service of Canada ("CSC") to take certain steps. Mr. Alam commenced, but chose not to pursue a final grievance decision. If he had pursued that grievance, and received an unsatisfactory result, then he would have been able to seek judicial review in the Federal Court and relief in the form of mandamus or certiorari. Hence, this Court has no jurisdiction because:
 - i. the Federal Court has exclusive jurisdiction over mandamus, certiorari, and quo warranto;
 - ii. the true nature of Mr. Alam's application is described in his notice of application. He is seeking relief that is not related to habeas corpus.
- [16] The Attorney General's overall submission is that this proceeding represents an attempt by Mr. Alam to transform his prior grievance so that it fits within the scope of habeas corpus. The Attorney General submits that, if pursued without success, Mr. Alam's grievance may have ultimately resulted in him seeking another prerogative writ in the Federal Court. That procedural path does not create a proper basis for a claim of habeas corpus.
- [17] The Attorney General submits that it is through these other forms of relief that the Federal Court can compel certain actions from the CSC. The superior courts of each province do not have jurisdiction to compel any action outside of the habeas corpus remedy of "release".
- [18] On all of those bases, the Attorney General submits that this proceeding should be dismissed because it has no chance of success. The respondent also seeks costs.

Mr. Alam's Position

[19] In summary, Mr. Alam submits that:

- a) access to computers is required for him to have access to justice;

- b) access to justice is a constitutionally protected right;
- c) access to recreation is required for him to maintain his mental health;
- d) the restriction on access to computers and recreation time, for the extended period of the pandemic, constituted a significant deprivation of his residual liberty.

[20] Hence, he argues that habeas corpus is available, and this Court can order that he be "released" to the level of access and recreation that he had before the pandemic.

[21] He says the issues to be determined are (in the following order):

- a) Whether a "significant restriction" of access to computers and/or access to recreation time has occurred.
- b) Whether access to justice and minimum recreation time form part of the prisoner's constitutional rights.
- c) Whether access to the tools necessary for achieving access to justice (computers) is a "mere privilege" or a "significant restriction".
- d) Are these restrictions within the scope of a habeas corpus review?
- e) Having answered the prior questions, the court should then address the jurisdictional issues (overlapping or exclusive jurisdiction with the grievance procedure and the Federal Court).

[22] Mr. Alam submits that answering these questions will lead to the conclusion that his application is not bound to fail. He submits that, while his position may represent an expansion of the current law relating to the scope of habeas corpus, his claim is not "bound to fail".

Context of Habeas Corpus and Submissions on Legal Positions

[23] Some context is required for the discussion below. The ultimate question in this application is whether Mr. Alam's complaints might possibly fall within, or will obviously fall outside, the scope of habeas corpus.

[24] In describing the nature, procedure, and scope of habeas corpus, I can do no better than the discussion provided by Thomas J. in *Ewanchuk v. Canada (Attorney General)*, 2017 ABQB 237:

[18] The "great writ" of habeas corpus is a common law right of persons who are detained by state actors to go to court and demand that the state actor prove that detention is lawful; history and evolution reviewed in *DG v Bowden Institution*, 2016 ABCA 52 at paras 105-122, 612 AR 231. Canada has enshrined access to habeas corpus in Charter, s 10(c):

Everyone has the right on arrest or detention ... to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

[19] The process for habeas corpus is well established. As Canada correctly indicated, the first step is the applicant must meet a threshold requirement that he or she is detained, and provides a basis to argue that detention is illegal. *Mission Institution v Khela* describes this requirement:

... First, the applicant must establish that he or she has been deprived of liberty. Once a deprivation of liberty is proven, the applicant must raise a legitimate ground upon which to question its legality....

[20] If that threshold is met then Canada must prove to a balance of probabilities that the detention is legal: *Mission Institution v Khela* at para 30. If Canada cannot establish that, then the Court must order the release of the detained person. That, in brief, is the function of habeas corpus; it is a highly specialized but very powerful tool. It shields the freedom of people from unauthorized state action.

[21] Incarcerated persons are already detained, but habeas corpus may be employed to challenge a further loss of their "residual liberty". *Mission Institution v Khela* confirms *R v Miller*, [1985] 2 SCR 613, 24 DLR (4th) 9, which provided examples of the kinds of loss of residual liberty that may attract a habeas corpus remedy: administrative segregation, being confined in a special handling unit, and transfer to a higher security institution. Importantly, these identified categories represent a different physical environment for the prisoner, and one which offers less freedom.

[22] What is equally important for this application is to understand what habeas corpus is not.

[23] Habeas corpus is only relevant to current and ongoing detention. It does not apply to hypothetical future detention, or historic detentions: *Cundell v Bowden Institution*, 2016 ABQB 348 at para 37, *Dumas v Leclerc Institute*, [1986] 2 SCR 459 at paras 12-14, 34 DLR (4th) 427; *R v Latham*, [2000] OJ No 3720 at paras 21-23 (QL), 2000 CarswellOnt 348 (Sup Ct J). Habeas corpus is only a remedy for the here and now.

[24] Habeas corpus has no application where a person complains they were denied release or a reduced form of detention: *Mapara v Ferndale Institution (Warden)*, 2012 BCCA 127 at para 15-16, 318 BCAC 139, leave denied [2012] SCCA No 217; *Biever v Alberta (Director of Edmonton Remand Centre)*, 2015 ABQB 609 at paras 33-35. Habeas corpus cannot be sought where the detention or form of detention is voluntary or caused by the detained person: *R v Blanchard*, 2011 SKCA 60 at para 13, 371 Sask R 270; *Biever v Alberta (Director of Edmonton Remand Centre)*, at para 32. Habeas corpus does not apply to persons who are under judicial interim release: *R v Barbour*, 2016 ABCA 161, 336 CCC (3d) 542.

[25] Many conditions and circumstances in prisons are also not a basis for habeas corpus as these do not amount to a loss of liberty. *Le Dain J in R v Miller*, at para 35, stated habeas corpus does not apply to privileges:

... I do not say that habeas corpus should lie to challenge any and all conditions of confinement in a penitentiary or prison, including the loss of any privilege enjoyed by the general inmate population. But it should lie in my opinion to challenge the validity of a distinct form of confinement or detention in which the actual physical constraint or deprivation of liberty, as distinct from the mere loss of certain privileges, is more restrictive or severe than the normal one in an institution. [Emphasis added in Ewanchuk.]

- [26] Deprivation of liberty also must be substantial. "The Charter does not protect against insignificant or "trivial" limitations on rights": *Cunningham v Canada*, [1993] 2 SCR 143, 80 CR (4th) 57; see also *Canada (Attorney General) v Whaling*, 2014 SCC 20 at para 57, [2014] 1 SCR 392; *Lord v Coulter*, 2007 BCSC 1758 at para 60, 72 Admin LR (4th) 264, affirmed 2009 BCCA 62 at para 5, 266 BCAC 122.
- [27] Instead, what is required is a "substantial change in conditions amounting to a further deprivation of liberty": *Dumas v Leclerc Institute*, at p 464; *Cunningham v Canada*, at p 151; *Canada (Attorney General) v Whaling*, at para 57.
- [28] Access to prison or rehabilitation programming is not a deprivation of liberty that attracts court scrutiny via habeas corpus scrutiny: *Mapara v Ferndale Institution*, 2012 BCCA 127 at paras 12-15, 318 BCAC 139, leave denied [2012] SCCA No 217; *Lord v Coulter*, 2007 BCSC 1758 at para 60-63, 72 Admin LR (4th) 264, affirmed 2009 BCCA 62 at para 5, 266 BCAC 122; *Urbano v Bowden Institution*, 2015 ABQB 279 at para 59, 121 WCB (2d) 45; *Rain v Canada (Parole Board)*, 2015 ABQB 639 at para 15.
- [29] Habeas corpus is a remedy that operates only within the geographic jurisdiction of the superior court of inherent jurisdiction: *R v Gamble*, [1988] 2 SCR 595 at paras 48-50, 31 OAC 81; *R v Bonamy*, 1999 BCCA 487, 130 BCAC 11, but also see *Nodrick v Canada (Correctional Service)*, 2014 NSSC 93, 341 NSR (2d) 164; *Richards v Springhill Institution*, 2015 NSCA 40, 359 NSR (2d) 59.
- [30] The Supreme Court of Canada in *R v Miller*, confirmed in *Mission Institution v Khela* at para 42, identified two circumstances where a superior court of inherent jurisdiction should decline to hear a habeas corpus application. These arise where legislation:
1. confers jurisdiction on an appeal court to correct an error of a lower court and release an applicant, or
 2. creates a complete, comprehensive, and expert procedure for review of an administrative decision.

- [31] Habeas corpus is not required in these two scenarios because the common law authority has been replaced by another statutory procedure that adequately supervises government ordered detention. The Parole Board of Canada is a complete, comprehensive, and expert procedure authorized by the Corrections and Conditional Release Act, SC 1992, c 20: *Armaly v Canada (Parole Service)*, 2001 ABCA 280, 299 AR 188, leave denied [2002] SCCA No 134; *DG v Bowden Institution (Warden)*, 2016 ABCA 52, 612 AR 231.
- [25] With that context in mind, I now proceed to address the issues raised by Mr. Alam. Although I have placed Mr. Alam's submissions first in these reasons, I have done so because his submissions are necessary in order to frame the Attorney General's position on the reasons to dismiss. This is, of course, the Attorney General's application to dismiss. The onus falls on the Attorney General to establish that the claim is frivolous, fundamentally defective, or improperly brought and thus, bound to fail.

Is the Restriction on Computer Time a Deprivation of Liberty?

- [26] In addressing the first question, Mr. Alam submits that removal of computer time constitutes a deprivation of liberty when the computer is being used to achieve access to justice. He says that, over time, the court has taken a broader view of the scope of habeas corpus. It is no longer limited to formal "release" from custody, or a more restrictive form of incarceration.
- [27] In support of this submission, Mr. Alam cites a series of decisions commencing with *R. v. Miller*, [1985] 2 S.C.R. 613 wherein Le Dain J. wrote, in the penultimate paragraph:
35. I do not say that habeas corpus should lie to challenge any and all conditions of confinement in a penitentiary or prison, including the loss of any privilege enjoyed by the general inmate population. But it should lie in my opinion to challenge the validity of a distinct form of confinement or detention in which the actual physical constraint or deprivation of liberty, as distinct from the mere loss of certain privileges, is more restrictive or severe than the normal one in an institution.
- [28] In *May v. Ferndale Institution*, [2005] 3 S.C.R. 809, the Court wrote, in respect of overlapping jurisdiction:

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).

- [29] I pause to note that the May decision dealt with the transfer of inmates from a minimum- to a medium-security institution. It is important for understanding the context of that paragraph that it deals with matters that clearly fall within the scope of habeas corpus.
- [30] Mr. Alam submits that the concept of residual liberty interests has evolved since the Miller and May decisions. He points to the decision in *Chambers v. Daou*, 2015 BCCA 50:
- [48] More recently, this Court came to a similar conclusion in *Mapara v. Ferndale Institution*, 2012 BCCA 127 (leave to appeal denied 2012 CanLII 56133 (SCC)). In that case, the applicant sought habeas corpus when he was denied escorted temporary absences. Frankel J.A., speaking for the court, stated:
- [15] The appellants' arguments misconceive the scope of habeas corpus in the corrections context. The writ is not available to challenge all administrative decisions made by corrections officials. Rather, it is available to challenge only those decisions that result in a substantial change in the conditions of an inmate's confinement that adversely affects his or her residual liberty interests.
- [31] Mr. Alam argues that the COVID-19-related restrictions constituted a substantial change in the conditions of his confinement. He says that a short-term limitation on his access to computers and recreation time might be considered an administrative decision made by corrections officials. However, the extended restrictions imposed during the pandemic represented a substantial change in the conditions of his confinement.
- [32] Mr. Alam further argues that his access to computer time represented his opportunity to achieve access to justice. The requirement that he use his recreation time for computer research had a negative affect on his mental health. He says that his access to both computers and recreation time are:
- a) statutorily protected in the Corrections and Conditional Release Act, S.C. 1992, c. 20, ss. 4, 70, and 87 [CCRA];
 - b) protected by s. 7 of the Charter (life liberty and security of the person).
- [33] Mr. Alam argues that on this application to dismiss, the question for the court is whether the above arguments are "bound to fail". He says that he has an arguable case that the broader interpretation of "residual liberty". Hence, he argues that the respondent's application should be dismissed.
- [34] In support of the application to dismiss this proceeding, the Attorney General argues that habeas corpus is an extraordinary procedure which provides for only one remedy: release from the applicant's current deprivation of liberty. It is not a procedure wherein an inmate can challenge all decisions made by corrections officials. The dividing line between habeas corpus and the other procedures requires that the deprivation of liberty be "substantial" and

that it adversely affects the inmate's "residual liberty interests". Hence, the transfer from a lower security (minimum) institution, to a more secure (medium security) institution is the purview of habeas corpus. The inmate can seek "release" to the lower security institution.

[35] The Attorney General submits that the computer restrictions resulted from an administrative decision that did not affect Mr. Alam's residual liberty interests, let alone "substantially". He continued to have computer access. It was limited to 90 minutes per day. He also continued to have access to recreation. He was entitled to choose whether he would use his time on a given day working on his legal challenges or pursuing recreation.

[36] On the specific issue of computers and residual liberty, the Attorney General relies on the decision in *Lord v. Coulter*, 2009 BCCA 62. In that case, Mr. Lord sought 17 forms of relief under habeas corpus, including:

- a) an order that he be given back his computer with hardware and software intact;
- b) an order compelling the CSC stop censorship of reading material available to the general public;
- c) an order compelling the CSC to allow prisoners to keep up with technology by allowing prisoners access to the internet.

[37] At the chambers hearing, the judge refused to address Mr. Lord's complaints regarding computer access because they fell outside the scope of habeas corpus.

[38] On appeal, Ryan J.A. wrote:

[5] The learned chambers judge also refused to deal with Derik Lord's complaints about the administration of his sentence including - his allegations of racism, denial by the institution of visits with his father, complaints about his access to a computer, the Parole Board's decision to deny him parole, and, the requirement by the Parole Board, that Mr. Lord confront his guilt for the crime of which he was convicted. The chambers judge concluded that none of these complaints fell within the limited scope of the writ of habeas corpus. For that proposition the chambers judge relied on *R. v. Miller*, [1985] 2 S.C.R. 613, *Dumas v. Leclerc Institute*, [1986] 2 S.C.R. 459 and *Ewing v. Mission Institution*, [1984] BCJ No. 1989. In my view the chambers judge was correct in this conclusion.

[Emphasis added.]

[39] Thus, the Attorney General submits that the decision in *Lord* represents recent Court of Appeal authority for the proposition that access to computers does not fall within the limited scope of the writ of habeas corpus.

Was Mr. Alam Singled Out?

- [40] The Attorney General submits that Mr. Alam has not been singled out. The restriction on computer use was imposed across the board. The Attorney General relies on the decision in *Ogiamien v. Ontario (Community Safety and Correctional Services)*, 2017 ONCA 667:
- [81] In my view, the frequency, duration and impact of the lockdowns affecting Ogiamien and Nguyen caused a change in their conditions of incarceration at Maplehurst, but not a substantial change. During a lockdown neither was singled out or dealt with more harshly than any other inmate in the remand units. Neither was placed in administrative segregation. Neither was transferred to a different and higher risk or higher security correctional institution. These latter instances might have amounted to a substantial change sufficient to trigger a deprivation of Ogiamien's and Nguyen's residual liberty under s. 7. The lockdowns did not.
- [82] And even if the lockdowns deprived Ogiamien and Nguyen of their residual liberty under s. 7, the deprivations were nonetheless in accordance with the principles of fundamental justice. Law or policy will not be in accordance with the principles fundamental justice when it is arbitrary, that is when no rational connection exists between its purpose and its effects on liberty: *Canada (Attorney General) v Bedford*, 2013 SCC 71, at para.111.
- [41] The Attorney General further relies on the decision of Slatter J.A. in *R. v Latham*, 2018 ABCA 308:
- [7] The applicant erroneously regards the great writ of habeas corpus as being some sort of legal Swiss Army knife that can be used to engage any grievance he has. Habeas corpus is a limited remedy designed to address wrongful detentions and loss of liberty only. It is not available as of right for any type of dispute that a person chooses to raise, just because that person is detained. It is not a method of automatically bypassing specialized procedures in place to address grievances about detention and parole. While the superior courts always retain a discretion to grant habeas corpus notwithstanding the availability of other remedies, it is a discretion that is judiciously exercised. The applicant's attempt to use habeas corpus to invite the superior courts to review the management of the corrections and parole systems is inappropriate.
- [42] The Attorney General submits that the restriction on computer time is not a "new detention" and Mr. Alam has not been subjected to a "more restrictive confinement" than other inmates.
- [43] Mr. Alam submits that his access to computers was more restrictive than other inmates. However, it is clear that the COVID lock-downs applied across the Matsqui Institution.
- [44] Mr. Alam also alleges that the Matsqui lock-downs were more restrictive than other institutions. While that may be the case, it does not indicate that Mr. Alam's circumstances were more restrictive than other inmates within his institution.

The Restrictions Are No Longer in Place

- [45] On this issue, the Attorney General submits that Mr. Alam's complaint relates to a situation that no longer exists, and that he cannot obtain relief (or "release") when the more restrictive conditions have been eased.
- [46] In response, Mr. Alam submits that his computer access has not been returned to the pre-COVID level.

There Is an Alternate Procedure

- [47] The Attorney General submits that there is a grievance procedure in place to address complaints like the one brought by Mr. Alam. In circumstances where the inmate is successful in that grievance procedure, CSC can be ordered to take steps to remedy the conditions of the inmate or inmates. Those types of remedies are, in effect, the remedies that Mr. Alam is seeking in this proceeding.
- [48] Mr. Alam submits that the grievance procedure is exceedingly slow. He pursued that procedure, but received a negative response. He says the grievance procedure is ineffective and he was forced to pursue this litigation instead.
- [49] As noted, Mr. Alam's argument is that his access to computers is necessary for him to have access to justice, which he argues is a protected constitutional right. He further argues that without time for recreation, his mental health (a charter-protected right) will be damaged. Hence, he needs "release" to a less restrictive form of detention wherein he will have greater access to computers and recreation time.

Discussion and Analysis

- [50] In my opinion, Mr. Alam's habeas corpus application is bound to fail. I find that it is bound to fail for at least five reasons:
- a) the restriction of access to a computer, and access to the internet, are not complaints that fall within the limited scope of the writ of habeas corpus.
 - b) the remedy sought by Mr. Alam is clearly not "release".
 - c) the restriction on computer use applied to all inmates. Mr. Alam was not singled out.
 - d) the restrictions on computer use that formed the basis of Mr. Alam's application are no longer in place.
 - e) the type of relief that Mr. Alam is seeking is provided in the CCRA. There is a complete, comprehensive, and expert procedure for review of the administrative decisions of which Mr. Alam complains.

- [51] I come to the first conclusion on the basis of the decision of our Court of Appeal in Lord. The position taken by the Attorney General accords with the decision of the Court of Appeal in Lord as it relates to computer use. Computer use is a privilege and not a form of residual liberty. The decision to restrict computer access was an administrative decision relating to that privilege. Similarly, as found in Ewanchuk at para. 28, access to rehabilitation-related programming is not a deprivation of liberty. The reasoning in those decisions would apply even where the restrictions are in place over an extended period of time. Hence, if the matter was to proceed to a full hearing, Mr. Alam's claim is bound to fail on this ground.
- [52] I come to the second conclusion by reviewing Mr. Alam's notice of application and the relief sought therein (see para. 6 above). All of the remedies sought by Mr. Alam are described (by Mr. Alam) as declarations and orders directing CSC to take steps. It is clear that none of those paragraphs seek Mr. Alam's "release". That is a fundamental flaw in Mr. Alam's application. He attempted to resolve that flaw by reframing the relief as described in his written submissions. He reframed the remedy as "release" to his prior level of computer access and recreation. In my opinion, that reframing does not assist Mr. Alam in divining the actual relief he seeks. The fact is that this Court does not have the power to "release" Mr. Alam to more computer access or more recreational time. His claim is bound to fail on this ground.
- [53] I come to the third conclusion on the basis of the general law applicable to habeas corpus. As described above in Ogiemien (at para. 81), habeas corpus does not apply to restrictions imposed by CSC on the entire prison population. It addresses the concerns of one inmate whose incarceration has been altered in an arbitrary manner.
- [54] The COVID-19 restrictions applied to the whole prison population, not to Mr. Alam only. As such, habeas corpus is not available to him. His claim is bound to fail on this ground.
- [55] I come to the fourth conclusion on the basis of the information that the COVID-19 restrictions have been eased. As noted, there is now a computer in the living unit. As set out in Ewanchuk at para. 23, habeas corpus deals with the "here and now". It does not apply to historic detentions. With the easing of concerns regarding the pandemic, the restrictions on computer use and recreation were also eased. Hence, the circumstances which formed the basis of Mr. Alam's initial complaint no longer exist. His claim is bound to fail on this ground.
- [56] I come to the fifth conclusion, in part, based on my earlier findings that the limits on computer time were not a significant interference with Mr. Alam's residual liberty. There exists a grievance procedure to address Mr. Alam's complaint. This is not an area of overlapping or concurrent jurisdiction. As noted above, the only remedy available under habeas corpus is "release". That remedy is not engaged on these facts. Further, there exists, under the CCRA, a complete, comprehensive, and expert procedure for review of administrative decisions. That is the proper venue for Mr. Alam's complaints.

- [57] A casual observer may wonder why the form of prerogative writ would be an important distinguishing element in this case. In other words, one might query whether Mr. Alam could amend his pleading to seek another prerogative writ (certiorari or mandamus) to compel the relief he sought in the notice of application.
- [58] However, the nature of the prerogative writ is critically important in these circumstances because the other forms of relief are reserved for the Federal Court. The Federal Courts Act, R.S.C. 1985, c. F-7, reserves exclusive jurisdiction over the other prerogative writs to the Federal Court.

Extraordinary remedies, federal tribunals

18 (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

- (a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and
 - (b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.
- [59] This Court has jurisdiction over habeas corpus. It has no jurisdiction in relation to the other prerogative writs.
- [60] Mr. Alam undertook the statutory procedure (the grievance) before he decided to pursue this application. That grievance forum was the correct venue to raise concerns about access to computers and recreation time. His claim is bound to fail on this ground.
- [61] That being the case, I find that there are several grounds upon which Mr. Alam's application is bound to fail.

Costs

- [62] The Attorney General seeks the costs of this application, fixed in the amount of \$1,000.
- [63] The Attorney General submits that this proceeding was frivolous and defective from the outset. It has wasted significant public and court resources.
- [64] The Attorney General further notes that it has been forced to address Mr. Alam's prolix materials. In that respect, the Attorney General notes:
- a) the notice of application is 31 pages (135 paragraphs);
 - b) Mr. Alam's written submission are 61 pages (339 paragraphs) and contain 166 footnoted references to cases and legislation;
 - c) Mr. Alam sought the costs of the proceeding.

[65] The Attorney General further submits that an award of costs would discourage future frivolous applications by Mr. Alam.

[66] I accept the submission of the Attorney General on this point. I have set out above several reasons why Mr. Alam's application is bound to fail. In my opinion this type of application should be discouraged. Mr. Alam had an existing grievance through the CCRA procedure specifically on the issue of access to computers. I note that the Warden's response to his grievance stated:

Mr. ALAM you were interviewed 2021.07.21 Please note that the legitimate and proper exercise of management's authority or responsibility does not constitute discrimination. You claim you were being discriminated against in regards to access to a computer to work on your legal cases. You advised you currently have 3 Canadian Human Rights Complaints, 3 Cases with the Federal Court, 2 Class Action Lawsuits and 2 Habeas Corpus currently in process. You claim another offender has been given access to a laptop to work on legal paperwork and that you should be given the same. As explained during the interview, the circumstances surrounding another offenders (sic) access to a computer is not your business and each case is reviewed on its own. You have full access to the computers in the library and have been seen in the library on those computers on a nearly daily basis. CSC's obligation is to ensure all offenders have equal access, you have the same access as any other offender in this population. This part of your grievance is DENIED. [Emphasis in original.]

[67] Although Mr. Alam was not satisfied with that ruling, the correct path would have been an appeal of that decision and, ultimately, an application for judicial review. Instead, he sought to reformulate his argument to attempt to fit it within the limited scope of habeas corpus. In my opinion, that attempt was ill-conceived at best and frivolous at worst.

[68] I grant costs to the respondent of \$1,000.

Summary and Conclusion

[69] Based on my findings above, I grant the respondent's application to dismiss this proceeding. It follows that Mr. Alam's application for habeas corpus is dismissed on the basis that it is bound to fail.

[70] The respondent is entitled to costs in the amount of \$1,000.

"A. Ross J."

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