

CANADA / JUDGMENT

Mohsenipour v. Mountain Institution (Warden)

2025 BCSC 1750

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2025 BCSC 1750 Mohsenipour v. Mountain Institution (Warden)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mohsenipour v. Mountain Institution (Warden),

2025 BCSC 1750

Date: 20250905

Docket: 75244-1

Registry: Chilliwack

Between:

Kasra Mohsenipour

Applicant

And

Warden of Mountain Institution

Respondent

Before: The Honourable Madam Justice Sukstorf

Oral Reasons for Judgment

The Applicant appearing on own behalf

K. Mohsenipour

Counsel for Respondent:

M. Emanuele

R. Awa

Place and Date of Hearing:

Chilliwack, B.C.

August 20, 2025

Place and Date of Judgment:

Chilliwack, B.C.

September 5, 2025

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I. Background

- [1] On April 24, 2025, the Parole Board of Canada revoked Mr. Kasra Mohsenipour's day parole. Mr. Mohsenipour now advances an application for habeas corpus to challenge the Parole Board's decision. The Attorney General of Canada ("AGC"), on behalf of the respondent, has applied to strike Mr. Mohsenipour's application in its entirety on the basis that it is duplicative of ongoing statutory proceedings and constitutes an abuse of process.

A. Style of Cause Correction

- [2] As a preliminary matter, I note that the style of cause, as originally filed, named the AGC, the Correctional Service of Canada ("CSC"), and the Parole Board of Canada ("PBC") as respondents. However, in habeas corpus proceedings, the proper respondent is the person who has custody of the applicant: *Lord v. Coulter*, 2007 BCSC 1758 at para. 21, *aff'd* 2009 BCCA 62; *Dixon v. Mountain Institution (Warden)*, 2017 BCSC 183 at para. 4; *Petrowski v. Mountain Institution (Warden)*, 2016 BCSC 1137 at para. 3.
- [3] Mr. Mohsenipour is currently incarcerated at Mountain Institution. Accordingly, and consistent with the above authorities, the style of cause shall be amended to add the Warden of Mountain Institution as the respondent. All other named respondents shall be removed.

II. Facts

- [4] In January 2023, Mr. Mohsenipour arrived at the Mountain Institution to serve his sentence.
- [5] In November 2023, Mr. Mohsenipour was released on day parole. His day parole was extended in May 2024 and again in November 2024.
- [6] On February 5, 2025, after 15 months on parole with no issues, the Mountain Institution's security intelligence department obtained information that led them to believe that Mr. Mohsenipour had breached his parole conditions. His day parole was then suspended.
- [7] On April 24, 2025, the PBC revoked his day parole. Mr. Mohsenipour promptly appealed that decision to the PBC's Appeal Division. That appeal remains pending.
- [8] It is notable that PBC had already ruled that Mr. Mohsenipour was eligible for statutory release as of April 20, 2025. This decision had already been rendered on November 13, 2024, and set out the conditions of his statutory release.
- [9] As a result of the April 2025 revocation decision, made four days after his statutory release date, Mr. Mohsenipour was given a new statutory release date by CSC sentence management. This date is in June 2026.

- [10] In his writ of habeas corpus, Mr. Mohsenipour seeks an order from this Court to nullify and quash the PBC's decision to revoke his parole. He asks that the Court restore him to the position he would have been in had the suspension not occurred or had the suspension been cancelled by the board. At that point, Mr. Mohsenipour would be deemed to be on statutory release, as his statutory release date would have been four days before the revocation hearing.
- [11] He also requests that the parole conditions listed in the November 13, 2024, PBC decision for statutory release be applied to him upon release, as this would place him in the same position as he would have been in if his suspension and revocation had not occurred.
- [12] Mr. Mohsenipour submits that this judicial intervention is necessary as the PBC's reasons for revoking his parole were not in accordance with the Corrections and Conditional Release Act, S.C. 1992, c. 20 [CCRA] or the principles guiding parole boards. He also argues that his community parole officer ("CPO") engaged in intentional misconduct towards him, amplifying the breaches and violations of his rights. He argues that his CPO began to create and fabricate a multitude of concerns, including allegations that other breaches had been committed regarding his ownership of an Xbox gaming system.

III. History of Proceedings

- [13] On June 4, 2025, Mr. Mohsenipour filed an application for habeas corpus with certiorari in aid under s. 774 of the Criminal Code, R.S.C. 1985, c. C-46. He challenges the April 24, 2025, decision of the PBC to revoke his day parole.
- [14] I note that Mr. Mohsenipour's application for habeas corpus should properly have been filed as a petition. However, Mr. Mohsenipour is self-represented. In the interest of justice, I have opted to consider Mr. Mohsenipour's argument, as filed. On this point I am guided by the remarks of Justice Walkem in *Lee v. Pacific Institution (Warden)*, 2023 BCSC 793:
- [4] An application for habeas corpus in the present circumstances is properly made under the Supreme Court Civil Rules: *Bacon v. Surrey Pretrial Services Centre (Warden)*, 2010 BCSC 805 at para. 21; and *Charlie v. British Columbia (Attorney General)*, 2016 BCSC 2292 [Charlie] at para. 6. Despite that such applications should be made by petition, the court can nonetheless consider a notice of application as though it were a petition: *Charlie* at para. 7.
- [15] On July 18, 2025, the AGC, on behalf of the respondent, filed a Notice of Application seeking to strike the habeas corpus application pursuant to Rule 9-5(1)(d) of the Supreme Court Civil Rules on the ground that the application is duplicative of a pending appeal before the PBC's Appeal Division. The AGC also asserts that the application constitutes an abuse of process.
- [16] On July 21, 2025, Mr. Mohsenipour filed an additional notice of civil claim asserting that state actors violated a number of his rights under the Charter of Rights and Freedoms. Mr. Mohsenipour seeks Charter relief for the alleged violations.

- [17] On July 31, 2025, Mr. Mohsenipour filed several additional documents. In these documents Mr. Mohsenipour attempted to join another party to this application as a petitioner. Affidavits filed with the Court allege violations of this third party's Charter rights and detail the third party's requests for Charter relief.
- [18] On July 31, 2025, Mr. Mohsenipour filed a response to the AGC's application to strike. He opposes the request to strike. In his response he also elaborated on his allegations of procedural unfairness, bias, and Charter breaches. He maintains that habeas corpus is the only effective remedy available to him.
- [19] For the purposes of these reasons, I am concerned only with the respondent's application to strike Mr. Mohsenipour's habeas corpus application. I do not address the merits of his habeas corpus claim or the separate Charter relief proceedings he has commenced.

IV. Issues

- [20] For the reasons that follow, I grant the respondent's application to strike Mr. Mohsenipour's petition for habeas corpus under Rule 9-5(1)(d). Although this Court has jurisdiction to entertain habeas corpus, I decline to exercise that jurisdiction in these circumstances.
- [21] The habeas corpus application is duplicative of Mr. Mohsenipour's ongoing statutory appeal before the PBC's Appeal Division. In such cases, the CCRA provides a complete and expert review mechanism within the PBC and offers further recourse to the Federal Court. Proceeding with this habeas application in parallel would therefore amount to an abuse of process.
- [22] Mr. Mohsenipour also seeks remedies beyond the scope of habeas corpus.
- [23] The application raises the following issues:
- a) Whether this proceeding, although filed in the criminal registry, is governed by the Supreme Court Civil Rules;
 - b) Whether the Court should exercise its habeas corpus jurisdiction, or whether the appeal and review process under the CCRA constitutes a complete and adequate alternative remedy that engages what is commonly referred to as the "Peiroo exception";
 - c) Whether, even if this Court were to exercise its habeas corpus jurisdiction, the remedies sought by Mr. Mohsenipour fall outside the scope of that jurisdiction; and
 - d) Whether, in light of the pending statutory appeal, this habeas corpus petition is duplicative and constitutes an abuse of process within the meaning of Rule 9-5(1)(d).

V. Legal Framework

- [24] Habeas corpus is an extraordinary remedy available to a detained person to challenge the lawfulness of their detention or a further deprivation of their liberty. The traditional remedy following a request for habeas corpus is an order for release.
- [25] The jurisdiction of provincial superior courts to hear habeas corpus applications is well established. It was first comprehensively articulated in the so-called Miller trilogy: *R. v. Miller*, [1985] 2 S.C.R. 613, 1985 CanLII 22 (S.C.C.) [Miller]; *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, 1985 CanLII 23 (S.C.C.); and *Morin v. Shu Review Committee*, [1985] 2 S.C.R. 662, 1985 CanLII 24 (S.C.C.).
- [26] In those cases, the Supreme Court of Canada ("SCC") confirmed that provincial superior courts may hear applications for habeas corpus from federal inmates, notwithstanding that the Federal Court also has jurisdiction to grant prerogative remedies.
- [27] Habeas corpus has often been referred to as the "great writ of liberty": *May v. Ferndale Institution*, 2005 SCC 82 at para. 19 and *R. v. Gamble*, [1988] 2 S.C.R. 595, 1988 CanLII 15 (SCC) at 645. Writing for the majority in *Miller*, Justice Le Dain emphasized that concerns over concurrent or overlapping jurisdiction should not narrow its availability: at para. 35. The writ of habeas corpus may be invoked to challenge the lawfulness of particular forms of confinement that reduce a prisoner's "residual liberty," such as administrative segregation, confinement in a special handling unit, or transfer to a higher-security institution: *Miller* at para. 35.
- [28] In *May*, the SCC described habeas corpus as a crucial remedy which protects two fundamental Charter rights: the right to liberty and not to be deprived of it except in accordance with the principles of fundamental justice (s. 7), and the right not to be arbitrarily detained or imprisoned (s. 9): at para. 22.
- [29] Accordingly, the SCC found that prisoners may generally choose to proceed either by habeas corpus in a provincial superior court or by judicial review in the Federal Court: *May* at para. 33.
- [30] Similarly, in *Mission Institution v. Khela*, 2014 SCC 24, the SCC confirmed that habeas corpus review extends to both the reasonableness of a decision and its procedural fairness. As stated by Justice LeBel:
- [39] In the Federal Court, a wide array of relief can be sought in an application for judicial review of a CSC decision (see s. 18.1(3)(b) of the FCA). But all a provincial superior court can do is determine that the detention is unlawful and then rule on a motion for discharge.
- [31] An important qualification, however, arises from *Peiroo v. Canada (Minister of Employment and Immigration)*, 69 O.R. (2d) 253 (C.A.), 1989 CanLII 184 (O.N.C.A.). Under what has become known as the *Peiroo* exception, a provincial superior court should decline to exercise habeas corpus jurisdiction where Parliament has created a complete,

comprehensive, and expert review procedure that is at least as broad and advantageous as the remedies otherwise available by way of habeas corpus. The SCC confirmed this principle in *May and Khela*.

- [32] This issue was most recently addressed by the SCC in *Canada (Public Safety and Emergency Preparedness) v. Chhina*, 2019 SCC 29 [Chhina]. There, the SCC emphasized that habeas corpus is a constitutional remedy entrenched in s. 10(c) of the Charter and that exceptions to its availability must be narrowly construed.
- [33] In *Chhina*, the SCC clarified that the so-called *Peiroo* exception applies only where the statutory scheme is as broad and advantageous as habeas corpus with respect to the specific grounds on which the detention is challenged. In *Chhina*, the immigration detention review process under the Immigration and Refugee Protection Act, S.C. 2001, c. 27 was held not to provide an adequate substitute because it could not fully address the length, indeterminate duration, and conditions of detention. While the case arose in the immigration context, its teaching is that habeas corpus jurisdiction cannot be displaced unless the statutory process truly affords review of the same liberty interests with equivalent breadth, timeliness, and advantage.
- [34] Mr. Mohsenipour relies upon the case of *Mooring v. Canada (National Parole Board)*, [1996] 1 S.C.R. 75, 1996 CanLII 254 (S.C.C.), to advance his Charter arguments in this Court. *Mooring* confirms the PBC is not a "court of competent jurisdiction" under s. 24(2) of the Charter. However, the fact that the PBC is not a "court of competent jurisdiction" does not expand this Court's habeas powers: fairness and legality issues are addressed within the CCRA scheme and, if needed, by judicial review in the Federal Court.
- [35] Our own Court of Appeal ("BCCA") applied the *Peiroo* exception in *John v. National Parole Board*, 2011 BCCA 188, and held that the statutory framework contained in the CCRA is a complete and expert process for parole suspension and revocation. This decision was grounded in the fact that the CCRA provides for an internal review, a broad right of appeal to the Appeal Division, and subsequent judicial review in the Federal Court, is such a complete and expert process.
- [36] Accordingly, in circumstances such as the one before the Court, the BCCA's guidance indicates that provincial superior courts should decline to exercise their habeas corpus jurisdiction to avoid creating duplicative and inconsistent proceedings.

VI. Positions of the Parties

A. Position of Mr. Mohsenipour

- [37] Mr. Mohsenipour submits that habeas corpus is the only effective remedy available to him because the PBC acted outside its jurisdiction and in breach of natural justice. He argues that the Appeal Division cannot cure the prejudice he has suffered and that the statutory process is inadequate to protect his fundamental Charter rights.

- [38] Mr. Mohsenipour submits that his CPO engaged in intentional misconduct by fabricating concerns following the suspension of his parole. He argues that this misconduct tainted the fairness of the parole proceedings. He also asserts that the PBC's decision was biased and unsupported by evidence. He further contends that the assessment of him as being an "elevated risk" lacked any evidentiary foundation and was baseless, unreasonable, and infected by bias.
- [39] On this basis, he argues that the PBC lost jurisdiction of his matter because of its persistent ethical breaches and its errors in applying the criteria set out in the CCRA. On this basis, he maintains that habeas corpus is his only meaningful remedy.
- [40] Notably, Mr. Mohsenipour also argues that the government, through the actions of the PBC and CSC, acted unlawfully and deliberately to infringe his Charter rights. Specifically, he maintains that his ongoing detention has become unlawful and amounts to cruel and unusual punishment, contrary to s. 12 of the Charter.
- [41] He also maintains that because of the infringement to his Charter rights he is entitled to seek habeas corpus as a remedy under s. 24(1) of the Charter.
- [42] He also seeks wide-ranging relief, including quashing the PBC's April 24, 2025, revocation decision, reinstating his statutory release, deleting prejudicial entries from his record, and prohibiting the PBC from acting against him unlawfully in the future. He also seeks Charter damages and any other relief that the Court considers just.

B. Position of the Respondent

- [43] In this application, the AGC submits that Mr. Mohsenipour's application should be struck in its entirety.
- [44] In its view, the Appeal Division of the PBC provides a comprehensive and expert review mechanism that falls squarely within the Peiroo exception.
- [45] The AGC further submits that the remedies sought exceed this Court's jurisdiction on an application for habeas corpus. The AGC asserts that, in accordance with s. 18 of the Federal Courts Act, R.S.C. 1985, c. F-7, only the Federal Court has jurisdiction to quash PBC decisions or grant mandamus. Conversely, it asserts that in the superior provincial courts, the remedy for habeas corpus is confined to determining whether a detention is unlawful and, if so, ordering release.
- [46] The AGC argues that allowing duplicative proceedings also undermines judicial economy, consistency, and the integrity of the adjudicative process.

VII. Analysis

A. Applicability of the Supreme Court Civil Rules

- [47] Counsel for the AGC submits that, although Mr. Mohsenipour filed his habeas corpus application in the criminal registry, the subject matter of the application is not criminal in nature. His allegations concern the revocation of parole, which is an administrative decision of the PBC, rather than a warrant of committal issued in a criminal proceeding.
- [48] Accordingly, the AGC argues that this matter, and in particular the application to strike, must be governed by the Rules.
- [49] As the revocation of parole is an administrative decision, I find that this habeas corpus application is appropriately dealt with under the Rules. Mr. Mohsenipour made no submissions on this issue. I accept the Attorney General's position that the Rules govern the application before me.

B. Jurisdiction to Hear the Habeas Corpus Application

- [50] As stated above, a provincial superior court should decline to exercise habeas corpus jurisdiction where Parliament has created a complete, comprehensive, and expert review procedure that is at least as broad and advantageous as the remedies otherwise available by way of habeas corpus.
- [51] As the SCC later confirmed in *May*, habeas corpus in a provincial superior court is confined to assessing whether a detention is lawful and, if necessary, ordering release. Remedies such as declarations or the quashing of PBC decisions lie exclusively in the Federal Court under the Federal Courts Act. This has been affirmed in *British Columbia* by Dixon.
- [52] Therefore, to consider whether this Court should assume jurisdiction over Mr. Mohsenipour, I must consider whether the CCRA constitutes a complete, comprehensive, and expert review procedure that offers remedies that would otherwise be available by way of habeas corpus.
- [53] The CCRA confers exclusive jurisdiction on the PBC to grant, deny, suspend, or revoke parole (s. 107). An offender whose parole is revoked has a statutory right of appeal to the PBC's Appeal Division (s. 147). That appeal is broad in scope and expressly allows challenges based on jurisdictional error, breaches of the principles of fundamental justice, errors of law, reliance on erroneous or incomplete information, or failure to exercise jurisdiction. The Appeal Division has the authority to affirm, vary, or cancel the decision, or to order a new review.
- [54] In addition, in accordance with under ss. 18 and 18.1 of the Federal Courts Act, decisions of the Appeal Division are subject to judicial review in the Federal Court. Such review provides the full range of relief including certiorari, mandamus, prohibition, and declarations.

- [55] In this case, the applicant has, in fact, invoked the CCRA scheme. His proceeding before the Appeal Division remains pending, and any further relief, whether setting aside the revocation decision, directing a rehearing, or addressing alleged procedural unfairness or reliance on erroneous information, lies within that process and, if necessary, the Federal Court on judicial review.
- [56] Notwithstanding the above, Mr. Mohsenipour asserts that the CCRA is not a comprehensive, complete, or expert review process and even if they were, BPC that they have lost jurisdiction.
- [57] To support his position, Mr. Mohsenipour drew the Court's attention to *Fraser v. Drumheller Institution (Warden)*, 285 A.R. 127, 1995 CanLII 9303 (A.B.Q.B.). In *Fraser*, the Alberta Queen's Bench, as it was then, conducted a substantial review of the relevant case law and concluded that a proven breach of s. 141(1) of CCRA, in this case, a failure to abide by the mandatory duty to disclose, can result in the PBC losing jurisdiction. In such cases the inmate may find relief in the courts via the writ of habeas corpus. As stated by Justice Moreau:
- [52] I am further of the view that the Board's failure to comply with s. 141(1) of the Act resulted in a breach of the principles of fairness, and, the consequence of the breach being a substantial change in conditions amounting to a deprivation of liberty within the meaning of *Dumas*, habeas corpus lies.
- [58] In this case, by contrast, the materials do not particularize any information withheld in breach of s. 141(1), nor do they allege any other substantive breaches of the CCRA. Mr. Mohsenipour's complaints focus on bias, risk assessment, and weight of information-- matters within the PBC's jurisdiction and properly addressed in the Appeal Division and, if necessary, on judicial review. *Fraser* predates *May*, *Khela*, and *John*, and illustrates only a rare true jurisdictional defect; none is alleged or established here.
- [59] Instead, in *John*, our Court of Appeal confirmed that the CCRA's framework for parole suspension and revocation -- which provides for review by the Parole Board itself, a broad statutory right of appeal to the Appeal Division, and subsequent judicial review in the Federal Court -- satisfies the *Peiroo* exception.
- [60] Since *John*, British Columbia courts have consistently declined to exercise their habeas corpus jurisdiction in parole revocation cases. Instead, BC courts have held that the revocation of parole is a matter to be addressed through the CCRA's appeal and review scheme; habeas is not a substitute in that context.
- [61] For example, in *Dixon*, Justice Brown noted that while revocation might appear to diminish residual liberty, the statutory appeal and review process is the proper mechanism, and habeas corpus cannot be used as a substitute.

- [62] Most recently, in *Wu v. Canada (Attorney General)*, 2022 BCSC 2084, this Court reaffirmed that where the CCRA appeal and review scheme applies, provincial superior courts are not the appropriate forum for review. The Federal Court is the only Court which has jurisdiction to review decisions made pursuant to the CCRA, and provincial superior courts have therefore declined to exercise habeas corpus jurisdiction over PBC revocation decisions: at para. 54.
- [63] After reviewing the case law before me, I find Mr. Mohsenipour's application is indistinguishable from the situations addressed in these authorities. Like Mr. Dixon and Mr. John, Mr. Mohsenipour seeks to use habeas corpus to overturn the revocation of a parole decision. The jurisprudence makes clear that in the circumstances before me the CCRA provides a complete, comprehensive, and expert review process to address a review of the decision to revoke Mr. Mohsenipour's day parole.
- [64] I also find myself bound by the ruling in *John*, which held that the administrative procedure set out in the CCRA for reviewing the suspension and revocation of parole is as broad and advantageous as the remedies otherwise available by way of habeas corpus: at para. 35.
- [65] Nothing in *Chhina* alters that conclusion. The applicant has not demonstrated a gap in the statutory scheme or an inability of the Appeal Division or Federal Court to address the liberty interests engaged that would justify resorting to habeas here. The Peiroo exception applies.
- [66] Accordingly, in accordance with the Peiroo exception, I would decline to exercise the Court's habeas corpus jurisdiction in this case. The proper recourse for Mr. Mohsenipour's grievances is through the statutory appeal he has already pursued and, if necessary, via judicial review in the Federal Court.

C. Jurisdictional Limits on Habeas Corpus

- [67] Even if I were to exercise the Court's habeas corpus powers, I also find that the remedies requested by Mr. Mohsenipour are not available on habeas corpus.
- [68] For example, he requests that this Court quash the PBC's decision, reinstate his statutory release, and grant Charter relief. The SCC reaffirmed in *Khela* that while habeas corpus can be used to review deprivations of residual liberty for both reasonableness and fairness, the relief is limited. A superior court may order release from unlawful detention, but it cannot quash Parole Board decisions as that remedy is exclusively available in the Federal Court: at para. 31. Accordingly, Mr. Mohsenipour cannot pursue the remedies he seeks via a habeas corpus application.

- [69] The applicant also challenges CSC's recalculation of his statutory release date following the revocation of his parole. The recalculation was an administrative consequence of the revocation decision that is now under appeal. If the Appeal Division sets aside the revocation, the CSC's calculation will likely be revisited. However, this Court's habeas jurisdiction does not extend to varying statutory release dates.
- [70] The proximity or passage of the would-have-been statutory release date while the applicant was suspended and detained pending the hearing does not, in itself, deprive the Board of jurisdiction to revoke; nothing turns on timing in these facts.
- [71] In sum, I decline to exercise this Court's jurisdiction for habeas corpus, and, even if I did, the jurisprudence makes clear that this Court lacks the jurisdiction to grant the relief sought by Mr. Mohsenipour.

D. The Motion to Strike

- [72] I now turn to the AGC's application. The AGC requests that this Court strike Mr. Mohsenipour's habeas corpus application pursuant to Rules 1-3, 8-1, and 9-5(1)(d).

1. Legal Framework

- [73] At any stage of a proceeding, Rule 9-5(1) provides that:

At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

- i. it discloses no reasonable claim or defence, as the case may be,
- ii. it is unnecessary, scandalous, frivolous or vexatious,
- iii. it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
- iv. it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

- [74] The AGC requests that Mr. Mohsenipour's application be struck under Rule 9-5(1)(d) which permits the Court to dismiss actions which attempt to use the court process for an abuse of process.

- [75] What constitutes an abuse of process will depend on the circumstances of the case. The SCC has described the doctrine of abuse of process as flexible, and has indicated that the doctrine:

engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute.

[Emphasis added in Behn v. Moulton Contracting Ltd.]

(Behn v. Moulton Contracting Ltd., 2013 SCC 26 at para. 40, citing Canam Enterprises Inc. v. Coles, 51 O.R. (3d) 481, 2000 CanLII 8514 (O.N.C.A.) at paras. 55-56.)

[76] The flexible nature of the doctrine under Rule 9-5(1)(d) was also affirmed in Babavic, where Baker J. commented:

[17] ... The principle of abuse of process is somewhat amorphous. The discretion afforded courts to dismiss actions on the ground of abuse of process extends to any circumstance in which the court process is used for an improper purpose.

[18] The categories of abuse of process are open. Abuse of process may be found where proceedings involve a deception on the court or constitute a mere sham; where the process of the court is not being fairly or honestly used, or is employed for some ulterior or improper purpose; proceedings which are without foundation or serve no useful purpose and multiple or successive proceedings which cause or are likely to cause vexation or oppression. ...

[77] An abuse of process includes, but is not limited to, where a claim is used oppressively or where it is advanced for ulterior or improper motives: Chernen v. Robertson, 2014 BCSC 1358 at para. 29, citing Babavic v. Babowech, [1993] B.C.J. No. 1802, 42 A.C.W.S. (3d) 447 (S.C.) at paras. 17-18.

[78] Rule 9-5(1)(d) empowers courts to prevent proceedings that are "unfair to the point that they are contrary to the interest of justice": Toronto (City) v. C.U.P.E. Local 79, 2003 SCC 63 at para. 35, citing R. v. Power, [1994] 1 S.C.R. 601, 1994 CanLII 126 (S.C.C.).

[79] The SCC has identified that duplicative proceedings whose essence attempts to relitigate a claim constitutes an abuse of process as it undermines the judicial process: C.U.P.E. Local 79 at paras. 50-51.

[80] Under Rule 9-5(1)(d), to find that an action constitutes an abuse of process, the Court must conclude that it is plain and obvious that the action is abusive: Shuswap Lake Utilities Ltd. v. Mattison, 2008 BCCA 176 at para. 35.

[81] Courts should only strike pleadings as an abuse of process in the clearest of cases and should use this power sparingly: A.M. v. Dr. F, 2021 BCSC 32 at para. 63, citing Babavic at para. 20; Strata Plan KAS 1691 v. City of Kamloops et al, 2004 BCSC 1231 at para. 20, citing Chapman v. Canada 2001 BCSC 420.

[82] The party advancing an abuse of process claim bears a heavy onus to prove that the matter ought to be struck: Strata Plan KAS 1691 at para. 19.

[83] In sum, in this case, the AGC must show that Mr. Mohsenipour's application is brought for an improper purpose or that permitting it to proceed would be so unfair as to offend the court's sense of justice. It is important to note that on such a motion, the Court does not determine the truth of the allegations; it assesses, viewed broadly and generously, whether the claim is plainly and obviously abusive.

2. Application

[84] Courts have treated habeas corpus petitions, which are advanced concurrently to a CCRA appeals, as abuses of the court's process: *Petrowski* at para. 10.

[85] More broadly, the jurisprudence in British Columbia indicates that it is also an abuse of process for a litigant to challenge the decision of an administrative body that is already subject to statutory review: *Fox v. Scott Safety Services Inc.*, 2021 3080 842 at paras. 18, 23.

[86] I accept the AGC's argument that Mr. Mohsenipour's application ought to be struck. Mr. Mohsenipour has already sought review from the PBC's Appeal Division. Allowing his habeas corpus application to proceed would create parallel proceedings, both of which have been advanced in an attempt to secure the same relief.

[87] The PBC's Appeal Division is already seized of the revocation decision and can address the very issues Mr. Mohsenipour raises before this Court; namely, procedural unfairness, reliance on erroneous information, and bias. Conversely, as addressed above, this Court cannot order the remedies requested by Mr. Mohsenipour.

[88] Permitting this habeas corpus application to proceed in tandem with the PBC's Appeal Divisions proceedings would create precisely the risks identified in *C.U.P.E. Local 79*: it would undermine consistency, finality, and judicial economy and is therefore contrary to the interests of justice.

[89] In sum, I find that allowing Mr. Mohsenipour's application to proceed would be unfair to the point of being contrary to the interests of justice. I therefore strike the application in accordance with Rule 9-5(1)(d).

VIII. Conclusion

[90] There are several independent reasons why Mr. Mohsenipour's habeas corpus application cannot succeed.

[91] First, the Peirou exception applies to Mr. Mohsenipour's habeas corpus request. The CCRA establishes a complete, comprehensive, and expert review mechanism, consisting of the Appeal Division process and subsequent judicial review in the Federal Court. The relief available through this mechanism is equivalent to the relief available via the writ of habeas corpus. Accordingly, I decline to exercise the Court's habeas corpus jurisdiction.

- [92] Secondly, even if I did exercise this Court's jurisdiction, the relief Mr. Mohsenipour seeks lies outside the scope of habeas corpus. This Court cannot quash the PBC's decisions, nor can it vary statutory release dates. These requests fall within the jurisdiction of the PBC, including the Appeals Divisions, and the Federal Court.
- [93] Lastly, the habeas corpus request duplicates the statutory appeal Mr. Mohsenipour has already filed with the PBC's Appeal Division and therefore constitutes an abuse of process within the meaning of Rule 9-5(1)(d).
- [94] Each of these grounds, standing alone, would be sufficient to dispose of the application. Taken together, they make clear that although this Court generally has jurisdiction to entertain habeas corpus applications, in these circumstances it is appropriate to decline to exercise that jurisdiction and to strike the application.

IX. Disposition and Orders

- [95] Accordingly, the AGC's application is granted.
- [96] The habeas corpus application filed June 4, 2025, is struck in its entirety pursuant to Rule 9-5(1)(d).
- [97] There will be no order as to costs.

"Sukstorf J."

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