



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **HABEAS CORPUS ACT**

## PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to December 2, 2015. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

If you find any errors or omissions in this consolidation, please contact:

*Legislative Counsel Office*

*Tel: (902) 368-4292*

*Email: [legislation@gov.pe.ca](mailto:legislation@gov.pe.ca)*



## HABEAS CORPUS ACT

### CHAPTER H-1

#### PART I — HABEAS CORPUS

**1. *Habeas corpus* proceedings**

Upon sufficient cause shown to a judge of the Supreme Court by or on behalf of any person confined in jail or prison, the judge, instead of granting his fiat for a writ of *habeas corpus cum causa*, requiring the keeper of the jail or prison to bring the prisoner before him, in order that the legality of the imprisonment may be inquired into, and discharge, bailment or recommitment had thereon, may by order in writing, signed by him, require and direct the keeper to return to him whether or not the person is detained in prison, together with the day and cause of his being taken and detained. *R.S.P.E.I. 1974, Cap. H-1, s.1.*

**2. Return to be made by keeper of the jail**

The keeper, immediately upon the receipt of the order, shall make a true and full return in writing to the judge of the Supreme Court of the day and cause of the taking and detention, to the same effect as a return to a writ of *habeas corpus* would formerly have been made; the return shall include a copy of the process, warrant or order upon which the prisoner is held, and the judge may enforce obedience to the order, by process of contempt, in the same manner as he might formerly have compelled proper return to be made to a writ of *habeas corpus*. *R.S.P.E.I. 1974, Cap. H-1, s.2.*

**3. Jurisdiction of court in making order**

Upon return of the order, the judge may proceed to examine into and decide upon the legality of the imprisonment, and make such order, require such verification, and direct such notices of further returns in respect thereof, as he may consider proper, and may by order in writing require the immediate discharge from prison, or may direct the bailment of the prisoner, in such manner and for such purpose and with the like effect and proceeding as was formerly allowed upon *habeas corpus*; the bail, when ordered, to be entered into before any provincial court judge or justice. *R.S.P.E.I. 1974, Cap. H-1, s.3.*

**4. Notice of order to prisoner**

The keeper, immediately upon receipt of any order of a judge in relation to a prisoner in his custody, shall communicate it to the prisoner, and give him a true copy thereof, if demanded, and shall obey the requirements of the same. *R.S.P.E.I. 1974, Cap. H-1, s.4.*

**5. Contempt, where and how punishable**

Every wilful neglect or disobedience of the order of a judge, in relation to a prisoner, shall be deemed a contempt and punishable as such, by fine or imprisonment, or both, at the discretion of the court or judge. *R.S.P.E.I. 1974, Cap. H-1, s.5.*

**6. Jurisdiction of judges to hear return**

The matter of the return made to the order of a judge may be heard and decided on by any other judge of the Supreme Court, who shall have the same power and jurisdiction in respect thereof as the judge by whom the first order was made. *R.S.P.E.I. 1974, Cap. H-1, s.6.*

**7. Additional return by keeper**

No order made under this Act shall require or enable the keeper of any jail or prison to discharge the prisoner from any commitment or charge, other than that specified in the order; but the keeper in every return made to a judge's order shall specify the several causes of commitment and detention, if more than one, and if between the time of making a return and receiving an order for the discharge or bailment, any other warrant, process or order shall have been delivered to him, requiring the detention of the prisoner, the keeper shall, without any further order, make and transmit to the judge an additional return, with a copy of the warrant, process or order, and the time of receiving it, which may be dealt with by the judge as if made pursuant to an order for that purpose. *R.S.P.E.I. 1974, Cap. H-1, s.7.*

**8. Civil remedy for false imprisonment preserved**

Nothing in this Act shall be construed to deprive any person who may have been falsely imprisoned from his civil remedy against any person who may have illegally caused the imprisonment, but the judge, by whom relief may be afforded under this Act, may by his order, exempt any keeper of a jail or sheriff or other peace officer from the action, who may appear to him to have acted upon the warrant or order of any judge, justice or provincial court judge according to the requirement of the same without malice or evil intent, although the warrant or order may be bad in form or substance; and an order of exemption shall be a good defence in any such action. *R.S.P.E.I. 1974, Cap. H-1, s.8.*

## PART II — GENERAL PROVISIONS

**9. Return of materials relevant to determination of legality of confinement**

In all applications for an order of *habeas corpus*, the court or judge may order that the person by whom, or by whose authority, any person is confined or restrained of his liberty, or the person having the custody and control thereof certify and return to the court or judge, as may be provided, all the informations, evidences, depositions, judgments, convictions, orders and all proceedings had or taken touching or concerning the confinement or restraint of liberty, to the end that they may be viewed and considered by the court or judge and to the end that the sufficiency thereof to warrant the confinement or restraint may be determined. *R.S.P.E.I. 1974, Cap. H-1, s.15; 1988, c.35, s.13.*

**10. Renewal of application**

- (1) Whenever an application for an order of *habeas corpus* or an order under section 1 is made to one judge only and the application is refused, the application may not be renewed before the



same judge, or before any other judge sitting alone, except upon some ground not taken on the former application.

**Appeal from refusal**

- (2) Whenever an application for an order of *habeas corpus* or an order under section 1 is made to one judge only and the application is refused, the applicant may appeal to the Court of Appeal within fifteen days of the refusal.

**Appeal from grant**

- (3) Where a judge sitting alone grants an order upon a return to an order in the nature of *habeas corpus* for the discharge of a person from confinement, the Minister of Justice and Public Safety and Attorney General or a person aggrieved may appeal the order to the Court of Appeal within fifteen days of the order. *1988, c.35, s.13; 1993, c.29, s.4; 1997, c.20, s.3; 2000, c.5, s.3; 2008, c.20, s.72(37); 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

**11. Notice to Minister**

The Minister of Justice and Public Safety and Attorney General is entitled to notice of an application for an order of *habeas corpus* or an order pursuant to section 1. *1988, c.35, s.13; 1993, c.29, s.4; 1997, c.20, s.3; 2000, c.5, s.3; 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*