

Applicability to Habeas Corpus Rejection Endorsement

The Supreme Court of Canada in *Dorsey v. Canada (Attorney General)*, 2025 SCC 38, held by a 6-3 majority (Moreau J. writing, with Wagner C.J.C., Karakatsanis, Martin, Kasirer, and O'Bonsawin JJ. concurring) that federal inmates are legally entitled under s. 10(c) Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [Charter], to challenge Correctional Service Canada (CSC) denials of reclassification from medium- to minimum-security institutions via writ of habeas corpus, where such denials result in an unlawful deprivation of residual liberty (at paras. 1, 42-43). This decision builds on the foundational trilogy establishing residual liberty interests for prisoners—*R. v. Miller*, [1985] 2 S.C.R. 613 at pp. 637-38; *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at pp. 660-61; *Morin v. National Special Handling Unit Review Committee*, [1985] 2 S.C.R. 662 at pp. 664-65—and refines the tripartite deprivation framework from *Dumas v. Leclerc Institute*, [1986] 2 S.C.R. 459 at pp. 464-65, categorizing deprivations as: (1) initial deprivation of liberty; (2) substantial changes amounting to further deprivation (e.g., segregation or higher security transfer); and (3) continuations of deprivation that become unlawful (at paras. 23-24).

Factual Background: The appellants, federal inmates in medium-security facilities, sought reclassification to minimum security supported by institutional recommendations but were denied by CSC decision-makers. They filed habeas corpus applications with certiorari in aid, alleging procedural unfairness and unreasonableness under s. 27 Corrections and Conditional Release Act, S.C. 1992, c. 20 [CCRA], and Commissioner's Directive 710-2-3: Inmate Transfer Processes. Lower courts dismissed, holding no deprivation under *Dumas* category two absent an involuntary increase in security level (*Dorsey v. Canada (Attorney General)*, 2021 ONSC 597 at para. 45; *Salah v. Canada (Attorney General)*, 2021 ONSC 131 at para. 32; affirmed 2023 ONCA 843). Appeals were moot by SCC hearing due to subsequent transfers, but proceeded on public importance grounds (at paras. 12-15).

Majority Reasoning: Habeas corpus, as a flexible, purposive remedy against state-imposed liberty restraints (*May v. Ferndale Institution*, 2005 SCC 82 at para. 22; *Mission Institution v. Khela*, 2014 SCC 24 at para. 29), is constitutionally mandated to be expeditious and effective (Charter s. 10(c); *R. v. Gamble*, [1988] 2 S.C.R. 595 at p. 642). The Court clarified a two-stage jurisdictional test: (1) establish a deprivation where current confinement is more restrictive than the lawful alternative, assessed qualitatively and contextually (e.g., impacts on programming, family visits, work releases, parole eligibility under CCRA ss. 28, 120-126), filtering frivolous claims without "qualitative difference" (at paras. 44, 60-71); (2) raise a legitimate ground questioning legality, such as jurisdictional error, procedural unfairness (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paras. 21-28), unreasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 99-101), or Charter breach (at paras. 49-50, 73-77). Upon meeting this, the onus shifts to CSC to prove lawfulness at a merits hearing, potentially granting transfer or release (at para. 49). The majority rejected a strict "entitlement" prerequisite, as it would bar review of arbitrary denials (at paras. 54-59), and affirmed provincial superior courts' preference over Federal Court judicial review under Federal Courts Act, R.S.C. 1985, c. F-7, s. 18, due to speed, onus shift, holistic review, and accessibility (*Khela* at paras. 52-55; *Woodhouse v. Canada (Correctional Service)*, 2024 FCA 158 at para. 44). Internal CSC grievances (CCRA s. 90) are inadequate alternatives (at paras. 78-88).

Dissenting Reasons (Côté, Rowe, and Jamal JJ.): The dissent mandated dismissal, cautioning against expansive habeas corpus risking judicial overreach and floodgates (at paras. 143, 173-180). They restricted jurisdiction to existing entitlements under *Dumas* category two, viewing denials as non-deprivations absent involuntary escalation (at paras. 151-158, 166). Expansion undermines Parliament's CCRA scheme, Federal Court expertise, and administrative coherence, potentially leading to inconsistent jurisprudence and routine challenges (at paras. 184-190). Reasonableness review in habeas is obiter from *Khela* (at

para. 173), and adequate alternatives exist (grievances, Ombudsman per CCRA s. 167; judicial review).

Implications: Dorsey constitutionally obligates courts to entertain habeas for security denials constituting non-trivial liberty deprivations, enhancing accountability for CSC decisions affecting rehabilitation and reintegration (CCRA s. 3). It does not encompass trivial matters (e.g., privileges, lockdowns; *Mapara v. Ferndale Institution (Warden)*, 2015 BCCA 368 at para. 120) but strengthens s. 7 Charter protections against arbitrary detention (at para. 42). This directly undermines Justice Carroccia's endorsement, which selectively cited para. 44 to limit habeas to physical custody, ignoring the majority's expansion to qualitative liberty differences in ongoing detentions (cf. *Khadr v. Canada (Prime Minister)*, 2010 SCC 3 at para. 21, affirming flexibility against state abuse).

Conclusion: Dorsey mandates broader habeas access, rendering the endorsement's refusal legally erroneous and appealable under s. 6(1)(b) Courts of Justice Act, R.S.O. 1990, c. C.43.