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PRACTICE AND PROCEDURE BEFORE ADMINISTRATIVE TRIBUNALS

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AUTHOR'S NOTE

In *Dorsey v. Canada (Attorney General),* 2025 CarswellOnt 18841, 2025 CarswellOnt 18842, 2025 SCC 38, 2025 CSC 38, 2025 W.C.B. 1543 (S.C.C.), the Supreme Court considered the application of *habeas corpus* to two federal inmates who had applied to be transferred from medium- to minimum-security institutions. Despite having been recommended for reclassification and transfer to minimum-security facilities, in each case an administrative decision-maker rejected their reclassification. Both inmates filed applications for habeas corpus, seeking orders that they either be transferred to minimum-security institutions or that their continued detention in medium-security settings be justified. The Supreme Court confirmed that *habeas corpus* applied to this reclassification setting in prison administration, and ordered that the applications could proceed.

Writing for the majority, Moreau J. situated this appeal in the general trend at the Supreme Court to adapt the historic common law right of habeas corpus to a modern, statutory prison context.

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> [1] Over the past four decades, this Court has been resolute in its application of *habeas corpus* to the modern carceral context. Long revered as the great writ of liberty, habeas corpus review remains an essential safeguard against unlawful detention and a cornerstone for the protection of prisoner's rights. This Court has repeatedly stated that "[h]abeas corpus has never been 'a static, narrow, formalistic remedy'; rather, over the centuries, it 'has grown to achieve its grand purpose — the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty' " (*Canada (Public Safety and Emergency Preparedness) v. Chhina*, 2019 SCC 29, [2019] 2 S.C.R. 467, at para. 19, citing *May v. Ferndale Institution*, 2005 SCC 82, [2005] 3 S.C.R. 809, at para. 21, and *Jones v. Cunningham*, 371 U.S. 236 (1962), at p. 243; *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502, at para. 54).
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> [2] This Court has recognized that the writ, as both a right and remedy, must remain flexible and purposive in order to respond to unlawful deprivations of liberty. Moreover, the writ must remain available and accessible to those individuals whose liberty has been most restricted living within penitentiary walls. These individuals, already facing significant deprivations of their liberty, should have access to the expedient and effective relief long offered by habeas corpus where the deprivation of liberty becomes unlawful. A qualitative approach must be taken when assessing the meaning of "deprivation of liberty" which focuses on the actual effect of a particular form of confinement.
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> [3] This appeal requires the Court to decide a narrow question: whether inmates who are denied a lower security classification may access the writ of habeas corpus. Many such denials will, of course, be lawful, just as many decisions increasing an inmate's security classification are lawfully made. Yet the writ exists precisely for those occasions when carceral authorities exceed their lawful bounds. Broad and effective access to habeas corpus is paramount for those who suffer an unlawful and continued deprivation of their residual liberty and seek to challenge the legality of their confinement.
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> . . .
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> [6] In my view, the decision to continue a particular, more restrictive form of confinement instead of placing an inmate in a lower security facility results in a deprivation of liberty. The effect of being continually held in a higher security facility is substantially the same as an inmate being involuntarily transferred to a higher security facility. Both inmates face greater restrictions on their daily lives and both are deprived of their liberty relative to the facility in which they potentially ought to be placed. As I outline, any distinction between the two is erroneously based on a formalistic understanding of a deprivation of liberty.

Dorsey represents the further development of a more purposive approach to *habeas corpus* generally, and the deprivation of liberty in the context of prison

administration specifically.

This release features developments in several areas of administrative law.

In *Habibi v. Canada (Citizenship and Immigration)*, 2025 CarswellNat 4275, 2025 FC 1675 (F.C.), the Court granted a writ of mandamus directing the government to decide a citizenship application which had been filed three years earlier, on the basis that the processing delays were unreasonable.

In *Blockchain Labrador Corporation v. Board of Commissioners of Public Utilities*, 2025 CarswellNfld 326, 2025 NLCA 35 (N.L. C.A.), the Newfoundland and Labrador Court of Appeal granted leave to an applicant to appeal an order of the Board of Commissioners of Public Utilities relating to electricity rates, but denied the appeal on the merits, including on grounds of an alleged breach of procedural fairness. Leave to appeal under the statute governing appeals from decisions of this kind is limited to questions of law and jurisdiction. In the course of its decision, the Court examined how broad or narrow "questions of jurisdiction" could be interpreted in the circumstances.

In *West Whitby Landowners Group Inc. v. Elexicon Energy Inc.*, 2025 CarswellOnt 19804, 2025 ONCA 821 (Ont. C.A.), the Ontario Court of Appeal considered whether certain correspondence from the Ontario Energy Board (OEB) in response to a referral from parties in a dispute constituted a decision giving rise to judicial review. The Divisional Court had concluded it had no jurisdiction to hear a judicial review on the issue as the OEB had merely offered its opinion in response to a request from parties involved in a private contractual dispute. The Court of Appeal allowed the appeal, concluding that while the referral arose from a private dispute, the OEB's actions involved its interpreting and applying legal issues within its exclusive jurisdiction.