

## Canada Supreme Court allows inmates to challenge denied security transfers

The Supreme Court of Canada ruled on Friday that federal prisoners can use habeas corpus to challenge decisions denying them transfer to lower-security institutions, holding that such refusals can amount to a deprivation of liberty that courts must be able to review.

In its decision in *Dorsey v. Canada* involving inmate Ghassan Salah, the Court held that a qualitative approach to liberty is required. It is not enough to ask whether a prisoner's formal security classification has changed. Judges must consider the real-world impact of confinement conditions and recognize that remaining in a more restrictive environment when a transfer to less restrictive conditions is in issue can engage liberty interests that are residual after incarceration.

Both appellants sought transfer from medium-security to minimum-security facilities in 2019. Their case management teams initially supported reclassification, but senior correctional officials ultimately refused the transfers. The Ontario Superior Court dismissed their habeas corpus applications, and a majority of the Court of Appeal agreed, treating transfer denials as internal administrative matters to be addressed through the Correctional Service of Canada's grievance process and judicial review, not through habeas corpus.

Writing for the majority, Justice Mary Moreau rejected that view. The Court held that once an inmate shows a deprivation of liberty and raises a legitimate basis to doubt its legality, habeas corpus is available and the burden shifts to the state to justify the detention. The majority emphasized that habeas corpus remains an essential safeguard against unlawful restrictions on liberty, including within prison walls, and cannot be confined only to situations where security classifications are increased. It ordered that the inmates' applications proceed on the merits.

In dissent, Justices Suzanne Côté, Malcolm Rowe and Mahmud Jamal warned that expanding habeas corpus to denied transfers risks turning it into a general vehicle for reviewing prison administration. They argued that the statutory grievance regime and Federal Court judicial review are the appropriate avenues for such disputes and cautioned that the majority's approach could draw provincial superior courts into day-to-day correctional management.

The judgment reinforces that incarceration does not place individuals outside the protection of the courts. By confirming that habeas corpus can be used to test significant decisions about security level and conditions of confinement, the Supreme Court has underlined that executive power over prisoners remains subject to meaningful judicial scrutiny. The decision signals that liberty interests continue to matter even after conviction and that constitutional principles of accountability and oversight extend into the penitentiary system.

Ryan Huang  
Lincoln Alexander School of Law, CA  
Nov 22, 2025