S.C.C. File Number 41605

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUEBEC)

BETWEEN:

ATTORNEY GENERAL OF QUEBEC

Appellant / Respondent
on cross-appeal

and

JOSEPH-CHRISTOPHER LUAMBA

Respondent / Appellant
on cross-appeal

and

CANADIAN CIVIL LIBERTIES ASSOCIATION, ATTORNEY GENERAL OF CANADA, CANADIAN ASSOCIATION OF BLACK LAWYERS

Respondents

and

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, CLINIQUE JURIDIQUE DE SAINT-MICHEL, COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, PROCUREUR GÉNÉRAL DU CANADA, PROCUREUR GÉNÉRAL DE L'ONTARIO, PROCUREUR GÉNÉRAL DU MANITOBA, PROCUREUR GÉNÉRAL DE LA COLOMBIE-BRITANNIQUE, PROCUREUR GÉNÉRAL DE SASKATCHEWAN, PROCUREUR GÉNÉRAL DE L'ALBERTA, PUBLIC INTEREST LITIGATION INSTITUTE, AKWESASNE JUSTICE DEPARTMENT, WOMEN'S LEGAL EDUCATION AND ACTION FUND, CANADIAN ASSOCIATION OF CHIEFS OF POLICE, AFRICAN NOVA SCOTIA JUSTICE INSTITUTE, BLACK LEGAL ACTION CENTRE, MOTHERS AGAINST DRUNK DRIVING (MADD CANADA), ONTARIO HUMAN RIGHTS COMMISSION, CRIMINAL LAWYERS' ASSOCIATION (ONTARIO), DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS

Interveners

FACTUM OF THE INTERVENER CANADIAN ASSOCIATION OF CHIEFS OF POLICE

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Interveners

FACTUM OF THE INTERVENER
CANADIAN ASSOCIATION OF CHIEFS OF POLICE
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW AND STATEMENT OF FACTS

a) Overview

1. This appeal questions the authority for police officers to conduct traffic stops without required grounds for safety purposes outside an organized program. The Quebec Court of Appeal declared this authority inoperative on the basis that it results in racial profiling.[1]

2. The Canadian Association of Chiefs of Police (CACP) takes the position that the authority to conduct traffic stops without required grounds for safety purposes outside an organized program is an essential tool for promoting compliance with traffic regulations. Given that the operation of a motor vehicle on a public highway is a privilege, not a right, rendering this authority inoperative would constitute a disproportionate measure that undermines public safety and impairs the ability of police officers across Canada to fulfill their duty to protect life and the safety of the public.

3. The CACP acknowledges the existence and harms of racial profiling. It also recognizes that racial profiling does not have a place in the police decision making process.

4. However, this Honourable Court should not equate an officer's misuse of authority with the lawful scope and purposes of that authority.

5. The CACP substantially agrees with the Attorney General of Quebec's submissions on sections 7, 9 and 15 of the *Charter*.[2]

6. The CACP will advance three submissions:

   a) The factors that lead this Honourable Court to uphold the authority to conduct traffic stops with no required grounds for safety purposes outside an organized program remain fully applicable in today's society;

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[1] *Procureur général du Québec c. Luamba,* 2024 QCCA 1387

[2] *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

b) The discretion inherent in the authority to conduct traffic stops without required grounds for safety purposes outside an organized program is not absolute and does not authorize the practice of racial profiling identified by the Quebec Court of Appeal; and

c) The appropriate remedy for instance of racial profiling is not confined to the exclusion of evidence under section 24(2) of the *Charter*.

b) Statement of Facts

7. The CACP takes no position as to the facts at issue in the present appeal.

PART II – QUESTIONS AND ISSUES

8. The CACP accepts the questions and issues as outlined in the Appellant's factum.

9. The CACP will address the issues relating to whether at common law police officers have the power to conduct a traffic stop without required grounds outside an organized program.

PART III – STATEMENT OF ARGUMENT

a) Police officers' common law power to conduct traffic stops without required grounds outside an organized program

10. This Honourable Court has firmly established the police power at common law to conduct traffic stops without required grounds for traffic safety reasons in *Dedman v The Queen*[3]. The authority to conduct random stops was, therefore, deemed to fall within the scope of general police duties to prevent crime and to protect life and property through traffic control.[4]

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[3] *Dedman v. The Queen,* [1985] 2 SCR 2

[4] *Dedman v. The Queen,* [1985] 2 SCR 2, at para 68

11. Driving on the public highway is not a fundamental liberty like the ordinary right of movement of the individual.[5] Driving is a privilege, not a right.

12. In concluding that random traffic stops were not an unreasonable interference with the right to circulate on the public highway, this Honourable Court took into consideration that driving is a licensed activity that is subject to regulation and control and that "the stop would be of relatively short duration and of slight inconvenience."[6]

13. The principle that driving is a privilege has been codified under section 320.12 of the *Criminal Code of Canada*[7] which declares that "operating a conveyance is a privilege that is subject to certain limits in the interests of public safety that include licensing, the observance of rules and sobriety."

14. This acknowledgement affirms that have a reduced expectation of privacy when engaged in the regulated activity of driving on public highway.

15. Subsequent Supreme Court of Canada's decisions have confirmed the police power to engage in random traffic safety stops as part of an organized program and outside such program, including *R v. Hufsky*[8], *R v Ladouceur*[9], *R. v. Orbanski; R. v. Elias,*[10] and *R. v. Nolet*[11].

16. These cases held that while conducting traffic stops with no required grounds for traffic safety purposes (i.e. checking the driver's licence and insurance, the sobriety of the driver and the mechanical fitness of the vehicle) amounts to an arbitrary detention, this power was saved under section 1 of the *Charter* as it addresses a "pressing and substantial concern." In coming to this conclusion, this Honourable Courts highlighted the following factors:

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[5] *Dedman v. The Queen,* [1985] 2 SCR 2, at para 68

[6] *Dedman v. The Queen,* [1985] 2 SCR 2, at para 69

[7] *Criminal Code*, RSC 1985, c C-46.

[8] *R. v. Hufsky,* [1988] 1 SCR 621

[9] *R. v. Ladouceur,* [1990] 1 SCR 1257

[10] *R. v. Orbanski; R. v. Elias,* 2005 SCC 37, at para 41

[11] *R. v. Nolet,* 2010 SCC 24, at para 25

i. Compliance with driver's licence conditions and the requirement to hold a valid licence cannot be determined solely through observations of driving behaviour. Conducting a traffic stop is the only effective means of verifying a driver's licence, insurance and the mechanical fitness of vehicles;[12]

ii. Motor vehicle accidents are caused disproportionately by drivers who operated while impaired by alcohol and/or drugs, without a valid licence, while under licence suspension, and/or without insurance; [13]

iii. There would be no point in requiring licences for driving if there was no means to ensure drivers are holding a valid licence;[14] and

iv. The detention involved in random traffic stops is of brief duration, without a need for any intrusive search.[15]

17. These reasons for allowing random traffic stops were summarized by the Alberta Court of Appeal in *R. v. Dhuna*:[16]

> "[…] Police officers are empowered to stop vehicles at random (i.e. arbitrarily), even outside organized stop check programs, so long as they do so for "legal reasons" related to driving a car, such as checking a driver's licence and insurance, sobriety and mechanical fitness of the car: see *Ladouceur*. Provided the officer is acting lawfully within the scope of the statute, such random stops are justifiable under the *Charter*. Random stops are justifiable under the *Charter* because of the importance of highway safety; the public danger of impaired driving and motor vehicle accidents; and the relative importance of enforcing motor vehicle offences which cannot generally be detected by observation of the driving (such as possession of a valid licence and insurance, mechanical fitness of the vehicle and the sobriety of the driver)."

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[12] *R. v. Hufsky,* [1988] 1 SCR 621, at para 20; *R. v. Ladouceur,* [1990] 1 SCR 1257, at p. 1281

[13] *R. v. Hufsky,* [1988] 1 SCR 621, at para 19; *R. v. Ladouceur,* [1990] 1 SCR 1257, at p. 1280

[14] *R. v. Ladouceur,* [1990] 1 SCR 1257, at p. 1284

[15] *R. v. Ladouceur,* [1990] 1 SCR 1257, at p. 1283

[16] *R. v. Dhuna,* 2009 ABCA 103, at para 8

18. All these concerns remain relevant today, as acknowledged by the Quebec Court of Appeal in this case when it recognized that highway safety, the prevention and detection of impaired driving and the integrity of the licensing system are pressing and substantial objectives.[17]

19. The authority to conduct traffic stops without requiring specific grounds serves as an important deterrent to unsafe or unlawful driving. There is no alternative authority that would allow proactive enforcement of driver's licence conditions, the requirement to have valid insurance, the proper use of seat belts and the necessity to drive a vehicle that is mechanically fit.

20. The authority to conduct traffic stops without requiring specific grounds is therefore a key component to promoting compliance with the normative framework governing road safety and traffic regulation.

21. The common law authority to conduct traffic stops with no required grounds has been codified across Canada in various provincial statutes[18], including in the challenged provision of section 636 of the Quebec *Highway Safety Code*[19].

22. The Quebec Court of Appeal found that the common law authority to conduct random traffic stop and section 636 of the *Highway Safety Code* confer an absolute discretion on police officers as they provides "no express or implied criteria to govern its exercise."[20] The Court agreed with the trial judge that the issue of racial profiling did not arise from an improper application of the police authority granted by the section 636 but from the challenged provision itself.

23. This finding fails to account for the limits imposed on police officers using their discretion.

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[17] *Procureur général du Québec c. Luamba*, 2024 QCCA 1387, at para 115

[18] E.g. Alberta *Traffic Safety Act,* RSA 2000, c T-6 (sections 166 and 167), Ontario *Highway Traffic Act,* RSO 1990, c H.8 (section 216)

[19] *Highway Safety Code,* CQLR, c. C-24.2

[20] *Procureur général du Québec c. Luamba,* 2024 QCCA 1387, at para 76

b) Police discretion

24. Police discretion is embedded in multiple places in statutes, for example the *Criminal Code of Canada* and the *Controlled Drugs and Substances Act,*[21] without providing guidelines for the exercise of this discretion. Nonetheless, daily functioning of law enforcement relies upon the exercise of police discretion in the protection of life and property, apprehension of offenders and enforcement of the law. This discretion is supported by the legislative frameworks of the provinces, which collectively empower police officers to act in accordance with their duty to protect the public.

25. The essential feature of police discretion in the criminal justice system was recognized by this Honourable Court in *R. v. Beare.*[22] La Forest J. stated:

> "Discretion is an essential feature of the criminal justice system. A system that attempted to eliminate discretion would be unworkably complex and rigid."[23]

26. In *R v Beaudry,*[24] this Honourable Court expanded on the concept of police discretion. It determined that the discretion is not absolute, and police officers must justify their decisions rationally.[25] The use of the discretion must be justified subjectively as well as based on objective factors. This Honourable Court offered the following comments:

i. "A decision based on favouritism, or on cultural, social or racial stereotypes, cannot constitute a proper exercise of police discretion."[26]

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[21] *Controlled Drugs and Substances Act,* SC 1996, c 19

[22] *R. v. Beare; R. v. Higgins,* [1988] 2 S.C.R. 387 [*R. v. Beare*]

[23] *R. v. Beare,* [1988] 2 S.C.R. 387, at para 51

[24] *R. v. Beaudry*, 2007 SCC 5

[25] *R. v. Beaudry,* 2007 SCC 5, at para 37

[26] *R. v. Beaudry,* 2007 SCC 5, at para 38

ii. "[T]he justification offered must be proportionate to the seriousness of the conduct and it must be clear that the discretion was exercised in the public interest."[27]

iii. "In discharging their respective duties, both the police officer and the prosecutor have a discretion that must be exercised independently of any outside influence."[28]

27. It follows that the discretion embedded in the common law authority to conduct random traffic stops and mirrored in the challenged provision is not absolute or without guidance as characterized by the Quebec Court of Appeal.

28. The common law and the challenged provision only authorize a traffic stop with no required grounds for traffic safety related reasons. The mechanical fitness of the vehicle, the possession of a valid licence and proper insurance, and the sobriety of the driver have been recognized being traffic safety reasons.

29. A random traffic stop influence by racial profiling does not constitute a proper exercise of police discretion and, consequently, it is not a traffic stop authorized under either the common law or the challenged provision.

30. Decision-makers have recognized that racial stereotyping involves the improper exercise of police discretion, regardless of how it is manifest.[29]

31. Consequently, the Quebec Court of Appeal erred in concluding that the absence of guidelines governing the exercise of discretion under the common law and the challenged provision rendered these authorities absolute. The Quebec Court of Appeal incorrectly attributed the instances of racial profiling to the absolute discretion of the authority rather than recognizing that such profiling arises from the improper exercise of police discretion.[30]

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[27] *R. v. Beaudry,* 2007 SCC 5, at para 40

[28] *R. v. Beaudry,* 2007 SCC 5, at para 48

[29] *Nassiah v Peel (Regional Municipality) Services Board,* 2007 HRTO 14

[30] *Procureur général du Québec c. Luamba,* 2024 QCCA 1387, at para 74

c) Addressing racial biases and racial stereotypes

32. In *R v Beare; R v Higgins*,[31] this Honourable Court has established that the appropriate remedy for the wrongful exercise of an otherwise lawful discretionary police power is determined on a case-by-case basis under s. 24 of the *Charter*, rather than by striking down the provision or power itself.

33. This approach has been endorsed by this Honourable Court in *R. v. Le*,[32] and by lower courts, [33] where racial profiling was deemed to be relevant under the first and second *Grant* factor.

34. The issue of constitutionality of a provision and racial profiling was explored by the courts in relation to the mandatory alcohol screening provision under section 320.27(2) of the *Criminal Code*.

35. Section 320.27(2) provides police officers with the authority to make a mandatory alcohol screening demand without any grounds. There is no requirement for an officer to suspect the individual has alcohol in their body. A mandatory alcohol screening demand will be valid if the officer is in possession of an approved screening device (ASD), the individual is operating a motor vehicle, and the officer is acting in the execution of their duties. The authority to conduct a traffic stop without required grounds has been used to satisfy the "in the execution of their duties" requirement.

36. The constitutionality of the mandatory alcohol screening provision has been confirmed by various courts across Canada.[34] Some courts have found that section 320.27(2) infringed section 8 of the *Charter* but that the infringement is saved by section 1 of the *Charter.* The possibility that section 320.27(2) could be used as a tool for racial profiling was raised as a significant concern but, ultimately, it did not lead to a lack of section 1

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[31] *R v Beare,* [1988] 2 SCR 387

[32] *R. v. Le*, 2019 SCC 34

[33] *R. v. Douglas-Hodgson,* 2023 ONSC 6769; *R. v. Neyazi,* 2014 ONSC 6838; *R. v. Holloway*, 2021 ONSC 6136; and *R. v. Ffrench,* 2022 ONCJ 134

[34] E.g. *R. v. Blysniuk*, 2020 ONCJ 603; *R. v. Brown*, 2021 NSPC 32; *R. v. Day*, 2022 MBPC 2; *McLeod v. British Columbia (Superintendent of Motor Vehicles)*, 2023 BCSC 325; and *R. v. Wright*, 2025 SKCA 52

justification.[35] The authority to conduct mandatory alcohol screening is not undermined by the possibility that an officer could rely on racial stereotype to abuse that authority.

37. The Quebec Court of Appeal adopted the trial judge's conclusion that the remedy of excluding evidence under s. 24(2) of the *Charter* does not alleviate the deleterious effects of the police authority to conduct traffic stops without required grounds because when these involved an element of racial profiling, the traffic stop is "unlikely to uncover an offence".[36]

38. Consequently, the Quebec Court of Appeal found that, on a balance of the salutary and deleterious effects, section 1 of the *Charter* did not save the violation of the right not to be arbitrarily detained under section 9 of the *Charter.*[37]

39. This argument fails to consider that exclusion of evidence is not the only remedy available to those subjected to racial profiling.

40. Police actions are reviewable by independent oversight organizations, such as the Commissaire à la déontologie and the Commission des droits de la personne et des droits de la jeunesse in the province of Québec.

41. Law enforcement agencies across Canada have acknowledged the effects of racial profiling have on both police actions and the communities they serve. Active steps are being taken to address racial profiling in policing and to mitigate its impacts. For example, across the country, police officers are mandated to complete impartial and unconscious bias training as well as cultural competency training.

42. This is an ongoing process but one that law enforcement agencies are committed to continuously advance.

d) Conclusion

43. By failing to recognize the limitations on police discretion and the alternative measures available to address racial profiling, the Quebec Court of Appeal erred in

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[35] *R. v. Kortmeyer,* 2021 SKPC 10, at para 66

[36] *Procureur général du Québec c. Luamba,* 2024 QCCA 1387, at para 143

[37] *Procureur général du Québec c. Luamba,* 2024 QCCA 1387, at para 144

concluding that the authority to conduct traffic stops without required grounds for safety purpose outside an organized program at common law or under the challenged provision cannot be saved by section 1 of the *Charter.*

PART IV – COSTS

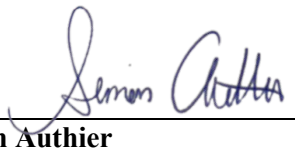
44. The CACP does not seek costs of this appeal and asks that no costs be awarded against it.

PART V – ORDER SOUGHT

45. The CACP intends to present an oral argument not exciding five minutes as per the Order of this Court dated September 24, 2025.

46. The CACP does not request a specific order with respect to this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED on November 17, 2025.



Simon Authier
Counsel for the intervener – Canadian Association of Chiefs of Police

PART VI – TABLE OF AUTHORITIES

CASE LAW	PARA. NO.
Dedman v. The Queen, [1985] 2 SCR 2	10, 11, and 12
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