SCC Court File No.: 37971

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE *COURT OF APPEAL FOR ONTARIO*)

B E T W E E N:

TOM LE

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

- and -

FEDERATION OF ASIAN CANADIAN LAWYERS AND THE CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC, CRIMINAL LAWYERS' ASSOCIATION, DIRECTOR OF PUBLIC PROSECUTIONS, CANADIAN MUSLIM LAWYERS ASSOCIATION, CANADA WITHOUT POVERTY, CANADIAN MENTAL HEALTH ASSOCIATION OF MANITOBA AND WINNIPEG, THE ABORIGINAL COUNCIL OF WINNIPEG, INC., END HOMELESSNESS WINNIPEG INC., CANADIAN CIVIL LIBERTIES ASSOCIATION, SCADDING COURT COMMUNITY CENTRE, JUSTICE FOR CHILDREN AND YOUTH, URBAN ALLIANCE ON RACE RELATIONS

Interveners

FACTUM OF THE INTERVENERS FEDERATION OF ASIAN CANADIAN LAWYERS AND THE CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC

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PART I - STATEMENT OF FACTS

1. The Federation of Asian Canadian Lawyers ("FACL") and the Chinese and Southeast Asian Legal Clinic ("CSALC") accept the facts as set out in the parties' facta. FACL and CSALC take no position on disputed facts and take no position on the specific outcome of this appeal. Instead, the focus of these submissions is on the proper framework for the courts to adopt in determining whether there has been a detention under s. 9 of the *Charter*.

PART II - OVERVIEW AND POSITIONS ON QUESTIONS IN ISSUE

2. In *R. v. Grant*,[1] this Court held that the "minority status" of an accused is relevant in assessing whether s/he was detained under the *Charter*. This case provides the Court with an opportunity to build on this analysis and expand the lens through which to consider a person's racialized status in the detention inquiry.[2]

3. More broadly, this case raises serious questions about race in our criminal justice system. In the court below, the majority and dissent disagreed sharply on whether the Appellant was detained in violation of s. 9 of the *Charter*. In finding that the Appellant's *Charter* rights were violated, Lauwers J.A. (in dissent) was blunt: race played a role.[3] If true, the severity of this type of misconduct cannot be overstated. A finding that police have infringed the equality rights of racialized minorities in Canada's multicultural and democratic society has "very serious long-term implications for the administration of justice".[4]

4. As a preliminary comment, FACL and CSALC urge this Court to depart from the term "visible minority" in favour of the term "racialized person".[5] The former is outdated. "Visible minority" situates "whiteness" as the dominant culture against which other ethno-racial groups are to be measured and "renders invisible the differences in the lived experiences of diverse

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[1] 2009 SCC 32 ["*Grant*"].

[2] This approach is consistent with Canada's constitutional commitment to the protection of minority rights, an "independent principle underlying our constitutional order": *Reference re: Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 80.

[3] *R. v. Le*, 2018 ONCA 56 ["*Le*"], at para. 162.

[4] *R. v. Neyazi*, 2014 ONSC 6838 ["*Neyazi*"], at para. 220.

[5] See, for example, this Court's use of the term "visible minority" in *Grant, supra* (S.C.C.).

communities".[6] By contrast, the term "racialized person" recognizes that race is a social construct and demands consideration of whether the *Charter* claimant has experienced prejudice as a result of his/her race.[7] Different racialized groups experience racism differently. These experiences shape how a reasonable person in similar circumstances would feel upon approach by police and are therefore critical to the detention analysis. As this Court held in *Grant*, the key question is whether a reasonable person in all of the circumstances would have felt psychologically restrained.[8]

5. FACL and CSALC make three further points. *First*, the existence of racial profiling is relevant not only to the reasons for a detention (*i.e.*, whether it was arbitrary), but also to the threshold question of whether there was a detention. A reasonable person is someone who is aware of the history of interactions between police and his/her community. Where that history involves racial profiling, the power imbalance between police and the citizen is amplified, and the individual is less likely to believe that s/he can simply walk away from police.

6. *Second*, where there is ambiguity regarding an individual's belief in his/her right to walk away from police, this should inure to the benefit of the individual. Encounters between police and individuals are often fraught with uncertainty. Faced with this uncertainty, different people will react in different ways, and the reasons for their reactions will seldom be clear. Reactions may be especially unpredictable in over-policed communities where there is an atmosphere of distrust. The courts should therefore err on the side of recognizing a detention.

7. *Third*, it is dangerous to reason that because a person has been approached by police in the past, s/he must have known that s/he was free to walk away. Individuals in over-policed communities are generally more (and not less) vulnerable and are more likely to be viewed suspiciously by police. Thus, they are in greater need of the protections that follow from recognizing a detention (*e.g.*, the right to counsel under s. 10(b)).

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[6] Office of the United Nations High Commissioner for Human Rights, Committee on the Elimination of Racial Discrimination, "Concluding observations on the twenty-first to twenty-third periodic reports of Canada", August 25, 2017, at p. 2, available online: <https://fncaringsociety.com/sites/default/files/CERD_C_CAN_CO_21-23_28714_E.pdf>.

[7] See, for example, the Ontario Human Rights Commission "Policy and guidelines on racism and racial discrimination", June 9, 2005, at s. 2.1.1, available online: <http://www.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_racism_and_racial_discrimination.pdf>.

[8] *Grant, supra* (S.C.C.), at paras. 31, 44.

PART III - LAW AND ARGUMENT

A. Courts should consider the impact of historic racial profiling

8. Racial profiling is a reality in Canada that "cannot be denied".[9] It is "supported by significant social science research."[10] As this Court put it in *Grant*, "[a] growing body of evidence and opinion suggests that visible minorities and marginalized individuals are at particular risk from unjustified 'low visibility' police interventions in their lives".[11] Courts "cannot presume to be colour-blind in these situations".[12]

9. Racial profiling arises most frequently in the determination of whether a detention was *arbitrary* and therefore in violation of s. 9 of the *Charter*. It can also be relevant, however, to the threshold question of whether there was a detention.

10. A history of racial profiling directed at a particular community can inform the reasonable person's belief of whether s/he is free to walk away from police. A reasonable person is one who is apprised of all of the circumstances. These circumstances should include the dynamics between law enforcement and the group to which a person belongs (or is perceived to belong). If that relationship is plagued by racial profiling — and the power imbalance that allows for, and is perpetuated by, this insidious phenomenon — a reasonable person is likely to treat police questions as demands that must be obeyed rather than requests that can be ignored.[13]

11. Racial profiling is also relevant to the detention issue where the *Charter* claimant experiences it directly. The reasonable person is someone who stands in the claimant's shoes. If s/he believes that police have approached him/her on the basis of race, s/he is more likely to feel psychologically restrained by any police action that follows.

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[9] *Peart v. Peel (Regional Municipality) Police Services Board* (2006), 217 O.A.C. 269 (C.A.), at para. 146.

[10] David M. Tanovich, "Applying the Racial Profiling Correspondence Test", (2017) 64 Crim. L.Q. 359, FACL and CSALC's Book of Authorities ("BOA"), Tab 4, at p. 359, quoting from *R. v. Brown* (2003), 64 O.R. (3d) 161 (C.A.) ["*Brown*"], at para. 9.

[11] *Grant, supra* (S.C.C.), at para. 154 (per Binnie J., concurring).

[12] *Ibid*.

[13] To borrow a phrase from Laskin J.A. in *R. v. Grant* (2006), 81 O.R. (3d) 1 (C.A.), at para. 24: "Second, the trial judge characterized Gomes' advice to keep his hands in front of him where Gomes could see them as a 'request', not a 'direction or demand'. In my view, any reasonable person hearing these words from a uniformed officer three feet away would treat them not as a request that might be ignored, but as a command that must be obeyed."

12. Binnie J.'s concurring opinion in *Grant* is instructive. He criticized the reasonable person test by noting that the judicially constructed "reasonable person" is often "much more assertive in encounters with police officers than is the average citizen".[14] Binnie J. further wrote:

> This gap between the reality on the street and the court constructed "reasonable person" is of particular relevance to visible minorities who may, because of their background and experience, feel especially unable to disregard police directions, and feel that assertion of their right to walk away will itself be taken as evasive and later be argued by the police to constitute sufficient grounds of suspicion to justify a *Mann* detention.[15]

13. This problem can be cured (in part) by closing the gap between the reasonable person and the individual before the court. The "reasonable person" test should not assume that all groups have a similar social and historical relationship with police. Instead, where the *Charter* claimant is racialized, the courts should examine the detention issue through a lens that considers race. To that end, two practical considerations are important: (i) the relevant racialized group(s) must be appropriately defined; and (ii) the court should take a broad approach to the types of evidence that may be admissible and probative of racial profiling.

(i) Racialized groups must be appropriately defined

14. In defining the relevant racialized group, the courts should consider both the group with which the *Charter* claimant self-identifies and the group to which police perceive the *Charter* claimant as belonging. The former is relevant because it speaks directly to the individual's perception of why s/he is being approached by police. The latter is relevant insofar as it explains why police have racially profiled an individual, therefore causing a reasonable person in the same circumstances to feel psychologically restrained. Both the police perspective and the *Charter* claimant's perspective are important to the s. 9 inquiry.

15. In defining the relevant racialized group(s), the courts should adopt a racial equity lens that respects the *Charter* claimant's self-identity and does not perpetuate pre-existing stereotypes about the racialized group to which the claimant belongs. To give an obvious example, Asian

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[14] *Grant, supra* (S.C.C.), at para. 169 (per Binnie J., concurring), quoting from E.J. Butterfoss, "Bright Line Seizures: The Need for Clarity in Determining When Fourth Amendment Activity Begins" (1988-1989), 79 J. Crim. L. & Criminology 437, at p. 439, BOA Tab 1.

[15] *Grant, supra* (S.C.C.), at para. 169 (per Binnie J., concurring).

Canadians do not represent a single, monolithic group.[16] Viewing them as such risks perpetuating the prejudicial "model minority myth". The "model minority myth" suggests that Asian Canadians are free from discrimination.[17] They are not. Certain East and Southeast Asian Canadian communities are over-represented among the low income population[18] and experience systemic discrimination within the criminal justice system.[19] For example, the 2016 York University Traffic Stop study examined incidences of traffic stops among different racial groups in Ottawa, and tracked the reasons for and outcomes of the stops.[20] Compared with white drivers, East-Asian drivers experienced disproportionately high incidences of stops based on perceived criminal offences or suspicious activities.[21]

16. Consider also the following court decisions:

- In *R. v. Koh*, the Court of Appeal for Ontario allowed an appeal on the basis that the trial judge refused to allow the accused to ask the following question to jurors on a challenge for cause: "Would the fact that the accused are persons of Chinese origin

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[16] See *R. v. Nguyen*, 2006 ONCJ 95, at paras. 22-23. See also The Honourable Michael H. Tulloch's "Report of the Independent Police Oversight Review", (Toronto: Queen's Printer for Ontario, 2017), available online: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review/>, recommendation 4.2, at para. 53, which recommends implementing training for police oversight bodies to develop greater social and cultural competency regarding the communities they serve, including South Asian and East Asian communities.

[17] See the U.S. literature on Asian Americans and their interactions with the criminal justice system: Harvey Gee, "Asian Americans and Criminal Law and Criminal Procedure: A Missing Chapter from the Race Jurisprudence Anthology" (2011), 2 Geo. J.L. & Mod. Crit. Race Persp. 185, BOA Tab 2, at p. 192; Rhoda J. Yen, "Racial Stereotyping of Asians and Asian Americans and Its Effect on Criminal Justice: A Reflection on the Wayne Lo Case", (2000) 7 Asian L.J. 1, at pp. 2-4. See also John Huey-Long Song, "Attitudes of Chinese Immigrants and Vietnamese Refugees toward Law Enforcement in the United States", (1992) 9 Just. Q. 703, BOA Tab 3, at pp. 712, 715, which discusses the differences between Chinese and Vietnamese Americans in their dealings with the criminal justice system.

[18] Michael Polanyi, Beth Wilson, Jessica Mustachi, Monali Ekra, and Michael Kerr, "Unequal City: The Hidden Divide Among Toronto's Children and Youth" (2018), available online: <http://torontocas.ca/sites/torontocas/files/CAST%20Child%20Poverty%20Report%20Nov%202017.pdf>, at pp. 11, 15.

[19] *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer for Ontario, 1995), available online: < http://www.ontla.on.ca/library/repository/mon/25005/185733.pdf>, at pp. i, ix, 4, 12, 13-14, 16-17, 35, 44-45, 93-95, 120, 172,182-183, 228-229, 231, 235, 251, 262, 337-341, 351-357, 367, 397, 409.

[20] Dr. Lorne Foster, Dr. Les Jacobs, and Dr. Bobby Siu, "Race Data and Traffic Stops in Ottawa, 2013-2015: A Report on Ottawa and the Police Districts" (2016), available online: <https://www.ottawapolice.ca/en/about-us/resources/.TSRDCP_York_Research_Report.pdf>.

[21] Similarly, Criminal Intelligence Service Canada's annual reports have referred to "Vietnamese-based groups" as being extensively involved in "residential marihuana grow operations" that are "widespread" throughout Canada. See Tanovich, *supra*, BOA Tab 4, at p. 363.

and visitors from Singapore affect your ability to judge the evidence fairly and without prejudice?" The Court of Appeal explained that "it is not to be doubted that racist sentiment against persons of Chinese origin is present amongst the residents of Toronto and in sufficient numbers to raise serious concerns."[22]

- In *R. v. Lam*, after a minimal opportunity to observe Mr. Lam in the passenger seat of a car, police stopped the car to question him on the basis that he might be another Asian male who was wanted by police. The court held that Mr. Lam was detained in the absence of reasonable suspicion. The court found an "astounding lack of understanding as to cross-race identification dangers" on the part of police.[23]

- In *R. v. Huang*, an officer stopped Mr. Huang's vehicle because he was Asian, and the officer assumed he was therefore involved in the production of marijuana. The court found that the officer was "personally very angry at a particular group of people of Asian extraction – those who are associated with organized crime, particularly the production and trafficking of marijuana and other drugs. He demonstrates enmity to that group of people. Further, he assumes that Mr. Huang is part of that group."[24]

17. These examples underscore the reality that Asian Canadians are discriminated against because they are "Asian" and/or because they are seen as belonging to a particular ethno-racial group of an Asian background (*e.g.*, Vietnamese). It follows that individuals who self-identify in this way may experience a heightened sense of powerlessness in their encounter with police and may, as a result, be more likely to feel restrained when approached by police on the street (or in a backyard). In these circumstances of vulnerability, individuals are most in need of the *Charter* protections that apply immediately upon detention (*e.g.*, the right to counsel under s. 10(b)).

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[22] (1998), 42 O.R. (3d) 668 (C.A.), at paras. 8, 25.

[23] 2014 ONSC 3538, at paras. 196, 207-209.

[24] 2010 BCPC 336 ["*Huang*"], at paras. 22-23. Similarly, in *R. v. Nguyen* (2006), 139 C.R.R. (2d) 65 (Ont. S.C.J.) ["*Nguyen*"], at paras. 25-28, the court found that police had commenced an investigation into marijuana trafficking against Mr. Nguyen by looking for properties Vietnamese persons owned and applying the erroneous racial stereotype that Mr. Nguyen may be involved in criminal activity because he was Vietnamese. The court excluded the evidence that was ultimately seized. See also *R. v. Mac*, [2005] O.J. No. 527 (S.C.J.), at paras. 2-6. In *Mac*, the court struck references to "East Asian, Asian and Vietnamese" from an Information to Obtain to avoid the risk of an issuing Justice of the Peace "jumping to conclusions which are based on stereotypical assumptions and not on hard evidence." The court held that "[u]nless it is essential for the race of an individual to be referred to for purposes of explaining the evidence it should not be done because of the risk of colouring the approach of the judicial officer reading the Information to Obtain."

(ii) A broad approach should be taken to admissible and probative evidence

18. If the existence of racial profiling is relevant to the detention inquiry, the courts should take a broad approach to the type of evidence that is admissible and probative of racial profiling. At the most fundamental level, courts should take judicial notice of the fact that there is a history of discrimination against racialized persons.[25] Beyond this, *Charter* claimants should be able to augment their detention claim by adducing evidence of systemic racial profiling directed at a particular racialized group. This can include empirical studies such as the 2016 York University Traffic Stop study, as well as reports by human rights commissions.

19. In addition, the courts should consider evidence that the *Charter* claimant has been the subject of racial profiling on the facts of the specific case. Of course, police officers will rarely testify that racial stereotypes influenced their decisions.[26] *Charter* claimants must therefore draw from circumstantial or other evidence.[27]

20. To that end, this Court should consider what Professor David M. Tanovich has called the "varied manifestations of racial profiling" — factors to assess whether an individual was racially profiled.[28] These factors include, among other things: explicitly using race to justify a criminal profile;[29] engaging in heightened surveillance of racialized or low-income neighbourhoods;[30] using highly discretionary or minor statutory powers to justify a detention;[31] interpreting ambiguous, or even innocuous, behaviour as incriminating;[32] using race to target an individual

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[25] *Koh, supra* (Ont. C.A.), at para. 41.

[26] See, for example, *Huang, supra* (B.C.P.C.), at paras. 5, 35, where the court found that a police officer was not truthful with the court about his motivation for stopping Mr. Huang's vehicle.

[27] *Brown, supra* (Ont. C.A.), at paras. 16, 44-45.

[28] Tanovich, *supra*, BOA Tab 4, at p. 369. See also *Neyazi, supra* (Ont. S.C.J.), at para. 198, where Smith J. discussed several factors indicative of racial profiling.

[29] See, for example, *Nguyen, supra* (Ont. S.C.J.), where the court found that police commenced an investigation based on a Vietnamese name.

[30] In the Appellant's case, part of the reason for entering Mr. Dixon's backyard was to "investigate whether the young men were entitled to be in the backyard or were trespassing on the property": 2014 ONSC 2033 ["Ruling on *Charter* Application"], at para. 23. In his dissenting opinion in the court below, Lauwers J.A. observed that police would not likely have "brazenly entered a private backyard and demanded to know what its occupants were up to in a more affluent and less racialized community": *Le, supra* (Ont. C.A.), at para. 162.

[31] See, for example, *Huang, supra* (B.C.P.C.), at para. 9, where an officer stopped Mr. Huang's vehicle "because it swerved twice in its own lane".

[32] This case is again a good example. Police interpreted the Appellant's nervous behaviour as incriminating: Ruling on *Charter* Application, at paras. 5, 29. See also *Grant, supra* (S.C.C.), at paras. 6-7.

based on an alleged match with the race of a known suspect;[33] and undertaking unjustifiable measures, or using excessive force, to respond to purported dangers.

21. Applied consistently, these factors challenge courts to engage with racial profiling in a more robust, and less speculative, way. Where some or all of these factors are present, it should be open to a court to make a finding of racial profiling, which in turn is relevant to the question of whether the person was detained (as well as whether the detention was arbitrary). The evidentiary barrier cannot be insurmountable.[34]

B. Courts should be careful not to impute too much certainty to the claimant's subjective belief

22. The *Charter* claimant's subjective belief in his/her right to walk away can also play a role in the detention analysis. Although the question of whether an individual was detained is determined on an objective "reasonable person" standard — and subjective belief is not a prerequisite — "the individual's particular circumstances and perceptions at the time may be relevant in assessing…the reasonableness of any perception that he or she had no choice but to comply with the police directive."[35] In that limited way, subjective belief is relevant.

23. Most individuals, however, do not know the limits of police authority.[36] This is precisely why they need the right to counsel.[37] The courts should therefore be careful not to impute too much knowledge or too much certainty to the mindset of the *Charter* claimant. It would defeat the purpose of the s. 10(b) right to assume an unrealistic level of clarity in the mind of the claimant upon approach by police — especially when this is done to preclude a finding that the claimant was detained and thereby prevent the right to counsel from ever arising.

24. Uncertainty can cause people to react in unpredictable ways. One person may react with compliance if s/he believes s/he is being detained;[38] another may react with hostility.[39]

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[33] See, for example, *Huang, supra* (B.C.P.C.), where police stopped a car because its passenger was "Asian".

[34] As Hill J. explained in *R. v. Athwal*, 2017 ONSC 96, at para. 267, the court "cannot be seen as condoning the arbitrary detention of visible minority members of the community if we are to eliminate perceptions of racism on the part of the police".

[35] *Grant, supra* (S.C.C.), at para. 32.

[36] *Ibid*, at para. 30, citing *R. v. Therens*, [1985] 1 S.C.R. 613, at p. 644.

[37] *Grant, supra* (S.C.C.), at para. 22.

[38] *R. v. Hunlin*, 2013 BCPC 427, at para. 8.

Individuals who live in an atmosphere of distrust of law enforcement cannot be expected to conform to a uniform manner of response. As Myers J. put it in *Elmardy v. Toronto Police Services Board*:

> Had Constable Pak approached me, I might have given him the information he wanted. I might have said, "Constable, I prefer to not answer your question and I would like to be on my way now please." But, Mr. Elmardy is not me. He brings his life's experiences with him…The police deal with all manner of members of the public. Each brings his or her own life and troubles, experiences and joys with him or her to each encounter.[40]

25. Accordingly, any uncertainty as to the *Charter* claimant's subjective belief about whether or not s/he was free to walk away from police should inure to the benefit of the claimant. If police want to clarify the situation, they should do so by informing the individual in no uncertain terms that s/he is free to walk away at any time and that doing so cannot be held against them.[41]

C. Experience with police should seldom be used to argue against a detention

26. In the court below, Doherty J.A. found the Appellant's perception that he was not being detained by police was "particularly significant as he is no stranger to street-level encounters with the police."[42] The Court should be extremely wary of such reasoning.

27. It is precisely because of racial profiling that racialized persons often have the most experience in street-level encounters with police. This makes them more — not less — vulnerable to the power imbalance inherent in these encounters, and more likely to believe that their liberty is being restricted. It would turn the "minority status" factor of the *Grant* analysis on its head to allow the frequency of an individual's street-encounters with police to *weaken* his/her detention claim. More significantly, it would have the effect of legitimizing the use of racial profiling as a policing tool.

28. Increased encounters with police may result in anything but "sophistication". The more encounters a racialized minority has with police, the more anxious s/he may be in their presence, which police may interpret as a sign of suspicion. It would be doubly prejudicial to allow police

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[39] *R. v. Atkins*, 2013 ONCA 586, at para 10.

[40] 2015 ONSC 2952, at para. 96.

[41] *Grant, supra* (S.C.C.), at para. 32.

[42] *Le, supra* (Ont. C.A.), at para. 63.

to use an individual's apparent experience with police to argue that there was no detention at the outset of the encounter, and then use that person's subsequent anxiety as a basis to establish a reasonable suspicion to lawfully detain him/her later in the encounter.[43]

29. Accordingly, an individual's experience with police — especially a racialized person's experience with police — should seldom be used to argue against a finding of detention. Such reasoning perpetuates a self-fulfilling prophecy and can have the effect of legitimizing racial profiling.

30. In conclusion, the devastating impact of arbitrary detentions on racialized persons cannot be overstated. As Smith J. held in *R. v. Neyazi*, racial profiling is "an affront to human dignity" and "undermine[s] the core values of human dignity and equality vital to a democratic society".[44] If the courts are to seriously confront this social problem, they must be sensitive to the circumstances that perpetuate the problem in crafting legal doctrine.

PART IV - COSTS

31. FACL and CSALC do not seek costs and ask that none be awarded against them.

PART V - ORDER REQUESTED

32. FACL and CSALC do not request any orders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 21th day of August, 2018.

Gerald Chan / Lindsay Board /
Avvy Yao-Yao Go

Counsel for FACL & CSALC

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[43] Compare, for example, the court's reluctance to rely on demeanour evidence as a determinant of credibility or reliability. In this arena, the court recognizes that culture, stereotypical attitudes, and the pressure of testifying may impact a witness' demeanour when giving evidence. See, for example, *R. v. Hemsworth*, 2016 ONCA 85 and Justice David Watt, *Watt's Manual of Criminal Jury Instructions*, 2nd Ed. (Toronto: Thomson Reuters Canada Limited, 2015), BOA Tab 5, at p. 268. Similarly, culture, stereotypical attitudes, and the pressure of a police encounter may understandably impact a person's demeanour when approached by police.

[44] *Neyazi, supra* (Ont. S.C.J.), at paras. 214, 216.

PART VI - TABLE OF AUTHORITIES

PART VII - LEGISLATION CITED

A. Canadian Legislation

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c 11

9. Everyone has the right not to be arbitrarily detained or imprisoned.	9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.
10. Everyone has the right on arrest or detention	10. Chacun a le droit, en cas d'arrestation ou de detention
(b) to retain and instruct counsel without delay and to be informed of that right	(b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit