

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

BETWEEN:

HIS MAJESTY THE KING

APPELLANT
(Respondent)

and

ABDEL KARIM CHEMLAL

RESPONDENT
(Appellant)

and

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PART I and II: OVERVIEW OF INTERVENER’S POSITION AND LEGAL ISSUES

1. The fundamental question raised in this appeal concerns the applicable legal standard for authorizing warrantless safety searches incident to a lawful investigative detention. As highlighted by the QCCA, jurisprudential confusion remains in Quebec and Canadian jurisprudence notwithstanding this Honourable Court’s precedent in *R. v. MacDonald*, [2014 SCC 3](#) holding that the standard is that of reasonable and probable grounds to believe in a risk to officer safety or to the safety of the public.¹ Justice Bachand, dissenting, also highlighted his preoccupations about the possibility that racial profiling may have influenced the search at issue in the present appeal, but ultimately affirmed the trial judge’s conclusion in the negative.²

2. In this light, the present appeal provides this Honourable Court with the opportunity to revisit and affirm the precedent in *MacDonald*, and to illuminate the relationship between racial profiling, the standards of reasonable grounds to suspect and reasonable and probable grounds to believe, and the framework for excluding evidence under s. 24(2) of the *Charter*. It is on these specific and narrow issues PILI intervenes.

3. PILI takes no position as to the disposition of the present appeal. Instead, PILI submits that *MacDonald* should be revisited and affirmed; that it is entirely consistent with *R. v. Mann*, [2004 SCC 52](#) in identifying the standard of reasonable grounds *to believe* as the standard authorizing a warrantless safety search; and that there are no “compelling reasons” for this Court to overrule or otherwise depart from *MacDonald* as a matter of horizontal *stare decisis*.

4. PILI also submits that racial profiling is an example of “irrelevant or discriminatory factors” that can never form the basis of “objectively discernible facts” required to satisfy the standard of reasonable grounds to suspect.³ Correlatively, racial profiling can never provide for “compelling and credible information” upon which to establish an “objective basis” for an officer’s belief in the existence of reasonable and probable grounds to believe.⁴

5. PILI also submits that the inquiry into whether evidence should be excluded under s. 24(2) of the *Charter* must be sensitive to *Charter* violations occasioned by or otherwise involving racial profiling, especially under the first and second prongs of the test in *R. v. Grant*, [2009 SCC 32](#).

¹ *Chemlal c. R.*, [2025 QCCA 302](#), at para. 78, citing numerous Canadian judgments and doctrine.

² *Chemlal*, at para. 92.

³ *R. v. Mann*, [2004 SCC 52](#), at para. 43; *R. v. Ahmad*, [2020 SCC 11](#), at para. 25.

⁴ *R. v. Beaver*, [2022 SCC 54](#), at paras. 72, 81, citing *R. v. Al Askari*, [2021 ABCA 204](#), at para. 25; *R. v. Murray*, [2025 ONSC 4127](#), at para. 284, citing *R. v. Dudhi*, [2019 ONCA 665](#), at paras 56, 62.

PART III: INTERVENER’S ARGUMENTS

I. MacDonald Should Be Revisited and Affirmed

5. *MacDonald* should be revisited because the divergence between the majority and concurring reasons as to its interaction with *Mann* has – as noted by the Court of Appeal – generated jurisprudential inconsistency and confusion.⁵ This strikes at the heart of the rule of law, which vouchsafes for individuals a legal order characterized by the stable, certain, and predictable application of ascertainable laws and precedents.⁶ Legal clarity is particularly important in criminal law and procedure – and as concerns ancillary police powers to conduct warrantless searches, seizures, detentions, and arrests – as core *Charter* rights and freedoms are at stake. It is also significant that the Crown argued in the court below that the concurring reasons in *MacDonald* should be applied – rather than the majority – in arguing for the reasonable suspicion standard.

6. PILI suggests that the majority reasons in *MacDonald* should be affirmed as correctly establishing that warrantless safety searches are authorized on the standard of reasonable grounds to believe that there is an imminent threat to the safety of the public or of the police.⁷ This Court should also affirm that *MacDonald* is entirely consistent with *R. v. Mann*, 2004 SCC 52.

II. No Compelling Reasons To Overrule or Otherwise Depart From MacDonald

7. This Court’s jurisprudence is clear: “it is permissible to depart from precedent only where there exists ‘a compelling reason to do so, including if the precedent was inconsistent with a binding authority or statute, it has proven unworkable, or its rationale has been eroded by significant social or legal change’”⁸ No such reasons justify departing from *MacDonald*.

8. **First**, *MacDonald* was not inconsistent with any legal authority or statute. As highlighted by the Court of Appeal, the key question is whether *MacDonald* is inconsistent with *Mann*.⁹ The answer is negative as both hold that the standard of reasonable and probable grounds to believe applies to authorize a warrantless safety search. *Mann* is clear that an “officer may engage in a protective pat-down search of the detained individual... [w]here an officer has reasonable grounds to believe that his or her safety is at risk.” (para. 43) *MacDonald* extends this to safety searches of

⁵ e.g., *Chemlal c. R.*, 2025 QCCA 302, at para. 78, citing numerous judgments and doctrine.

⁶ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 70.

⁷ *MacDonald*, at paras. 41, 42, 43, 44, 45.

⁸ *Quebec (Attorney General) v. Senneville*, 2025 SCC 33, at para. 77, citing *Canada (Attorney General) v. Power*, 2024 SCC 26, at para. 98; and *R. v. Henry*, 2005 SCC 76, at para. 44.

⁹ *Chemlal c. R.*, 2025 QCCA 302, at para. 78, citing several Canadian judgments and doctrine.

a person not actually detained.¹⁰ The suggestion in the concurring reasons in *MacDonald* that the latter overturned “*Mann* and a decade of subsequent jurisprudence”¹¹ is, therefore, inaccurate.

9. **Second**, *MacDonald* has not proven unworkable. Unworkability concerns the difficulty of application the rule or test set out in a precedent. No precedent of this Court has questioned the workability of the widely-applicable standard of reasonable grounds to believe – under s. 8 of the *Charter* or otherwise. Nor is identifying a warrantless safety search incidental to a lawful investigative detention – or assessing whether it satisfied the requisite standard – difficult.

10. **Third**, *MacDonald*’s rationale has not been eroded by significant legal change. To the contrary, this Honourable Court has affirmed that a warrantless safety search incidental to a lawful investigative detention is only authorized if the officer “has reasonable grounds to believe that his safety or the safety of others was at risk”¹² (emphasis added). The standard could necessarily not be reasonable suspicion where, as in *MacDonald*, a person is neither lawfully detained or arrested. Other Canadian courts have also applied *MacDonald* and the reasonable grounds to believe standard for such safety searches.¹³ Any court decision requiring reasonable grounds to suspect is premised on an incorrect application of *MacDonald*, is wrongly decided, and is not binding on this Honourable Court. Erroneous applications of this Court’s precedents do not constitute a compelling reason for departing from them; the solution is for this Court to clarify the law.

11. It is true that the common law power to search incidental to a lawful arrest – premised as it is on the “safety of the police, the suspect and the public”– only requires “a reasonable basis” short of reasonable and probable grounds that the search will serve one or more of these purposes.¹⁴ However, this is because both warrantless and warrant-based arrests require reasonable and probable grounds to believe that the person has committed or is about to commit a criminal offence.¹⁵ By contrast, a lawful investigative detention only requires “reasonable grounds to suspect a clear nexus between the individual and a still unfolding crime.”¹⁶ PILI makes no submissions on “social change,” as PILI cannot adduce new evidence or supplement the record.

¹⁰ *MacDonald*, at paras. 41, 42, 43, 44, 45, citing *Mann*, at paras. 40, 45.

¹¹ *MacDonald*, at para. 90, per Moldaver and Wagner JJ. (as he then was), concurring.

¹² *R. v. Tim*, [2022 SCC 12](#), at paras. 60 and 53. See also *R. v. Ahmad*, [2020 SCC 11](#), at para. 60.

¹³ See cases and doctrine at footnote 45 of the Judgment on Appeal (Bachand J.A., dissenting).

¹⁴ *R. v. Fearon*, [2014 SCC 76](#), at para. 66.

¹⁵ *R. v. Beaver*, [2022 SCC 54](#), at paras. 71-72; *Criminal Code*, R.S.C. 1985, c. C-46, at s. 495.

¹⁶ *R. v. Le*, [2019 SCC 34](#), at para. 131; *R v Zacharias*, [2023 SCC 30](#), at para 66; *Mann*, at para. 34.

12. No legitimate reliance interests can flow from police relying on the dissenting reasons in *MacDonald* to apply a standard of reasonable suspicion for warrantless safety searches incidental to a lawful investigative detention. State actors are not at liberty to disregard binding and authoritative majority reasons in split decisions of this Honourable Court, even if they happen to prefer the concurring or dissenting reasons. This is particularly true for constitutional cases, since this Court is the final and authoritative guardian of the constitution, and as legislatures may invoke s. 33 of the *Charter* to override a decision declaring laws inconsistent with ss. 2 or 7 to 15 thereof.¹⁷

13. **Finally**, overruling the *MacDonald* majority in favour of the concurring reasons would not only also overrule *Mann*, it would operate to reduce previously-recognized *Charter* protections. This is because the standard of reasonable grounds to suspect is lower than reasonable and probable grounds to believe.¹⁸ Lowering the evidentiary standard for conducting a warrantless safety search incidental to lawful investigative detention would facilitate what would otherwise be impingements on *Charter*-protected rights if the higher standard is maintained. However, “a decision to depart from precedent must be carefully considered and justified,”¹⁹ and “[t]he Court should be particularly careful before reversing a precedent where the effect is to diminish *Charter* protection.”²⁰ In PILI’s view, *MacDonald* should be affirmed.

III. Racial Profiling Can Never Provide For “Objectively Discernible Facts” Required To Establish Reasonable Grounds to Suspect

14. Dissenting in the Court of Appeal (para. 92), Justice Bachand highlighted his preoccupations about the possibility that racial profiling may have influenced the search at issue in the present appeal, but affirmed the trial judge’s conclusion in the negative. Bachand JA’s concerns were grounded in the fact that the police discontinued their search for an armed suspect in order to question the Respondent, a racialized individual, over “une infraction assez banale” of Quebec’s *Highway Safety Code*, C.Q.L.R. c. C-24.2. This is indeed concerning.

15. In the policing context, racial profiling is “anchored to an internal mental process” rooted in prejudice and stereotype and is “primarily concerned with the motivation of the police... when race or racial stereotypes about offending or dangerousness are used, consciously or

¹⁷ *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34, at para. 60.

¹⁸ e.g., *R. v. Beaver*, 2022 SCC 54, at para. 72; *R. v. Chehil*, 2013 SCC 49, at para. 26.

¹⁹ *Quebec (Attorney General) v. Senneville*, 2025 SCC 33, at para. 77; *David*, at 69, 78, 95-97.

²⁰ *Henry*, at para. 44; *R. v. Nur*, 2015 SCC 15, at para. 59; *David*, at 207.

unconsciously, to any degree in suspect selection or subject treatment...”²¹ (emphasis added) Racial profiling has no place in Canadian society, generally, or in policing, specifically.

16. The standard of reasonable grounds to suspect “is a robust standard determined on the totality of the circumstances” and “prevents prevents indiscriminate and discriminatory breaches of privacy interests by ensuring that the police have an objective and reasonable basis for interfering with an individual’s reasonable expectation of privacy.”²² (emphasis added) Racial profiling is an example of “irrelevant or discriminatory factors” that can never form the basis of “objectively discernible facts” required to satisfy the standard of reasonable grounds to suspect.²³

This is inherent in the very definition of racial profiling adopted by this Court:

Racial profiling is any action taken by one or more people in authority with respect to a person or group of persons, for reasons of safety, security or public order, that is based on actual or presumed membership in a group defined by race, colour, ethnic or national origin or religion, **without factual grounds or reasonable suspicion**, that results in the person or group being exposed to differential treatment or scrutiny.

17. It is also inherent in the very concept of reasonable suspicion, which refers to “individualized suspicion” and reflects the criminal law’s aversion to “generalized suspicion.”²⁴ Racial profiling attributes dangerousness and criminality to an individual based on a generalized suspicion of the racial group(s) to which an individual belongs. Racial profiling is, therefore, antithetical to the individualized nature of reasonable suspicion.

18. It is clear that an individual’s race can, in some circumstances, be “objectively discernible.” However, race is not an “objectively discernible” basis for suspecting an individual’s dangerousness or involvement in criminality. Nor is race a “reasonable basis”²⁵ for such suspicions; as racial profiling is inherently arbitrary, it is equally inherently unreasonable and cannot form the basis of a lawful exercise of police power requiring reasonable suspicion. The sole exception is when the description provided to the police of a person suspected of committing a criminal or other offence includes a reference to the suspect’s race among other objective facts.

19. This Honourable Court has emphasized that “[c]ourts must be able to assess the extent to which the police, in seeking to form reasonable suspicion over a person or place, rely upon overly

²¹ *R. v. Le*, [2019 SCC 34](#), at paras. 77-78.

²² *R. v. Chehil*, [2013 SCC 49](#), at paras. 3, 25-26.

²³ *R. v. Mann*, [2004 SCC 52](#), at para. 43; *Chehil*, at para. 29; *R. v. Ahmad*, [2020 SCC 11](#), para. 25.

²⁴ *Ahmad*, at paras. 48, 136, citing *Chehil*, at para. 30.

²⁵ *Chehil*, at para. 25.

discriminatory or stereotypical thinking, or upon “intuition” or “hunches” that easily disguise unconscious racism and stereotyping.”²⁶ This must be read to apply to all police conduct requiring reasonable suspicion to be legal – whether under ss. 8, 9 or 10 of the *Charter*. As reasonable suspicion cannot be based on “irrelevant or discriminatory factors,”²⁷ and as racial profiling is a textbook example thereof, police conduct that is based on racial profiling necessarily lacks reasonable suspicion and automatically violates the *Charter*.

20. This includes warrantless safety searches incident to a lawful arrest and other warrantless searches authorized under this standard under s. 8 of the *Charter*, such as sniffer dog searches.²⁸ It also extends to racially-motivated detentions – as s. 9 protects against arbitrary detentions, and as “a detention based on racial profiling is one that is, by definition, not based on reasonable suspicion.”²⁹ Race may, however, form part of a constellation of objectively identifiable facts upon which a reasonable suspicion may be based. For example, in *R. v. Usmann*, [2020 ABQB 793](#) reasonable suspicion was based on a physical description of two black males abruptly exiting a vehicle and then running across a particular street at 3 AM with no one else in sight (para. 111).³⁰

21. From a comparative standpoint, similar conclusions may be drawn from the U.S. Supreme Court’s jurisprudence under the Fourth Amendment of the U.S. Constitution. This jurisprudence is particularly relevant since ss. 8 and 9 – and some of this Court’s caselaw under them – are directly inspired by the Fourth Amendment.³¹ Like ss. 8 and 9, respectively, the Fourth Amendment protects the right “to be secure... against unreasonable searches and seizures” and “imposes limits on search-and-seizure powers in order to prevent arbitrary and oppressive interference... with the privacy and personal security of individuals.”³² (emphasis added) In turn, the standard of reasonable suspicion also applied under the Fourth Amendment requires “individualized suspicion that a particular citizen was engaged in a particular crime.”³³ A reasonable suspicion cannot be based on a characteristic that “describe[s] a very large category of

²⁶ *R. v. Ahmad*, [2020 SCC 11](#), para. 25; *R. v. MacKenzie*, [2013 SCC 50](#), at paras. 64-65.

²⁷ *R. v. Mann*, [2004 SCC 52](#), at para. 43.

²⁸ *Chehil and MacKenzie*.

²⁹ *R. v. Le*, [2019 SCC 34](#), at para. 78.

³⁰ Appeal dismissed in *R. v. Usmann*, [2023 ABCA 3](#) (see paras. 2-5).

³¹ e.g., *Hunter v. Southam Inc.*, [\[1984\] 2 S.C.R. 145](#), at 158-160.

³² *United States v. Martinez-Fuerte*, [428 U.S. 543](#), 554 (1976).

³³ *Kansas v. Glover*, [589 U.S. 376](#), 385, n.1 (2020).

presumably innocent” people, such as their “demographic profile.”³⁴ Indeed, “apparent ethnicity alone cannot furnish reasonable suspicion,”³⁵ such that, for example, “‘Mexican ancestry’ alone did not constitute reasonable suspicion to support stops by Border Patrol agents, even near the border.”³⁶ Fundamentally, the “individualized inquiry” under the Fourth Amendment cannot be satisfied by racial profiling. While it is true that U.S. judgments decided under the Fourth Amendment “can be transplanted to the Canadian context only with the greatest caution,”³⁷ the above judgments are consonant with the Canadian caselaw concerning reasonable suspicion, and this Court’s jurisprudence at the nexus of racial profiling, and police powers such as *R. v. Le*.

22. Overall, even if this Honourable Court overturns *MacDonald* and holds that warrantless safety searches incident to a lawful investigative detention require reasonable grounds to suspect, racial profiling could never provide the “objective discernible facts” this standard requires.³⁸

IV. Racial Profiling Can Never Provide For “Compelling and Credible Information” Required To Establish Reasonable and Probable Grounds To Believe

23. The standard of reasonable and probable grounds governs certain warrantless searches and seizures in addition to being the applicable standard for warrantless arrests under s. 495(1) of the *Criminal Code*³⁹ and other police powers set out thereunder. Reasonable and probable grounds to believe require “compelling and credible information,” without which the “objective basis” for an officer’s belief will necessarily be absent.⁴⁰

24. Racial profiling can never generate or constitute “compelling and credible information” and can therefore never provide for an “objective basis” for an officer’s belief in the existence of reasonable and probable grounds to believe.⁴¹ As racial profiling is premised on generalized race-based attributions of suspicion or criminality, it is antithetical to “the particularized probability required to meet the reasonable grounds standard.”⁴² Canadian cases have repeatedly held that racial profiling cannot provide reasonable and probable grounds to believe an offence has been

³⁴ *Reid v. Georgia*, [448 U.S. 438](#), 441 (1980), and *Kansas v. Glover*, [589 U.S. 376](#), 385 n. 1, cited in *Noem v. Vasquez Perdomo*, [606 U.S. ____](#), 10 (2026), Sotomayor J., dissenting on another point.

³⁵ *Noem*, at 5, per Kavanaugh J., concurring, and agreed to by Sotomayor J., at 11, footnote 6.

³⁶ *Noem*, at 9, per Sotomayor J., citing *United States v. Brignoni-Ponce*, [422 U.S. 837](#), 878 (1975).

³⁷ *Hunter v. Southam*, at 161, affirmed in *R. v. Tim*, [2022 SCC 12](#), at para. 35.

³⁸ *R. v. Murray*, [2025 ONSC 4127](#), at para. 284; *R. v. Dudhi*, [2019 ONCA 665](#), at paras. 56, 62.

³⁹ *R. v. Carignan*, [2025 SCC 43](#), at para. 60, 70.

⁴⁰ *R. v. Beaver*, [2022 SCC 54](#), at paras. 72, 81.

⁴¹ *Beaver*, at paras. 72, 81.

⁴² *Beaver*, at paras. 139, 170.

committed so as to authorize an exercise of police power subject to that standard, including searches, seizures, detentions, and arrests.⁴³ In *Douglas-Hodson*, the Ontario Superior Court pointedly held that “[the] conclusion that racial profiling played a role in suspect selection here defeats any assertion of reasonableness for the detention.”⁴⁴ (emphasis added) An unlawful detention premised on racial profiling can indeed lead to a cascade of further Charter violations, including a search or seizure, and even an arrest all premised on the initial taint of racial profiling.⁴⁵

25. Further, racial profiling can never contribute to establishing reasonable grounds to believe, as such grounds “cannot be supplied by actions that involved violations of the *Charter*” and as racial profiling violates the right to equality and non-discrimination under s. 15 of the *Charter*.⁴⁶

26. In the context of a warrantless arrest – or any other exercise of police power relying on this standard – race is not a proxy or instrument for establishing probability of an individual having committed a particular criminal offence. This is unless the police are proceeding on the basis of objective, compelling and credible information as to the suspect’s racial identity, the specific offence committed, and any other objectively articulable relevant facts (such as clothing worn, distinctive physical features, or specific vehicle driven).

27. Importantly, however, not just *any* factors combined with race can support the objectively individualized evidentiary basis supporting reasonable and probable grounds. Such grounds cannot, for example, emerge from a combination of race and language, since both “are often intertwined” and can amount to “relying on ethnicity alone.”⁴⁷ Nor can race and language be combined with the fact that a person is of modest means since, that too, can feed into discriminatory inferences grounded criminal proclivities of the impoverished and racialized.⁴⁸

28. Overall, for the same reasons that racial profiling can never satisfy the reasonable suspicion standard, racial profiling can also never provide for the “compelling and credible information” required to satisfy the higher standard of reasonable and probable grounds to believe.⁴⁹

⁴³ e.g., *R. v. Bailey*, [2024 ONSC 2136](#), at paras. 90-94 (search); *R. v. Huang*, [2010 BCPC 336](#), at paras. 5, 22 (detention); *R. v. Khan*, [2004 CanLII 66305 \(ONSC\)](#), at paras. 68-69 (detention and search); *R. v. Douglas-Hodson*, [2023 ONSC 6769](#), at paras. 81, 86, 134 (detention, search, arrest).

⁴⁴ *Douglas-Hodson*, at para. 81.

⁴⁵ *Douglas-Hodson*, at para. 134.

⁴⁶ *R. v. Zacharias*, [2023 SCC 30](#), at paras. 30 and 107 (proposition adopted by majority).

⁴⁷ *Noem v. Vasquez Perdomo*, [606 U.S. ____](#), at 11 at footnote 6 (2026), per Sotomayor J..

⁴⁸ *Noem*, at 11 at footnote 6, Sotomayor J., dissenting on another point.

⁴⁹ *R. v. Murray*, [2025 ONSC 4127](#), at para. 284; *R. v. Dudhi*, [2019 ONCA 665](#), at paras. 56, 62.

V. Racial Profiling Impacts The Analysis Into Whether Evidence Should Be Excluded Under Section 24(2) of the Canadian Charter of Rights and Freedoms

29. In addition to impacting the assessment of whether lawful authority exists for a search, seizure, detention or other police action – and thus of whether a *Charter* right has been infringed – racial profiling necessarily impacts the inquiry into whether the admission of evidence obtained as a result would bring the administration of justice into disrepute. The application of the test developed in *R. v. Grant*, [2009 SCC 32](#) for determining whether evidence should be excluded under s. 24(2) of the *Charter* must therefore be sensitive to racial profiling.

30. Evidence of racial profiling is primarily relevant under the first and second stages of the *Grant* test – especially, but not exclusively, when an individual’s rights under ss. 8 and/or 9 are found to have been breached. **First**, as stated in *R. v. Le*, [2019 SCC 34](#), racial profiling is relevant in assessing the seriousness of police conduct and whether police were acting in good faith in engaging in *Charter*-infringing conduct.⁵⁰ Racial profiling increases the seriousness of *Charter*-infringing conduct, is a paradigmatic example of bad faith, and will therefore always result in the first *Grant* factor pulling in favour of exclusion of evidence. This is so even if there were other grounds not tainted by racial profiling that could have justified the relevant state action.⁵¹ Canadian courts have indeed held that racial profiling is an improper purpose for a search, seizure, arrest, or detention,⁵² and “decision making by police on the basis of racial or racial stereotypes” constitutes “serious state misconduct.”⁵³ In *Khan*, the Ontario Superior Court emphasized that “Conduct of this kind by the police is reprehensible. It cannot be condoned or excused.”⁵⁴ This is particularly – but not exclusively – the case in communities tainted by a history of racism.⁵⁵

31. **Second**, racial profiling is highly relevant in assessing “the impact of the breach on the *Charter*-protected interests of the accused.”⁵⁶ Canadian courts have indeed held that a search, seizure, detention or arrest grounded on racial profiling constitutes a serious (or “most serious”)

⁵⁰ *R. v. Le*, [2019 SCC 34](#), at paras. 78, 145-147.

⁵¹ e.g., *R. v. Dudhi*, [2019 ONCA 665](#), at paras. 56-63.

⁵² e.g., *Dudhi*, at para. 60; *R. v. Khan*, [2004 CanLII 66305](#), at para. 68 (ONSC), *R. v. Huang*, [2010 BCPC 336](#), at para. 5, 22; *R. v. Sparks*, [2022 NSPC 51](#), at para. 34.

⁵³ *R. v. Bailey*, [2024 ONSC 2136](#), at para. 141; *Sparks*, at paras. 40, 44.

⁵⁴ *Khan*, at para. 69.

⁵⁵ *Sparks*, at paras. 40, 44.

⁵⁶ *R. v. Le*, [2019 SCC 34](#), at para. 141.

breach of ss. 8 and/or 9, as applicable, and warrants the exclusion of evidence obtained as a result.⁵⁷ Racial profiling can also lead to “consequential” or “cascading *Charter*” breaches that amplify the seriousness of the initial *Charter* breach – and indeed the cumulative impact of all *Charter* breaches arising in that single transaction.⁵⁸ For example, an arbitrary detention premised on racial profiling can result in an unreasonable search and/or seizure and a consequentially unlawful arrest, which would strongly weigh in favour of excluding the evidence obtained as a result.⁵⁹ Further, racial profiling is antithetical to the right to equality and non-discrimination protected under s. 15 of the *Charter*.⁶⁰ This compounds the seriousness of searches, seizures, arrests, and detentions that infringe ss. 8 and/or 9. A holistic approach to assessing the impact of a breach on an accused’s *Charter*-protected rights is required, and will lead to this factor pulling in favour of exclusion.

32. This Honourable Court’s jurisprudence is clear: when the first and second prongs of the *Grant* test pull in favour of exclusion, the third prong will seldom – if ever – “tip the scale in favour of admissibility.”⁶¹ In PILI’s view, when racial profiling has been found to have caused or contributed to a breach of ss. 8 and/or 9, the first two prongs will always strongly pull in favour of exclusion and proceeding to the third prong will never be necessary. In such circumstances, the evidence must always be excluded.⁶² Importantly, Canadian prosecutors have frequently conceded the inappropriateness of admitting evidence obtained as a result of racial profiling under s. 24(2).⁶³

33. Fundamentally, the admission of evidence obtained as a result of independent or cumulative breaches of ss. 8 and/or 9 involving racial profiling “would send a message that the justice system is somehow condoning serious state misconduct.” This “would greatly undermine public confidence in the administration of justice”⁶⁴ and can simply not be countenanced.

THE WHOLE RESPECTFULLY SUBMITTED THIS 13th DAY OF APRIL 2026



Lawrence David, JD/BCL, LL.M

⁵⁷ e.g., *Khan*, at para. 69; *Huang*, at para 6

⁵⁸ *R. v. Zacharias*, 2023 SCC 30, at paras. 2-3, 47, 52, 56; *R. v. Douglas-Hodson*, [2023 ONSC 6769](#), at paras. 81, 86, 134; *R. v. Murray*, [2025 ONSC 4127](#), at paras. 380-392.

⁵⁹ *Douglas-Hodson*, at paras. 81, 86, 134; *R. v. Elawad*, [2025 ONSC 1298](#), at paras. 209, 216.

⁶⁰ *R. v. Dudhi*, [2019 ONCA 665](#), at para. 65.

⁶¹ *R. v. Lafrance*, [2022 SCC 32](#), at para. 90; *R. v. Fox*, [2026 SCC 4](#), at para. 126-127.

⁶² *Murray*, at para. 361; *R. v. Morgan*, [2023 ONSC 6855](#), at para. 92.

⁶³ e.g., *Khan*, at para. 69; *R. v. Bailey*, [2024 ONSC 2136](#), at para. 140; *Morgan*, at para. 92.

⁶⁴ *Bailey*, at para. 141; *Elawad*, at para. 216.

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