500-09-030301-220

COURT OF APPEAL OF QUEBEC

(Montreal)

Appeal from a judgment of the Superior Court, District of Montreal, rendered on October 25, 2022, by the Honorable Michel Yergeau.

No.: 500-17-114387-205 (S.C.)

THE ATTORNEY GENERAL OF QUÉBEC

APPELLANT -
(Defendant)

v.

JOSEPH-CHRISTOPHER LUAMBA

RESPONDENT -
(Plaintiff)

THE ATTORNEY GENERAL OF CANADA

IMPLEADED PARTY -
(Defendant)

-and-

CANADIAN ASSOCIATION OF BLACK LAWYERS
CANADIAN CIVIL LIBERTIES ASSOCIATION

IMPLEADED PARTY -
(Intervener)

-and-

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
CLINIQUE JURIDIQUE DE SAINT-MICHEL
COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE

INTERVENERS

BRIEF
OF THE INTERVENER BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
Dated October 30, 2023

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BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

PART I: FACTS

1. The Attorney General of Quebec ("**Appellant"**) is seeking appeal of the honorable Michel Yergeau, J.C.S.'s ("**First Instance Judge**") judgment rendered on October 25, 2022 ("**Judgment**") by which he declared invalid, on constitutional grounds, the common law rule recognized in *R. v. Ladouceur*[1] and subsequently codified at article 636 of the *Highway Safety Code*[2] ("**Impugned Rules**"), which provide for the power of police officers to intercept a vehicle without reason.

2. The First Instance Judge declared that the Impugned Rules infringe upon the rights protected under ss. 7, 9 and 15(1) of the *Canadian Charter of Rights and Freedoms* ("***Charter***").

3. The intervener, British Columbia Civil Liberties Association ("**BCCLA**"), refers to the joint presentation of the facts communicated to this Court.

PART II: ISSUES IN DISPUTE

4. The Appellant has framed the grounds of appeal as follows:
    1. Is racial profiling an effect of the Impugned Rules?
    2. Is the criterion allowing for the reconsideration of a Supreme Court precedent met?
    3. Do the Impugned Rules infringe upon the rights protected by s. 7 of the *Charter*?
    4. Do the Impugned Rules infringe upon the right to equality?

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[1] *R.* v. *Ladouceur*, [1990] 1 S.C.R. 1257 [*Ladouceur*].
[2] *Highway Safety Code*, CQLR c. C-24.2.

5. The BCCLA has been authorized to intervene in order to assist this Court with its analysis of the following issues:

    1. The scope of the liberty and security of the person interests as protected by s. 7 of the *Charter*;
    2. The interplay between the analysis of the principles of fundamental justice within s. 7 and the s. 1 analysis; and
    3. The role and application of *stare decisis* to s. 7.

6. These issues will be brought forth in response to grounds (2) and (3) as framed by the Appellant.

PART III: SUBMISSIONS

1. The First Instance Judge was correct in precluding the application of *stare decisis* to the s. 7 analysis.

7. The BCCLA submits that the First Instance Judge rightly concluded that *Ladouceur*[3] did not constitute a binding precedent to the case at bar by application of the criteria set forth in *Bedford*[4]*.*

8. Indeed, in *Bedford*[5], the Supreme Court established the criteria according to which a trial judge is authorized to consider and decide an argument normally precluded by application of *stare decisis*, that is to say:

    1) the argument based on *Charter* provisions was not raised in the earlier case;
    2) new legal issues are raised as a consequence of significant developments in the law; or

[3] *Ladouceur, supra*, note 1.
[4] *Canada (Procureur général)* v. *Bedford*, [2013] 3 S.C.R. 1101, para. 46 [*Bedford***]**.
[5] *Bedford*, *supra*, note 4, para. 42.

3) there is a change in the circumstances or evidence that fundamentally shifts the parameters of the debate.

9. The BCCLA is of the view that each one of these three criteria has been met in the case at bar, and additionally, that the Appellant has failed to demonstrate a palpable and overriding error committed by the First Instance Judge which would warrant intervention by this Court in this regard.

10. Regarding the first criterion, the First Instance Judge concludes that although s. 7 was discussed in *Ladouceur*, it was not squarely dealt with, "traité à proprement parler"[6], at that time by the Supreme Court, hence giving rise to the first criterion set out in *Bedford.*

11. As for the second criterion, the First Instance Judge correctly concludes that when *Ladouceur* was rendered in 1990, s. 7 did not have the same breadth it currently does[7].

12. Each one of these conclusions is sufficient to prevent the application of *stare decisis.*

13. In *Bedford*, the Supreme Court ruled on s. 7 issues despite a previous decision for both reasons[8].

14. Similarly, *Carter* presents "two situations"[9] in which deviation from precedent is allowed. This distinction is also made clear by doctrinal analysis[10], where the term “or” is used in reference to the application of the exceptions to a precedent.

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[6] Judgment, para. 136.
[7] *Id.*, para. 143.
[8] *Bedford*, *supra*, note 4, para. 45.
[9] *Carter* v. *Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331, para. 44 [*Carter*].
[10] Abdulla Adil, “The Circumstances of Change: Understanding the Bedford/Carter Exceptions, Vertical Stare Decisis” (2020) 78:1 *U Toronto Fac L Rev* 1, p. 2.

15. For the third criterion, the Appellant claims that the First Instance Judge erred in fact and in law in his determination that a change in circumstances had radically changed the parameters of the debate[11].

16. What constitutes a change in the circumstances or the evidence that fundamentally shifts the parameters of the debate is not precisely defined. The Supreme Court in *Comeau*[12] explains the required change as a "fundamental shift", more substantial than "an alternative perspective on existing evidence".

17. In the case at bar, after an exhaustive review of both the qualitative and quantitative evidence, the First Instance Judge determined that racial profiling constitutes a new and important social fact which was not contemplated by the Supreme Court at the time of *Ladouceur*[13], in causes therefore of fundamental shift[14].

18. Moreover, the BCCLA submits that the Appellant mischaracterizes the importance of the new evidence and unduly dismisses the First Instance Judge's analysis which led to a significant distinction between racial discrimination and racial profiling[15].

19. In *Ladouceur*, the infringement upon *Charter*-protected rights caused by "truly random routine checks"[16] was deemed "reasonable and demonstrably justified in a free and democratic society"[17] under s.1 because of its deterrent impact on drunk driving. The racial profiling that occurred in the application of this rule was not anticipated nor addressed by the Court. To plead, as the Applicant does, that additional evidence to support the existence of racial profiling is irrelevant[18] is to ignore this fundamental shift in the debate.

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[11] Appellant's factum, para. 82.
[12] *R.* v. *Comeau*, 2018 SCC 15, [2018] 1 S.C.R. 342, para. 34.
[13] Judgment, para. 563.
[14] Judgment, para. 148.
[15] Judgment, para. 573.
[16] *Ladouceur, supra*, note 1, p. 1278.
[17] *Id.,* p. 1288.
[18] Appellant's factum, para. 81.

20. The Appellant's contest of the First Instance Judge's factual appreciation of the evidence[19] is subject to the standard of palpable and overriding error which the Appellant has failed to establish in its grounds of appeal.

21. Further, the First Instance Judge's findings on societal facts are entitled to a high level of deference, as established by the Supreme Court in *Bedford*:

> [48] The Court of Appeal held that the First Instance Judge's findings on social and legislative facts — that is, facts about society at large, established by complex social science evidence — were not entitled to deference. With respect, I cannot agree. As this Court stated in Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235, appellate courts should not interfere with a trial judge's findings of fact, absent a palpable and overriding error.[20]

22. The Appellant has failed to meet its burden by failing to demonstrate a palpable and overriding error, arguing that the sole use of the term 'racial profiling' is insufficient to constitute a radical change in circumstances[21], and thus ignoring the First Instance Judge's conclusion that the risks of racial profiling were not understood at the time of *Ladouceur*[22].

2. The First Instance Judge was correct in concluding that the Impugned Rules limit the liberty and security of the person as protected by s. 7 of the *Charter.*

23. After an exhaustive review and thorough analysis of the evidence, the First Instance Judge correctly found that the effect of the Impugned Rules is racial profiling[23].

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[19] *Id.*, para. 33.
[20] *Bedford*, *supra*, note 4, para. 48.
[21] Appellant's factum, paras. 86-87.
[22] Judgment, para. 51.
[23] Jugdment, paras. 631-632.

24. Not only is this a conclusion of mixed fact and law which merits a high degree of deference from this Court, but the Appellant also failed to establish a palpable and overriding error in this regard.

25. Further, the First Instance Judge found that the Impugned Rules infringe upon the liberty and the security of Black drivers, described as the fundamental freedom for Black people to live their lives as they choose and to drive a vehicle to meet their needs without being harassed by the police solely because of the color of their skin[24].

26. First, the liberty infringed by the Impugned Rules is *not* the liberty to drive or to obtain, maintain or renew a driver's license, as was the case in the decisions cited by the Appellant[25].

27. Rather, it is the **liberty to move around on a road or otherwise, without police interception based solely on race**.

28. In fact, the First Instance Judge acknowledged and dealt with the Appellant's argument regarding the "privilege" status of driving, stressing that the right to liberty encompasses not the right to drive, but to move around[26].

29. The Supreme Court of Canada has repeatedly affirmed that the right to liberty encompasses both physical liberty and the liberty to make fundamental personal decisions[27].

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[24] *Id.*, para. 738.
[25] Appellant's factum, paras. 101-103.
[26] Judgment, para. 736.
[27] *Blencoe* v. *Colombie-Britannique (Human Rights Commission),* [2000] 2 S.C.R. 307, para. 49 [*Blencoe*]; *R.* v. *Smith*, 2015 SCC 34, paras. 17-18 [*Smith*]; *Carter*, *supra*, note 9, para. 64.

30. As such, it is well-established law that the liberty to make fundamental personal decisions as protected by s. 7 includes the liberty to move freely[28], "a value as ancient as literature and the common law"[29], much like the liberty from obligations to appear at a specific time and place[30].

31. As reasoned by the First Instance Judge, this liberty is not infringed upon only because there is a detention, which is captured by s. 9 of the *Charter*, but because this liberty is frustrated by police interventions **based solely on racial profiling**. Black drivers are therefore inhibited from moving around as other drivers under the threat of racially based interceptions.

32. As for the right to security, it includes both bodily integrity[31] and protection from serious state-imposed psychological stress[32]. The question in the second scenario is whether there is a profound effect on a person's psychological integrity, meaning that the effect "need not rise to the level of nervous shock or psychiatric illness, but must be greater than ordinary stress or anxiety"[33]. For example, the Supreme Court has found that depriving parents from their children pursuant to the state's *parens patriae*[34] or the delays to obtain medical treatment[35] met this requirement.

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[28] *R.* v. *Heywood*, [1994] 3 S.C.R 761, para. 45 [*Heywood*]; *Baril* v. *Obelnicki*, 2007 MBCA 40, para. 40; *R.* v. *Budreo* (2000), 142 CCC (3d) 225, para. 23 (Ont CA); *R.* v. *A.(S.)*, 2014 ABCA 191, paras. 332-333 (Bilby JA dissenting); *Thomson* v. *Alberta (Transportation and Safety Board)*, 2003 ABCA 112, para. 9; *Tremblay* v. *Quebec (Procureur général)*, 2001 CanLII 25403, para. 47 (Sup Ct).

[29] *Ogden Entertainment Services* v. *United Steelworkers of America, Local 440*, 1998 CanLII 14755 (ON SC), para. 20 [*Ogden*].

[30] *R.* v. *Beare*, *R.* v. *Higgins*, [1988] 2 S.C.R 387. See also: *R.* v. *Tinker*, 2017 ONCA 552, para. 70 (appeal dismissed on other grounds); *R.* v. *Boudreault*, 2012 SCC 56; *Re Application Under s 83.28 of the Criminal Code*, 2004 sec 42, para. 67.

[31] *R.* v. *Morgentaler*, [1988] 1 S.C.R. 30 [*Morgentaler*]; *Bedford*, *supra*, note 4, *Carter*, *supra*, note 9.

[32] *Morgentaler*, *supra,* note 31, page 56: "The case law leads me to the conclusion that state interference with bodily integrity and serious state-imposed psychological stress, at least in the criminal law context, constitute a breach of security of the person."; *Blencoe*, *supra,* note 27, para. 55; *New Brunswick (Minister of Health and Community Services)* v. *G. (J.)*, [1999] 3 S.C.R. 46 [*G. (J.)*].

[33] *G. (J.), supra,* note 32, para. 60.

[34] *G. (J.), supra,* note 32, para. 61.

[35] *Chaoulli* v. *Quebec (Attorney General)*, 2005 SCC 35 [*Chaoulli*].

33. In a unanimous decision regarding a reform of the youth criminal justice system, this Court found that the inherent stigmatization of criminal proceedings sufficed to establish a violation of psychological security of a young person[36].

34. The police interceptions in the case at bar do not have the same legal consequences as criminal proceedings, but due to their racial underpinning, the First Instance Judge found that their impact on the psychological security of those affected are of sufficient gravity to warrant s. 7's protection.

35. In so doing, the First Instance Judge correctly integrated substantive equality considerations in his analysis of s. 7.

36. The Supreme Court has recognized that the right to equality "applies to and supports all other rights guaranteed by the Charter"[37]. More specifically, it has emphasized that "equality interests should be considered in interpreting the scope and content of the interpretation of the rights guaranteed by s. 7"[38].

37. Therefore, when considering s. 7 Charter rights and the principles of fundamental justice, "it is important to ensure that the analysis takes into account the principles and purposes of the equality guarantee in promoting the equal benefit of the law and ensuring that the law responds to the needs of those disadvantaged individuals and groups whose protection is at the heart of s. 15"[39].

38. The Supreme Court has thus made clear that "the rights in s. 7 must be interpreted through the lens of s. 15 [...] to recognize the importance of ensuring that our interpretation of the Constitution responds to the realities and needs of all members of society"[40].

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[36] *Quebec (Minister of Justice)* v. *Canada (Minister of Justice)*, 2003 CanLII 52182 (QCCA), paras. 206-212.
[37] *Andrews* v. *Law Society of British Columbia*, [1989] 1 S.C.R 143, p. 185.
[38] *G. (J.), supra,* note 32, para. 112.
[39] *Id.*, para. 115.
[40] *G. (J.), supra,* note 32, para. 115.

39. The "animating norm" of s. 15 is the conception of substantive equality[41], which focuses on ensuring that laws or policies do not subordinate groups who already face social, political, or economic disadvantages, and recognizes that individuals may require different treatments to achieve equality[42].

40. For that reason, a complete s. 7 analysis must account for the full context of the specific claimants' perspective. It requires acknowledging concurrent, intersectional factors and how these interact with existing discriminatory systems and institutions, compounding disadvantage[43].

41. As the Supreme Court found in *Le*[44]*,* and cited by the First Instance Judge in his assessment of the facts[45], "[t]he impact of the over-policing of racial minorities […] without any reasonable suspicion of criminal activity is more than an inconvenience"[46]. Such a practice not only "takes a toll on a person's physical and mental health", but "contributes to the continuing social exclusion of racial minorities, encourages a loss of trust in the fairness of our criminal justice system, and perpetuates criminalization"[47].

42. It is therefore the nature of the police interceptions that cause the deprivation of security and liberty of Black drivers[48].

43. The Appellant also argues that the First Instance Judge's reasoning is incoherent and is based on recurrence and overrepresentation of intercepted Black drivers, while stating that the quantity of affected claimants is irrelevant to the analysis.

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[41] *Fraser* v. *Canada (Attorney General)*, 2020 SCC 28, para. 42.
[42] KOSHAN Jennifer & W. HAMILTON Jonnette, "The Continual Reinvention of Section 15 of the Charter" (2013) 64 *UNBLJ* 19, at 24–25.
[43] For an example, albeit under s. 12, see *R.* v. *Boudreault*, 2018 SCC 58, paras. 65-79.
[44] *R.* v. *Le*, 2019 SCC 34 [*Le*].
[45] Judgment, para. 385.
[46] *Le*, *supra,* note 43, para. 95.
[47] *Ibid.*
[48] For the same reasoning, see *R.* v. *Nguyen*, 2006 CanLII 1769 (ON SC), para. 27.

44. The BCCLA submits that recurrence and overrepresentation do not serve a quantitative purpose, but a qualitative one: they establish the existence of racial profiling and of Charter violations. Once established, it matters not whether the Impugned Rules violate the rights of one or many.

45. The Appellant further argues that if the Impugned Rules deprive the liberty of Black drivers, they must deprive the liberty of all drivers, and since the First Instance Judge's conclusion is limited to the former, this conclusion is untenable[49].

46. The BCCLA submits that this argument fails to recognize that Black drivers are deprived of their liberty and security precisely because they are Black. The race-specific effect of the Impugned Rules does not exempt them from scrutiny under s. 7, but rather begets it.

47. Finally, the Appellant argues that road interceptions by the police are useful for deterrence and reduction of road accidents. Although the First Instance Judge refuted that argument, this is a public interest argument which is not relevant in a s. 7 analysis[50], and certainly not relevant in the first step of the analysis.

3. The First Instance Judge was correct in concluding that the limits are not in accordance with the principles of fundamental justice.

48. As identified by the First Instance Judge, the purpose of the Impugned Rules is to increase road security[51].

[49] Appellant's factum, para. 104.
[50] *Bedford*, *supra,* note 4; *Carter*, *supra*, note 9; *R.* v. *Brown*, 2022 CSC 18.
[51] Judgement, para. 754.

49. The Appellant argues that the Impugned Rules are not arbitrary because there is a clear and self-evident connection between the obligation to immobilise one's vehicle and the purpose of the Rules[52].

50. The Appellant also argues that each single police interception increases the public's perception of police control[53] and therefore of "real" deterrence[54].

51. However, the fundamental principle of justice against arbitrariness requires "a direct connection between the purpose of the law and the impugned effect on the individual, in the sense that the effect on the individual bears some relation to the law's purpose"[55].

52. In this case, the effects on the individual are the limits on liberty and security identified by the First Instance Judge. These effects are not caused by the police interventions themselves, but rather they are found to flow from random police interceptions outside any structured program.

53. The question is therefore not whether there is a connection between road security and police interceptions, or even between road security and *each* police interception, but whether there is a connection between road security and random police interceptions, with no cause and outside any structured program.

54. Based on the evidence before him, the First Instance Judge found that not only do the Impugned Rules give rise to police interventions which are arbitrary[56], but the Impugned Rules bear no rational connection with the purpose sought[57].

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[52] Appellant's factum, para. 119.
[53] *Id.*, para. 120.
[54] Appellant's factum, para. 125.
[55] *Bedford*, *supra,* note 4, para. 111 (underline added).
[56] Judgement, para. 755.
[57] *Id.,* para. 754.

55. The Appellant also argues that the First Instance Judge contradicted himself by declaring that his analysis was done without regard to efficacity all the while clearly basing his reasoning on an absence of efficacity[58].

56. The BCCLA submits that any such contradiction can be traced back to the Supreme Court's reasoning in *Bedford*.

57. It is true that in its decision, the Supreme Court writes that "The inquiry into the purpose of the law focuses on the nature of the object, not on its efficacy"[59]. This "puzzling remark"[60] seems to run afoul of the Supreme Court's own past[61] and subsequent[62] decisions on arbitrariness, as well as its caselaw on overbreadth[63].

58. In fact, in *Bedford* itself, it is established that a law may be found to be arbitrary, whether its effects are inconsistent with its objective or *merely unnecessary for its objective*, "on a case-by-case basis, in light of the evidence"[64]. Logically, one should conclude that "a court would need some empirical evidence concerning both the effectiveness of the law in achieving its purposes and its impact on section 7 interests"[65]. Indeed, as reiterates the Supreme Court, two years later, in *Carter*, "[a]n arbitrary law is one that is not capable of fulfilling its objectives"[66].

59. One coherent reading of the Court's comments in *Bedford* can be found precisely in *Carter.*

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[58] Appellant's factum, para. 126.
[59] *Bedford*, *supra,* note 4, para. 127.
[60] STEWART Hamish, "*Fundamental Justice"*, 2nd ed., (Toronto: Irwin Law, 2019), p. 181.
[61] *Canada (Attorney General)* v. *PHS Community Services Society*, 2011 SCC 44, para. 131; *Chaoulli*, *supra,* note 35.
[62] *Smith*, *supra,* note 27, para. 27.
[63] *R.* v. *Demers*, 2004 SCC 46; *Carter, supra,* note 9; *R.* v. *Appulonappa*, 2015 SCC 59; *R.* v. *Safazadeh-Markhali*, 2016 SCC 14 [*Safazadeh*]; *R.* v. *Ndhlovu*, 2022 SCC 38 [*Ndhlovu*].
[64] *Bedford*, *supra,* note 4, para. 119.
[65] STEWART, Hamish, "Bedford and the Structure of Section 7" (2015) 60-3 McGill Law Journal 575.
[66] *Carter*, *supra*, note 9, para. 83.

60. Both *Bedford* and *Carter* clearly establish an important distinction between s. 7 and s. 1; only the latter allows justifications of an infringement based on competing social interests or public benefits[67].

61. Thus, when the Court rejected "efficacy" from its s. 7 analysis in *Bedford*, it could be said that what it rejected is the efficacy (or usefulness) of the purpose of the law towards a greater good, and not the efficacy of the measure disputed towards the purpose of the law:

> [127] By contrast, under s. 7, the claimant bears the burden of establishing that the law deprives her of life, liberty or security of the person, in a manner that is not connected to the law's object or in a manner that is grossly disproportionate to the law's object. The **inquiry into the purpose of the law** focuses on the nature of the object, not on its efficacy. The inquiry into the impact on life, liberty or security of the person is not quantitative — for example, how many people are negatively impacted — but qualitative. An arbitrary, overbroad, or grossly disproportionate impact on one person suffices to establish a breach of s. 7. To require s. 7 claimants to establish the efficacy of the law versus its deleterious consequences on members of society as a whole, would impose the government's s. 1 burden on claimants under s. 7. That cannot be right. [68]
>
> [Underlining and emphasis added]

62. The rejection of efficacy happens at the stage of the "inquiry into the purpose of the law". Therefore, claimants are not required to assess whether a purpose is efficacious or not, or whether it is good or bad "in terms of society as a whole"[69], but simply what the purpose is.

63. It is indeed only with the intent of stressing the above-mentioned distinction between s. 1 and s. 7 that the *Carter* decision refers to that excerpt in *Bedford*:

> [80] In Bedford, the Court noted that requiring s. 7 claimants "to establish the efficacy of the law versus its deleterious consequences on members of society as a whole, would impose the government's s. 1 burden on claimants under s. 7" (para. 127; see also Charkaoui v. Canada (Citizenship and Immigration), 2007 SCC 9, [2007] 1 S.C.R.

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[67] *Bedford, supra,* note 4, paras. 123 and 125; *Carter*, *supra*, note 9, para. 79.
[68] *Bedford*, *supra,* note 4, para. 127.
[69] *Id.*, para. 126.

> 350, at paras. 21-22). A claimant under s. 7 must show that the state has deprived them of their life, liberty or security of the person and that the deprivation is not in accordance with the principles of fundamental justice. They should not be tasked with also showing that these principles are "not overridden by a valid state or communal interest in these circumstances": T. J. Singleton, "The Principles of Fundamental Justice, Societal Interests and Section 1 of the Charter" (1995), 74 Can. Bar Rev. 446, at p. 449. As this Court stated in R. v. Swain, [1991] 1 S.C.R. 933, at p. 977:
>
> > It is not appropriate for the state to thwart the exercise of the accused's right by attempting to bring societal interests into the principles of fundamental justice and to thereby limit an accused's s. 7 rights. Societal interests are to be dealt with under s. 1 of the Charter . . . .[70]

64. As such, the First Instance Judge was well-founded in basing his conclusion of arbitrariness on the lack of rational connection between the Impugned Rules and the objective sought[71], while stating, that his analysis of arbitrariness was conducted without regard to "efficacity"[72], as the Supreme Court did in *Bedford*.

65. On this same point, the Appellant argues that the First Instance Judge committed an overriding and palpable error when he rejected a rational connection based on the inherent deterrence of road police control, given the jurisprudential acknowledgement of the principle of deterrence.

66. Once again, the Appellant does not answer to the First Instance Judge's finding regarding the uselessness of *the specific kind of police intervention* debated in this case. The Appellant does not raise any precedent recognizing a deterrent effect of such interventions.

67. Even if courts were found to be bound by some general presumption that police intervention or the risk and punishment related thereto are always deterrent in and of themselves, it does not flow from such presumption that random interventions are

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[70] *Carter, supra*, note 9, para. 80.
[71] Judgement, para. 754.
[72] *Id.*, para. 759.

presumably deterrent. It is even less so when one considers interventions based on racial profiling.

68. As for the difficulties in detecting traffic violations, such as driving without a valid permit, drinking under influence or issues associated with vehicle registration or general vehicle condition, the Supreme Court has made abundantly clear that "enforcement practicality" is an argument of public interest, to be addressed under s. 1 and not under s. 7 [73].

PART IV: CONCLUSIONS

THE INTERVENER BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION ASKS THE COURT OF APPEAL TO:

[1] DISMISS the appeal;

[2] CONFIRM the first instance judgment;

[3] THE WHOLE, without costs.

On October 30, 2023, in Montreal:

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[73] *Bedford*, *supra,* note 4, para. 144. See also the caselaw on arbitrariness: *Singh* v. *Minister of Employment and Immigration*, [1985] 1 S.C.R. 177, p. 219; *Carter*, *supra,* note 9, para. 88; *Safazadeh, supra,* note 62, para. 53. For a thorough discussion on the matter, see *Ndhlovu*, *supra,* note 62, paras. 103-110.

PART V: AUTHORITIES

Case Law

Doctrine

Law

ATTESTATION OF THE AUTHOR OF THE BRIEF

I, the undersigned, Novalex Law Firm Inc., attest to the brief's conformity with the *Rules of* the *Civil Practice Regulation of the Court of Appeal*.

We do not have any transcribed depositions.

The time requested for the presentation of our oral argument is 30 minutes.

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PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
COURT OF APPEAL OF QUÉBEC

THE ATTORNEY GENERAL OF QUÉBEC

APPELLANT - (DEFENDANT)

v.

JOSEPH-CHRISTOPHER LUAMBA

RESPONDENT – (PLAINTIFF)

AND OTHERS

BRIEF OF THE INTERVENER BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

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