Court File No. 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**
(Appellant)

- and -

**JOSEPH CHRISTOPHER LUAMBA**
**RESPONDENT / APPELLANT ON CROSS-APPEAL**
(Respondent)

- and -

**CANADIAN CIVIL LIBERTIES ASSOCIATION**
**RESPONDENT**
(Respondent)

- and -

**CANADIAN ASSOCIATION OF BLACK LAWYERS**
**RESPONDENTS**
(Impleaded Party)

- and -

**BRITISH COLOMBIA CIVIL LIBERTIES ASSOCIATION**
**CLINIQUE JURIDIQUE DE SAINT-MICHEL**
**COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE**
**INTERVENERS**
(Interveners)

- and -

**ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF SASKATCHEWAN, ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF BRITISH COLUMBIA, PUBLIC INTEREST LITIGATION INSTITUTE, AKWESASNE JUSTICE DEPARTMENT, WOMEN'S LEGAL ACTION AND EDUCATION FUND, CANADIAN ASSOCIATION OF CHIEFS OF POLICE, AFRICAN NOVA SCOTIAN JUSTICE INSTITUTE, BLACK LEGAL ACTION CENTRE, MOTHERS AGAINST DRUNK DRIVING (MADD CANADA), ONTARIO HUMAN RIGHTS COMMISSION, CRIMINAL LAWYERS' ASSOCIATION (ONTARIO), DAVID ASPER CENTER FOR CONSTITUTIONAL RIGHTS**
**INTERVENERS**

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**FACTUM (CROSS-APPEAL) OF THE RESPONDENT CANADIAN CIVIL LIBERTIES ASSOCIATION**
(Pursuant to Rule 43 of *the Rules of the Supreme Court of Canada*)

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**This document is an unofficial courtesy translation of the reply factum as filed with the Supreme Court of Canada by the Respondent, the Canadian Civil Liberties Association, on November 3, 2025. It is provided only as a courtesy to media and the public. Where no official English translation of a quote cited in the original version was available, an unofficial translation has been provided. The authoritative position of the Canadian Civil Liberties Association in the present appeal remains the French factum as filed.**

**Mtre Bruce W. Johnston**
**Mtre Lex Gill**
**Mtre Louis-Alexandre Hébert-Gosselin**
**Trudel Johnston & Lespérance**
750 Côte de la Place d'Armes
Suite 90, Montreal QC H2Y 2X8
Tel: 514 871-8385
Fax: : 514 871-8800
bruce@tjl.quebec
lex@tjl.quebec
louis-alexandre@tjl.quebec

**Counsel for the Respondent,**
**Canadian Civil Liberties Association**

**Mtre Mike Siméon**
Suite 1610
2000 Mansfield Street
Montreal, Quebec
H3A 3A4

Tel.: (514) 380-5915
Fax: (514) 866-8719
msimeon@mslex.ca

**Counsel for the Respondent,**
**Joseph-Christopher Luamba**

**Mtre Michel Déom**
**Mtre Luc-Vincent Gendron-Bouchard**
**Aurélie Fortin**
**Attorney General of Quebec**
Bernard, Roy (Justice-Québec)
1 Notre-Dame Street East, Suite 8.00
Montréal, Québec
H2Y 1B6

Tel.: (514) 393-2336 Ext: 51498
Fax: (514) 873-7074
michel.deom@justice.gouv.qc.ca

**Counsel for the Appellant,**
**Attorney General of Quebec**

**Mtre Pierre Landry**
**Noël et Associés, s.e.n.c.r.l.**
225 montée Paiment
2nd Floor
Gatineau, Quebec
J8P 6M7

Tel.: (819) 771-7393
Fax: (819) 771-5397
p.landry@noelassocies.com

**Agent for the**
**Attorney General of Quebec**

**Mtre Karine Joizil**
**Mtre Sajeda Hedaraly**
**McCarthy Tétrault LLP**
1000 De La Gauchetière Street West
Suite MZ400
Montreal, Quebec
H3B 0A2

Tel.: (514) 397-4129
Fax: (514) 875-6246
kjoizil@mccarthy.ca

**Counsel for the Respondent (Impleaded Party),**
**Canadian Association of Black Lawyers**

**Mtre Marc Ribeiro**
**Mtre Miriam Clouthier**
**Attorney General of Canada**
Complex Guy-Favreau, East Tower,
5th floor
200, boul. René-Levésque West
Montréal, Québec
H2Z 1X4

Tel.: (514) 283-6272
Fax: (514) 496-7876
marc.ribeiro@justice.gc.ca

**Counsel for the Intervener,**
**Attorney General of Canada**

**Mtre Bernard Letarte**
**Department of Justice Canada**
National Litigation Sector
275 Sparks Street, St-Andrew Tower
Ottawa, Ontario
K1A 0H8

Tel.: (613) 294-6588
SCCAgentCorrespondentCSC@justice.gc.ca

**Agent for the Attorney General of Canada**

**Mtre Vincent Larochelle**
**Mtre Ga Grant**
**Larochelle Law**
303B Hawkins Street
Whitehorse, Yukon Territory
Y1A 1X5

Tel.: (867) 456-2325
vincent@larochellelaw.ca

**Counsel for the Intervener,**
**British Columbia Civil Liberties Association**

**Mtre Maxime Vincelette**
**Power Law**
50 O'Connor Street, Suite 1313
Ottawa, Ontario
K1P 6L2

Tel.: (613) 702-5573
mvincelette@juristespower.ca

**Agent for the**
**British Columbia Civil Liberties Association**

**Mtre Fernando Belton**
**Mtre Dardia Garcelle Joseph**
**Mtre Sarah Warda**
**Mtre Clarisse Émond-Larochelle**
**BELTON AVOCAT INC.**
3737, boul. East
Suite 801
Montreal, Quebec
H1Z 2K4

Tel.: (514) 794-5917
Tel. : (514) 221-3210
fbelton@cjsm.ca

**Counsel for the Intervener,**
**Clinique juridique de Saint-Michel**

**Mtre Christine Campbell**
**Mtre Emma Tardieu**
**Bitzakidis, Clément-Major,** Fournier
2nd Floor
360 Saint-Jacques Street
Montreal, Quebec
H2Y 1P5

Tel.: (514) 873-5146, ext: 8384
Fax: (514) 873-6032
christine.campbell@cdpdj.qc.ca

**Counsel for the Intervener,**
**Commission des droits de la personne**
**et des droits de la jeunesse**

**Mtre Robert Palser**
**Alberta Crown Prosecution Service**
3rd Floor, Bowker Building
9833 - 109 Street
Edmonton, Alberta
T5K 2E8

Tel.: (780) 422-5402
Fax: (780) 422-1106
robert.palser@gov.ab.ca

**Counsel for the Intervener,**

**Mtre D. Lynne Watt**
**Gowling WLG (Canada) LLP**
160 Elgin Street
Suite 2600
Ottawa, Ontario
K1P 1C3

Tel.: (613) 786-8695
Fax: (613) 788-3509
lynne.watt@gowlingwlg.com

**Agent for the**

**Attorney General of Alberta**

**Mtre Noah Wernikowski**
**Ministry of Justice Saskatchewan**
820-1874 Scarth Street
Constitutional Law Branch
Regina, Saskatchewan
S4P 4B3

Tel.: (306) 786-0206
Fax: (306) 787-9111
noah.wernikowski@gov.sk.ca

**Counsel for the Intervener,**
**Attorney General of Saskatchewan**

**Mtre James V. Palangio**
**Mtre Elizabeth Guilbault**
**Attorney General of Ontario**
Crown Law Office - Criminal
720 Bay Street, 10th Floor
Toronto, Ontario
M7A 2S9

Tel.: (416) 326-4600
Fax: (416) 326-4656
james.palangio@ontario.ca

**Counsel for the Intervener,**
**Attorney General of Ontario**

**Mtre Micah Rankin, K.C.**
**Mtre Rome Carot**
**Attorney General of British Columbia**
B.C. Prosecution Service
3rd Floor, 940 Blanshard Street
Victoria, British Columbia
V8W 3E6

Tel.: (778) 974-3344
Fax: (250) 387-4262
micah.rankin@gov.bc.ca

**Counsel for the intervener,**
**Attorney General of British Columbia**

**Attorney General of Alberta**

**Mtre D. Lynne Watt**
**Gowling WLG (Canada) LLP**
160 Elgin Street
Suite 2600
Ottawa, Ontario
K1P 1C3

Tel.: (613) 786-8695
Fax: (613) 788-3509
lynne.watt@gowlingwlg.com

**Correspondent for the**
**Attorney General of Saskatchewan**

**Mtre Nadia Effendi**
**Borden Ladner Gervais LLP**
World Exchange Plaza
100 Queen Street, suite 1300
Ottawa, Ontario
K1P 1J9

Tel.: (613) 787-3562
Fax: (613) 230-8842
neffendi@blg.com

**Agent for the**
**Attorney General of Ontario**

**Mtre Matthew Estabrooks**
**Gowling WLG (Canada) LLP**
2600 - 160 Elgin Street
Ottawa, Ontario
K1P 1C3

Tel.: (613) 786-0211
Fax: (613) (613) 563-9869
matthew.estabrooks@gowlingwlg.com

**Agent for the**
**Attorney General of British Columbia**

**Mtre Lawrence David, LL.M**
**Public Interest Litigation Institute**
1030 Berri Street – Suite 102
Montreal, Quebec
H2L 4C3

Tel.: (343) 961-6186
Fax: (514) 868-9690
ldavid@clg.org

**Counsel for the Intervener,**
**Public Interest Litigation Institute**

**Mtre Neha Chugh**
**Mtre Anne-Marie McElroy**
**Chugh Law Professional Corporation**
28 First Street West
Cornwall, Ontario
K6J 1B9

Tel.: (613) 938-0000
Fax: (613) 938-8556
neha@chughlaw.ca

**Counsel for the Intervener,**
**Akwesasne Justice Department**

**Mtre Akosua Matthews**
**Mtre Katia Snukal**
**Kastner Ko LLP**
55 University Avenue, Suite 1800
Toronto, Ontario
M5J 2H7

Tel.: (416) 655-3044 Ext: 814
Fax: (416) 981-7453
amatthews@kastnerko.com

**Counsell for the Intervener,**
**Women's Legal Education and Action Fund**

**Mtre Nadia Effendi**
**Borden Ladner Gervais LLP**
World Exchange Plaza
100 Queen Street, Suite 1300
Ottawa, Ontario
K1P 1J9

Tel. (613) 787-3562
Fax (613) 230-8842
neffendi@blg.com

**Correspondent for the**
**Women's Legal Education and Action Fund**

**Mtre Simon Authier**
**Vancouver Police Department**
2120 Cambie Street
Vancouver, British Columbia
V5Z 4N6

Tel. : (604) 717-0727
simon.authier@vpd.ca

**Counsel for the Intervener,**
**Canadian Association of Chiefs of Police**

**Mtre Lynda A. Bordeleau**
**Perley-Robertson, Hill & McDougall**
1400 - 340 Albert Street
Ottawa, Ontario
K1R 0A5

Tel.: (613) 238-2022
Fax: (613) 238-8775
lbordeleau@perlaw.ca

**Correspondent for the Canadian**
**Association of Chiefs of Police**

**Mtre Lee V. Seshagiri**
**Mtre Brandon P. Rolle**
**Mtre Alexander J. MacKillop**
**African Nova Scotian Justice Institute**
5832 Bilby Street
Halifax, Nova Scotia
B3K 1V8

Tel. : (902) 420-3471
lee.seshagiri@nslegalaid.ca

**Counsel for the Intervener,**
**African Nova Scotian Justice Institute**

**Mtre Marie-France Major**
**Supreme Advocacy LLP**
340 Gilmour Street
Suite 100
Ottawa, Ontario
K2P 0R3

Tel.: (613) 695-8855 Ext: 102
Fax: (613) 695-8580
mfmajor@supremeadvocacy.ca

**Correspondent for the African Nova**
**Scotian Justice Institute**

**Mtre Annamaria Enenajor**
**Mtre Sabrina Shillingford**
**Mtre Ruby Shiller Enenajor DiGiuseppe**
**Barristers**
197 Spadina Avenue
Suite 402
Toronto, Ontario
M5T 2C8

Tel.: (416) 964-9664 Ext: 107
Fax: (416) 964-8305
aenenajor@rubyshiller.com

**Counsel for the Intervener,**
**Black Legal Action Centre**

**Mtre Marie-France Major**
**Supreme Advocacy LLP**
340 Gilmour Street
Suite 100
Ottawa, Ontario
K2P 0R3

Tel.: (613) 695-8855 Ext: 102
Fax: (613) 695-8580
mfmajor@supremeadvocacy.ca

**Correspondent for the**
**Black Legal Action Centre**

**Mtre Earl A. Cherniak, Q.C.**
**Mtre Jacob Damstra**
**Mtre Debbie Boswell**
**Lerners LLP**
130 Adelaide Street West
Suite 2400, P.O. Box 95
Toronto, Ontario
M5H 3P5

Tel.: (416) 601-2350
Fax: (416) 867-2402
echerniak@lerners.ca

**Counsel for the Intervener,**
**Mothers Against Drunk Driving (MADD Canada)**

**Me Catherine Ouellet**
**Gowling WLG (Canada) LLP**
160 Elgin Street
Suite 2600
Ottawa, Ontario
K1A 5C6

Tel.: (613) 786-0189
Fax: (613) 563-9869
Catherine.Ouellet@gowlingwlg.com

**Correspondent for**
**Mothers Against Drunk Driving (MADD Canada)**

**Mtre Roger Love**
**Mtre Nina Gandhi**
**Ontario Human Rights Commission**
180 Dundas St., W., 9th Floor
Toronto, Ontario
M7A 2G5

Tel.: (416) 618-2390
roger.love@ohrc.on

**Counsel for the Intervener,**
**Ontario Human Rights Commission**

**Mtre Bijon Roy**
**Champ and Associates**
43 Florence Street
Ottawa, Ontario
K2P 0W6

Tel.: (613) 237-4740
Fax: (613) 232-2680
broy@champlaw.ca

**Correspondent for the**
**Ontario Human Rights Commission**

**Mtre Gerald Chan**
**Mtre Alexandra Heine**
**Stockwoods LLP**
TD North Tower
4130-77 King St W, PO Box 140
Toronto, Ontario
M5K 1H1

Tel.: (416) 593-1617
Fax: (416) 593-9345
geraldc@stockwoods.ca

**Counsel for the Intervener,**
**Criminal Lawyers' Association (Ontario)**

**Mtre Maxine Vincelette**
**Power Law**
50 O'Connor Street, Suite 1313
Ottawa, Ontario
K1P 6L2

Tel.: (613) 702-5573
Fax: (613) 702-5573
mvincelette@juristespower.ca

**Correspondent for the**
**Criminal Lawyers' Association (Ontario)**

**Mtre Megan Savard**
**Mtre Riaz Sayani**
**Savards LLP**
26 Soho Street, Suite 400
Toronto, Ontario
M5T 1Z7

Tel.: (416) 789-7843
megan@savards.ca

**Counsel for the Intervener,**
**David Asper Centre for Constitutional Rights**

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** Part VI (confidentiality) is not applicable to this file*

## PART I – STATEMENT OF THE RESPONDENT'S POSITION ON THE CROSS-APPEAL

1. On October 20, 2025, the Court issued an order authorizing the Canadian Civil Liberties Association (CCLA) to file a factum in reply to Mr. Luamba's factum on cross-appeal, which asks this Court to recognize the existence of a parallel common law power authorizing the traffic stops in dispute before declaring that power constitutionally invalid. Thus, somewhat unusually, Mr. Luamba and the Attorney General of Quebec ("AGQ") both argue that such a power exists, although they disagree on its constitutionality. The CCLA, a full party to this litigation since the summer of 2021, is of the contrary view, and argues that the Court of Appeal concluded correctly that such a common law power has never been recognized by this Court.

2. With respect, the theory advanced by the AGQ and the cross-appellant amounts to an assertion that new common law police powers can be recognized implicitly and in a manner that encroaches on legislative authority in the complete absence of reasonable necessity. In reality, the Supreme Court has never applied the *Waterfield* test to the power in dispute and has never recognized the existence of such a broad police power as a matter of common law.

3. That said, the CCLA acknowledges that over the past thirty years, some courts across the country have misinterpreted the *Ladouceur*, *Hufsky,* and *Dedman* decisions to recognize the existence of a common law power to conduct traffic stops without grounds in circumstances beyond those envisioned by the program in *Dedman*. Given that this issue could have serious implications for the scope of police powers across Canada, the CCLA asks this Court to clarify that the type of stop at issue in the present appeal has never been authorized at common law, and to guard against the risk that common law will be invoked to justify discriminatory and arbitrary stops in the future.

## PART II – QUESTIONS IN ISSUE

4. Mr. Luamba's cross-appeal raises the question of whether there is a common law power allowing the traffic stops in dispute and, if so, whether that power is constitutional.

5. For the reasons set out below, the CCLA submits that such a power has never been recognized by this Court and that Mr. Luamba's cross-appeal should be dismissed.

## PART III – STATEMENT OF ARGUMENT

6. The evolution of the power to conduct traffic stops outside the criminal context can be summarized as follows.

7. **In 1985, the Supreme Court rendered its decision in *Dedman*.** The facts in that case—which concerned traffic stops at a fixed point as part of a structured program—occurred before the adoption of the *Charter.*[1] At that time, there was no legal provision authorizing the stops in question.[2] Applying the test in *Waterfield*, the majority concluded that the R.I.D.E. program did not constitute an unreasonable interference with drivers' freedoms, given the objectives of road safety.[3]

8. **In 1988, the Supreme Court rendered its decision in *Hufsky*.** The facts in that case arose following the adoption of the *Charter.*[4] The power in question was to conduct random stops at a fixed point ("spot checks"). Unlike the R.I.D.E. program at issue in *Dedman*, this type of check had several objectives in addition to testing for sobriety.[5] The appellant did not rely on the common law power recognized in *Dedman.*[6] Instead, the only legal basis relied upon to justify the stop was subsection 189a(1) of the Ontario *Highway Traffic Act.*[7] The Court did not apply the *Waterfield* test. It confirmed that the stops were arbitrary and therefore contrary to section 9 of the *Charter* but found them to be justified under section 1.[8]

9. **In 1990, the Supreme Court rendered its decision in *Ladouceur*.** Unlike the *Dedman* and *Hufsky* cases, the stop in question had been carried out "from a patrolling police vehicle and not from a fixed point as part of an organized program".[9] The constitutional issue to be decided differed from that in *Hufsky* in that the stop in question was not "part of an organized procedure".[10]

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[1] *Dedman v. The Queen*, [1985] 2 SCR 2, pp. 23–25, 36 ["***Dedman***"] ; *Procureur général du Québec c. Luamba,* 2024 QCCA 1387, para. 18 ["**Appeal Judgment**"].
[2] *Dedman*, pp. 30–32.
[3] *Dedman*, p. 36.
[4] *R. v. Hufsky*, [1988] 1 S.C.R. 621, pp. 625-626 ["***Hufsky***"].
[5] *R. v. Ladouceur*, [1990] 1 SCR 1257, p. 1274 ["***Ladouceur***"].
[6] *Hufsky*, p 631.
[7] *Hufsky*, p. 631; Appeal Judgment, para. 21.
[8] *Hufsky*, pp. 636-637.
[9] See Appeal Judgment, para. 23, 26 to 32. See also: *R. v. McColman*, 2023 SCC 8, para. 29.
[10] *Ladouceur*, p. 1271.

The appellant invoked the power of the police to conduct "completely random stops"[11] in an entirely discretionary manner, without any suspicion that the driver was violating the law. As in *Hufsky*, the Court did not apply the *Waterfield* test, because the only source invoked to justify the stop was subsection 189a(1) of *the Highway Traffic Act* — a general legislative provision authorizing a police officer acting "in the lawful execution of his duties" to require a driver to stop.[12] The Court upheld the constitutionality of the arbitrary detentions at issue under section 1.

10. **Six months after the judgment in *Ladouceur***, the Quebec legislature amended section 636 of *the Highway Safety Code* ("*H.S.C.*") to remove the requirement that an officer stopping a vehicle have reasonable grounds to believe that an offence under the *H.S.C.* had been committed.[13] Parliamentary debates show that this amendment was intended to harmonize the legislative provision with the Ontario power that had just been validated by the Supreme Court in *Ladouceur*, which did not require any grounds.[14]

11. **In 1994, the Quebec Court of Appeal rendered the *Soucisse* decision.** In this judgment, the Court of Appeal upheld the constitutionality of the new section 636 *H.S.C.*, basing its decision entirely on this Court's reasoning in *Ladouceur.*[15]

12. In light of this history, it is clear that the powers challenged in the *Hufsky*, *Ladouceur* and *Soucisse* cases each had a purely statutory basis.

13. The *Waterfield* test — now referred to as the "ancillary powers doctrine" — sets out strict criteria for determining whether a police action restricting an individual's liberty is authorized at common law.[16] This test requires that a police power be "clearly defined" and that the reasonable necessity test be applied in an "especially stringent" manner.[17] Indeed, the second element of the test is

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[11] *Ladouceur,* p. 1276.
[12] *Ladouceur*, p. 1278; *Hufsky*, p. 634.
[13] Appeal Judgment, paras. 36, 113.
[14] Journal of Debates, Parliamentary Committees, Standing Committee on Planning and Equipment, Detailed Study of Bill 108 – An Act to amend the Highway Safety Code and other legislative provisions, December 18, 1990, p. 3731, excerpt cited here: *Luamba c. Procureur général du Québec*, 2022 QCCS 3866, footnote 34 ["**Trial Judgment**"].
[15] *R. v. Soucisse*, [1994] R.J.Q. 1546, 1994 CanLII 5821 (QC CA) ["***Soucisse***"].
[16] *Fleming v. Ontario*, 2019 SCC 45, para. 43 ["***Fleming***"]; *R. v. Waterfield*, [1963] 3 All E.R. 659, pp. 170-171.
[17] *Fleming*, para. 46, 75.

"particularly difficult to justify" in cases involving law-abiding individuals, "preventive" powers, and exercises of state power that, by their nature, are "evasive of review"[18] — in other words, cases such as this one.

14. Of the decisions cited above, only the *Dedman* ruling addresses the existence of common law police powers, while the others deal only with legislative provisions, namely section 189a(1) of *the Highway Safety Code* (*Hufsky* and *Ladouceur*) and section 636 *H.S.C.* (*Soucisse*). This was also the conclusion reached by the Court of Appeal.[19] Simply put, since the Court did not apply the ancillary powers doctrine in the *Ladouceur* decision, it cannot be said to have recognized the existence of a common law power. To the extent that the Court briefly refers to other potential sources of the contested power, including the common law, these comments are at best *obiter* and cannot substitute for the satisfaction of the criteria of the *Waterfield* test.[20]

15. The AGQ and the cross-appellant suggest that it is the *Dedman* case, not *Ladouceur*, that provides a common law basis for the contested power, and that this power was not in fact expanded in *Ladouceur.*[21] However, in light of the history summarized above, it is clear that the power recognized on a purely legislative basis in *Hufsky* was broader than that at issue in *Dedman*, and that the power validated in *Ladouceur* on the same purely legislative basis was broader than that referred to in *Hufsky*.

16. Furthermore, the National Assembly of Quebec would have had no reason to amend section 636 *H.S.C.* in 1990 to allow roadside stops without grounds if the power already existed in common law. [22] This understanding is confirmed by the *Soucisse* decision, in which Justice Steinberg concluded that, prior to the coming into force of the new section 636 of the *H.S.C.*, the common law power of random interception "was not extended to encompass a roving random stop, that is, a stop that is neither made at a checkpoint, nor as part of an organized program".[23]

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[18] *Fleming*, paras. 75-85.
[19] Appeal Judgment, para. 25.
[20] Appeal Judgment, para. 27; *R. v. Griffin*, 1996 CanLII 11055 (NL CA), application for leave to appeal to the Supreme Court dismissed, April 24, 1997, No. 25753.
[21] Factum of the AGQ, paras. 1, 3, 13, 30 to 38; Cross-Appellant's Factum, paras. 20, 21.
[22] See, on a related point: *Kosicki v. Toronto (City),* 2025 SCC 28, para. 43; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General),* 2011 SCC 53, paras. 43, 45; See also Appeal Judgment, para. 31.
[23] *Soucisse*, p. 7.

17. As mentioned, the theory advanced by the AGQ and the cross-appellant amounts to an assertion that new police powers can be recognized in common law in an implicit manner and in the total absence of the reasonable necessity required by the second part of the *Waterfield* test. This approach, in addition to introducing a high degree of instability and unpredictability into our constitutional order, is inconsistent with this Court's instruction in *Fleming* to the effect that "[t]he courts of this country, as custodians of the common law, must act cautiously when asked to use it to authorize actions that interfere with individual liberty".[24]

18. In Ontario, the *Dedman*, *Hufksy*, and *Ladouceur* cases constitute vertical precedents for this Court.[25] In other provinces, an equivalent power to the one challenged in the present appeal has been incorporated into law by analogy to these three cases (as was the case in Quebec following the *Soucisse* decision).[26] In some of these cases, it is true that common law is described as one of the sources, or even *the* source, of the power to conduct traffic stops without grounds, even outside of a structured program. There is therefore a risk that artful pleaders will argue that common law continues to justify the kind of discriminatory and arbitrary stop at issue, regardless of this Court's decision in the present appeal.

19. The Court therefore has a unique opportunity to clarify this ambiguity in the case law and avoid the risk that its decision in this historic case will have no practical effect. In this regard, its reasons and final order should be drafted in such a way as to eliminate any ambiguity regarding the constitutionality of the power at issue, regardless of its source. This would provide clear and intelligible guidance to police services and, where applicable, government institutions, in implementing less intrusive measures.[27] Finally, such a declaration would avoid duplicative litigation against the state concerning the scope of the power and would protect against unfair outcomes in individual cases involving traffic stops.



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[24] *Fleming,* para. 5.
[25] See *Brampton (City) v. Rampersaud*, 2024 ONCJ 78, paras. 28, 40-41, 45.
[26] See, for example, *R. v. Strilec*, 2010 BCCA 198, paras. 28–29; *R. v. Brown*, 2021 NSPC 32, para. 15; *R. v. Jobb*, 2021 SKQB 4, paras. 37-39; *R v. Labillois*, 2020 ABQB 200, paras. 15-18, *R. v. Scott*, 2016 ABPC 226, paras. 30, 64.
[27] *Fleming*, para. 52; Trial Judgment, para. 857.

## PART IV – SUBMISSIONS ON COSTS

20. The CCLA is not seeking any costs in connection with the cross-appeal.

## PART V – ORDERS SOUGHT

21. The CCLA asks that this Court dismiss the cross-appeal and affirm the judgment of the Quebec Court of Appeal in its entirety, with immediate effect.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**.

Montreal, November 3, 2025.

**Bruce W. Johnston**
Trudel Johnston & Lespérance
Counsel for the Respondent, CCLA

**Lex Gill**
Trudel Johnston & Lespérance
Counsel for the Respondent, CCLA

**Louis-Alexandre Hébert-Gosselin**
Trudel Johnston & Lespérance
Counsel for the Respondent, CCLA

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## PART VII – TABLE OF AUTHORITIES

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