

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

B E T W E E N:

HIS MAJESTY THE KING

Appellant
(Respondent)

– and –

ABDEL KARIM CHEMLAL

Respondent
(Appellant)

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CANADIAN CIVIL LIBERTIES ASSOCIATION
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I — STATEMENT OF THE CASE

1. This appeal asks when police may search an individual who is not under arrest or detention, in order to address a risk to officer or public safety. The CCLA intervenes to assist the Court in striking the appropriate balance between the duties of law enforcement, and the civil liberties of individuals who are freely interacting with police.

2. The CCLA's position is that police will be authorized to conduct a safety search when they have reasonable grounds to believe the search is necessary to address an imminent risk to officer or public safety.

3. The common law power to search an individual and inspect their personal property for safety reasons is exceptional and must be narrowly construed. Citizens have a high interest of privacy in their person and property when they are freely interacting with police, and police will be justified in intruding on their privacy, liberty, and bodily integrity to conduct a search only in situations of objectively verifiable necessity.

4. The majority of such searches will never be reviewed by any court. This Court must be alert to the potential for abuse that accompanies low-visibility exercises of police power. A robust standard of reasonable grounds to believe offers clear guidance to officers in the field regarding when they will be justified in conducting a search, and promotes meaningful judicial review when such searches are challenged.

PART II — POSITION ON QUESTIONS IN ISSUE

5. The CCLA intervenes to make submissions on the following question in issue:

1. When will a police officer be authorized to conduct a security search of an individual who is not detained or arrested?

6. The CCLA's position is that:

1. Individuals who are not under arrest have a high expectation of privacy in their person and belongings. Security searches of such individuals must remain exceptional.
2. The standard for a security search is reasonable grounds to believe that the individual poses an imminent threat to the safety of the police or public.
3. "Imminent threat" will exist where there are reasonable grounds to believe the individual is in possession of a weapon, and poses a realistic risk of harming or attempting to harm another person.

PART III – STATEMENT OF ARGUMENT

I. Security Searches are Exceptional

(i) Overview

7. The common law power to search an individual for officer or public safety reasons is exceptional, and must remain so. This Court has repeatedly emphasized that this search power "is constrained by a requirement of objectively verifiable necessity."¹ Police may conduct a security search only where necessary to address a safety risk, and may not intrude upon the individual's *Charter*-protected interests any more than necessary to neutralize that risk. Courts must continue to closely scrutinize safety searches to ensure that they meet this standard.

(ii) This Court's Decisions in *Mann* and *MacDonald* Articulated an Exceptional Search Power

¹ *R. v. MacDonald*, [2014 SCC 3](#) at para. [31](#)

8. The common law search power at issue in this appeal was recognized by this court in *R. v. Mann*,² which concerned the powers to investigatively detain an individual and, when necessary, to search them for safety reasons incident to that investigative detention. This Court expanded on *Mann* in *MacDonald*,³ which concerned whether police were authorized in entering the home of an individual who was not arrested or detained to address an apprehended threat to officer safety. Both decisions emphasized the exceptional nature of security searches.

9. In *Mann*, this Court reiterated that police are authorized at common law to perform actions that would otherwise constitute an unlawful interference with liberty or property **only** where that interference is **reasonably necessary** in order for the police to perform their duty — in the case of safety searches, the duty to protect life.⁴ A safety search must be “confined in scope to an intrusion reasonably designed to locate weapons,”⁵ in order to ensure that it is tailored to the fulfillment of that duty.

10. In *MacDonald*, the majority made it clear that it was articulating a narrow and exceptional search power, founded on “reasonable, objectively verifiable necessity.”⁶ The majority held that reasonable necessity will be present “only when police officers have **reasonable grounds to believe** there is an **imminent threat** to their safety.” [Emphasis added]⁷

11. The dissenting justices in *MacDonald* would have imposed a lower threshold of reasonable suspicion, rather than reasonable grounds, for a safety search; however, the dissenting justices

² *R. v. Mann*, [2004 SCC 52](#)

³ *Supra*

⁴ *R. v. Mann*, [2004 SCC 52](#) at paras. [24-27](#), [39-40](#)

⁵ *Mann*, *supra* at para. [41](#)

⁶ *MacDonald*, *supra* at para. [41](#)

⁷ *MacDonald*, *supra* at para. [43](#)

appeared to endorse the language employed by the majority to capture the nature of the threat that will justify a search: “realistic risk of **imminent harm**.” [Emphasis added]⁸

(iii) The Search of Individuals not under Detention or Arrest Must be Rare

12. This Court’s decision in *MacDonald* did not expressly distinguish between the safety search of an individual under investigative detention (as in *Mann*), and a safety search of an individual who is not under any form of police control (as in *MacDonald*). In both cases, this Court articulated a standard of reasonable belief in imminent harm.

13. While the CCLA submits that the threshold of reasonable belief in imminent harm applies to all safety searches, regardless of whether the individual is detained or free, the need for a robust threshold is particularly pressing in the case of individuals freely interacting with police. Individuals do not expect their bodies to be patted down or their belongings inspected when they are interacting with police as a victim or witness, or in relation to non-criminal infractions like jaywalking, on the basis of mere “possibility” that they might pose a danger.⁹

14. Individuals have the right to expect their privacy, liberty and bodily integrity will be respected in interactions with the police, and that these *Charter*-protected interests will not be intruded upon except in those rare circumstances where police **must** do so in order to fulfill their duties.

II. The Appropriate Threshold: Reasonable Grounds to Believe in Imminent Threat

(i) The Standard Articulated in *Mann*

⁸ *MacDonald*, *supra* at para. 91 (per Moldaver and Wagner JJ, in dissent)

⁹ *R. v. Stairs*, [2022 SCC 11](#) at para. 68

15. In *Mann* and subsequent cases where this Court has considered the scope of the police power to conduct a safety search, it has articulated a threshold of “reasonable grounds to believe,” rather than reasonable suspicion.

16. For instance, in *Mann*, Iacobucci J. wrote for the majority:

The general duty of officers to protect life may, in some circumstances, give rise to the power to conduct a pat-down search incident to an investigative detention. Such a search power does not exist as a matter of course; the officer must **believe on reasonable grounds** that his or her own safety, or the safety of others, is at risk.¹⁰

17. Iacobucci J. also quoted with approval from the decision of the United States Supreme Court in *Terry v. Ohio*:

...there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has **reason to believe** that he is dealing with an armed and dangerous individual... [Emphasis added]¹¹

18. This Court’s choice of language in describing the threshold for a search was not accidental. When addressing the grounds for investigative detention, the *Mann* majority consistently referred to “reasonable suspicion” or “reasonable grounds to suspect,” but when addressing the threshold for a safety search, referred instead to “reasonable grounds to believe.” The CCLA submits that this Court made a deliberate decision to impose a lower threshold for a brief and less intrusive investigative detention than for a search incidental to that investigative detention:

To summarize, as discussed above, police officers may detain an individual for investigative purposes if there are **reasonable grounds to suspect** in all the circumstances that the individual is connected to a particular crime and that such a detention is necessary. In addition, where a police officer has **reasonable grounds to believe that his or her safety or that of others is at risk**, the officer may engage in a protective pat-down search of the detained individual. [Emphasis added]¹²

¹⁰ *Mann, supra* at para. [40](#)

¹¹ *Mann, supra* at para. [41](#), citing *Terry v. Ohio*, [392 US 1 \(1968\)](#) at p. 27

¹² *Mann, supra* at para. [45](#)

19. The standard of reasonable belief was reiterated in the recent case of *R. v. Tim*, where this Court framed the lawfulness of the safety search as a question of “whether the arresting officer had reasonable grounds to believe that his safety or the safety of others was at risk,” citing *Mann*.¹³

(ii) The Standard Articulated in *MacDonald*

20. This Court also applied the standard of “reasonable grounds to believe” to the safety search in *MacDonald*. In that case, Mr. MacDonald was not arrested or detained. The police knocked on his front door to address a noise complaint and, when they became concerned that Mr. MacDonald was concealing a weapon behind his leg, pushed the door open further to reveal the object.

21. In *MacDonald*, the Respondent Crown argued that “reasonably based suspicion” was all that police required to act as they did.¹⁴ The dissenting justices too would have held that the threshold *Mann* established for a safety search was “reasonable grounds to suspect the individual is armed and dangerous.” The legal threshold for a security search was therefore squarely at issue in *MacDonald*. The *MacDonald* majority must be taken to have made a deliberate choice by repeatedly articulating the standard as “reasonable grounds to believe”:

¹³ *R. v. Tim*, [2022 SCC 12](#) at para. 60. Note that, in discussing whether the officer’s evidence established that the search was truly conducted for the purpose of addressing safety concerns, this Court referred at one point to evidence “that the officers **suspected** that the appellant might have been armed.” (at para. 63) However, in this passage, the Court was addressing the presence or absence of evidence that the search was for safety rather than evidence-gathering purposes. The degree of probability attached to those safety concerns was not at issue. In the CCLA’s position, this passage should not be taken as an indication that the court applied a standard of reasonable suspicion. When the court articulated the legal test, at para. 60, it referred to “reasonable grounds to believe.”

¹⁴ SCC File No. 34914, Factum of the Respondent at para. 46

When the performance of a police duty requires an officer to interact with an individual who they have **reasonable grounds to believe** is armed and dangerous, an infringement on individual liberty may be necessary.

...

Given the high privacy interests at stake in [safety] searches, the search will be authorized by law only if the police officer **believes on reasonable grounds** that his or her safety is at stake and that, as a result, it is necessary to conduct a search.

...

Sgt. Boyd had **reasonable grounds to believe** that Mr. MacDonald was armed and dangerous.

...

As I explained above, it is only when police officers have **reasonable grounds to believe** that there is an imminent threat to their safety that it will be reasonably necessary to conduct such a search.

...

The power was engaged because Sgt. Boyd had **reasonable grounds to believe** that there was an imminent threat. [Emphasis added]¹⁵

22. Some subsequent decisions have interpreted *MacDonald* as having applied a more stringent threshold because the search involved entry into a residence. However, while the majority was clearly alive to the high expectation of privacy Mr. MacDonald enjoyed in his residence, nothing in the majority's decision expressly ties the reasonable belief standard to the location of the search in that case. Instead, the critical passages refer generally to the "power to conduct a safety search...where a search is reasonably necessary to eliminate an imminent threat to the safety of the public or the police," and to the principles established in *Mann* and *Clayton* regarding the "necessity of safety searches."¹⁶

23. It is also worth noting that while the search at issue in *MacDonald* occurred in a residence, it was not greatly intrusive: the officer "pushed the door open a few inches further" to get a better look at what Mr. MacDonald had in his hand. It was only after identifying the object as a handgun

¹⁵ *MacDonald*, *supra* at paras. [39](#), [41](#), [42](#), [43](#), [44](#)

¹⁶ *MacDonald*, *supra* at paras. [40-41](#)

that the officer physically entered the home.¹⁷ It cannot be said that the privacy interest at stake in *MacDonald* was significantly greater than an individual's expectation of privacy in their body and in personal possessions carried in their purse or backpack.¹⁸

24. The CCLA submits that *MacDonald* left no doubt about the threshold for a safety search. There must be reasonable grounds to believe in an imminent safety threat.

(iv) A Standard of Reasonable Belief Better Protects the Public against Abusive Searches and Facilitates Effective Judicial Review

25. Courts must be in a position to provide effective oversight of the exercise of warrantless search powers. This Court recognized in *Mann* “the potential for abuse inherent in such low-visibility exercises of discretionary power.”¹⁹ The intrusions into liberty and privacy that result from such “low-visibility” exercises of police power are borne disproportionately by Black Canadians, whom police stop, search and question at higher rates than members of other racial groups,²⁰ as well as by other members of marginalized communities that are subject to over-policing. A robust standard offers meaningful protection against unjustified searches, and is more readily amenable to review by the courts.

26. Applying a low threshold of reasonable suspicion would grant police broad discretion over when to search witnesses, victims, motorists, and other individuals freely interacting with police. A broad grant of discretion introduces a greater risk that officer decisions will be grounded in

¹⁷ *MacDonald*, *supra* at paras. [6-7](#)

¹⁸ In *A.M.*, Armstrong J.A. adopted the CCLA's description of a student's backpack as “a portable bedroom and study rolled into one.” ([2006 CanLII 13550 \(ON CA\)](#) at para. [50](#)) In this Court, McLachlin C.J. and Binnie J. described backpacks, briefcases, purses and suitcases as “the repository of much that is personal, particularly for people who live itinerant lifestyles during the day as in the case of students and travellers.” ([2008 SCC 19](#) at para. [62](#))

¹⁹ *Mann*, *supra* at para. [18](#)

²⁰ *R. v. Morris*, [2018 ONSC 5186](#) at para. [22](#); *R. v. Smith*, [2025 ONSC 1828](#) at paras. [143-145](#)

conscious or unconscious racial bias and stereotypes, rather than on specific and objectively verifiable evidence of risk. Broader discretion may be justified in the case of an investigative detention, which is briefer and less intrusive, but a search entails a far greater interference with individual liberty and privacy.

27. A search premised on the low threshold of reasonable suspicion will also often prove evasive of judicial review, because police must only point to some circumstance that could ground a reasonable possibility that an individual was armed and dangerous in order to justify the search. A requirement of reasonable belief empowers the reviewing court to meaningfully engage with the objective necessity of the search.

(v) The Factors that will Ground an Imminent Threat

28. The Appellant Crown argues that police will be justified in conducting a safety search whenever they reasonably suspect “la présence sur un individu ou dans son environnement immédiat d’un objet pouvant servir d’arme.”²¹ While the CCLA agrees that police must not necessarily wait for an “overt indication of violence” or “la conviction que l’arme serait utilisée,” the CCLA submits that the Appellant defines the circumstances that will justify a search too broadly.²²

29. Almost any hard or sharp object is capable of being used as a weapon, but most such objects were not designed (and are generally not possessed) for that purpose. The CCLA submits that police must have a reasonable belief that the individual poses a **realistic risk** to safety in the circumstances, having regard to the nature of the item reasonably apprehended; whether it is

²¹ Appellant’s Factum at para. 48

²² Appellant’s Factum at paras. 49-50

accessible to the individual; the demeanour, conduct or known history of the individual; and the circumstances surrounding the individual's interaction with the police.

30. The nature of the item reasonably apprehended by police is an important consideration in assessing whether the individual poses an imminent threat. For some objects, such as firearms or other items that will always meet the *Criminal Code* definition of a "weapon," their possession may pose an inherent and immediate risk because of the degree of harm they are capable of causing, and because there will be a compelling inference that they are possessed for a dangerous purpose.

31. But for objects that have the potential to serve as weapons but which may also be carried for lawful and legitimate purposes (*e.g.*, construction tools, a baseball bat, a Swiss Army-style knife), the police must be in a position to articulate specific grounds to believe that the individual poses an imminent threat. The apprehension of imminent threat may arise from the individual's conduct or demeanor, from the individual's history known to the police (such as a past history of aggression towards police), or from other factors that indicate the item is possessed for a dangerous rather than legitimate purpose.²³ In other words, there must be evidence that the object reasonably apprehended *is* a weapon (not merely something with the potential to be used as such).

PARTS IV and V – COSTS AND ORDER SOUGHT

32. The CCLA takes no position on the disposition of this appeal. The CCLA does not seek costs and asks that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of May, 2026

²³ For example, it would be reasonable to take a very different approach to an individual carrying a hammer late at night than a construction worker carrying a hammer on their toolbelt close to a construction site.



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PART VII – TABLE OF AUTHORITIES

CASES	PARAGRAPH(S)
<i>R. v. A. M.</i> , 2006 CanLII 13550 (ON CA)	23
<i>R. v. A.M.</i> , [2008] 1 S.C.R. 569, 2008 SCC 19	23
<i>R. v. MacDonald</i> , 2014 SCC 3	7, 8, 10, 11, 12, 20, 21, 22, 23, 24
<i>R. v. Mann</i> , 2004 SCC 52	8, 9, 12, 15, 16, 18, 19, 21, 22, 25
<i>R. v. Morris</i> , 2018 ONSC 5186	25
<i>R. v. Smith</i> , 2025 ONSC 1828	25
<i>R. v. Stairs</i> , 2022 SCC 11	13
<i>R. v. Tim</i> , 2022 SCC 12	19
<i>Terry v. Ohio</i> , 392 US 1 (1968)	17