

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Chehil, 2013 SCC 49, [2013] 3 S.C.R. 220 | **Date:** 20130927**Docket:** 34524 |

**Between:**

**Mandeep Singh Chehil**

Appellant

and

**Her Majesty The Queen**

Respondent

- and -

**Attorney General of Ontario, Canadian Civil Liberties Association,**

**Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic and**

**British Columbia Civil Liberties Association**

Interveners

**Coram:** McLachlin C.J. and LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

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| **Reasons for Judgment:**(paras. 1 to 77) | Karakatsanis J. (McLachlin C.J. and LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver and Wagner JJ. concurring) |

R. *v.* Chehil, 2013 SCC 49, [2013] 3 S.C.R. 220

Mandeep Singh Chehil Appellant

v.

Her Majesty The Queen Respondent

and

Attorney General of Ontario,

Canadian Civil Liberties Association,

Samuelson‑Glushko Canadian Internet Policy and

Public Interest Clinic and British Columbia

Civil Liberties Association Interveners

**Indexed as: R. *v.* Chehil**

2013 SCC 49

File No.: 34524.

2013:  January 22; 2013:  September 27.

Present: McLachlin C.J. and LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

on appeal from the court of appeal for nova scotia

 *Constitutional law — Charter of Rights — Search and seizure — Sniffer dogs — Airplane luggage — Police suspecting accused, airline passenger, of transporting drugs — Police verifying accused’s checked bag using drug detection dog — Whether police had reasonable grounds to suspect accused was involved in drug‑related offence — Whether drug detection dog was sufficiently reliable for sniff search to be reasonable — Canadian Charter of Rights and Freedoms, s. 8.*

 Police analyzed the passenger manifest for an overnight flight from Vancouver to Halifax. They suspected that the accused was trafficking drugs on the basis of a number of indicators: the accused’s travel was on a one‑way ticket, he was one of the last passengers to purchase a ticket, he was travelling alone, he paid for his ticket in cash and checked one bag. The police verified the accused’s checked bag for the presence of drugs using a drug detection dog. As the dog gave a positive indication for the scent of drugs, the accused was arrested for possession of a narcotic. On searching the bag, police found three kilograms of cocaine. The trial judge held that the police did not have reasonable suspicion when they deployed the sniffer dog and further, the dog’s performance in the field was not sufficiently reliable for the search to be reasonable. The trial judge excluded the evidence under s. 24(2) of the *Canadian Charter of Rights and Freedoms*. The Court of Appeal allowed the appeal, holding that the search was reasonable and the accused’s arrest was justified. It ordered a new trial.

 *Held*: The appeal should be dismissed.

 The deployment of a dog trained to detect illegal drugs using its sense of smell is a search that may be carried out without prior judicial authorization where the police have a reasonable suspicion based on objective, ascertainable facts that evidence of an offence will be discovered. The reasonable suspicion threshold respects the balance struck under s. 8 of the *Charter* by permitting law enforcement to employ legitimate but limited investigative techniques. This balance is maintained by subsequent judicial oversight that 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. The fact that reasonable suspicion deals with possibilities, rather than probabilities, necessarily means that in some cases the police will reasonably suspect that innocent people are involved in crime. In spite of this reality, properly conducted sniff searches that are based on reasonable suspicion are *Charter* compliant in light of their minimally intrusive, narrowly targeted and highly accurate nature.

 Reasonable suspicion must be assessed against the totality of the circumstances. This inquiry must be fact‑based, flexible and grounded in common sense and practical, everyday experience. A constellation of factors will not be sufficient to ground reasonable suspicion where it amounts merely to a “generalized” suspicion that would capture too many innocent people. Exculpatory, neutral or equivocal information cannot be disregarded when assessing a constellation of factors. However, the obligation of the police to take all factors into account does not impose a duty to undertake further investigation to seek out exculpatory factors or rule out possible innocent explanations. While the police must point to particularized conduct or particularized evidence of criminal activity in order to ground reasonable suspicion, such evidence need not itself consist of unlawful behaviour or evidence of a specific known criminal act.

 Characteristics identified by a police profile can be considered when evaluating reasonable suspicion; however, profile characteristics are not a substitute for objective facts that raise a reasonable suspicion of criminal activity. The analysis must remain focused on one central question: Is the totality of the circumstances, including the specific characteristics of the suspect, the contextual factors, and the offence suspected, sufficient to reach the threshold of reasonable suspicion?

 The onus is on the Crown to show that objective and ascertainable facts rise to the level of reasonable suspicion, such that a reasonable person, standing in the shoes of the police officer, would have held a reasonable suspicion of criminal activity. An officer’s training and experience may provide an objective experiential, as opposed to empirical, basis for grounding reasonable suspicion. However, this is not to say that hunches or intuition grounded in an officer’s experience will suffice, or that deference is owed to a police officer’s view of the circumstances based on her training or experience in the field. A police officer’s educated guess must not supplant the rigorous and independent scrutiny demanded by the reasonable suspicion standard.

 The reliability of a particular dog is relevant to determining whether a particular sniff search was conducted reasonably. In the absence of legislated standards, trial judges must scrutinize the evidence before them in making this assessment. Both the results of testing in a controlled setting and the results of deployment in the field are helpful in assessing the reliability of a positive indication as a sign of the actual presence of drugs.

 The accused in this case had a reasonable expectation of privacy in his checked luggage with regard to general police investigations. However, the sniff search was reasonable. The trial judge erred in principle in the manner of applying the reasonable suspicion standard by assessing the factors individually. Viewed in their entirety, the factors in this case justified a reasonable suspicion of illegal drug activity such that the sniff search was consistent with the *Charter*. Given the strength of the constellation of factors that led to the decision to deploy the dog, the reliability of the dog, and the absence of exculpatory explanations, the positive indication raised the reasonable suspicion generated by the constellation to the level of reasonable and probable grounds to arrest the accused.

**Cases Cited**

 **Referred to:** *R. v. Kang‑Brown*, 2008 SCC 18, [2008] 1 S.C.R. 456; *R. v. A.M.*, 2008 SCC 19, [2008] 1 S.C.R. 569; *R. v. Simpson* (1993), 12 O.R. (3d) 182; *R. v. MacKenzie*, 2013 SCC 50, [2013] 3 S.C.R. 250; *R. v. Collins*, [1987] 1 S.C.R. 265; *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145; *R. v. Simmons*, [1988] 2 S.C.R. 495; *R. v. Monney*, [1999] 1 S.C.R. 652; *R. v. Mann*, 2004 SCC 52, [2004] 3 S.C.R. 59; *R. v. M. (M.R.)*, [1998] 3 S.C.R. 393; *R. v. Caslake*, [1998] 1 S.C.R. 51; *R. v. Bramley*, 2009 SKCA 49, 324 Sask. R. 286; *United States v. Gooding*, 695 F.2d 78 (1982); *Reid v. Georgia*, 448 U.S. 438 (1980); *Terry v. Ohio*, 392 U.S. 1 (1968); *R. v. Golub* (1997), 34 O.R. (3d) 743; *United States v. Sokolow*, 490 U.S. 1 (1989); *R. v. Payette*, 2010 BCCA 392, 291 B.C.A.C. 289; *Florida v. Harris*, 133 S.Ct. 1050 (2013); *R. v. Borden*, [1994] 3 S.C.R. 145; *R. v. Storrey*, [1990] 1 S.C.R. 241; *R. v. Lozano*, 2013 ONSC 1871, [2013] O.J. No. 1432 (QL); *R. v. Nguyen*, 2013 SKQB 36 (CanLII); *Alberta v. Jarvis*, 2012 ABQB 602, 270 C.R.R. (2d) 154; *R. v. Gowing*, 2012 ABPC 38, 532 A.R. 312; *R. v. Earle*, 2012 NSPC 27, 315 N.S.R. (2d) 123; *R. v. Krafczyk*, 2011 ABQB 107, 511 A.R. 211; *R. v. Imani*, [2012] N.B.J. No. 120 (QL); *R. v. Ryan*, 2011 NSSC 102, 300 N.S.R. (2d) 97; *R. v. Hoy*, 2010 ABQB 575, 534 A.R. 58; *R. v. Hoang*, 2010 BCPC 24, 206 C.R.R. (2d) 127; *R. v. Frieburg*, 2013 MBCA 40 (CanLII); *R. v. Tse*, 2012 SCC 16, [2012] 1 S.C.R. 531; *R. v. Patrick*, 2009 SCC 17, [2009] 1 S.C.R. 579; *R. v. Shepherd*, 2009 SCC 35, [2009] 2 S.C.R. 527; *R. v. Wong*, 2005 BCPC 24, 127 C.R.R. (2d) 342; *R. v. Calderon* (2004), 188 C.C.C. (3d) 481.

**Statutes and Regulations Cited**

*Canadian Charter of Rights and Freedoms*, ss. 8, 9, 24(2).

*Corrections and Conditional Release Act*, S.C. 1992, c. 20, s. 49.

*Criminal Code*, R.S.C. 1985, c. C-46, ss. 254(2), 492.2.

*Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.), s. 98.

*Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, ss. 15(1), 17(1).

**Authors Cited**

Sankoff, Peter, and Stéphane Perrault. “Suspicious Searches: What’s so Reasonable About Them?” (1999), 24 C.R. (5th) 123.

Shapiro, Jonathan. “Confusion and Dangers in Lowering the *Hunter* Standards” (2008), 55 C.R. (6th) 396.

Tanovich, David M. “A Powerful Blow Against Police Use of Drug Courier Profiles” (2008), 55 C.R. (6th) 379.

 APPEAL from a judgment of the Nova Scotia Court of Appeal (MacDonald C.J.N.S. and Saunders and Farrar JJ.A.), 2011 NSCA 82, 308 N.S.R. (2d) 122, 278 C.C.C. (3d) 445, 243 C.R.R. (2d) 109, 88 C.R. (6th) 300, 976 A.P.R. 122, [2011] N.S.J. No. 499 (QL), 2011 CarswellNS 646, setting aside a decision of Cacchione J., 2010 NSSC 255, 300 N.S.R. (2d) 28, 268 C.C.C. (3d) 249, 950 A.P.R. 28, [2010] N.S.J. No. 712 (QL), 2010 CarswellNS 906, and ordering a new trial.  Appeal dismissed.

 *Stanley W. MacDonald*, *Q.C.*, for the appellant.

 *Mark Covan*, for the respondent.

 *Amy Alyea*, for the intervener the Attorney General of Ontario.

 *Mahmud Jamal*, *David Mollica* and *W. David Rankin*, for the intervener the Canadian Civil Liberties Association.

 Written submissions only by *Tamir Israel*, for the intervener the Samuelson‑Glushko Canadian Internet Policy and Public Interest Clinic.

 *Michael A. Feder* and *H. Michael Rosenberg*, for the intervener the British Columbia Civil Liberties Association.

 The judgment of the Court was delivered by

1. Karakatsanis J. — In *R. v. Kang-Brown*, 2008 SCC 18, [2008] 1 S.C.R. 456, and *R. v. A.M.*, 2008 SCC 19, [2008] 1 S.C.R. 569, the Court balanced the travelling public’s privacy interests against the public interest in apprehending those who transport and traffic drugs. The Court concluded that the use of a properly deployed drug detection dog was a search that was authorized by law and reasonable on a lower threshold of “reasonable suspicion”. Because they are minimally intrusive, narrowly targeted, and can be highly accurate, sniff searches may be conducted without prior judicial authorization. These appeals require the Court to elaborate on the principles underlying the reasonable suspicion standard and its application.
2. Some of the interveners urge the Court to find there is no reasonable expectation of privacy in luggage in an airport setting; or to elevate the standard for authorizing a sniff search to reasonable and probable grounds. However, they provided no compelling reason to revisit the balance struck in *Kang-Brown* and *A.M.* between society’s interest in routine crime prevention and an individual’s interest in her own privacy.
3. In my view, there is no need to revise the reasonable suspicion standard. It is a robust standard determined on the totality of the circumstances, based on objectively discernible facts, and is subject to independent and rigorous judicial scrutiny. As Doherty J.A. said in *R. v. Simpson* (1993), 12 O.R. (3d) 182 (C.A.), at p. 202, the standard prevents the indiscriminate and discriminatory exercise of police power.
4. However, the application of the reasonable suspicion standard continues to raise concerns, particularly when individual factors relied upon by police are neutral and capable of innocent explanation. The appellant submits that the characteristics identified by the police as forming part of the “drug courier profile” should not be used to ground reasonable suspicion, as they do not provide particularized evidence of criminal activity. In the companion appeal, *R. v. MacKenzie*, 2013 SCC 50, [2013] 3 S.C.R. 250, the appellant in that case also challenges the use of drug courier profiles.
5. In addition, the appellant asks the Court to affirm the trial judge’s finding that the dog deployed in this case was not reliable and to require and establish national standards to determine reliability of sniffer dogs.
6. For the reasons that follow, I would dismiss the appeal. The reasonable suspicion standard requires that the entirety of the circumstances, inculpatory and exculpatory, be assessed to determine whether there are objective ascertainable grounds to suspect that an individual is involved in criminal behaviour. It does not require the police to investigate to rule out exculpatory circumstances. The Court of Appeal correctly concluded that the trial judge erred in assessing the factors individually rather than in their entirety and in finding the sniffer dog to be unreliable.
7. Facts
8. Late on a Tuesday evening in November 2005, Mr. Chehil departed from Vancouver International Airport on WestJet’s overnight flight to Halifax.
9. The next morning, Corporal Fraser and Constable Ruby, of the RCMP’s Criminal Interdiction Team (CIT), attended WestJet’s offices in Halifax and analyzed the passenger manifest for the flight on the overnight Vancouver-Halifax run. They observed that the appellant was one of the last passengers to purchase a ticket, paid for his ticket in cash, and checked one bag. The officers testified that, in their experience, these characteristics were indicators of the illegal traffic of narcotics.
10. As a result, they decided to verify the appellant’s checked bag for the presence of drugs using a drug detection dog, Boris. When the appellant’s flight arrived, the officers located his bag on the secure side of the airport. Nine other bags from the same flight were also removed and lined up with the appellant’s bag. Boris was deployed by Officer Daigle and walked down the line of bags. On his first run, he turned and looked at the appellant’s bag. On the second pass, Boris indicated that he had detected the scent of drugs by sitting in front of the appellant’s bag, and then on the next item in the line-up, a cooler. The owner of the cooler subsequently consented to a search, and no drugs were found.
11. After the appellant collected his bag, he was approached by another police officer, who informed him that there had been a positive indication for drugs on his bag and arrested him for possession of a narcotic.
12. The appellant was taken to a secure location. Upon forcing open his locked bag, the police found a backpack containing three kilograms of cocaine. The appellant was arrested for possession of a narcotic for the purpose of trafficking.
13. Judicial History

A. *Supreme Court of Nova Scotia (2010 NSSC 255, 300 N.S.R. (2d) 28)*

1. The trial judge held that Mr. Chehil had a reasonable expectation of privacy in his checked luggage and that there was no reason to lower constitutional protections in an airport. He drew a distinction between a traveller’s expectation of privacy in relation to flight safety as opposed to general police investigations.
2. Finding that only the purchase of the ticket with cash, perhaps at the last minute, could be viewed as suspicious, and that the rest of the factors relied upon were open to several neutral explanations that were not explored, the trial judge held that the police did not have reasonable suspicion when they deployed Boris. In particular, the CIT’s failure to conduct further investigation or consider exculpatory explanations meant that the police did not undertake the global assessment of the facts required to establish reasonable suspicion. At best, they were operating on intuition or an educated guess, and thus the search was not authorized at common law.
3. The trial judge also found that yearly validation performance was not an adequate indicator of a sniffer dog’s reliability, and that Boris’s performance in the field was not sufficiently reliable for the search to be reasonable.
4. The trial judge excluded the evidence under s. 24(2) of the *Canadian Charter of Rights and Freedoms*.

B. *Nova Scotia Court of Appeal (2011 NSCA 82, 308 N.S.R. (2d) 122)*

1. The Court of Appeal agreed that the appellant retained a privacy interest in his suitcase and that heightened efforts to combat terrorism in airports cannot circumvent protections guaranteed in relation to the investigation of crime generally. However, the Court of Appeal held that the trial judge erred by considering the factors relied upon by the police in isolation, rather than determining whether they coalesced to form a reasonable suspicion despite potential innocent explanations for each. Whether additional steps could have been taken to buttress the grounds of reasonable suspicion was irrelevant; the police need only demonstrate they have done enough to establish reasonable suspicion.
2. The Court of Appeal found that reliability assessments cannot ignore the fact that sniffer dogs are trained to detect the smell of drugs, not drugs themselves. The trial judge erred by rejecting Corporal Daigle’s expert opinion that the false indication on the cooler likely resulted from scent emanating from the appellant’s adjacent bag. Given that the police had reasonable and probable grounds to believe the appellant was in possession of illegal drugs following Boris’s positive indication, his arrest was justified and the search of his suitcase reasonable. There was no *Charter* breach.
3. Issues/Outline
4. The outline is as follows:

A. *General Principles*

(1) Nature of Reasonable Suspicion

(2) Profiling and Reasonable Suspicion

(3) Nature of Judicial Scrutiny

(4) Reliability of Individual Dogs

(5) Actions Following Positive Indication

B. *Application to This Case*

(1) Reasonable Suspicion of the Police

(2) Reasonableness of the Search

(3) Arrest Subsequent to Positive Indication

IV. Analysis

A. *General Principles*

1. The deployment of a single-profile narcotic dog (a dog trained to detect certain kinds of illegal drugs using its sense of smell) is a search that does not require prior judicial authorization. However, in order for a sniff search to be *Charter*-compliant, it must meet the criteria for unauthorized searches laid out in *R. v. Collins*, [1987] 1 S.C.R. 265. As such, when sniffer dogs are engaged by the police, the deployment must be authorized by a reasonable law (in this case, the common law), and the manner in which the sniff search was conducted must be reasonable. In *Kang-Brown*, a majority of the Court found that the decision to deploy a sniffer dog meets the *Collins* test where the police have a reasonable suspicion based on objective, ascertainable facts that evidence of an offence will be discovered: see *Kang-Brown*, para. 60, *per* Binnie J.; paras. 188-94, *per* Deschamps J.; and para. 244, *per* Bastarache J. Further, as I will explain, a sniff search is conducted reasonably where the sniffer dog used was properly trained and handled.
2. The appellant submits that the police applied the reasonable suspicion standard in a way that authorizes random generalized searches of a very large number of innocent travellers. The appellant and certain interveners are concerned that profile characteristics, applied mechanically, capture a high percentage of innocent travellers or racially marginalized groups. They suggest that if the factors are individually innocent or innocuous, police should be required to conduct further investigation to seek out any exculpatory factors.
3. In my view, there is no need to reformulate the “reasonable suspicion” test; it is a common standard that arises in a number of contexts. However, in light of the concerns raised, I propose to clarify (1) the nature of reasonable suspicion; (2) the role of “profiles” as grounds for reasonable suspicion; and (3) the nature of rigorous judicial scrutiny.

 (1) Nature of Reasonable Suspicion

1. In *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, the Court laid out the underlying principles of the s. 8 framework, which balances privacy interests and the public interest in providing law enforcement with the means to investigate crime. First, s. 8 does not protect against all encroachments on an individual’s privacy interests. Its primary goal is to protect individuals from arbitrary state action by balancing their interest in being left alone, against the public interest in providing the state with the means to investigate crime (pp. 159-60). This balance must be struck on objective grounds (pp. 166-67), and, where possible, should be assessed before the search occurs (p. 160). In most cases, “[t]he state’s interest in detecting and preventing crime begins to prevail over the individual’s interest in being left alone at the point where credibly-based probability replaces suspicion” (p. 167).
2. Both the impact on privacy interests and the importance of the law enforcement objective play a role in determining the level of justification required for the state to intrude upon the privacy interest in question. In *Hunter*, this Court also recognized that this balancing of interests can justify searches on a lower standard where privacy interests are reduced, or where state objectives of public importance are predominant (p. 168). Thus, the Court has found reasonable suspicion to be a sufficient threshold in certain investigative contexts,[[1]](#footnote-1) and Parliament has employed this standard when authorizing certain searches in legislation.[[2]](#footnote-2)
3. In the case of sniff searches, the use of the reasonable suspicion standard reflects, in part, the minimal intrusion of a dog sniff. For a physical search of luggage incident to arrest, which will be more intrusive, the more exacting reasonable and probable grounds standard is engaged, as the arrest must be justified: see *R. v. Caslake*, [1998] 1 S.C.R. 51. This mirrors the continuum established under s. 9 of the *Charter* to justify detentions, ranging from reasonable suspicion (for investigative detentions) to reasonable and probable grounds (for arrests): see *R. v. Mann*, 2004 SCC 52, [2004] 3 S.C.R. 59.
4. The reasonable suspicion threshold respects the balance struck under s. 8 by permitting law enforcement to employ legitimate but limited investigative techniques. This balance is maintained by subsequent judicial oversight that 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.
5. Reasonable suspicion derives its rigour from the requirement that it be based on objectively discernible facts, which can then be subjected to independent judicial scrutiny. This scrutiny is exacting, and must account for the totality of the circumstances. In *Kang-Brown*, Binnie J. provided the following definition of reasonable suspicion, at para. 75:

The “reasonable suspicion” standard is not a new juridical standard called into existence for the purposes of this case. “Suspicion” is an expectation that the targeted individual is possibly engaged in some criminal activity. A “reasonable” suspicion means something more than a mere suspicion and something less than a belief based upon reasonable and probable grounds.

1. Thus, while reasonable grounds to suspect and reasonable and probable grounds to believe are similar in that they both must be grounded in objective facts, reasonable suspicion is a lower standard, as it engages the reasonable possibility, rather than probability, of crime. As a result, when applying the reasonable suspicion standard, reviewing judges must be cautious not to conflate it with the more demanding reasonable and probable grounds standard.
2. The fact that reasonable suspicion deals with possibilities, rather than probabilities, necessarily means that in some cases the police will reasonably suspect that innocent people are involved in crime. In spite of this reality, properly conducted sniff searches that are based on reasonable suspicion are *Charter-*compliant in light of their minimally intrusive, narrowly targeted, and highly accurate nature: see *Kang-Brown*, at para. 60, *per* Binnie J., and *A.M.*, at paras. 81-84, *per* Binnie J. However, the suspicion held by the police cannot be so broad that it descends to the level of generalized suspicion, which was described by Bastarache J., at para. 151 of *A.M.*, as suspicion “that attaches to a particular activity or location rather than to a specific person”.
3. Reasonable suspicion must be assessed against the totality of the circumstances. The inquiry must consider the constellation of objectively discernible facts that are said to give the investigating officer reasonable cause to suspect that an individual is involved in the type of criminal activity under investigation. This inquiry must be fact-based, flexible, and grounded in common sense and practical, everyday experience: see *R. v. Bramley*, 2009 SKCA 49, 324 Sask. R. 286, at para. 60. A police officer’s grounds for reasonable suspicion cannot be assessed in isolation: see *Monney*, at para. 50.
4. A constellation of factors will not be sufficient to ground reasonable suspicion where it amounts merely to a “generalized” suspicion because it “would include such a number of presumably innocent persons as to approach a subjectively administered, random basis” for a search: *United States v. Gooding*, 695 F.2d 78 (4th Cir. 1982), at p. 83. The American jurisprudence supports the need for a sufficiently particularized constellation of factors. See *Reid v. Georgia*, 448 U.S. 438 (1980), and *Terry v. Ohio*, 392 U.S. 1 (1968). Indeed, the reasonable suspicion standard is designed to avoid indiscriminate and discriminatory searches.
5. While some factors, such as travelling under a false name, or flight from the police, may give rise to reasonable suspicion on their own (*Kang-Brown*,at para. 87, *per* Binnie J.), other elements of a constellation will not support reasonable suspicion, except in combination with other factors. Generally, characteristics that apply broadly to innocent people are insufficient, as they are markers only of generalized suspicion. The same is true of factors that may “go both ways”, such as an individual’s making or failing to make eye contact. On their own, such factors cannot support reasonable suspicion; however, this does not preclude reasonable suspicion arising when the same factor is simply one part of a constellation of factors.
6. Further, reasonable suspicion need not be the only inference that can be drawn from a particular constellation of factors. Much as the seven stars that form the Big Dipper have also been interpreted as a bear, a saucepan, and a plough, factors that give rise to a reasonable suspicion may also support completely innocent explanations. This is acceptable, as the reasonable suspicion standard addresses the *possibility* of uncovering criminality, and not a *probability* of doing so.
7. Exculpatory, neutral, or equivocal information cannot be disregarded when assessing a constellation of factors. The totality of the circumstances, including favourable and unfavourable factors, must be weighed in the course of arriving at any conclusion regarding reasonable suspicion. As Doherty J.A. found in *R. v. Golub* (1997), 34 O.R. (3d) 743 (C.A.), at p. 751, “[t]he officer must take into account all information available to him and is entitled to disregard only information which he has good reason to believe is unreliable”. This is self-evident.
8. However, the obligation of the police to take all factors into account does not impose a duty to undertake further investigation to seek out exculpatory factors or rule out possible innocent explanations. As was noted in *United States v. Sokolow*, 490 U.S. 1 (1989), at p. 10 (citing *Illinois v. Gates*, 462 U.S. 213 (1983), at p. 244, footnote 13), “the relevant inquiry is not whether particular conduct is ‘innocent’ or ‘guilty,’ but the degree of suspicion that attaches to particular types of noncriminal acts”. In conducting this inquiry to ascertain whether reasonable suspicion was present, the court will assess the circumstances the police were aware of at the time of the execution of the search, including those learned after the decision to deploy the sniffer dog was made if there is a delay in deployment, as there was in this case. However, it would not be permissible for the reasonable suspicion inquiry to assess circumstances learned *after* the execution of the search: see *Kang-Brown*, at para. 92.
9. Finally, the objective facts must be indicative of the possibility of criminal behaviour. While I agree with the appellant’s submission that police must point to particularized conduct or particularized evidence of criminal activity in order to ground reasonable suspicion, I do not accept that the evidence must itself consist of unlawful behaviour, or must necessarily be evidence of a specific known criminal act.
10. A nexus must exist between the criminal conduct that is suspected and the investigative technique employed: see *Mann*, at para. 34. In the context of drug detection dogs, this nexus arises by way of a constellation of facts that reasonably supports the suspicion of drug-related activity that the dog deployed is trained to detect. For instance, in *R. v. Payette*, 2010 BCCA 392, 291 B.C.A.C. 289, the Court of Appeal for British Columbia stated that in order to justify the deployment of a sniffer dog, the constellation must be “capable of providing the required objectively discern[i]ble nexus between the [accused] and illegal drug activity” (para. 22). Binnie J. was of a similar view in *Kang-Brown*, where he cast reasonable suspicion broadly, linking it to the presence of contraband (para. 25). The particularized indicia of drug couriering have been documented by the police and can be established by objective evidence.
11. In sum, when single-profile narcotic dogs are deployed on the basis of reasonable suspicion, the police intrusion must be connected to factors indicating a drug-related offence. Reasonable suspicion does not, however, require the police to point to a specific ongoing crime, nor does it entail the identification of the precise illegal substance being searched for. The reasonable suspicion held by the police need only be linked to the possession, traffic, or production of drugs or other drug-related contraband.

 (2) Profiling and Reasonable Suspicion

1. The appellants in this case and in the companion appeal, *MacKenzie*, as well as the interveners the Canadian Civil Liberties Association (“CCLA”) and the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (“CIPPIC”) ask this Court to rule that drug courier profiles cannot ground reasonable suspicion in and of themselves. They say that reliance on profiles replaces rigorous judicial scrutiny with the police view of the circumstances. The CCLA highlights various dangers related to the use of profiles, even as an investigative tool to identify persons of interest, such as inconsistent application or after-the-fact modification by the police, unanticipated impacts on bystanders, disproportionate harm to visible minorities, and stereotyping.
2. In my view, it is unhelpful to speak of profiling as generating reasonable suspicion. The term itself suggests an assessment based on stereotyping and discriminatory factors, which have no place in the reasonable suspicion analysis. Rather, the analysis must remain focused on one central question: Is the totality of the circumstances, including the specific characteristics of the suspect, the contextual factors, and the offence suspected, sufficient to reach the threshold of reasonable suspicion?
3. The application of the reasonable suspicion standard cannot be mechanical and formulaic. It must be sensitive to the particular circumstances of each case. Characteristics identified by a police profile can be considered when evaluating reasonable suspicion; however, profile characteristics are not a substitute for objective facts that raise a reasonable suspicion of criminal activity. Profile characteristics must be approached with caution precisely because they risk undermining a careful individualized assessment of the totality of the circumstances.
4. In this case, the profiling alleged consisted of a set of factors that the officers had been taught to look for and had learned through experience to look for in order to detect drug couriers. Whether or not these factors give rise to reasonable suspicion will depend upon a police officer’s reasons for relying on specific factors, the evidence connecting these factors to criminal activity, and the entirety of the circumstances of the case.
5. It is not alleged in this case, or in the companion appeal, that any form of discriminatory profiling took place. Even though we are not concerned with these issues here, I caution that courts must be wary that factors arising out of police experience are not in fact stereotypical or discriminatory.
6. Furthermore, the elements considered as part of the reasonable suspicion analysis must respect *Charter* principles. The factors considered under the reasonable suspicion analysis must relate to the actions of the subject of an investigation, and not his or her immutable characteristics.
7. Nor should the exercise of *Charter* rights, such as the right to remain silent or to walk away from questioning made outside the context of a detention, provide grounds for reasonable suspicion. These rights become meaningless to the extent that they are capable of forming the basis of reasonable suspicion. Individuals should not have to sacrifice privacy to exercise *Charter* rights.

 (3) Nature of Judicial Scrutiny

1. The requirement for objective and ascertainable facts as the basis for reasonable suspicion permits an independent after-the-fact review by the court and protects against arbitrary state action. Under the *Collins* framework, the onus is on the Crown to show that the objective facts rise to the level of reasonable suspicion, such that a reasonable person, standing in the shoes of the police officer, would have held a reasonable suspicion of criminal activity.
2. Rigorous judicial scrutiny is an independent review that ensures that the suspicion relied on by the police is supported by factors that are objectively ascertainable, meaning that the suspicion is based on “factual elements which can be adduced in evidence and permit an independent judicial assessment”: P. Sankoff and S. Perrault, “Suspicious Searches: What’s so Reasonable About Them?” (1999), 24 C.R. (5th) 123, at p. 125. The constellation of facts must be based in the evidence, tied to the individual, and capable of supporting a logical inference of criminal behaviour. If the link between the constellation and criminality cannot be established by way of a logical inference, the Crown must lead evidence to connect the circumstances to criminality. This evidence may be empirical or statistical, or it may be based upon the investigating officer’s training and experience.
3. An officer’s training and experience may provide an objective experiential, as opposed to empirical, basis for grounding reasonable suspicion. However, this is not to say that hunches or intuition grounded in an officer’s experience will suffice, or that deference is owed to a police officer’s view of the circumstances based on her training or experience in the field: see *Payette*,at para. 25. A police officer’s educated guess must not supplant the rigorous and independent scrutiny demanded by the reasonable suspicion standard. Evidence as to the specific nature and extent of such experience and training is required so that the court may make an objective assessment of the probative link between the constellation of factors relied on by the police and criminality. The more general the constellation relied on by the police, the more there will be a need for specific evidence regarding police experience and training. To the extent that specific evidence of the investigating officer’s experience and training supports the link the Crown asks the court to draw, the more compelling that link will be.

 (4) Reliability of Individual Dogs

1. Concerns about the reliability and accuracy of a drug detection dog may arise at each level of the *Collins* inquiry. In *Kang-Brown*, the high accuracy of sniffer dogs that were properly trained and deployed was key to endorsing a reasonable suspicion standard for sniff searches. Further, in light of the consequences of a false indication, the reliability of a particular dog is also relevant to determining whether a particular sniff search was conducted reasonably in the circumstances: see *Kang-Brown*, at paras. 63-65.
2. The consequences of a false indication by a sniffer dog can be severe. As discussed below, a positive indication for the presence of the smell of narcotics by a reliable dog may, depending on the circumstances, lead to reasonable and probable grounds for an arrest. If the police make use of a dog whose indications cannot be taken as a reliable sign of the presence of the smell of drugs, the false positive resulting from the dog’s unreliable nose could lead to unnecessary arrests. Because dogs are trained to indicate for smell and thus may indicate even in the absence of drugs, validations in controlled settings are important, as it is only in such environments that a false positive can truly be identified.
3. However, evidence of the searching dog’s performance during past deployments is also relevant. Because the dog’s ability is to detect the *smell* of drugs, a sniffer dog will be unable to distinguish between a smell emanating from contaminated items rather than actual drugs. If the smell of drugs from contaminated property becomes pervasive, the utility of an indication by smell is diminished. In environments with high contamination rates, a dog may be inherently unreliable; however, this should not count against a dog’s performance record in general. Information about deployment may also demonstrate whether a particular dog is exceptionally prone to false alerts or detecting residual odours.
4. A method of searching that captures an inordinate number of innocent individuals cannot be reasonable, due to the unnecessary infringement of privacy and personal dignity that an arrest would bring. Accordingly, both the capacity of the individual dog and the potential for the dog to be less accurate in certain settings due to environmental cross-contamination must factor into the contextual analysis of reliability. In order to assist in analyzing an individual dog’s susceptibility for providing false positives, handlers should keep records of the dog and team’s performance. Both the results of testing in a controlled setting and the results of deployment in the field are helpful in assessing the reliability of a positive indication as a sign of the actual presence of drugs.
5. The appellant urges the Court to insist on national testing standards in order to ensure consistent reliability of sniffer dogs. However, while standards to regulate the use of sniffer dogs would be desirable, they must be implemented through legislative action by Parliament.
6. In the absence of legislated standards, trial judges must continue to scrutinize the evidence before them in order to determine whether the particular sniff search meets the *Collins* criteria. Thus, even though *indicia* like a dog’s past performance and the risk of cross-contamination can be relevant to determining a dog’s reliability, no specific evidentiary requirements will apply mechanically to every case. The prosecution does not have to prove that the dog is infallible, just as it does not have to prove that an informer’s tip is infallible.
7. Dog reliability is also important to determining whether a positive indication provides the reasonable and probable grounds required to justify further police action. The reviewing court will make this determination armed with the results of the sniff search and evidence regarding the reliability of the dog. If a sniff search is conducted lawfully, the officer already has reasonable grounds to suspect criminal conduct based on the totality of the circumstances that existed prior to the sniff search. With all these elements in mind, the court must determine whether the *totality* of the circumstances reached the reasonable and probable grounds threshold. I note that a similar approach was recently endorsed by the Supreme Court of the United States in *Florida v. Harris*, 133 S.Ct. 1050 (2013), albeit in the context of the “probable cause” test, which is specific to American law.

 (5) Actions Following Positive Indication

1. Once a sniffer dog has delivered a positive indication, the police often seek consent for a verification search. Provided that the consent is properly sought and obtained, the search will respect s. 8 of the *Charter*: see *R. v. Borden*, [1994] 3 S.C.R. 145. Alternately, the police may determine that they have the grounds required under the *Charter* to proceed with a warrantless arrest, namely reasonable and probable grounds to believe that the accused has committed an offence: see *R. v. Storrey*, [1990] 1 S.C.R. 241, at pp. 249-51. If the arrest is validly made, the police may conduct a search incident to arrest in order to secure evidence that could be used at the accused’s trial: see *Caslake*. That is what occurred in this case, and in the majority of reported cases dealing with sniff searches occurring post-*Kang-Brown* in which the police conducted a search to confirm the presence of drugs.[[3]](#footnote-3)
2. The intervener the CCLA argued that a positive indication for drugs by a sniffer dog should only justify a verification search, which is less intrusive than an arrest. This position echoes Binnie J.’s observation in *Kang-Brown* (at para. 101) and *A.M.* (at para. 14) that it would be preferable that no arrest be made until a verification search has confirmed the presence of drugs.
3. Given the fact that the use of verification searches, as opposed to arrests, to respond to positive indications for drugs from sniffer dogs was not raised by the parties or addressed by the courts below, I would leave this issue for another day.[[4]](#footnote-4) However, it seems to me that the minimal intrusion on privacy interests posed by a sniff search was key to this Court’s decision in *Kang-Brown* and *A.M.* to recognize a common law power to sniff search without prior judicial authorization. The same would not hold true for verification searches, which involve the actual inspection of a hiding place’s contents and pose a greater interference with privacy interests. I note as well that Binnie J. did not speak for a majority of the Court in *Kang-Brown* and *A.M.*, and did not provide a basis for the new common law power regarding verification searches: see J. Shapiro, “Confusion and Dangers in Lowering the *Hunter* Standards” (2008), 55 C.R. (6th) 396, at p. 399.
4. I would also observe that, in cases like this one, where the police deploy a sniffer dog to sniff an item in the absence of its owner, the police should generally provide notice to the owner of the item searched, even in the event of a negative indication. For example, it would be practical in such circumstances to simply add a tag or other notice to the item searched indicating that it had been sniffed for drugs by a dog trained to detect the smell of drugs. Indeed, as I have explained, the rigour of the reasonable suspicion standard is derived from the fact that it is based on objective facts that are subject to judicial review. Without a notice requirement, judicial review of a search conducted in the absence of an item’s owner may not be possible. Further, as this Court noted in *R. v. Tse*, 2012 SCC 16, [2012] 1 S.C.R. 531, at paras. 82-84, after-the-fact notice of searches that are not subject to prior judicial authorization is an important safeguard against the abuse of such powers. However, the appellant in this case clearly had notice of the sniff search conducted in his absence.

B. *Application to This Case*

1. The intervener the Attorney General of Ontario suggested that travellers do not have a reasonable expectation of privacy in their checked luggage in an airport setting, given the security screening that such luggage is subjected to as a condition of travel. However, as this Court has found in the past, an individual’s reasonable expectation of privacy must be assessed contextually, and may vary depending on the nature of the circumstances: see *R. v. Patrick*, 2009 SCC 17, [2009] 1 S.C.R. 579, at paras. 26 and 38. The trial judge found that while the appellant was aware of and implicitly consented to the security screening that his bag would undergo, this did not undermine his reasonable expectation of privacy in his checked luggage with regard to general police investigations. The Court of Appeal agreed. The Crown does not contest these findings before this Court, and I see no reason to disturb them. Accordingly, the appellant’s interests under s. 8 of the *Charter* were engaged in this case.

 (1) Reasonable Suspicion of the Police

 (a) *Standard of Review*

1. A trial judge’s determination as to whether a constellation of factors relied on by the police in making the decision to deploy a sniffer dog gave rise to a reasonable suspicion is a question of mixed fact and law. While a trial judge is owed deference in relation to her factual findings, whether those factual findings support reasonable suspicion is a question of law, and as such is reviewable on the correctness standard: see *R. v. Shepherd*, 2009 SCC 35, [2009] 2 S.C.R. 527, at para. 20.

 (b) *The Constellation in This Case*

1. The trial judge found that the appellant travelled alone, on an overnight one-way flight from Vancouver to Halifax, that he was one of the last passengers to purchase a ticket for this flight, and that he had paid for his ticket with cash. The trial judge considered potential innocent explanations for individual factors that could have been dealt with through further investigation, and found that absent such investigation, there could be no reasonable suspicion of involvement in drug crimes.
2. The Court of Appeal found that the trial judge erred by looking at each factor individually. In their view, it was not determinative that each factor, viewed in isolation, was capable of innocent explanation. They found that the circumstances must be looked at in their totality, which precludes a divide and conquer approach that finds each factor individually equivocal.
3. The appellant argues that none of the factors highlighted by the police in this case involve particularized evidence of criminal activity, and that they capture large groups of innocent travellers. He also submits that, in order to raise reasonable suspicion, the use of cash must be paired with particularized conduct that raises a reasonable suspicion of criminal activity.
4. The presence of reasonable suspicion must be assessed in the context of a specific case. The officers testified that no indicator by itself was determinative, that the decision to deploy a sniffer dog was made based on the following factors: (1) the travel was on a one-way ticket; (2) the flight originated in Vancouver; (3) the appellant was travelling alone; (4) the ticket was purchased with cash; (5) the ticket was the last one purchased before the flight departed; (6) the appellant checked one piece of luggage; (7) the flight was overnight; (8) the flight took place mid- to late-week; and (9) drug couriers prefer less expensive airlines, such as WestJet. In her cross-examination, Constable Ruby gave evidence that most people meeting this constellation had been proven to be drug couriers:

Q: Now, Constable Ruby, yesterday you testified about some indicators that you, as a police officer, look at when you go to look at the manifest.

A: Yes, sir.

Q: Okay? And including things like how the ticket was purchased; you know, whether it was last minute, walk-up, paid for cash, et cetera, right?

A: Yes, sir.

Q: Now would you agree with me that not all people who purchase tickets in this manner are drug couriers?

A: Yes, sir.

Q: Okay. Would you agree with me that, in fact, most probably are not?

A: I wouldn’t be able to agree to that, because what I look at, and it’s been my experience that when there’s a cluster, and in -- taken in their totality, our experience has been that those persons that we have spoken to, or end up in arresting, have been in possession of narcotics. [A.R., vol. V, at pp. 64-65]

The officers testified they had seen this constellation in Halifax, and knew that it was common to drug couriers. The constellation had been noted in their training and observed by them in their prior investigations. It was not common to innocent travellers. This assertion was not challenged on cross-examination.

1. In some cases, evidence has been adduced that challenges the probative value of the factors relied upon by the police: see *R. v. Wong*, 2005 BCPC 24, 127 C.R.R. (2d) 342, or *R. v. Calderon* (2004), 188 C.C.C. (3d) 481 (Ont. C.A.). In those cases, a poor track record undermined the police’s reliance on the particular constellations involved. As Professor Tanovich has noted, “evidence of an unreasonably high false positive rate can impact on the ability of the police to rely on a profile, for example, in establishing the requisite constitutional threshold for an investigative detention or search”: “A Powerful Blow Against Police Use of Drug Courier Profiles” (2008), 55 C.R. (6th) 379, at p. 391. No such evidence was adduced in this case.
2. The appellant also argues that the police had a duty to investigate in order to exclude innocent explanations for the constellation giving rise to reasonable suspicion, and that the Court of Appeal erred by considering the relatively new condition of his suitcase, as this factor was not known to the police at the time of the decision to deploy the sniffer dog.
3. As I have outlined above, the police are not under a duty to investigate alternative explanations for constellations of factors giving rise to reasonable suspicion. However, they must account for information received between the time of the decision to deploy the sniffer dog and the performance of the sniff search. In this case, there was evidence that the police practice was to take such information into account, and that factors such as being met by grieving family members or a comment on the reservation record noting a bereavement rate would likely exclude an individual from suspicion. The police are also entitled to account for information obtained that strengthens the inference of reasonable suspicion.
4. However, I agree that the Court of Appeal erred by including the relatively new condition of the suitcase in the constellation of factors. Constable Pattison and Constable Ruby did not remark on the relatively new condition of the appellant’s luggage until *after* Boris’s sniff search. The constellation of factors must be assessed *at the time* of the search and not after: see *Kang-Brown*, at para. 92.
5. For these reasons, I agree with the Court of Appeal that the trial judge erred in principle in the manner of applying the reasonable suspicion standard by assessing the factors individually. Viewed in their entirety, the factors in this case justified a reasonable suspicion of illegal drug activity.

 (2) Reasonableness of the Search

1. The trial judge found that the search was unreasonable, as the sniffer dog used was not reliable. He focused on the fact that in this case, Boris indicated on a cooler containing no drugs, as well as the appellant’s bag, finding this gave a reliability rating of 50 percent on the day in question. He also looked to actual deployments, including Boris’s indications where no drugs were found. The trial judge concluded that the RCMP training assessment was unreliable, as it was not conducted by an independent agency and was not based on national standards. He was also of the view that the lack of instruction given by the RCMP to dog handlers with regard to the way in which a sniffer dog’s reliability should be evaluated led to highly subjective accuracy assessments.
2. The Court of Appeal overturned these findings, saying that they were based on speculation and misapprehension of the evidence.
3. Corporal Daigle provided detailed evidence of Boris’s validation performance and records of 178 deployments in the field from May 2003 to November 2005. As well, his evidence established that Boris had never given a “false sit” in a controlled environment. Through four validation exercises Boris was 99 percent accurate in detecting hidden drugs.
4. Further, the evidence established that 87.6 percent of Boris’s indications for the smell of drugs led to the discovery of drugs or drug residue or involved circumstances that demonstrated the likely recent presence of drugs, such as admitted recent drug use by the owner of the luggage, the discovery of drug-related paraphernalia in the luggage, or the discovery of large amounts of cash (in amounts varying between $9,000 and $84,775).
5. In my view, the trial judge erred in principle by discounting the RCMP’s controlled yearly validations and by failing to consider evidence of contamination from the recent presence of drugs that explained indications where no drugs were found, an explanation that would equally apply to the indication on the cooler in this case. As a result, and based on the record, the trial judge committed a palpable and overriding error in finding that Boris was only 50 percent reliable.
6. I agree with the Court of Appeal that the trial judge erred and that Boris was reliable. Given the reliability of the dog, the sniff search was reasonable in these circumstances.

 (3) Arrest Subsequent to Positive Indication

1. The appellant was arrested following Boris’s positive indication on his bag. When the police officer arrested the appellant, he knew of the constellation of factors that led to the decision to deploy Boris, and that Boris had in fact indicated on the appellant’s bag. In this case, given the strength of the constellation, the reliability of the dog, and the absence of exculpatory explanations, the positive indication raised the reasonable suspicion generated by the constellation to the level of reasonable and probable grounds to arrest the appellant.

V. Conclusion

1. The police had a reasonable suspicion that they would discover evidence of a drug-related crime in Mr. Chehil’s luggage. The sniff search was conducted reasonably. It is unnecessary to consider the fresh evidence tendered by the Crown in light of my conclusion and I would dismiss the appeal.

 *Appeal dismissed.*

 Solicitors for the appellant:  Garson MacDonald, Halifax.

 Solicitor for the respondent:  Public Prosecution Service of Canada, Halifax.

 Solicitor for the intervener the Attorney General of Ontario:  Attorney General of Ontario, Toronto.

 Solicitors for the intervener the Canadian Civil Liberties Association:  Osler, Hoskin & Harcourt, Toronto.

 Solicitor for the intervener the Samuelson‑Glushko Canadian Internet Policy and Public Interest Clinic:  University of Ottawa, Ottawa.

 Solicitors for the intervener the British Columbia Civil Liberties Association:  McCarthy Tétrault, Vancouver.

1. These contexts include border security investigations, see *R. v. Simmons*, [1988] 2 S.C.R. 495, and *R. v. Monney*, [1999] 1 S.C.R. 652; limited searches accompanying investigative detentions, see *R. v. Mann*, 2004 SCC 52, [2004] 3 S.C.R. 59; and searches performed in schools by school authorities, see *R. v. M. (M.R.)*, [1998] 3 S.C.R. 393. [↑](#footnote-ref-1)
2. *Criminal Code*, R.S.C. 1985, c. C-46, s. 254(2) (physical coordination tests and obtaining a breath sample to test for the presence of alcohol or a drug), and s. 492.2 (use of a number recorder and obtaining telephone records); *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.), s. 98 (search power for customs officers); *Corrections and Conditional Release Act*, S.C. 1992, c. 20, s. 49 (frisk searches of inmates); *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, s. 15(1) (search of a person), s. 17(1) (examination and opening of mail). [↑](#footnote-ref-2)
3. *R. v. Lozano*, 2013 ONSC 1871, [2013] O.J. No. 1432 (QL) (arrest then search); *R. v. Nguyen*, 2013 SKQB 36 (CanLII) (arrest then search); *Alberta v. Jarvis*, 2012 ABQB 602, 270 C.R.R. (2d) 154 (arrest then search); *R. v. Gowing*, 2012 ABPC 38, 532 A.R. 312 (arrest then search); *R. v. Earle*, 2012 NSPC 27, 315 N.S.R. (2d) 123 (arrest then search); *R. v. Krafczyk*, 2011 ABQB 107, 511
A.R. 211 (verification search, but the accused had fled the scene); *R. v. Imani*, [2012] N.B.J. No. 120 (QL) (Q.B. (T.D.)) (arrest then search); *R. v. Ryan*, 2011 NSSC 102, 300 N.S.R. (2d) 97 (arrest then search); *R. v. Hoy*, 2010 ABQB 575, 534 A.R. 58 (arrest then search); *R. v. Hoang*, 2010 BCPC 24, 206 C.R.R. (2d) 127 (verification search of the accused’s car conducted on consent, verification search of the accused’s person conducted incident to arrest). [↑](#footnote-ref-3)
4. Subsequent to the hearing of this appeal, the Court of Appeal for Manitoba considered the constitutionality of verification searches in *R. v. Frieburg*, 2013 MBCA 40 (CanLII). In that case, the court determined, based on the reasons of Binnie J. in *Kang-Brown*, that verification searches pass constitutional muster. [↑](#footnote-ref-4)