Dear participants,

The Julius Alexander Isaac Moot (the "Moot") for the 2025-2026 academic year concerns the legal standard for racial mistreatment in the context of claims of breaches of the Canadian Charter of Rights and Freedoms.

The ruling used as the foundation for this problem is the Superior Court of Justice in *R v Murray*.[1]

This moot is an opportunity for in-depth discourse of the issues underlying the law for identifying and addressing *racial mistreatment* to inspire legal development.

The focus of this appeal is for law students to consider ways to strengthen criminal and constitutional law to address anti-Black racism. Participants will consider how to advance the law through the lens of racial mistreatment which is recognized but less developed in the jurisprudence compared to racial profiling. The following outlines the procedure and substance of the Moot.

1. Procedure

a) Overview

The Moot will consist of a fictional appeal from the Ontario Superior Court of Justice to the Diversity High Court of Canada (DHCC). Information pertaining to the nature of argumentation, issues, and deadlines relating to that appeal can be found in the following sections.

b) Nature of Argumentation

The DHCC is a fictional court, which does not view Canadian legal doctrine as binding, but rather views it as persuasive. It appreciates the persuasiveness of Canadian doctrine according to its established hierarchy of precedents in Canadian law. Additionally, the DHCC solely recognizes arguments supported by existing legal sources. Therefore, using a critical race approach, both parties must present: (1) *at least* one argument scoping the current legal framework for finding

[1] 2025 ONSC 4127 [*Murray*]

racial mistreatment[2]with regards to police interactions[3] and (2) *at least* one argument with a critical race theory (CRT) focus, proposing key revisions required for the law to be more responsive to modern knowledge of how racial mistreatment manifests and impacts Black people. Parties may submit multiple arguments to support the establishment of a new standard and or test, provided they adhere to the required type of argumentation and effectively support their position.

The Respondent shall ground its argument in an individual rights and civil liberties perspective, i.e. consideration of potential Charter rights violations that constitute racial mistreatment caused by discretionary police power.

The Appellant shall base its argument on public safety and policy considerations, i.e. the importance of discretionary police powers in ensuring public safety. The Appellant is expected to recognize the social context and any parts of the Respondent's position that it accepts while providing its own distinct position. The argument should not be a repetition of the Respondent's position.

Innovation by both sides is encouraged.

Parties are expected to reference Canadian legal authorities to explain what the law is, why it is effective or ineffective and what they believe the law should be.

Referring to Canadian authorities and CRT, Participants are encouraged to consider the overarching debate: the development of the law of racial mistreatment.

Specifically considering how the law of racial mistreatment has developed and how it should or should not be expanded upon. Throughout the submissions, participants shall consider the ensuing impact of the law on racialized peoples.

c) Issues on Appeal

The issues on appeal include both doctrinal and theoretical issues. The doctrinal issues deal with what the parties believe to be the current state of the law. The theory issue(s) ask(s) where the

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[2] See *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)* 2015 SCC 39 at para 33 [Quebec v. Bombardier].

[3] See *R v Le* 2019 SCC 34 at paras 75-76.

parties believe that the law needs to go to be more just. The scope of the issues is intentionally broad as it is expected that students innovatively address these issues based on their positions.

It is the parties' responsibility to ensure that both types of arguments are included in their written and oral submissions. Failure to comply will result in disqualification from the final rounds of the Moot. To prevent this, parties are required to organize and identify their oral and written submissions as follows: "Existing Law"; "Impracticality of Current Law Argument 1:..."; and "Revision of Law Argument 1:..".

The doctrinal issues on appeal are as follows:

1. What does racial mistreatment mean? How is it defined? What does it encompass? How does it differ (if at all) from the concept of racial profiling?

2. What is the current law and test for racial mistreatment as explained by the Court of Appeal in *R. v. Dudhi*? [paras 56-63]
    a. Did the trial judge err in interpreting the test?

3. Did the trial judge err in finding any of the ss. 7,8,9, and 10 *Charter* breaches? If so, which findings were in error?

4. Consider whether the trial judge correctly identified and interpreted the law of racial mistreatment alongside coinciding jurisprudence.
    Following these requirements:
    a. Explain what racial mistreatment is as defined by case law.
    b. Identify whether there is a racial mistreatment test
    c. Explain any developments since the Court of Appeal decision in *Dudhi*
    d. Identify the law applicable for all *Charter* sections in the decision
    e. Consider jurisprudence

5. Whether litigants should ask the court to find that if there is racial mistreatment, to also find a breach of s. 15 of the *Charter*? If yes, explain why. If not, explain.

6. Should racial mistreatment be assessed pursuant to section 24(2) as per the test from the Supreme Court in *R v. Grant*?

a. In particular, in order to advance an understanding of racism should judges be required to explain how racial mistreatment affects the seriousness of the breach; impact of the breaches, adjudication on the merits and final balancing.
b. Should the courts be required to further explain how racial mistreatment impacts the individual claimant and the Black community?

7. Did the trial judge err by finding the evidence inadmissible as per section 24(2)?

The theoretical issues that may be raised are open and require both the Appellant and Respondent to think critically about ways in which the existing legal system can be critiqued in a manner favourable to their position. These may be identified as "Revision of Law" arguments.

For example, theoretical issues on appeal may include but are not limited to:

- Whether the current legal framework to address anti-black racism during police investigations is sufficient or does it require improvements to more effectively address the problem? If so, what kind of changes?
- Whether the onus to prove racial mistreatment should be modified to recognize that it is pervasive but notoriously difficult to prove. For example:
    - Once the Applicant makes out a prima facie case or raises an air of reality, should the Crown be required to disprove racial profiling or racial mistreatment?
    - Whether regulatory offence investigations involving racialized people that turn into detentions for criminal offence investigations should require the police to demonstrate the detention is not influenced to any degree by racial stereotypes?
    - If the court is unable to rule out racism was involved to any degree, should that finding be sufficient to find a breach?
- Whether a judicially developed non-exhaustive factorial/indicators test is required? If so, what should inform those factors?
- Whether a finding that racism was involved to any degree should necessarily result in a finding of inadmissibility per s.24(2) or whether judges should attempt to explain their reasons to develop the law in this area?
- Are there any factual scenarios where there is racial mistreatment but the evidence should not be excluded?

- Whether there should be an indicator test to assist prosecutors to determine whether criminal charges shall be pursued amid findings of racial mistreatment?
    - For example, the court decides whether the evidence should be excluded based on various factors like: the seriousness of the breach, the impact on the accused, and the potential impact on public confidence in the justice system.
    - Based on the current jurisprudence; does the law require a racial mistreatment severity indicator test?
- How would you define racial mistreatment? What language would you use? Consider how the definition would impact the ability to prove the threshold alongside the ensuing impact on racialized communities.
- To what extent do modern courts recognize and address the prevalence of anti-Black racism and its role in racial mistreatment by the police?
- Is it important that s. 15 of the Charter be argued and further considered in criminal cases to develop the law?
- Do current systems of law and practices of law operate unfairly towards, and fail to benefit, Black people?

d) Deadlines

The following deadlines will be strictly enforced by the Moot Director and Moot Committee:

- **Appellant Factum due**: Thursday, January 8, 2026, at 3:00 PM EST
- **Receipt of opposing Appellant Factum by Respondent**: Friday, January 9, 2026
- **Respondent Factum due**: Thursday, January 15, 2026, at 3:00 PM EST
- **Receipt of opposing Respondent Factum by Appellant**: Friday, January 16, 2026
- **Moot Competition**: Friday, January 30, 2026, to Sunday, February 1, 2026

e) Format

The following is an excerpt from the Official Moot Rules regarding the factum format that teams must follow. Please consult the rules for the full list of factum requirements:

- 20 pages maximum
- Times New Roman
- 12-point font
- 1-inch margins

- Double spaced (except indented quotes)
- Numbered paragraphs
- 8.5" x 11" pages
- Bold headings and sub-headings including the five (5) following sections
    I. Overview
    II. Statement of Facts
    III. Statement of Issues
    IV. Argument
    V. Order Sought
- Citations according to the latest edition of the McGill Guide.
- The cover should be in the same form as factums at the SCC, except:
    - use 12-point font;
    - "Supreme Court of Canada" should be changed to "Diversity High Court of Canada "; and
    - there is no need to make any references to the Supreme Court Act or Rules.

Please ensure that factums are only identifiable via use of the team's assigned number (check for tracked changes or any other areas where your names may appear), as points may be deducted if names are included.

Refer to the Official Moot Rules for specific details regarding submission and formatting.

2. Substance

The doctrinal foundation for the moot is *R v Murray*.[4] The theoretical foundation for the appeal is briefly summarized below.

Theoretical arguments must engage with relevant social context, empirical studies, reports, and case law addressing anti-Black racism. Competitors are also required to incorporate Critical Race Theory (CRT). The CRT scholarship cited in the footnotes provides a starting point for developing arguments; however, additional research is encouraged. Parties will be evaluated on the clarity and persuasiveness of the application of CRT in courtroom advocacy, rather than the volume of citations relied upon.

[4] 2025 ONSC 4127.

a) What is Racial Mistreatment

In Canada, courts have acknowledged both the existence and unlawfulness of racial profiling. In *Murray*, Justice Mirza used the term racial mistreatment to explain a different form of racial bias that can extend beyond suspect selection.[5]

The Supreme Court adopted the following definition of racial profiling in *Bombardier*, a definition that was most recently cited in *Le* in 2019:[6]

> Racial profiling is any action taken by one or more people in authority with respect to a person or group of persons, for reasons of safety, security or public order, that is based on actual or presumed membership in a group defined by race, colour, ethnic or national origin or religion, without factual grounds or reasonable suspicion, that results in the person or group being exposed to differential treatment or scrutiny.
>
> Racial profiling [also] includes any action by a person in a situation of authority who applies a measure in a disproportionate way to certain segments of the population on the basis, in particular, of their racial, ethnic, national or religious background, whether actual or presumed.

In *Le*, the court further explained that the concept of racial profiling is primarily concerned with the motivation of the police.[7] Racial profiling is present where "race or racialized stereotypes about offending or dangerousness are used, consciously or unconsciously, to any degree in suspect selection *or treatment*."[8] The example provided in *Peart*, is that of a police officer who observes a vehicle speeding and decides to pull the driver over, in part due to the driver's race.[9] The officer has engaged in racial profiling, even though their action would have been justified by the driver's speeding.[10] Differential treatment which results in detention is arbitrary and contrary to s. 9 of the

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[5] *Murray*, *supra* note 1 at para 289, n 1.

[6] *Quebec v Bombardier, supra* note 2 at para 33.

[7] *Le, supra* note 3 at para 76; see also *R v Dudhi*, 2019 ONCA 665 at para 55 [*Dudhi*].

[8] *Le*, *supra* note 3 at para 76.

[9] *Peart v Peel (Regional Municipality) Police Services Board* (2006), 43 C.R. (6th) 175, 217 O.A.C. 269, 39 M.V.R. (5th) 123 (Ont. C.A.) at para 91.

[10] *Ibid* at para 91.

Charter.[11] This conclusion was confirmed in the recently decided case, *PG Quebec c Luamba.*[12] The Quebec Court of Appeal unanimously upheld that the section of Quebec's *Highway Safety Code* that permitted police officers to randomly stop drivers without reasonable suspicion of an offence was contrary to the *Charter*.[13] Specifically, individuals' sections 9 and 15 rights which relate to arbitrary detention and equality were violated by these types of police stops.[14] Thus, the law which led to members of the Black community being racially profiled by police officers while driving was deemed inoperative by the court.[15]

In the landmark racial profiling case, *Brown*, Justice Morden concluded that the framework for assessing racial profiling must be inference drawn from circumstantial evidence.[16] Requiring proof by direct evidence, he noted, would be too high a bar, as police officers rarely admit to use of racial profiling.[17] A substantial burden of proof is placed on claimants to prove racial profiling. As established in *Dudhi*, it requires establishing that race or a racial stereotype motivates or influences the decisions of the persons in authority. [18]

This raises a critical question: is Canada's current test for racial mistreatment fair and sufficiently developed? Does the lack of jurisprudence or test inherently disadvantage racialized individuals seeking justice?

b) What is Critical Race Theory (CRT)

Critical Race Theory (CRT) is an analytical framework examining the intersection of law and racial inequity. It interrogates the racial undercurrents embedded within legal structures, critically analyzing how laws may perpetuate discrimination while advocating for equitable treatment. CRT

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[11] *David M. Tanovich, "Applying the Racial Profiling Correspondence Test" (2017), 64 Crim LQ 359 at 359.*

[12] *PG Quebec c Luamba* (23 October 2024), Montréal 500-09-030301-220 (QCCA).

[13] *Ibid* at para 222.

[14] *Ibid* at para 224.

[15] *Ibid* at para 224.

[16] *R v Brown,* 2003 CanLII 52142 at para 44 (ONCA).

[17] *Ibid* at para 44.

[18] *Le, supra* note 3 at para 78; see also *Dudhi, supra* note 14 at para 55.

challenges conventional interpretations of law and society, emphasizing the role of race in shaping institutional practices and outcomes.

CRT provides a lens to interrogate and refine the law, challenging assumptions rooted within legal doctrine. Participants may recognize its principles from their studies, as CRT enriches legal discourse through rigorous critique and by exposing the interplay between law and systemic inequality. As Derrick Bell, widely regarded as the intellectual forefather of CRT, asserts: "Critical race theory recognizes that revolutionizing a culture begins with the radical assessment of it."[19]

The practical application of CRT is exemplified in Justice Michael Tulloch's *Independent Street Checks Review*, which highlights the persistence of implicit bias and called for a coordinated approach across government sectors. He observed that "there is no quick fix to the problem of systemic discrimination […] justice, education, and mental health are not separate issues, and they should not operate in silos."[20]

Canada's legal framework accommodates the principles of CRT. Section 15(2) of the *Canadian Charter of Rights and Freedoms* permits the adoption of conscriptive and ameliorative policies addressing social and historical inequalities. By contrast, recent U.S. Supreme Court rulings have invalidated race-conscious affirmative action policies by deeming it unconstitutional, reflecting ongoing debates on whether modern policies should still account for race to rectify historical disadvantages.[21] Importantly, racism can manifest subtly or systemically, even when not overtly recognized, and may still produce significant inequitable outcomes.

With hindsight, racism in Canada preceding the 21st century may appear more explicit than it does today. This can be illustrated by the neglect and destruction of Africville and the internment of Japanese Canadians, both of which were facilitated and sanctioned through law and policy. Yet, systemic inequity persists in evolving forms. Contemporary racism may be less overt, but it continues to necessitate a dynamic CRT approach to both identify and address its manifestations. In *R v Le*, the Supreme Court of Canada emphasized the importance of considering racial context in the analysis of detention under Section 9 of the *Charter*, acknowledging historical tensions

[19] Derrick A Bell, "Who's Afraid of Critical Race Theory" (1995) 1995:4 U Ill L Rev 893 at 893.

[20] Justice M. H. Tulloch, *Report of the Independent Street Checks Review* (2018), at 214 para, 28.

[21] *Students for Fair Admissions v. President and Fellows of Harvard College*, 600 U.S. (2023).

between law enforcement and racialized communities.[22] Similarly, *R v Murray* provides a contemporary case study for examining systemic inequities and racialized experiences in policing. This CRT-informed perspective underscores the necessity for judicial sensitivity to systemic, structural, and implicit biases when applying legal standards and rendering decisions.

CRT calls for a critical engagement with the role of race within legal institutions. Simply put, thoughtful consideration of race and law constitutes engagement with Critical Race Theory.[23] The objective of the Isaac Moot is to encourage participants to explore how legal frameworks can simultaneously challenge and perpetuate racial hierarchies while fostering creativity and innovation—hallmarks of CRT. Participants are not expected to adhere to a prescriptive methodology or predetermined conclusion; CRT provides guidance, not a formula.[24]

Race is often treated as a fixed identity marker (e.g., Black, White, etc.); however, CRT emphasizes that race functions as a social process, shaping experiences and institutional interactions. As Kendall Thomas, a foundational CRT scholar, writes: "we are 'raced' through a constellation of practices that construct and control racial subjectivities."[25] Recognizing race as a social construct is essential in legal practice; failure to do so risks allowing implicit biases and systemic inequities to persist, hindering collective development.

Participants are encouraged to examine how daily practices and legal procedures may perpetuate racial mistreatment, acknowledging that racism often operates through subtle structural patterns and decisions. Critical Race Theory requires confronting those latent biases and revealing the racial dimensions embedded within law and legal processes. By engaging with these realities, participants not only expose injustices but also contribute to transformative approaches, advancing a vision of society where equity is realized as both principle and practice.

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[22] *R v Le*, 2019 SCC 34 at para 76.

[23] Khiara M Bridges, Critical Race Theory: A Primer (New York: Foundation Press, 2019) at 7

[24] Bridges, *supra* at 11.

[25] Kendall Thomas, "The Eclipse of Reason: A Rhetorical Reading of Bowers v. Hardwick" (1993) 79:7 Va L Rev 1805 at 1806–07.

c) Circumstances to Consider

When evaluating *Charter* breaches on appeal, participants may confront contextual factors sometimes raised in litigation. While such circumstances are often advanced to justify police conduct, appellate courts caution against relying on them in ways that dilute constitutional protections.[26]

Examples include:

- **Prior Criminal Record or Police Contacts**
  - *Consideration:* Should a prior record influence the reasonableness of police suspicion, or does it risk undermining the universality of *Charter* rights.
- **"High Crime" Neighbourhoods**
  - *Consideration:* Does presence in an area with higher police activity justify greater state intrusion, or should *Charter* rights remain unaffected by geography?
- **Time of Day**
  - *Consideration:* Can the lateness of an encounter meaningfully inform police suspicion, or is it insufficient on its own to curtail rights?
- **Perceived Behaviour or Demeanour**
  - *Consideration:* To what extent should nervousness, avoidance, or other subjective observations inform reasonable suspicion, given the risk of arbitrariness?
- **Socio-Economic or Racialized Context**
  - *Consideration:* Should courts acknowledge how systemic factors shape encounters with police, or does reliance on such context risk reinforcing stereotypes?

Together, these circumstances raise an overarching question for participants: do such factors meaningfully inform the *Grant* balancing under section 24(2), or do they risk introducing prejudice and eroding constitutional guarantees?[27]

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[26] *Le*, *supra* at note 3, para 132.

[27] *R v Grant*, 2009 SCC 32 at para 223.