Translated from the original French

|  |  |
| --- | --- |
| Commission des droits de la personne et des droits de la jeunesse (Sam) c. 9377-1905 Québec inc. | 2022 QCTDP 3 |
| HUMAN RIGHTS TRIBUNAL |
|  |
| CANADA |
| PROVINCE OF QUEBEC |
| DISTRICT OF | MONTREAL |
|  |
| No.: | 500-53-000572-204 |
|  |
| DATE: | January 28, 2022 |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |
| PRESIDING: | THE HONOURABLE | CHRISTIAN BRUNELLE |
| WITH THE ASSISTANCE OF ASSESSORS: | Mtre Marie Pepin, retired attorney Mtre Jacqueline Corado |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |
|  |
| COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, acting in the public interest and on behalf of KIANNA SAM |
| Plaintiff |
| v. |
|  |
| 9377-1905 QUÉBEC INC. |
| Defendant |
| and |
| **KIANNA SAM** |
| Complainant |
|  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |
| **JUDGMENT** |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |

1. The Commission des droits de la personne et des droits de la jeunesse (the Commission), acting on behalf of the complainant,[[1]](#footnote-1) Kianna Sam, seeks $8,000 in compensatory damages and $2,000 in punitive damages from the defendant, 9377-1905 Québec inc.[[2]](#footnote-2) (9377-1905).
2. 9377-1905 operates a convenience store in the borough of LaSalle, on the Island of Montreal.
3. The Commission submits that Ms. Sam was unable to obtain the goods and services ordinarily offered to the public in this type of commercial establishment due to her race, colour, sex, and social condition.

# THE ISSUES

1. The dispute essentially raises two questions:
2. Has the Commission established, on a balance of probabilities, that 9377-1905 discriminated against Ms. Sam, thereby interfering with her rights under ss. 4, 10, 12, and 15 of the Quebec *Charter of human rights and freedoms*?[[3]](#footnote-3)
3. If so, what is the appropriate compensation in application of s. 49 of the *Charter*?

**II. THE BACKGROUND**

1. Ms. Sam is from the Caribbean archipelago of the Grenadines and has been living in Montreal since 2011.
2. She is black, speaks English – or broken English to use her expression – and is a permanent resident.
3. She lives alone with her three sons aged respectively 8, 4, and 2 years old, a block away from the 9377-1905 convenience store.
4. Jianli Liu operates this commercial establishment.
5. At the end of the day on January 15, 2019, Ms. Sam walked to the daycare to pick up her two youngest boys. On the way back home, she stopped at the convenience store to buy macaroni for dinner.
6. This was only the second time she had been in this establishment. The first time, she bought a telephone card that she wanted to pay for with her bank card. The terminal was slow to confirm the transaction, causing Mr. Liu to doubt that she had the necessary funds, which she did not like: “He was rude to me”.
7. Once in the convenience store, Ms. Sam and her two children walked up and down the aisles. The boys followed her. She claims she gave the youngest a bag of chips to keep his attention, as was her habit.
8. Mr. Liu was watching closely.
9. Once at the cash, Ms. Sam gave Mr. Liu a small amount of money.
10. She then decided to buy a small can of soft drink as well. Because she did not have enough cash to pay for everything, she wanted him to give her back her money so she could pay with her bank card instead.
11. Mr. Liu then abruptly grabbed the bag of chips out of the youngest child’s hands. He was afraid that she would not pay for his merchandise. He asked Ms. Sam to leave his store immediately with her sons.
12. A lively discussion ensued and Mr. Liu threatened to call the police.
13. While waiting for the police, Ms. Sam took out her smart phone and started recording what was happening in the convenience store.[[4]](#footnote-4)
14. At this point, a white woman with blond hair entered the convenience store and went to the cash to pay.
15. Ms. Sam’s oldest son, who was on the way back from school, went inside. He covered his ears with his hands to muffle the sound of his mother’s cries.
16. Ms. Sam claims that her oldest son, once outside, put his hands in his pockets because it was cold. Mr. Liu physically forced him to remove them because he was worried that he had been robbed: “You have my stuff in your pockets!” he allegedly told the boy.
17. Ms. Sam then yelled at him: “Don’t touch my child!” She related that the child was frightened and she herself was shocked, sad, confused, and highly emotional, given the turn of events.
18. Once on the scene, the police ended the dispute. Ms. Sam wanted to file a complaint, but the police officer with whom she was speaking instead suggested that she contact the Commission.
19. In tears, Ms. Sam then went with her sons to another store to buy the goods she needed.
20. She never returned to the 9377-1905 convenience store after that: “What he did was not right”, she said, referring to Mr. Liu.
21. On February 14, 2019, Ms. Sam filed a complaint with the Commission. According to the Commission’s resolution of April 9, 2020, the complaint concerned an allegation of [translation] “discrimination based on race and colour”.[[5]](#footnote-5)
22. Following an investigation, the Commission adopted a resolution in which it concluded that [translation] “the complainant was the victim of differential or unusual treatment by the convenience store owner, namely because she belongs to a group protected by the *Charter*”.

**III. THE RELEVANT LEGISLATIVE PROVISIONS**

1. This application engages the following *Charter* provisions:

**4.** Every person has a right to the safeguard of his dignity, honour and reputation.

**10.** Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

**12.** No one may, through discrimination, refuse to make a juridical act concerning goods or services ordinarily offered to the public.

**15.** No one may, through discrimination, inhibit the access of another to public transportation or a public place, such as a commercial establishment, hotel, restaurant, theatre, cinema, park, camping ground or trailer park, or his obtaining the goods and services available there.

**49.** Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

**IV. ANALYSIS**

1. The Commission submits that Mr. Liu engaged in “racial profiling”[[6]](#footnote-6) with respect to Ms. Sam by refusing to sell her consumer goods and by demanding instead that she and her young sons leave his establishment.
2. 9377-1905 argues that it acted this way because the customer was not properly supervising her sons and thus violated the policy that every item must be paid for before being consumed.
3. A trial concerning an allegation of discrimination may be characterized as a civil proceeding. In general, while the Tribunal is “not bound by the special rules of evidence applicable in civil matters”, it is obviously “bound by the general principles of justice”.[[7]](#footnote-7)
4. With respect to evidence, it therefore remains subject to the teachings in the case law whereby “an application under the *Charter* involves a two‑step process that successively imposes separate burdens of proof on the plaintiff and the defendant”.[[8]](#footnote-8)
5. **The Commission’s burden of proof**
6. In its capacity as plaintiff, the Commission has a triple burden related to “the three elements of discrimination”:[[9]](#footnote-9)

[35] ... s. 10 requires that the plaintiff prove three elements: “(1) a ‘distinction, exclusion or preference’, (2) based on one of the grounds listed in the first paragraph, and (3) which ‘has the effect of nullifying or impairing’ the right to full and equal recognition and exercise of a human right or freedom”.[[10]](#footnote-10)

1. It is also common ground that the Commission must establish this tripartite proof on a “balance of probabilities”:[[11]](#footnote-11)

[59] ... the standard of proof that normally applies in the civil law, namely that of proof on a balance of probabilities, applies in this case. In a discrimination context, the expression “*prima facie*” refers only to the first step of the process and does not alter the applicable degree of proof.[[12]](#footnote-12)

[Emphasis added.]

1. What is the situation here?
2. Distinction/exclusion
3. At this first step, the Commission “must prove the existence of differential treatment”, meaning that Mr. Liu’s conduct affected Ms. Sam “differently from others” by imposing, for example, “restrictive conditions that are not imposed on others”.[[13]](#footnote-13)
4. An individual who enters a convenience store with her young children to buy consumer goods does not expect to be ordered to leave the premises, without being allowed to complete her purchases, on pain of being thrown out with the help of the police.
5. The Tribunal agrees that this is sufficient evidence of “differential treatment” to justify the analysis of the “second element of discrimination”, it being understood that “a distinction alone cannot suffice”.[[14]](#footnote-14)
6. Prohibited grounds
7. At this second step, the Commission must establish that the distinction or exclusion suffered by Ms. Sam is connected, in whole or in part, to one of the prohibited grounds of discrimination under s. 10 of the *Charter*:

... as regards the second element of *prima facie* discrimination, the plaintiff has the burden of showing that there is a *connection* between a prohibited ground of discrimination and the distinction, exclusion or preference of which he or she complains or, in other words, that the ground in question was a *factor* in the distinction, exclusion or preference.[[15]](#footnote-15)

[Emphasis added.]

1. *Confluence of grounds*
2. In its resolution of April 9, 2020, the Commission stated that the complainant is [translation] “a black woman” who believes she was “discriminated against based on race and colour”.
3. Then, after briefly reviewing the evidence collected during its investigation, writes ~~it~~ wrote:

[translation]

The Commission is of the view ... that the evidence that the complainant was discriminated against based on race and colour when she went to the Convenience Store … is sufficient to submit the dispute to the tribunal .... The Commission finds that the complainant was the victim of differential or unusual treatment by the convenience store owner, namely because she belongs to a group protected by the *Charter*.[[16]](#footnote-16)

[Emphasis added.]

1. In its application, the Commission also added the grounds based on “sex” and “social condition”.
2. Counsel for the Commission argues that there is a confluence[[17]](#footnote-17) of several personal characteristics that, taken together, result in discriminatory profiling:

[translation]

Consideration of these combined prohibited grounds of discrimination is part of a contextualized approach that is sensitive to “intersectional” discrimination, which takes into account the specific effect resulting from the interaction or overlap of several grounds ....[[18]](#footnote-18)

1. In other words:

An individual’s or a group’s experience of discrimination may not be discernible with reference to just one prohibited ground of discrimination, but only in reference to a conflux of factors, any one of which taken alone might not be sufficiently revelatory of how keenly the denial of a benefit or the imposition of a burden is felt.[[19]](#footnote-19)

1. Although the wording could be more explicit,[[20]](#footnote-20) the *Charter* obviously does not exclude “a robust intersectional analysis”[[21]](#footnote-21) - or [translation] “holistic”[[22]](#footnote-22) analysis of the grounds of discrimination to identify the combined disadvantages and thus [translation] “better reflect the “reality” of discrimination in all its complexity”.[[23]](#footnote-23)
2. After investigating, however, the Commission is still required to clearly identify in its resolution the personal characteristics under s. 10 that are involved.
3. The *Charter* distinguishes the “Commission” – which is “composed of 13 members”[[24]](#footnote-24) and “the personnel it requires for the performance of its functions”.[[25]](#footnote-25)
4. There is every reason to believe that the Legal Department, not the Commission strictly speaking, added “sex” and “social condition”, first in the application and then in the brief.
5. Naturally, in its resolution [translation] “the Commission **MANDATES** the Legal Department to apply to a tribunal to obtain, where consistent with the public interest, any appropriate measure or to demand, in favour of the victim, any measure the Commission considers appropriate at that time”.
6. That being said, the Legal Department cannot add grounds of discrimination in its pleadings to grant the Tribunal jurisdiction that exceeds the mandate defined in the Commission’s resolution.
7. In *Mouvement laïque québécois v. Saguenay (City)*,[[26]](#footnote-26) the Supreme Court of Canada stated the following about the Tribunal:

[40]  ... It is a body created under the *Quebec Charter* whose expertise relates mainly to cases involving discrimination ... . Its jurisdiction in this regard is based on the mechanism for receiving and processing complaints that is provided for in the *Quebec Charter* and implemented by the Commission. For such complaints, the Tribunal is intended to be an extension, as an adjudicative body, of the Commission’s preliminary investigation mechanism ... .[[27]](#footnote-27)

[Emphasis added.]

[Citations omitted.]

1. Then, discussing the litigant (victim or complainant) who, exceptionally, may be authorized to submit an application directly to the Tribunal in place of the Commission,[[28]](#footnote-28) the Court added:

[57]  ... where a complainant has a right to submit his or her own application to the Tribunal, the scope of the remedy is limited by the work done beforehand by the Commission. The Tribunal’s jurisdiction is circumscribed by that work. In a discrimination case, the application to the Tribunal is intended to be an extension of the investigation conducted by the Commission in response to a complaint.

…

[60] ... To conclude otherwise would be to unduly curtail the Commission’s function of managing and screening complaints .... The Tribunal’s jurisdiction in discrimination cases is dependent on the Commission’s having first conducted an investigation.[[29]](#footnote-29)

[Emphasis added.]

[Citations omitted.]

1. Because the Tribunal’s jurisdiction is dependent on the Commission’s first having conducted an investigation and is circumscribed by this work done beforehand, it cannot rule on rights[[30]](#footnote-30) or grounds of discrimination[[31]](#footnote-31) that did not attract the Commission’s attention in its resolution.
2. The Tribunal therefore intends to limit its analysis to the grounds of “race” and “colour” and thus decline jurisdiction over the grounds related to “sex” and “social condition”.

ii) *The “connection” or “factor”*

1. At this stage of the analysis, the plaintiff need only establish a connection between the alleged grounds of discrimination and the conduct of the person alleged to have engaged in discrimination:

[48] ... the decision or action of the person responsible for the distinction, exclusion or preference need not be based solely on the prohibited ground; it is enough if that decision or action is based in part on such a ground ... In other words, for a particular decision or action to be considered discriminatory, the prohibited ground need only have contributed to it.[[32]](#footnote-32)

[Emphasis added.]

[Citations omitted.]

1. That being said, “the degree of proof” required to establish the “connection” or prove at least one of the prohibited grounds in s. 10 of the *Charter* was a “factor” that contributed to the alleged discriminatory conduct remains the same as in any civil proceeding:

[56] ... even though the plaintiff and the defendant have separate burdens of proof in an application under the *Charter*, and even though the proof required of the plaintiff is of a simple “connection” or “factor” rather than of a “causal connection”, he or she must nonetheless prove the three elements of discrimination on a balance of probabilities. This means that the “connection” or “factor” must be proven on a balance of probabilities.[[33]](#footnote-33)

[Emphasis added.]

\* \* \*

1. In this case, Ms. Sam was the only one to testify for the plaintiff.
2. In defence, Mr. Liu was the only one summoned to appear for 9377-1905.
3. These two people have largely contradictory versions of the events.
4. The evidence reveals that Mr. Liu had only been operating the convenience store a very short time when Ms. Sam went there the first time. The slowness in obtaining confirmation of Ms. Sam’s payment by bank card immediately caused him to worry about whether she had sufficient funds.
5. Evidently, his subjective fear of being cheated already outweighed the importance for merchants to nurture their relationships with their customers.
6. The events of January 15, 2019, unfolded similarly.
7. Despite the stress that generally inhabits witnesses called to testify before a court, it was apparent at the hearing that Mr. Liu is a particularly fretful and nervous man who appears to be very insecure.
8. Mr. Liu is Chinese and he and his wife are the only directors of 9377-1905. They live above the convenience store with their young daughter.
9. Mr. Liu said that every day he works very long hours in the store, often from 8:00 a.m. to 11:00 p.m. His 6-year old daughter sometimes comes down to see him at work, when she misses her father.
10. She was there when Ms. Sam and her children entered the convenience store.
11. Ms. Sam testified that the little girl followed them around the convenience store. The Commission considers the fact that the white woman with blond hair who later entered the premises and was not subjected to this surveillance an indication of “differential treatment”.
12. In this regard, it is noteworthy that the area of the convenience store is small and rather encumbered by the goods for sale. There were already five people there when that customer entered. The fact that she was not followed may very well be explained by the little girl’s greater interest in the young children of her age or the craft paper she was holding in her hands, according to the video clip entered into evidence.[[34]](#footnote-34)
13. In any event, Mr. Liu was closely watching the four cameras that cover the entire store. He testified that he saw one of Ms. Sam’s sons grab a chocolate bar and the youngest one put a candy in his mouth.
14. He warned Ms. Sam about the store policy, clearly in view in the convenience store, which he summarized as “You cannot open or eat before payment”:

[translation]

BEFORE PAYMENT

Please do not put anything in your pocket

Please do not open or consume anything

Please do not leave the store[[35]](#footnote-35)

1. He implored Ms. Sam to control the children.
2. He said that they were going up and down the aisles chaotically – he used the expression “a mess”. The apparent calmness of Ms. Sam’s two youngest children in the video clip[[36]](#footnote-36) prove that this description is definitely exaggerated.
3. It nonetheless conveys Mr. Liu’s subjective fear of seeing his merchandise consumed or stolen without his knowledge.
4. When Ms. Sam asked him to return the cash already paid so that she could instead pay with her bank card, this fear increased to the point that Mr. Liu preferred not to complete the sale.
5. After Ms. Sam insisted on paying for the selected items, Mr. Liu insulted her by stating: “You people always come here to steal my stuff”.
6. Offended, Ms. Sam started to record what was happening in the convenience store live on Instagram, commenting on what had just happened.
7. Her oldest son, apparently bothered by his mother’s raised voice, covered his ears with his hands and left the convenience store.
8. Cutting short the telephone conversation he was having with the police, Mr. Liu followed him outside and yelled: “Take off my stuff”, “You steal, you steal”.
9. The video clip does not reveal whether Mr. Liu touched the child, but it ended with Ms. Sam saying: “Don’t touch my child! *…* What happened? What happened? What happened?”
10. She contends that Mr. Liu pulled her son’s hands, which he had kept in his pockets, but the evidence does not establish on a balance of probabilities that he touched the boy.

\* \* \*

1. The Commission had to establish that race or colour were in some way connected to Mr. Liu’s treatment of Ms. Sam.
2. The fact that an individual’s unique personhood may be defined by several personal characteristics set out in s. 10 of the *Charter* does not create a presumption that being treated callously, insensitively, or boorishly by a merchant is necessarily discriminatory.
3. From all the evidence, the Tribunal accepts that Mr. Liu’s reaction was disproportionate in the circumstances. His irritable behaviour marked by suspicion and motivated by an almost obsessive fear of being robbed caused him to wrongly accuse Ms. Sam and her sons, which obviously hurt her.
4. That being said, the false accusations in this instance are not connected to any of the alleged grounds of discrimination.
5. Mr. Liu’s inappropriate reaction would have been the same had Ms. Sam and her children not been black.
6. In the Tribunal’s view, his disproportionate, visceral fear that goods might be consumed or stolen without his knowledge was essentially the only driving force behind his action. Because of the high number of hours he works and the considerable efforts he devotes to growing his business, he abhors the economic loss due to theft, hence his repeated calls to the police during arguments with his customers in this regard.
7. Despite the Commission’s objection in this respect, the Tribunal considers Mr. Liu’s repeated calls to the Service de police de la Ville de Montréal (SPVM) relevant. The notes on a call made on June 12, 2019, (less than five months after the facts of this case)[[37]](#footnote-37) state:

[translation]

VERBAL ARGUMENT

WITH CUSTOMER

CONVENIENCE STORE OWNER

KNOWN FOR HAVING

ARGUMENTS WITH HIS

CUSTOMERS ...

CONVENIENCE STORE OWR

KNOWN FOR BEING

IMPATIENT[[38]](#footnote-38)

1. As insulting as the merchant’s conduct may have been, the evidence does not establish on a balance of probabilities that it is connected to Ms. Sam’s colour or race.
2. In *Commission des droits de la personne et des droits de la jeunesse (X) c. Commission scolaire de Montréal,*[[39]](#footnote-39) the Court of Appeal of Quebec recalled:

[TRANSLATION]

[18]  … When the balance of probabilities favours neither of the opposing positions, it is important to know which party is required to meet the burden, as this is the party who will lose.

[Emphasis added.]

1. Because the Tribunal answered the first issue in the negative, the application must be dismissed.
2. **The compensation**
3. Given the Tribunal’s conclusion on the first issue, the second one becomes moot.

**FOR THESE REASONS, THE TRIBUNAL:**

1. **DISMISSES** the application, with legal costs.

|  |
| --- |
|  |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**CHRISTIAN BRUNELLE****Judge of the Human Rights Tribunal** |
|  |
|  |
|  |
| Mtre Geneviève GriffinBITZAKIDIS CLÉMENT-MAJOR FOURNIER |
| Counsel for the plaintiff |
|  |
| Mtre Dominique Pion |
| Counsel for the defendant |
|  |
|  |
| Date of hearing: | June 10, 2021 |

1. Exhibit P-1, Written consent of Kianna Sam authorizing the Commission to act on her behalf. [↑](#footnote-ref-1)
2. Exhibit P-2, Information statement concerning a legal person from the enterprise register dated January 18, 2019. [↑](#footnote-ref-2)
3. CQLR, c. C-12 (*Charter*). [↑](#footnote-ref-3)
4. Exhibit P-4, video clip on USB stick. [↑](#footnote-ref-4)
5. Exhibit P-3, Resolution CP-766.2, April 9, 2020. [↑](#footnote-ref-5)
6. Even though the concept of “racial profiling” was originally developed in the context of proceedings brought against public authorities for abuse of power, it may also be used against a legal person established for a private interest: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc*. *(Bombardier Aerospace Training Center),* 2015 SCC 39, [2015] 2 SCR 789 (*Bombardier*) at para. 33. [↑](#footnote-ref-6)
7. Section 123 of the *Charter*. [↑](#footnote-ref-7)
8. *Bombardier, supra* note 6 at para. 55. [↑](#footnote-ref-8)
9. *Ibid*. at para. 40. [↑](#footnote-ref-9)
10. *Ibid.* at para. 35. [↑](#footnote-ref-10)
11. *Ibid*. at paras. 50, 56, 59, 65, and 67; *Commission des droits de la personne et des droits de la jeunesse (Bencheqroun) c. Société de transport de Montréal*, 2020 QCCA 602 at para. 23. [↑](#footnote-ref-11)
12. *Bombardier*, *ibid.* at para. 59*.* [↑](#footnote-ref-12)
13. *Ibid.* at para. 42. [↑](#footnote-ref-13)
14. *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43 at para. 95. [↑](#footnote-ref-14)
15. *Bombardier, supra* note 6 at para. 52. [↑](#footnote-ref-15)
16. Exhibit P-3, *supra* note 5. [↑](#footnote-ref-16)
17. The term is borrowed from PIERRE BOSSET, “Les fondements juridiques et l’évolution de l’obligation d’accommodement raisonnable” in Myriam JÉZÉQUEL (Dir.), *Les accommodements raisonnables: quoi, comment, jusqu’où? Des outils pour tous* (Cowansville, Qc.: Yvon Blais, 2007) 3 at 14. [↑](#footnote-ref-17)
18. *Commission des droits de la personne et des droits de la jeunesse (Tardif et autres) c. Syndicat des constables spéciaux*, 2010 QCTDP 3 at para. 216 (rev’d on appeal, but not on this point: *Québec (Procureur général) c. Commission des droits de la personne et des droits de la jeunesse*, 2013 QCCA 141). [↑](#footnote-ref-18)
19. *Withler v. Canada (Attorney General),* 2011 SCC 12, [2011] 1 SCR 396 at para. 58. [↑](#footnote-ref-19)
20. There is no provision in the *Quebec Charter* equivalent to s. 3.1 found in the *Canadian Human Rights Act* (RSC 1985, c. H-6) since 1998: “For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.” [↑](#footnote-ref-20)
21. *Fraser v. Canada (Attorney General)*, 2020 SCC 28 at para. 116. [↑](#footnote-ref-21)
22. Sirma BILGE & Olivier ROY, “La discrimination intersectionnelle: la naissance et le développement d’un concept et les paradoxes de sa mise en application en droit antidiscriminatoire”, (2010) 25-1 *Canadian Journal of Law and Society / Revue Canadienne Droit et Société* 51 at 66 *et seq*. [↑](#footnote-ref-22)
23. Vanessa TANGUAY, “La Charte québécoise des droits et libertés permet-elle de mobiliser l’intersectionnalité comme cadre d’analyse de la discrimination? Quelques pistes de réflexion”, (2021) 36-1 *Canadian Journal of Law and Society / Revue Canadienne Droit et Société* 47 at 50. [↑](#footnote-ref-23)
24. Section 58 of the *Charter*. [↑](#footnote-ref-24)
25. Section 62 of the *Charter*. [↑](#footnote-ref-25)
26. 2015 SCC 16, [2015] 2 SCR 3. [↑](#footnote-ref-26)
27. *Ibid*. at para. 40. [↑](#footnote-ref-27)
28. Section 84 of the *Charter*. [↑](#footnote-ref-28)
29. *Mouvement laïque québécois v. Saguenay (City)*, *supra* note 26 at paras. 57 and 60. [↑](#footnote-ref-29)
30. *Amer c. Bédard-Lafrance*, 2021 QCTDP 38 at para. 91 *et seq*. [↑](#footnote-ref-30)
31. *Yapi c. Moustafa*, 2021 QCTDP 9 at para. 56 *et seq*. [↑](#footnote-ref-31)
32. *Bombardier, supra* note 6 at para. 48. [↑](#footnote-ref-32)
33. *Ibid*. at para. 56. [↑](#footnote-ref-33)
34. Exhibit P-4, *supra* note 4. [↑](#footnote-ref-34)
35. Exhibit D-4, Policy posted in the convenience store. [↑](#footnote-ref-35)
36. Exhibit P-4, *supra* note 4. [↑](#footnote-ref-36)
37. *Commission des droits de la personne et des droits de la jeunesse (Dorion et une autre) c. Englander*, 2021 QCTDP 17 at para. 53: [translation] “… a fact that arises after the dispute is admissible if relevant”. See also *Commission des droits de la personne et des droits de la jeunesse (Samson-*  [↑](#footnote-ref-37)
38. Exhibit D-3. See also exhibit D-5, which reveals that the police also intervened at the convenience store on September 18, 2019, and on November 28, 2020. [↑](#footnote-ref-38)
39. 2017 QCCA 286 at para. 18, leave to appeal to SCC refused, 37538 (17 August 2017). [↑](#footnote-ref-39)