Translated from the original French

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| Commission des droits de la personne et des droits de la jeunesse (Bazelais) c. Ville de Montréal (Service de police de la Ville de Montréal) (SPVM) | | | | | 2022 QCTDP 6 |
| HUMAN RIGHTS TRIBUNAL | | | | | |
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| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| DISTRICT OF | | MONTREAL | | | |
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| No.: | 500-53-000538-197 | | | | |
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| DATE: | March 3, 2022 | | | | |
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| PRESIDING: | | | THE HONOURABLE | CHRISTIAN BRUNELLE | | |
| WITH THE ASSISTANCE OF ASSESSORS: | | | | Mtre Pierre Deschamps  Mtre Marie-Josée Paiement | |
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| COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, acting in the public interest and on behalf of PAUL BAZELAIS | | | | | |
| Plaintiff | | | | | |
| v. | | | | | |
| VILLE DE MONTRÉAL (SERVICE DE POLICE DE LA VILLE DE MONTRÉAL) (SPVM) | | | | | |
| and | | | | | |
| STÉPHANE MATHURIN | | | | | |
| Defendants | | | | | |
| and | | | | | |
| **PAUL BAZELAIS** | | | | | |
| Victim | | | | | |
| and | | | | | |
| **CENTER FOR RESEARCH-ACTION ON RACE RELATIONS (CRARR)** | | | | | |
| Complainant | | | | | |
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| **JUDGMENT** | | | | | |
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1. The Commission des droits de la personne et des droits de la jeunesse (Commission), acting in the public interest and on behalf of Paul Bazelais, argues that the Ville de Montréal (City) and one of its special units (Éclipse), under the responsibility of police officer Stéphane Mathurin, unlawfully racially profiled Mr. Bazelais during an intervention in a bar, thereby interfering with his rights under the *Charter of human rights and freedoms*[[1]](#footnote-1) (*Charter*) in a discriminatory manner.
2. On behalf of Mr. Bazelais, the Commission asks that the City and Mr. Mathurin be solidarily condemned to pay:

* $35,000 for material injury resulting from loss of wages
* $15,000 for moral injury

1. The Commission also asks that Mr. Mathurin be personally condemned to pay $2,000 in punitive damages for unlawful and intentional interference with Mr. Bazelais’s rights.
2. Moreover, the Commission calls on the Tribunal to make several orders against the City, in the public interest, destined to stop any racial profiling practices within the SPVM.
3. Not only does the City deny that its officers acted in a discriminatory manner in the circumstances, but it also submits that the proceeding brought against it and Mr. Mathurin should be dismissed outright for abuse of procedure due to the unreasonable investigation delays largely attributable to the Commission.
4. On the merits, the City and Mr. Mathurin submit that the Tribunal does not have jurisdiction to rule on the overall police operation and that the intervention concerning Mr. Bazelais was both reasonable and proportionate in light of the information the SPVM had at the time.

# THE ISSUES

1. The Tribunal must decide the following issues:
2. Should the application to dismiss the proceeding due to abusive and prejudicial delays be granted because the time between the filing of the complaint with the Commission and the notification of this proceeding was so unreasonable as to constitute abuse of procedure?
3. Does the wording of the resolution adopted by the Commission[[2]](#footnote-2) limit the Tribunal’s jurisdiction to rule on the overall police operation led by the SPVM?
4. Has the Commission demonstrated on a balance of probabilities that Mr. Bazelais was the subject of racial profiling, thereby interfering with his right to full and equal recognition and exercise of his rights under ss. 1, 4, 24, 24.1, 25, and 28 of the *Charter*?
5. If so, what remedies are justified in the interest of Mr. Bazelais and of the public?

# BACKGROUND

1. Mr. Bazelais is a black, English-speaking man. He is an American citizen who has lived in Montreal since 2007, where he works as a college teacher.
2. On August 31, 2014, Reginald Bernard and Fenol Milien, two black men from the Boston area (USA) were visiting Montreal. Mr. Bernard is Mr. Bazelais’s brother-in-law, while Mr. Milien is an old friend.
3. After walking around a lively downtown core on a warm summer evening, the three men in their forties decided to stop by Thursday’s, a bar on Crescent Street, around 11 p.m.
4. Doormen controlled access to the licensed establishment, which was busy.[[3]](#footnote-3) Mr. Bazelais saw two. One was a black man, and he thought the other was of Arab or Italian origin.
5. Once inside, Mr. Bazelais, Mr. Bernard, and Mr. Milien sat in a section where there were fewer customers and ordered a drink.
6. At one point, Mr. Milien wanted to make a local call. He borrowed Mr. Bazelais’s cell phone and went outside due to the background noise.
7. While he was there, Mr. Bazelais and Mr. Bernard began a quiet conversation with a young woman who was near them.
8. Mr. Bazelais, who could see the outside patio, spotted four police officers in the distance whose uniforms were militaristic, which he found intimidating. He lost sight of them momentarily.
9. Suddenly, they burst in and rushed toward him and Mr. Bernard. The presence of these officers surprised the customers around them.
10. Both men were asked to identify themselves.
11. Mr. Bazelais got up to take his wallet from his pants. An officer immediately grabbed it, went through its contents, and expressed his surprise at the number of credit cards he had, as if their holder might have stolen them.[[4]](#footnote-4)
12. Mr. Bazelais tried on several occasions to find out why he was being questioned but received no answer from the officers.
13. He claims that an officer searched his person and, in doing so, put his hands into each of his pants pockets, which he vehemently opposed but in a calm tone. “You cannot do this”, he said.
14. The officer firmly ordered him to put both his hands behind his back and took him outside, in the alley bordering the establishment.[[5]](#footnote-5) Mr. Bernard received the same treatment and was also escorted by two officers.
15. Mr. Bazelais was pushed against a wall and handcuffed. The belt on his pants was then unbuckled, and the officer swept the inside of his pants with a flashlight.
16. A female officer, who kept her hand on her weapon, observed the scene, which dissuaded Mr. Bazelais from reiterating his questions about why he was being treated this way.
17. He testified that he was not read his constitutional rights.
18. After the search, he tried in vain to find out the name of the police officer and his badge number.
19. Sergeant Mathurin approached him, claiming to be in charge of the operation.
20. According to Mr. Bazelais, the sergeant did not identify himself.
21. Mr. Bazelais once again asked to know the reasons for the intervention and the badge number of the person with whom he was dealing. In response, the sergeant allegedly answered, “If you have a pen, I can write it on your skin”, a remark Mr. Bazelais found dehumanizing.
22. At this point, Mr. Bazelais testified that he was in shock, ashamed, and troubled.
23. A more comprehensive verification of the identity of Mr. Bazelais, Mr. Bernard, and Mr. Milien led to the conclusion that they were not connected to criminal activity, contrary to the information obtained by the police in the minutes following the three men’s arrival at Thursday’s.
24. In that context, the trio wanted to go back inside the bar to continue the conversation they had begun and finish their drinks, but the police informed Mr. Bazelais and his friends that they were no longer welcome in the establishment. According to Mr. Bazelais, “We were told to leave”.

\* \* \*

1. Mr. Mathurin has been a police officer since July 1, 1993.
2. After being a patrol officer for cities north of the metropolitan area, he joined the SPVM in 1995.
3. He developed an interest in teaching police techniques and became an instructor in the use of force as of 1998.
4. The experience he acquired progressively led him in turn to train instructors. He began teaching at the École nationale de police du Québec (ENPQ) and has acted as an expert before the courts a few times.
5. In 2005, on loan to another department, he was the deputy director of operations for the Régie intermunicipale de police de la Rivière-du-Nord, in the Lower Laurentians.
6. In 2006, he was back with the SPVM, promoted to lieutenant.
7. In 2013, he became a supervising-sergeant of operations and joined the ranks of the Éclipse unit,[[6]](#footnote-6) a group of SPVM officers specialized in the fight against gang violence.
8. He explained that a large portion of the work was to create [translation] “through prevention and communication”, a [translation] “relationship of trust” with individuals likely to have information on the activities of the underworld (bar owners, doormen, exotic dancers, street gang members).
9. The SPVM collects the information provided by its officers and compiles this precious knowledge that allows it to know who is active, evaluate the risk of attacks, and adapt its patrols to [translation] “ease tensions”.
10. Mr. Mathurin explained that bar doormen provide invaluable assistance in this respect as their work consists of maintaining order in the private establishment owned by their employers.
11. They sometimes find themselves [translation] “between a rock and a hard place” when members of opposing groups go into the bar. The doormen may fear being personally attacked or find it difficult to remove those who are unwelcome.
12. In 2014, at the time of the facts, Sergeant Mathurin recounted that several criminal organizations with complex structures were operating in the Montreal area, looking to grow their influence, forcefully impose their presence, take control of the drug trade, and profit from prostitution through procuring, etc. He referred to the Italian mafia, motorcycle gangs, but also to over 50 street gangs associated with the Crips – who dominated at the time – and the Bloods.
13. On August 31, 2014, starting at 7 p.m., Sergeant Mathurin was on the job and directing a group of eight police officers from the Éclipse unit in the south west area of the City.
14. At around 11 p.m., he was alone in his patrol car when he received a call on his cell phone.
15. A doorman from Thursday’s (whom we will refer to by the initials D.B.[[7]](#footnote-7)) told him that black men had just entered the bar and that he was afraid for his life.
16. Mr. Mathurin assigned a great deal of credibility to what the doorman told him[[8]](#footnote-8) and explained why.
17. Mr. D. B. is a black man[[9]](#footnote-9) who personally grew up and attended school with street gang members. He is an experienced, reliable doorman,[[10]](#footnote-10) who is not in the habit of alerting the police for nothing.
18. The previous year, he had been working as a doorman in another establishment, where the head of the Crips, Jean-Philippe Célestin, was a regular. Mr. D.B. had received an order from his boss to henceforth refuse to grant this individual and his associates access to the bar.
19. The doorman was then attacked with a knife and seriously injured, making it impossible for him to work for several months. Sergeant Mathurin was aware of that attack.
20. Mr. D.B. had confided in him that he felt threatened and that he was convinced that the Crips had sent henchmen to Thursday’s to [translation] “finish the job”, and [translation] “finish him”.
21. The sergeant detected [translation] “an urgency to act” and mobilized the members of his team to [translation] “intervene quickly”, given the possibility of an assault with a [translation] “high risk potential”.
22. The officers got together and parked the patrol cars in a line on De Maisonneuve Boulevard. Then, for tactical reasons, they continued on foot to the Crescent Street bar.
23. Sergeant Mathurin was leading the march. When they got to Thursday’s, one of the doormen gave him a sign that a black man nearby – it was Mr. Milien – was of interest.
24. With hand signals, the sergeant told two police officers to intercept Mr. Milien, which they did.
25. He then went toward the bar’s main door to meet with Mr. D.B., who was, according to the sergeant, shaking, in tears, and completely distressed.
26. The doorman confirmed the reasons for his call and gave a brief physical description of Mr. Bazelais and Mr. Bernard, pointing in the direction where the two men were seated.
27. The order was given to four officers to [translation] “breach the distance” – according to Mr. Mathurin’s expression – and to quickly intervene with them and look for weapons.
28. Two more police officers set up watch near Mr. D.B., who took refuge on the bar’s second floor and did not see the intervention.
29. Sergeant Mathurin went outside toward the front of the establishment. He glimpsed the four police officers escorting Mr. Bazelais and Mr. Bernard toward the door, near the patio that leads to the alley, but momentarily lost sight of them afterward.
30. The identity of the three men who were intercepted was then confirmed. They were American and did not have criminal records. There was nothing that seemed to connect them to street gangs. [translation] “The search was negative”, added Mr. Mathurin, who had strong doubts by then about a Montreal gang hiring American contract killers to eliminate a doorman like Mr. D. B.
31. The sergeant first informed the doorman that there was [translation] “mistaken identity” before heading to the alley.
32. He testified that he identified himself to Mr. Bazelais who, he noted, was on edge and stressed. He claims that he took the time to give him the reasons for the intervention, but that Mr. Bazelais was not satisfied with his explanations.
33. His dissatisfaction was not lessened when he found out from the sergeant that he was not allowed to go back inside the bar because one of the establishment’s doormen was opposed to it.
34. Cutting any argument short, Sergeant Mathurin and his colleagues withdrew and left the premises.

\* \* \*

1. Once home, Mr. Bazelais could not sleep. He claims to have been devastated and anxious. He still struggles to understand what could have caused him and his friends to draw this type of attention from the police. “I was looking for answers”, he said.
2. The next day, he went back to Thursday’s and spoke with Mr. Sean Brown, the doorman who, the previous evening, had refused to let the three men back inside the establishment following the police intervention. He wanted to know more about the reasons for this intervention.
3. Then, he went to an SPVM neighbourhood police station where he tried in vain to obtain a report of the incident. He was directed to the police headquarters, but everything points to the incident not having been documented.[[11]](#footnote-11)
4. On November 11, 2014, with Mr. Bazelais’s consent,[[12]](#footnote-12) the Center for Research-Action on Race Relations (CRARR) filed a complaint with the Commission.[[13]](#footnote-13) In addition to the City and Mr. Mathurin, the complaint also targeted two other police officers then identified as “John Doe” and “Jane Doe”.
5. On December 9, 2014, Kathrin Peter, an assessment advisor for the Commission, informed the CRARR that she had been [translation] “assigned the file for assessment”. She wanted to meet with Mr. Bazelais during the week of December 15, 2014.[[14]](#footnote-14)
6. On December 19, 2014, the City was informed of the complaint, which was then being assessed [translation] “to determine possible next steps in the file”.[[15]](#footnote-15)
7. On January 9, 2015, counsel for the City voiced her client’s interest in [translation] “taking part in a mediation process in this case”.[[16]](#footnote-16)
8. On January 15, 2015, Mr. Bazelais [translation] “agreed to mediation”.[[17]](#footnote-17)
9. On January 16, 2015, the Commission informed the City that the file had been sent to its mediation department.[[18]](#footnote-18)
10. On April 9, 2015, the City was given the name of the mediator and told that mediation could take place on May 1, 2015.[[19]](#footnote-19)
11. On April 15, 2015, the mediator confirmed that the mediation session would be held on May 1, 2015.
12. On April 27, 2015, counsel for the City informed the mediator that Sergeant Mathurin would not be available and that the search to identify the two other police officers, while started, was not complete, making it necessary to postpone the mediation session.[[20]](#footnote-20)
13. On May 1, 2015, the mediator postponed the mediation session to June 23, 2015.[[21]](#footnote-21) Everything seems to indicate that the parties met with the mediator on that date, without coming to an agreement, however.
14. On September 21, 2015, the City indicated that it had finally discovered the identity of the two officers also concerned by the complaint.[[22]](#footnote-22)
15. The parties were unable to come to an agreement, however, despite the mediator’s help.
16. Thus, on October 22, 2015, the mediator wrote to counsel for the City:

[translation]

We have noted the impossibility, for the time being, of reaching an amicable agreement in this file.

We therefore inform you that the file is being transferred to the Investigation department and that it will be assigned within the next few months.[[23]](#footnote-23)

1. On June 16, 2016, Investigator Omar Edriss of the Commission informed the City that he had been appointed and asked to obtain its version of the facts, in writing, [translation] “by July 4, 2016, at the latest”.[[24]](#footnote-24)
2. The City was unable to communicate its version within that time period.
3. On July 26, 2016, the City sent Investigator Edriss the only document it had in connection with the intervention at Thursday’s on the evening of August 31, 2014.[[25]](#footnote-25)
4. On October 11, 2016, Investigator Serge Marquis of the Commission informed the City that the file had been [translation] “reassigned to him for investigation”. He asked for the names and badge numbers of the officers who intervened with Mr. Bazelais and the City’s version of the facts, [translation] “by October 28, 2016, at the latest”.[[26]](#footnote-26)
5. On December 9, 2016, the Commission’s investigator spoke with Mr. Mathurin and then prepared a document titled [translation] “Statement (by telephone)”.[[27]](#footnote-27)
6. On December 12, 2016, Investigator Marquis sent this document to counsel for the City and asked for Mr. Mathurin to initial each of the pages and add his signature on the last page.[[28]](#footnote-28)
7. In an email dated December 21, 2016, counsel for the City told the investigator that he could not recommend that Mr. Mathurin sign that statement for the following reasons:

[translation]

... because despite the best of intentions, you cannot transcribe verbatim this statement, which lasted 90 minutes; your transcription cannot [translation] “reproduce it faithfully”. In the circumstances, you will understand that we have advised Mr. Mathurin not to sign or initial it.[[29]](#footnote-29)

1. On June 23, 2017, counsel for the City asked Investigator Marquis when he thought he would be able to send her his [translation] “statement of facts” since the [translation] “last step in this file goes back to December 21, 2016”.[[30]](#footnote-30)
2. On August 24, 2017, the investigator sent his statement of facts[[31]](#footnote-31) and asked for the CRARR’s comments,[[32]](#footnote-32) and then those of the City, [translation] “before September 1, 2017”.[[33]](#footnote-33)
3. After obtaining an additional week from the investigator to provide his remarks,[[34]](#footnote-34) counsel for the City sent them on September 6, 2017.[[35]](#footnote-35)
4. Two days later, the CRARR provided its remarks to the investigator.[[36]](#footnote-36)
5. On May 22, 2019, the complaints committee adopted a resolution in which the Commission deemed that:

[translation]

... there is sufficient evidence to conclude that Mr. Bazelais was the subject of differential or unusual treatment by the SPVM officers and Sergeant Stéphane Mathurin, who intervened on August 31, 2014, at Thursday’s due, in particular, to his belonging to one of the groups protected by the *Charter*.[[37]](#footnote-37)

1. On August 26, 2019, the Commission notified this resolution – and the proposed measures of redress it contained – to the City.[[38]](#footnote-38)
2. The City did not follow up on the proposed measures of redress.
3. On October 25, 2019, the Commission filed its originating application.
4. On April 15, 2020, the City served on the Commission a Preliminary application to dismiss the proceeding due to abusive and prejudicial delays.
5. On July 24, 2020, after hearing the parties and deliberating, the Honourable Ann‑Marie Jones rendered judgment and [translation] “**REFERRED** the application to dismiss the defendants’ proceeding due to abusive and prejudicial delays to the judge who will hear the case on the merits”.[[39]](#footnote-39)

# ANALYSIS

## Application to dismiss for abuse of procedure

1. The City argues that the Commission took an unreasonable amount of time to process the discrimination complaint made against it by the CRARR on behalf of Mr. Bazelais. It wrote:

[translation]

Between **November 11, 2014**, the date on which the complaint was served on the CDPDJ, and **October 25, 2019**, the date on which this proceeding was finally notified to the City, **5 years less 17 days passed**;[[40]](#footnote-40)

1. In *Commission des droits de la personne et des droits de la jeunesse (Nyembwe) c. Ville de Gatineau*,[[41]](#footnote-41) the Tribunal recalled:

[translation]

[211] The right of parties involved in a discrimination complaint filed with the Commission to have their complaint dealt with within a reasonable delay is governed by the principles of public law, as are the possible sanctions for undue delay in filing a proceeding before the Tribunal.[[42]](#footnote-42)

1. These principles of public law appear, *inter alia*, from *Blencoe v. British Columbia (Human Rights Commission)*,[[43]](#footnote-43) [translation] “the leading case on the subject”.[[44]](#footnote-44)
2. That judgment confirmed that the time taken by a human rights commission to process a discrimination complaint may exceptionally turn into “abuse of process” if three conditions are present:

[translation]

[81] A review of *Blencoe* establishes that three conditions must be met to support a finding of abuse of procedure justifying the dismissal of the application: (1) a delay in processing the discrimination complaint that can be characterized as excessive or inexcusable; (2) that causes the defendants significant, i.e., actual and serious, prejudice; (3) such that would bring the human rights protection system into disrepute and offend the community’s sense of fairness.[[45]](#footnote-45)

### Processing time

1. The initial complaint concerned two other police officers from the Éclipse unit who intervened directly with Mr. Bazelais on the evening of August 31, 2014.
2. The City acknowledges that a delay of [translation] “nearly five (5) months” was necessary to [translation] “trace the identity of the two (2) unknown police officers” and that this delay is attributable to the City.[[46]](#footnote-46)
3. It laments the delays it attributes to the Commission, however:
4. The delay of one (1) month and eight (8) days between the CDPDJ receiving the complaint and its service on the City (November 11 – December 19, 2014);
5. The delay of three (3) months between the City signaling its interest in participating in a mediation session and the appointment of a mediator (January 9 – April 9, 2015);
6. The delay of one (1) month and one (1) day between the City informing the CDPDJ of the fact that the two unidentified police officers were now known and the transfer of the file to the Investigation department (September 21 – October 22, 2015);
7. The delay of seven (7) months and twenty-five (25) days between the transfer of the file to the Investigation department and the appointment of an investigator (October 22, 2015 – June 16, 2016);
8. The delay of two (2) months and fifteen (15) days between the SPVM sending the documentation requested and the appointment of a new investigator (July 26 – October 11, 2016);
9. The delay of eight (8) months and three (3) days between the transmission of Sergeant Mathurin’s remarks and sending the statement of facts (December 21, 2016 – August 24, 2017);
10. The delay of over twenty-three (23) months and twenty (20) days between the transmission of remarks on the statement of facts and the notification of the CDPDJ’s resolution (September 6, 2017 – August 26, 2019);
11. The delay of two (2) months and three (3) days between the notification of the resolution and the notification of the originating application (August 26, 2019 – October 25, 2019).[[47]](#footnote-47)

[Emphasis in original.]

1. Without saying that the delays of three months or less that appear in sequences (1), (2), (3), (5), and (8) are negligible, most of them can be explained, in large part at least, by their institutional nature.
2. The appropriate processing of a discrimination complaint takes time and will necessarily create administrative delays.
3. Once received, the complaint must first be the subject of a summary assessment, if only to determine whether, on its face, it appears “frivolous” or purely “vexatious”, for example.[[48]](#footnote-48)
4. The persons of interest (victim, complainant organization) must then be contacted. Details may have to be obtained before the person concerned can be informed that a complaint has been made against him or her.
5. The use of mediation, after having obtained the parties’ consent, may also cause delays related to finding a mediator who is available, who must then become familiar with the file, communicate with the parties, and prepare and hold mediation sessions depending on the availability of everyone involved.
6. If mediation fails, an investigation must begin. The person appointed must review the file and then obtain the versions of the parties and witnesses, if any, to prepare the written statement of facts that he or she will submit to the parties for comment,[[49]](#footnote-49) before putting final touches on his or her Investigation report.
7. The [translation] “decision-making step of the administrative process” then begins and, as explained by the Commission’s secretary general and director of administration,[[50]](#footnote-50) it includes six steps:

* Filing the Report for decision on the investigation with the Secretariat;
* Requesting a legal opinion from the head of the Legal Department;
* Sending the file to the Secretariat to establish the complaints committee;[[51]](#footnote-51)
* Holding a session of the complaints committee:[[52]](#footnote-52)
* Drafting the resolution;
* Sending the resolution to the parties.

1. When the Commission deems that there is sufficient proof of discrimination,[[53]](#footnote-53) it will propose measures of redress in its resolution.[[54]](#footnote-54)
2. In the event that the person to whom the discriminatory conduct is attributed ignores the proposal, the Commission’s legal department may be called upon to exercise the appropriate remedy,[[55]](#footnote-55) which may, once again, cause some delays inherent to fully reviewing the file, establishing the strategy (or theory of the case), and drafting the proceedings.

\* \* \*

1. That being said, the delays in sequences (4), (6), and (7),[[56]](#footnote-56) that is, between:

* The transfer of file to the Investigations department and the appointment of an investigator;
* The communication of remarks by Sergeant Mathurin and the sending of the statement of facts; and
* The communication of remarks by the City concerning the statement of facts and the notification of the Commission’s resolution;

are characterized by periods of administrative inactivity that, *prima facie*, appear difficult to explain.

1. The Commission was created by the *Charter*. Inserted under the title “Functions”, section 71 establishes its responsibilities, including the very first which is:

… to make a non-adversary investigation, on its own initiative or following receipt of a complaint, into any situation, ... which appears to the commission to be either a case of discrimination within the meaning of sections 10 to 19 ... ;[[57]](#footnote-57)

[Emphasis added.]

1. Given the importance of this responsibility assigned to the Commission by the legislature, what are we to make of the fact that it took 7 months and 25 days – that is, 238 days – before an investigator was appointed and revealed himself for the first time to the City after mediation failed?
2. Similarly, after informing the Commission that Mr. Mathurin would not sign the transcription of the Statement (given by telephone) written by the investigator, the City waited another 8 months and 3 days – that is, 246 days – before receiving for the purpose of commenting, the first version of the 10-page statement of facts prepared by the investigator.
3. Finally, there were 23 months and 20 days – that is, 719 days – between the moment the City communicated its remarks on the statement of facts and the notification by the Commission of its resolution and the proposed measures of redress it contained.
4. It appears that there were three periods of extended inactivity totalling 1,203 days, or some 40 months, during the processing of Mr. Bazelais’s complaint.
5. As the Tribunal observed:

[translation]

[214] The prolonged periods of inactivity during the investigation and the state or cessation of communication between the parties must be taken into consideration in determining whether the delays that preceded the institution of the proceeding are unreasonable.[[58]](#footnote-58)

1. In this case, there are 4 years, 11 months, and 14 days – that is, 1,809 days – between the time Mr. Bazelais’s complaint was filed and the notification of the proceeding on his behalf by the Commission.
2. It appears that two-thirds of this time was marked, so to speak, by inertia.
3. It must be concluded that there was a lack of diligence largely attributable to the Commission, [translation] “which resulted in an unusually long and unacceptable delay in processing the complaint”.[[59]](#footnote-59)

### Prejudice

1. In *Blencoe*, the Supreme Court of Canada stated that “delay, without more, will not warrant a stay of proceedings”,[[60]](#footnote-60) such that “there must be proof of significant prejudice”,[[61]](#footnote-61) “actual”,[[62]](#footnote-62) “serious”.[[63]](#footnote-63)
2. More recently, the Court of Appeal of Quebec reiterated the double requirement imposed on the party who believes he or she has been harmed by the slowness of the administrative process as follows:

[translation]

When involved in administrative proceedings ... citizens may benefit from certain administrative law remedies if subjected to unreasonable delays that are attributable to the state and that cause a significant prejudice.[[64]](#footnote-64)

(Emphasis in original.)

1. The City argues that the [translation] “excessive and abusive delays in processing this complaint have caused serious prejudice to the defendants and have had a serious impact on their right to make full answer and defence”. In this respect, it wrote:

[translation]

The passage of time will certainly result in making the administration of the defendants’ evidence much more difficult, particularly in this case where, because it was a routine intervention, the officers did not complete a report and so will be unable to refresh their memory;

Indeed, the quality of the testimony of all those involved and those who witnessed the incident on August 31, 2014, can only be seriously affected by the passage of time, particularly in a file, like this one, where the details are very important, and the credibility of all of them will play such a dominant role that this erosion of memory is in itself a serious prejudice;[[65]](#footnote-65)

1. The events underlying the dispute occurred on August 31, 2014. The Commission communicated the discrimination complaint made by the CRARR on behalf of Mr. Bazelais to the City on December 19, 2014. Less than four months had passed since the Éclipse unit had intercepted Mr. Bazelais.
2. From that point, the City was able to take appropriate internal steps to find the officers on duty on the evening of August 31, 2014, and try to reconstruct the events, with the assistance of Sergeant Mathurin and the members of his unit, for the purpose of [translation] “documenting” what was, to them, a mere routine intervention.
3. The rights and freedoms guaranteed under the *Charter* are not dependant on the subjective characterization that police officers give their interventions. The harm a person deems to have suffered from being questioned by the police does not disappear because it is the result of a so-called routine intervention rather than one that is carefully planned and subsequently documented for the purpose of a possible trial.
4. A public body the size of the Ville de Montréal should take reasonable steps to preserve its [translation] “institutional memory”[[66]](#footnote-66)as soon as it finds out that a discrimination complaint has been made against it, which is obviously likely to progress over time until a court rules on it.
5. That said, the indubitable fact that memories fade over time does not, in itself, constitute evidence of an irremediable infringement of procedural fairness:[[67]](#footnote-67)

[translation]

As noted several times in the case law, the mere passage of time does not entail a presumption of inability to make full answer and defence. ... even if it is obvious that memories fade over time, that is not sufficient to establish definite prejudice concerning the production of evidence.[[68]](#footnote-68)

[Emphasis added.]

[Citations omitted.]

1. The Tribunal has had the opportunity of hearing all the witnesses summoned to appear. While it is true that, on occasion, some questions revealed a failing memory in a given witness with respect to a specific detail, the City was clearly able to establish the essential elements of its defence.
2. Sergeant Mathurin, a key witness for the City, was able to testify at length about the nature of the Éclipse unit’s intervention and the circumstances in which it unfolded. Both during his examination in chief by counsel for the City and during his cross-examination by counsel for the Commission, he answered the questions he was asked effectively and with aplomb, sometimes adding nuance, and at other times the details requested. Obviously, the limited and rather minor lapses in memory did not compromise his ability to offer a consistent account of the events.[[69]](#footnote-69)
3. There remains the City’s argument that [translation] “the destruction of medical reports relating to the leaves from work” of Mr. Bazelais [translation] “also cause it definite prejudice” due to the fact that Mr. Bazelais [translation] “attributes these leaves to the police intervention and that he claims the resulting pecuniary losses”.[[70]](#footnote-70)
4. On this point, the evidence of material injury that Mr. Bazelais alleges having suffered is incumbent upon the Commission. It will be up to the Tribunal to assess its value and probative force, in particular in light of the so-called [translation] “best evidence” rule argued by the City in this case.[[71]](#footnote-71)
5. Overall, the Tribunal finds that the City has failed to prove a prejudice so “significant”, “actual”, or “serious”[[72]](#footnote-72) that it would be appropriate to immediately put an end to the dispute based solely on that ground.

### Bringing the human rights protection system into disrepute

1. The City argues:

[translation]

Notwithstanding the foregoing, we respectfully submit to the Tribunal that the delays incurred in this case are so serious that they are in and of themselves prejudicial in that they bring the very meaning of justice and the human rights protection system into disrepute.[[73]](#footnote-73)

[Emphasis added.]

1. In doing so, the City repeats the theory that the passing of an unusually long time when processing a complaint justifies an inference that the person to whom the discriminatory act is attributed suffers, based solely on this, a prejudice justifying a stay of proceedings.
2. In *Commission des droits de la personne et des droits de la jeunesse (Desrosiers et autres) c. Centre de la petite enfance Les Pandamis (Gardeurois)*,[[74]](#footnote-74) argued by the City, 57 months had passed between the filing of the complaint and the moment the proceeding was brought before the Tribunal. Incidentally, in that file, there was a complete lack of communication by the Commission for 43 months.
3. In this respect, the Tribunal concluded:

[translation]

[74] In the opinion of the Tribunal, there is a point where the combined effect of the length of the delay, the extended and unexplained period of inactivity during the investigation, the nature and apparent simplicity of the facts in dispute, the absence of factual complexity requiring the gathering of a significant amount of information, the fact that no undue delay can be attributed to the petitioner since it always acted promptly and in good faith, and the absence of explanations by the Commission at the hearing means that the delay is prejudicial in and of itself to the extent that it offends a sense of decency and fairness, and brings the human rights protection system into disrepute.[[75]](#footnote-75)

[Emphasis added.]

1. In *Commission des droits de la personne et des droits de la jeunesse c. Manoir Archer inc*.,[[76]](#footnote-76) also submitted by the City, a delay of 65 months separated the moment the complaint was filed from its judicialization. The Tribunal concluded that this delay was one that [translation] “is prejudicial in and of itself”[[77]](#footnote-77) because it revealed an [translation] “abuse of procedure”,[[78]](#footnote-78) but nevertheless refused to order a stay of proceedings.
2. The Court of Appeal of Quebec did not call into question the Tribunal’s conclusion on the intrinsically prejudicial nature of the delay but did consider, however, that [translation] “the Tribunal acted unreasonably by failing to order a stay of proceedings”.[[79]](#footnote-79)
3. It remains that a dismissal for abuse of procedure must be an [translation] “exceptional measure reserved for extreme cases”[[80]](#footnote-80) due to its devastating effect on the right of the alleged victim of discrimination to access justice.
4. In *Commission des droits de la personne et des droits de la jeunesse (Asmar) c. Ville de Montréal (Service de police de la Ville de Montréal) («SPVM»)*,[[81]](#footnote-81) the Tribunal granted the application to dismiss brought by the City because 88 months had passed between the moment the discrimination complaint was filed and the originating application:

[translation]

[127]  Everyone is in agreement that proceedings are only dismissed for delays in exceptional cases. Here, the Tribunal is seized of an exceptional case that requires exceptional treatment. A delay of 88 months is, on its face, excessive and unreasonable in the particular circumstances of this case.[[82]](#footnote-82)

[Emphasis added.]

1. In *Miller*,[[83]](#footnote-83) nearly 77 months, that is, almost 6 and a half years, had passed between the filing of the discrimination complaints and the bringing of the proceeding. At trial, the Tribunal pointed out that [translation] “the witnesses’ memories had been seriously altered by the passage of time”,[[84]](#footnote-84) and that [translation] “some of the physical evidence ha[d] been destroyed due to the passage of time”.[[85]](#footnote-85) This led to the observation that there was an [translation] “abuse of procedure” that justified dismissing the Commission’s proceeding:

[translation]

[569] It must be noted that the Commission was unacceptably slow in handling this file, to the detriment of not only the complainant parties, but also the community, which has an important interest in seeing human rights cases decided with diligence by a tribunal. Such delays bring the human rights protection system into disrepute and undermine citizens’ confidence in it.

[570] In the circumstances, considering the 77-month delay, of which 65 months are attributable to the Commission, and the 15-month delay between the adoption of the resolutions by the complaints committee and their notification to the parties, this exceptional case warrants the exceptional remedy of the dismissal of the action.[[86]](#footnote-86)

1. In *Commission des droits de la personne et des droits de la jeunesse (N.R.) c. Procureure générale du Québec (Sûreté du Québec)*,[[87]](#footnote-87) two defendants were each seeking the dismissal of a proceeding that had been brought against them.
2. The processing time for a discrimination complaint leading up to the exercise of the proceeding by the Commission spread over a period of [translation] “5 years, 3 months, and 9 days”, that is [translation] “over 63 months”.[[88]](#footnote-88) Furthermore, one of the defendants was told of the complaint made against it only some 40 months after it had been filed.[[89]](#footnote-89)
3. The Tribunal concluded that the Commission had not been diligent and ordered, at the preliminary stage, a stay of proceedings in favour of each of the two defendants. It explained it as follows:

[translation]

[146] Considering the simplicity of the case, in the absence of any justification whatsoever by the Commission, the time passed is inconsistent with protection of the parties’ fundamental rights, particularly with the protection of the defendant’s rights, including the right to find out within a reasonable delay after a complaint has been filed against it, to allow the party to preserve all the evidence that will allow it to make full answer and defence.

…

[162] The Commission was unacceptably slow in handling this file, to the detriment of all the parties and the community, which has an interest in seeing the dispute decided by the Tribunal.[[90]](#footnote-90)

[Emphasis added.]

1. The Commission has since obtained leave to appeal of that decision.
2. In the judgment granting leave, the Honourable Guy Cournoyer, J.A. noted:

[translation]

[12] Without ruling on the appeal’s chances of success, I deem that the issues raised by the Commission on the Tribunal’s application of *Blencoe*, and, in particular, whether it is possible to rely on a presumed prejudice arising from the mere passage of time, merit the Court’s attention.[[91]](#footnote-91)

[Emphasis added.]

1. It is easily inferred from these remarks that the state of the law remains uncertain on the issue of whether the mere passage of long processing times justifies a presumption that there is a prejudice justifying a stay of proceedings.
2. Given the Tribunal’s conclusion that the City failed to establish, in this case, that it suffered a “significant”, “actual”, or “serious” prejudice – a burden that was incumbent upon it[[92]](#footnote-92) – it appears inappropriate to make up for this shortcoming by applying a presumption that has yet to be clearly defined by the higher courts.[[93]](#footnote-93)
3. Certainly, once again, the human rights protection system implemented by the *Charter* is not improved by long periods of inactivity such as those that characterize the Commission’s investigation.
4. While the delays in this case do not reach the 77 months of *Miller* or the 88 months of *Asmar*, they remain unreasonable and excessive, in particular due to the long periods of inactivity. They [translation] “contribute to bringing the human rights protection system, and therefore the interests of justice, into disrepute”[[94]](#footnote-94) from the perspective of both the victim and the defendants:

[translation]

[239] Like them, the victim suffers prejudice as a result of the delay in processing his or her complaint. He or she experiences the same anxiety related to the Commission’s institutional process, which adds to the anxiety from the situation of discrimination reported. The prejudice suffered as a result of the delay elapsed is all the more significant for the victim, who may not be able to prove the allegations he or she has made.[[95]](#footnote-95)

1. This situation must be judicially condemned:

[translation]

[277] ... this case is another opportunity for the Tribunal to denounce the fact that the Commission does not process the complaints it receives diligently, in the hopes of leading it to do what is necessary so that the delays in processing complaints do not harm the progress on the long road to respecting minority rights.[[96]](#footnote-96)

1. That said, considering that this case raises the delicate issue of racial profiling within the police force, this firm reprobation appears preferable to the ultimate and exceptional sanction[[97]](#footnote-97) that is dismissing the application without deciding it on the merits.
2. [translation] “Administrative ineffectiveness”[[98]](#footnote-98) and the Commission’s flagrant lack of diligence must not have the collateral and prejudicial effect of denying Mr. Bazelais his right to access justice:[[99]](#footnote-99)

[96] ... the dismissal of an application on the ground that the Commission took more time than desirable to process the complaint would amount to sanctioning the alleged victim of discrimination or the complainant even though they are not responsible for the slowness in processing the file. In such case, a second injustice risks aggravating the first.[[100]](#footnote-100)

1. The City’s application to dismiss is therefore dismissed.
2. However, given the lengthy delays, which are largely attributable to the Commission, the Tribunal grants all legal costs to the City, whatever the outcome of the claim.

## Jurisdiction of the Tribunal

1. According to the City, the Tribunal does not have jurisdiction to rule on the overall police operation led by the SPVM. It notes that the discrimination complaint made by the CRARR on behalf of Mr. Bazelais targeted two police officers who were unidentified at the time other than as “John Doe” and “Jane Doe”.
2. Yet, in its statement of facts from August 2017, the Commission’s investigator named only the “Ville de Montréal (SPVM)” and “Sergeant Stéphane Mathurin” as the impleaded parties.[[101]](#footnote-101)
3. The same is true in the resolution adopted by the Commission on May 22, 2019.[[102]](#footnote-102)
4. Citing *Coutu c. Québec (Tribunal des droits de la personne)*,[[103]](#footnote-103) the City insists on the fact that [translation] “the law subjects the denunciation of a presumed victim to a full verification process through investigation”.[[104]](#footnote-104)
5. It argues that the investigator removed any reference to the discriminatory or inappropriate conduct of police officers “John Doe” and “Jane Doe” from his investigation.
6. The City argues that the Tribunal’s jurisdiction arises from the [translation] “full verification” inherent to the investigation and the examination by the Commission of the [translation] “relevance and accuracy of the facts reported by the complainant or that it personally uncovers”:[[105]](#footnote-105)

[57] ... 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.[[106]](#footnote-106)

[Citations omitted.]

1. According to the City, the Tribunal is therefore without jurisdiction to rule on the conduct of the police officers who did not attract the investigator’s attention.
2. The argument has no merit. As a legal person[[107]](#footnote-107) established in the public interest,[[108]](#footnote-108) the City ensures public security on its territory through its police department and physical persons – the chief of police, police officers, other officers, employees[[109]](#footnote-109) – who are part of it and have responsibilities, under the authority of the municipal council.[[110]](#footnote-110)
3. That said, it is trite law that as an employer, the City is liable for injury caused to another by its police officers.[[111]](#footnote-111)
4. It appears clearly from the statement of facts and the wording of the Commission’s resolution that, during his investigation, the investigator devoted himself to gathering evidence [translation] “on the way the [police] intervention unfolded”, which led him to conclude:

[translation]

In the Commission’s view, there is sufficient evidence to conclude that Mr. Bazelais was the subject of differential or unusual treatment by the SPVM officers and by Sergeant Stéphane Mathurin, who intervened on August 31, 2014, at Thursday’s due, in particular, to his belonging to one of the groups protected by the *Charter*.[[112]](#footnote-112)

[Emphasis added.]

1. The fact that the Commission’s judicial action is not directed at a specific police officer does not confer any form of immunity on the City from the discriminatory acts that they might have committed in the exercise of their duties.[[113]](#footnote-113)
2. The Tribunal therefore has jurisdiction to rule on the proceeding, as it is.

## Discrimination by racial profiling

1. In *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*,[[114]](#footnote-114) the Supreme Court of Canada accepted the following definition of “racial profiling” proposed by the Commission:

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 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.[[115]](#footnote-115)

[Emphasis added.]

[Citation omitted.]

1. In *R. v. Le*[[116]](#footnote-116) – which concerned a police intervention, as in this case – the Court repeated the definition while adding the following clarifications:

[76] ... the concept of racial profiling is primarily concerned with the motivation of the police. It occurs when race or racial stereotypes about offending or dangerousness are used, consciously or unconsciously, to any degree in suspect selection or subject treatment ... .[[117]](#footnote-117)

[Emphasis added.]

[Citations omitted.]

1. Thus, in *Nyembwe*, the Tribunal observed that [translation] “[r]acial profiling is anchored to an internal mental process that is held by a person in authority”.[[118]](#footnote-118) These processes may be influenced by unconscious racial stereotypes or prejudices, which requires increased vigilance when assessing the evidence:

[translation]

[196] ... because the treatment used by a person in a position of authority may also be the result of unconscious prejudice, the connection between the differential treatment and a prohibited ground of discrimination is rarely proven by direct evidence but is generally established by inference drawn from circumstantial evidence. Such unconscious prejudice must be capable of being inferred from the evidence as a whole and not solely from the victim’s perception.[[119]](#footnote-119)

[Emphasis added.]

[Citations omitted.]

1. In racial profiling matters, maybe even more than with any other matter, analyzing the overall context in which the police intervention took place appears fundamental:

[translation]

[148] ... evidence of racial profiling, that is, of the connection between the alleged treatment and race, is generally indirect. It is established by taking into account various circumstantial evidence. Because such evidence is very difficult to establish, the courts must, while respecting the standard of the balance of probabilities, be sensitive to the circumstances as a whole and the context to determine whether race or colour, consciously or unconsciously, played a role in the police officer’s alleged behaviour.[[120]](#footnote-120)

\* \* \*

1. That said, two significant contextual elements appear from the facts in dispute.
2. The first is related to “suspect selection”. The police intervention carried out by Sergeant Mathurin and the members of his unit at Thursday’s is not the fruit of a random or intuitive verification, security screening, or a skilfully planned operation arising from their own initiative.
3. It was instead at the specific request of a bar doorman, who claimed to fear for his life, that the Éclipse unit went to the premises. It was this doorman, a black man himself, who gave a brief description of the black men he feared and who told the officers where they were inside the establishment. That is a [translation] “basic, neutral, and objective fact”.[[121]](#footnote-121)
4. In a statement he signed on July 16, 2015, the doorman claimed:

[translation]

In connection with the complaint filed with the Commission des droits de la personne against the police, I, [D. B.] attest that I made an urgent call to the Éclipse police department on the evening of August 30, 2014, from Thursday’s, where I worked. Individuals had chased me the previous evening after my work shift. The evening I called Éclipse, I felt watched, and I feared for my life. I want to inform the Commission des droits de la personne that the officers acted at my request and following my instructions about the look of the individuals who were in Thursday’s and the descriptions I had given them.[[122]](#footnote-122)

1. Incidentally, on August 1, 2016, the CRARR also filed a complaint on behalf of Mr. Bazelais, Mr. Bernard, and Mr. Milien against Thursday’s Restaurant and Bar Inc., nearly two years after the events.[[123]](#footnote-123)
2. After investigating, the Commission ceased any action and closed the file, explaining it as follows:

[translation]

It appears … from the evidence that the doorman at Thursday’s had real reasons to request the intervention of the police on the evening of August 31, 2014, fearing that the [three customers concerned] were on the premises to assault him. According to the Commission, the doormen’s decision to refuse to let them back into the bar following the intervention of the SPVM officers appeared justified in the context and the circumstances revealed by the evidence.[[124]](#footnote-124)

1. To date, in every case where the Tribunal concluded that there was “racial profiling” by the police forces, “the suspect selection”, as it were, was up to the police itself.[[125]](#footnote-125)
2. Admittedly, in *Nyembwe*, the officers involved had first received a call from the 9‑1‑1 emergency service informing them that the spouse of a woman had just left her home on foot after assaulting her. The person working dispatch told them that the man they were looking for was black, 6’1”, had long black hair that was tied up, and was wearing a black coat and gray pants.
3. However, the “suspect selection” was in fact that of the police, the officers on duty omitted the distinctive element of long hair and stopped the first black man they encountered instead.[[126]](#footnote-126)
4. The second significant contextual element refers to the nature of the Éclipse unit.
5. Sergeant Mathurin received the doorman’s call on his personal emergency line. He did not obtain the relevant information through the usual dispatch service for 9-1-1 emergency calls. Instead, he had a telephone conversation directly with the doorman.
6. In his pre-trial examination, he stated, [translation] “At Éclipse, we are trained for that type of intervention inside bars”.[[127]](#footnote-127)
7. In this respect, the Tribunal also heard Commander François Harrison-Gaudreault, who was a sergeant for the SPVM when he joined the new “Éclipse unit” in the summer of 2008.
8. Concerned by the increase in street gang violence, the federal government distributed public funds to large cities to fight this phenomenon more effectively.
9. It was in that context that the specialized unit, Éclipse, was created. Its mandate, as described by Commander Harrison-Gaudreault is to:

* ensure increased police presence in the City (e.g., bars, cafés, schools, metro, etc.) for the purpose of preventing crime;
* develop a network of collaborators (e.g., valets, doormen, regular clients in bars, etc.) and collect information to better target the places frequented by criminal organizations and street gangs;
* intervene to prevent or repress criminal acts to destabilize the targeted groups and reduce their influence;
* support the other SPVM units.

1. Thus, the commander explained that the Éclipse unit’s mission was not to respond to calls from 9-1-1.
2. With respect to street gangs, he confirmed the rivalry that existed in 2014 between the Bloods (in Montreal North) and the Crips (in the St-Michel-Rosemont area), which used violence to monopolize the profits from the sale of narcotics, prostitution, and other fraudulent activities.
3. He spoke of [translation] “disorganized” criminal behaviour that was marked by the impulsiveness of those involved, whose violent acts were sometimes committed [translation] “openly and publicly” without the risk of having to serve a prison sentence deterring them from acting.
4. Therein lay the importance of [translation] “taking the pulse of what was happening”, [translation] “taking the temperature”, as he put it, and creating relationships with individuals like bar doormen. [translation] “We built ourselves a network”, he said.
5. It was specifically this type of [translation] “diplomatic relationship” that Sergeant Mathurin had been able to build with the doorman, who called him directly on his [translation] “professional cell phone” on the evening of August 31, 2014.
6. The sergeant then felt the doorman’s panic and believed him:

[translation]

I gave considerable credence to the doorman’s information because, for me, he is a credible and reliable person. He knows things, and he is an experienced doorman. I know, however, that even me, as an officer, I did not confirm all the information. He did not tell me, [translation] “That’s J-P. Célestin over there”. That would have been a different story. But he told me, [translation] “I’m not sure about these people. Obviously, I’m stuck between ... I have information that appears very credible from the doorman because I respect him. And I didn’t mention it, but the doorman is also a black man, so, it’s ... both doormen are black, so I didn’t even see any connection, personally, to [translation] “Um, I don’t want to see you in the club” or anything like that. It wasn’t even that. That isn’t even close to the issue. I really took it to be reliable information, but at the same time, we didn’t know who these people were. So, it could be, like in this case, ultimately that’s not what it was.[[128]](#footnote-128)

[Emphasis added.]

\* \* \*

1. According to the Supreme Court of Canada, “the fact that racial profiling is recognized as a prohibited form of discrimination [does] not change the two‑step process that applies in the context of a complaint under the *Charter*”.[[129]](#footnote-129)
2. In other words, “whatever form discrimination takes, the two‑step analysis applicable to a complaint under the *Charter* does not change”.[[130]](#footnote-130)
3. The Court recalls the “two-step analysis” that should be followed in these words:

[35] First, 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” ... .

[36] If these three elements are established ... there is “*prima facie* discrimination”. This is the first step of the analysis.

[37] Second, the defendant can then ... justify his or her decision or conduct on the basis of the exemptions provided for in the applicable human rights legislation or those developed by the courts. If the defendant fails to do so, discrimination will then be found to have occurred.[[131]](#footnote-131)

1. Thus, this “two-step process ... successively imposes separate burdens of proof on the plaintiff and the defendant”.[[132]](#footnote-132)
2. As to the degree of proof required, it is “the standard of proof that normally applies in the civil law, namely that of proof on a balance of probabilities”.[[133]](#footnote-133)
3. That said, the Tribunal – inspired by the case law of other specialized human rights tribunals elsewhere in Canada – draws these three [translation] “specific elements that a plaintiff must demonstrate, more particularly, in order to establish racial profiling on a balance of probabilities”:

(1) he or she is (or is perceived as) a member of a group that is characterized on the basis of a prohibited ground of discrimination;

(2) while exercising a right protected by law, he or she was subjected to differential or unusual treatment by a person in authority;

(3) a prohibited ground of discrimination was one of the factors that led the person in authority to apply the treatment in question.[[134]](#footnote-134)

1. Thus, [translation] “[t]he Tribunal’s assessment of the evidence must allow it to conclude that the most rational or likely explanation for the person in authority’s conduct is related to one or several of the prohibited grounds of discrimination set out in section 10 of the *Charter*”.[[135]](#footnote-135)
2. If the evidence of discriminatory profiling is established *prima facie* by the Commission, the defendant must be able to show, based on [translation] “objectively significant elements”,[[136]](#footnote-136) that are [translation] “credible and lawful”,[[137]](#footnote-137) that the action was based on “factual grounds or reasonable suspicion”.[[138]](#footnote-138)
3. That will be the case where there is an intervention based on [translation] “the receipt of information causing the police officer to reasonably believe that the plaintiff broke the law”.[[139]](#footnote-139)

\* \* \*

1. The fact that Mr. Bazelais belongs to a [translation] “group that is characterized on the basis of a prohibited ground of discrimination” is not in question.
2. In its originating application, the Commission alleges the grounds related to “race, colour, ethnic origin, and sex”. In fact, it never spent any time on the ground of “sex” during its submissions before the Tribunal.
3. It is undeniable that Mr. Bazelais has black skin and is African-American.
4. That said, [translation] “the right to equality or non-discrimination is, in its very essence, comparative”:[[140]](#footnote-140)

[141] The first element to establish in discrimination cases is **differential treatment**. With respect to racial profiling, the plaintiff must prove that the treatment to which they were subjected by a person in authority is unusual. In other words, was there, according to the – generally circumstantial – evidence available, improper behaviour by a police officer as compared with usual practices in similar circumstances? Would the officer have acted differently if the complainant had not been a member, or a presumed member, or a group protected by the Charter”?[[141]](#footnote-141)

[Citations omitted.]

1. To be clear, to determine whether Mr. Bazelais was the subject of differential treatment by the officers of the Éclipse unit, it is necessary to ask them whether they would have acted differently toward him had he been a white man.
2. As the Tribunal pointed out in *DeBellefeuille*, [translation] “the question is not whether the police officers’ actions were reasonable, but rather whether they were unusual and discriminatory within the meaning of section 10 of the *Charter*”.[[142]](#footnote-142) The overall police intervention must be analyzed because even the slightest discriminatory consideration is likely to tarnish the intervention irremediably.[[143]](#footnote-143)
3. The factual and circumstantial evidence in this case leads the Tribunal to conclude that Mr. Bazelais was not the subject of discriminatory treatment.

### Report and questioning

1. It was based on a report made by the doorman of Thursday’s that Sergeant Mathurin mobilized the members of the Éclipse unit.
2. He knows this doorman and considers him to be a credible person. There is a relationship of trust between the two men, such that the doorman has his direct number in case of emergency.
3. Sergeant Mathurin heard the fear in the doorman’s voice.
4. A few months earlier, the doorman had been the victim of a knife attack in which he was seriously injured, and he was under the impression that three men who had just entered the bar had come to finish him off.
5. When he got there with his team, Sergeant Mathurin took the doorman aside and saw that he was almost in tears, afraid, and shaking. He obtained a brief description of the individuals and directions on exactly where they were sitting in the establishment. From the bar’s entry hallway, he glimpsed Mr. Bazelais.[[144]](#footnote-144)
6. The order was given to four police officers to go inside to intervene with Mr. Bazelais and his brother-in-law, Mr. Bernard.
7. According to the very definition of “racial profiling”, it occurs when police officers intervene with a black person “without factual grounds or reasonable suspicion”, thereby exposing him “to differential treatment or scrutiny”.[[145]](#footnote-145)
8. Yet, “‘[s]uspicion’ is an *expectation* that the targeted individual is possibly engaged in some criminal activity.”[[146]](#footnote-146) If there is more than “mere suspicion”, the “reasonable suspicion” does not correspond to a “belief based upon reasonable and probable grounds”.[[147]](#footnote-147)
9. The “reasonable suspicion” may indeed rest on a mere possibility of criminal acts. “[T]he reasonable suspicion standard requires only the possibility, rather than probability, of criminal activity”.[[148]](#footnote-148) That is why the expression [translation] “reasonable cause to suspect”, in comparison with [translation] “reasonable grounds to believe”, is a [translation] “less exacting legal standard”.[[149]](#footnote-149)
10. For the Tribunal, the decision to question Mr. Bazelais was based at least on a “reasonable suspicion” in the circumstances.

### Identification and summary pat-down search

1. When they reached Mr. Bazelais, the officers asked him to identify himself. He got up to take his wallet from his back pants pocket. A police officer quickly took it.
2. At the hearing, Sergeant Mathurin explained that it is possible for an ill-intentioned individual to hide, among his or her personal cards, a piece of metal the same size as the cards with sharpened edges that can be used as a weapon, which justifies the speed with which the wallet was taken.
3. Mr. Bazelais complains about the fact that the officer then asked why his wallet contained several bank cards. When asked about this, he claimed:

Q So he [the policeman] took it [the wallet] from you?

A He took it from me, yes, without my permission and he started going through the content of my wallet. Then he said: “What are you doing with all these credits cards?” implying like they were stolen.

Q That’s what you thought?

A Yes, with his tone of voice and the way he said it.[[150]](#footnote-150)

1. It is important to remember that at that specific moment, the police officers thought Mr. Bazelais could be a street gang member who had come to assault the doorman.
2. Commander Harrison-Gaudreault testified that one of the illegal activities in which street gangs are involved is bank fraud (e.g., using stolen or “cloned” credit cards).
3. While it does appear that the question is not directly connected to the fear of being assaulted expressed by the doorman, it is closer to “criminal profiling”[[151]](#footnote-151) than “racial profiling”. It does not appear to be “unusual” but rather consistent with the fact that the Éclipse unit is specialized in fighting against the criminal activities of street gangs.
4. The police officer then informed Mr. Bazelais that he would perform a pat-down search on him. Mr. Bazelais asked to know the reason for this but did not receive an answer.
5. He maintains that the officer put his hands inside his front pants pockets, despite his objection. He said, “You can’t do this, I have rights and you can’t search me without my permission”.[[152]](#footnote-152)
6. Sergeant Mathurin did not witness this search. At the hearing, he expressed doubt, however, about the fact that the officer slipped his hands inside Mr. Bazelais’s pockets. He raised the risk an officer would run of injuring his or her hand if, for example, there was a blunt or sharp object in the pocket.
7. Officer Jérôme Tremblay was part of the group that intervened that night at Thursday’s. He and his colleague, Alexandre Leroux, were on the second floor of the building to question[[153]](#footnote-153) and secure the doorman, who had taken refuge there. [translation] “He was afraid of the people he thought he had recognized”, he said, [translation] “He was terrified. He was really, really scared”.
8. Examined by counsel for the Commission, Officer Tremblay stated:

[translation]

I know that the people were identified and searched, because it was ... it is ... we were looking for a weapon, a knife, if I’m not mistaken[[154]](#footnote-154)

[Emphasis added.]

1. At the hearing, Officer Tremblay stated that street gang members can be unpredictable. [translation] “They could be armed”, he said.
2. Thus, given the doorman’s information, which was *a priori* credible, the Éclipse unit had individualized reasonable suspicion[[155]](#footnote-155) to detain Mr. Bazelais to investigate and perform a search of his person:

[45] ... reasonable suspicion is not “unduly onerous” ... . As a lower standard than reasonable grounds, it allows police additional flexibility in enforcing the law and preventing crime.

…

[46] While the reasonable suspicion standard requires only the possibility, rather than probability, of criminal activity ... , it must also be remembered that it provides police officers with justification to engage in otherwise impermissible, intrusive conduct such as searches and detentions.[[156]](#footnote-156)

[Emphasis added.]

[Citations omitted.]

1. Based on the information the officers had at the time and their duty to protect life and safety[[157]](#footnote-157) to “eliminate an imminent threat to the safety of the public or the police”, they were justified to carry out a summary pat-down search.[[158]](#footnote-158) That search did not represent [translation] “differential or unusual treatment ... as compared with usual practices in similar circumstances”.[[159]](#footnote-159)

### Handcuffing and security search

1. Mr. Bazelais’s insistence on knowing the reasons for his being searched, and his refusal for the officers to go ahead without his authorization, led the officers to take him outside the bar:

A And then [the policeman] said: “Okay, you don’t comply I am going to arrest you”. Then he took my hands and put them behind my back.

Q Which hand did he take?

A Both hands.

Q Both hands?

A Yes.

Q He put them behind your back?

A Yes, and then he forcefully pushed me outside.[[160]](#footnote-160)

1. Sergeant Mathurin explained that it is not unusual to act this way when a small group of officers is questioning someone inside a busy, noisy bar:

[translation]

We know that it’s very dangerous because we do not control the environment. To control the environment, there needs to be more officers, the music has to stop, people have to lay down on the ground, you know, the main ones, that [translation] “Everyone, stop moving. Stop moving.” And that’s not what I wanted to do. I didn’t want to cause a riot, well, not a riot, but an incredible commotion because my objective was to validate ... …

…

The best way, the way, let’s say, the softer, the gentlest way to intervene is to take, to tell the people “We are going to take you outside the bar, please, now”. Then, once outside, we can control the environment, and we can speak to them according to their reactions.[[161]](#footnote-161)

[Emphasis added.]

1. Once escorted to the alley next to the establishment, Mr. Bazelais was placed facing the wall and handcuffed with his hands behind his back.
2. He was then the subject of a more thorough security search given the summary nature of the search performed inside the bar.[[162]](#footnote-162) The contents of his pockets were once again checked. Then, his belt was unbuckled so that the officer – who was still looking for a weapon – could sweep the inside of his pants with a flash light.
3. At that point, Mr. Bazelais knew that a baggie with traces of cocaine had just been found in possession of his friend Milien.[[163]](#footnote-163)
4. The search revealed, however, that neither Mr. Bazelais nor his friends were in possession of any weapons whatsoever.
5. The verifications made in the police data banks concerning the identity and criminal records of the three men – all American citizens – led Sergeant Mathurin and his team to conclude that this was clearly a case of [translation] “mistaken identity”.
6. First, he found it rather unlikely that a Montreal street gang would hire three Americans to come to Quebec to eliminate a mere bar doorman.
7. Second, the attitude of the three men was inconsistent with the one generally observed in street gang members:

[translation]

... the people who exited the bar ... they were people who did not behave in a way that gave me the impression, you know, that ... They were not so aggressive as to say ... Sometimes, we see that, the reactions of armed gangs, they’ll be much more ... They’ll yell; they’ll gesticulate; they’ll manoeuvre specifically to avoid being searched. From memory, these guys did not have that reaction, in the moment.[[164]](#footnote-164)

1. That said, as the Supreme Court of Canada recalls in *R. v. Chehil*:[[165]](#footnote-165)

[28] 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.

[Emphasis added.]

1. That is unfortunately what happened here.

### End of the intervention

1. Mr. Bazelais was freed from his handcuffs as soon as the police officers received confirmation that there was a mistake.[[166]](#footnote-166)
2. What he had just experienced caused him to feel anxious, humiliated, and baffled. “I was shocked for what happened”, he said.  He desperately sought to know the reasons why he and his friends had been the target of this intervention.
3. In light of his insistence, Sergeant Mathurin began a conversation with him.
4. In this respect, the CRARR wrote the following in the discrimination complaint it filed on behalf of Mr. Bazelais:[[167]](#footnote-167)

28. Another officer whose nametag read “Mathurin S.” approached Victim Bazelais and identified himself as the supervisor.

29. Respondent Mathurin asked whether Victim Bazelais and his companions were from the United States, which Victim Bazelais confirmed. Respondent Mathurin stated that the laws in Canada were very different and that the police “could do whatever we want.”

30. Respondent Mathurin stated that if Victim Bazelais wanted to file a complaint, that he was the supervisor and therefore responsible. That was said in a manner that suggested Respondent Mathurin was being sarcastic.

31. Victim Bazelais asked Respondent Mathurin for his badge number. Respondent Mathurin responded by making fun of Victim Bazelais in front of the other officers and bystanders, including a sarcastic offer to write it on Victim Bazelais’ skin if a pen was available. Respondent Mathurin mocked the request for his badge number and make jokes about the shooting of Michael Brown in Ferguson, Missouri.

32. Respondent Mathurin never provided Victim Bazelais with his badge number.

33. At around 11:50 pm, the officers told Victim Bazelais and his companions to leave and that they did not have the right to go back to Thursday’s to finish the drinks they had paid for. The officers told them that if they did not leave they would be arrested. Victim Bazelais and his companions walked to their car and left.

34. The officers never informed Victim Bazelais or his companions of why they were originally suspected of having done anything wrong. No explanation of why Victim Bazelais and Mr. Bernard were associated with Mr. Milien, who was detained outside the bar. No charges were laid, and no statements of offence issued, against either Victim Bazelais or his companions. The officer did not apologize to Victim Bazelais and to his friends for their conduct or provide any explanation.

1. At the hearing, Mr. Bazelais testified in English. Mr. Bernard and Mr. Milien did as well. It is difficult to find that they are fluent in French.
2. For his part, Sergeant Mathurin spoke French before the Tribunal. The two other police officers called to testify, who were on duty in the Éclipse unit on the night of the incident, also testified in French. Furthermore, the list of all the other members of the unit that may have intervened at the time was entirely made up of names that sound like those of French-speaking Quebeckers.[[168]](#footnote-168) It is reasonable to think that communication between them took place essentially in French.
3. Thus, it cannot be excluded that the subjective perception that the remarks were marked by sarcasm or mockery was in part skewed by linguistic misunderstandings.

\* \* \*

1. It is common ground that Mr. Bazelais insisted on being told the badge number of Sergeant Mathurin, who declared:

[translation]

So then, [Mr. Bazelais] said, [translation] “I want the badge number”. So then, I gave him my badge number. Then. He said, [translation] “I want it in writing”. At that point, when he asked for it in writing, I had nothing. Because I don’t have business cards – I do that because … excuse me, it’s my bullet proof vest that’s there, the pocket for business cards that’s there – I don’t have any. I have a notebook, but we are not allowed, according to our instructions, to remove a page from the notebook. In fact, it’s now the law, we have...

…

In criminal matters, we have to hand over our notebooks when we arrest someone, when there are criminal charges. Then, when they take our notebook, well, there can’t be any pages missing from it.[[169]](#footnote-169)

1. Without any business cards or paper at his disposal, Sergeant Mathurin suggested to Mr. Bazelais [translation] “in the heat of the exchange”, he claims, that he write his badge number on his skin.
2. At the hearing, Sergeant Mathurin defended himself from claiming that he intended to personally write his badge number on Mr. Bazelais’s skin claiming that there was [translation] “no benefit to saying such stupid things” that were likely, he agreed, to result in an ethics complaint against him.
3. Thus, in paragraph 94 of its written submissions, the City wrote:

[translation]

He therefore proposed that the complainant write his badge number on his hand. This proposal was not sarcastic for Sergeant Mathurin, who regularly writes notes on the palm of his hand.

1. Given the importance of the notebook[[170]](#footnote-170) for possible purposes of disclosure of evidence,[[171]](#footnote-171) Sergeant Mathurin had ink pens in his possession. He testified that he in fact offered Mr. Bazelais the loan of one, an offer Mr. Bazelais refused.
2. Besides, the Tribunal deems that Mr. Bazelais’s state of shock – which he admits – and the presence of customers and passers-by, background noise, and the fact that Sergeant Mathurin was speaking to him in English (his second language) may have contributed to confusing the communication.
3. As for the possible allusion to the very contemporaneous events surrounding the death of Michael Brown, a young black man who was killed by a police officer in Fergusson, Missouri, it is likely that these events were on the minds of the three American citizens more than on those of the Montreal officers.
4. In fact, Sergeant Mathurin testified that he had just come back from a six-week vacation in Portugal and was not even aware of this recent tragedy. At that point, he says, [translation] “I didn’t even know about that event”.
5. He claims that Mr. Bazelais disapproved of the intervention method used by the Éclipse unit. [translation] “I understand that he was frustrated”, acknowledged Sergeant Mathurin. Seeking to put things in context, he then informed him that police practices in the United States were even [translation] “rougher”, without arguing that the Montreal police was authorized to [translation] “do whatever it wants”.
6. In paragraph 97 of its written submissions, the City asks the Tribunal to accept [translation] “the testimony of Sergeant Mathurin on this aspect of the intervention”:

[translation]

It is much more likely that Sergeant Mathurin tried to emphasize the remorselessness of American police interventions in relation to Canadian ones – especially when they involve black men. This fact is practically considered a matter of judicial notice.

1. The Tribunal accepts the more likely explanations offered by Sergeant Mathurin, who did not act in a discriminatory manner against Mr. Bazelais by saying, rightly or wrongly, that police repression was, in his view, more marked in the United States than in Quebec.

\* \* \*

1. Once the explanations had been given, Mr. Bazelais and his friends wanted to go back inside the bar to resume the conversation and finish their drinks, which they were prevented from doing.
2. Sergeant Mathurin explained that he was not opposed to it but that another doorman at Thursday’s, Mr. Sean Brown, had informed him of his refusal.
3. [translation] “I don’t have the power to force their admittance”, the sergeant regretfully stated as he considered that this decision by the establishment was purely civil in nature and did not therefore fall under police purview.
4. Mr. Bazelais expressed his displeasure with the situation. As for Sergeant Mathurin, he wanted to prevent the situation from escalating.
5. “We were told to leave”, stated Mr. Bazelais, or his friends would be [translation] “arrested”. Mr. Bernard and Mr. Milien had the same understanding of Sergeant Mathurin’s remarks.
6. For his part, Sergeant Mathurin confirmed that he asked them to leave the premises or receive a statement of offence.
7. Obviously the consequences of being [translation] “arrested” are heavier than that of simply being given a statement of offence for failure to circulate or loitering.[[172]](#footnote-172)
8. Mr. Bazelais saw a threat or an attempt to intimidate contrary to the ethical standard applicable where police officers must not “make threats, intimidate or harass”.[[173]](#footnote-173) In this respect, it is noteworthy that Mr. Bazelais’s complaint filed with the Police Ethics Commissioner against Sergeant Mathurin led to a settlement following a mediation session.[[174]](#footnote-174)
9. In addition to the apparent contradiction emerging from the respective testimony of Mr. Bazelais and Sergeant Mathurin on the specifics of the remarks concerning the possible consequences, at the very least, it appears from the evidence that Mr. Bazelais’s insistence urged the sergeant to curtail the argument. [translation] “I couldn’t stay there for an hour”, he said, [translation] “I left on another call”.
10. Punishing the police officer’s impatience or some ethical violation does not fall under the Tribunal’s jurisdiction.

\* \* \*

1. The testimony of Mr. Bazelais, Mr. Bernard, and Mr. Milien are consistent in regard to the fact that the officers’ attitude with them was authoritarian and intimidating. Despite the three men’s repeated requests to find out the reasons for their questioning, the officers ignored them.
2. Sergeant Mathurin explained that the members of the Éclipse unit are instructed to keep their remarks to a minimum.
3. In fact, once the officers were convinced that this was a case of [translation] “mistaken identity”, they expressed no regret, and offered no apologies.
4. Everything indicates that this [translation] “silent police officer” is based on a desire to [translation] “control the message” and minimize, to the extent possible, the risk that an ill-advised remark said in the heat of the moment might lead to ethical or judicial action by citizens who were questioned.
5. While nothing compels officers who commit an error to express regret or apologize, it may be a different story with respect to communicating the reasons justifying detaining a person for the purpose of investigation.
6. In this respect, section 28 of the *Charter* states the following rule:

**28.**  Every person arrested or detained has a right to be promptly informed, in a language he understands, of the grounds of his arrest or detention.

[Emphasis added.]

1. Unlike the Court of Québec or the Superior Court, however, the Tribunal does not have jurisdiction to rule on an allegation that this right was violated.
2. Rather, its jurisdiction is limited to determining whether Mr. Bazelais was denied the recognition and exercise of his right protected under section 28 of the *Charter* for discriminatory reasons.[[175]](#footnote-175)
3. In this case, there is nothing justifying an inference that the instruction to be silent followed by the officers of the Éclipse unit has anything to do with the colour, race, or ethnic origin of the persons questioned.

### Consequences of the intervention

1. In the hours following his questioning, Mr. Bazelais tried in vain to obtain a report of the event.
2. While there is no doubt that the episode he and his two friends experienced had a profound impact on them, it was, for the Éclipse unit, a [translation] “non-event” that was [translation] “open and shut”, to use Commander Harrison-Gaudreault’s expression.
3. He testified that a report is prepared if, for example, there is an arrest following the commission of a criminal offence or if force is used against an individual. The officers limit themselves to documenting significant events, or they would [translation] “become secretaries”.
4. At the hearing, Officer Jérôme Tremblay also claimed that he completes a report only if he must use force to detain or handcuff a person.[[176]](#footnote-176)
5. [translation] “I didn’t note anything significant” during the intervention, declared Sergeant Mathurin, no tackling to the ground, no joint holds, no applying any pressure points, no hitting.
6. As for the search and the use of handcuffs, these are common practice and are not documented by the Éclipse unit when the individuals cooperate. [translation] “It happens a few times a week”, according to Sergeant Mathurin, who considers that there was nothing in particular that justified preparing an incident report in the circumstances.
7. Certainly, the SPVM has a policy on police checks that requires that a record of questioning be completed [translation] “when the information gathered is of interest to the Department’s mission”.[[177]](#footnote-177) However, [translation] “investigative detention” is expressly excluded from the definition of “police checks” under this policy.[[178]](#footnote-178)
8. Finally, Sergeant Mathurin remarked that the Éclipse unit is known to border services. Since incident reports and the identities of those named therein are put into the police department data banks, such a report could have been prejudicial to Mr. Bazelais, and his friends, with respect to their cross-border movement (Canada-United States).

### Conclusion

1. On August 31, 2014, the pleasant evening of three black, American men who are friends ended abruptly following a brief police intervention that mistakenly targeted them.
2. Years later, their feeling of injustice remains intact.
3. It appears from the sincere testimony of Mr. Bazelais that this incident marked him profoundly and that he still feels its prejudicial effects on his health.
4. That said, the Tribunal’s power to grant a remedy is dependant on the observation that the action of the officers was based, in whole or in part, consciously or unconsciously, on the skin colour, race, or ethnic origin of the person questioned.
5. The Tribunal considers that the SPVM’s Éclipse unit, with the credible information it first obtained from Thursday’s doorman, D.B., had “reasonable suspicion” to apprehend Mr. Bazelais and his friends.
6. In this respect, the Supreme Court of Canada noted:

[25] ... In each case, the reasonable suspicion standard is uniquely “designed to avoid indiscriminate and discriminatory” police conduct ... . Courts must be able to assess the extent to which the police, in seeking to form reasonable suspicion over a person or a place, rely upon overtly discriminatory or stereotypical thinking, or upon “intuition” or “hunches” that easily disguise unconscious racism and stereotyping ... . [[179]](#footnote-179)

[Citations omitted.]

[Emphasis added.]

1. For the Court, the existence of this “reasonable suspicion” is precisely an effective means of fighting against racial profiling. This appears explicitly from the definition of “racial profiling” the Court used in *Bombardier*.[[180]](#footnote-180)
2. Recalling the wording of the definition of “racial profiling” drawn from *R. v. Le*[[181]](#footnote-181) – which was in turn inspired by a policy of the Ottawa police department – author David M. Tanovich, a jurist known for his expertise in racial profiling,[[182]](#footnote-182) notes that there is an exception that applies to police officers when a suspect’s colour corresponds to the physical description given of that suspect, when the description given is specific, and the apprehended person reasonably meets this description.[[183]](#footnote-183)
3. Thus, the evidence supports the conclusion that the SPVM’s Éclipse unit must benefit from this exception here, which is more in line with [translation] “criminal profiling”:

[translation]

Criminal profiling is a lawful police practice used to identify a suspect (regardless of visible characteristics); this practice is used following the receipt of information related to criminal activity committed by a person (or persons) fitting a certain description and whose behaviour (modus operandi) was observed before, during, or after the commission of an offence.[[184]](#footnote-184)

1. Some might suggest that there should be a *presumption* of racial profiling reversing the applicable burden of proof when the police intervention concerns a person belonging to a minority vulnerable to this reprehensible practice.[[185]](#footnote-185)
2. However, in the current state of the law, the superior courts have always refrained from creating any type of judge-made presumption to this effect.[[186]](#footnote-186) *Bombardier* reiterates, in the context of allegations of racial profiling, that it is the “standard of proof that normally applies in the civil law, namely that of proof on a balance of probabilities, [that] applies in this case”.[[187]](#footnote-187)
3. As for the treatment suffered by Mr. Bazelais during and after the intervention, it is certainly not beyond reproach. The [translation] “cold indifference” of the police intervention, marked by silence on the reasons for his questioning and a certain insensitivity as to the traumatizing effects that it clearly had on him could all be improved:

[translation]

Citizens must know as soon as possible the reason for the police intervention. Citizens will then be able to make informed decisions and, especially, to not panic out of ignorance as to the actual situation or due to the stress normally created in any human being subjected to police authority.[[188]](#footnote-188)

1. However, nothing indicates that a white man, in the same circumstances, would have been treated differently, that is, in a way that was less intimidating and unsettling, or more focused on dialogue and patience. In other words, as imperfect as it may be, the method used [translation] “would have been the same regardless of the suspect’s colour”.[[189]](#footnote-189)
2. That said, the Tribunal’s mission is to sanction discriminatory acts. It is not within its jurisdiction to determine whether a police intervention was otherwise legal,[[190]](#footnote-190) appropriate,[[191]](#footnote-191) legitimate,[[192]](#footnote-192) or reasonable.[[193]](#footnote-193)
3. The Éclipse unit was created principally to fight against violence perpetrated by street gang members and criminal organizations. The officers who are part of the unit must deal with situations that are often delicate and individuals whose unpredictable actions could compromise public security and their own physical integrity.
4. In *St-Antoine c. R*.,[[194]](#footnote-194) the Court of Appeal of Quebec wrote:

[translation]

[68] ... It is not for us to be armchair quarterbacks to assess the sometimes difficult decisions of police officers, or their actions that are a consequence of the performance of their duties.

1. The Tribunal had the opportunity of hearing Mr. Bazelais. His testimony was sincere and thoughtful. He is a dignified man whose appearance has none of the attributes that would feed the stereotype of a gangster or miscreant.
2. However, as Sergeant Mathurin aptly pointed out about the protection mission entrusted to him:

[translation]

[O]ur police experience is that it’s not because someone says “Hey, I’m good”, that he or she is necessarily good, unfortunately. We would like it to be so, magically, but it is not the case. So we intervene to the best of our knowledge. People, sometimes, will be surprised, and obviously, we take note of that surprise.[[195]](#footnote-195)

1. In fact, on August 31, 2014, Mr. Bazelais may have had the worst surprise of his life. But this regrettable situation is not the result of discriminatory profiling prohibited under the *Charter*.
2. The conduct of the police officers [translation] “must be assessed in light of the situation that was before them, with all of its uncertainties, unknowns, and vagaries, not based on an ideal scenario with the benefit of hindsight”.[[196]](#footnote-196)
3. After examining the evidence as a whole, the Tribunal deems that Mr. Bazelais’s colour, race, or ethnic origin did not have the slightest incidence on the way the police officers treated him during their brief intervention.

## Compensation

1. Because the Commission failed to prove on a balance of probabilities that Mr. Bazelais was the victim of discriminatory profiling, the issue regarding the applicable compensation becomes moot.

**FOR THESE REASONS, THE TRIBUNAL:**

1. **DECLARES** that the period of time between the filing of the complaint with the Commission and the filing of the originating application is unacceptable**;**
2. **DISMISSES** the City’s *Re-re-amended … application to dismiss the proceeding due to abusive and prejudicial delays*;
3. **DISMISSES** the Commission’s originating application;
4. **THE WHOLE,** with legal costs.

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|  | | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **CHRISTIAN BRUNELLE**  **Judge of the Human Rights Tribunal** |
|  | | |
| Mtre Geneviève Griffin  Mtre Christine Campbell | | |
| BITZAKIDIS CLÉMENT-MAJOR FOURNIER | | |
| Counsel for the plaintiff | | |
|  | | |
| Mtre Myrtho Adrien | | |
| GAGNIER GUAY BIRON | | |
| Counsel for the defendants | | |
|  | | |
| Dates of hearing: | November 30, December 1, 2, 3, and 4, 2020, February 16, 17, 18, 2021 | |

1. CQLR, c. C-12. [↑](#footnote-ref-1)
2. Exhibits R-24, P-11, and VDM-4, Resolution CP-752.1. [↑](#footnote-ref-2)
3. Exhibit VDM-20, Pre-Trial Examination of Paul Bazelais, February 3, 2020, at 8: “ ... it was Labor Day week-end and it was full of clientele, there was a lot of people”. [↑](#footnote-ref-3)
4. *Ibid*. [↑](#footnote-ref-4)
5. It is the Nick Auf Der Maur alley, perpendicular to Crescent Street. [↑](#footnote-ref-5)
6. It is the acronym for the **É**quipe **C**orporative de **L**utte, d’**I**ntervention et de **P**révention des **S**ituations **É**mergentes created by the SPVM. [↑](#footnote-ref-6)
7. Section 121 of the *Charter* authorizes this designation by the Tribunal. In fact, the parties themselves referred to the doorman by his initials, in all likelihood to protect his identity for security purposes, so that he could avoid possible retaliation due to his cooperation with police officers. Thus, [translation] “while there is a violation of the principle of the open court system, it is minor”: *S. c. Lamontagne*, 2020 QCCA 663 at para. 38. [↑](#footnote-ref-7)
8. Exhibit P-28, Pre-trial examination of Mr. Stéphane Mathurin, September 28, 2020, at 68. [↑](#footnote-ref-8)
9. *Ibid.* at 69. [↑](#footnote-ref-9)
10. *Ibid.* at 68. [↑](#footnote-ref-10)
11. In actual fact, only one document, titled [translation] “call log” (Exhibit VDM-2), was found in connection with the incident. It was sent to the Commission by the City on July 26, 2016. [↑](#footnote-ref-11)
12. Exhibit R-2, Mandate for representation, October 17, 2014. [↑](#footnote-ref-12)
13. Exhibits R-1 and VDM-1, Complaint of discrimination based on race intersecting with gender and national origin and violation of s. 1, 4, 5, 10, 24, 24.1 and 28 of the Quebec *Charter of Rights and Freedoms*. [↑](#footnote-ref-13)
14. Exhibit C-1, Email from Kathrin Peter, assessment advisor for the Commission, sent to the CRARR. [↑](#footnote-ref-14)
15. Exhibit R-2, Notice of receipt of complaint signed by Kathrin Peter. [↑](#footnote-ref-15)
16. Exhibit R-3, Letter from Mtre Myrtho Adrien. [↑](#footnote-ref-16)
17. Exhibit C-2, Email from Fo Niemi of the CRARR, sent to Kathrin Peter of the Commission. [↑](#footnote-ref-17)
18. Exhibit R-4, Letter transferring the file to mediation, from Kathrin Peter of the Commission. [↑](#footnote-ref-18)
19. Exhibit R-5, Email from the Commission to Mtre Myrtho Adrien. [↑](#footnote-ref-19)
20. Exhibit R-7, Email from Mtre Myrtho Adrien to the mediator. [↑](#footnote-ref-20)
21. Exhibit R-8, Letter from the mediator to Mtre Myrtho Adrien. [↑](#footnote-ref-21)
22. Exhibit R-10, Email from Mtre Myrtho Adrien to the mediator. [↑](#footnote-ref-22)
23. Exhibit R-11, Letter from the mediator to Mtre Myrtho Adrien. [↑](#footnote-ref-23)
24. Exhibit R-12, Letter from Investigator Omar Edriss. [↑](#footnote-ref-24)
25. Exhibit R-13, Letter from Benoît Robitaille, head of archives for the City, to Investigator Edriss. [↑](#footnote-ref-25)
26. Exhibit R-14, Letter from Investigator Serge Marquis to counsel for the Ville, Mtre Jean-Nicolas Loiselle. [↑](#footnote-ref-26)
27. Exhibits C-12, R-16, and P-2, Statement (by telephone) of Mr. Mathurin, as written by Investigator Serge Marquis. [↑](#footnote-ref-27)
28. Exhibit C-10, Letter from Investigator Serge Marquis to Mtre Myrtho Adrien. [↑](#footnote-ref-28)
29. Exhibit R-19, Email from Mtre Myrtho Adrien to Investigator Serge Marquis. [↑](#footnote-ref-29)
30. Exhibit R-20, Email from Mtre Myrtho Adrien to Investigator Serge Marquis. [↑](#footnote-ref-30)
31. Exhibits P-3 and VDM-3, Statement of facts of Investigator Serge Marquis. [↑](#footnote-ref-31)
32. Exhibit C-13, Letter from Investigator Serge Marquis to Fo Niemi (CRARR). [↑](#footnote-ref-32)
33. Exhibit R-21, Letter from Investigator Serge Marquis to Mtre Myrtho Adrien. [↑](#footnote-ref-33)
34. Exhibit R-22, Email from Mtre Myrtho Adrien to Investigator Serge Marquis. [↑](#footnote-ref-34)
35. Exhibit R-23, Email from Mtre Myrtho Adrien to Investigator Serge Marquis. [↑](#footnote-ref-35)
36. Exhibit C-14, Email from Amélie Charbonneau (CRARR) to Investigator Serge Marquis. [↑](#footnote-ref-36)
37. Exhibits R-24, P-11, and VDM-4, Resolution CP-752.1. [↑](#footnote-ref-37)
38. Exhibits R-25 and P-11, transmission slip of the email notification of the proposal for measures of redress. [↑](#footnote-ref-38)
39. Judgment recorded in the minutes following a case management conference held on July 22, 2020. [↑](#footnote-ref-39)
40. *Re-re-amended … application to dismiss the proceeding due to abusive and prejudicial delays*, February 5, 2021, at para. 36 (bold in the original). [↑](#footnote-ref-40)
41. 2021 QCTDP 1 [*Nyembwe*] (Application for leave to appeal dismissed, *Ville de Gatineau c. Commission des droits de la personne et des droits de la jeunesse*, 2021 QCCA 339). [↑](#footnote-ref-41)
42. *Nyembwe*, *Ibid*. at para. 211; *Commission des droits de la personne et des droits de la jeunesse (Faublas) c. Entreprises Bruno Zanetti ltée (Les Déesses Bar Salon)*, 2020 QCTDP 8 [*Faublas*] at para. 32; *Commission des droits de la personne et des droits de la jeunesse (Varin) c. Ville de Montréal (Arrondissement Rosemont—La Petite-Patrie)*, 2021 QCTDP 27 [*Varin*] at para. 77. [↑](#footnote-ref-42)
43. [2000] 2 SCR 307 [*Blencoe*]. [↑](#footnote-ref-43)
44. *Nyembwe*, *supra* note 41 at para. 213. [↑](#footnote-ref-44)
45. *Commission des droits de la personne et des droits de la jeunesse (DeBellefeuille) c. Ville de Longueuil*, 2020 QCTDP 21 (*DeBellefeuille*) at para. 81. [↑](#footnote-ref-45)
46. *Re-re-amended … application to dismiss the proceeding due to abusive and prejudicial delays*, February 5, 2021, at para. 48*.* [↑](#footnote-ref-46)
47. *Ibid.* at para. 47, combined with the Table attributing the delays, prepared by the City. [↑](#footnote-ref-47)
48. Section 77, para. 2(3) of the *Charter*. [↑](#footnote-ref-48)
49. *Regulation respecting the handling of complaints and the procedure applicable to the investigations of the Commission des droits de la personne et des droits de la jeunesse*, c. C-12, r. 5 (“*Regulation*”), s. 7. [↑](#footnote-ref-49)
50. Affidavit of Jean-François Trudel, November 6, 2020, at para. 3. [↑](#footnote-ref-50)
51. Section 61 of the *Charter*. [↑](#footnote-ref-51)
52. Section 2 of the *Regulation*. [↑](#footnote-ref-52)
53. Section 78 of the *Charter*. [↑](#footnote-ref-53)
54. Section 80 of the *Charter*. [↑](#footnote-ref-54)
55. *Ibid*. [↑](#footnote-ref-55)
56. See para. [105] of this judgment. [↑](#footnote-ref-56)
57. Section 77, para. 2(1) of the Charter. [↑](#footnote-ref-57)
58. *Nyembwe*, *supra* note 41 at para. 214; *Varin*, *supra* note 42 at para. 80. [↑](#footnote-ref-58)
59. *Commission des droits de la personne et des droits de la jeunesse (Bisson et autres) c. Ville de Montréal (SPVM)*, 2021 QCTDP 3 [*Bisson*] at para. 137. [↑](#footnote-ref-59)
60. *Blencoe*, *supra* note 43 at para. 101. [↑](#footnote-ref-60)
61. *Ibid.* at paras. 101 and 115 (“*important*” in the French version of the judgment). [↑](#footnote-ref-61)
62. *Ibid.* at para. 133 (“*réel*” in the French version of the judgment). [↑](#footnote-ref-62)
63. *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para. 36; *Behn v. Moulton Contracting Ltd*., 2013 SCC 26 at para. 41 (“*grave*” in the French versions of these two judgments). [↑](#footnote-ref-63)
64. *Donaldson c. Autorité des marchés financiers*, 2020 QCCA 401 (leave to appeal to SCC refused, 39158 (10 December 2020) at para. 53. [↑](#footnote-ref-64)
65. *Re-re-amended … application to dismiss the proceeding due to abusive and prejudicial delays*, February 5, 2021, at paras. 53 and 54. [↑](#footnote-ref-65)
66. *Nyembwe*, *supra* note 41 at para. 244; *LeBlanc v. Dan’s Hardware et al*., 2001 BCHRT 32 at para. 118: “Memories do fade, especially when the hearing occurs some five years after the alleged incident. However, in such cases, the parties have some obligation to preserve their memories and those of their witnesses” [emphasis added]. In *Jacques c. Ultramar ltée*, 2011 QCCS 6020, the Superior Court – per Dominique Bélanger, J. as she then was – agreed, in para. 20, [translation] “that there is in Quebec an implicit duty to preserve evidence based on the requirement of good faith”. [↑](#footnote-ref-66)
67. *DeBellefeuille*, *supra* note 45 at para. 84. [↑](#footnote-ref-67)
68. *Commission des droits de la personne et des droits de la jeunesse (Miller et autres) c. Ville de Montréal (Service de police de la Ville de Montréal) (SPVM)*, 2019 QCTDP 31 at para. 547; *Nyembwe*, *supra* note 41 at para. 256: [translation] “Since the burden of proof in civil matters is that of the balance of probabilities, our system admits that there may exist some incertitude with respect to the facts grounding a judgment, and it does not make much of this uncertainty.” [citations omitted]. [↑](#footnote-ref-68)
69. *DeBellefeuille*, *supra* note 45 at paras. 84 and 85. [↑](#footnote-ref-69)
70. *Re-re-amended … application to dismiss the proceeding due to abusive and prejudicial delays*, February 5, 2021, at paras. 54.3 and 54.4. [↑](#footnote-ref-70)
71. Jean-Claude Royer, *La preuve civile*, 6th ed. by Catherine Piché (Montreal: Yvon Blais, 2020) Title II, chapter VI. [↑](#footnote-ref-71)
72. *Faublas*, *supra* note 42 at para. 41; *DeBellefeuille*, *supra* note 45 at para. 82. [↑](#footnote-ref-72)
73. *Re-re-amended… application to dismiss the proceeding due to abusive and prejudicial delay*, February 5, 2021, at para. 55. [↑](#footnote-ref-73)
74. 2006 QCTDP 11. [↑](#footnote-ref-74)
75. *Ibid*. at para. 74 [↑](#footnote-ref-75)
76. *Commission des droits de la personne et des droits de la jeunesse (Chiquette et une autre) c. Manoir Archer inc*., 2009 QCTDP 14, rev’d 2010 QCCS 4410 and 2012 QCCA 343 [*Manoir Archer*]. [↑](#footnote-ref-76)
77. *Ibid*. at para. 91. [↑](#footnote-ref-77)
78. *Ibid*. at para. 92. [↑](#footnote-ref-78)
79. *Commission des droits de la personne et des droits de la jeunesse c. Manoir Archer inc*., 2012 QCCA 343 at para. 18. [↑](#footnote-ref-79)
80. *Bisson*, *supra* note 59 at para. 163 [citations omitted]. [↑](#footnote-ref-80)
81. 2019 QCTDP 17. [↑](#footnote-ref-81)
82. *Ibid*. at para. 127. [↑](#footnote-ref-82)
83. *Supra* note 68. [↑](#footnote-ref-83)
84. *Ibid*. at para. 550. [↑](#footnote-ref-84)
85. *Ibid*. at para. 552. [↑](#footnote-ref-85)
86. *Ibid*. at paras. 569 and 570. [↑](#footnote-ref-86)
87. 2020 QCTDP 22, leave to appeal granted, 2021 QCCA 495. [↑](#footnote-ref-87)
88. *Ibid*. at para. 139. [↑](#footnote-ref-88)
89. *Ibid*. at paras. 48 and 136. [↑](#footnote-ref-89)
90. *Ibid*. at paras. 146 and 162. [↑](#footnote-ref-90)
91. *Commission des droits de la personne et des droits de la jeunesse c. Procureur général du Québec (Sûreté du Québec)*, 2021 QCCA 495 at para. 12. [↑](#footnote-ref-91)
92. *Donaldson c. Autorité des marchés financiers*, *supra* note 64 at paras. 66 and 67. [↑](#footnote-ref-92)
93. At the time of writing, the Supreme Court of Canada had been deliberating since November 8, 2021, in *Law Society of Saskatchewan v. Peter V. Abrametz* (file No. 39340). The principles in *Blencoe* are at the heart of the judgment appealed before the Court: *Abrametz v. Law Society of Saskatchewan*, 2020 SKCA 81. [↑](#footnote-ref-93)
94. *DeBellefeuille*, *supra* note 45 at para. 98. [↑](#footnote-ref-94)
95. *Nyembwe*, *supra* note 41 at para. 239. [↑](#footnote-ref-95)
96. *Ibid*. at para. 277. [↑](#footnote-ref-96)
97. *Montréal (Ville de) (Service de police de la Ville de Montréal/SPVM) c. Tribunal des droits de la personne*, 2009 QCCA 22 at para. 27. [↑](#footnote-ref-97)
98. *Québec (Commission des droits de la personne et des droits de la jeunesse) c. Sénécal*, 2001 CanLII 13382 (QC TDP) at para. 58. [↑](#footnote-ref-98)
99. In *For-Net Montréal inc. c. Chergui*, 2014 QCCA 1508 at para. 37, the Court of Appeal of Quebec asserted that [translation] “facilitating access to effective justice for potentially vulnerable persons” is part of the [translation] “Tribunal’s fundamental mission”. Citing that same judgment with approval, the Supreme Court of Canada reiterated in *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16 at para. 41, that one of the reasons for the Tribunal’s existence is “to improve access to justice”. See also *Commission des droits de la personne et des droits de la jeunesse (Proulx) c. Centre de la petite enfance "Le Château des adorables"*, 2009 QCTDP 22 at paras. 84 to 86 (quoting the remarks of the former Minister of Justice Gil Rémillard when the Tribunal was created). [↑](#footnote-ref-99)
100. *DeBellefeuille*, *supra* note 45 at para. 96. [↑](#footnote-ref-100)
101. Exhibits P-3 and VDM-3: Statement of facts of Investigator Serge Marquis. [↑](#footnote-ref-101)
102. Exhibits R-24, P-11, and VDM-4: Resolution CP-752.1. [↑](#footnote-ref-102)
103. 1993 CanLII 4285 (QCCA). [↑](#footnote-ref-103)
104. *Ibid*. at 6 (pdf). [↑](#footnote-ref-104)
105. *Ibid.* at 7 (pdf)*.* [↑](#footnote-ref-105)
106. *Mouvement laïque québécois v. Saguenay (City)*, *supra* note 99 at paras. 57 and 60. [↑](#footnote-ref-106)
107. *Charter of Ville de Montréal, metropolis of Québec*, CQLR c. C-11.4, s. 2. [↑](#footnote-ref-107)
108. *Civil Code of Québec*, S.Q. 1991, c. 64 (C.C.Q.), art. 300. [↑](#footnote-ref-108)
109. *Charter of Ville de Montréal, metropolis of Québec*, supra note 107 at s. 107. [↑](#footnote-ref-109)
110. *Ibid*. s. 115. [↑](#footnote-ref-110)
111. Art. 1463 C.C.Q.; *Kosoian v. Société de transport de Montréal*, 2019 SCC 59 at para. 40. [↑](#footnote-ref-111)
112. Exhibits R-24, P-11, and VDM-4: Resolution CP-752.1. [↑](#footnote-ref-112)
113. *Boycott, désinvestissement, sanction, section Québec (Comité de la Coalition pour la justice et la paix en Palestine) c. Ville de Montréal*, 2018 QCCQ 8703 at paras. 82 to 86; *Kosoian v. Société de transport de Montréal*, *supra* note 111 at para. 40: “ ... there are no exceptional rules applicable to the police”. [↑](#footnote-ref-113)
114. 2015 SCC 39, [2015] 2 SCR 789 [*Bombardier*]. [↑](#footnote-ref-114)
115. *Ibid*. at para. 33. It is noteworthy that the SPVM “adopted” this same definition: Exhibit P-26, SPVM “Des valeurs partagées, un intérêt mutuel, Plan stratégique en matière de profilage racial et social (2012-2014)” at 14; *Miller*, *supra* note 68 at para. 168. [↑](#footnote-ref-115)
116. 2019 SCC 34. [↑](#footnote-ref-116)
117. *Ibid*. at para. 76. This definition was accepted by the Superior Court of Quebec in *R. c. Dorfeuille*, 2020 QCCS 1499 at paras. 7 and 38. [↑](#footnote-ref-117)
118. *Supra* note 41 at para. 306. [↑](#footnote-ref-118)
119. *Miller*, *supra* note 68 at para. 196. [↑](#footnote-ref-119)
120. *DeBellefeuille*, *supra*, note 45 at para. 148. See also *R. c. Dorfeuille*, *supra*, note 117 at para. 55. [↑](#footnote-ref-120)
121. *Dowd c. Beaulieu-Dulac*, 2021 QCCQ 4286 at para. 104. [↑](#footnote-ref-121)
122. Exhibits R-17 and VDM-2, Doorman’s written statement at 22. [↑](#footnote-ref-122)
123. Exhibit VDM-8, Complaint(3). After the Tribunal ruled that Mr. Bazelais did not have to give the City a copy of the complaint filed against Thursday’s because the Commission’s investigation process [translation] “benefits from the protection of confidentiality” (judgment recorded in the minutes by the Honourable Ann-Marie Jones, 500-53-000538-197, July 24, 2020), the City lawfully obtained, at the [translation] “judicial phase”, copy of the three complaints through Torrance Ragueneau, representative of Thursday’s. In these circumstances, the duty of confidentiality incumbent on the Commission under s. 95 of the *Charter* is not at issue: see by analogy *Commission des droits de la personne et des droits de la jeunesse (René et autre) c. Montréal (Ville de), Service de police*, 2016 QCTDP 14 at paras. 32 and 33, aff’d 2018 QCCA 1246; *Commission des droits de la personne et des droits de la jeunesse (André) c. Ville de Montréal (SPVM)*, 2019 QCTDP 15 at paras. 9 and 10; *Commission des droits de la personne et des droits de la jeunesse (Essalama) c. Ville de Montréal (SPVM)*, 2021 QCTDP 28. [↑](#footnote-ref-123)
124. Exhibit VDM-7, Resolution CP-752.2, May 22, 2019. [↑](#footnote-ref-124)
125. See *Commission des droits de la personne et des droits de la jeunesse (Rezko) c. Montréal (Service de police de la ville de) (SPVM)*, 2012 QCTDP 5 [*Rezko*] (leave to appeal refused, 2012 QCCA 1501); *Commission des droits de la personne et des droits de la jeunesse (Mensah) c. Ville de Montréal (Service de police de la Ville de Montréal)*, 2018 QCTDP 5 [*Mensah*] (leave to appeal refused, 2018 QCCA 1030); *DeBellefeuille*, *supra* note 45. [↑](#footnote-ref-125)
126. *Nyembwe*, *supra* note 41 at paras. 254, 362, 371, and 379. [↑](#footnote-ref-126)
127. Exhibit P-28, *supra* note 8 at 68. [↑](#footnote-ref-127)
128. *Ibid*. at 68–69. [↑](#footnote-ref-128)
129. *Bombardier*, *supra* note 114 at para. 3. [↑](#footnote-ref-129)
130. *Ibid*. at para. 34. [↑](#footnote-ref-130)
131. *Ibid*. at paras. 35 to 37 [citations omitted]. [↑](#footnote-ref-131)
132. *Ibid*. at para. 55. [↑](#footnote-ref-132)
133. *Ibid.* atpara. 59; *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-133)
134. *Rezko*, *supra* note 125 at para. 177; *Mensah*, *supra* note 125 at para. 68; *Commission des droits de la personne et des droits de la jeunesse (Peart et un autre) c. Ville de Montréal (Service de police de la Ville de Montréal, SPVM)*, 2018 QCTDP 15 at para. 83. [↑](#footnote-ref-134)
135. *Miller*, *supra* note 68 at para. 196. See also *Commission des droits de la personne et des droits de la jeunesse (Dagobert et autres) c. Bertrand*, 2013 QCTDP 6 at para. 145, rev’d in part on other grounds *Bertrand c. Commission des droits de la personne et des droits de la jeunesse*, 2014 QCCA 2199 (leave to appeal to SCC refused, 36275 (28 May 2015); *Rezko*, *supra* note 125 at para. 185; *DeBellefeuille*, *supra* note 45 at para. 155. [↑](#footnote-ref-135)
136. *Nyembwe*, *supra* note 41 at para. 384. [↑](#footnote-ref-136)
137. *DeBellefeuille*, *supra* note 45 at para. 154. [↑](#footnote-ref-137)
138. *Bombardier*, *supra* note 114 at para. 33. [↑](#footnote-ref-138)
139. *DeBellefeuille*, *supra* note 45 at para. 154. [↑](#footnote-ref-139)
140. *Procureure générale du Québec c. Association des juristes de l'État*, 2018 QCCA 1763 at para. 59. [↑](#footnote-ref-140)
141. *DeBellefeuille*, *supra* note 45 at para. 141. See also *Dowd c. Beaulieu-Dulac*, *supra* note 121 at para. 49. [↑](#footnote-ref-141)
142. *DeBellefeuille*, *Ibid*. at para. 180. [↑](#footnote-ref-142)
143. *Rezko*, *supra* note 125 at para. 199; *Mensah*, *supra* note 125 at paras. 266–267. [↑](#footnote-ref-143)
144. Exhibit P-24, Sketch of the inside of the bar (with a note indicating “seats”).  [↑](#footnote-ref-144)
145. *Bombardier*, *supra* note 114 at para. 33. [↑](#footnote-ref-145)
146. *R. v. Kang-Brown*, 2008 SCC 18 at para. 75 [emphasis added]. [↑](#footnote-ref-146)
147. *Ibid*. [↑](#footnote-ref-147)
148. *R. v. Ahmad*, 2020 SCC 11 at para. 46 [emphasis added]. [↑](#footnote-ref-148)
149. Alexandre Boucher, François Lacasse & Thierry Nadon, “La création de la détention pour enquête en common law : dérive jurisprudentielle ou évolution nécessaire? Un point de vue pragmatique”, (2009) 50 *Cahiers de droit* 771 at 776. [↑](#footnote-ref-149)
150. Exhibit VDM-20, *supra* note 3 at 8. [↑](#footnote-ref-150)
151. Exhibit VDM-22, SPVM citizen relations policy, January 26, 2012, at 2. [↑](#footnote-ref-151)
152. Exhibit VDM-20, *supra* note 3 at 9. [↑](#footnote-ref-152)
153. Exhibit VDM-10, Affidavit of Jérôme Tremblay, November 2020. [↑](#footnote-ref-153)
154. Exhibit P-27, Pre-trial examination of Jérôme Tremblay held by videoconference on October 6, 2020, at 21. [↑](#footnote-ref-154)
155. *R. v. Ahmad*, *supra*, note 148 at para. 48. [↑](#footnote-ref-155)
156. *Ibid*. at paras. 45 and 46. [↑](#footnote-ref-156)
157. *Police Act*, CQLR, c. P-13.1, s. 48. [↑](#footnote-ref-157)
158. *R. v. MacDonald*, 2014 SCC 3, [2014] 1 SCR 37 at paras. 40 and 41. [↑](#footnote-ref-158)
159. *Mensah*, *supra* note 125 at para. 227 [citation omitted]. [↑](#footnote-ref-159)
160. Exhibit VDM-20, *supra* note 3 at 8–9. [↑](#footnote-ref-160)
161. Exhibit P-28, *supra* note 8 at 68 and 69. [↑](#footnote-ref-161)
162. Contrary to the facts in *Mensah*, *supra* note 125 at paras. 245 *et seq*., the evidence in this case supports the conclusion that this second search was essentially to complete the first. It is noteworthy that in *Mensah*, the police intervention was carried out under the *Highway Safety Code*, and the patrollers had no credible information that could lead them to suspect that the individual they searched intended to commit an offence. Incidentally, in para. 40 of *Tlayji c. R.*, 2022 QCCA 229, the Court of Appeal recognized that a rather summary first search could be completed by a more thorough search. [↑](#footnote-ref-162)
163. Exhibit VDM-20, *supra* note 3 at 27. [↑](#footnote-ref-163)
164. *Ibid*. at 84. [↑](#footnote-ref-164)
165. 2013 SCC 49, [2013] 3 SCR 220 at para. 28. [↑](#footnote-ref-165)
166. Because [translation] “the purpose of investigative detention is to infirm or confirm a suspect’s involvement in a recent or ongoing offence”, it must be [translation] “brief” and [translation] “in the *short term* lead to either an arrest *or a release*”: Boucher, Lacasse & Nadon, *supra* note 149 at 784 [emphasis added]. [↑](#footnote-ref-166)
167. Exhibits R-1 and VDM-1, supra note 13. [↑](#footnote-ref-167)
168. Exhibit P-15, List of the daily workforce for the Éclipse unit, August 28, 2014. [↑](#footnote-ref-168)
169. Exhibit P-28, *supra* note 8 at 102. [↑](#footnote-ref-169)
170. See e.g., *Wood v. Schaeffer*, 2013 SCC 71, [2013] 3 SCR 1053 at paras. 66 and 67. [↑](#footnote-ref-170)
171. *R. v. Stinchcombe*, [1991] 3 SCR 326. [↑](#footnote-ref-171)
172. *By-law concerning peace and order on public property*, RBCM, c. P-1, s. 1. [↑](#footnote-ref-172)
173. *Code of Ethics of Québec Police Officers*, CQLR c. P-13.1, r. 1, s. 6, para. 2(2). [↑](#footnote-ref-173)
174. Exhibit C-9, Letter from Mtre Hélène Tremblay, Deputy police ethics commissioner, July 9, 2015. [↑](#footnote-ref-174)
175. Sections 10, 71, para. 2(1), 80, and 111 of the *Charter*. In this regard, see: Henri Brun, Guy Tremblay & Eugénie Brouillet, *Droit constitutionnel*, 6th ed. (Cowansville, QC.: Yvon Blais, 2014) at 1074–1075, notes XII-4.110). [↑](#footnote-ref-175)
176. See also Exhibit P-27, *supra* note 154 at 36, 38–39. [↑](#footnote-ref-176)
177. VDM-24, SPVM Policy on Police Checks, s. 4.3. [↑](#footnote-ref-177)
178. *Ibid.* at 2.2. [↑](#footnote-ref-178)
179. *R. v. Ahmad*, *supra* note 148 at para. 25. [↑](#footnote-ref-179)
180. This definition is reproduced in paragraph [173] of this judgment. [↑](#footnote-ref-180)
181. This definition is reproduced in paragraph [174] of this judgment. [↑](#footnote-ref-181)
182. *R. v. Sitladeen*, 2021 ONCA 303 at para. 21. The Commission referred the Tribunal to one of its publications: David M. Tanovich, *The Colour of Justice: Policing Race in Canada* (Toronto: Irwin Law, 2006). [↑](#footnote-ref-182)
183. David M. Tanovich, “Applying the Racial Profiling Correspondence Test”, in Lorne Foster, Lesley Jacobs, Bobby Siu & Shaheen Azmi (eds.), *Racial Profiling and Human Rights in Canada: The New Legal Landscape* (Toronto: Irwin Law, 2018) c. 4 at 83–84. [↑](#footnote-ref-183)
184. Exhibit VDM-22, *supra* note 151 at 2. [↑](#footnote-ref-184)
185. Tanovich, *supra* note 183 at 97–98. [↑](#footnote-ref-185)
186. *Peart v. Peel Regional Police Services*, 2006 CanLII 37566 (ON CA) (leave to appeal to SCC refused, 31798 (30 March 2007) at paras. 136 *et seq.*; *R. v. Sitladeen*, 2021 ONCA 303 at para. 67. [↑](#footnote-ref-186)
187. *Bombardier*, *supra* note 114 at para. 59. [↑](#footnote-ref-187)
188. *R. c. David*, AZ-94031219, J.E. 94-996 (C.Q.) at 13. [↑](#footnote-ref-188)
189. *Dowd c. Beaulieu-Dulac*, *supra* note 121 at para. 136. [↑](#footnote-ref-189)
190. *Mensah*, *supra* note 125 at para. 199. [↑](#footnote-ref-190)
191. *Rezko*, *supra* note 125 at para. 180; *Miller*, *supra* note 68 at paras. 185 and 294. [↑](#footnote-ref-191)
192. *Dagobert*, *supra* note 135 at para. 172. [↑](#footnote-ref-192)
193. *DeBellefeuille*, *supra* note 45 at para. 180. [↑](#footnote-ref-193)
194. 2017 QCCA 2044 at para. 68. [↑](#footnote-ref-194)
195. Pièce P-28, *supra* note 8 at 88. [↑](#footnote-ref-195)
196. *Jean Pierre c. Benhachmi*, 2018 QCCA 348 at para. 30. [↑](#footnote-ref-196)