

**NOVA SCOTIA BOARD OF INQUIRY**

**Date:** July 23, 2024

**File No:** H-21-2174

**Between:**

**Ross Gray**

Complainant

- and -

**Halifax-Dartmouth Bridge Commission  
o/a Halifax Harbour Bridges**

Respondent

- and -

**Commissionaires Nova Scotia**

Respondent

- and -

**Nova Scotia Human Rights Commission**

Party

**Chair:** Benjamin Perryman

**Date of Hearing:** April 16, 18, 2024

**Counsel:** Ross Gray, self-represented

Ronald MacLeod, Counsel for the Halifax-Dartmouth Bridge Commission

Gillian Lush, Counsel for the Commissionaires of Nova Scotia

Kendrick Douglas, Counsel for the Nova Scotia Human Rights Commission

**DECISION**

**Overview**

[1] The complainant was walking his bicycle across the MacDonald bridge. Someone else was unlawfully riding their bicycle at the same time and in almost the same location. Bridge patrol officers mistakenly assumed the complainant was *the* cyclist and erroneously stopped him to investigate a potential by-law infraction.

[2] The complainant alleges that he was racially profiled and discriminated against by the officers. For the reasons that follow, I find that race or colour were not factors in the officers' interactions with the complainant, including the decision to stop him and subsequent treatment.

[3] The test for discrimination has not been established because any distinction and disadvantage that occurred was not "based on" a protected characteristic. The evidence shows the incident was a mistake, not discrimination. Accordingly, this human rights complaint is dismissed.

### **Background**

[4] The Angus L. Macdonald bridge crosses the Halifax Harbour, linking the Halifax peninsula with Dartmouth. It has three lanes for cars, a separated bike lane, and a pedestrian walkway. The bike lane is on the north side of the bridge and the pedestrian walkway is on the south side of the bridge.

[5] The bridge is operated by the Halifax-Dartmouth Bridge Commission, a Crown corporation created by the *Halifax-Dartmouth Bridge Commission Act*, SNS 2005, c 7.

[6] The Bridge Commission contracted with Commissionaires Nova Scotia for operational services, which included collecting tolls, monitoring the bridge, and enforcing provincial and by-law offences on Bridge Commission property.

[7] Some staff with the Commissionaires were appointed special constables pursuant to section 88 of the *Police Act*, RSNS 1989, c 348. Special constables are peace officers when exercising powers of a special constable: *Police Act*, s 88(2).

[8] One of the offences that special constables enforce on the bridge is the prohibition against riding a bicycle other than in the bike lane: *Halifax-Dartmouth Bridge Commission By-law No. 2007-1*, NS Reg 302/2009, s 26(h). Special constables are authorized to prevent or stop such violations and may use reasonable force for such purpose: *Halifax-Dartmouth Bridge Commission Act*, s 26(2). They may also issue summary offence tickets for this offence: *Summary Offence Tickets Regulations*, NS Reg 281/2011, Schedule 19.

[9] On July 17, 2021, the complainant, Mr. Ross Gray, was walking his bicycle across the bridge, Dartmouth-bound, in the pedestrian walkway. This was permissible.

[10] At the same time, another person was riding his bicycle across the bridge in the pedestrian walkway. This was prohibited.

[11] A special constable in training, Mr. Cody Emery, who was driving Dartmouth-bound across the bridge, observed someone riding their bike in the pedestrian walkway. He radioed the operations centre (located on the Dartmouth-side of the bridge) and advised that he was going to park and go talk to the cyclist. Another special constable, Ms. Megan Tizzard, heard the radio report and proceeded on foot to the “bottleneck” to intercept the cyclist.

[12] The “bottleneck” is the area on the Dartmouth-side of the bridge where multiple toll lanes converge into the three car lanes. Haligonians who drive cars or ride the bus across the bridge will know this as the place of organized chaos where traffic collects and drivers try to file onto or off the bridge without causing a fender bender.

[13] The pedestrian walkway also exits the bridge at this point. The walkway is straight for the portion of the bridge crossing the harbour and then veers outwards—to the right if walking from Halifax to Dartmouth—as the three lanes become multiple toll lanes. The operations centre is adjacent to the toll booths at this location.

[14] Pedestrians must continue past the operations centre to the intersection of Wyse Road and Nantucket Avenue. This is the eastern edge of the Bridge Commission’s property. Before this point, there is no place for people using the pedestrian walkway to exit. As a result, anyone using the pedestrian walkway Dartmouth-bound must walk through the “bottleneck” and past the operations centre before exiting the bridge.

[15] As Ms. Tizzard and Mr. Emery were parking their respective vehicles, an operations supervisor, Mr. Joseph Nasrallah, was monitoring surveillance cameras on the bridge. He provided updates on the cyclist’s location on the bridge and that he had just past Gantry 2. The gantries are the overhead structures with the green or red arrows that indicate to drivers which lanes are open. Gantry 2 is the second gantry that one drives under when driving Halifax-bound from the toll booth area.

[16] Ms. Tizzard and Mr. Emery joined each other on the pedestrian walkway and proceeded to the starting point of the “bottleneck” in anticipation of stopping the cyclist when they emerged from the straight portion of the bridge. The operations supervisor radioed: “there’s a biker, I think that might be the one, just nearing our front area now.”

[17] Ms. Tizzard and Mr. Emery briefly engaged the complainant, who at that point was still walking his bike across the bridge. Ms. Tizzard and Mr. Emery thought they had identified the cyclist seen riding his bike across the bridge. They had not.

[18] A short time later, the cyclist who had been riding his bike, continued to ride his bike into the bottleneck. It was at that point that Ms. Tizzard, Mr. Emery, and Mr. Nasrallah realized they stopped the wrong person.

[19] On October 5, 2021, the complainant filed a human rights complaint alleging that the Bridge Commission had discriminated against him in the provision of or access to services or facilities because of his race and colour. He says that the decision to stop him and the way he was treated contravened the *Human Rights Act*, RSNS 1989, c 214, s 5(1)(a)(i)-(j). The Commissionaires were added as a party on March 25, 2022.

[20] One year later, the Nova Scotia Human Rights Commission referred the complaint to a board of inquiry and the Chief Judge of the Provincial and Family Courts appointed me as the chair of the board of inquiry. Unfortunately, an administrative error at the Human Rights Commission led to a three-to-four-month delay in communicating this appointment to the Board.

[21] During pre-hearing case management, counsel for the Bridge Commission advised of their intention to file a preliminary motion concerning the scope of the complaint. On the deadline for filing motion materials, December 8, 2023, counsel indicated that a preliminary motion would no longer be filed.

[22] The merits hearing proceeded on April 16 and 18, 2024. The complainant called himself as a witness. The Bridge Commission and the Commissionaires collectively called Cody Emery, Megan Tizzard, Joseph Nasrallah, and Daryl Lowe. The Human Rights Commission did not call any witnesses.

## **Evidence**

*Ross Gray*

[23] Mr. Gray testified that he was walking his bike across the bridge when he was confronted by Ms. Tizzard and Mr. Emery as he approached the “bottleneck.” He was surprised that he was being stopped since he had not done anything wrong and stated that he was stopped because of the “colour of my skin.”

[24] He indicated that Ms. Tizzard told him that he was not supposed to be riding his bike on the pedestrian walkway. He responded that he did not ride his bike across the bridge and proceeded to walk past Ms. Tizzard toward the operations centre. During this interaction, Mr. Emery did not speak.

[25] He testified that Mr. Emery went into the operations centre, but Ms. Tizzard chased after him and demanded that he stop. Mr. Gray characterized this act of running after him as “aggressive.” Ms. Tizzard caught up to him just past the operations centre and again accused him of riding his bike. Mr. Gray again denied that he had ridden his bike. Ms. Tizzard indicated that they had video of the infraction and Mr. Gray demanded to see the proof. Mr. Gray characterized Ms. Tizzard’s voice as raised and with a sharper tone.

[26] Shortly thereafter, there was an announcement on a loudspeaker saying that someone else was riding their bike on the pedestrian walkway. Ms. Tizzard apologized to Mr. Gray. As Mr. Gray was walking away, he observed a white male riding his bike, who Ms. Tizzard proceeded to stop.

[27] Mr. Gray testified that the stop and following interaction had a very harmful impact on him. When he reached his sister’s house he broke down. He could not sleep properly

for the next few nights. He continues to feel guarded and have issues with going out in public.

[28] One of the reasons why this interaction was so harmful, Mr. Gray said, was that it was the third time he had been stopped by special constables on the bridge. He also found Ms. Tizzard's behaviour aggressive and "totally overboard." He explained that he felt racially profiled because Ms. Tizzard did not believe him when he said he was not riding his bike, and assumed he was lying.

[29] The incident destroyed his trust in the system. As a parent, he felt compelled to educate his son on systemic anti-Black racism in Nova Scotia in a way that he had not done before. He felt racially profiled by the stop and following interaction. He stated that the public does not really understand what it is like to be stopped by a peace officer when you have not done anything wrong.

[30] Mr. Gray described his efforts to seek redress from the Bridge Commission after July 17, 2021. He provided emails he sent to the Bridge Commission the next day. He received a call back the next day (Monday), but he did not answer the call because at that point he wanted a record of all communication with the Bridge Commission.

[31] He received a written response from Alison MacDonald four days later (Exhibit 3), which stated:

HHB wishes to acknowledge and apologize for the confrontation that occurred on Saturday July 17 at 11:25am between yourself and agents of Halifax Harbour Bridges. An internal investigation was conducted in the following days and it is clear you did indeed walk your bicycle across the Macdonald Bridge.

The accusations made at that time were incorrect and unjustified, and for that we are truly sorry. The circumstances that contributed to the situation were human error and the appropriate counselling and administrative action has been taken

regarding those involved. In addition HHB is developing a Standard Operating Procedure to eliminate this type of situation from reoccurring.

Again, please accept our deepest apologies for any trouble this has caused you.

[32] Mr. Gray stated that he was not satisfied with this response and wanted “action” to be taken. In December 2021, he tried to communicate with the Bridge Commission’s equity, diversity and inclusion consultant: Exhibit 4. In January 2022, he filed a complaint with Commissionaires Nova Scotia: Exhibit 5.

*Cody Emery*

[33] Mr. Emery testified that on July 17, 2021 he was a bridge patrol officer and had been in that role for two to three months. He was “unbadged” at that point and not yet a special constable.

[34] He explained that as a bridge patrol officer he was responsible for monitoring the bridge, including for cyclists using the pedestrian walkway. This was done for safety reasons. While biking in the pedestrian walkway was an offence, he explained that their mandate was to educate cyclists about walking across the bridge.

[35] Mr. Emery testified that he was driving Dartmouth-bound, in the lane closest to the walkway, when he observed through his rearview mirror a person riding his bike. He stated that he only got a “glimpse” of the cyclist so could not provide a description of the individual, including the person’s race or skin colour. There was a railing between the driving lane and the walkway that partially obscured his line of sight. He drove through the toll booth, parked his car, and proceeded to intercept the cyclist.

[36] Mr. Emery stated that when he and Ms. Tizzard approached the “bottleneck” they did not have a description of the cyclist from the operations centre, only that the cyclist



was approaching their location. He did not recall anything about the initial interaction between Ms. Tizzard and Mr. Gray.

[37] Mr. Emery did recall trying to get confirmation from the operations centre that they had stopped the right person, but his radio did not work properly. As a result, he went into the operations centre to get face-to-face confirmation from his supervisor. He indicated that his supervisor advised they had the right individual. He then exited the operations centre to rejoin Ms. Tizzard who was with Mr. Gray.

[38] Mr. Emery could not recall anything about this second interaction but does remember the intercom announcement that there was an individual on a bike coming toward them. The announcement would normally have come across their radios, but since those were not working properly, it was made over the intercom.

[39] Mr. Emery stated that race played no factor in the decision to stop Mr. Gray and that he was following the instructions of his operations supervisor.

[40] Once the real cyclist was identified, Mr. Emery and Ms. Tizzard provided education to him on the rules about biking on the bridge.

*Megan Tizzard*

[41] Ms. Tizzard testified that she was a special constable on July 17, 2021 and had been in that role for 9 months.

[42] She explained that as a special constable, she had a mandate to enforce the prohibition of biking on the pedestrian walkway, primarily through public education. The basis for this prohibition and enforcement was public safety.

[43] Ms. Tizzard stated that herself and Mr. Emery had proceeded to the “bottleneck” to wait for the person who had been seen riding their bike. She could not recall with any detail the first interaction she had with Mr. Gray at this location but did recall that he denied riding his bike. She remembered asking Mr. Emery to radio the operations centre to check whether they had stopped the right person. She explained that her practice was to obtain confirmation of an infraction if she did not see it herself. However, the radio failed, so Mr. Emery had to go inside. As a result, she was relying on the operations supervisor to determine they had stopped the right person.

[44] Ms. Tizzard testified that she had to jog after Mr. Gray to catch up with him. She knew that it would only take Mr. Emery a short time to confirm identity. During this second interaction, she asked Mr. Gray to step to the side so that they were not blocking the sidewalk. She did not recall asking for any identification from Mr. Gray.

[45] Ms. Tizzard stated that Mr. Gray became visibly agitated during this interaction and raised his voice. She stated that she tried to de-escalate the situation as best she could. She indicated that she herself became frustrated during the interaction, recalling that at one point she had to say “don’t turn your back on me.” She agreed that her tone may have been “sharp” at that point. She explained that as a “woman in this field” it is sometimes necessary to speak firmly with the public because “people tend to question my authority.” Ms. Tizzard apologized to Mr. Gray as soon as the intercom announcement made her realize a mistake had been made.

[46] She could not remember her subsequent interaction with the person who was actually riding his bicycle, but she testified that she was likely explaining the applicable rules

given her hand gestures that can be seen on the surveillance video. She did not recall issuing this person a ticket and could not recall ever issuing such a ticket.

[47] Ms. Tizzard testified that race was not a factor in her decision to stop Mr. Gray. She explained she lacked a description of the cyclist but knew a cyclist had just passed Gantry 2 and would be approaching imminently. While she normally would not have stopped someone who was walking their bike, the information she received from the operations supervisor and the timing between that information and seeing Mr. Gray led her to conclude this was the person seen riding his bike.

*Joseph Nasrallah*

[48] Mr. Joseph Nasrallah was an operations supervisor with the Bridge Commission on July 17, 2021. He had been in that role for approximately two years. He was responsible for public safety and maintaining traffic flow. He described several types of safety-related incidents that could require his response.

[49] Part of the operations supervisor duties is monitoring closed circuit television from the approximately 40-50 surveillance cameras across the bridge. Some of these cameras could zoom but many could not. There were also blind spots where there was no camera footage.

[50] The monitoring was done on a system of large and small monitors in the operations centre that the operations supervisor controlled. What was on each monitor could be customized, but there would normally be streams from at least ten cameras showing at any given time.

[51] Mr. Nasrallah explained that there are many instances of bikers travelling on the pedestrian walkway. He described the normal response to such activity, which was either to make the person turn around and use the bike lane or make them dismount and give them a verbal warning.

[52] Mr. Nasrallah described the level of detail that the cameras could provide. It was “very poor” but could show if a person was walking or biking and their rate of speed.

[53] Mr. Nasrallah testified that when he would see a person biking in the pedestrian walkway, he would track that person’s progress across the bridge so that they could be intercepted once reaching the Dartmouth side.

[54] Mr. Nasrallah recalled that on July 17, 2021, one of the bridge patrol officers came to speak with him to confirm that they had stopped the right individual. Mr. Nasrallah indicated that he would have rescanned the live feed of cameras to ensure that there were no other bikers on the bridge and stated that none could be seen at the time. Rewatching previous footage was not something that could be done on a short timeframe but could be done as part of a more thorough investigation.

[55] Mr. Nasrallah could not remember precisely when he realized there was another person riding their bike on the pedestrian walkway. He could not remember what camera angle he was viewing at the relevant time. As soon as he realized the error, he advised the bridge patrol that there was visual of another biker actually riding his bike. He could not recall what he did next at that point.

[56] Mr. Nasrallah explained that the only factor involved in the decision to stop Mr. Gray was public safety. Mr. Nasrallah made what he described as an “assumption” that the

person walking his bike had to be the person who he observed riding his bike on the pedestrian walkway.

*Daryl Lowe*

[57] Mr. Daryl Lowe is the operations manager for the Bridge Commission and has been in that role for seven years. He testified that he is responsible for the administration of the security services contract. This includes managing about 45 people: bridge attendants (26), bridge patrol (10), operations supervisors (8), and senior administrators (3).

[58] The Bridge Commission previously contracted with Commissionaires Nova Scotia for security services, but no longer uses them as the provider. Special constables are part of these security services contracts and responsible for traffic and public safety.

[59] Mr. Lowe explained that special constables have peace officer authority on Bridge Commission property but can also lay charges elsewhere if the offence occurs on the Bridge Commission property. One of the responsibilities of special constables is to enforce the prohibition against biking in the pedestrian walkway, primarily through education. Mr. Lowe stated that they have authority to ticket for this offence, but he has never seen such a ticket issued. His direction to bridge patrol officers is to educate.

[60] He testified that it is not unusual for cyclists to ride across the bridge and dismount just before they reach the operations centre. He also testified that it is not unusual, particularly in the context of vehicle stops, for people to initially deny they had committed a by-law offence.

[61] Mr. Lowe explained that in the summer of 2021, he gave a direction to bridge patrol to stop cyclists riding in the pedestrian walkway, not to ask for identification, and instead

to provide public education. Bridge patrol was also directed to record such incidents. Mr. Lowe explained this was in response to an increase in complaints from the public about cyclists using the pedestrian walkway. As a result, they had to put “greater heat and light on the situation” and bridge patrol was directed to increase visibility and increase interventions if required. The Bridge Commission also engaged in a public education campaign, including with the support of Cycle Nova Scotia.

[62] Mr. Lowe described the camera infrastructure on the bridge and how it was impacted by the “Big Lift” construction project that changed the structure of the bridge. The Big Lift involved replacing whole sections of the bridge by lifting new sections from the ocean below. It resulted in a higher centre point for the bridge and changed the rise of the road and walkway. This disrupted camera profiles and severed various communications cables for the cameras. At the time, the camera system had been identified as being beyond its useful life and requiring replacement. The Bridge Commission had begun the replacement process and issued a request for proposals but did not want to fully execute that process until after the Big Lift was completed.

[63] Mr. Lowe described the new camera system that has been put in place. It removed surveillance blind spots, increased the number of pan/tilt/zoom cameras, and created the ability to automatically track the progress of a person as they cross the bridge.

#### *Documentary evidence*

[64] The Board received nine exhibits:

- Exhibit 1: USB containing surveillance video;
- Exhibit 2: Human rights complaint dated October 5, 2021 and amended March 25, 2022;

Exhibit 3: Emails between Ross Gray and Alison MacDonald dated July 18 and 22, 2021;  
Exhibit 4: Emails between Ross Gray and Stephen Grant dated December 28 and 29, 2021;  
Exhibit 5: Commissionaires of Nova Scotia Comment/Complaint Form dated January 25, 2022;  
Exhibit 6: Transcript of radio communication from July 17, 2021;  
Exhibit 7: Halifax Harbour Bridges Statement of Cody Emery undated;  
Exhibit 8: Halifax Harbour Bridges Statement of Megan Tizzard undated; and  
Exhibit 9: Halifax Harbour Bridges Statement of Joseph Nasrallah undated.

## **Chronology**

[65] The following chronology is based on Board's review of radio transmissions and surveillance video in evidence:

- 1110: Mr. Gray begins to walk his bike across the bridge: Exhibit 1, Cam 3 2021-07-11 11\_10\_34 AM.
- 1111: Mr. Gray continues to walk his bike across the bridge: Exhibit 1, Cam 52 2021-07-17 11\_11\_48 AM.
- 1123: Mr. Emery advises the operations centre that there is someone on the pedestrian walkway who is biking Dartmouth-bound. He indicates that he is pulling through the toll booth, will park his car, and "go talk to him": Exhibit 1, Audio Footage.
- 1125: The operations supervisor advises Ms. Tizzard and Mr. Emery "that biker's just passed Gantry two now" and should be getting close to the "bottleneck". A cyclist can be seen biking past Gantry 2 before disappearing into a surveillance blind spot: Exhibit 1, Audio Footage; Exhibit 1, Cam 59 2021-07-17 11\_25\_27 AM.
- 1125: Ms. Tizzard can be seen walking away from the operations centre Halifax-bound; Mr. Emery exits the operations centre shortly after and walks after her; the two stop at the start of the "bottleneck" at 1126: Exhibit 1, 2021-07-17 1\_25\_16 AM; Exhibit 1, Cam 143 2021-07-17 11\_25\_25 AM; Exhibit 1, Cam 59 2021-07-17 11\_25\_27 AM.
- 1126: Mr. Gray appears on the surveillance, walking his bike Dartmouth-bound, shortly after the officers join each other. There is a pedestrian just in front of Mr. Gray. Ms. Tizzard engages Mr. Gray for approximately 10 seconds during which time he slows his walking pace, does not stop, and walks by Ms.

Tizzard to the right. The other pedestrian stops briefly to observe the interaction and then continues. Ms. Tizzard and Mr. Emery appear to have a brief exchange, and then begin walking back toward the operations centre and Mr. Gray, who at that point is approximately 10 metres away from the officers: Exhibit 1, 2021-07-17 1\_25\_16 AM; Exhibit 1, Cam 59 2021-07-17 11\_25\_27 AM; Exhibit 1, Cam 143 2021-07-17 11\_25\_25 AM.

- 1127 The officers, who are still walking, reach the door to the operations centre. Mr. Emery goes in the building. Ms. Tizzard begins to jog to catch up to Mr. Gray and reaches him just past the operations centre building. She stands in front of Mr. Gray blocking his path. Ten seconds later Mr. Emery exits the building and joins Ms. Tizzard and Mr. Gray: Exhibit 1, 2021-07-17 1\_25\_16 AM; Exhibit 1, Cam 144 2021-07-17 11\_26\_59 AM.
- 1128 A person appears riding his bike Dartmouth-bound. At this point, Mr. Gray can be seen walking away from the officers. The officers begin to walk Halifax-bound to intercept the cyclist: Exhibit 1, 2021-07-17 1\_25\_16 AM; Exhibit 1, Cam 144 2021-07-17 11\_26\_59.
- 1129 The cyclist dismounts and the officers stop him just outside the doorway to the operations centre. At this point, Mr. Gray is at the south-west corner of the Wyse Road and Nantucket Avenue intersection. The officers speak with the cyclist for approximately 90 seconds. During this time the camera zooms in for a close-up shot of the interaction: Exhibit 1, 2021-07-17 1\_25\_16 AM.
- 1130 The officers go into the operations centre for approximately 30 seconds while the cyclist waits outside. Ms. Tizzard exits the building and speaks to the cyclist. She can be seen pointing her finger in various directions while speaking: Exhibit 1, 2021-07-17 1\_25\_16 AM.
- 1131 Mr. Emery exits the building and joins Ms. Tizzard with the cyclist. The conversation continues: Exhibit 1, 2021-07-17 1\_25\_16 AM.
- 1132 The officers end their conversation with the cyclist who continues on his way: Exhibit 1, 2021-07-17 1\_25\_16 AM.

## **Analysis**

### *Test for Discrimination Under the Human Rights Act*

[66] Section 4 of the *Human Rights Act*, RSNS 1989, c 214 defines discrimination and is the starting point for analyzing whether discrimination has occurred. It provides:



For the purpose of this Act, a person discriminates where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic, referred to in clauses (h) to (v) of subsection (1) of Section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or a class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.

[67] Section 5 of the Act prohibits discrimination in several areas, including the “provision of or access to services or facilities” asserted by the complainant. Section 6 creates exceptions to the prohibition against discrimination.

[68] Based on this statutory scheme, to establish discrimination a complainant must prove on a balance of probabilities:

- a. that they experienced a direct or indirect distinction whether intentional or not;
- b. that the distinction was based on a real or perceived protected characteristic; and
- c. that the distinction imposed disadvantage on them or denied them benefits in a way that is different from others: *Disability Rights Coalition v Nova Scotia (Attorney General)*, 2021 NSCA 70 at para 105.

[69] If discrimination under this test is established, the burden shifts to the respondent to justify their conduct in accordance with section 6 of the Act: *Canadian Elevator Industry Welfare Trust Fund v Skinner*, 2018 NSCA 31 at para 37.

#### *The “Based On” Requirement and Racial Profiling*

[70] The parties agree that the first step of the discrimination test is met. Mr. Gray experienced a direct distinction in the provision of or access to services or facilities. He was stopped by officers on the bridge when he should not have been stopped. But the parties disagree about whether this interaction was “based on” race or colour. As a

result, much of the inquiry focused on the circumstances surrounding the initial decision to stop Mr. Gray, the following interactions, and what inferences could properly be drawn from this evidence.

[71] The second element of the discrimination test—the “based on” requirement—recognizes that not all distinctions are discriminatory, even when the distinction causes harm. It is the link between the distinction and the protected characteristic that triggers the possibility of a human rights remedy: *McGill University Health Centre (Montreal General Hospital) v Syndicat des employés de l'Hôpital général de Montréal*, 2007 SCC 4 at para 49. That link does not require evidence of discriminatory intent, but it must be sufficient: *Canadian Elevator Industry Welfare Trust Fund v Skinner*, 2018 NSCA 31 at para 36.

[72] The “based on” element does not require a causal connection between the distinction and the protected characteristic. It is enough that the protected characteristic was a factor or was connected to the impugned conduct: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para 52.

[73] Where discrimination on grounds of race or colour is alleged, the concept of racial profiling is helpful for analyzing the “based on” element of the discrimination test. In *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para 33, the Supreme Court of Canada described racial profiling as follows:

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. [Emphasis in original]

[74] Human rights case law recognizes there is often limited direct evidence of racial discrimination. The “connection” or “factor” played by race in a particular distinction may be inferred from the surrounding circumstances. Relevant considerations include whether the respondent’s conduct was abnormal, disproportionate, discourteous, or inexplicable: *Symonds v Halifax Regional Municipality (Halifax Regional Police Department) (Re)*, 2021 CanLII 37128 (NS HRC) at paras 113-119 (NS HRC); *Lawrence v Searidge Foundation Inc*, 2020 CanLII 49269 (NS HRC); *Johnson v Halifax Regional Police Service*, 2003 CanLII 89397 at paras 8, 57 (NS HRC).

[75] In summary, the board must be satisfied, on a balance of probabilities, that there was a “connection” between race or colour and the impugned distinction or that race or colour was a “factor” in the distinction. Race or colour does not have to be the only explanation for the distinction, but it must be more likely than not that there was a sufficient link between race or colour and the distinction.

#### *Application of the Test to this Complaint*

[76] The first and third elements of the discrimination test were established in this inquiry.

[77] The distinction was direct, albeit unintentional. The complainant was mistakenly stopped by the officers when he should not have been. He had not committed an offence. He had the right to be left alone.

[78] The officers' conduct imposed disadvantage on the complainant that was different from others. The pedestrian who was immediately in front of the complainant was permitted to cross the bridge unencumbered. The complainant, by contrast, was treated differently. He was subjected to a false allegation of wrongdoing and denied the right to move freely without interference.

[79] The complainant submitted that this differential treatment was because of his race or colour. He reached this conclusion because this was the third time he had been stopped on the bridge and because the officers' conduct was excessive.

[80] The Commission submitted that while the initial decision to stop the complainant could not have been race-based, the decision to pursue him was unnecessary, disproportionate, and unjustified.

[81] The respondents denied that race played any factor in how the complainant was treated. They characterized the treatment as a mistake arising from the unfortunate reality that there were two people with bicycles on the bridge in proximity, the complainant lawfully walking his bike and another person unlawfully riding his bike.

[82] In my view, race was not likely a factor in the officers' decision to stop the complainant. The officers did not have a description of the cyclist who had been observed riding on the pedestrian walkway. The radio communication reveals that a decision to "go talk to him" was made before there was any further visual of the cyclist. The video surveillance (Exhibit 1, Cam 143 2021-07-17 11\_25\_25 AM) shows the officers walking toward the "bottleneck" before the complainant is clearly visible. When he became visible for the first time, there was some distance between him and the officers.

[83] In any event, the officers were already prepared to intercept the cyclist who was about to arrive at their location. This is because the officers had received radio confirmation from the operations supervisor that the person riding their bicycle had just past Gantry 2 and would be approaching the “bottleneck” shortly.

[84] The available surveillance footage the operations supervisor used to make this determination (Exhibit 1, Cam 59 2021-07-17 11\_25\_27 AM) is clear enough to show someone riding their bicycle past Gantry 2 but too far away to reveal the race, skin colour, or any other features of that person. Accordingly, race or colour could not have been a factor in the operation supervisor’s assessment.

[85] The surveillance confirmation provided by the operations supervisor to the officers coincided temporally with when the complainant came around the corner and approached where the officers had stopped to intercept the cyclist. Based on deductive reasoning, the officers had reasonable grounds to believe that the next cyclist approaching where they were stationed was *the* cyclist they intended to stop. They were mistaken, but their deductive reasoning was sound in the unique circumstances of this case.

[86] The complainant did not provide detailed evidence on the other times he says he was stopped on the bridge. In any event, even if this evidence were fully accepted, it would not change my finding that the decision to intercept the next cyclist coming toward the “bottleneck” was made before the race or colour of that person could be ascertained. As such, the complainant has not established on a balance of probabilities that the officers’ initial decision to intercept him was “based on” his race or colour.

[87] This leaves the board to consider how the complainant was treated when he was initially intercepted, the officers' decision to pursue the complainant, and how the complainant was treated during the second more lengthy interaction.

[88] The officers' first engagement with the complainant at the "bottleneck" lasted approximately 10 seconds: Exhibit 1, Cam 143 2021-07-17 11\_25\_25 AM 11:26:30-11:26:40. If there was a stop at this time it was fleeting at best. The complainant can be seen walking toward the officers, slowing his pace, engaging in some words, and then walking off. All the parties appear calm.

[89] The complainant's concerns with this interaction are that he was stopped in the first place and that he was wrongly accused of riding his bike. Neither of the officers could remember much about this very brief interaction. I accept the complainant's recollection of this interaction. It is more likely than not that he was accused of riding his bicycle across the bridge, either explicitly or implicitly.

[90] For the reasons already provided, however, the officers' accusation was wrong but reasonable in these circumstances. They had grounds, both subjective and objective, to believe that the next person with a bicycle arriving at their location was *the* cyclist they were trying to intercept. There was nothing abnormal, disproportionate, discourteous, or inexplicable with questioning the complainant about a potential offence. There is no evidence that the manner of this questioning was improper.

[91] As such, the complainant has not established on a balance of probabilities that the way the officers treated him during their first engagement with him was "based on" his race or colour.

[92] What happened next is also largely not in dispute. Both officers recalled that Mr. Emery radioed the operations supervisor to get confirmation that they had identified the correct person, but the radio failed. Mr. Emery can be seen on the surveillance video looking at and adjusting his radio (Exhibit 1, Cam 143 2021-07-17 11\_25\_25 AM at approximately 11:26:45). Both officers testified that Mr. Emery went into the operations centre to seek confirmation directly from the operations supervisor. This is confirmed by video surveillance (Exhibit 1, Cam 144, 2021-07-17 11\_26\_59 AM).

[93] The parties disagreed on how Ms. Tizzard approached Mr. Gray, who at that point had walked past the operations centre front entrance. Mr. Gray stated that Ms. Tizzard chased after him in an aggressive manner. Ms. Tizzard stated that she had to jog to catch up with Mr. Gray. The video surveillance, in my opinion, shows Ms. Tizzard somewhere between a jog and run, but I cannot conclude there was anything aggressive in how she was pursuing Mr. Gray (Exhibit 1, Cam 144, 2021-07-17 11\_26\_59 AM).

[94] The parties agree that Ms. Tizzard stopped Mr. Gray. She can be seen on the surveillance video standing in front of him and blocking his path (Exhibit 1, Cam 144, 2021-07-17 11\_26\_59 AM at approximately 11:27:34). Mr. Gray testified that Ms. Tizzard renewed her questioning of him concerning riding his bike on the pedestrian walkway. After about twenty seconds, Mr. Gray turned to walk away. Ms. Tizzard said something to the effect of “don’t turn your back on me” in what the parties agree was a sharper tone. Mr. Gray stopped and resumed speaking with Ms. Tizzard. Mr. Emery joined them

about ten seconds later and relayed that the operations supervisor had confirmed they stopped the correct person.

[95] All parties agree that this second interaction was less copacetic than the initial interaction. Mr. Gray was frustrated because he was being falsely accused of something he did not do. Ms. Tizzard was frustrated because she was trying to execute her duties and thought she had identified the correct person. After Mr. Emery joined Mr. Gray and Ms. Tizzard, about thirty seconds of conversation took place before the officers learned they had stopped the wrong person.

[96] In total, the second interaction lasted approximately 65 seconds (Exhibit 1, Cam 144 2021-07-17 11\_26\_59 AM at approximately 11:27:25 to 11:28:30). One of the reasons this interaction lasted this long is that the actual cyclist appears to have stopped riding his bike after passing Gantry 2, before resuming riding his bike toward the “bottleneck” and the operations centre.

[97] The complainant and the Commission urged the board to infer that the second interaction was based on race or colour because Ms. Tizzard did not take Mr. Gray’s denial of wrongdoing during the initial interaction at face value and continued to investigate him. Both relied on this board’s decision in *Symonds v Halifax Regional Municipality (Halifax Regional Police Department) (Re)*, 2021 CanLII 37128 (NS HRC) [Symonds] as well as Chair Girard’s decision in *Johnson v Halifax Regional Police Service* (2003), 48 CHRR 307, 2003 CanLII 89397 for the proposition that unjustified conduct by peace officers can be circumstantial evidence that race was a factor in their conduct.



[98] The respondent distinguished *Symonds* on the grounds that the police officers in that case had acted improperly and inexplicably pursued the complainant for additional surveillance. The respondent submitted that some interactions between peace officers and the public will get heated, but this is not circumstantial evidence of race being a factor unless the conduct of officers is disproportionate or unprofessional. In this case, the respondent says there was nothing inexplicable, disproportionate, or unprofessional about the officers' conduct.

[99] I agree with the respondent. The officers had reasonable grounds for their initial engagement with the complainant. While the complainant truthfully denied riding his bicycle, peace officers are not required to take the denial of a person as a complete impediment to further investigation. They are entitled to take reasonable steps to pursue their investigation despite a denial of wrongdoing. In pursuing the complainant, Ms. Tizzard was taking reasonable steps to complete her investigation.

[100] Several factors also help to contextualize and understand the officers' conduct.

[101] First, Ms. Tizzard stated that her normal practice was to only engage cyclists where she observed them riding their bicycles or where someone else made such an observation. This was the latter situation. The officers did not proceed as though they had stopped the correct person. They attempted to confirm via radio that they had stopped the correct person. When the radios failed, they obtained a verbal confirmation from the operations supervisor. This shows an open mind as to whether the complainant had committed an offence.

[102] Second, the officers had received directions from the operations manager to put “greater heat and light on the situation” of cyclists riding on the pedestrian walkway. This shows that the officers were acting in accordance with the instructions they received from management.

[103] Third, Ms. Tizzard’s conduct, while potentially sharper in tone, remained professional. I accept that peace officers may sometimes have to use a sharper tone when engaging with the public and giving verbal directions. Overall, Ms. Tizzard was polite and courteous according to Mr. Gray; his real concern was with her decision to pursue and stop him, not with her demeanour.

[104] Fourth, when the officers finally identified the correct cyclist, they engaged with him in much the same way as they did with the complainant, albeit for a longer period, approximately 2m15s (Exhibit 1, 2021-07-17 11\_25\_16 AM at approximately 11:28:55-11:32:10).

[105] All this leads the board to conclude that there was nothing abnormal, disproportionate, discourteous, or inexplicable about the officers’ conduct, including their decision to pursue the complainant and the way they interacted with him when he was stopped. As such, the complainant has not established on a balance of probabilities that the officers’ second interaction with him was “based on” his race or colour.

[106] In the absence of sufficient evidence to show that race or colour were factors in the respondent’s treatment of the complainant, the test for discrimination is not met.

[107] Having found that the evidence does not meet the test for discrimination, it is unnecessary to consider justifications provided by the respondents.

*Harm to the Complainant and Action Taken by the Bridge Commission*

[108] Even though discrimination has not been established in this complaint, the board wishes to comment briefly on the harm experienced by the complainant as well as the Bridge Commission's response.

[109] It is apparent that the complainant was harmed by this incident and that the effects are ongoing. It changed how and when he goes out. It changed how he parented his child. It changed his trust in the system. It had a substantial impact on his well-being. Recounting these harms was emotional and challenging. As the complainant explained: "like it's all still there. It's just like it happened yesterday, right?"

[110] When interactions like those that occurred in this case are broken down into their component parts—a process enabled by video surveillance time stamped to the second and demanded by the requirements of stepwise legal analysis—it can be easy to underestimate the negative impact that even short interactions can cause.

[111] The complainant only engaged with the officers for a couple minutes, three years ago, but the harm caused by this interaction continues to this day.

[112] As the complainant explained:

People don't really understand, you know, when you get pulled over, you know, whether you're ... it's a special constable or a police officer and you know in your heart that you didn't do anything wrong, but as a person of colour, that's not ... they just do that because they feel they can do that, you know, and that stuff's got to stop, you know?

[113] It is worth noting this harm because it was experienced by the complainant and because it was not easy for the complainant to share this with the board. While harm in the absence of discrimination does not enable a human rights remedy, it reminds us why the exercise of authority by peace officers must be, and be seen to be, justified. It reminds us that harm can be caused even by conduct that does not meet the test for discrimination. It compels us to action to prevent this type of harm from occurring.

[114] The board heard evidence on what the Bridge Commission did in response to this incident. That too is worth noting because it shows the seriousness with which the Bridge Commission responded to this incident and the steps it has taken to ensure that an incident like this, however unlikely, does not reoccur.

[115] Within days of the incident, the Bridge Commission provided the complainant with what the board considers to be a genuine apology letter (Exhibit 3). The letter acknowledges that the complainant should not have been accused of riding his bike and that human error was the cause of the incident. The letter explains that staff have been counselled in response to the incident and that the Bridge Commission is “developing a Standard Operating Procedure to eliminate this type of situation from reoccurring” (Exhibit 3).

[116] The Bridge Commission modified some of its Standard Operating Procedures, including by cautioning operations supervisors to be careful when relying on cameras for identification purposes. It invested in an improved surveillance system that will provide better clarity as well as the capacity to pan, tilt, and zoom cameras. It upgraded its radio system with the goal of removing communications failures.

[117] If the board had made a finding of discrimination, these are the types of systemic remedies that could have been ordered. It is encouraging to see the Bridge Commission undertook these changes on its own volition and with an obvious commitment to ensuring that this type of incident does not reoccur.

**Conclusion**

[118] The complainant has not proven on a balance of probabilities that race or colour were factors in how he was treated by the respondents. Even though there was a distinction in this case that resulted in disadvantage and harm to the complainant, the test for discrimination was not met. Accordingly, this complaint is dismissed.

DATED at Halifax, Nova Scotia, this 23<sup>rd</sup> day of July, 2024.

“Benjamin Perryman”

---

Board of Inquiry Chair