**DECISION**

File No. 17-0122

## NOVA SCOTIA POLICE REVIEW BOARD

**IN THE MATTER OF:**

The *Police Act*, Chapter 31 of the *Acts* of 2004 and the Regulations made pursuant thereto

- and -

**IN THE MATTER OF:**

An appeal filed by **Vincent Garnier**, Complainant, on behalf of his son, Christopher Garnier, against Cst. Steve Campbell, Cst. Gary Fraser, Cst. Dennis MacSween and Cst. Troy Walker, of the Cape Breton Regional Police Service, requesting a review of a decision made by Supt. Phillip Ross dated June 18, 2018.

**BEFORE:**

Jean McKenna, Chair
Hon. Simon J. MacDonald, Vice-Chair
Stephen Johnson, Board Member

**COUNSEL:**

Vincent Garnier, Self-Represented
Guy LaFosse QC, Counsel for Constable Dennis MacSween
Tony Mozvik QC, Counsel for Constable Gary Fraser
Darlene MacRury, Counsel for Constable Troy Walker
Jillian Barrington, Counsel for Constable Steve Campbell
Demetri Kachafanas QC, Counsel for CBRPS

**COST DECISION:**

By written submission from the parties. The last submission was received on December 16, 2021

**DECISION DATE:**

March 22, 2022

[1] This is a decision on costs in the above-titled matter. The matter was heard from January 18 through to the 25th, 2021. The Board filed a decision on November 2, 2021. After the decision was filed the parties were given an opportunity to address the issue of costs.

[2] The parties presented their cost arguments in writing to the Board and the final cost argument was presented to the Board on December 16, 2021.

**BACKGROUND**

[3] The matter came before the Nova Scotia Police Review Board (the Board) as a result of complaints by Mr. Vincent Garnier, with the consent of his son Christopher Garnier. The complaints were against Constables Steven Campbell, Gary Fraser, Dennis MacSween and Troy Walker of the Cape Breton Regional Police Service (CBRPS). The Board was asked to consider two issues namely:

1. Mr. Garnier's complaint concerning the taking of pictures by the CBRPS at 117 Milleville Highway; and

2. The arrest without warrant by CBRPS of Christopher Garnier on February 19, 2017.

[4] In carrying out these actions did the named officers breach the Code of Conduct as required of the police officers under the Nova Scotia *Police Act* and Regulations, section 24.

[5] The taking of the photographs involved Constables Fraser and Campbell. The Board determined after hearing the evidence that Constable Fraser was not actually aware that a warrant would be required and that there was no evidence that his taking of the photographs would constitute an abuse of authority and furthermore, he would have obtained a warrant had one been requested. It therefore concluded that

his conduct did not amount to "discreditable conduct". Constable Campbell had limited involvement in the taking of photographs as he was to arrange for the SOCO officer, Constable Fraser to conduct the assigned task. The Board found in that activity there was no misconduct as required under the Code of Conduct against Constable Campbell.

[6] Constables Fraser and Campbell are seeking costs against Mr. Garnier.

[7] In the matter of the arrest of Christopher Garnier, the Board concluded that the legality of the arrest was not raised or considered in the course of the breach hearing before Justice Rosinski. The Board had heard further evidence in that regard and concluded that Kim Edmunds, the landowner, did not give any consent to the officers to enter her home to arrest Christopher Garnier. In the circumstances the Board determined that there was a minor disciplinary default on the part of Constables MacSween and Walker. It therefore concluded there was a breach under section 24(7)(a) of the Code of Conduct. The Board ordered they receive a reprimand.

**DISCUSSION AND DECISION**

[8] Usually the successful party in an action is awarded its costs. In this particular case Mr. Garnier has been successful against Constables Walker and MacSween and he seeks costs accordingly.

[9] MacAdam, J in **Bishop v. Purdy,** 2015 NSSC 365 discussed in detail the subject of lay representatives' entitlement to costs. At paragraph 4 he said:

> [4] In *McBeth v Dalhousie University, Governors of Dalhousie College and University* (1986), 1986 CanLII 4007 (NS CA), 72 N.S.R. (2d) 224 (S.C.A.D.), Morrison J.A., for the

court, held that a common law rule denying costs to a self-represented litigant where costs would have been granted to a litigant with counsel was incompatible with the equality guarantee under section 15 of the *Charter of Rights and Freedoms*. The Charter-based reasoning of *McBeth* was later invalidated by the Supreme Court of Canada's preclusion of "direct application of the *Charter* to common law rules governing litigation between private parties." The Court of Appeal later confirmed in *Crewe v Crewe*, 2008 NSCA 115, however, that "the principles underlying the awarding of costs could not justify a rule denying costs to self represented parties." The court adopted the following passage from *Fong v Chan* (1999), 1999 CanLII 2052 (ON CA), 181 D.L.R. (4th) 614, [1999] O.J. No. 4600 (Ont. C.A.):

> [24] A rule precluding recovery of costs, in whole or in part, by self-represented litigants would deprive the court of a potentially useful tool to encourage settlements and to discourage or sanction inappropriate behaviour. For example, an opposite party should not be able to ignore the reasonable settlement offer of a self-represented litigant with impunity from the usual costs consequences. Nor, in my view, is it desirable to immunize such a party from costs awards designed to sanction inappropriate behaviour simply because the other party is a self-represented litigant.
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> [25] I would add that nothing in these reasons is meant to suggest that a self-represented litigant has an automatic right to recover costs. The matter remains fully within the discretion of the trial judge, and as Ellen Macdonald J. observed in *Fellowes, McNeil v. Kansa*, 1997 CanLII 12208 (ON SC), [1997] O.J. No. 5130 *supra*, there are undoubtedly cases where it is inappropriate for a lawyer to appear in person, and there will be cases where the self-represented litigant's conduct of the proceedings is inappropriate. The trial judge maintains a discretion to make the appropriate costs award, including denial of costs.
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> [26] I would also add that self-represented litigants, be they legally trained or not, are not entitled to costs calculated on the same basis as those of the litigant who retains counsel. As [*London Scottish Benefits Society v. Chorley* (1884), 13 Q.B.D. 872] recognized, all litigants suffer a loss of time through their involvement in the legal process. The self-represented litigant should not recover costs for the time and effort that any litigant would have to devote to the case. Costs should only be awarded to those lay litigants who can demonstrate that they devoted time and effort to do the work ordinarily done by a lawyer retained to conduct the litigation and that, as a result, they incurred an opportunity cost by forgoing remunerative activity. As the early Chancery rule recognized, a self-represented lay litigant should receive only a "moderate" or "reasonable" allowance for the loss of time devoted to preparing and presenting the case. This excludes routine awards on a per diem basis to litigants who would ordinarily be in attendance at court in any event. The trial judge is particularly well-placed to assess the appropriate allowance, if any, for a self-represented litigant, and accordingly, the trial judge should either fix the costs when making such an award or provide clear guidelines to the Assessment Officer as to the manner in which the costs are to be assessed. [Emphasis added.]

[5] Although the court referred to awarding costs in respect to the self-represented litigants, on account of their participation as their own counsel, on the basis of their foregoing

remunerative activity, I am satisfied this would not exclude an award where the self-represented litigants were not otherwise engaged in remunerative activity. Such a limitation would exclude persons who were not otherwise financially gainfully employed, including students, unemployed people, homemakers and the retired. In this respect I would note the comments of Justice Hood in *Salman v. Al-Sheikh Ali*, 2011 NSSC 30, [2011] N.S.J. No. 68:

> 48 In some cases, the courts have recognized an opportunity cost which was lost, but in *Dechant v. Law Society of Alberta*, 2001 ABCA 81, the court concluded that it is not necessary to prove the actual value of any lost opportunity. The court said in that case in para. 19:
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> > 19 ... Nonetheless, whether a person has lost time from work to represent themselves is a relevant factor to consider. If any unrepresented litigant was not otherwise employed, the fee portion of costs attributable to lost opportunity may not exist or, at a minimum, would be significantly less than a person who has suffered a loss of income due to employment absences.
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> 49 In this case, Mariam Al-Sheikh Ali was not employed and did not lose income. Fawzi Al-Sheikh Ali used vacation time rather than lose paid time from work. In my view, that is a factor which merits consideration.

[6] The respondents note that both Mr. Ryan and Mr. Tardif, who acted on behalf of the applicants, are retired, and suggests that as a result of this, the applicants should only receive reasonable and necessary disbursements. With this submission I cannot agree. It is clear that the applicants spent a great deal of time both in preparation for court, at the hearing itself, and in respect to the submissions filed both pre-and post the hearings. As such, they were not able to engage in other activities that, as retired persons, they would normally be doing. Although this may not amount to a direct financial loss, these efforts involved time and effort taken away from their other activities. Their time has a value, even if they would not otherwise have been engaged in remunerative activities. They are entitled to costs on account of their efforts in this proceding. [Emphasis Added]

[10] Further at paragraph 11 MacAdam, J quotes from *Izyuk v. Bilousov:*

> [11] In *Izyuk v. Bilousov*, 2011 ONSC 7476, [2011] O.J. No. 5814, Pazaratz J. provided a useful overview of the principles pertaining to costs and self-represented parties:
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> > 38 The emerging issue of costs claimed by self-represented litigants has been dealt with extensively in recent years, perhaps most comprehensively by Justice D.G. Price in *Jahn-Cartwright v. Cartwright* 2010 ONSC 2263 (CanLII), 2010 91 R.F.L. (6th) 301 (Ont. S.C.J.) and *Cassidy v. Cassidy* 2011 ONSC 791 (CanLII), 2011 92 R.F.L. (6th) 120 (Ont. S.C.J.).
> >
> > 39 Justice Price made the following observations of the Ontario Court of Appeal decision in *Fong v. Chan* 1999 CanLII 2052 (ON CA), [1999] O.J. No. 4600:

a. The Court of Appeal confirmed a self-represented litigant's entitlement to costs.

b. The Court gave some guidance on the method of quantifying those costs, but did not elaborate as to the methodology to be used.

c. Self-represented litigants are not entitled to costs calculated on the same basis as litigants who retain counsel.

d. The self-represented litigant should not recover costs for the time and effort that any litigant would have to devote to the case.

e. Costs should only be awarded to those lay litigants who can demonstrate they devoted time and effort to do the work ordinarily done by a lawyer retained to conduct the litigation.

f. The trial judge is particularly well-placed to assess the appropriate allowance, if any, for a self-represented litigant.

40 In *Jahn-Cartwright* and *Cassidy*, Justice Price expanded the analysis:

a. The entitlement to costs and the appropriate amount to be paid is within the court's discretion.

b. Rule 24(1) of the *Family Law Rules* creates a presumption of costs in favour of the successful party.

c. In setting the amount of costs, the court must try to indemnify the successful party while avoiding an overly onerous costs burden for the unsuccessful party which would jeopardize access to justice.

d. For many years indemnification of a successful party was considered the only objective, and this was held to preclude an award of costs to a successful self-represented litigant who had not paid fees for which they needed to be indemnified. But while indemnification remains a paramount consideration in awarding costs, it is not the only one.

e. In both *Fong v. Chan* and more recently in *Serra v. Serra* 2009 ONCA 395, the Ontario Court of Appeal confirmed that costs rules are designed to foster three important principles:

1. To partially indemnify successful litigants for the cost of litigation;

2. To encourage settlement; and

3. To discourage and sanction inappropriate behaviour by litigants.

f. Access to justice has been recognized as a further objective that the court should seek to achieve when awarding costs. (1465778 *Ontario Inc. v. 1122077 Ontario Ltd*, 2006 CanLII 35819, (2006) 82 O.R. (3d) 757 (Ont. C.A.)).

g. A party with counsel, opposite an unrepresented litigant, should not perceive that they are immune from a costs award merely because such opposite party is unrepresented. They should be discouraged from presuming they will face only nominal costs.

h. The right of a self-represented litigant to recover costs is not automatic. Quantification of those costs may be difficult. But without the option of awarding meaningful costs to self-represented litigants, the court's ability to encourage settlements and discourage inappropriate behaviour will be greatly diminished.

i. Determination of costs for self-represented litigants should take into account all of the objectives which costs orders should promote. Rules 18 and 24 of the *Family Law Rules* apply. Otherwise the resulting amount can render the entitlement to costs illusory; undermine access to justice by self-represented litigants; and frustrate the administration of justice.

j. If a self-represented litigant, in performing the tasks that would normally have been performed by a lawyer, lost the opportunity to earn income elsewhere, this may be a relevant factor. But costs for self-represented parties are not the same as damages for lost income. Remunerative loss is not a "condition precedent" to an award of costs. To require proof of lost income would disqualify litigants who are homemakers, retirees, students, unemployed, unemployable, and disabled; and deprive courts of a tool required re administration of justice.

k. Lost income may be one measure. But even if no income was lost, the self-represented party's allocation of time spent working on the case may still represent value.

l. The fact that a self-represented litigant is not a lawyer who charges a standard and commonly accepted hourly rate makes it more difficult - but not impossible - to assess their costs. However, the difficulty in valuing the time and effort of the lay litigant is not a good reason to decline to value it.

m. An "applicable hourly rate" should be taken into account when quantifying even a self-represented lay litigant's costs. But the appropriate hourly rate, once determined, is only one of several factors to be considered.

n. In considering the appropriate hourly rate, the court should consider what the lay litigant's reasonable expectations were as to the costs he would pay if unsuccessful. (*Boucher v. Public Accountants Council (Ontario)* 2004 CanLII 14579 (ON CA), [2004] O.J. No. 2634 (Ont. C.A.)).

o. Where one party is represented by a lawyer and the other is not, the hourly rate that the represented litigant's lawyer is entitled to claim on an assessment of

costs should inform the reasonable expectations of both parties as to the costs that they will likely be required to pay if unsuccessful. Otherwise, litigants represented by lawyers would be less circumspect with regard to their conduct and their response to the opposing party's efforts to settle because that party is a self-represented litigant.

p. The hourly rate of the lawyer representing the unsuccessful party is only one of several factors to be considered. It does not necessarily entitle the successful self-represented party to claim the same rate for time spent. However, if the self-represented party was required to contend with a highly experienced lawyer whose years at the Bar would have entitled a higher hourly rate, that may be relevant in considering the calibre of the work the self-represented party had to do to effectively participate in the adversarial process.

q. As with counsel, the appropriate hourly rate may be affected by the level of indemnification or recovery deemed to be appropriate, given all of the Rule 18 and 24 considerations.

r. There are no automatic calculations. We should not simply use the hourly rate for the opposing lawyer, or the hourly rate the self-represented litigant earns outside of court. Fixing costs is not a mechanical exercise. (*Boucher*)

s. The quality of the self-represented litigant's work and documentation must be considered, and its impact on hearing time and trial results. The emphasis must be on the value of the work done. This encompasses both the value of the work to the Court and the value of the time spent to the litigant who performed the work, or who hired a lawyer to perform it.

t. Calculating the amount of time the self-represented litigant should be compensated for can be a complex endeavour. All litigants suffer a loss of time through their involvement in the legal process. A self-represented litigant should not recover costs for the time and effort any litigant would have to devote to the case, including attendances in court where the party would ordinarily attend.

u. But if the self-represented litigant demonstrates he/she did the work ordinarily done by a lawyer, then they will have justified receiving an award of costs - including time spent on communications, drafting documents and correspondence, preparation and compensation for time spent arguing their case.

v. Self-represented litigants may be held to the standards of civility expected of lawyers and a proper reprimand for failure to do so is an award of costs on a substantial indemnity basis. Where either a litigant or his/her lawyer acts unreasonably, by incivility or otherwise, it is a factor that may result in discounting the costs that should otherwise be awarded. This discounting is a necessary part of quantifying costs and is consistent with the overall purpose of costs awards in improving the efficiency of the administration of justice.

w. Ultimately, the overriding principle in fixing costs is "reasonableness."

[11] In his written arguments Mr. Garnier argues he ought to receive an award against Constables MacSween and Walker for their misconduct ranging from a minimal of $2,500 each to a high against the Cape Breton Regional Municipality (CBRM) in the amount of $530,000. He argued he suffered many things including irreparable harm, fees, and expenses that he has incurred including other legal fees. The Board has concluded that a great deal of his argument is outside the scope of the Board's authority to award costs. He wishes to be reimbursed for costs in other matters relating to Christopher Garnier's criminal trial. Mr. Garnier's arguments deal more with damages than costs. It is clear from the *Police Act*, s. 79(1)(g) that the Board only has the authority to award costs, not damages.

[12] In his lengthy brief, Mr. Garnier still argues matters which were already decided by the Board and yet not accepted by him. This is most inappropriate. The Board made its decision and that ends the matter at this stage. Decisions already decided by the Board are not to be reargued in submissions on costs.

[13] Counsel representing Constables Fraser and Campbell, as well as, counsel representing Constables MacSween, Walker and the CBRM, argue Mr. Garnier ought not to receive any costs at all. They argue his actions in this case were frivolous or vexatious and more of a vendetta against the police. They argue he took needless actions, prolonging the action and making unnecessary work for counsel and the Board.

[14] Counsel has referred to **MacLeod (Re)**, 2001 CanLII 37701 wherein there was a discussion by the Board about frivolous, vexatious and meritless hearings. In that case they were dealing with a claim by a citizen against a Chief of Police. In the course of the action the complainant continuously made

wild allegations against Chief MacLeod. The reason behind this complaint was Mr. MacMillan was making wild accusations on behalf of an action committee who were involved in campaigning as to the selection of the RCMP or Regional Police force to be adopted by the CBRM upon amalgamation. In that hearing the Board found Mr. MacMillan's complaint was absolutely without foundation. They concluded that he was simply using the Board as a platform to further expound the views of the citizens in action and his own. The Board further concluded that Mr. MacMillan's actions were patently an attempt to further undermine Chief MacLeod and the Cape Breton Regional Police. We find Mr. Garnier was not proceeding in this matter similar to Mr. MacMillan in the MacLeod case.

[15] Counsel for Constables MacSween, Walker, and CBRM, have said the following in paragraph 12 of their cost argument:

> 12. The facts in the present case are readily distinguishable from the MacLeod decision. There has been no suggestion or finding by the Board in the present case that the position of any of the parties was entirely meritless, or that there has been an abuse of the complaints process for collateral purposes.

[16] Counsel for Constables Fraser and Campbell having been successful against Mr. Garnier are seeking costs and primarily arguing that the actions taken by Mr. Garnier were frivolous and vexatious. In **Mercier v. Nova Scotia (Police Complaints Commissioner)** 2014 NSSC 79, LeBlanc, J as he then was discussed, frivolous and vexatious as it applies to court cases. He said at paragraph 27 forward:

> [27] In *Weisgerber v. Weisgerber*, 2003 ABQB 763, [2003] A.J. No. 1120, Watson J. considered the interpretation of "vexatious" and "frivolous" in relation to a prior court order. Watson J. stated, at paras. 11-12, that:
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> > ... I consider the word "vexatious" to carry with it a normative concept as well as a legal one. It seems to me that a party can be said to have acted in a vexatious manner, not merely that they acted in a manner which might be characterized as mean-spirited or nasty, but also that in fact the nastiness conveyed itself through to the legal process itself. In other words, that the legal process was being misused.

> To summarize then: my view of the word "vexatious" is that it connotes not simply that the party was acting without the highest of motives, or was acting in a manner which was hostile towards the other side. " Vexatious", as a word, means to me that the hostility went beyond simple animus toward the other side, and went into a situation where the party actually was attempting to abuse or misuse the legal process, even if legally justified to do so.

[28] As the court order read "vexatious or frivolous", Watson J. went on to consider the definition of frivolous on its own:

> 18 "Frivolous" is defined in the law, it seems to me, in relation to the simple absence of an air of reality to a position, or the simple lack of any threshold basis on which to put forward an argument. In other words, an argument is frivolous if in fact it simply has no chance or no reasonable chance of success.
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> 19 An argument does not have to be hilarious in order to be frivolous; it does not have to be offensive in order to be frivolous. It is the law, in my view, that the word "frivolous" connotes an argument which does not have a realistic prospect of success.

[29] In *Fahey v. Law Society of Newfoundland*, 2003 NLCA 8, [2003] N.J. No. 20, the applicant sought to have his appeal reinstated after it was deemed abandoned. One of the factors in determining whether an appeal should be reinstated is "whether the appeal can be said to be frivolous or vexatious, in the sense that there is no arguable case" (para. 13). The court concluded that the appeal was frivolous, on the basis that the applicant had "not established that a credible legal argument can be put forward" (para. 20).

[30] In *Diskotech Investments Ltd. v. Szczepanik*, 2003 BCSC 1691, the respondent opposed an application to be added as a defendant to an action on the basis that there was no evidence to support the claim. The court found the action to be frivolous, applying the *Black's Law Dictionary* (6th edition) definition of the term. Similarly, the court applied the Black's definition in *Niro v. Niro*, [2004] OJ No 342 (Ont. Sup. Ct. J.), where some of the defendants brought a successful motion to strike out the statement of claim on the basis that it was "frivolous or vexatious or is otherwise an abuse of process of the court" (para. 10). Matheson J. said:

> 35. The word 'frivolous' has been defined in *Black's Law Dictionary*, Sixth Edition as follows:
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> "A pleading is 'frivolous' when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense."

> [31] The *Concise Oxford Dictionary* defines frivolous, variously, as "paltry", "trifling," or "lacking seriousness." This interpretation has been adopted in the interpretation of the word frivolous (in the context of describing an appeal as "not frivolous") in s. 679(3) of the *Criminal Code*: *R v. Mian* (1996), 1996 NSCA 114 (CanLII), 148 N.S.R. (2d) 155, [1996] N.S.J. No. 95 (C.A.), at para 9. Interpreting the same section, the British Columbia Court of Appeal held that frivolous is "a term of art in the law" and that a proceeding "will be frivolous when to put it forward would be wasting the time of the court": *R. v. Barling* (1993), 24 M.V.R. (4th) 122, [1993] B.C.J. No. 3138 (B.C.C.A.), at paras. 3-4.

[17] The Board, in assessing the actions of Mr. Garnier, has concluded that he was acting for he and his son. Although he presented arguments to the Board which prolonged the hearings, he had an obvious imperfect knowledge of the process in which he was involved. There were instances during the hearing where Mr. Garnier pursued matters which turned out to be irrelevant. This caused more reply, submissions, and argument by all counsel on the other side.

[18] The Board however is mindful that care should be taken neither to discourage or penalize litigants acting for themselves or to impede their free access to the courts. That having been said, the Board must also consider the reality of the situation and the extended legal work required by all counsel on the other side as the result of Mr. Garnier's motions, documents, and allegations.

[19] This Board concludes Mr. Garnier, although not trained in the law, was diligent in researching the law and preparing material. He was putting forward his best effort in presenting his case to the Board. Although sometimes argumentative on issues he was polite and courteous to counsel during the hearing. At no time was he nasty or vindictive.

[20] The Board does however concern itself about Mr. Garnier's continuous actions in this matter. He does not want to accept the finding of his son's guilt for the charge of murder. The Board has come to the conclusion Mr. Garnier appears to be on a cause for some kind of justification for his son to have

been found innocent of the charges. However, as much as he has argued this before the Board, the Board is satisfied that his son was found guilty by a trial in the Supreme Court of Nova Scotia and the conviction was upheld by the Nova Scotia Court of Appeal. The Board accepts that. It is unfortunate that Mr. Garnier does not accept this fact and the results to him personally has caused him deep financial costs to he and his family.

[21] The Board was asked by Mr. Garnier to find that the police actions against Christopher Garnier were because the victim was a police officer. The Board rejects that argument and says this is another example of Mr. Garnier raising an issue not germane to the matter before the Board.

[22] The Board concludes Mr. Garnier was civil and not disruptive during the hearing. He was not satisfied with the evidence and actions of police officers, but the Board concludes this did not amount to reprehensible conduct or rise to the level of vexatious, frivolous, or vindictive.

[23] However, Mr. Garnier did require counsel to reply to unwarranted claims and matters before the Board that should not have presented themselves. The Board is satisfied that there were several unnecessary steps taken by Mr. Garnier that obviously had nothing to do with the matters before the Board.

[24] In **Big X Holdings Inc. v. Royal Bank of Canada**, 2015 NSSC 350 para 43, the Court determined that parties who forced the other side to take steps that would otherwise be unnecessary or who themselves take unnecessary steps should be accountable for their actions in costs.

[25] In **Southwest Construction Management Ltd. v. EllisDon Corporation**, 2018 NSSC 270, the Court again concluded where the action of a plaintiff complicates a proceeding resulting in additional legal fees being incurred by the defendants the Court found that higher costs ought to be considered against the plaintiff. The Board appreciates this case was not before a board or a tribunal, but the principle is still applicable here.

[26] The Board is aware that a lay representative is not entitled to the same amount of costs or an amount arrived at in the same fashion in which legally trained counsel are entitled to when representing a party or parties. See: **Bruno v. Keinick,** 2012 NSSC 434; **Nurse v. Holden,** 2020 NSSC 110.

[27] Cost awards have a primary purpose of indemnification to a successful party. However, one of the considerations in making such an award is "discourage unnecessary steps that unduly prolong the litigation". See: **National Bank Financial Ltd. v. Potter**, 2008 NSSC 213; **Corfu Investments Ltd. v. Oickle**, 2011 NSSC 223.

[28] The Board should not make awards against citizens that would amount to a deterrent by being so high as to prevent citizens from bringing forward *bona fide* complainants against police officers. As was said in **MacLeod (Re)**, *supra*, "an award of costs must reflect the balance that the Board must strike between the larger public interest and the particulars of this case."

[29] In arriving at our conclusion on cost, the Board finds this was not an exceptional or unique case. Again, as was said in **MacLeod (Re),** *supra* "...an award of cost requires special consideration and is far from a matter of routine."

[30] Therefore. having considered the above principles and the facts of this case, the Board has determined that each party shall be responsible for their own costs. No costs are awarded to any party.

Dated at Halifax, Nova Scotia, this 22nd day of March 2022.

Jean McKenna, Chair

Hon. Simon J. MacDonald, Vice-Chair

Stephen Johnson, Board Member

Distribution: Vincent Garnier, Self-Represented
Guy LaFosse QC, Counsel for Constable Dennis MacSween
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