

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Cape Breton (Regional Municipality) v. Nova Scotia  
(Police Review Board), 2024 NSSC 88*

**Date:** 20240322  
**Docket:** 511121  
**Registry:** Sydney

**Between:**

Cape Breton Regional Municipality, Dennis (Cst) MacSween,  
Troy (Cst) Walker

Plaintiffs

and

Nova Scotia Police Review Board, Vincent Garnier,  
Steve (Cst) Campbell, Gary (Cst) Fraser

Defendants

<b>DECISION</b>
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**Judge:** The Honourable Justice Jamie Campbell

**Heard:** March 7, 2024, in Sydney, Nova Scotia

**Counsel:** Demetrius Kachafanas K.C., for the Plaintiff (Cape Breton)  
Guy LaFosse K.C., for the Plaintiff (MacSween)  
Darlene MacRury, for the Plaintiff (Walker)  
Myles Thompson, for the Defendant (Police Review Board)  
Vincent Garnier, self-represented Defendant  
Andrea Rizzato, for the Defendant (Campbell)  
Tony Mozvik K.C., for the Defendant (Fraser)

**By the Court:**

[1] This application for judicial review arises from the circumstances surrounding the arrest of Christopher Garnier in 2017. Mr. Garnier was arrested for breach of the conditions of his release pending trial on a homicide charge. He was found guilty of murder but was found not guilty on the breach charge. His father, Vincent Garnier, on his son's behalf and with his son's consent, filed complaints against four police officers alleging misconduct on their part in the arrest of Christopher Garnier for the breach charge. The Police Review Board found that there had been a disciplinary default on the part of Cst. Dennis MacSween and Cst. Troy Walker. Cst. MacSween, Cst. Walker and the Cape Breton Regional Municipality have applied for a review of that decision. The Board found no disciplinary default on the part of Cst. Steve Campbell or Cst. Gary Fraser. Mr. Garnier is seeking a review of the decision with respect to Cst. Campbell and Cst. Fraser.

[2] Vincent Garnier filed the complaints about the conduct of 4 Cape Breton Regional Police officers during the investigation on February 18 and arrest on February 19, 2017. His son, Christopher Garnier, was arrested for breaching his recognizance. The allegation was that Christopher Garnier did not answer to a compliance check. A hearing was held before Justice Peter Rosinski who was "not satisfied that it is more probable than not that Mr. Garnier was aware of, and therefore 'knowingly' and voluntarily failed to present himself for the compliance check at or about 1:20 a.m. on February 18, 2017." Mr. Garnier filed a complaint against the officers. An investigation was done by Staff Sergeant Bill Turner of the Cape Breton Regional Police Service. Staff Sergeant Turner referred the matter to the delegated disciplinary authority, Superintendent Philip Ross. Superintendent Ross held that there had been no misconduct on the part of Cst. Campbell or Cst. Fraser. His decision did not refer to whether there had been misconduct on the part of Cst. MacSween or Cst. Walker.

[3] Vincent Garnier requested a review of his public complaint. The Police Complaints Commissioner, Judith McPhee K.C., reviewed the file and put two issues before the Board. Those were Mr. Garnier's complaint about Cape Breton Regional Police coming onto the property at 117 Millville Highway to take photographs and the arrest without warrant of Christopher Garnier on February 19, 2017, inside the home at 117 Millville Highway.

**Background**

[4] Christopher Garnier was arrested on September 16, 2015, and charged with the murder of an off-duty police officer and with the disposal of that person's remains. On December 20, 2016, he was released on bail. He was bound by a recognizance with three sureties, his father, Vincent Garnier, his father's wife, Angela Garnier, and his mother, Kim Edmunds. The terms of the recognizance required that he be on house arrest at his father's home in Bedford or at the home of his mother, Kim Edmunds, at 117 Millville Highway in Millville, Nova Scotia. Millville is on Boularderie Island, just past North Sydney. He was required to prove compliance with the house arrest condition by presenting himself at the entrance of the residence if the police came to do a compliance check. On February 17, 2017, Mr. Garnier reported to the police headquarters on Gottingen Street in Halifax and reported his plan to travel to Cape Breton to his mother's home. He also called the answering service and left a message to that effect.

[5] Cst. George Farmer was assigned to do a compliance check at Vincent Garnier's home in Bedford. He was not made aware of Christopher Garnier's travel plans. He got no response at the house when he did the compliance check. Vincent Garnier was not there because he was driving Christopher Garnier to Cape Breton. Cst. Farmer told Cst. Mike Stevens of Halifax Regional Police about the result of the compliance check. Cst. Stevens then asked Cape Breton Regional Police to do a check at the Millville home. Cst. Steve Campbell was assigned to do that check and he did that at about 1:00 am on February 18. There was no response. The evidence at the Police Review Board from Christopher Garnier, Brittany Francis, and Kim Edmunds, was that all three were inside the home at 117 Millville Highway at about 1:00 am on the morning of February 18, 2017, but because they were asleep, they did not hear Cst. Campbell knocking.

[6] That morning, Angela Garnier got a call from Cst. Stevens and she told him that Christopher Garnier was at his mother's home in Cape Breton. When told that there had been no response to the compliance check made there at 1:00 am she suggested that Cst. Campbell may have gone to the wrong door. There are three entrances to the home in Millville, one to a basement apartment where Kim Edmunds lives, and two to the main floor where Ms. Edmunds' father lives.

[7] Cst. Stevens, in Halifax, instructed Cst. Campbell to do another check at 117 Millville Highway and to take photographs of the home to show where the entrances were located. Cst. Campbell and Cst. Gary Fraser went there at 9:59 pm, on February 18, 2017. Cst. Campbell performed the compliance check as ordered and Christopher Garnier was present at the home. Cst. Fraser went onto the

property and took the photographs. Mr. Garnier argued that Cst. Campbell and Cst. Fraser acted in a way that would justify the imposition of discipline.

[8] Christopher Garnier was arrested on February 19, 2017, for failure to comply with the terms of his recognizance by failing to present himself at the entrance of his residence on February 18, 2017. The arrest was performed by Cst. MacSween. Cst. Walker acted as his backup. Vincent Garnier said that by entering the home of Kim Edmunds without a warrant to arrest his son, Cst. MacSween and Cst. Walker committed acts that justified their being disciplined.

[9] Christopher Garnier was transported to Halifax and held in custody until the hearing of the breach charges before Justice Rosinski on April 4 and 5, 2017. Justice Rosinski dismissed the charge, *R. v. Garnier*, 2017 NSSC 102. He found that when Cst. Campbell conducted his compliance check between 1:20 am and 1:36 am on February 18, 2017, Christopher Garnier, Brittany Francis, and Kim Edmunds were in the apartment and they must have been asleep because they did not hear Cst. Campbell knocking on the door. Justice Rosinski also said,

I had no hesitation in finding both Constable Campbell and Stevens to be credible witnesses. I found that they dealt with this matter in a professional manner throughout. Based on the evidence presented to me, I am satisfied that at the time Mr. Garnier was arrested, the police had reasonable grounds to believe that an indictable offence had been committed. (para. 34)

## **The Complaints**

[10] The Police Complaints Commissioner referred two issues to the Police Review Board. Those were about the taking of photographs at 117 Millville Highway by Cst. Farmer and Cst. Campbell and the arrest of Christopher Garnier by Cst. Walker and Cst. MacSween.

[11] The Halifax Regional Police asked the Cape Breton Regional Police Service to provide exterior photographs of the entrances to 117 Millville Highway. That evidence was to be used in the case against Christopher Garnier on the breach charges that were eventually heard before Justice Rosinski. The request for the photographs was passed on to Cst. Campbell, who requested another officer accompany him to the home. That was Cst. Fraser. Cst. Fraser took photographs of all the entrances, including the back and side entrances that Cst. Campbell had used when doing the compliance checks. To take those photographs, Cst. Fraser went onto the property. He did not have a warrant.

[12] While Cst. Fraser was taking the photographs, Cst. Campbell conducted a further compliance check.

[13] The complaints against Cst. Fraser and Cst. Campbell were that they went onto the property at 117 Millville Highway without a warrant.

[14] The second complaint is that Cst. Walker and Cst. MacSween entered the residence at 117 Millville Highway to arrest Christopher Garnier, without a warrant or without an invitation to enter. Halifax Regional Police Cst. Mike Stevens reviewed the reports of the compliance checks, including the photographs taken by Cst. Fraser. He contacted Sergeant MacGillivray of the Cape Breton Regional Police Service and requested that Christopher Garnier be arrested for breaching his recognizance by failing to present himself at the entrance of 117 Millville Highway on February 18, 2017, between 1:20 am and 1:36 am. Sergeant MacGillivray reviewed the material and believed there were reasonable and probable grounds to arrest Christopher Garnier. He assigned Cst. MacSween to do the arrest. Cst. Walker went with Cst. MacSween to 117 Millville Highway on February 19, 2017, at 10:25 am.

[15] Cst. MacSween's arrest report noted that he and Cst. Walker were invited into the residence by Kim Edmunds. Cst. Walker testified before the Board that he and Cst. MacSween were invited in. Kim Edmunds told the Board that Cst. MacSween entered her home without a warrant and without an express invitation from her. She said that just after Cst. MacSween entered, Cst. Walker followed. The allegedly uninvited entry into the home, without a warrant, and the arrest of Christopher Garnier, gave rise to the complaints against Cst. Walker and Cst. MacSween.

### **The Nova Scotia Police Review Board Decision**

[16] With regard to the taking of photographs while on the property at 117 Millville Highway, the Board held that while Cst. Fraser did not have a warrant to go on the property, the photographs would probably not have been accurate if taken from a location off the property. They concluded that it was "likely that a warrant would be required to enter the property to take photographs, in the absence of consent from Kim Edwards, the landowner". Cst. Fraser did not ask for consent and testified that he had not been aware that a warrant would be required. The photographs were used at the trial before Justice Rosinski, without objection.

The Board accepts that Constable Fraser was not aware that a warrant would be required, absent consent. His conduct was inadvertent and does not amount to “...discreditable conduct...that is reasonably likely to bring discredit to the reputation of the police department...” Furthermore, even if the conduct was technically unlawful, there is no evidence that it would constitute an abuse of his authority.

There was no question that he would have obtained a warrant had one been requested. The complaint against Constable Fraser is therefore dismissed.

Constable Campbell’s limited involvement in the taking of the photographs was to arrange for the SOCO officer, Constable Fraser, to conduct the assigned task. We are satisfied here that there was no misconduct by Constable Campbell in that activity, and the complaint against him is likewise dismissed. (Board Decision, paras. 21-23)

[17] With regard to the arrest of Christopher Garnier inside the home of his mother, Kim Edmunds, the Board asked, rhetorically, whether consent could be implied by the conduct of Ms. Edmunds. She testified that she was shocked and upset at her son being unexpectedly arrested that morning. She said that while she did not invite the arresting officers into their home, she did not refuse entry. She did not know that she could refuse, and the Board accepted that. She confirmed as well that Cst. Walker and Cst. MacSween were courteous throughout the process, and she knew that they were just doing their jobs.

[18] The Board noted that even if the arrest had been unlawful, in a criminal court, the question was whether it was done in such a way, or for an improper motive, as to constitute a breach of discipline. The officers were courteous throughout and there was no use of force. There was no reason advanced for the failure to obtain a warrant which would normally have been required for entry for the purpose of arrest. The Board said that there would be no way of knowing whether a warrant would have been issued in the circumstances.

[19] At paragraph 41 of the decision the Board comments that Vincent Garnier was clearly very distressed about the arrest and ultimate conviction of his son. His arguments, the Board said, were, for the most part, “not relevant to the question before the Board, which is, misconduct”. At paragraph 42, the Board notes that the miscommunications regarding Christopher Garnier’s message to Halifax Regional Police, which would have confirmed his intention to be at his mother’s home was “unfortunate”. The lack of response to the early morning knock at the residence was “equally unfortunate” but, as found by Justice Rosinski, the people in the home were sleeping. The Board acknowledged at paragraph 43 that Christopher

Garnier, who was innocent until proven guilty, was deprived of his liberty for two months and goes on to say that it was satisfied that there had been a disciplinary default. The Board ordered a reprimand for breach of ss, 24(7) of the Code of Conduct.

The consequence of that arrest was that Christopher Garnier was denied his freedom for almost two months, and the Board is satisfied that there was a disciplinary default on the part of Constables MacSween and Walker. The Board orders that a reprimand be entered for breach of ss. 24(7) of the Code of Conduct.

The Board does conclude that there is no cogent evidence at all that the subject officers were motivated by anything other than to carry out the duties assigned to them.

### **The Positions on Judicial Review**

[20] Vincent Garnier, on behalf of his son, Christopher Garnier, said that the Board was correct in finding that the warrantless arrest of Christopher Garnier, in his mother's home, was worthy of a disciplinary default. Despite that he would prefer to have a judicial decision that provides more comprehensive direction to police officers about the scope of their authority. He said that the Board erred in finding that the conduct of Cst. Fraser and Cst. Campbell, in coming onto the property at 1117 Millville Highway to take photographs and to do a compliance check were not worthy of discipline. He said that they required a warrant, and their actions were illegal.

[21] Cst. Steve Campbell and Cst. Gary Fraser took the position that the decision of the Board that their actions did not warrant disciplinary sanctions was reasonable and should be upheld.

[22] Cape Breton Regional Municipality, Cst. Dennis MacSween, and Cst. Troy Walker seek to have the decision of the Board to impose discipline, by way of a reprimand, on Cst. MacSween and Cst. Walker, set aside.

### **Standard of Review**

[23] The standard of review on judicial review is presumed to be reasonableness except when the legislature has indicated that another standard should apply or when the rule of law requires that the test of correctness be applied. That is in the case of certain categories of questions like constitutional questions, general questions of law that are of central importance to the legal system and questions related to the jurisdictional boundaries between administrative bodies. *Canada*

*(Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, paras. 16-17. The reasonableness standard applies in this case.

[24] The focus of the reviewing court is on the decision maker's process and on the outcome. It is to those things that the reasonableness standard is applied. The reviewing court does not ask whether it would have reached the same decisions and does not apply a standard of perfection. The administrative decision does not have to look like a court decision. But it does have to be reasonable.

[25] To be reasonable a decision must be based on reasoning that is both rational and logical. The reviewing court must be able to trace the decision maker's reasoning without finding flaws in the logic and must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it to the conclusion that it reached. It must be transparent and intelligible. It is not enough to simply quote the statutory language and state a peremptory conclusion. That does not help the reviewing court to understand the rationale for the decision. The reasons provided must show a rational chain of analysis. The reviewing court, must, in the end, be satisfied that the decision maker's reasoning "adds up." *Vavilov*, paras. 102-104. There is a problem when the decision maker either leaves a fundamental gap in the reasoning on a fundamental point or when the reasoning does not flow in a logical chain with respect to points that are central or significant. The reasons provided must be read holistically and contextually, in light of the record and with an understanding of the administrative regime.

### **Cst. Steve Campbell and Cst. Gary Fraser**

[26] The actions of Cst. Campbell and Cst. Fraser were not found to have merited discipline. In its decision the Board noted that while it had an obligation to consider the lawfulness of what the constables did, the Board's mandate was to determine whether those actions constituted a breach of the Code of Conduct. The Code of Conduct at s. 24(1)(a) sets out that a member engages in discreditable conduct by acting in a disorderly or in a manner that is reasonably likely to bring discredit on the reputation of the police department. Section 24(7) of the Code of Conduct provides that a member who abuses their authority by, (a) making an arrest "without good or sufficient cause" or (c) unlawfully exercises authority as a member, commits a disciplinary default.

[27] The Chair of the Board, continued to remind those involved of that focus.



[28] Cst. Steven Campbell got the call to do a compliance check at 117 Millville Highway. He asked Constable Stevens to attend with him to take photographs. Those photographs were taken at the request of the Halifax Regional Police. The purpose was to confirm that Cst. Campbell had done the compliance check at the right door.

[29] Cst. Fraser did not have a warrant to go on the property to take the photographs. Cst. Fraser did not feel that he needed one.

[30] The Board held that Cst. Fraser was not aware that a warrant was required. It found that his conduct was “inadvertent” and did not amount to discreditable conduct. Even if the conduct was “technically unlawful” there was “no evidence that it would constitute an abuse of his authority”. The Board also noted that there was no question that Cst. Fraser would have got a warrant had he requested one.

[31] Cst. Campbell’s involvement was to arrange for the taking of the photographs. The Board concluded that he had also completed a second compliance check and that in doing so he was engaged in the lawful execution of his duties.

[32] Mr. Garnier argued that Cst. Campbell may have been entitled to do the compliance check but neither he nor Cst. Fraser were entitled at common law to go on the property to collect evidence. He said that their actions were unreasonable and unlawful. Whether there was an absence of bad faith, Mr. Garnier argued, does not matter. He referred to caselaw in which evidence obtained in breach of a person’s *Charter* rights can be admitted having regard to the nature of the breach and the actions of the police. Inadvertence or ignorance of the law on the part of the police cannot be used to justify their actions so that evidence improperly obtained can be made admissible.

[33] The issue on judicial review is not whether the actions of Cst. Campbell and Cst. Fraser were either unreasonable or unlawful or whether the evidence was found to be admissible or inadmissible. It is whether the Board’s decision was reasonable, that in doing what they did, they did not commit a breach of the Code of Conduct. Put simply, the Board had to decide whether going onto the property at 117 Millville Highway, without a warrant, to take photographs, was conduct worthy of discipline.

[34] The Board’s chain of logical analysis is transparent. There are no fundamental gaps. The Board found as a fact that there was no cogent evidence

that any of the officers, which would include Cst. Fraser and Cst. Campbell were motivated by anything other than to carry out the duties assigned to them. Cst. Fraser took photographs as he was requested to do. Those photographs were admitted in trial before Justice Rosinski. Cst. Fraser did not believe that a warrant was required, though had one been requested it would have been granted. His actions were inadvertent. In other words, it was a mistake. Cst. Campbell was engaged in his duties by doing a compliance check. He arranged to have Cst. Fraser take the photographs. That was his only involvement.

[35] The Board determined that the actions of the two officers did not constitute a breach of the Code of Conduct. The conduct may have been technically unlawful but did not amount to an abuse of authority.

[36] The Board's decision is reasonable both in its outcome and in the transparent analysis used to reach that decision. The Board's decision with respect to Cst. Campbell and Cst. Stevens is affirmed.

### **Cst. MacSween and Cst. Walker**

[37] Cst. MacSween and Cst. Walker arrested Christopher Garnier in the home at 117 Millville Highway. The officers entered the home without a warrant. Kim Edmunds, Mr. Garnier's mother, and the resident of the home said that she never gave them permission. Constables MacSween and Walker said that they were invited in by her. The Board noted that difference but did not make any finding about whether Ms. Edmunds had invited the officers into the house. The Board referred to caselaw about whether an invitation could be inferred but ultimately decided that it was not necessary to decide whether the arrest of Christopher Garnier was or was not lawful. The issue, as stated by the Board, was misconduct. The Board asked, "But even if the arrest was unlawful, in a criminal court, the question before the Board is whether it was done in such a way, or for an improper purpose, so as to constitute a breach of discipline" (Board Decision, para. 40). Having posed that, as the question, the Board had to answer it.

[38] That is where a fundamental gap in logic, or the expression of the logical analysis appears. The Board notes that the officers were courteous throughout and there was no use of force. But no reason was put forward for the failure to get a warrant and the officers should have been aware that a warrant would be required for the purpose of the arrest. Cst. MacSween had reviewed the material before making the arrest and made the arrest at the request of another officer.

[39] If one stops reading at that point, there are clearly expressed thoughts, but they do not lead toward any particular conclusion. The officers were polite. There was no force. There was no reason given for failing to get a warrant. The officers should have known that they would need a warrant. None of that is leading up to a logical conclusion about whether there has been a breach of the Code of Conduct.

[40] That leaves the last 5 paragraphs of the decision. It is at this point that the logical train should arrive its conclusion. But it does not. The Board notes in paragraph 41 that Mr. Garnier's arguments were, for the most part, not relevant to the question of misconduct. Paragraph 42 comments on how unfortunate it was that there had been a miscommunication about Mr. Garnier's going to Cape Breton and a lack of response because the occupants of the home were asleep when a compliance check was done. That does not provide any insight into the Board's conclusion. The Board then says in paragraph 43, that "as a result" presumably because of the miscommunication and the lack of response, referred to in the immediately preceding paragraph, Christopher Garnier was deprived of his liberty for two months. Once again, that observation does not relate to any allegation of misconduct on the part of the officers who went to 117 Millville Highway to arrest him. Neither Cst. Walker nor Cst. MacSween had anything to do with the miscommunication about Christopher Garnier's whereabouts, or the failure to get a response at the door when Cst. Campbell did the compliance check on February 18, and no one responded.

[41] Paragraph 44 of the decision reads as a *non sequitur*. It does not follow logically from what precedes it.

The consequence of that arrest was that Christopher Garnier was denied his freedom for almost two months, and the Board is satisfied that there was a disciplinary default on the part of Constables MacSween and Walker. The Board orders that a reprimand be entered for breach of ss. 24(7)(a) of the Code of Conduct.

[42] Subsection 24(7)(a) of the Code of Conduct provides that a member who abuses their authority by making an arrest without good or sufficient cause commits a disciplinary default. That means that the Board imposed discipline because Cst. MacSween and Cst. Walker arrested Christopher Garnier without good or sufficient cause. It was then not because they had entered the home without a warrant or without permission of the resident, Kim Edmunds. The Board made no finding in that regard. And the arrest was that led to Christopher Garnier being taken into custody pending the trial before Justice Rosinski on the breach

charge, not any warrantless entry. The problem with the logical chain is that the Board accepted Justice Rosinski's finding that "at the time Mr. Garnier was arrested, the officers had reasonable grounds to believe an indictable offence had been committed" (Board Decision, para. 12, quoting *R. v. Garnier*). If the officers had reasonable grounds to make the arrest, it could not have been made without good or sufficient cause. The Board does not provide any explanation for why the arrest of Christopher Garnier was, contrary to Justice Rosinski's finding, not based on reasonable grounds. He was denied his freedom for more than two months, but that does not make the arrest either illegal or grounds for discipline.

[43] The Board made no finding that contradicted Justice Rosinski's conclusion that the officers had reasonable grounds to make the arrest. The Board found that the officers were not motivated by anything other than carrying out the duties assigned to them. They followed the directions that they were given. The Board did not find that they entered the home of Kim Edmunds without an invitation. There was no physical force used. The officers were courteous. But the Board does not explain how, considering those things, Cst. MacSween and Cst. Walker acted in a way that warranted their being reprimanded. The Board's decision leaves unanswered the question of what they did that was wrong.

[44] The Board's conclusion that there was a disciplinary default under ss. 24(7)(a) does not flow logically from the reasons provided.

[45] The Board's decision with respect Cst. MacSween and Cst. Walker is set aside. The matter should not be remitted to a differently constituted Board for decision. The complaint was heard by the Board over the course of 6 days. The record is substantial. Cst. MacSween and Cst. Walker were found by Justice Rosinski to have had reasonable grounds to arrest Mr. Garnier. The arrest was not without good and sufficient cause. Furthermore, the arrest was not done for an improper purpose and was not done in a way that would constitute a breach of discipline.

[46] I will hear the parties on the matter of costs, in writing, within 30 days of this decision.

Campbell, J.