NOVA SCOTIA BOARD OF INQUIRY

Date: April 29, 2021
File No: 42000-30-H18-0012

Between:

Gyasi Symonds

Complainant

– and –

Halifax Regional Municipality
o/a Halifax Regional Police Department

Respondent

– and –

Nova Scotia Human Rights Commission

Party

Chair:	Benjamin Perryman
Date of Hearing:	November 5, 6, and 10, 2020 in Halifax, Nova Scotia
Post-Hearing Submissions:	March 5, 25, and April 8, 2021
Counsel:	Gyasi Symonds, Self-Represented Karen MacDonald, Counsel for Halifax Regional Municipality Kate Dewey, Counsel for Halifax Regional Municipality Kendrick Douglas, Counsel for Nova Scotia Human Rights Commission

DECISION

Overview

[1] Jaywalking is the common and dangerous act of a pedestrian crossing a roadway at a place where they do not have the right of way. Jaywalking becomes an offence when such crossing causes an oncoming vehicle to have to yield to the pedestrian. The offence is punishable on summary conviction by a ticket ranging from $410 to $1,272.

[2] This inquiry concerns a ticket for jaywalking issued by a Halifax Regional Police officer to the Complainant. The Complainant alleges that he was issued the ticket because he is Black. The Respondent argues that its officers acted properly at all times in issuing the ticket.

[3] I find that race was a factor in the police officers' decision to target the Complainant for surveillance and investigation. This decision resulted in a summary offence ticket and constitutes adverse treatment. The Respondent has not justified this adverse treatment. Accordingly, the Complainant has established discrimination in violation of the *Human Rights Act*. This requires a remedy that is appropriate and responsive in the circumstances.

Background

[4] The Complainant, Mr. Gyasi Symonds, is an Income Assistance Worker employed by the Nova Scotia Department of Community Services. He works in the Major General Donald J. MacDonald Building (the "MacDonald Building") located at 2131 Gottingen Street in Halifax, Nova Scotia.

[5] The Respondent is the Halifax Regional Municipality ("HRM"), which operates the Halifax Regional Police ("HRP"). The HRP is a municipal police department established by the HRM. Under the *Police Act*, SNS 2004, c 31, HRM is legally responsible for the HRP and its officers.

[6] Messrs. Paul Cadieux and Steve Logan are constables with the HRP. At the relevant time, Cst. Cadieux and Cst. Logan were assigned to foot patrol in the North End of Halifax. This included Gottingen Street between Cogswell Street and North Street.

[7] The Nook Espresso Bar and Lounge (the "Nook") is located at 2118 Gottingen Street, directly across from the MacDonald Building.

[8] On the morning of January 24, 2017, Mr. Symonds left his workplace and crossed Gottingen Street (east to west) to get a coffee at the Nook. All parties agree that he crossed in the middle of the street and not at the nearby intersection (Cornwallis Street and Gottingen Street) that is controlled by traffic lights in both directions.

[9] Subsection 125(5) of the *Motor Vehicle Act*, RSNS 1989, c 293 creates the summary offence of jaywalking and reads: "A pedestrian crossing a roadway at any point other than within a crosswalk shall yield the right of way to vehicles upon the roadway." As a result, a pedestrian has the right to cross a roadway at a point which is not a regular crossing for pedestrians, but in

such a case, they must exercise care and look out for oncoming traffic (*Annapolis County District School Board v Marshall*, 2012 SCC 27 at para 5). If the pedestrian fails to yield to oncoming traffic, they may be ticketed for the offence known colloquially as jaywalking. Tickets currently cost from $410 to $1,272, depending on whether it is a pedestrian's first, second or subsequent offence (*Motor Vehicle Act*, s 297; *Summary Offence Tickets Regulations*, NS Reg 182/2020, s 6).

[10] At the same time that Mr. Symonds was crossing Gottingen Street to get a coffee, Cst. Cadieux and Cst. Logan were walking northbound on the west side of Gottingen Street, just south fo the Nook. They observed Mr. Symonds cross in the middle of the street from the MacDonald Building to the Nook. The parties disagree about whether Mr. Symonds failed to yield to vehicles on the roadway during this crossing.

[11] Cst. Cadieux and Cst. Logan stopped Mr. Symonds outside the Nook. I refer to this exchange as "Interaction #1". Cst. Cadieux wanted to educate Mr. Symonds about the dangers of jaywalking. Mr. Symonds did not want a lesson. There is some disagreement between the parties on how this interaction transpired.

[12] All parties agree that Interaction #1 ended when Mr. Symonds asked if he was free to go. Cst. Cadieux responded that he could go. No summary offence ticket or formal warning was issued. Mr. Symonds proceeded into the Nook. Cst. Cadieux and Cst. Logan proceeded on their patrol.

[13] There is substantial and irreconcilable disagreement about what happened next. Mr. Symonds says that he got his coffee, crossed Gottingen Street at the nearby intersection, and returned to work. Cst. Cadieux and Cst. Logan say that they observed Mr. Symonds cross in the middle of street, again without yielding to traffic, and enter the MacDonald Building. I refer to these events and observations as "Interaction #2".

[14] Cst. Cadieux and Cst. Logan pursued Mr. Symonds, who at that point was unknown to them because he had not been issued a formal warning. When they arrived in the lobby of the MacDonald Building, Mr. Symonds was not present. They gave a description of Mr. Symonds to the Commissionaire, Ms. Carolyn Brodie. There is some disagreement about how Cst. Cadieux and Cst. Logan were able to identify Mr. Symonds, however, he ultimately was called to come

down to the lobby and did come down.

[15] I refer to the events that transpired in the lobby as "Interaction #3". Again, there is substantial and irreconcilable disagreement about how this interaction transpired. Cst. Cadiuex issued Mr. Symonds a summary offence ticket for violating s. 125(5) of the *Motor Vehicle Act*, then the officers left and Mr. Symonds returned to work.

[16] Mr. Symonds did not challenge the ticket in court. He paid the $410 fine when he needed to renew his license plates. In December 2017, he filed a complaint under the *Police Act*, but this complaint was rejected on the basis that it was filed after the applicable (six-month) deadline.

[17] On January 9, 2018, Mr. Symonds, who is Black, signed a complaint under the *Human Rights Act*, RSNS 1989, c 214 (the "*Act*") alleging that he was discriminated against in the provision of services on the basis of race or colour. The Nova Scotia Human Rights Commission (the "Commission") investigated the complaint. Two years later, the Commission decided to forward the complaint to a board of inquiry. On March 5, 2020, the Chief Judge of the Provincial and Family Courts appointed me to a board of inquiry.

[18] The inquiry was held on November 5-6, and 10, 2020 at an in-person hearing in Halifax. The Complainant called himself and Ms. Carolyn Brodie as witnesses. The Commission called Ms. Tracy Embrett as a witness. The Respondent called Cst. Steve Logan, Cst. Paul Cadieux, and Staff Sgt. Mark MacDonald as witnesses.

[19] The Complainant, Commission, and Respondent all made written submissions on remedy in March 2021. The Complainant made reply submissions on remedy in early April 2021.

Preliminary Issues

[20] During his testimony in chief and his oral submissions, the Complainant attempted to add an additional ground of discrimination (source of income) to his complaint. The Respondent objected on the basis that a board of inquiry does not have jurisdiction to amend a complaint referred to it by the Commission.

[21] In *Nova Scotia (Environment) v Wakeham*, 2015 NSCA 114 at para 48, the Court of Appeal held that a board of inquiry does not have jurisdiction to amend a complaint. Accordingly, the only alleged grounds of discrimination before this Board are "race" and "colour" because only those grounds were listed in the complaint referred by the Commission.

Evidence

Gyasi Symonds

[22] Mr. Gyasi Symonds, the Complainant, acknowledged that jaywalking was an offence, but observed that it is an offence that is regularly committed on Gottingen St. He testified that he crossed Gottingen St around 8:00am on the day in question to get a coffee at the Nook. He admitted to crossing in the middle of the street, but did not admit to failing to yield to oncoming traffic. He stated that there were four white co-workers who crossed in a similar fashion in front of him.

[23] Mr. Symonds stated that he was confronted by Cst. Cadieux and Cst. Logan who blocked his entrance to the Nook. From his perspective, he was singled out because he is Black and given an unnecessary lecture. He stated that the interaction only ended when he asked if he was being detained. He then entered the Nook to get a coffee.

[24] After getting his coffee, he exited the Nook and turned left (north) toward the intersection of Gottingen St and Cornwallis St. Mr. Symonds stated that he could see the backs of Cst. Cadieux and Cst. Logan who were walking north on the west side of Gottingen St approximately two buildings north of the intersection. Mr. Symonds could not remember if the light was green or red when he reached the intersection, but he was unequivocal in his testimony that he crossed with the light at the intersection.

[25] Mr. Symonds testified that he then returned to work and continued with his workday. After about ten to fifteen minutes, he was contacted by a supervisor, Ms. Tracey Embrett, who advised him that the police were in the lobby and wanted to speak to him.

[26] Mr. Symonds went down to the lobby. He was met by Cst. Cadieux who he described as immediately aggressive and wanting to give him a ticket for jaywalking. He said he was threatened

with arrest if he did not comply with providing his identification. Since he did not have his identification, Mr. Symonds returned to his office to get his identification before coming back to the lobby. He was then issued a summary offence ticket and returned to work. Mr. Symonds testified that he had his cell phone with him and was trying to record the interaction but ultimately was not able to do so.

[27] Mr. Symonds described the events as one of the worst days he has ever had at work. He said that he felt humiliated, ashamed, and degraded by the interactions. He felt targeted by the police.

[28] Mr. Symonds stated that the events have had a lasting impact on him personally and professionally. He testified that he no longer goes for coffee while at work and feels uncomfortable in the lobby. He stated that he has been passed over for numerous internal job competitions. He further stated that this lack of career advancement is linked to these interactions with the police.

Carolyn Brodie

[29] Ms. Carolyn Brodie was one of two Commissionaires on duty in the lobby of the MacDonald Building on the day in question.

[30] She testified that it was common for the police to come into the building for a variety of matters but that this interaction was out of the ordinary. She stated that the police entered the lobby as though there was a serious crime in progress. She was taken aback when she learned that they were pursuing someone for a jaywalking offence because she regularly witnessed people jaywalk in front of the police on Gottingen St without any enforcement response.

[31] Ms. Brodie said that the police advised her that they were looking for a Black man in a toque. She did not immediately know who this could be because nobody had entered the lobby for some time. She stated that Cst. Cadieux demanded access to the controlled upper floors of the building—a request she denied—and then followed her around as she tried to reach a supervisor. When she did reach a supervisor by phone, she conveyed the situation and advised that she believed the Black man the police were pursuing was Mr. Symonds.

[32] Ms. Brodie testified that when Mr. Symonds came to the lobby, the response of Cst.

Cadieux was disturbing. She stated that she was worried the police were going to hurt Mr. Symonds and that she was in shock by what she considered to be their disproportionate response. She characterized Cst. Cadieux's demeanour as not in control and stated that he "lost it" in response to Mr. Symonds speaking. She said the incident left her feeling shaken.

Tracy Embrett

[33] Ms. Tracy Embrett is a director with the Department of Community Services. She has never been Mr. Symonds immediate supervisor but at the relevant time was a manager working at the MacDonald Building.

[34] She testified that on the day in question, she observed Mr. Symonds leaving the building for what she presumed to be a trip to get coffee. Shortly thereafter she received a call from another supervisor who advised that there were two police officers in the lobby who wanted to see Mr. Symonds in relation to a jaywalking ticket.

[35] Ms. Embrett testified that she called Mr. Symonds into a private office. According to Ms. Embrett, he said to her that he knew why the police were downstairs and explained the interactions from earlier that morning. Mr. Symonds asked if the police could come into the workplace. Ms. Embrett said "no" but suggested that he go downstairs. She asked Mr. Symonds if she could give him some advice and offered: "Why don't you just go downstairs and make this go away ... [t]ell them that you were just going across the street to get a cup of coffee." Mr. Symonds then went downstairs.

[36] Ms. Embrett stated that she did not know what to do next and that she was worried about what might be occurring in the lobby of the building. After waiting for some time, she went down to the lobby. She saw one of the police officers speaking to Mr. Symonds. She walked through the lobby and made eye contact with Mr. Symonds. While her observations were brief, she recalled that Mr. Symonds appeared uncomfortable and was sweating profusely. She could not recall any aspects of the conversation between the police officers and Mr. Symonds. When she returned through the lobby, shortly thereafter, the police and Mr. Symonds were all gone.

Steve Logan

[37] Cst. Steve Logan is one of the two police officers who interacted with the Complainant on the day in question. At the time, he had been with the HRP for only six months, though he was previously a military police officer for approximately ten years and with the Royal Canadian Mounted Police for one year.

[38] He testified that at the relevant time he was assigned to the Gottingen St foot patrol area. On the morning in question, he and his partner, Cst. Paul Cadieux, were walking northbound on the west side of Gottingen St. He observed the Complainant cross in the middle of the street and heard a vehicle travelling northbound slow down in response.

[39] According to Cst. Logan, his partner decided to provide some information to the pedestrian about jaywalking. Cst. Logan stated that his partner advised the Complainant about the legalities of jaywalking. The Complainant then asked if he was under arrest. Cst. Cadieux advised that he was not. The police officers then continued on their patrol.

[40] Cst. Logan acknowledged that the police officers decided to wait for the Complainant to see if he would jaywalk again. He did not state that this was his normal practice or that this was part of HRP's standard operating procedure. He did not state that he had reasonable grounds to believe the Complainant was about to commit a summary offence.

[41] Instead, Cst. Logan offered two explanations for this decision to wait for the Complainant. First, that it was normal for officers on foot patrol to stand around for long periods at a time because they really have no place to go. Second, that police presence can act as a "deescalating tactic" by deterring violations of the law; this deterrent effect, Cst. Logan hoped, would result in the Complainant taking the crosswalk on his return trip.

[42] Cst. Logan testified that he and his partner had stopped just short of Cornwallis St, on the west side of Gottingen St, where they were waiting for the Complainant. This was about 9 metres (30 feet) from the Nook, according to Cst. Logan. He stated that he saw the Complainant exit the Nook, turn towards them, and begin walking northbound toward the intersection. He recalled remarking to his partner "Oh, good, he's going to take the crosswalk." The officers then proceeded

northbound on their foot patrol.

[43] Cst. Logan testified that before they reached the Cornwallis St intersection, he observed an HRM bus (travelling southbound in the west lane) come to an abrupt stop in front of them. He then saw the Complainant running across the street in front of where the bus stopped. Cst. Cadieux told Cst. Logan that he was going to issue him a ticket. But it took the officers some time to reach the MacDonald Building because they had to wait for the light to turn at the intersection.

[44] Cst. Logan stated that when they entered the lobby of the MacDonald Building the only people there were two Commissionaires. He explained that they provided a description of the Complainant to the Commissionaires and then viewed the building security footage to identify the Complainant. Ms. Brodie then called someone and the Complainant ultimately came to the lobby.

[45] Cst. Logan described his partner's demeanour in the interaction that followed as standard and normal. He described the Complainant's demeanour as rude and agitated. He stated that the Complainant was making accusations of racism. He further stated that the Complainant was video taping them, threatening a complaint, and asking for their ID numbers (which were provided).

[46] The interaction ended after Cst. Cadieux issued a summary offence ticket for pedestrian failing to yield while crossing a roadway outside a crosswalk. Cst. Logan advised that he had never issued such a ticket in his policing career. He further advised that reports for such tickets are normally only prepared where there is an accident. He described the report prepared in this case as being "basically to cover our own butts to say, 'Look, we're not hiding anything, this is what happened,' and that's why we wrote it."

[47] Cst. Logan testified that the Complainant's race played no role in the decision to issue the ticket. He described the equity and diversity training he received from the HRP. While he acknowledged historic issues between the HRP and the African Nova Scotian community, his view was that there were no longer any such issues. Cst. Logan expressed a general familiarity with present statistics showing that Black people are more likely to be stopped by the HRP than White people. He understood this differential as being "[b]ecause a lot of our clientele is Black."

Paul Cadieux

[48] Cst. Paul Cadieux is the other of the two police officers who interacted with the Complainant on the day in question. He is the officer who issued the summary offence ticket and wrote a police report in relation to the incident. At the time, Cst. Cadieux had only been with the HRP for three to four months. Before becoming a police officer he had a non-policing career in the military.

[49] He testified that at the relevant time he was assigned to the Gottingen St foot partol area. On the morning in question, he and his partner, Cst. Logan, were walking northbound on the west side of Gottingen St. He explained that they would walk on this side of the street so that they could better observe and stop traffic that would be coming toward them (southbound) at that time of day. He observed the Complainant cross in the middle of the road and almost get hit by a white cube van travelling southbound.

[50] Cst. Cadieux testified that he arrived at the Nook at the same time as the Complainant. He reminded him of the dangers and illegality of jaywalking. The Complainant asked if he was being detained. Cst. Cadieux said "no" and that was the end of the interaction. Cst. Cadieux explained that it was normal for him to give warnings for this type of traffic offence.

[51] Cst. Cadieux testified that he and Cst. Logan proceeded on the their patrol. Cst. Cadieux recalled having a conversation with Cst. Logan about whether these types of informal education and warnings had any value. He could not recall specifically waiting outside for the Complainant.

[52] Cst. Cadieux explained that he and Cst. Logan had walked about halfway from the Nook to the Gottingen St and Cornwallis St intersection before observing the Complainant a second time. Cst. Cadieux was asked how long it took to walk this distance. He estimated that it would have taken them four to five minutes to walk the approximately 150 metres to the intersection. He stated that foot patrol officers normally walk at an extremely slow pace because they have no real place to go and sometimes interact with other members of the public. He could not recall any such interactions on the day in question. He also hypothesized that he could have had muscle stiffness from the cold weather that would have slowed them down.

[53] Cst. Cadieux stated that he saw the Complainant exit the Nook and turn toward the inter-

section. He assumed that his informal warning had worked, so he kept walking. He then noticed a Metro Transit bus hit its breaks. When he turned to look at the bus he observed the Complainant crossing the street in front of the bus while impeding traffic.

[54] Cst. Cadieux decided that he would issue the Complainant a ticket. He stated that he has only ever given two tickets for jaywalking, the ticket at issue in this inquiry and another ticket to a pedestrian who had been hit by a vehicle.

[55] Cst. Cadieux testified that it took some time to get to the lobby of the MacDonald Building because they had to wait for the light to change. He explained that they identified the Complainant through security camera footage. The Complainant then came down to the lobby.

[56] Cst. Cadieux characterized the Complainant as confrontational. He stated that he was filming them. This was Cst. Cadieux's first time dealing with a hostile member of the public. Cst. Cadieux issued the ticket. He gave the Complainant his business card and the number of his supervisor. Then the officers left.

[57] After leaving the MacDonald Building, Cst. Cadieux called his supervisor, Kim Robinson, to advise her that she may receive a phone call from the complainant. She advised him to take good notes in the event of a complaint. Cst. Cadieux explained that normally a "GO Report" is not prepared for a summary offence ticket unless there is an accident. However, per his supervisor's instruction, he prepared a report.

Mark MacDonald

[58] Staff Sgt. Mark MacDonald has been a police officer with the HRP for thirty-one years. For the last three years, he has been in the "training section" of the HRP where he supervises one sergeant and five constables. He oversees the training provided to HRP officers, including an approximate annual training budget of $430,000.

[59] He is generally not involved with determining what training to provide to officers or with designing training programs. Instead, he takes direction from HRP management, who passes down instructions through the chain of command.

[60] Staff Sgt. MacDonald explained that cadets who are hired by the HRP do not receive additional training upon entry provided that their certifications are current. Cadet hires are assigned a coach officer when they start. Experienced officers, by contrast, are given three weeks of training and re-certification when they join the HRP.

[61] Once hired, HRP officers receive "block training" at the beginning of each year that usually runs for two days and is mandatory for all active members. The contents of this training changes based on operational demands and includes mandatory certification and re-certification as needed.

[62] Staff Sgt. MacDonald outlined the equity, diversity, and inclusion ("EDI") training that Cst. Logan and Cst. Cadieux would have received as part of "block training" after joining the HRP. In 2017, the "block training" included a module on de-escalation tactics. In 2018, the "block training" re-introduced a module on fair and impartial policing that had not been offered since 2009; this module, according to Staff Sgt. MacDonald, included discussion of conscious and unconscious bias as well as material related to anti-Black racism or discrimination. In 2019, the "block training" focused on internal workplace rights. In 2020, the "block training" did not include any EDI modules and focused instead on responding to active shooter situations.

[63] Staff Sgt. MacDonald conveyed that the HRP takes issues of anti-Black racism seriously, including the report by Dr. Scott Wortly on street checks. He explained that the Chief of Police recently delivered training to supervisors on bias-free policing, interactions with the public, and rules of engagement. While previous EDI training has been under a broad umbrella of multiculturalism, Staff Sgt. MacDonald stated that the HRP is developing new training targeted specifically at anti-Black racism.

[64] This new training program is called "Journey to Change" and was designed in conjunction with the African Nova Scotian community. It is optional and currently at the pilot stage. Having not taken the program, Staff Sgt. MacDonald could not provide details of its contents, but he did testify that it includes exercises designed to enhance police understanding of community perspectives.

[65] At the hearing date in this inquiry, the pilot project had been offered once, to twenty HRP officers who volunteered to participate. Initial program reviews were positive. The HRP has an in-

tention to expand the program but this has not been implemented. Staff Sgt. MacDonald explained that including this type of training as part of mandatory "block training" would be cumbersome and expensive because it takes substantially longer than the normal training period.

[66] Staff Sgt. MacDonald described the processes that the HRP uses to evaluate its training programs. He testified that historically the HRP did not engage in program evaluation to assess the effectiveness of its training programs. He stated that the HRP is trying to improve its model in this area, for example, by including questionnaires at the end of a course. More recently, the HRP has included course pre-questionnaires to try to get an accurate picture of officer knowledge and opinion before a training course. When coupled with post-training questionnaires, Staff Sgt. MacDonald explained, these types of metrics would give the HRP a sense of "which direction we're heading in and how well we're doing." None of these questionnaires or data from these questionnaires was provided to the Board.

Documentary Evidence

[67] The Board was provided with the following documentary evidence that was entered as exhibits on the consent of all parties:

Ex. 1: Exhibit book prepared by the Commission consisting of the following:
- Written human rights complaint dated September 1, 2018;
- Letter to the Complainant from the Police Complaints Commissioner dated December 21, 2017;
- Commission case file note dated June 21, 2019;
- Commission notes of telephone interview dated June 27, 2019;
- Commission case file note dated June 20, 2019; and
- HRP general occurrence report dated January 24, 2017;

Ex. 2: Three Google Maps Street View images of 2118, 2121, and 2128 Gottingen St;

Ex. 3: Commission case file note dated May 8, 2019;

Ex. 4: Schematic of the MacDonald Building lobby prepared by Ms. Brodie during her testimony; and

Ex. 5: Three photographs of the MacDonald Building lobby.

Official Apologies for Anti-Black Racism

[68] Both the Complainant's and Commission's pre-hearing briefs referred to formal apologies made by the former premier of Nova Scotia and the current chief of the HRP to the Black community in Nova Scotia. These apologies were in response to historic and ongoing racial injustice in Nova Scotia. The text of the apologies was not provided to the Board, though the Complainant's pre-hearing brief did refer to news articles that contain passages of the apologies.

[69] At the hearing, the Board raised, on its own motion, whether the *Apology Act*, SNS 2008, c 34 precluded the admission of these apologies on an inquiry into a human rights complaint. The Board noted that the definition of "court" in paragraph 2(b) of the *Apology Act* "includes a tribunal, an arbitrator and any other person who is acting in a judicial or quasi-judicial capacity." Section 3 of the *Apology Act* concerns the effect of an apology on other matters and reads:

> 3(1) An apology made by or on behalf of a person in connection with any matter
>
> (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter;
>
> ...
>
> (d) may not be taken into account in any determination of fault or liability in connection with that matter.
>
> (2) Notwithstanding any other enactment or law, evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any court as evidence of the fault or liability of the person in connection with that matter.

[70] None of the parties provided case law on the admissibility of official apologies in a human rights inquiry. The Complainant questioned the point of an apology if its existence was nullified by law. The Commission took no issue with official apologies being inadmissible, but suggested that an apology could be "another straw" to support taking judicial notice of issues between police and the Black community. The Commission argued that this would not be an inference because the issues were a reality. HRM acknowledged that these apologies were made.

[71] In my view, the official apology made by the former Premier is admissible, but the apology made by the chief of the HRP is not admissible. A human rights board of inquiry is a "court" within the meaning of the *Apology Act*. Accordingly, the Board is prohibited from receiving evidence of

an apology made by a person in connection with any matter that involves the fault or liability of the person in connection with that matter.

[72] In other words, the *Apology Act* does not preclude official apologies generally, only apologies by or on behalf of a person who faces potential fault or liability connected to the matter for which an apology was made. This is consistent with the purpose of the *Apology Act* which is to promote the socially valuable act of apologizing by ensuring that the apology cannot be used to find legal liability against the person who made the apology.

[73] The former Premier's apology was made, it appears, on behalf of himself, his caucus, and his government, in relation to systemic racism in the province's justice system. None of these entities face a risk of fault or liability in this inquiry, therefore, the apology made on their behalf is admissible.

[74] The chief of the HRP's apology was made, it appears, on behalf of the HRP and by extension HRM, in relation to the historic actions of police and the injustices these actions caused to the Black community. While this apology was only made with respect to historic injustices, it is connected with the present inquiry. The Complainant and the Commission argue that an apology for historic events is relevant to an assessment of the evidence in the present case. In this way, the apology made on behalf of HRM operating as HRP is connected to this human rights complaint against HRM operating as HRP. This brings the chief's apology within scope of the *Apology Act* and renders it inadmissible in this inquiry.

Judicial Notice of Anti-Black Racism & Disproportionate Policing

[75] The Commission urged the Board, after citing numerous examples of judicial commentary on anti-Black racism in Nova Scotia and Canada, to take notice of the following:

(a) "In Nova Scotia, the social reality is that racism and systemic discrimination exists"; and

(b) the poor relations, historic and ongoing, between the police and the Black community.

According to the Commission, these facts inform the "reasonable person" standard that the Board applies in assessing allegations of discrimination in an inquiry. As I explain (below), there is

no such standard applicable to the test for discrimination under the *Act*. Nonetheless, it is still necessary to comment on the Commission's submissions on judicial notice.

[76] HRM, for its part, "recognizes there is a history of systemic racism in Nova Scotia directed towards African Nova Scotians and that this has been judicially noticed by the Courts, both in Nova Scotia and elsewhere." HRM acknowledges that the facts and allegations in this inquiry should be evaluated with an appreciation to this historical disadvantage, but argues that they do not obviate the need for independent evidence to substantiate the Complainant's allegations.

[77] The Complainant did not explicitly address judicial notice, but did argue that there is a well-established history of police racism and discrimination against Black Nova Scotians.

[78] Judicial notice permits a fact-finder, in this case the Board, to dispense with the requirement that facts must be proven with evidence. The general rule is that judicial notice may only be taken of facts that are either "(1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy" (*R v Find*, 2001 SCC 32 at para 48).

[79] How this rule is applied depends on how the facts will be used to resolve a case. The more important facts are to resolving a key issue in a case, the more strictly the requirements of notoriety or immediate demonstrability will be applied (*R v Le*, 2019 SCC 34 at para 85; *R v Spence*, 2005 SCC 71 at paras 61, 63). This allows fact-finders to take a more relaxed approach to social facts that "merely paint the background to a specific issue" and employ a more exacting threshold to facts that are dispositive of a case (*Le* at para 85).

[80] Where facts fall somewhere between background information and key issues in dispute, a fact-finder ought to ask themselves "whether such 'fact' would be accepted by reasonable people who have taken the trouble to inform themselves on the topic as not being the subject of reasonable dispute" (*R v Spence*, 2005 SCC 71 at para 65). This applies equally to social phenomena of which a fact-finder is asked to take notice (*Quebec (Attorney General) v A*, 2013 SCC 5 at para 239).

[81] In *Le*, the issue was whether the appellant, an Asian-Canadian man, was arbitrarily detained by police in violation of s. 9 of the *Charter*. In analyzing whether a person in the appellant's

shoes would feel obligated to comply with police demands—an aspect of the relevant legal test for arbitrary detention—the Supreme Court of Canada held that evidence of race relations in Canada was relevant and fell somewhere in the "middle ground" of the judicial notice spectrum. As a result, the Court applied the "reasonable people" test, articulated in *Spence*, to analyze whether taking judicial notice of race relations was appropriate (*Le* at paras 86–88).

[82] The Court reviewed numerous reports on race relations and concluded:

> These reports represent the most current statement on the relevant issues, and they originate from highly credible and authoritative sources. They are the product of research that included the time period at issue in this case. More importantly, they document actions and attitudes that have existed for a long time. A striking feature of these reports is how the conclusions and recommendations are so similar to studies done 10, 20, or even 30 years ago. These reports do not establish any new fact, but they build upon prior studies, research and reports and present a clear and comprehensive picture of what is currently occurring. **Courts generally benefit from the most up to date and accurate information and, on a go-forward basis, these reports will clearly form part of the social context when determining whether there has been an arbitrary detention contrary to the *Charter*.**
>
> **We do not hesitate to find that, even without these most recent reports, we have arrived at a place where the research now shows disproportionate policing of racialized and low-income communities** (see D. M. Tanovich, "Applying the Racial Profiling Correspondence Test" (2017), 64 C.L.Q. 359). Indeed, it is in this larger social context that the police entry into the backyard and questioning of Mr. Le and his friends must be approached. It was another example of a common and shared experience of racialized young men: being frequently targeted, stopped, and subjected to pointed and familiar questions. **The documented history of the relations between police and racialized communities would have had an impact on the perceptions of a reasonable person in the shoes of the accused.** When three officers entered a small, private backyard, without warrant, consent, or warning, late at night, to ask questions of five racialized young men in a Toronto housing co-operative, these young men would have felt compelled to remain, answer and comply (*Le* at paras 96–97). [emphasis added]

Based in part on these conclusions about the context of race relations, the Court found that the appellant had been detained by the police. The Court then assessed whether the detention was "arbitrary" within the meaning of s. 9 of the *Charter*.

[83] In this case, the Commission asks the Board to take judicial notice of race relations in Nova Scotia. As part of this notice, the Commission asked the Board to take notice of vague and

unspecified "issues" between the HRP and the Black community. HRM agrees that the Board must make its findings with an appreciation of the historical disadvantage of Black people in Nova Scotia, but submits that the Board cannot take notice of disproportionate policing of racialized communities. In my view, the position advanced by HRM is correct.

[84] The existence of historic and ongoing anti-Black racism in our society is notorious. It exists and is not the subject of debate among reasonable persons. Recently, some trial courts have taken judicial notice of this social reality (*See e.g. R v Jackson*, 2018 ONSC 2527 at para 82). This follows three decades of consistent judicial fact-finding on the topic. For example, in *R v Parks* (1993), 15 OR (3d) 324 (CA), after reviewing social science evidence of race relations, Doherty JA stated:

> I do not pretend to essay a detailed critical analysis of the studies underlying the various reports to which I have referred. Bearing that limitation in mind, however, I must accept the broad conclusions repeatedly expressed in these materials. Racism, and in particular anti-black racism, is a part of our community's psyche. A significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes. Furthermore, our institutions, including the criminal justice system, reflect and perpetuate those negative stereotypes. These elements combine to infect our society as a whole with the evil of racism. Blacks are among the primary victims of that evil.

[85] Three decades later, the Supreme Court of Canada remarked that what is striking about current reports on race relations is how similar they are to "studies done 10, 20, or even 30 years ago" (*Le* at para 96). In other words, Black people continue to experience anti-Black racism and systemic discrimination in our society. This social phenomenon is so notorious that the Board can properly take judicial notice of its existence.

[86] The same cannot be said, in the circumstances of this case, about poor relations between the police and the Black community in HRM. I am mindful of the Supreme Court of Canada's conclusions, in *Le*, about the disproportionate policing of racialized and low-income communities in Canada. I am also aware of the former Premier's apology for systemic racism in Nova Scotia's justice system. Like Chair Girard in *Johnson v Halifax Regional Police Service* (2003), 48 CHRR 307, 2003 CanLII 89397 at para 3 (NSHRC), rev'd *Johnson v Halifax (Regional Municipality) Police Service*, 2005 NSCA 70 (on the issue of remedy only *not* the finding of discrimination)

[*Johnson*], I am further aware that the "treatment of racial minorities by the police in Canada has been a topic of controversy for the last decade at least, but especially within the last few years." Nonetheless, it would not be appropriate to take notice of "issues" between the police and the Black community because the core dispute in this complaint is whether the interactions between the HRP officers and the Complainant were discriminatory.

[87] The Commission is asking the Board to recognize broader "issues" between the police and the Black community and to use that social phenomenon to make inferences about what happened in this case. This is not merely painting the background with context. Unlike in *Le*, where notice of race relations was relevant to a step in the legal analysis, the inferences the Commission are asking the Board to draw are closer to being dispositive of the case. This demands the more strict requirements of notoriety or immediate demonstrability before notice can be taken.

[88] Leaving aside the vagueness of the policing "issues" that the Commission wants the Board to notice, I am not satisfied that what is being advanced is so notorious or immediately demonstrable with indisputable proof that I can appropriately take notice. Accordingly, I decline to take notice of "issues" between the HRP and the Black community in HRM.

Reports on Race Relations

[89] In its pre-hearing brief, the Commission referred to the following reports and legal opinions on race relations in Canada:

(a) Bridglal Pachai, *Nova Scotia Human Rights Commission: 25th anniversary, 1967-1992: A History* (Halifax: Commission, 1992);

(b) United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Twenty-First to Twenty-Third Periodic Reports of Canada* (13 September 2017), UN Doc CERD/C/CAN/CO/21-23;

(c) Scot Wortley, *Halifax, Nova Scotia: Street Checks Report* (Halifax: Commission, 2019);

(d) J. Michael MacDonald and Jennifer Taylor, *Independent Legal Opinion on Street Checks* (15 October 2019); and

(e) Government of Nova Scotia, *Count Us In: Nova Scotia's Action Plan in Response to the International Decade for People of African Descent, 2015–2024*

[90] Domestic legal opinions are not normally considered evidence and the Commission did not advance any argument explaining why it was necessary to deviate from this rule. Accordingly, the *Independent Legal Opinion on Street Checks* is not admissible to assist the Board's fact-finding. The Board can, however, refer to the legal arguments raised in this report when deciding how to analyze the facts of this inquiry subject to the caveat that procedural fairness requires the Commission to have sufficiently highlighted those arguments on which it intends to rely.

[91] Of the remaining documents, only Dr. Scot Wortley's *Street Checks Report* (the "Wortley Report") was seriously pressed into service by the Complainant and the Commission. This report was authored by Dr. Wortley for the Commission and published in March 2019.

[92] The Complainant argued that the "Wortley Report" should be given a lot of weight and that the broad definition of a "street check" made the findings in this report relevant to this inquiry.

[93] The Commission acknowledged that the "Wortley Report" was of limited assistance for resolving the conflicting facts in this inquiry, but argued that the Report was relevant to support taking judicial notice of an "issue" between police and Black people that is sometimes the result of systemic discrimination. As explained, I have declined to take such notice.

[94] HRM argued that the "Wortley Report" should be given very little weight in this case because this inquiry is not concerned with "street checks".

[95] A human rights board of inquiry is not bound by the rules of evidence (*Boards of Inquiry Regulations*, NS Reg. 221/91, s 7). This does not mean that any and all evidence automatically becomes admissible. The Board must still assess whether evidence is relevant and reliable to the inquiry. The Board must also balance the access to justice benefits of relaxed evidentiary rules against the concerns of unfairness and unreliability that arise when accepting evidence that a party did not have an opportunity to challenge.

[96] HRM is correct that the Wortley Report focused primarily on the issue of "street checks" and not on the broader issue of "police stops". But the Wortley Report also includes self-reported and race disaggregated data on "police stops" more generally as well as qualitative evidence on the impact of such stops on Black people. The Wortley Report also discusses perceptions of the Black

community with respect to how they are treated by the police in HRM.

[97] In my view, this type of information is relevant to this inquiry in two ways. First, the Wortley Report provides some evidence of disproportionate policing that could support a finding of discrimination. Second, the Wortley Report provides some evidence on the impact of "police stops" that could support a quantification of damages in the event of a finding of discrimination.

[98] In *Le* at para 96, the Supreme Court of Canada held that decision-makers will generally benefit from having the most up to date and accurate information on race relations where issues of race are germane a case. In *Fraser v Canada (Attorney General)*, 2020 SCC 28 at para 58, a case concerning adverse effects discrimination in the context of the *Charter*, the Court held that "[e]vidence about the 'results of a system' may provide concrete proof that members of protected groups are being disproportionately impacted. This evidence may include statistics, especially if the pool of people adversely affected by a criterion or standard includes *both* members of a protected group *and* members of more advantaged groups." [citations omitted, emphasis in original]

[99] The Wortley Report constitutes such relevant evidence and its findings overlap with the time period at issue in this inquiry. One of the core findings of the Wortley Report is that Black people were five to six times more likely to appear in "street check" statistics than their representation in the general population would predict during the period 2006 to 2017 (Wortley Report, p 109). Self-reported statistics on "police stops" also showed disproportionate experience based on race (Wortley Report, p 33). In response to these experiences, Black people were more likely to express concerns about inconvenience, feelings of anxiety or fear, disrespectful treatment, fear of escalation, and racial profiling (Wortley Report, p 35).

[100] Relevance is not the only factor for determining admissibility and weight. Unlike in *Johnson*, where the Commission called an expert witness to testify about anti-Black racism related to police stops, the author of the Wortley Report did not testify in this inquiry. Neither were his credentials presented to the Board. This raises concerns with both fairness and reliability.

[101] There is an open debate between the parties about the extent to which the findings in the Wortley Report can reliably be extended to non-street check circumstances. There is also no settled

agreement on the explanation(s) for the over-representation of Black people in the data contained in the Wortley Report. As the Wortley Report explained, a majority of HRP officers believe that racial over-representation in "street check" data is the result of the fact that 1) street checks target criminal offenders, and 2) street checks target poor, high crime communities (Wortley Report, p 85). "[A] minority suggested that both racial stereotyping and unconscious bias could be contributing factors" (Wortley Report, p 88).

[102] Testimony from Dr. Wortley would have been immensely helpful to the Board in understanding the generalizability of his report's findings and the extent to which these findings may reliably lead to an inference of discrimination in non-street check circumstances. It would also have been helpful in assessing police explanations for over-representation.

[103] The Commission's decision not to call Dr. Wortley also deprived HRM of an opportunity to test the report findings and the application of these findings to this inquiry. It would be unfair to assign excessive weight to evidence that HRM has not had an opportunity to test.

[104] Considering relevance and reliability together, I find that the Wortley Report is admissible, but should be given limited weight in these circumstances.

Analysis

The Test for Discrimination Under the Human Rights Act

[105] Section 4 of the *Human Rights Act*, RSNS 1989, c 214 defines "discrimination" as follows:

> For the purpose of this Act, 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.

[106] Paragraph 5(a) of the *Act* prohibits discrimination in the "provision of or access to services or facilities."

[107] There is a two-part test for establishing discrimination in the provision of services under human rights legislation (*Moore v British Columbia (Education)*, 2012 SCC 61 at para 33) [*Moore*].

[108] First, a complaint must first prove, on a balance of probabilities (which is the same as saying "more likely than not"):

i) that they have a characteristic protected from discrimination under the *Act*;

ii) that they experienced an adverse impact with respect to the service; and

iii) that the protected characteristic was a factor in the adverse impact (*Canadian Elevator Industry Welfare Trust Fund v Skinner*, 2018 NSCA 31 at paras 33–37 [*Canadian Elevator*]).

[109] Second, if each of these factors are proven, the burden shifts to the respondent to justify its conduct within the exceptions outlined in the *Act* (*Canadian Elevator* at para 37). If a respondent cannot justify its conduct, discrimination is established in contravention of the *Act*.

[110] The Commission submits that in circumstances of alleged racial discrimination, the Board should apply this test from the perspective of a "reasonable person" imbued with knowledge of anti-Black racism in Nova Scotia. The only relevant authority cited for this proposition is *Dhanjal v Air Canada* (1996), 28 CHRR 367, 1996 CanLII 2385 (CHRT) [*Dhanjal*], where the Canadian Human Rights Tribunal stated:

> We are therefore of the opinion that, in the case of a complaint of racial harassment, a tribunal must strive to examine the impugned acts and conduct from the perspective of a reasonable person belonging to a racial minority, putting aside the stereotypes entertained in good faith by the majority. The tribunal must ask itself: from the standpoint of a reasonable Black person, for example, can this conduct be perceived as injurious or humiliating? We believe, therefore, that the seriousness of allegedly harassing conduct must be assessed not according to the criterion and perspective of the "reasonable person", who would necessarily be a person belonging to the racial majority, but rather according to the criterion and perspective of the "reasonable victim".

[111] *Dhanjal* does not stand for the proposition advanced by the Commission and I do not accept that the *Moore* test must be approached from the perspective of a modified reasonable person. In my view, *Dhanjal* speaks to a modified objective standard where a board must determine if racial

harassment in the workplace has created a toxic work environment. This is how the decision was approached by the Court of Appeal in *Nova Scotia (Human Rights Commission) v Play It Again Sports Ltd*, 2004 NSCA 132 at para 59. Similarly, the Supreme Court of Canada, in *Le* at para 75, employed a modified objective standard to query whether a reasonable person *of similar racial background* to the accused would have felt detained by police.

[112] The Commission has not identified any authority where the *Moore* test was approached from a modified objective standard. It may be that a modified standard is appropriate for assessing injury and humiliation following a finding of discrimination, but that does not mean that the *Moore* test should be modified. The proper vantage point with which to approach the test is that of the Board chair appointed to conduct the inquiry and to make findings of fact and law following a careful review of the evidence.

[113] In *Johnson*, the Board followed this approach. Chair Girard discussed the application of the two-part test to a complaint involving an HRP traffic stop and summary offence ticket that the complainant alleged were the result of racial profiling. Chair Girard noted that in such cases, "circumstantial evidence and inference are heavily relied upon as there is seldom direct evidence of discriminatory conduct" (*Johnson* at para 8). Relying on the Ontario Court of Appeal, Chair Girard further noted that "discriminatory acts by the police (or anyone) can arise from a process of subconscious stereotyping as well as from conscious decisions" (*Johnson* at para 9).

[114] The prohibition of indirect discrimination continues to be the law along with the related principle that a complainant does not have to prove discriminatory intent. As the Court of Appeal explained in *Canadian Elevator* at para 36:

> For the purposes of the *Act*, discrimination embraces both direct and indirect discrimination. Indirect discrimination occurs where otherwise neutral policies have an adverse effect on groups or individuals, based on grounds enumerated in the *Act*. It is unnecessary to establish discriminatory intent on behalf of the respondent. Both these principles of indirectness and lack of discriminatory intent are captured by the s. 4 statutory definition. [citations omitted]

[115] In assessing whether race or colour was a factor, directly or indirectly, in police conduct that caused an adverse impact, it is helpful to consider the exercise of police discretion and how it

is evaluated.

[116] Police officer discretion is an essential feature of the criminal justice system. A just society requires that the letter of the law be applied using judgment that adapts law enforcement to individual circumstances. "But this discretion is not absolute. Far from having *carte blanche*, police officers must justify their decisions rationally" (*R v Beaudry*, 2007 SCC 5 at para 37 [*Beaudry*]).

[117] Such justifications have both a subjective and objective component. Subjectively, a police officer must believe that they have legitimate grounds for their decision. Objectively, those grounds must accord with the material circumstances. "Thus, a decision based on favouritism, or on cultural, social or racial stereotypes, cannot constitute a proper exercise of police discretion" (*Beaudry* at para 37). Similarly, a decision that is disproportionate to the circumstances cannot constitute a proper exercise of discretion (*Beaudry* at para 40).

[118] In *Le* at para 77 citing *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 explained that a lack of subjective and objective justification for police conduct is at the core of racial profiling:

> 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 [also] 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 added]

[119] In *Johnson*, the Board analyzed these types of justifications when reaching its decision on discrimination. Chair Girard held that police were well within their authority to pursue vehicles that appeared to be eluding them, but found that the police officer's decision to pursue the complainant's vehicle was objectively unusual and the officer's subjective justifications were "less than candid" (*Johnson* at para 35). On this basis, Chair Girard concluded that race was an operative element in the police officer's decision to execute a traffic stop and that the complainant had been treated

disproportionately on the basis of race in violation of the *Act*.

Application of the Test to this Complaint

[120] The Complainant alleges that he was discriminated against in the provision of policing services on the basis of race and colour. All parties agree that the Complainant has these protected characteristics. The parties disagree about whether the Complainant experienced an adverse impact with respect to policing services and whether his race or colour was a factor in the interactions he had with HRP officers. For the reasons that follow, I find that the Respondent discriminated against the Complainant in the provision of policing services in violation of the *Act*.

[121] **Interaction #1**: Both officers testified that they observed the Complainant cross Gottingen St in the middle of the road on his way to the Nook and that in the process he failed to yield to an oncoming vehicle. The officers were inconsistent on which direction the oncoming vehicle was travelling, but this is immaterial in my view. Cst. Cadieux stopped the Complainant to provide informal education on jaywalking. He testified that this is something he does regularly. The interaction was brief and cordial. It ended when the Complainant asked if he was detained. Cst. Cadieux's contemporaneous report is consistent with his testimony on this initial interaction.

[122] The Complainant acknowledged that he crossed in the middle of the road, but disputed that he failed to yield to oncoming traffic. He characterized the interaction as calm but intimidating and longer than it needed to be. In his testimony, the Complainant said that there were four, White, female colleagues who crossed in front of him and were not stopped for informal education. The complaint makes no mention of Interaction #1. In both the complaint to the Commission and the complaint to the Police Complaints Commissioner, there is reference to four colleagues on the *return* trip from the Nook (Exhibit 1, pp 1, 7).

[123] HRM asked the Board to draw a negative inference from the fact that the complaint makes no mention of Interaction #1 and the four colleagues were not called as witnesses. The decision to draw an adverse inference is discretionary. In administrative proceedings where parties are self-represented, care must be taken not to place too much weight on the decisions of a self-represented party and their explanations for why certain witnesses were or were not called.

[124] I accept the Complainant's explanation that he included in his written complaint what he thought was relevant. I note that he did not shy away in his testimony from describing Interaction #1 much in the same terms as the officers. The Complainant was questioned on the identity of the four "colleagues" who apparently crossed in front of him. His evidence was that he was aware they worked in the building but did not know them personally. This is consistent with the fact that there are multiple different government offices in the MacDonald Building. The Complainant was not asked and did not make submissions on why he did not call these colleagues as witnesses.

[125] I am not persuaded that an adverse inference is appropriate in these circumstances. However, I agree with HRM that no weight should be put on the assertion that the Complainant was treated differently than his colleagues because the presence of such colleagues was not proven on a balance of probabilities.

[126] Regardless of whether the Complainant jaywalked on his way to the Nook, Cst. Cadieux's decision to provide informal education to the Complainant was *not* discriminatory. Informal education, done properly, does not create an adverse impact in the provision of services. Even if it did, I am satisfied that race or colour played no factor in Cst. Cadieux's decision to provide informal education in this case.

[127] The interaction was in keeping with Cst. Cadieux's regular practice. He had subjectively reasonable grounds to pursue this approach having believed that he observed the Complainant cross in the middle of the road while failing to yield to oncoming traffic. Objectively, the Complainant acknowledged that he did cross in the middle of the road. The interaction itself was brief and calm. Cst. Cadieux did not ask the Complainant for identification. The interaction ended at the Complainant's request. It was proportionate to the material circumstances.

[128] The Complainant has not established that this interaction resulted in an adverse impact or that a protected characteristic was a factor. Accordingly, the first-step of the test for discrimination is not met for Interaction #1.

[129] **Interaction #2**: What happened next is extraordinary and does constitute discrimination contrary to the *Act*. Instead of continuing on their patrol, Cst. Logan and Cst. Cadieux decided to target the Complainant for further investigation and surveillance. Race was a factor in this decision.

[130] Cst. Logan admitted that the two officers decided to "wait" for the Complainant to exit the Nook. When asked by counsel for the Commission if this behaviour was normal, Cst. Logan responded that the officers "didn't have to be anywhere." He also added that the decision to wait was a "deescalating tactic" to deter the Complainant from jaywalking again.

[131] Cst. Cadieux was much less candid in his testimony about what the officers did next. He acknowledged that the officers lingered around the Nook, but suggested that it was normal for foot patrol officers to take four to five minutes to walk a few store lengths or alternatively that he may have had a "muscle stiffness" due to the cold weather. I do not accept this testimony as credible. It is inconsistent with Cst. Logan's admission that there was a decision to "wait" for the Complainant. Cst. Cadiuex's poor recall of this time period is also inconsistent with his detailed recall of other aspects of that morning, for example, the types of military medals warn by the second Commissionaire in the lobby of the MacDonald Building. Additionally, while I can accept that foot patrol officers are not walking with a destination as an objective, it is improbable that it would take four to five minutes to walk from the Nook to the corner of Gottingen St and Cornwallis St.

[132] The officers clearly decided to wait for the Complainant and to target him for further investigation and surveillance.

[133] The only subjective ground offered for this targeting decision was Cst. Logan's belief in further surveillance as a "deescalating tactic". He did not state that he believed it was likely that the Complainant would commit another summary offence or that he had reasonable suspicion that this might occur or even that he had a mere hunch.

[134] It is hard to understand how Cst. Logan believed that the fact he "didn't have to be anywhere" or a potential "deescalating tactic" could be reasonable grounds for the decision to target the Complainant for further surveillance. The informal education provided was complete. The Complainant had gone on his way. There was nothing to "deescalate". HRM did not suggest that

this type of targeting was part of HRP training or that it would be reasonable to expect HRP officers to form such views. In my view, an absence of things to do and a hypothetical "deescalation tactic" in the face of no ongoing event are not legitimate subjective grounds for police intervention, even following informal education for an apparent motor vehicle act violation.

[135] Objectively, the decision to target the Complainant for further investigation and surveillance was disproportionate to the circumstances. At best, the officers had observed a contravention of the *Motor Vehicle Act*, one they found sufficiently minor so as to warrant informal education only. The Board was not provided with any objective evidence to suggest that a person who has committed a *Motor Vehicle Act* violation is more likely to commit another summary offence shortly thereafter.

[136] Cst. Logan's and Cst. Cadieux's decision to target the Complainant for investigation and surveillance constitutes an adverse impact in the provision of policing services. It subjected the Complainant to policing that was different from other Nova Scotians going about their day. It was disproportionate to the circumstances of an individual crossing in the middle of the road to get a coffee and receiving informal education about jaywalking.

[137] The decision was also inexplicable. It lacked both subjective and objective grounds. In this respect, it was an illegitimate exercise of discretion. Cst. Logan's explanations for his actions were untenable. Cst. Cadieux's explanations for his actions, like in *Johnson*, were less than candid. On this basis, I find that race or colour was a factor, consciously or unconsciously, in the decision to target the Complainant.

[138] The Complainant has established that he experienced an adverse impact in the provision of services for which a protected characteristic was a factor. The first-step of the test for discrimination is met. HRM did not advance any exceptions within the *Act* that would justify this type of discrimination, therefore, the decision to target the Complainant constitutes a violation of the *Act*.

[139] Even though a violation of the *Act* has been proven, it is still necessary to analyze the remainder of the interactions between the HRP officers and the Complainant in order to properly determine what remedy is required.

[140] The evidence of what happened after Cst. Logan and Cst. Cadieux's discriminatory targeting decision is imperfect on all sides. Before considering that evidence, I note that the fact the Complainant paid the summary offence ticket is not an admission to the offence. The Complainant testified, and I accept, that he only paid the ticket because he had to settle all outstanding fines before renewing his license plates.

[141] According to the Complainant, when he exited the Nook, Cst. Logan and Cst. Cadieux were north of Cornwallis St, on the west side of Gottingen, walking northbound. He did not jaywalk on his return trip and did not cause an HRM bus or any other vehicle to have to yield to him. HRM did not argue that it would be an abuse of process to contest the veracity of the ticket after the fact.

[142] The Complainant stated to the Police Complaints Commissioner that he "crossed, Gottingen street at the Cornwallis intersection ... with four other staff members" (Exhibit 1, p 7). In this complaint, he writes that he "crossed the road, near the Cornwallis and Gottingen intersection, with four white colleagues" (Exhibit 1, p 1).

[143] In his direct examination at the hearing, when talking about his return trip, the Complainant stated: "I did walk across the crosswalk, in the – within the crosswalk with, you know, other people that were within the crosswalk as well." He later stated: "So, I waited at the intersection with my coffee and I walked through the crosswalk. So, there was absolutely no jaywalking on the way back."

[144] On cross-examination by counsel for the Commission, the Complainant stated: "I take a left and I walk down to the corner of Gottingen Street and Cornwallis, I'm at the intersection where the crosswalk is, I have my coffee in my hand and I walk across the street in the crosswalk." He later testified that he crossed with the light, though he could not recall if he had to wait for the light to change.

[145] On cross-examination by counsel for HRM, the Complainant was asked about the discrepancy between his written complainant ("near the ... intersection") and his *viva voce* testimony ("in the crosswalk"). The Complainant's evidence was that these phrasings are synonymous.

[146] There were certainly some discrepancies in the Complainant's evidence about the presence

of other "colleagues" or persons crossing the street with him, both in terms of when they were allegedly present and their identity. As I have already concluded, the record before me does not support a finding that there were other people crossing with the Complainant.

[147] There were far fewer discrepancies in the Complainant's evidence about his return trip, both in terms of the officers' location and his compliance with the *Motor Vehicle Act*. He was firm in his testimony that he did not jaywalk. I believe and prefer his evidence on this point.

[148] According to both Cst. Logan's and Cst. Cadieux's *viva voce* testimony, they were located on the west side of Gottingen St, just south of the Cornwallis St intersection. They saw the Complainant exit the Nook and turn towards them. They then continued northbound. Shortly thereafter, they noticed a bus come to an abrupt halt. They turned their heads and observed the Complainant running across the street from in front of the bus.

[149] Cst. Cadieux's contemporaneous written report—which was prepared at the express instruction of his supervisor and with the explicit purpose, according to Cst. Logan, of justifying their actions in the event of a complaint—provides a different account:

> I continued our patrol and stop (sic) at the red traffic light on Gottingen / Cornwallis Street.
>
> Few minutes later, I observed the same male coming out of the store with a coffee. He was walking North on Gottingen, and passed the location where he previously cross (sic) the road earlier. At approximately 15-20 feet from the intersection of Cornwallis and Gottingen, the male ran between cars and cross the road. The male entered the office building located at 2131 Gottingen.
>
> We were able to catch up with the male few minutes later (waited to cross the street at the traffic light) (Exhibit 1, p 19).

[150] The written report places the officers further north on Gottingen St than the intersection, though the precise location is unclear. It makes no mention of a bus. It makes no mention of the officers ending their targeted surveillance after observing the Complainant turn north. It makes no mention of the officers' sight lines being obscured by a vehicle. It makes no mention of the Complainant not being present when they arrived in the lobby of the MacDonald Building or the steps they took to have him come down to the lobby.

[151] On cross-examination, counsel for the Commission questioned Cst. Cadieux about some of these discrepancies:

> **Q.** So, if I understand you correctly, the triggering event for this whole issuance of the ticket would be the bus, the bus incident involving Mr. Symonds, from your vantage point?
>
> **A.** What triggered the event to turn me around was the bus, that's correct.
>
> **Q.** And your observation of Mr. Symonds crossing the road and your belief that it was him that caused the bus to stop suddenly, that's what basically led to him receiving the ticket. So, being that's the crucial or the triggering effect, should that or should that not be included in an occurrence report?
>
> **A.** Perhaps it should have been. At the end of the day this was, you know, my third week on —
>
> **Q.** On the job.
>
> **A.** My note-taking is a lot different now, four or five years after I joined the police force, than my third week walking the beat without being supervised by any other officer. Absolutely, it should have been there.

[152] While I accept that new police officers may have less experience in note taking, the contemporaneous written report is substantially different from both officers' testimony on the grounds for issuing the summary offence ticket. This diminishes the reliability of their evidence on this point.

[153] There is also an inconsistency between Cst. Cadieux's written report and the testimony of Ms. Brodie. Cst. Cadieux writes that they caught up with the Complainant "a few minutes later" (Exhibit 1, p 19). But Ms. Brodie's evidence was that "some time" had passed after the Complainant returned and before the police arrived. She later stated that she was unsure of the precise time but estimated that it was around 10 minutes, long enough for her to forget that the Complainant had come in the building. Some further time passed between when the police arrived in the lobby and when the Complainant was called down from his workplace. What this suggests is that the officers may have actually been further up Gottingen St, though I do not need to resolve this issue for the purposes of this inquiry.

[154] Based on my assessment of the credibility and reliability of the evidence before me, I find it more likely than not that the Complainant did *not* jaywalk on his return trip. I do not go so far as to find that the HRP officers constructed their evidence or that they decided to ticket the Complainant out of malice or other impropriety. They may have thought they observed something that would warrant a summary offence ticket. However, on the evidence before me, I am not satisfied that there was a good basis for issuing such a ticket and there was certainly no basis whatsoever to be targeting the Complainant in the first place.

[155] **Interaction #3**: Like Interaction #2, the parties' evidence differed substantially on what happened in the lobby of the MacDonald Building during the issuance of the summary offence ticket. Unlike the previous interactions, there were two witnesses to what transpired, Ms. Brodie and Ms. Embrett. Both are disinterested witnesses, meaning they have nothing to gain or lose by their testimony. This is important where the parties are each pointing the finger of impropriety at the other. Unfortunately, neither Ms. Brodie nor Ms. Embrett were interviewed by the Commission's investigators until 18 months after the incident and both their statements to the Commission and testimony at the hearing were imprecise at points.

[156] The parties led evidence on how the officers identified the Complainant, the demeanour of all involved, the Complainant's alleged recording of the incident, the officers' alleged handling of their firearms, and the length of the interaction. It is not necessary to resolve each of these disagreements. The issue before the Board is whether the Complainant experienced an adverse impact in policing services in which a protected characteristic was a factor. As Chair Girard explained in *Johnson* at para 49, the question is whether an officer's behaviour during a traffic stop would have been different if the person suspected of violating the *Motor Vehicle Act* was White.

[157] Ms. Brodie testified that the officers came into the lobby with a demeanour that was more consistent with a serious crime in progress than a traffic offence. She found them rude and aggressive. Cst. Cadieux followed her around the lobby as she determined who to call for assistance. When the Complainant came down to the lobby, Ms. Brodie became worried for his safety. She thought that Cst. Cadieux was "challenging" the Complainant, though she could not recall much specifically that led her to this view. She could not recall anything specifically that was said by

either officer to the Complainant that was inappropriate.

[158] In her telephone interview with an investigator for the Commission, some 18 months after the incident, Ms. Brodie stated that she was in "shock" and that the interaction was "very scary and unnecessary" (Exhibit 1, pp 12–13). But the statement lacks particulars on what was said. It also misses some important information, such as the Complainant having to go back to his work station to retrieve his ID.

[159] I found Ms. Brodie to be a credible witness and I accept her opinion of the interaction, including the observation that the officers were rude and aggressive. I also note, however, that she was unaware of what transpired before the officers arrived, that she did not have the ability to observe all of the interactions between the officers and the Complainant in the lobby, and that her memory lacked firmness in parts. As a result, I do not accept her conclusion that this was a one-sided interaction.

[160] The Complainant acknowledged that he had an interaction with the officers about producing his identification. Cst. Cadieux's contemporaneous report states that he told the Complainant "that he was currently being detain (sic) under the MVA, and needed to provide officers with identification ... and I told his (sic) it was correct and if he didn't provide identification, we could even arrest him until we can positively ID him" (Exhibit 1, p 19). The Complainant then went back to his work station to get his identification.

[161] The Complainant further acknowledged that he was trying to record the interaction that followed, but stated that he did not end up recording it. His evidence was that a Commission investigator's notes (Exhibit 3) to the contrary, from 17 months after the incident, were not accurate. The investigator was not called to give evidence. These notes are hearsay if relied on for the truth of their contents which diminishes their reliability. I accept the Complainant's testimony that he did not successfully record the interaction.

[162] Both officers testified that they did not feel at risk in the interaction. Both testified that they did not have their hand on their firearm at any point in the interaction. Cst. Logan explained that police officers like to know where their equipment is at all times and may sometimes rest their

arms on their duty belt. This matters because, in his words, "every time we go to a call, it's a gun call, it's a gun call, because we bring a gun to the call." I accept the officers' evidence that neither actively placed their hand on their firearm.

[163] Both officers explained why the interaction lasted as long as it did. For example, foot patrol officers do not have access to computers, so must call in the standard identity checks by radio. I accept the officers' evidence that issuance of the ticket did not take longer than it normally would for foot patrol officers.

[164] Both officers testified that the Complainant was agitated and making allegations of racism against them. The allegations of racism are confirmed by Cst. Cadieux's contemporaneous report. That report also notes a number of remarks made by the Complainant to the effect that the officers should be concerned with more pressing matters in the neighbourhood (Exhibit 1, p 19). The Complainant's testimony confirmed much of these observations, but contested the assertion that he was agitated or rude in any way.

[165] Ms. Embrett's very late and very brief observations of the Complainant suggest that he was under distress, but this is not necessarily indicative of a particular behaviour on the part of any party. Ms. Embrett did not observe rude or hostile behaviour from either the Complainant or the officers during the very brief time that she observed the interaction.

[166] This discussion of the Complainant's behaviour should not be taken as a suggestion that he is somehow on trial or at fault. As Chair Girard explained in *Johnson* at para 41:

> A citizen who honestly and reasonably believes he is being treated unjustly by the police is not obliged to sit meekly by to let matters take their course. He or she is entitled to remonstrate vigorously with the authority who is believed to be acting in error, as long as there is no resort to threatening gestures to accompany the words.

But a person's comportment is relevant to understanding the response of police and analyzing whether it was different than it would have been if that person was White.

[167] The evidence before me suggests that the officers, particularly Cst. Cadieux, came into the lobby of the MacDonald Building much hotter than was to be expected in the circumstances, even

taking into consideration the preceding interactions they had with the Complainant. But I am not satisfied that Interaction #3 was as one-sided as the Complainant suggests. He had to be told that he could be arrested for obstruction if he did not produce his identification. He was contesting the legitimacy of the officers' actions and threatening a complaint against them. This was not a cordial interaction.

[168] More experienced officers may have been able to more quickly diffuse this situation. By the time Ms. Embrett arrived in the lobby the situation was diffused. That said, when a member of the public contests a request for identification during a *Motor Vehicle Act* detention, it may be necessary for police to respond firmly and directly, including with notice that failure to comply may have legal consequences. This can make the situation much more confrontational for all involved.

[169] Officer rudeness and aggression may constitute an adverse impact in the provision of policing services. But such behaviour only becomes discriminatory where a protected characteristic is a factor in that behaviour. In the absence of such a factor, the appropriate recourse is a complaint under the *Police Act* alleging that an officer was "discourteous or uncivil to a member of the public, having regard to all the circumstances" (*Police Regulations*, NS Reg 11/2020, s 24(e)).

[170] Based on my assessment of the credibility and reliability of the evidence before me, I am not satisfied that the Complainant has proven, on a balance of probabilities, that race or colour were factors in how he was treated in the lobby of the MacDonald Building. The interaction should not have happened because the Complainant should not have been targeted. But the Complainant was not treated differently than a White pedestrian would have been in similar circumstances.

[171] **Inadequate Training**: The majority of evidence and submissions presented to the Board focused on the individual actions of Cst. Logan and Cst. Cadieux. The Board also heard some evidence on systemic contributions to those actions, in particular, evidence about training that officers receive when they join the HRP and annually during "block training". This raises the question of whether the training (or lack of training) contributed to the officers' actions, and if so, whether a protected characteristic was a factor in the training (or lack of training).

[172] Both Cst. Cadieux and Cst. Logan were inexperienced officers at the time of the incident. Cst. Cadieux had been on patrol for a matter of weeks. While Cst. Logan previously had a career as a military police officer, he had limited experience policing civilians.

[173] Cst. Logan testified that he had received employment, diversity, and equity ("EDI") training during his time with the military and as "block training" after joining the HRP in the summer of 2016. Cst. Cadieux testified that he received EDI training in the summer of 2016 as a cadet before starting as a patrol officer around September 2016.

[174] Staff Sgt. MacDonald, who oversees HRP training, explained that neither officer would have received much additional training upon joining the HRP and that EDI training is not offered as part of initial training. He explained that EDI training is incorporated into annual "block training" but few details of this training were provided to the Board. In any event, Cst. Cadieux testified that the 2017 "block training"—his first such training after joining the HRP—was not offered until February to March 2017 (after the incident). It follows that Cst. Cadieux had not received EDI "block training" from the HRP before the incident.

[175] Staff Sgt. MacDonald also explained that neither Cst. Cadieux nor Cst. Logan had received "block training" in de-escalation or "legitimate and bias-free policing" until after the incident. The HRP's "verbal judo" course in de-escalation was offered in 2017 *after* the incident. The HRP's "legitimate and bias-free policing" course was offered in 2009 (*before* the officers joined the force) but was not offered again until 2018 (*after* the incident). The reasons for this large time gap in providing the bias-free policing course are not clear.

[176] Based on the record before me, I find that it is more likely than not that the Respondent's approach to training police officers contributed to the actions of Cst. Logan and Cst. Cadieux. HRM allowed the HRP to operate for almost a decade without offering the "legitimate and bias-free policing" course. As Staff Sgt. MacDonald explained: "the basic idea [of this course] was to help people examine any bias that they might have and how it might affect their actions." I cannot say definitively that Cst. Logan and Cst. Cadieux would have acted differently if they had received more comprehensive EDI training, but I can say that their lack of EDI training contributed to their actions and to the adverse impact experienced by the complaint.

[177] As already stated, an adverse impact alone does not constitute discrimination. Inadequate training that contributes to an adverse impact will only amount to discrimination where a protected characteristic is a factor in the inadequate training. The Board was not presented with evidence to explain the Respondent's decisions regarding police training. Accordingly, it cannot be concluded that the inadequate training was discriminatory under the *Act*.

Remedy

The Law on Remedies for Violations of the Act

[178] Subsection 34(8) of the *Act* authorizes the Board to grant remedies following a finding of discrimination:

> A board of inquiry may order any party who has contravened this Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons or to make compensation therefor and, where authorized by and to the extent permitted by the regulations, may make any order against that party, unless that party is the complainant, as to costs as it considers appropriate in the circumstances.

[179] This enables the Board to make two types of orders. First, non-monetary orders requiring a party to do any act or thing: (i) to comply with the *Act*, (ii) to recitfy any injury caused, or (iii) to make compensation. Second, monetary orders requiring a party (other than the complainant) to pay damages that are considered appropriate.

[180] In determining what is a just and appropriate remedy in the circumstances, the Board is guided by the principle that remedies are supposed to be remedial not punitive. The focus of the remedial exercise is on the experience of the complainant. The purpose of a remedy is to restore a complainant to the position they would have been in if the discrimination did not occur and to recognize the harm they suffered.

[181] Where a complainant alleges that discrimination caused special damages (monetary loss), the loss must be quantified and there must be a sufficient causal link between the discrimination and the loss. In the human rights context, this link is less exacting than the "but for" standard applied in tort law (*YZ v Halifax (Regional Municipality)* (2019), 95 CHRR D/51, [2019] NSHRBID No 4

at paras 1–3 (NSBOI)) [*YZ*] citing *Walsh v Mobil Oil Canada*, 2013 ABCA 238 at para 44.

[182] In assessing general damages for harm and injury to a Complainant's dignity—what is referred to as "pain and suffering" in other contexts—case law identifies the following factors as relevant:

- the subjective experience of the complainant (e.g. humiliation, hurt feelings, loss of self-esteem, loss of dignity, victimization, etc.)
- the seriousness, frequency, and duration of the violation;
- the vulnerability of the complainant;
- restoration of the complainant;
- redress for harm(s) experienced;
- consistence with other awards in similar circumstances;
- public respect for human rights; and
- deterrence of future violations (*See YZ* at paras 1–3, 19 and the cases cited therein).

Position of the Complainant

[183] The Complainant seeks the following monetary remedies:

(a) $1,600 in "special damages" as compensation for the costs associated with preparing for and attending the hearing;

(b) $400,000 in "special damages" as compensation for past and future lost income; and

(c) $400,000 in "general damages" as compensation for pain and suffering.

[184] The Complainant also requests the following non-monetary remedies:

(a) termination of Cst. Logan and Cst. Cadieux;

(b) criminal prosecution of Cst. Logan and Cst. Cadieux;

(c) 2,000 word essays by Cst. Logan and Cst. Cadieux respectively about what they did wrong, why they did it, and what they learned;

(d) mandatory anti-racism training for Cst. Logan and Cst. Cadieux chosen by the Complainant,

(e) mandatory anti-racism training of "high-level staff and officers" followed by a report from the HRP to the Commission confirming the details of this training; and

(f) Written and public apologies from Cst. Logan, Cst. Cadieux, the HRP, and HRM.

[185] The Complainant contends that his reputation was damaged in the eyes of his employer as a result of the actions of Cst. Logan and Cst. Cadieux. He argues that this reputational damage has prevented his career advancement. He estimates that he should have been promoted twice in the past four years, with each promotion resulting in an additional $7,000 more per annum to his salary. He calculates his lost wages for the past four years at $28,000. Taking this sum and extrapolating forward, he reasons that his lost past and future income amounts to $400,000.

[186] The Complainant contends that he suffers from PTSD because of the interactions with Cst. Logan and Cst. Cadieux. He says that he now fears police officers whenever he sees them and that this has caused him to alter his behaviour while at work and in the community. He further contends that the interactions were humiliating and caused lasting psychological and physiological damage.

[187] The Complainant also notes, in his written submissions, that following the hearing in this inquiry, the stress of the experience caused him to take almost three months of sick leave from his job.

[188] In support of these submissions, the Complainant refers to a Commission media release following the decision in *David v Sobeys Group Inc (No 1)*, 2015 CanLII 154352 (NS HRC) [*Sobeys*]. The Complainant reasons that if approximately $30,000 was awarded in that case, he "should get at least 10 times that amount for pain and suffering, and damage to my career **$800,000**" [emphasis in original].

Position of the Commission

[189] The Commission argues that general damage awards for discrimination based on race or colour have been excessively low. The Commission contends that such excessively low amounts do not reflect the important principle of non-discrimination that the *Act* seeks to uphold or the significant pain and suffering that discrimination causes.

[190] The Commission notes that the Board's decision in *MacLean v Nova Scotia (Attorney General)*, 2019 CanLII 115231 (NS HRC) [*MacLean*] is presently under appeal. There, Chair

Thompson held that high general damage awards were "wrong in principle" because they amount to punishment rather than remediation.

[191] The Commission further notes that in *YZ* , Chair Connors awarded a complainant $80,000 in general damages following a finding of discrimination based on race. The complainant in that case was White and experienced racially derogatory remarks targeted at his spouse who identified as African Nova Scotian. The Commission submits that if a White complainant's pain and suffering in these circumstances can reach a quantum of $80,000, a Black person who is the subject of racial discrimination should not be limited by an unduly restrictive cap on general damages.

[192] The Commission urged the Board to follow the approach in *YZ* over the approach in *MacLean*. After highlighting the *viva voce* testimony the Complainant gave at this inquiry on the effects of the interactions with Cst. Logan and Cst. Cadieux, the Commission advanced an appropriate general damages amount in the range of $20,000–$30,000.

[193] The Commission also expressed concern that the "full extent of the impact/injury flowing from this incident is not known because Mr. Symonds did not testify to same." Citing procedural fairness, the Commission argued that the Board should hold a further hearing on the issue of remedy to allow the Complainant an opportunity to testify further.

[194] The Commission did not advance a request for a public interest remedy. The Commission stated that it was satisfied with the evidence of Staff Sgt. MacDonald, including his testimony on the HRP's current equity, diversity and inclusion training as well as efforts to track the efficacy of such training.

Position of HRM

[195] HRM contested the Commission's submission that the Complainant had not provided testimony on the harm he experienced. HRM drew the Board to various places in the hearing transcript where the Complainant spoke to the harm he experienced. HRM argued that all the parties agreed not to bifurcate the proceeding and that it would not be appropriate to hold an additional hearing on remedy.

[196] HRM argued that the Complainant's submission on career disruption was rebutted by Ms. Embrett's evidence that it played no role in the Complainant's lack of success in certain job competitions.

[197] HRM took no position on the Commission's submissions about *MacLean* and its limitation on the scope of general damages. After providing a thorough review of human rights case law on general damages in the context of racial discrimination, HRM suggests that an appropriate range for general damages is between $10,000 to $15,000. HRM also contends that relevant factors for determining the appropriate quantum of general damages include the length of the interaction and the demeanour of the officers.

[198] HRM submitted that a public interest remedy was not warranted in the circumstances of this case because of the steps the HRP has taken with respect to training, most notably the new Journey to Change course.

Reply of the Complainant

[199] The Complainant used his reply submission on remedy to castigate counsel for HRM for what he suggested was "insulting and disrespectful" behaviour. He argued that counsel was "racist, nasty and unprofessional." This followed similar remarks in the Complainant's initial brief on remedy. The Complainant then reiterated his main arguments on remedy. Notably, he did not request a further opportunity to lead evidence on remedy.

[200] The Complainant's remarks directed to counsel for HRM are baseless and improper. Counsel for HRM has been professional, measured, and helpful throughout this inquiry.

Analysis

[201] **Re-Opening the Hearing**: The parties were in unanimous agreement that this inquiry would not be bifurcated. Instead, the parties asked for an opportunity to make post-hearing submissions on remedy. This was granted. The Board received evidence on remedy at the hearing and post-hearing submissions on remedy. The Complainant has *not* asked that the Board re-open this inquiry to receive additional evidence. In this context, procedural fairness does not require, as the Commission suggests, that the hearing be re-opened.

[202] **Special Damages (Hearing Costs and Ticket Costs)**: In *Sobeys*, the Board ordered special damages to a complainant to reimburse them for the personal costs of attending the hearing. Here, the Complainant seeks $1,600 in compensatory damages for the costs of attending and preparing for this hearing, but his quantification of these costs associated are inaccurate and wanting. He states that "[t]his hearing took five days to complete" when in fact it was only three days. He claims transportation, photocopy, food, research, and daycare costs without providing any detailed itemization of these costs. He provided no evidence of his lost wages (e.g. his hourly salary) or the distance he had to travel to the hearing.

[203] In the absence of some detailed evidence, no special damages are awarded for preparation and travel costs. Taking at face value the Complainant's unsupported statement that he earns "approximately $69,000 per year", I calculate the Complainant's hourly salary at approximately $36/hour ($69,000 ÷ 52 weeks per year ÷ 37.5 hours per week). Presuming that the Complainant works 7.5 hours per day, I calculate his lost wages at $810 for the three-day hearing.

[204] The Complainant did not request reimbursement of the cost for the summary offence ticket that he paid. This was likely an oversight on his part. As I have found, the Complainant should have never been ticketed because he should have never been targeted. Cst. Logan's and Cst. Cadieux's discriminatory actions are causally linked to issuance of the ticket. The Complainant should be reimbursed the $410 he paid. He is also entitled to pre-judgment interest at a rate of 2.5% from the date the complaint was filed (*Hill v Misener (No 2)*, 1997 CanLII 24761 (NS HRC); *Cromwell v Leon's Furniture Limited*, 2014 CanLII 16399 (NS HRC)). This amounts to a total of $413.

[205] **Special Damages (Lost Income)**: The Complainant claims $400,000 in special damages for lost income (past and future). This claim is premised on the submission that the Complainant would have been promoted if it were not for the public discrimination he experienced.

[206] The Board was not provided with any details of the job competitions to which the Complainant applied. The Board has no evidence on the minimum requirements for these positions and therefore no ability to assess whether the Complainant is as overqualified as he submits. The Board has no evidence on the salary differential between these positions and the Complainant's present salary. There is also no evidence of a causal connection between the discrimination and the alleged

loss. The connection advanced by the Complainant is in the nature of supposition.

[207] There is insufficient evidence for the Board to make a finding that the Respondent's contravention of the *Act* caused the Complainant to lose past or future income. Accordingly, no special damages are awarded for lost income.

[208] **General Damages**: The Complainant claims $400,000 in general damages for the harm he experienced as a result of Cst. Logan's and Cst. Cadieux's discriminatory treatment of him. He described the humiliation of being targeted by police and confronted at his workplace. He explained that he is now fearful of going to get coffee at the Nook and of police more generally. In his post-hearing submissions, he contended that the discrimination was traumatizing to the point that he now has Post-Traumatic Stress Disorder ("PTSD"). He also stated that the hearing process was so traumatic that he had to take three-months off work.

[209] In assessing claims for general damages in the context of the *Act*, I share the Commission's view that *MacLean* must be approached with caution. In *MacLean*, Chair Thompson cited his own decision in *Willow v Halifax Regional School Board* (2006), 56 CHRR 157, 2006 NSHRC 2 at paras 123–124 [*Willow*] as well as *CN v Canada (Canadian Human Rights Commission)*, [1987] 1 SCR 1114 at 1134 for the proposition that general damage awards for human rights violations are capped at an "appropriate amount" that prevents them from becoming punitive.

[210] There are a number of problems with this statement of the law. First, Subsection 34(8) provides no such constraint; it compels the Board to provide an order that it "considers appropriate in the circumstances." Second, the cases cited in *MacLean* do not support the proposition that general damages should be applied differently in the human rights context.

[211] In *CN*, the Supreme Court of Canada did not hold that the human rights context warranted a lower range of general damages than other contexts. General damages were not even at issue in *CN*. The Court reiterated that human rights legislation should be given a broad interpretation and restored the order of the Canadian Human Rights Tribunal.

[212] In *Willow* at para 123, Chair Thompson relies on *Johnson* when stating that "[t]ribunals are often invited to inflate the damage awards above the range which has been established, but the

invitation has regularly been refused." But *Johnson* at para 92 merely acknowledges that there is a "usual range" for general damage awards, it does not go further and suggest that the range ought to be lower than in other contexts.

[213] In my view, general damages must be assessed using a principled approach that acknowledges the statutory language of the *Act* and appellate guidance requiring that the *Act* be given a broad and purposive interpretation. Consistency with previous decisions is an important factor for assessing general damages and part of the rule of law. But there are also other factors relevant to an assessment of general damages. Our understanding of those factors (e.g. vulnerability of the complainant or hurt to dignity) may change over time in a way that requires general damage awards to change. A conception of harm that is unchanging and tethered to yesteryear may trivialize human rights legislation and the important principles of equality and non-discrimination it is intended to protect. Additionally, where there are unique facts or harms that distinguish a complaint from existing case law, it would not be appropriate to limit an award of general damages to a "usual range". The language of the *Act* is what carries the day and that language provides costs as the Board considers "appropriate in the circumstances."

[214] Each party to this inquiry provided the Board with case law that is suggested to provide a helpful benchmark for assessing what is appropriate in the circumstances.

[215] The Complainant offered *Sobeys* as the benchmark and submitted that a multiplier of 13 times would be appropriate to add to this decision. *Sobeys* was a case of racial profiling by a grocery store employee of a Black customer. The problem with the Complainant's approach is that no rationale was provided as to why a multiplier was warranted in the circumstances, let alone one that is an order of magnitude greater than the benchmark.

[216] The Commission offered *YZ* as a benchmark and submitted that a Black complainant should receive general damages no less than a White complainant who advanced a claim of third-party racial discrimination. The problem with this approach is that the facts of *YZ* and the evidence that proved those facts are substantially different than this case. *YZ* was a toxic workplace complaint where the discrimination took place over many years. The complainant was represented by counsel and the assessment of damages was supported by evidence, including testimony from

the complainant's spouse, another witness, and an expert report authored by a psychologist. It is this evidence that explains the elevated general damages award in *YZ*. The quality of the evidence presented in this complaint does not make it comparable to *YZ*.

[217] HRM offered a comprehensive and helpful review of various racial discrimination cases as potential benchmarks. The most analogous case to this inquiry is *Phipps v Toronto Police Services Board*, 2009 HRTO 1604 [*Phipps*]. There, a Black mail carrier was surveilled and stopped by police who had become suspicious that he did not belong in the affluent neighbourhood where he was delivering the mail. The police stopped the mail carrier and demanded his identification. They then performed a background check on him before allowing him to carry on with his work. The Ontario Human Rights Tribunal found that race was a factor in the police actions and that this amounted to a violation of human rights legislation.

[218] In determining that the appropriate quantum of general damages was $10,000 ($12,245 in current dollars), the tribunal stated at paras 51–57:

> The applicant testified about the impact the events of March 9, 2005, had on him. These included the above-mentioned deterioration in his physical health, stress caused by teasing by co-workers, and ongoing feelings of anger and humiliation. For the reasons described above, I do not accept that the deterioration in the applicant's health is related to the discrimination.
>
> However, I accept the applicant's evidence he was deeply traumatized and angered by the events of March 9, 2005. That upset must be understood in the context of the applicant's evidence of his personal history, as a Black male who immigrated to Canada at the age of 10 and experienced what he perceived as continuous acts of racism throughout the course of his life.
>
> In addition, the applicant testified to what he perceived to be numerous acts of racial profiling by police since March 9, 2005.
>
> While I accept that the remedy I award should relate to the damage inflicted upon the applicant on March 9, 2005, and not based on subsequent unproven events, I find that it is appropriate to consider the applicant's heightened sensitivity to police interactions.
>
> The award of damages must also take [into] account the facts as I found them in my earlier decision, and be consistent with the awards of other decisions in similar circumstances.
>
> In my earlier decision, I found that that applicant had been followed and stopped by

> Michael Shaw, at least in part, because of the colour of his skin and that the officer continued to ask questions about the applicant after the brief interaction. However, I also declined to find that the officer had been rude or intimidating or threatened the applicant with his car, as alleged.
>
> In a previous case of racial discrimination involving a police officer, I awarded $20,000 to the applicant: *Nassiah v Peel Regional Police Services Board*, 2007 HRTO 14 [reported 61 C.H.R.R. D/88]. On the facts of that case, there were highly offensive comments made and the interaction last[ed] a couple of hours.
>
> In light of the brief nature and quality of the interaction between the applicant and the respondent Shaw and the evidence of the applicant, I find that an award of $10,000 is appropriate to compensate the applicant for the injury to his dignity, feelings and self-respect, the breach of his Code rights and the impact of the incident.

[219] Like in *Phipps*, the Complainant felt humiliated by Cst. Logan's and Cst. Cadieux's discriminatory treatment of him. He rightly intuited that he was being treated differently by HRP police officers because of his race or colour. This had a profound impact on his dignity. It has made him alter his behaviour while at work and further distrust the police.

[220] The Complainant's allegations of more serious and lasting psychological damage are unsupported by the evidence before the Board. Unlike in *YZ*, there was no expert report to establish that the Complainant suffered from PTSD that was causally linked to the discrimination. There was no evidence that the Complainant has even been treated by a medical professional.

[221] The seriousness and duration of the discrimination in this inquiry is slightly worse than in *Phipps*. The discrimination was a single occurrence. The Complainant was unreasonably targeted in a discriminatory fashion. This then went further and resulted in a summary offence ticket being issued. The process of issuing the ticket lasted less than one hour and was not longer than normal, but it took place at the Complainant's workplace. Multiple supervisors were aware that the Complainant had been called down to the lobby to resolve a police situation. Commissionaires and at least one supervisor witnessed the interaction. The HRP officers, Cst. Cadieux in particular, were rude and aggressive in the interaction, but this rudeness was not of the scale identified in *Nassiah* (cited in *Phipps*).

[222] Another aspect of this case that makes it more serious than *Phipps* is the contributing role of inadequate training. For reasons that are unclear, HRM permitted the HRP to operate for close to a decade without offering its training course on legitimate and bias-free policing. In the relevant time period, HRM took no steps to ensure that new police officers received EDI training before interfacing with the public. As a result, Cst. Logan and Cst. Cadieux did not receive this training until they had already discriminated against the Complainant. This failure to train contributed to the harm experienced by the Complainant.

[223] A general damages award of $14,000 is warranted in the circumstances. This amount is already in present day dollars so is not subject to pre-judgment interest.

[224] **Non-Monetary Remedies**: The Board does not have jurisdiction to order the termination or prosecution of Cst. Logan and Cst. Cadieux. Termination is not needed to comply with the *Act*, to rectify any injury caused, or to compensate; therefore, it is not included within the types of orders authorized by s 34(8) of the *Act*. Even if the Board had such jurisdiction, termination would not be appropriate. Cst. Logan and Cst. Cadieux were not parties to this complainant and did not have notice that the Complainant was pursuing termination. Termination would also be excessive in the circumstances.

[225] The Board can order apologies. These can be public or private. The Board could also, in theory, order a person responsible for discrimination to write a reflective essay. However, no examples of such a remedy were provided to the Board.

[226] Apologies are complicated. The nature and value of an apology is highly contextual. In most cases, a complainant's assertion that an apology would be valuable to their healing will be sufficient to warrant inclusion of some form of apology as part of remedial relief. After all, the point of human rights remedies is to make complainants whole and to focus on their needs after experiencing the harms of discrimination.

[227] In this case, however, the Board is concerned that the essay and some of the apologies requested by the Complainant are more about punishment than redress. The submissions of the Complainant during the hearing and on remedy were focused on putting the officers in their place

not on redress. For example, the Complainant characterized Cst. Logan and Cst. Cadieux as "goons and bullies who should not have a badge or gun." He called Cst. Cadieux "a racist bully, an enforcer, and potentially violent." In this context, I do not think that an apology or an essay from the officers will fulfill the purposes of remedial relief under the *Act*. I decline to order that Cst. Logan or Cst. Cadieux provide an apology or an essay. For similar reasons, I also decline to order that Cst. Logan and Cst. Cadieux undergo mandatory anti-racism training *chosen by* the Complainant.

[228] With that said, it would be appropriate for the Respondent to provide a written apology to the Complainant within three months of this decision. It would also be appropriate for Cst. Logan and Cst. Cadieux to take the HRP's Journey to Change course within a year of this decision. Orders to this effect will issue with this decision.

[229] **Public Interest Remedies**: The Complainant requests a public interest remedy that would require mandatory anti-racism training for high-level staff and officers as well as a public report from the HRP to the Commission concerning this training. The Commission took the position that a public interest remedy was not required because the HRP has begun to implement additional EDI training as well as greater efforts to track the success of such training. HRM echos the position of the Commission and submits that a public interest remedy is not needed to address historical wrongs because of the steps being taken by the HRP to improve EDI training.

[230] The evidence before the Board does suggest that the HRP is taking greater steps to implement EDI training. This includes the Journey to Change course that was designed in conjunction with the African Nova Scotian Community. Little evidence was provided, however, to suggest that the Journey to Change course will be delivered to all HRP officers in the near future. The Board was also not provided with the questionnaires or metrics that the HRP uses to evaluate its training, including its course in legitimate and bias-free policing. This leaves the Board in a place of cautious optimism.

[231] The Complainant's request for guaranteed anti-racism training within the HRP is not unreasonable given his experience and the record before the Board. However, the Board was not provided with particulars of what it would cost to implement such training. For example, the Board

cannot determine how much it would cost to deliver the Journey to Change program to all HRP officers within a finite period of time. There could also be other non-monetary costs that need to be taken into consideration before having HRP officers take a lengthy training program. Public interest remedies need to be supported by this type of detail so that the Board can provide a particularized order that is respectful of its institutional role and does not overstep into budgetary or policy decisions that are the purview of the Respondent.

[232] What the Board can do is make two observations stemming from this inquiry:

(a) All police officers hired by the HRP should be required to successfully complete training in legitimate and bias-free policing before they commence active duty and all current police officers should be required to retake and successfully complete such training periodically; and

(b) The performance metrics the HRP uses to evaluate this type of training and its EDI-related courses should be publicly available as well as the data resulting from these performance metrics.

[233] The Board hopes that HRM will take these observations seriously along with the Supreme Court of Canada's finding, in *Le* at para 97, that "we have arrived at a place where the research now shows disproportionate policing of racialized and low-income communities." Providing an effective response will take commitment and resources. But failing to act places residents of HRM at risk of the serious harms associated with discrimination and may erode public trust in policing.

DATED at Halifax, Nova Scotia, this 29th day of April, 2021.

"Benjamin Perryman"

Board of Inquiry

NOVA SCOTIA BOARD OF INQUIRY

Date: April 29, 2021
File No: 42000-30-H18-0012

Between:

Gyasi Symonds

Complainant

– and –

Halifax Regional Municipality
o/a Halifax Regional Police Department

Respondent

– and –

Nova Scotia Human Rights Commission

Party

ORDER

REASONS FOR DECISION having been delivered this day finding that the Respondent, Halifax Regional Municipality (**"HRM"**) o/a Halifax Regional Police Department (**"HRPD"**), contravened the *Human Rights Act* and discriminated against the Complainant, Gyasi Symonds;

IT IS ORDERED THAT:

1. HRM shall remit to Gyasi Symonds a total amount of $15,233 for compensatory and general damages within thirty days from the date of this order;

2. HRM shall provide Gyasi Symonds a written apology for the discrimination he experienced within three months from the date of this order;

3. HRM shall ensure that the HRPD offers (in-person or virtually) its Journey to Change course at least once within the twelve months following the date of this order;

4. HRPD shall ensure that Cst. Steve Logan takes the Journey to Change course when it is next offered by the HRPD; and

5. HRPD shall ensure that Cst. Paul Cadieux takes the Journey to Change course when it is next offered by the HRPD.

DATED at Halifax, Nova Scotia, this 29th day of April, 2021.

"Benjamin Perryman"
Board of Inquiry