

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
Sub-Registry, San Fernando**

**H.C.A. NO. S1564 of 2005**

IN THE MATTER OF THE FUNDAMENTAL RIGHTS AND FREEDOMS GUARANTEED BY THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO ENACTED AS A SCHEDULE TO THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO CHAPTER 1:01 "THE CONSTITUTION"

**AND**

IN THE MATTER OF AN APPLICATION BY THE APPLICANTS FOR REDRESS PURSUANT TO SECTION 14 OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO FOR THE CONTRAVENTION BY THE EXECUTIVE ARM OF THE STATE OF SECTIONS 4 AND 5 OF THE SAID CONSTITUTION IN RELATION TO THE APPLICANTS

**AND**

IN THE MATTER OF THE CONDUCT AND/OR ACTION OF THE EXECUTIVE ARM OF THE STATE IN TREATING THE APPLICANTS UNEQUALLY AND/OR IN FAILING TO TAKE STEPS TO ENSURE THAT THE APPLICANTS ENJOY THEIR FUNDAMENTAL RIGHTS AS GUARANTEED IN SECTIONS 4 AND 5 OF THE SAID CONSTITUTION

**BETWEEN**

1. ALLAN MITCHELL
2. DEOSINGH PARASRAM
3. EARL SAMUEL
4. INDAR HEERALAL
5. IVAN RANGOO
6. JERANDEL NOYAN
7. KELVIN DESMOND CALLENDER
8. KUBAIR RAMKUMARSINGH
9. LEON WELLS
10. RANCE JOHNSON
11. RUPERT ROY WILLIAMS
12. STEPHEN EDWARDS
13. MICHAEL SCARBOROUGH
14. GERARD HARPER

**Applicants**

**AND**

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

**Respondent**

**Before the Honourable Mr. Justice David C. Harris**

**Appearances:**

Mr. Ramesh L. Maharaj S.C. instructed by Ms. Vijaya Maharaj and Ms. Nyala Badal

**for the** Applicants

Mr. Fyard Hosein S.C. and Ms. Ronnelle Hinds instructed by Mr. Nairob Smart

**for the** Respondent

## SUPPLEMENTAL JUDGMENT<sup>1</sup>

### INTRODUCTION - BACKGROUND

1. This is a supplemental judgment in relation to the 4<sup>th</sup> and 11<sup>th</sup> Applicants. There were 14 Applicants in the trial at first instance. The matter was determined at the High Court and on appeal, in relation to the 4<sup>th</sup> and 11<sup>th</sup> Applicants only, the matter was sent back to the High Court to permit the cross examination of several witnesses whose application for cross examination had been disallowed at the said first instance trial.
2. The Applicants at the first trial had claimed constitutional redress for *inter alia*, breach of their constitutional right (i) to equality of treatment; (ii) to their right to enjoyment of property and (iii) to their right to freedom of association. The Applicants were precepted<sup>2</sup> "to act as Estate Police Constables ("**Applicants**' or "**EPOs**") for the Anti-Squatters Squad and all Police Divisions of the Territory". Since their appointment the Applicants had been in continuous service of the State for periods ranging from 28 years to over 40 years<sup>3</sup> and had worked solely in the Trinidad and Tobago Police Service. They had alleged that they have been performing duties the same as or materially similar to that of the regular Police Officers ("**RPOs**"). They challenged the failure of the Executive arm of Government to earlier absorb them into the said regular police force or to confer on them, similar beneficial terms and conditions as those of the regular Police. At the time of the trial, several EPOs had retired and some had been taken ("absorbed") into the regular police force.
3. At the 1<sup>st</sup> instance trial the Applicants had applied to cross examine specified witnesses. The Court of first instance ruled against permitting the cross-examination.
4. At the close of the said trial the Court ruled that it did not find the EPOs to be true comparators with the RPOs. The Court was satisfied that the legislation had created two dissimilar classes of officers so that the EPOs cannot claim to have been discriminated against. Secondly, and further or alternatively, on the evidence in support and against the contention that the actual circumstances of the EPOs and RPOs rendered them true comparators; the Court did not find the Applicants to be true comparators with the RPOs on the basis of their respective actual functions and circumstances and as a consequence, not to have been unlawfully deprived of their property – that being the enhanced terms and conditions were they to be either absorbed into the regular police or otherwise provided with similar terms and conditions – by the Respondent; and the Court did not find that the

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<sup>1</sup> The matter was remitted to the High Court to *hear and determine the veracity of the evidence* in relation to Applicants #4 and # 11.

<sup>2</sup> Pursuant to the Supplemental Police Ordinance Ch. 11 No. 2

<sup>3</sup> The Applicants commenced their duties as Estate Constables between 1971 and 1976

Applicants' right to freedom of association has been infringed by the Respondent as alleged. The judgment order was that the Applicants' motion was dismissed, with Judgment for the Respondent.

5. Upon appeal, the Court of Appeal made certain observations and findings and gave directions and orders accordingly. An excerpt from the judgment of the Court of Appeal (Per Smith J.A.) is instructive in setting the parameters for the trial before this High Court's and disposal of the matter now before the Court. The excerpt is as follows:

*"It is patent that there was a dispute of fact arising on the affidavits in relation to whether two of the Applicants performed regular police duties exclusively. That dispute could only be resolved by cross-examination of the deponents. It is at that stage that the trial judge may decide whether a finding of fact may make a difference to the conclusion as to whether the RPO's were comparators and whether the differentiation in treatment was justified. Further, the trial judge will determine whether these two Applicants can be severed from the others. It is important to determine this issue since the case in relation to these two Applicants may take another flavour"*

*"To that extent, we must set aside the orders in relation to the officers affected and remit the matter for continued trial and determination. The appeal is dismissed save and except for Appellants #4 and #11; The orders of the trial judge are affirmed save and except for Appellants #4 and #11; In relation to Appellants #4 and #11, leave is granted to the parties to cross examine the deponents on the following paragraphs:*

*a. Affidavit of Wayne Richards sworn on 5th April, 2007: Paragraph 33 "Of the remaining Applicants all except Rupert Roy Williams are assigned to duty in the Praedial Larceny Squad in the divisions 57 located throughout Trinidad. On 1st January 1995 Rupert Roy Williams was assigned as a driver to the Guard and Emergency branch and on 4th March 2001, he was assigned to the Inter Agency Task Force from the Praedial Larceny Squad. At the Inter Agency task Force he performs the duty of a driver only.*

*b. Joint Affidavit in Reply filed by the Applicants on 25th January, 2008:*

*i. Paragraph 2 (vi): Indar Heeralal say for myself ... In 1992, I was transferred to the San Fernando Police Station where my duties included charge room duties, escort duties and other regular police duties. In 2006 I was transferred to the San Fernando Model Station where to date I continue to perform regular police duties at the Criminal Investigation Department and the Task Force. Since 1992 I have not performed any praedial larceny or anti-squatter duties.*

*ii. Paragraph 2 (vii) (b): I Rupert Roy Williams ... Since 2000 I have not performed any praedial larceny duties and I have been required to*

*perform solely regular police duties. In 2005 I was transferred to the witness protection unit where my duties included gathering intelligence on people who commit murder. ... In 2006 I was transferred to the Inter Agency Task Force where my duties include patrols and enquiries in high risk areas.*

*The matter is remitted to the trial judge to hear and determine the veracity of the evidence with respect to Appellants #4 and #11, and to make such orders as to damages and costs as are necessary.* [Emphasis mine]

### **THIS SECOND/SUPPLEMENTAL TRIAL**

6. The second limb of the trial was convened on the 26<sup>th</sup> January 2021. Three (3) witnesses testified: Rupert Roy Williams and Indar Heeralal as the Applicants; and Wayne Richards for the Respondent.
7. As a preliminary observation and finding, the Court notes that the EPOs were taken on to assist the RPOs; more specifically, *"the Applicants were precepted<sup>4</sup> to act as Estate Police Constables ("Applicants or "EPOs") for the Anti-Squatters Squad and **all Police Divisions** of the Territory"* [Emphasis mine].
8. Presumably as part of the assistance to 'all Police Divisions' they were assigned to the Anti-Squatters Squad, Praedial Larceny Squad, the Inter-Agency Task Force, Homicide Division, and various other departments and police stations around Trinidad and Tobago including the Mounted Branch. Indeed para 2(i) and (iii) of the principal joint affidavit of the Applicants set out the various activities and functions carried out by the EPOs. Para 2(viii) of the same affidavit sets out the various places of work assignment that Mr. Williams experienced during his tenure. The said affidavit goes on to say that the RPOs actual functions include those which EPOs regularly perform. It says that the EPOs had the same powers and duties of RPOs of similar rank. The Applicants note that the more serious and complex RPO duties are performed by EPOs of higher rank. These issues were dealt with and subsumed in the Court's first judgment in this matter in relation to all of the original Applicants save for the two that the Court of Appeal have sent back to the High Court. However, if this High Court does not in this hearing expressly deal with a relevant finding made in the first hearing, then the findings in the first matter are applicable to Applicants 4 and 11 and repeated here.
9. The Court concludes that the EPOs can only assist the police by carrying out certain police functions. They were not there as nurses or electricians etc. They were assigned as law enforcement officers, as EPOs, as 'police officers' of sorts albeit below the equivalent rank of a Corporal of regular police service. It is this Court's expectation that the duties of the EPOs were to entail part of normal police officer duties, although of a certain character (and frequency) commensurate with their alleged

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<sup>4</sup> Pursuant to the Supplemental Police Ordinance Ch. 11 No. 2

subordinate status. Surely, there can be no functions of the regular police subordinate to that of a constable. There is no evidence before this Court that the numbers of the EPOs appointed for the purpose were sufficient in number to replace all the constables in the regular police force. It must be that it was anticipated that the EPOs would carry out some functions that were identical to that of regular police constables. That in itself would not necessarily amount to sufficient to establish the overall similarity or substantial similarity between the functions of the EPOs and the RPOs. Mr Heeralal in particular accepted that he was subordinate to the regular police constable in fact. They both accept that they worked under a regular police officer in many instances. Mr. Williams never missed the opportunity to make the point that he worked "side by side" with them.

10. The Court notes further, that Mr. Williams in particular, alluded to the fact that often times on foot patrol for instance, he and the superior police officer (of whatever rank) would be accompanied by members of the Defence Force. As an analogy, that this fact of the presence of soldiers, if done with the requisite frequency by a particular soldier would found a claim similar to that of the Applicants seems incredible. Neither, it would seem, can a claim by 'civilian' administrative/secretarial staff carrying out functions once exclusively done by RPOs be founded.
11. The Court has understood the circumstances to be that the State, by Statute created a patently subordinate law enforcement entity (EPOs)<sup>5</sup>. Their entry qualifications were less than the RPO's and their job descriptions far narrower. The fundamental reason and intention for their assignment to the squads for instance, was to provide certain assistance to the RPO's. They did so. The effect of the creation of the EPO in the circumstances of the 4<sup>th</sup> and 11<sup>th</sup> Applicants only, has been consistent with that fundamental intention and further, whether by design or not, it in the end provided an opportunity to the EPOs who did not otherwise meet the statutory entrance requirement to enter the regular police force or the subsequent full police training, to now gain entrance through the 'absorption' process after gaining meritorious experience in aspects of regular police work.

#### **THE ISSUES<sup>6</sup>**

12. The following issues arise for determination by the Court:
  - i. Is the Statutory subordination of the EPOs sufficient to defeat the Applicants' claim to be comparators with the RPO?
  - ii. Does the evidence establish that the 4<sup>th</sup> and 11<sup>th</sup> Applicants performed police duties exclusively from 1992 and 2000 respectively?

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<sup>5</sup> See the Supplemental Police Act; the Praedial Larceny Prevention Act.

<sup>6</sup> See the filed written submissions.

- iii. If yes:
- a) Does this make a difference to the conclusion as to whether RPOs were comparators and whether the differentiation in treatment was justified?
  - b) Can these two (2) Applicants be severed from the other Applicants against whom the claim was dismissed in light of the Court of Appeal's decision for the two (2) Applicants to be cross examined in order for a proper determination to be made of their respective claims?

#### **ASPECTS OF THE LAW<sup>7</sup>**

13. The **essential Law** that captures the nub of this matter and upon which all the parties seek protection is found in the following:
14. Section 4(d) of the Constitution provides individuals with the right to '**equity of treatment from any public authority in the exercise of any function**'. Persons alleging that their rights under section 4(d) has been breached by a public authority, have to establish that he/she has been or would be treated differently from some other similarly circumstanced person and persons described as actual or hypothetical comparators. ***Bhagwandeem v The Attorney General of Trinidad and Tobago [2004] UKPC 21*** at paragraph 18.
15. This does not mean that the comparison must reveal no differences at all, rather the comparison must be that the relevant circumstances are the same or not materially different. ***Mendonça J.A. in Police Service Commissioner v Graham C.A. Civ. 143 of 2006*** at paragraph 55, Lord Carswell in ***Mohanlal Bhagwandeem v Attorney General PC Appeal No. 45 of 2003*** at paragraph 18, ***Paponette v Attorney General [2010] UKPC 32*** at paragraphs 51 and 52.
16. A material difference in circumstances must be one that explains the difference in treatment. That is, it must be a material cause or a material justification of the difference (see in the British anti-discrimination context the comments of Lord Nichols in ***Glasgow City Council v Marshal [2000] 1WLR 333*** at 339H).
17. Further still, the Judicial Committee of the Privy Counsel in the case of ***Annissa Webster and others v the Attorney General of Trinidad and Tobago [2015] UKPC 10*** summarized at paragraph 21 of the approach to inequality of treatment claims in Trinidad and Tobago: **a.** The situation must be comparable, analogous or broadly similar, but need not be identical. Any differences between them must be material to the difference in treatment. **b.** Once such broad comparability is shown, it is for the public authority to explain and justify the difference in treatment. **c.** To be justified, the

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<sup>7</sup> This is a substantial reproduction of the written submissions of Senior Counsels for the Applicants and of the Respondent.

difference in treatment must have a legitimate aim and there must be reasonable relationship of proportionality between the means employed and the aim sought to be realized. **d.** Weighty reasons will be required to justify differences in treatment based upon the personal characteristics mentioned at the outset of section 4: *race, origin, colour, religion or sex*. **e.** It is not necessary to prove mala fides on the part of the public authority in question (unless of course it is specifically alleged).

18. Senior Counsel for the Applicant has set out the broader law comprehensively in his written submissions. Aspects of the law are also addressed in the submissions of the Respondent. Further to this, the Court has had the benefit of the submissions from the first instance trial. The applicable law commences with the Constitution followed by the Statutory regime: Supplemental Police Act Chap. 15:02. The case law relied upon is significantly that which was relied upon in the first trial. I will not set out the whole of the law here but refer Counsel to the submissions. So that a non-party reader of this Judgment would not be deprived of the benefit of the learning put before this Court, I set out the references to the other authorities under the following headings in the footnotes: "*Equality of treatment from any public authority in the exercise of any function*"<sup>8</sup>; *material difference in circumstances*<sup>9</sup>; *difference in legislative regimes*<sup>10</sup>; *qualifications and training*<sup>11</sup>; *assessing the veracity of the evidence*<sup>12</sup>; *duty of candour*<sup>13</sup>.
19. The learning in the following off cited cases are very instructive on the substantive issues in this action: Dennis Graham v Police Service Commission and the AGTT [2011] UKPC 46; James v AGTT [2010] UKPC 23 at para 36; **AGTT v Ramanoop** [2005] UKPC 15; **Merson v Cartwright and the Attorney General of the Bahamas** [2005] UKPC 38; Takitota v the AG of The Bahamas [2009] UKPC 11.
20. The legal regime governing the issue of the **award of damages** in the circumstance of this case is not linear, but involves some level of complexity if not uncertainty. The law has been distilled in the dicta of several landmark cases over many years. Senior Counsel for the Applicant has attempted to offer a way forward, in his written submissions<sup>14</sup>. The Respondents have not frontally addressed the point.
21. The upshot of the law with respect to the award of damages for a constitutional violation is that it is discretionary. The award if given at all, falls into three broad heads of damage: A Monetary award;

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<sup>8</sup> Bhagwandeem v AGTT [2004] UKPC 21 @ para 18; Police Service Commissioner v Graham Civ App No. 143 of 2006; Mohanlal Bhagwandeem v AG PC Appeal No. 45 of 2003; Paponette v AG [2010] UKPC 32 at paras 51, 52.

<sup>9</sup> Annissa Webster and others v AGTT (2015) UKPC 10; Glasgow City Council v Marshall [2000] 1 WLR 333 at 339H;

<sup>10</sup> **Annissa Webster**;

<sup>11</sup> Mathew v Kent and Medway Fire Authority (2006) ICR 365;

<sup>12</sup> Reid v Charles & Bain PC Appeal No 36 of 1987 pp 6; AG and another v Kalickal Bhooplal Samlal (1987) 36 WIR 382 pp 38; Mohammed v Bacchus Civil Appeal No. 106 of 2001 pp4.

<sup>13</sup> Judicial Review Handbook, Seventh Edit by Michael Fordam (2020) at paras 10.4 – 10.13; R v Lancashire ex parte Huddleston (1986) 2 ALL ER 941; **Police service v Graham** para 25 (Supra); Shairoon Abdul v B&L Insurance Company Limited HCA No 434 of 2001 at pp 14; R (Quark Fishing limited) v Secretary of State for Foreign and Commonwealth Affairs 92002) EWCA Civ 1409 at para 53.

<sup>14</sup> See also the Originating Motion filed in this matter in 2005.

a Vindictory award and an 'additional' award. A Vindictory award in nature is to be distinguished from "compensation pure and simple, and from exemplary or punitive damages at common law". In matters of this nature where a Vindictory award is considered, the court is concerned to uphold or vindicate the constitutional right which has been contravened.

22. To expand on the concept of vindictory damages, in **Merson** (*supra*), Lord Scott of Foscote citing **Ramanoop** (*supra*) noted that the purpose of a vindictory damage award is not a punitive purpose. So if the case is one for the award of damages by way of constitutional redress the nature of the damages even if compensatory in effect should always be vindictory. It is because of the vindictory nature of these damages that it may, in the appropriate case, exceed a purely compensatory amount.
23. The most recent relevant authority on the issue of damages for Constitutional redress including vindictory damages, is in the Court of Appeal of Trinidad and Tobago: **The Attorney General of Trinidad and Tobago v Oswald Alleyne & 152 others** Civil Appeal NO. P377 of 2018 delivered on the 30<sup>th</sup> April 2021<sup>15</sup>. This authority encapsulates the historic learning on the issue of Damages for Constitutional breach.

#### **THE EVIDENCE-THE FINDINGS**

24. **Rupert Roy Williams** was cross examined first. He joined the Estate Police ("EPOs") in 1976. In 2010 he was 'absorbed' into the Regular Police force pursuant to the policy in place at the time in relation to the EPOs that were precepted and brought across to assist the regular police officers ("RPOs"). As an EPO he was first assigned as a driver. Estate police officers were initially assigned as drivers he said. Over the years he was assigned to a wide variety of posts not least of which is the Inter-Agency Task Force.
25. It is in this role with the task force that much of his cross examination testimony with respect to his functions as an EPO being similar or substantially similar to that of an RPO was directed. He referred to his stint in the Homicide Bureau and insisted that he was not a driver in that function. He referred also to his guard duties at the Hospital; he was referred to his stint with the Guard and Emergency unit; the witness was referred to the document referred to as the Inter Agency Task Force duty sheet (particularly pps 42 – 52); a letter from him to the Inspector of the Homicide Bureau (dated 5/01/2006); letter written by PC Joseph to the Commissioner of Police (re: 30/01/2006 - Grenada Relief effort); letter requesting his need for a bullet proof jacket ; a letter between senior RPOs concerning the use of firearms/training, other investigative functions of Mr. Williams and certain

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<sup>15</sup> The Court was constituted by the panel of N. Bereaux JA; G. Smith JA; and R. Boodoosingh JA. The principal appearances for the Appellant was Mr R. Martineau S.C, and for the Respondents was Mr. R.L. Maharaj S.C. See also the dissenting Judgment of Justice of Appeal N. Bereaux.

commendations; and his own letter requesting compensation for his and others for their duties in Grenada.

26. He contended that his training was the same as that of the regular police force. The logic of his evidence was implausible. I do not accept that he had the identical training as that of the regular police from which he was initially appointed to the position of EPO. The general import of the evidence is that the witness was an enthusiastic ambitious law enforcement career person who went beyond the call of duty whenever possible. It is not surprising then, that notwithstanding he did not have the standard entry requirements or the formal training of a RPO, he was eventually absorbed in to the Regular Police force.
27. His evidence was substantially consistent with the affidavit evidence before the Court in the trial at first instance save where the cross examination elicited further detail and clarity.
28. I am unable to glean from the evidence that his stint at the **Homicide Bureau** or the **Guard and Emergency** or any of the assignments he set out in the joint affidavit did necessarily consistently and persistently, entail duties that can be said to be either, **(i)** that which was not envisioned by the enabling Statute(s) or **(ii)** that which would represent the full range of duties and functions that the RPO of any rank actually does or can be called upon to do. Mr. Williams claimed that he was trained on all types of firearms and certain literature on self-defence ("street survival...") whilst at the task force, was distributed to him as was similarly distributed to RPOs. I do not see the point of this evidence. Is it that every guidance or safety recommendation for the RPO should be diverted away from the hands of the EPOs? That seems impractical, unnecessary and administratively unwieldy. No one has addressed this point, if it needed addressing at all. He went on in cross examination to state that as an EPO working in the police force you must carry a firearm. It is inconceivable to this Court that the EPOs could have been brought in to assist the TTPS in the violent environment we lived in even then and not be armed in any active duty assignment. The upshot of this evidence is that he engaged in several regular police activities and performed those duties exclusively from 1998 until his absorption into the regular police force in 2010. In his view during this period he was treated by the RPOs as one of them.
29. Is it enough that you are called upon from time to time or even regularly (if the function is basic common function across the law enforcement entities for instance) to carry out duties, to then claim to be carrying out functions similar to or substantially similar to the RPOs so as to be a 'comparator' as envisaged by the law relied upon in this action? As this Court has noted above, it expected that the EPOs carry out certain actual regular police work. There is no evidence or submission to suggest that there is any division of the police force that does not have a function or range of functions to be carried out as envisioned by the Act and/or policy of the Commissioner. As to whether the nature and frequency of that work would elevate and equate the overall function of the EPOs to that as

required in Law – a ‘comparator’ - is one to be resolved on the law, nuanced detail and the quality of the evidence.

30. The evidence on this witness' role as part of the **Inter-Agency Task Force** however, was more nuanced. As the name suggests it was an inter-agency entity. That an EPO was part of it, is not at all surprising I would think. However, what is the evidence on this specific role?
31. The salient evidence in this Court's view is that the witness' role in this particular department was clearly on the lower end of the complexity scale. This is gleaned even from his evidence alone. A substantial part of his function was either foot patrol or in manning the mobile booth to take complaints and the like. He indicated that sometimes he would do foot patrols alone. It appears that it may have been a *one-off* breach of the requirements and limitations of the Statute and the intention and the assigned role of the EPO. There is however no evidence that the witness took this objection at a formal level with the Police management, his representative body or the like.
32. What does an EPO's training equip him to do? Do EPOs in their traditional Estate Constable functions carry out foot patrols, whether it be on Government buildings or other *estate* property? One would think that is a basic function of the EPO. Why would it now be argued that it is a function when assisting the RPOs that takes it out of the realm of the function of the EPOs or what was contemplated by the Act, or even what was accepted by the EPOs themselves when accepting the assignments? The evidence is however, that foot patrols for instance, done by Mr. Williams on his own, were infrequent.
33. The evidence on the function of the EPOs in the mobile unit (static patrol) was unremarkable. Again there is nothing in that function that suggests that he was carrying out anything else but one narrow function of an RPO. He was doing what he was hired to do and what in this court's view he would have expected to have been called upon to do.
34. The witness referred in some detail to his **voluntary jaunt to Grenada** to assist in the post hurricane effort. The TTPS was engaged to carry out the assistance to Grenada, involving carrying out certain investigations<sup>16</sup>. He was the only EPO to have gone on the trip apparently. Reference was made to letter communication between several relevant persons including the witness. No objection was taken at trial to the letters. The letter from PC Joseph speaks of CEPEP, TTEC, TSTT and WASA teams going as part of the effort. That these post disaster-event assistance efforts require a wide range of services at all levels to assist in recovery is notorious and understood simply from common human experience. You did not have to be a Police officer or EPO for that matter to contribute to relief efforts. Further, what functions did he actually carry out in Grenada? To the extent they represent

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<sup>16</sup> This is not a proved fact, but either way does not affect the Court's conclusions on this particular saga.

activities not contemplated by the Act or the assignment to the Police Force or even if they did represent contemplated functions, they would be notably, a one-off situation. That there was any function there that he was compelled to do as a matter of duty and not of his own enthusiastic (and commendable) willingness, is not borne out on the evidence.

35. The evidence of the witness does not fill a certain void. There is an *elephant in the room*. When one considers that he spent many years and at variety of posts as an EPO, the Court is left asking the question; where did the years go? There appears to be a gap in the evidence in describing the details of the functions other than what he considers the exceptional ones on which he devoted his working efforts doing.
36. This witness' more detailed evidence is about what work he did which in his view was similar to that of the RPOs and not what he did not do and indeed could not do having regard to the intention of the Statute and policy driving the arrangement.
37. **Indar Heeralal testified.** His evidence was fraught with gaps from memory lapses. No fault of his. The passage of time has been much. He was an Estate Constable from 1975. He did not have the variety of postings as did Mr. Williams. He spent a large part of his time on the Praedial Larceny Squad. He was posted in the Morvant Police Station for a while in 1977 and Piarco post it appears, for a limited period that year. In cross examination he said that from 1977 to 1992 he was transferred to San Fernando during which time he was with the Anti-Squatters Squad. Cross examination response suggested that the praedial larceny functions were not a full time engagement. Presumably interspersed with those functions he was engaged in what he referred to as regular police duties. It appears he was subsequently transferred to the St. Margaret's Police Station for a period, but on the evidence, he in any event spent the better part of his last years engaged in what he referred to as *regular police work* in the San Fernando Police Station. In cross examination he opened up to being assigned at some point to the Mounted Branch in San Fernando from which the praedial larceny operated. He testified in cross examination that from at least 2006 he did regular police duties and none else. I accept that evidence.
38. What exactly is regular police work? The EPOs were taken on to assist the Police in their regular police work. Was there work that RPOs did that he was not called upon to do? The upshot of his testimony in the principal affidavit is that there was such work. There is no evidence to the contrary from any source. In fact in cross examination he testified at trial that he assisted other regular police officers, took instructions from them, performed patrol duties and engaged in charge room duties. His role and functions in assisting other officers in their regular police duties was further and comprehensively set out in re- examination. That the list of duties he set out does not include the whole of the spectrum

of functions of a police officer is evident<sup>17</sup>. However, it is also the finding of this court that even RPO's did not necessarily engage in the full spectrum of RPO job descriptions.

39. Mr Heeralal was absorbed into the regular police service in 2010, just 4 months before he retired.
40. That was the supplemental case for the Applicants. The sole witness for the Respondent followed in the person of Wayne Richards.
41. **Wayne Richards testified for the Respondent**. He was subject to cross-examination.
42. Mr. Richards indicated he was not a sighted person now and was suffering from other ailments. The Court and both Senior Counsel in the matter acknowledged the condition of the witness and treated with it accordingly.
43. The upshot of Mr. Richards' evidence is that much of the evidence he gave in relation to the work roles and activities of the Applicants was based on their formal status as EPOs, their job description, their training and experience and the information he obtained from records obtained from the Office of the Commissioner of Police. In his testimony, he said that Mr. Williams was early on in his career transferred to the Praedial Larceny Squad and then in 1995 was transferred to the Guard and Emergency Branch. In March of 2001 Mr. Williams was transferred to the Inter-Agency Task Force.
44. His attention was drawn to the evidence of both Mr. Heeralal and Mr. Williams for the Applicants in relation to their evidence of their work history at times and certainly for an extended period leading up to the expiration of their service as EPOs, being one of regular police duties. It was further drawn to his attention that their testimony contradicted his in material particulars. Mr. Richards was directed to the joint affidavit filed in this matter by the Applicants. He indicated he was familiar with it and had read it before. He was further directed to several communications between, to and from the Police Administration and the Applicants concerning issues such as **(i)** a recommendation for the issuance of a FUL for Mr Williams; **(ii)** the issuance of Survival and other instructions; **(iii)** the request and recommendation for the issuance of another bullet proof vest for Mr. Williams; and **(iv)** the Grenada relief assistance. It was asked of him whether at the time of making his affidavit, he was aware of the contents of these communications. He indicated that he was not. However, Mr. Richards' further response was to the effect that he maintained his testimony derived as it was from the documents he viewed from the office of the Commissioner of Police.
45. The following extract from the transcript of the cross examination captures the substance of the position of Mr. Richards in relation to the source of certain aspects of his information contained in his

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<sup>17</sup> See also the Affidavits for the Respondent in the substantive matter.

testimony. This particular excerpt was in relation to what was suggested to the witness as the alternative sources of information on the Applicants activities, that were available to him at the time and before this supplemental hearing, but which he did not pursue:

**[by Mr. RL Maharaj S.C.]** Q. *And would you agree with me that one of the matters which are recorded in the station diary, according to the Standing Orders dealing with station diary, is the whereabouts of personnel attached to a police station branch or station office? Do you agree with me?*

**[from Mr. Richards]** A. Yes, sir.

Q *So if it is that, you, as a police officer, wanted to find out whether Mr. Roy Williams was a driver only, for a particular period of time, you could have checked the records of the various police stations that he was attached to during this period of time and determine whether he was only a driver or not; am I correct?*

A *Mister -- this officer --*

Q *Would you answer my question? Would you answer my question? You have answered -- you have told me that (indiscernible 11:26:01 a.m.) has to record the whereabouts of personnel at the police station.*

A Yes, sir.

Q *What I'm asking you -- well, let me put this then: Would you not agree that there'll be records in the police service to determine the duties that this officer performed over a period of time?*

A Yes, sir.

Q *Yes. And therefore, if you wanted to determine whether this police officer only performed the duties of a driver during a particular period, you could have checked those records?*

A Yes, sir.

Q *Yes. And if you checked those records and you supported what he was saying, you could have attached copies of those records to your affidavit?*

A Yes, sir.

46. The cross examination terminated with equating of certain actual functions of the EPOs with that of the RPOs, being put to the witness. Again, I believe the essence of that particular examination is best captured by the following excerpt from the transcript<sup>18</sup>:

[by **Mr. RL Maharaj** S.C.] *I just want to ask you one question, Mister -- one more question, Mr. Richards, you said you have been in the Police Service, for how many years? 40 years; am I correct?*

[from **Mr. Wayne Richards**]           A           Yes, sir.

Q           40 years. And in the 40 years that you served as a police officer, would you agree with me that you have some regular police officers who are drivers and they perform exclusively driving work for the Police Service?

A           Yes, sir.

Q           And would you agree with me that they get the same salary as other regular police officers in the same rank, whether -- let's say a constable is a driver and you have a constable working in the charge room; they get the same salary, and terms and conditions?

A           Yes, sir.

Q           Regular officers?

A           Yes.

Q           Am I not correct?

A           Yes, sir.

47. The emphasis in the above transcript extract is mine.

### **CONCLUDING ANALYSIS/DISPOSAL**

48. The EPOs performed several of the roles of regular police. That is not entirely what they were precepted to do but it is what they did over time. This now cannot be in dispute. Both witnesses for the Applicants testified to their roles in assisting the RPOs in a variety of tasks. Mr. Heeralal went on to testify broadly that the more 'complex' matters were the reserve of the RPOs. Indeed this is the conclusion of this Court. This court accepts the evidence of both Applicant witnesses as to their assignments and their roles and more particularly the dates from which they performed exclusively regular police work and no longer praedial larceny functions. The evidence from the State with

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<sup>18</sup> This accords with the Court's independent recall and impressions of the evidence given by Mr Richards.

respect to the formal assignments as documented in the records stand. However, notwithstanding those records, the evidence of where the two Applicants were assigned from time to time and the nature of the work performed is proved<sup>19</sup>.

49. The Court notes, that in assessing the comparative roles between the parties, an apposite observation is simply that not only does one have to recognize those who perform their designated and regular police tasks which includes both the EPOs and the RPOs, but also to recognize those who stand in line waiting, ready and entitled to perform the elevated, broader and often times more complex tasks theoretically reserved for the RPOs. This second limb, of those 'waiting in line' as it were, was not reserved for the RPOs. In the context of the circumstances of the function, role, policy and applicable statutory provisions, both the EPOs and the RPOs (both under the rank of Corporal), duty in standing in line, cannot be dismissed. It is an integral element of both their functions and role. It is an active duty. It is ever present. That a particular RPO or EPO may never have been called upon to perform any particular role he has stood in line waiting for, is again, of little moment; that is part of his daily role and function - to stand in waiting. Was it ever intended by legislation, policy or practice that the EPOs be put to work at every level of the regular police force? This issue is resolved from the purposes of this action, by the legislative provisions. Had the legislation specifically provided for the subordinate role of the EPO, i.e. that he be under the RPO constable, then perhaps one can come to the conclusion that they were never able to perform, or to stand in line to perform the full spectrum (or even as at a much diminished level) of functions of an RPO. The legislation however gives the EPO all the powers of the RPO below the rank of Corporal – a constable. A perusal of the Praedial Larceny Prevention Act Chap. 19:02 more particularly sections 2(1) and 2A (1) thereof shows no distinction between the RPO and the EPO in relation to the work of the squad. Likewise a perusal of the exhibits to the principal joint affidavit filed in this matter: A26 – A28 which exhibit several departmental orders from the commissioner of police over the period 1987 – 2001 establishing and re-establishing the squad<sup>20</sup>, all reflect the absence of a distinction between the RPOs and the EPOs in relation to the squad.

50. The evidence of the nature of the work activities carried out by the Applicants focus substantially on the non-praedial larceny work. In relation to the non-Praedial Larceny Squad activities, the fact that several enthusiastic EPOs may well have outperformed even certain RPOs is of little moment. The human condition reflects the disparity in individual capacity all the time. That on the evidence Mr. Williams attained what appeared to be roles of greater complexity than Mr. Heeralal is evident for instance. That both Mr. Heeralal and Mr. Williams may have outperformed even certain RPOs in their common roles would not be surprising either. However, in this Court's view the prevailing consideration in this matter and assessment is not the capacity of the individual. That capacity, is

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<sup>19</sup> The Court adopts the reasoning provided in the written submissions of the Applicants on the reasons acceptance of the Applicants evidence over that of the Respondent.

<sup>20</sup> See also the reference in the evidence to the underpinning Cabinet Minutes.

reflected in Mr. Williams' and Mr. Heeralal's absorption into the regular police force where thereafter they would be entitled to engage in any level of regular police duty commensurate with their innate and realizable capacity and performance or simply on the basis of superior commands metered out to them.

51. This Court accepts that Mr. Williams was utilized in several endeavours that perhaps other EPOs were not and maybe even RPOs. However, other than the performance of the regular routine police duties and even those not so routine but performed in the company of RPOs, the Applicant's evidence does not suggest and Court does not conclude that the other activities were sustained or routine; but, it does not have to be. The fact that Mr. Williams needed the bullet-proof jacket is in this Court's view, just that, and nothing else; that is, in the protective services and in particular in certain departments or activities such a gear is necessary. For instance, in an armed police 'raid', even a person tasked with carrying water for the *troops* would surely be equipped with a bullet-proof jacket and a firearm.
52. I come back again to the fact that the EPOs are expected to carry out police functions otherwise they will have no other use. Further, they are not hired part time – ad hoc – to be called in for specific tasks. So, they are expected to work consistently in assisting the police in their duties to which they are assigned and over which an RPO was to have oversight<sup>21</sup>. Importantly, this Court finds on the whole of the evidence put before this court, that the nature of the duties of the EPOs do not represent the full spectrum of those for which the RPOs can be called upon to do or do perform. Again, the evidence suggests that not all RPOs were necessarily called upon to perform the full spectrum of RPOs' duties under the rank of Corporal either.
53. It is in this Court's view of no small moment that the performance and role of a police officer is not only determined by the task he is assigned but significantly, also by the tasks he may be called upon to perform and be duty bound to perform them. The salary and perks of the RPO can in my view be in no small measure be based upon what he is obliged to do when called upon, or to use the words of Mr. Richards, based upon his job description. This Court adds the realistic prospect of the RPO being called upon to perform them. Promotion within the organization however, would in the usual course of things likely to have a stronger nexus with actual performance of tasks actually assigned. The Applicants efforts in the end were both recognized by their absorption into the regular police force. There is no sufficient evidence before me to establish what in any event is the actual prospect for promotion of an original RPO during his/her tenure in the police service. The pyramid structure of most organizations including that of the Police Service suggests that most will not move up the ranks at all and a few minimally and even fewer rise to the upper echelons of an organization. I say this as I note the length of time both Applicants took to be elevated by their *absorption* is not necessarily

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<sup>21</sup> In any event, the Court has not identified the document/instrument that definitively gives the RPO under the rank of Corporal, the authority over the EPO.

unusual. The Applicants contend in their submissions that this absorption is evidence of the fact that they were qualified to and did performed regular police work. I disagree. That is not necessarily so. You can be accepted into the police force with no experience at all if you meet other entry requirements<sup>22</sup>. But, this is a moot point. I accept that the two Applicants did do exclusively regular police work for the period the court has found that they did and in any event it has not been successfully contended that they had a right to be absorbed into the police Force.

54. To be clear, this Court has taken issue with some aspects of the evidence of the Applicants. I do not accept some of the inferences and conclusions the Court is called upon in the submissions, to draw. I have noted herein several of the Court's observations. However, the primary finding is that the said two Applicants did carry out regular police work, albeit tending to the lower end of the complexity scale and did so exclusively for the periods that they allege or found by the Court – from 2006 – 2010 for Mr. Heeralal and from 1992 - 2010 for Mr. Williams. It is the finding of the Court that in fact, the nature of the work tended to the lower and routine end of the scale. The authorities on the issue suggest that the fact the applicants operated on the lower end of the scale of duties does not necessarily mean they are not comparators. In fact the evidence does not suggest that all RPOs did anything more than these two EPOs during the years they worked exclusively in regular police work.

55. I note the Applicants' contention that section 4(2) of the Act sets out the function of the EPOs. On the plain construction of that paragraph one wonders if the EPOs were authorized to do anything whatsoever outside of the *Estate* as defined in the Act. It might be that the accepted fact between the parties in this matter is that every police station and every duty post falls within the larger 'Division' to which the EPO is assigned from time to time. The whole country is divided into Divisions<sup>23</sup>. An example of the instrument by which they were appointed by the Public Service Commission ('PSC') has been put before this Court as an exhibit to the principal affidavit. Neither party in the 'pleadings' have taken the point. The deliberations and decision of the Court of Appeal have not directed this Court to address and determine the issue of the statutory parameters of the functions of the EPO. However, it is a distinguishing feature considered by the Court in this matter that the Applicants having being appointed by the Public Service Commission (see exhibits A24B, A25 for instance) as EPOs were thereafter independently assigned to the Praedial Larceny Squad under the 'prevention' Act in which it was provided that several different entities could participate in this specialist entity. This specific Act provides for several entities being eligible, including both RPOs and EPOs. Does all of this sufficiently distinguish these Applicants so they are not captured by the rules in **Annissa Webster**?

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<sup>22</sup> See the exhibited comparison table of differences between the EPO and the RPO.

<sup>23</sup> See sections 2, 4, 7(b), and 14(1) of the Supplemental Police Act; and regulation 35 of the regulations under the principal Police Service Act.

56. The resolution to this matter is this: given the functions wheresoever carried out by the two EPOs before this Court, can it be said that they were two comparators with the RPOs? The short answer to that is, yes. The law provides for the diminution of the weight of considerations such as the statutory distinctions (qualifications, etc.), the frequency and character of the functions and the training of the EPOs in this case. The case law is comprehensively set out in the written submissions of the Applicants and this Court can do no more than to adopt it and the reasoning there set out, in its application to the facts of this case.
57. The Respondent has sought to distinguish this case from the **Annissa Webster** case. There are distinguishing factors as they have sought to put forward and as this court has in part raised above, but not such that it takes this case out of the core ambit of the learning and guidance in the case. I referred to the various statutory positions above, including that section 4(b), does not appear to adequately cover the non-Praedial Larceny Squad functions the Applicants performed. However, the Act appears to confer all the powers of an RPO constable upon the EPO (see section 14(1)). Another distinguishing feature is the question of the representative body of the Applicants. Whether it be the PSA or any other body they were represented by prior to the Supplemental Police Act, the said Act does provide for them being represented in para 45 and 46 thereof. Para 41 provides for the EP Association entering into agreements for the terms and conditions of the EPOs. It further provides for the application of elements of the Industrial Relations Act. Presumably, the EPOs' terms and conditions which they had, were not entirely out of their hands to negotiate. Notwithstanding the presence of these factors tending to be distinguishing in their effect, they were not pursued again in this supplemental matter and in any event there is insufficient evidence for this court to determine this point in relation to the status of the representative bodies, in favour of the Respondent. In any event, this issue was originally dealt with under the umbrella of the claim for breach of the right of association.
58. On the evidence and in the circumstances the Applicants have shown the parity between the work of the two Applicant EPOs and that of the RPOs. They did the same work for a limited period, with inferior compensation than that of the RPO's. They are comparators for that period. Further, no further evidence has been led as to the issues with respect to the freedom of association; the Court's conclusion on this issue remains as found in the original matter and the Court of Appeal. Further to this, for the reasons set out in the Applicants' written submissions and now adopted by this Court the 4<sup>th</sup> and 11<sup>th</sup> Applicants circumstances and facts proved in support, are deemed distinguishable from those of the other Applicants. The 4<sup>th</sup> and 11<sup>th</sup> Applicants are severed from the original Applicants for purposes of this Judgment<sup>24</sup>. The Court also notes further, that the case against the other Applicants has in any event been previously determined by the High Court and the Court of Appeal.

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<sup>24</sup> The Court in part relies on the reasoning submitted by the Applicant.

### **Damages**

59. At the onset on this issue is the Court's observation that it was never the right of the Applicants by statute to be absorbed into the regular Police Force. The contention is that they – the EPOs – have done and performed the same work of the RPO's and were then entitled to equal compensation and benefits for their work as EPOs. There is no evidence in this Court's view that lends itself even to the speculative endeavour of predicting, if that is what it is, what promotions for instance could have accrued to the applicants had they been so absorbed at any earlier time. This court concludes that the notion of a loss of a prospect (promotion etc. in the regular police force) is not applicable in the circumstances of this case.
60. The Applicants have presented a chart setting out the differences in salary and other financial benefits between the EPOs and the RPOs. This may need further explanation to derive the definitive disparity between the RPOs and the EPOs of equal status, but there is enough put before the Court to make a determination even if a rough one.
61. The evidence led in this matter does not disclose the circumstances that underlie an award of vindictory damages or any *additional damages* beyond a monetary (compensation) or vindictory award.
62. Having regard to the long and convoluted history of this matter, including the bifurcation of the hearing of the matter in relation to the 4<sup>th</sup> and 11<sup>th</sup> Applicants and the consequent straddling of the affidavit evidence over the two limbs of the matter/hearings, this Court is of the view that the assessment of damages is best done before the Judge in Chambers. Submissions on the way forward to determine the damages in a timely manner is to be submitted by both Counsel at the very earliest.
63. The Court of Appeal fixed the Costs of the appeal only at 67% (two-thirds) if this Court were to find for the Respondent. This is no longer applicable.
64. For the reasons stated above, **THIS COURT DECLARES THAT:**
- I. The failure of the State to pay the 4<sup>th</sup> Applicant the same salary and financial benefits as RPOs of the equivalent rank from 1992 until his absorption into the Police service in 2010 notwithstanding that he performed the same functions and/or duties as RPOs of equivalent rank during this period contravened his right to equality of treatment by a public authority as guaranteed by section 4(d) of the Constitution;

- II. The failure of the State to pay the 11<sup>th</sup> Applicant the same salary and financial benefits as RPOs of the equivalent rank from 2006 until his absorption into the Police service in 2010 notwithstanding that he performed the same functions and/or duties as RPOs of equivalent rank during this period contravened his right to equality of treatment by a public authority as guaranteed by section 4(d) of the Constitution;

**AND THIS COURT ORDERS THAT:**

- I. The 4<sup>th</sup> and 11<sup>th</sup> Applicants are severed from the original Applicants;
- II. The State do pay to the 4<sup>th</sup> and 11<sup>th</sup> Applicants respectively, monetary compensation for breach of their right to equality of treatment from a public authority as guaranteed by section 4(d) of the Constitution; such compensation to be the equivalent to the difference in the financial remuneration packages only, between the RPO and the EPO as best as can be retroactively calculated at this time;
- III. The Respondent do pay to the 4<sup>th</sup> and 11<sup>th</sup> Applicants the said damages, to be assessed before a Judge in Chambers or a Master whichever this Court determines upon addresses by the parties, on a date to be fixed;
- IV. The Respondent do pay the interest on the said damages at the rate of 1% p.a. from the date of filing to date of Judgment and 5% p.a. from the date of Judgment to full satisfaction.
- V. The Respondent do pay the Applicants' costs of this action (including the first and this trial) and the Court of Appeal<sup>25</sup> certified fit for Senior and Junior Counsel, to be assessed before a Master if not agreed.

**DAVID C. HARRIS**  
**HIGH COURT JUDGE**  
**JUNE 28<sup>TH</sup> 2021**

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<sup>25</sup> See Court of Appeal Judgment Order.