

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 RAMKUMARSINH
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. leads Ms. Vijaya Maharaj instructed by Ms. N. Bidal for **the Applicants**

Mr. Fyad Hosein S.C. leads Ms. Josephine Baptiste-Mohammed instructed by

Ms. Candice Homer-Nanan **for the Respondent**

JUDGMENT

INTRODUCTION

1. The Applicants claim constitutional redress for *inter alia* breach of their constitutional right to equality of treatment, right to enjoyment of property and right to freedom of association. The Applicants were precepted¹ "to act as Estate Police Constables ("**Applicants**" or "**EPO's**") for the Anti-Squatters Squad and all Police Divisions of the Territory". Since their appointment the Applicants have been in continuous service of the State for periods ranging from 28 years to 33 years² and have worked solely in the Trinidad and Tobago Police Service. They allege that they have been performing duties the same as or materially similar to that of the regular Police officers ("**RPO's**"). They are now challenging the failure of the Executive arm of Government to 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 this trial, several EPO's had retired and some had been taken into the regular police force.

THE ISSUES

2. Whether the failure of the State to equate the terms and conditions of service and employment of the Applicants with those of regular police officers ("**RPO's**") infringe the Applicant's right to equality of treatment from a public authority as guaranteed to them under Section 4(d) of the Constitution of the Republic of Trinidad and Tobago.
3. Whether the conduct and/or inaction of the executive arm of the State in failing to take further steps to facilitate the Applicants as public officers to be represented by an Association or an Association of their choice contravenes their right to freedom of association as guaranteed under Section 4 (j) of the Constitution.

CASE FOR THE APPLICANTS³

4. Counsel for the Applicants contend the following⁴; that: although the Applicants perform the same/materially similar functions and duties as RPO's of equivalent rank they do so under inferior terms and conditions in respect of *inter alia* salary, allowances, pension and gratuity, COLA, housing allowance, meal allowance, funeral grants and opportunities for promotion. There is therefore ample evidence that they are treated differently although similarly circumstanced. The

¹ Pursuant to the Supplemental Police Ordinance Ch. 11 No. 2

² The Applicants commenced their duties as Estate Constables between 1971 and 1976

³ This contains a substantial reproduction of aspects of the pleadings, submissions and 'speaking notes' of Senior Counsel for the Applicants.

⁴ See paras 4 – 7.

test for establishing inequality of treatment ⁵ is therefore satisfied. Their work as a whole including the similarities and not only the differences ought to be considered.⁶

5. Notwithstanding that they are referred to as Estate Constables and/or Corporals and are appointed by the Public Service Commission(**"PSC"**) retroactively as Estate Constables and/or Corporals, they are regarded and treated by the Commissioner of Police as regular police officers, the same police duties are performed by both groups on the direction of the Commissioner. The material factors are that both perform materially similar duties, both are paid by the State⁷, both receive the same orders from the Commissioner of Police(**"CoP"**) and the responsibility for their evaluation and regulation of pay and conditions is on the State. Further the law gives each Applicant upon appointment by the Commissioner all such rights, powers, authority, privileges and immunities as police officers below the rank of corporal. ⁸
6. No mala fides is necessary for a case of unequal treatment and therefore it is not necessary that such be present and proved.⁹ Where, as is the case here, there is cogent evidence of unequal treatment the onus is shifted to the respondent to explain. The entrance requirements for an Estate Police Officer (**"Applicant" or "EPO"**) and that for the RPO is immaterial to the issue of whether they are similarly circumstanced. The evidence in the case establishes that the nature, scope and variety of the duties which EPO's perform in reality are the same or not materially different from that of RPO's.
7. The State has breached its duty to facilitate the Applicant's constitutional right to enjoyment of the right to freedom of association by **(a)** failing to pass laws/measures to ensure the Applicants enjoy the right to Freedom of Association and **(b)** allowing a situation to exist whereby the Estate Police Association ("EPA") has refused to act for the EPO's on the basis that they are public officers and are thus members of the Public Service Association (**"PSA"**). However, the Applicants contend that the PSA has to-date refused to represent them to ensure that they are on equal terms with the RPO's. The Applicants allege that the Police Second Division Welfare Association refuses to represent them because they are not members of the police service since they are not under the jurisdiction of the Police Service Commission. Furthermore, the PSA classifies them with other government estate police and other public servants whose nature and functions are entirely different from that of the EPO's. For instance, the Applicants contend that Government Estate Police Officers unlike EPO's are assigned to specific government buildings to perform primarily guard duties but the PSA regards the both entities as the same (they receive the same salary and benefits) despite the fact that the EPO's perform regular and complex and varied police duties.

⁵ Bhagwandeem v AG (PCA No. 45 of 2003) per Lord Carswell

⁶ Matthews and Ors. v Kent and Ors. (2006) UKHL 8

⁷ See para 13 of the joint affidavit. In addition, the Applicants claim that they are assigned private extra duties just as the RPO's and paid the same rate as the RPO's for those duties(see para 18 of the joint affidavit).

⁸ S 14(1) of the Supplemental Police Act Chap. 15:02

⁹ Central Broadcasting Services v AG (Civ. App. No. 16 of 2004

This situation, argue the Applicants, puts them in the position where they effectively have no representation to redress the alleged inequality of treatment meted out to them by the State.

8. The Applicants contend that the refusal of the State to regularise the terms and conditions of EPO's with that of the RPO's has therefore deprived the Applicants of having the benefits and privileges of joining an association and has therefore deprived the Applicants of their rights to freedom of association as guaranteed by section 4(j) of the Constitution¹⁰.

CASE FOR THE RESPONDENT¹¹

9. The Respondent contends as follows: That the requirements to become a Regular Police Officer ("**RPO**") are materially different from that of an Estate Police Officer ("Applicant" or "EPO") in that the services provided by the EPO's are not as closely linked to that of the RPO's. Although they perform some of the basic functions of members of the RPO they do so at a much lower level and are neither trained nor qualified to perform the wide range of duties entrusted to an RPO. Although EPO's carry guns and wear police uniforms they do not perform the same duties as RPO's. From time to time when the exigencies of the service are required EPO's are asked to assist the RPO in performing functions within the purview of the RPO. (eg. Maintaining law and order in cases of external aggression or internal disturbance¹²).
10. However, unlike EPO's, RPO's undergo an intensive six month training programme, a two year probationary period and a written examination. EPO's do not sit any such examinations although they do undergo a two year probationary period. Overall, the entrance and training requirements for the Applicants are lower than that of RPO's. Further, they perform duties which are of a qualitatively different nature to that of RPO's and even Special Reserve Police. For these myriad reasons it is contended by the Respondent that EPO's cannot be deemed to be comparators with RPO's. The Respondent relies on the cases of Winston Bernard and Victor Martinez v AG HCA 3463 of 2002 and Bhagwandeem v AG PCA No. 45 of 2003 as authorities for the proposition that a claimant who alleges inequality of treatment must show that he has been or would be treated differently from some other similarly circumstanced person ("actual or hypothetical

¹⁰ See para "(e)" and para "9." of the Notice Of Motion at Tab 1 of the Trial Bundle Vol. 1; see also para 21 of the Affidavit of the first eleven Applicants at Tab 2.

¹¹ This contains a substantial reproduction of aspects of the pleadings and submissions of Senior Counsel for the Applicants.

¹² See Para. 25 of affidavit of Wayne Richards filed April 5 2007

comparators")¹³. The Respondent therefore argues that even where the Applicants perform "police duties" it is not a foregone conclusion that they are comparators to the RPO's.¹⁴

11. Furthermore, there is no issue of mala fides as argued by the Applicants because there is no discrimination inherent in a situation such as the present one where there are plainly distinctive duties as evidenced by the fact that the Applicants assist RPO's (who receive specific training in the performance of their duties) by doing subordinate acts.

12. The EPO's are appointed by the Public Service Commission ("**PSC**") and are subject to the provisions of the Civil Service Act, the Civil Service Regulations and the Public Service Commission's Regulations. EPO's are public officers and the Public Service Association ("**PSA**") is the appropriate recognised association which is authorised to represent the Applicants in trade disputes and has not failed to do so. The Applicants have not exhausted this trade dispute option and if dissatisfied with the quality of representation by the PSA, they must take that issue up with the PSA.

THE EVIDENCE

13. The evidence is of course set out in the affidavits in support of the respective parties¹⁵. The following affidavits were filed in relation to the substantive matter: on behalf of the Applicants:

- a. Joint Affidavit filed by the first to eleventh named Applicants on 27th August 2005 and 2nd September 2005 ("**the joint affidavit**")
- b. Joint Affidavit filed by twelfth and thirteenth named Applicants filed on 8th September 2005.
- c. Affidavit of fourth Applicant sworn to and filed on April 22nd 2010.
- d. Joint Affidavit of first to thirteenth named Applicants sworn to and filed on 25th January 2008
- e. Joint Affidavit of the first to thirteenth named Applicants sworn to on 2nd September 2009 and filed on 11th September 2009.

¹³ See comments of Lord Hutton in Shamoon v Chief Constable of the Royal Ulster Constabulary (2003) 2 All ER 26 at 71

¹⁴ See also: Annissa Webster v AG CVA No. 86 of 2009; Charles James v AG CV 2005 of 00168

¹⁵ See the Trial Bundles.

14. The Respondents filed the following affidavits in reply:

- a. Affidavit of Osborne Ashby sworn to and filed on 22nd February 2007.
- b. Affidavit of Debbie Sobers sworn to and filed on 23rd February 2007.
- c. Affidavit of Debbie Sobers sworn to and filed on 5th April 2007.
- d. Affidavit of Debbie Sobers sworn to on 22nd May 2007 and filed on 23rd May 2007.
- e. Affidavit of Wayne Richards sworn to and filed on 5th April 2007.
- f. Affidavit of Deowattee Dilraj sworn to on 22nd May 2007 and filed on 23rd May 2007.
- g. Affidavit of Deowattee Dilraj sworn to and filed on 25th May 2007.
- h. Affidavit of Gloria Edwards-Joseph sworn to on 22nd January 2009 and filed on 23rd January 2009.

15. At the onset let me say that the Court is also guided by the dicta in the recent decision of the Court of Appeal in the **Annisa Webster** matter (Supra): that it is a sufficient answer to the issues put before this Court, to show that the legislative regime governing the two classes of officers intended to and did in fact create two distinct classes of officers with one subordinate to the other¹⁶.

16. If I were wrong on that, let me say the following: The upshot of the evidence is that the EPO's carry out a variety of functions several of which are similar to that which the regular Police do and much of which are peculiar to the EPO's or in any event are not for the most part engaged in by the regular Police as they are by the RPO's. The Applicants suggest that they discharge their function creditably and in the absence of evidence to the contrary, I accept that.

17. The evidence does not seek to (and if it does it has failed to) contend that the legislation, the statutory requirements for entry, compensation or function of the EPO's can be equated with that of the regular Police. The evidence of the Applicants rather, seeks in my view, to establish that in effect the roles and functions of the Applicants *on the ground*, are the same or substantially similar to that of the RPO's so as to make them true comparators with the RPO's. The overwhelming tenor of the evidence however is that the legislative scheme sets out to and does indeed achieve, in creating a distinctly sub class of employees in the EPO's. So for instance, several of the entry requirements are now different¹⁷, the source of appointment and removal has always been different, the salary and other emoluments are different, the terminal employment benefits are different and indeed the very stated purpose of the EPO's are different.

18. As a further example of the differences; the EPO's are appointed by the Public Service Commission as opposed to the Police Service Commission as are the RPO's. The significance of this, among

¹⁶ See para 30 below.

¹⁷ This apparently was not entirely so in the beginning – 1970's

other things, is that the interests of the EPO's are as a consequence represented by the Public Service Association. The combination of the evidence from the Applicants and the Respondents on the issue arising from this representation - the right to Freedom of Association - suggests that at best, the Applicants are aggrieved by the quality of representation by the PSA and not that they have been deprived of the right of representation either by the legislation or other conduct of the Respondent¹⁸.

19. There is ample evidence of the EPO's carrying out certain functions of a regular police officer. It is a matter of degree then, to which one category of employee carries out the functions of another, in such a manner that it impacts on the question of whether they are similarly circumstanced. In this regard and for the limited reason provided below, I have also looked at the evidence to glean not just the fact that the EPO's may also carry out certain or even several core or general functions of the regular Police, but also the degree of independence with which it was carried out and the nature of the function and the extent and frequency of which they carry out those functions, that may be similar to that of the RPO's.
20. The affidavits of the first 11 applicants and that of the 12th and 13th Applicants are substantially the same in most respects¹⁹. The evidence from them all convey the impression to the Court, that indeed the substantial defined purport of their precept and then, most of their actual functions and duties were centered around the Anti Squatters Squad and the Praedial Larceny Squad for varying periods from EPO to EPO²⁰, expanding beyond that of the 'squads' with the passage of time, to include more regular police work. The evidence of functions and duties expanding beyond the ambit of these squads, although present, again, in varying periods from officer to officer, is sparse and often tines somewhat amorphous in detail and extent²¹. That is, the Court is unable to sufficiently glean from the affidavits of the Applicants the extent and frequency of the performance by the EP's of either the core or general duties and functions of the regular Police duties and functions²². A definitive identification of these regular police officer duties and functions and particulars of the extent and frequency of the performance of these said roles and functions by the RPO's, in the context of establishing similarities between them outside of the reading of the legislation, in the Court's view, is of some importance. When one looks at the length of service of the EPO's and the number of man hours this would represent, to then list an array of activities in the Applicants affidavits, that would have been performed by the EPO's over the period does not

¹⁸ See para 39 of the Submissions filed on behalf of the Respondents at Tab 13 of the Trial Bundle Vol. 2; see also Mr. Ashby's affidavit at para 4 and para 10; see further the Affidavit of Debbie Sobers.

¹⁹ The affidavit in response to the Respondents various affidavits is joint with the first 13 Applicants.

²⁰ See the joint affidavit of the Applicants including paras 4 and 5 thereof and the joint affidavit of the 12th and 13th Applicants at paras 5 and 6..

²¹ See also paras 15, 16 and 18 of the joint affidavit and paras 15 and 16 of the joint affidavit of the 12th and 13th Applicants.

²² The "Abstract" book from the police stations exhibited in this matter are noted and were informative.

sufficiently assist the Court in determining the extent and nature of the performance of these roles and functions over , what must be, thousands of man hours

21. The joint application of the first 12 Applicants in reply to the Affidavit of Gloria Edwards-Joseph filed the 23rd January 2009 in paras 4-5 thereof appear to misunderstand the testimony of Mrs Edwards-Joseph. Mrs Edwards-Joseph did not say that the Applicants or any of them had ever been disciplined, but, merely set out the procedure for such disciplinary action against an EPO to show that the EPO's never fell under the jurisdiction of the Police Complaints Authority. Further, I prefer the evidence of Mrs Edwards-Joseph at paras 8-14 supported as it was with detail and exhibits, over the bare denial of the Respondents in paras 5 of their affidavit in reply. On another note, the reference to "paragraph 3" of the 25th January 2008 affidavit does not match up. Perhaps para 4 was intended. Para 4 merely repeats the Applicants original contentions on each of the issues before this Court. Further, the reference to the Applicants *joint affidavit in response*, in support of the contention that they were subject to the Police Complaints Commission was not sufficient in my view and I remain unconvinced of this assertion by the Applicants.
22. The evidence of Osbourne Ashby is very useful with respect to the applicable legal and statutory regimes that govern the EP's and the regular Police force. I think it useful to set it out below and do so:

"The Applicants are Estate Police appointed by the Public Service Commission ("the Commission") and are subject to the Civil Service Act, the Civil Service Regulations, and the Public Service Commission Regulations. The Applicants are also governed by the Supplemental Police Act Chapter 15:02. All issues of appointment, promotion, transfers, discipline and removal from office of Estate Police are dealt with by the Commission and terms and conditions of employment are dealt with by the Chief Personnel Officer.

Officers of the Trinidad and Tobago Police Service ("Regular Police Officers") are appointed by the Police Service Commission pursuant to the Police Service Act Chap 15:01 and by virtue of the Constitution of Trinidad and Tobago Chapter 1:01. However all issues of appointment, promotion, transfers, discipline and removal from office of Regular Police Officers are dealt with by the Police Service Commission and terms and conditions of employment are dealt with by the Chief Personnel Officer.

Estate Police were precepted by the Commissioner of Police pursuant to the Supplemental Police Ordinance Ch. 11 No. 2 (as amended by the Act No. 29 of 1967) to be Estate Constables on the establishment of the Anti Squatters Brigade. Sometime in

or about May 28th 1987 the personnel of the Anti Squatters (including Estate Police) were redeployed to praedial larceny duties under the Praedial Larceny Squad.

Pursuant to Section 14 (1) of the Supplemental Police Act, Estate Police while engaged in the performance of their duties were granted all such rights, powers, authority, privileges and immunities as police officers below the rank of Corporal. However the Praedial Larceny Act Chapter 10:03 as amended by Act No. 56 of 2000 enables the members of the Praedial Larceny Squad to exercise special powers enumerated in the Praedial Larceny Act (as amended). Whilst Estate Police performed functions in the Anti Squatters Brigade their duties were limited to maintaining peace and order relative to the work that was performed by the Brigade.

The Commissioner of Police is responsible for outlining the length and type of training to be undertaken by Estate Police. It is understandable that this responsibility would lie with the Commissioner of Police given that the Estate Police are involved in the performance of limited "policing" functions. Occasionally, Estate Police are required in certain limited circumstances to perform some of the duties of Regular Police Officers. This is usually limited to occasions when there was need for additional assistance in relation to events like Carnival, Elections and major sporting events. Very occasionally they may be required to do foot and mobile patrol if there was a manpower shortage in the Division in which they were assigned to duty as part of the Praedial Larceny Squad.

The Personnel Department ("the Department") established by virtue of Section 14 (1) the Civil Service Act 1965 ("the Act") requires the Department to establish bargaining procedures with an appropriate recognized association. The Act divides the Civil Service the Civil Service into certain classes. The Estate Constables belong to the Manipulative Class which is as stated in Part VI of the Schedule of the Civil Service Act Chap. 23:01. However as Public Officers in the Civil Service they are represented by the Public Service Association ("the PSA"). The PSA is the only appropriate recognized association which represents officers in the Civil Service. No other body enjoys such recognition. Consequently, the PSA is solely authorized to negotiate Memoranda of Agreement with the Chief Personnel Officer concerning the terms and conditions of employment of the Estate Police employed by the Government. Estate Police employed by the Government are not required to be members of the PSA, however, their terms and conditions of employment are determined by Memoranda of Agreement between itself and the Chief Personnel Officer. Historically the PSA formerly referred to as the Civil Service Association was recognized by the Government of Trinidad and Tobago as the recognized association to represent members of the Civil Service. However, Section 23 of the Civil Service Act Chapter 23:01 specifically

recognized the Civil Services Association as the existing association and the bargaining body for any class or classes of public officers under the Civil Service Act.

The Special Tribunal established under Section 22 of the Civil Service Act determined on the 8th November, 1979 that the public officers under the Civil Service Act who were members of the Manipulative Class which also included inter alia, Estate Police employed by the Government, were represented by the Public Services Association which was the appropriate recognized association to represent that class and other classes in the Civil Service for bargaining purposes. The Special Tribunal also ruled that the Estate Police Association was not the recognized association to represent Estate Police in the Government Service.

In fact by letter dated the 31st May, 1996 from the PSA to the Permanent Secretary, Ministry of National Security carbon copied to the Chief Personnel Officer clarification was sought as to the role of the Estate Police in the performance of their duties alongside the regular police officers. In the letter it is noted that there was some discussion as to the duties of the squad in the various districts to which they were assigned. Further, it was recognized by the PSA that the officers are recognized to be "public servants" as reflected in the regulations that govern them, in addition to their terms and conditions of service and remuneration. A true copy of the letter dated the 31st May, 1996 is hereto annexed as an exhibit produced and shown to me and marked "O.A.1."

In answer to paragraph 9 of the affidavit of Allan Mitchell it is untrue of the Applicants to say that they did not or were not given any representation by any body, union or association. Further the PSA from time to time negotiated the terms and conditions of employment of all Civil Servants including Estate Police. In fact by Memorandum of Agreement dated the 7th November, 2003 the Public Service Association and the Chief Personnel Officer agreed to certain revised terms and conditions of employment of persons employed in the Civil Service including estate Constables who are classified in range 20. The period of implementation of the Memorandum of Agreement was from the 1st January, 2002 to the 31st December, 2004. By Minister of Finance Circular No. 8 of 2003 dated the 18th November, 2003 all Heads of Department were notified of the revised salaries and cost of living allowance in respect of the period the 1st January, 2002 to the 31st December, 2004 for full time officers in the Civil Service (including Estate Constables). True copies of the Memorandum of Agreement dated the 7th November, 2003 and Circular 8 of 2003 containing the revised salaries, cost of living and other allowances agreed to on the 7th November 2003 are hereto annexed in a bundle as an exhibit produced and shown to me and marked "O.A.2".

23. I hold the respective statutory regimes set out above to be correct and applicable²³. The contention by the Respondent that circumstances between the two groups of employees are substantially different on the legislation creating and governing them and the respective eligibility requirements, terms and conditions of employment²⁴, is unassailable I would think. I accept however, that this patent difference in the respective governing statutory regimes and its clear intent together with its varying eligibility requirements, terms and conditions of employment, although very convincing are not by themselves in all cases necessarily sufficient to establish that the two groups are not similarly circumstanced. Indeed the Applicants have challenged the Respondent's contention of the lesser entry requirements of the EPO's. The EPO's contend that the age, height, academic qualifications at the time they were brought in to the service in the 1970s and now the length and content of the training for both groups are the same or similar. For the Court's part, it notes that the overwhelming tenor of the evidence is that at the initial stages of the introduction of the EPO's to assist the RPO's in the 1970's there can be little argument that their duties were discernably of a lesser importance. Hence the sufficiency of some of the the lesser entry requirements.

24. In the end, consideration of the actual duties and functions performed by the respective groups independent of the legislation where the legislative intent and result is so clearly to create a sub class of law enforcement employee in the EPO's, are not a necessary ingredient in the process of determining whether one group is a true comparator with the other.

25. In this regard, I repeat my observations above, that the Affidavit evidence of the Applicants convey that their duties and functions were for varying periods for each of them, substantially constrained to the two squads, other lesser specified duties and where over time they increasingly acted outside of the limited and lesser functions of the squads, there is insufficient evidence to establish sufficient breadth or scope of the core regular Police role they performed. I accept that at times the affidavit evidence of the Applicants suggest a "blurring" of the distinctive roles of the two categories of law enforcement personnel. Very importantly, notwithstanding the evidence set out in the Joint affidavit in response, of the 25th January 2008 and generally, there is insufficient evidence to establish to the satisfaction of this Court, of the extent and frequency with which they carried out those RPO role(s). Even if one were to argue successfully that the evidence is "sufficient" in scope, the Court is not convinced by it. Further still, the level of independence with which the EPO's performed the regular Police roles or put another way, evidence of the absence of a supervisory input by the regular Police when the EPO's were carrying out RPO functions, is not established. This is so notwithstanding the bare assertion by the Applicants that in instances they

²³ The Court is not by this paragraph necessarily adopting any opinion that may be expressed in the quoted text by this witness.

²⁴ See the Affidavit of Wayne Richards filed April 5, 2007 at para 7; See also the affidavit of Debbie Sobers sworn to and filed on April 5, 2007 at para 4, for details set out in the tables.

operated both alone or along with the RPO's²⁵. Wayne Richards ,Debbie Sobers, Deowatee Dilraj and Osbourne Asby provide strong evidence contradicting the evidence led by the Applicants as to their being true comparators with the RPO's. I accept the evidence of these witnesses as being robust, internally consistent, possessed of sound logic, consistent with the plain words of the governing statutory regimes and sufficiently detailed and particular, to be suggestive of reality.

THE LAW²⁶

26. The test for unequal treatment was summarised in the Bhagwandeem Case as follows:

"A Claimant who alleges inequality of treatment or its synonym discrimination must ordinarily establish that he has been or would be treated differently from some other similarly circumstanced person or persons, described by Lord Hulton in Shamoon v Chief Constable of Royal Ulster Constabulary (2003) 2 ALL ER 26 at paragraph 71 as actual or hypothetical comparators. The phrase which is common to all anti-discrimination provisions in the legislation of the United Kingdom is that the comparison must be such that relevant circumstances in the one case are the same or not materially different."

27. In Annisia Webster and Ors. V Attorney General of Trinidad and Tobago CVA No. 86 of 2008 Bereaux JA developed and/or clarified the law further and found that there was a clear legislative difference between the two types of police service, (the Special Reserve Police Officers (SRPO) and the regular police officers). He found that the intention behind the establishment of the SRPO was to assist the regular police but as a subsidiary police force and that given the legislative differences between the two classes there was no need to depend on any evidence at all or choose between the Applicant's and Respondent's evidence. The fact that their terms and conditions of service were inferior to that of regular police officers was consistent with statutory regimes which provided for two distinct classes of police officer and in the case of the Special Reserve Police Service, officers whose primary purpose was to assist regular police officers in the performance of their duties.(emphasis mine)

28. The Applicants are appointed by the Public Service Commission and per the affidavit of the Applicants filed herein annexing copies of their letters of appointments in the Public Service. The Public Services Association is the only recognized association for persons so employed. Accordingly, the Applicants' contention that the Executive has breached their right to be represented by an association is not well founded. The Applicants' grievance is not with the respondent but with the Estate Police Association and or the Public Services Association.

²⁵ See for instance the last paragraph of para 4 and the first paragraph of para 5 of the joint affidavit.

²⁶ See the very enlightened written submissions of counsels for both parties.

29. The Applicants as Public Officers appointed by the Public Service Commission, are subject to the Civil Service Act Chap 23:01 and the Public Service Regulations. The Estate Constables belong to the *Manipulative Class which is at Part VI of the Civil Service Act* which is represented by the Public Services Association in accordance with section 23 of the Civil Service act which recognizes this Association as the appropriate recognized association.
30. The Special Tribunal, established pursuant to section 22 of the Civil Service Act, determined on the 8th November, 1979 that all members of the Manipulative Class which included Estate Police employed by the Government were represented by the Public Services Association. It was also to be noted in the ruling of the Special Tribunal that the Estate Police Association was not the appropriate recognized association to represent Estate Police in the Government Service.
31. The right to freedom of Association is merely a right to join an association and by extension to enjoy the privileges that go along with this. The Applicants have failed to make out any justification for relief under this heading. It is quite evident that the Applicants as Public Officers are to be and are represented by the Public Services Association. The main grouse for these Applicants is that the said representation is not meeting their needs as opposed to a lack of representation or none at all. This is a situation not for the Courts but for the Applicants to take up with their association representative.
32. The Court also accepts that no mala fides is necessary for a case of unequal treatment and therefore it is irrelevant that there is no such element present.²⁷

CONCLUSION

33. I do not believe that there is any dispute that were the EPO's similarly circumstanced and true comparators to the regular Police, the failure of the State to equate the terms and conditions of service and employment of the Applicants with those of regular police officers ("RPO's") may be an infringement on the Applicant's right to; equality of treatment from a public authority as guaranteed to them under Section 4(d) of the Constitution of the Republic of Trinidad and Tobago; and flowing from that infringement, a further infringement on the right to property pursuant to section 4(a) of the Constitution. The fundamental issue is whether the Applicants are similarly circumstanced with the regular Police officers. I find for the reasons set out above and below that the Applicants are not so circumstanced.
34. Further, if they are proximate 'comparators', the evidence is that the Applicants are public servants under the Civil Service Act and entitled to have their interests represented by the collective

²⁷ Central Broadcasting Services v AG (Civ. App. No. 16 of 2004)

bargaining body of the Public Service Association(PSA). The PSA would be responsible for making representations and negotiating the improvement of their terms and conditions to which the Applicants would be bound. Further still, I note the point made by the Respondent in its written submissions, that the Applicants as Public Servants could not be treated favourably (as they are indeed asking) over the other Public Servants of equal grade, including the other Estate constables, without exciting the concern of the Court that it would in effect be meting out unequal treatment to the other said Public Servants of equal grade. The Applicants have failed to make out any justification for relief under this heading – section 4(j) of the Constitution. It is quite evident that the Applicants as Public Officers are to be and have been represented by the Public Services Association²⁸. The Applicants have not identified what further steps they require the state to take to ensure that the Applicants are free to associate²⁹.

35. The legislative frame work clearly provides for and anticipates the EPO's performing some tasks typically characteristic of police functions and duties. Indeed the intention of the Supplemental Police Act is to provide for the EPO's in assisting the regular police. It is inconceivable to this Court that this assistance can be rendered without the EPO's doing something(s) that regular police officers do or had done prior to the advent of the role of the EPO's. This fact alone in my view would not be sufficient to elevate the EPO's role to that of a true comparator. Further, the legislation and indeed the industrial relations expectations surely dictate that the EPO's, like any other employee, strive and attain a high or in any event an acceptable level of performance on the job. The fact that the EPO's or any one or several of them may have been trained to carry out all RPO functions or performed certain assigned roles creditably or even, perhaps, if in some instances better than the RPO's or any one or several of them, deserves commendation and may well enhance the EPO's promotional prospects and/or eligibility for application and entry to the regular police service, but does not in itself elevate the EPO to that of a true comparator.

36. Again, in this context one has also to look at the nature of these roles being performed, whether they are core or general roles and if core roles, then the frequency of their performance and the level of supervision (passive or active) or even the mere presence of RPO's at the material time when the EPO's are performing the respective role(s); and to look at the gravity of the prevailing circumstances. The first and second sentences of paras 4 the joint affidavit and para 5 of the joint affidavit of the 12th and 13th Applicants assert that in carrying out duties in the two squads they acted under the supervision direction and control of the Commissioner of Police("CoP") and that they worked "*alongside*" the RPO's. I couldn't help note that there is no evidence, for instance, of

²⁸ See the affidavits of Debbie Sobers filed the 23 May 2007 and the 23rd February 2007 and more particularly para 5 and 6 thereof.; see also the affidavit of Gloria Edwards-Joseph at para 6 thereof and the affidavit filed May 23, 2007, of Deowattee Dilraj Attorney at Law for the Chief State Solicitors department, at para 4 thereof and the letter from the PSA with respect to the EPO's membership of the said PSA along with her affidavit sworn to on the 25th May 2007.

²⁹ See para 3 above for the allegation made by the Applicant.

an incident of an EPO effecting an arrest of a person outside of the 'squad's' usual jurisdiction. Performing a core police function at a critical stage of a murder investigation or in the 'field' at the cusp of effecting an arrest of a group of armed and dangerous men is of a graver context and qualitatively different than for instance, performing a core role in a routine road block – such as asking a driver for his driving documents - or a routine patrol of Charlotte St. Port of Spain – such as walking along the road armed and vigilant - with a group of armed police and army personnel³⁰. This sort of evidence or evidence from which the Court can make these sorts of findings on a balance of probabilities in favour of the Applicants is not sufficiently articulated in the case for the Applicants. Although I do find that the EPO's performed several of the roles of that of the RPO's, I do not find that the roles played by the EPO's were sufficiently similar to that of the RPO's in extent, frequency and gravity. I do not find that the EPO's performed key and grave police duties, such as arrest for major crimes etc independent of the supervision or presence of the RPO's.

37. The Applicants made the further points; that their pay slips emanated from the Trinidad and Tobago Police Service (TTPS); that they received orders from the Commissioner of Police (CoP) in common with that of the RPO's; and were assigned private jobs by the CoP for which they were paid on *par* with the RPO's, all, as suggesting that they were treated as RPO's. I do not agree. Private jobs are just that – private jobs – and the rationale for the equal payment is not necessarily that which underlies the Public sector pay rate or indeed the enquiry that the Court is put on in this matter, nor, in any event, is such an explanation set out in the case and submissions for the Applicants. But, in any event, the nature of the private jobs, to the extent one can glean from the evidence, are generally at the lower and routine end of the RPO's duties³¹. On the other point raised; the endorsements on the pay slips showing their origin from the TTPS is of no moment. It appears purely administrative and convenient. It would not be surprising to me to learn that the 'cleaners' and other auxiliary staff at the police stations also get their pay slips from the TTPS. I have not been convinced of the contention by the Applicants on this point. The general 'orders' instructing both RPO's and EPO's alike, do not in my view establish that the EPO's and the RPO's were viewed as comparators by the authorities. In the first place there is not sufficient evidence in my view as to what percentage of the Orders and Instructions by the senior Police, whether in writing or orally, were given to the RPO's and EPO's in common, to be able to draw the inferences supportive of the Applicants contention. Further, other reasons can justify this procedure, for example; It would seem to be reflective of good governance, that orders and instructions to the primary RPO's also be known by their assistants – the EPO's.

38. The Court does note and appreciate the importance and risks in the role of the EPO's as persons involved in law enforcement, but does not find the EPO's to be true comparators with the RPO's.

³⁰ See the evidence of Wayne Richards at para 28 of his Affidavit filed April 5, 2007.

³¹ See for instance para 18 of the joint affidavit.

Indeed they make out a strong case for their reclassification within the public service; but this is a matter for them and the PSA in the first instance. The Court is satisfied that the legislation has created two dissimilar classes of officers so that the EPO's cannot claim to have been discriminated against. And, this in the Court's view is a full answer to the claim of the Applicants. Secondly, and further or alternatively if you will, on the evidence in support and against the contention that the actual circumstances of the EPO's and RPO's rendered them true comparators; the Court does not find the Applicants to be true comparators with the RPO's on the basis of their respective circumstances and as a consequence, not to have been unlawfully deprived of their property - 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 does not find that the Applicant's right to freedom of association has been infringed by the Respondent as alleged³².

39. FOR THE REASONS PROVIDED ABOVE, **IT IS HEREBY ORDERED AS FOLLOWS:**

40. The Applicant's motion is hereby dismissed, with Judgment for the Respondents;

41. The Applicants to pay the Costs of the Respondents; to be taxed if not agreed.

HIGH COURT JUDGE

DAVID C HARRIS

MARCH 14, 2013

³² See the Affidavit of Debbie Sobers filed the 23rd of February 2007.