

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. CV 2019-04155

BETWEEN

Jim Joseph

Claimant

AND

The Attorney General of Trinidad and Tobago

Defendant

Before the Honourable Madam Justice Eleanor Joye Donaldson-Honeywell

Delivered on: 15 December 2021

Appearances

Mr. Mark Seepersad, Ms. Vishala Seepersad and Mr. Akash Ramroop Attorneys at Law for the Claimant

Ms. Trisha Ramlogan and Ms. Janine Joseph, Attorneys at Law for the Defendant

Judgment

A. Introduction

1. The Claimant is a Prisons Officer seeking damages arising from an incident in October 2015 when, he contends, a more senior Prison Officer subjected him to assault, battery, wrongful arrest and false imprisonment. He further contends that these actions constituted misfeasance in public office by the said senior Prison Officer for whose actions the Defendant is vicariously liable

pursuant to Section 19(2) of the **State Liability and Proceedings Act Chapter 8:02**.

2. The Trial took place on 7 and 8 July 2021. At the close of the oral evidence, parties were directed to file written closing submissions. Only the Defendant filed submissions within the timeframe permitted by the Court. The conclusion date for submissions by the Claimant was 27 October 2021, however the Claimant neither filed same nor applied for an extension of time before the period elapsed. On parties being notified of a new December date being set for delivery of the Judgment, the Claimant applied for permission to file submissions after the time permitted. The Court granted extended time to 14 December 2021 for the submissions.
3. Having considered the pleadings, evidence and submissions, the Court's determination is that the Claimant succeeds in part by establishing false imprisonment. The reasons for this determination are explained in this Judgment.

B. Issues

4. The issues to be determined in this case are whether:
 - a. the Claimant has proven, on a balance of probabilities, that the Defendant is liable for an assault and battery against him
 - b. the Claimant was wrongfully arrested and falsely imprisoned
 - c. the Defendant's agents or servants behaved in a way that amounts to misfeasance in public office
 - d. the Claimant is entitled to damages, including aggravated and exemplary damages, for any of these torts. If so, what is the measure of the damages?

C. Summary of facts as pleaded

5. The Claimant is a Prisons Officer I employed by the Trinidad and Tobago Prison Service for over ten years. Following an escape from the prison in mid-2015,

the Prison was on a heightened state of security for several months thereafter. During this period, the Claimant was posted as gatekeeper at the Port of Spain Prison.

6. In or around early October 2015, Superintendent Fabian Alexander, the Senior Prison Officer whom the Claimant alleges committed torts against him, arrived at the gate in his vehicle. The Claimant's instruction was to search every vehicle that entered the premises, hence he instructed two assistant gatekeepers to search Superintendent Alexander's vehicle.
7. According to the Claimant, Superintendent Alexander objected to the search, cursing at the Claimant and his assistants before allowing the assistant gatekeepers to search his vehicle. Thereafter, the Claimant states that he was called into the office of his supervisor, Mr. S. Ramudit, along with the assistant gatekeepers. Superintendent Alexander was present and he apologised to the assistant gatekeepers but not to the Claimant.
8. Approximately two weeks thereafter, the Claimant states that Supervisor Ramudit informed him that he might need to give a statement as Superintendent Alexander indicated that he intended to have disciplinary charges brought against him. There is no indication in the pleadings that the Claimant ever gave a statement or documented his report on this alleged occurrence. The Claimant states that nothing further was heard of any charges arising from the incident.
9. The pleaded case of the Defendant is that they have no knowledge of the facts pleaded by the Claimant about the alleged incident of objection by Superintendent Alexander to his vehicle being searched in early October 2015.
10. The Claimant's case concerning the later incident, which is the subject matter of his Claim, is that on 25 October 2015, he arrived at the Port of Spain Prison for duty at around 1:00 p.m. He was informed that Superintendent Alexander

was conducting a routine search of officers entering the Prison and he proceeded to the designated search area. The designated search area is not specifically identified in the Claimant's pleadings, however, in the Defendant's pleadings, it is identified as the Programmes Office located at the main gate of the Prison. The Claimant does not dispute that this was the location.

11. The Claimant claims he had in his possession a bag containing his personal belongings - foodstuffs, toiletries and other personal items. Superintendent Alexander instructed the Claimant to place his personal items onto a table. The Claimant objected because the table was unhygienic. Superintendent Alexander responded by taking a tablecloth and placing it on the table. The Claimant claims he took this cloth from the floor and it was also soiled. The Defendant, while also pleading that Superintendent Alexander placed a cloth on the table, denies the Claimant's account that it was soiled and from the floor.
12. Superintendent Alexander instructed the Claimant to place his items on the tablecloth in response to which he stated that it was unhygienic for him to place his items on that cloth.
13. The Claimant claims that Superintendent Alexander responded aggressively to this and without warning, he forcefully grabbed the right arm of the Claimant to prevent him from moving. The Claimant's case is that this caused pain and injury to his arm.
14. The Claimant claims he informed the Superintendent that he was assaulting him and requested that he be released. According to the Claimant, Superintendent Alexander then grabbed him across his chest area, striking him on the left side of his chest wall. The Claimant says this caused him to have difficulty breathing.

15. The Claimant then asked for his supervisor, Mr. Ramudit, to whom he reported the incident. The Claimant states that Supervisor Ramudit told Superintendent Alexander that the Claimant was not an officer suspected of smuggling or trafficking. He then searched his bag in the presence of Superintendent Alexander and other officers. He found nothing prohibited or unauthorised.
16. The Claimant states he informed Mr. Ramudit that he was in pain from the blow received from Superintendent Alexander and requested medical attention. The Claimant states that, on hearing this, Superintendent Alexander instructed the gatekeeper and gatekeeper assistant not to allow the Claimant to leave the Prison, thereby detaining him.
17. From this point, the Claimant claims he was arrested, detained and deprived by Superintendent Alexander of his liberty, without due process of law for a period of approximately two (2) hours. According to the Claimant, he was not informed of the reason for this treatment.
18. The Claimant was then taken to another area of the Prison. There he was placed under the armed guard of Prison Officer Daniel from the Emergency Response Unit. The Claimant states that officer Daniel had two firearms, one of which was pointed towards him. He states that he was told by the officer "hush your mouth and sit down before ah have to shoot yuh". The Claimant attempted to speak with another officer by the name of W. Mitchell to inform him what was happening but Superintendent Alexander directed that the two not speak to each other to ensure Mitchell did not contaminate the area.
19. At around 2:30 p.m., a party of heavily armed Police Officers came into the holding area. One identified himself as Assistant Superintendent Brown. The Claimant was informed that they had information from Superintendent Alexander that the Claimant had illegal items in his possession and that he required that the police attend the Prison and subject him to a search.

20. The team of police officers searched the Claimant's bag once again. The Claimant claims he was then strip-searched in a room to the front of the compound where the door was left open. He says the search took place in full view of the passing public and officers. This version of events is denied in the Defence.
21. According to the Claimant, the Police Officers, together with Superintendent Alexander, then took the Claimant to the Dormitory/locker area and searched the Claimant's locker. The Police Officers then took the Claimant to the "designated prison officer's only car park" where a search was conducted of his vehicle. Although not pleaded, the parties agree that this car park was located outside the premises of the prison next to the Law Association building.
22. After the Police were completed with their searching, nothing illegal or prohibited was found on the Claimant or in his belongings, on his person, in his locker or car. It is the Claimant's case that the search was "crafted" by Superintendent Alexander for the improper motive of humiliating and embarrassing him. This was with a view to teaching the Claimant a lesson for having searched Superintendent Alexander's car.
23. The Claimant returned from the car park to the prison along with his Supervisor, Mr. Ramudit, who then gave instructions that a prison ambulance should take the Claimant to the Port-of-Spain General Hospital. Superintendent Alexander instructed the Claimant to report back to the Prison thereafter regardless of whether sick leave was given to the him or not.
24. At the Port-of-Spain General Hospital, the Claimant was treated at the Accident and Emergency Department. He was given three (3) days sick leave and prescribed medication for the tenderness/soft tissue injury he alleges was sustained from the physical encounter with Superintendent Alexander. Medical documents supporting that injuries were sustained and that sick leave

was extended for nine (9) days in total are attached to the Claimant's Statement of Case.

25. At around 4:30 p.m., the Claimant returned to the Port of Spain Prison and delivered his sick leave certificate to the gatekeeper. The Claimant then proceeded to the Central Police Station and made a report of assault and battery, wrongful arrest and false imprisonment against Superintendent Alexander.
26. The Claimant seeks damages for assault and battery, false imprisonment, wrongful arrest and misfeasance in public office. The Claimant also seeks aggravated and exemplary damages for the manner in which he was searched and kept under guard, the humiliation suffered and malice and improper motive of Superintendent Alexander throughout the event.
27. The Defendant's pleaded case commences on the date of the alleged assault of the Claimant. There is no admission that any prior incident took place between the parties.
28. According to the Defendant, on 25 October 2015, Superintendent Alexander intended to conduct a search of Prison Officers. He spoke with Prisons Supervisor Ramudit asking that he accompany him whilst the search was being conducted. Supervisor Ramudit did not attend himself but directed Prison Officer II Spencer to accompany Superintendent Alexander and assist him with the search.
29. Superintendent Alexander proceeded towards the Programmes Office located at the main gates of the Port of Spain Prison, where a room was made available to conduct the search. The said room was chosen as it was close to the main gates and it is private. Located in the said room, there was a table that Prison Officers used when eating their meals.

30. The approach taken by Superintendent Alexander was that, upon the arrival of an officer, he would identify himself and inform the officer that he is conducting a random search pursuant to **Prison Rule 178**. He would instruct each officer how the search is to be carried out, including whether pockets and bags had to be emptied and the items placed on the table.
31. Superintendent Alexander began to conduct the search of several Prison Officers in the presence of Prison Officer II Spencer. The Claimant was one of the Prison Officers who presented himself for search. The Claimant indicated to Prison Officer Spencer that he was going to ask Superintendent Alexander about the senior officers who were searching and who were themselves involved in trafficking.
32. Superintendent Alexander followed his aforementioned approach before the search on the Claimant began. He requested that the Claimant empty the contents of his pockets onto the table in the room. The Claimant asked Superintendent Alexander "*who is going and search the Superintendent and dem? They bringing all kinda illegal stuff in the prison and allyuh only searching prison officers*". Superintendent Alexander disregarded the comments and asked him again to empty the contents of his pockets and to place the items in his bag on the table.
33. The Claimant refused to do so and indicated that the table was dirty and that he was not putting his items on it. Superintendent Alexander walked around him, took a tablecloth and draped it on the table. He again asked the Claimant to empty the contents of his bag onto the tablecloth on the table. The Claimant refused and stated that he was not "going through that and the table is dirty".
34. The Claimant did not empty the contents of his bag and turned to walk out of the room. Superintendent Alexander then raised his hand as if to block the Claimant from leaving and said that he was not finished searching him. He further instructed him that he could not leave until he was searched and until

he was satisfied that the Claimant did not have any illegal and unauthorized items on him.

35. The Claimant then advanced toward Superintendent Alexander who leaned back, and then they both came into contact with each other. The Claimant's right shoulder came into contact with Superintendent Alexander's chest. At that point, the Claimant said to Prison Officer Spencer "You see Spencer, he assaulted me." At no point in time did Superintendent Alexander either grab the Claimant's hand or strike him on his chest.

36. The Claimant reiterated that Superintendent Alexander assaulted him and again indicated he was leaving. Superintendent Alexander stepped aside and allowed him to walk out of the room.

37. Superintendent Alexander instructed the gatekeeper not to open the gate to allow the Claimant to either leave the premises or go to the dormitory. The gatekeeper was then instructed to communicate with Supervisor Ramudit and to inform him to report to the gate immediately.

38. The Claimant complained of feeling unwell. The Infirmary officer and Supervisor Ramudit arrived shortly thereafter. The Claimant refused treatment from the Infirmary Officer and Superintendent Alexander instructed Mr. Ramudit to have someone escort the Claimant to seek medical attention.

39. Prison Officer II No. 1843 Harold Le Gendre and Mr. King accompanied the Claimant to the Port of Spain General Hospital.

40. In addition to arranging medical attention for the Claimant, Supervisor Ramudit had a brief conversation with Superintendent Alexander and with the Claimant about the incident. The Claimant told him that Superintendent Alexander assaulted him and that he had refused to be searched. On the Defendant's case, there is no indication as to whether Supervisor Ramudit did

anything further at this point. However, as aforementioned, the Claimant's case is that Supervisor Ramudit conducted a search of his bag.

41. The Defendant's case as pleaded is that Superintendent Alexander communicated to his Superiors, Senior Superintendent Bruce and Deputy Commissioner of Prisons Alexander, as to what had transpired. According to the Defendant, the said Deputy Commissioner instructed Superintendent Alexander that if the Claimant did not want to be searched, he should not be allowed to enter the premises and to call the police to conduct a search on the Claimant.

42. Superintendent Alexander contacted the Central Police, informed them of the situation, and requested assistance. Shortly thereafter, the party of police officers, referred to by the Claimant in his Statement of Case, arrived.

43. Assistant Superintendent of Police Brown was stopped when he started to search the Claimant as Superintendent Alexander informed him that such a search needed to be done in private. Guided by Superintendent Alexander, the police officers escorted the Claimant back to the Programmes Office where the Police conducted a search on the Claimant's body and personal items. Subsequently, the police officers conducted a search of the Claimant's locker at the dormitory and vehicle in the car park. They found no illegal or unauthorized items.

D. Applicable legal principles

Approach to evidential findings

44. The Privy Council set out the duty of the Court in assessing evidence of witnesses in the seminal decision of **Horace Reid v Dowling Charles and Percival Bain Privy Council Appeal** No. 36 of 1897:

"Mr James Guthrie, in his able submissions on behalf of Mr Reid, emphasised to their Lordships that where there is an acute conflict of

evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.” [Emphasis added]

45. The court is entitled to draw adverse inferences from any failure to call material witnesses who might be expected to give evidence on the issues: **Ian Sieunarine v Doc’s Engineering Works (1992) Limited HCA 2387/2000.**

Elements of alleged Torts

i. Assault and Battery

46. An assault is a direct threat made by a defendant to a claimant, which causes the claimant to apprehend immediate and unlawful violence: see **Skinner v AG CV2006-03721; Halsbury’s Laws of England Vol. 26 (2010) at para. 15.7.**

47. In **Nicholas v AG CV2019-00748**, the Court set out the elements of assault and battery at para. 5, as follows:

“To constitute an assault, the defendant’s acts must be such that it would have caused any reasonable man to fear that violence was about to be applied to him. In other words, the acts must possess the

*capability of enforcing the intention to commit a battery¹. The courts would usually apply an objective test to determine if an assault existed. The existence of actual physical contact by the defendant against the claimant is not necessary for an act to constitute an assault, but the claimant must have reasonably apprehended or feared that such violent contact would be made: see *Shaban Muhammad v Attorney General*².*

...

*A battery would be deemed as having been committed where a defendant intentionally or recklessly actually inflicts unlawful force upon a claimant³. As such, battery requires that the defendant applies direct physical contact or force on the claimant: see *Shaban supra*.”*

48. As submitted by the Defendant, **Clerk and Lindsell on Torts 19th Ed. Chap. 15 para. 15-09** is instructive. The learned authors state that the direct imposition of any unwanted physical contact on another person may constitute the tort of battery.

49. In **Andrew Lee Kit v Carol Charles** CV. 3870 of 1991, Stollmeyer J (as he then was) noted:

*“The long standing definition of assault is an overt act by word or deed indicating an immediate intention to commit a battery, together with the capacity to carry the threat into action, or to put a plaintiff in fear of an immediate assault. **It is an intentional act.** There is an assault if there is a menace of violence with a present ability to commit it, but there will be no assault if the threat cannot be put into effect.”*
[Emphasis added]

¹ Stephen v Myers (1830) 4 C & P 349

² CV2010-04804

³ Collins v Wilcock [1984] 1 WLR 1172

ii. Wrongful/Unlawful arrest and False imprisonment

50. An action will lie in the tort of false imprisonment where there is an intentional deprivation of a person's liberty without lawful justification: see **M (by his litigation friend TM) v Hackney London Borough Council and others [2011] 3 All ER 529 at para. 33**. As Toulson LJ (as he then was) said in this case (at para. 100):

“Our system of law is rightly scrupulous to ensure that in matters affecting individual liberty the law is strictly applied. It is a hallmark of a constitutional democracy.”

51. According to the **Halsbury’s Laws of England on Tort Vol. 97A (2021)** at para. 141:

“Any total restraint of the liberty of the person, for however short a time, by the use or threat of force or by confinement, is an imprisonment... To compel a person to remain in a given place is an imprisonment, but merely to obstruct a person attempting to pass in a particular direction or to prevent him from moving in any direction but one is not...

The gist of the claim of false imprisonment is the mere imprisonment. The claimant need not prove that the imprisonment was unlawful independently of the tort or malicious, but establishes a prima facie case if he proves that he was imprisoned by the defendant; the onus then lies on the defendant of proving a justification.”

52. The Claimant’s pleading that he was wrongfully arrested is symbiotically related to his false imprisonment Claim. At common law and by legislative provisions, certain powers of arrest without warrant are afforded to Police Officers and private citizens. If such persons carry out an arrest within the scope of any such power, they will have a good defence to an action for false imprisonment, as well as for assault and battery⁴.

⁴ Kodilinye, Commonwealth Caribbean Tort Law, Fifth Edition at page 27

53. In this case, once there was ample evidence for Superintendent Alexander to suspect the Claimant of having committed an arrestable offence, he would have been lawfully arrested. If he was lawfully arrested, there was lawful authority to justify his detention. The claim for compensation for false imprisonment would therefore fail once the full period of detention was justified.

54. In **Chandrawtee Ramsingh v The Attorney General of Trinidad and Tobago [2012], UKPC 16**, the Privy Council explained the test for false imprisonment, including its interrelationship with proof of wrongful arrest, at para. 12, as follows:

“(i) The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.

(ii) It is for the arrestor to justify the arrest.

(iii) A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.

(iv) Thus the officer must subjectively suspect that that person has committed such an offence.

(v) The officer's belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.

(vi) Any continued detention after arrest must also be justified by the detainer.”

55. In defending the false imprisonment claim, the Defendant's case is that there is no proof that the arrest was wrongful or the detention unlawful. According to the Defendant, the arrest that initiated the detention was lawful. The Defendant cites authority on lawful arrest by constables with a view to establishing that the arrest in this case was justified and not wrongful. The authority cited is **Halsbury's Laws of England Volume 84A (2013)** at para. 487, which states:

"A constable may arrest without a warrant:

(1) anyone who is about to commit an offence;

(2) anyone who is in the act of committing an offence;

(3) anyone whom he has reasonable grounds for suspecting to be about to commit an offence; and

(4) anyone whom he has reasonable grounds for committing an offence.

If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.

If an offence has been committed, a constable may arrest without a warrant anyone who is guilty of the offence and anyone whom he has reasonable grounds for suspecting to be guilty of it."

56. However, as the person alleged to have wrongfully arrested and detained the Claimant is not a Police Officer, the premise of the Defendant's arguments and their reliance on this authority is faulty. The more relevant authority is **Section 3(2) and (3) of the Criminal Law Act, Chap. 10:04**, which provides:

*"(2) Any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, **in the act of committing an arrestable offence.***

*(3) Where **an arrestable offence has been committed**, any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of the offence" [Emphasis added]*

57. The private citizen's authority provided for in the above cited provisions differs from the arrest authority of a Police Officer which is provided for in the **Criminal Law Act, Section 3**, as follows:

"(4) Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.

(5) A police officer may arrest without warrant any person who is, or whom he, with reasonable cause, suspects to be, about to commit an arrestable offence.

(6) For the purposes of arresting a person under any power conferred by this section a police officer may enter (if need be, by force) and search any place where that person is or where the police officer, with reasonable cause, suspects him to be.”

58. The element of reasonable cause is a common requirement for both police and civilian arrests without warrant. This element was described in **Nigel Lashley v AG Civ. App. No. 267 of 2011** at p.7 as having:

“...a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer: O’Hara v. Chief Constable (1977) 2 WLR 1; Clerk and Lindsell on Torts (18th ed.) para. 13-53. The lawfulness of the arrest is to be judged at the time of the arrest.”

59. In **Clayton and Tomlinson, Civil Actions against the Police (1987)**, the authors, at p. 147, put the test in the form of the following questions:

“1. Did the officer honestly have the requisite suspicion or belief?

2. Did the officer, when exercising the power, honestly believe in the existence of the “objective” circumstances which he now relies on as the basis for that suspicion or belief?

3. Was his belief in the existence of the circumstances based on reasonable grounds?

4. *Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?"*

60. The test in **Ramsingh** (supra) was applied in **Lavende v AG CV2015-02781**, in determining whether a search and detention of a claimant under emergency powers regulations was lawful. The Court determined that a period of five (5) hours was unreasonable "given that there was no basis to suspect any offence".

61. The Privy Council in **Williamson v AG (2014) 85 WIR 452**, at para 19, determined that there was no power of arrest for questioning. The question that arises in the instant case is whether there was a power of arrest duly exercised by Superintendent Alexander for detaining the Claimant for a requested police search.

62. The regulatory framework within which the Defendant contends that the arrest of the Claimant was lawful starts with **1943 Prison Rule 178**. It states:

"Every officer or servant of the prison shall submit himself to be searched in the prison if called upon to do so by the Commissioner, or Deputy Commissioner, or a Prison Superintendent."

64. **Prison Rule 169** of the said Prison Rules provides:

"Subordinate officers shall strictly conform to and obey all Prison Rules and orders and instructions issued by the Commissioner, Deputy Commissioner or any Prison Superintendent and shall assist to their utmost in maintaining order and discipline."

65. It is in relation to alleged misconduct in breach of these rules that the Defendant seeks to persuade the Court that the arrest and detention of the Claimant was lawful. However, there is no indication that these are arrestable offences.

66. The **Prison Service Act Chap. 13:02, Subsidiary Regulations, Code of Conduct Regulations 20(1)** provides:

“20. (1) An officer who without reasonable excuse does an act which—

- (a) amounts to **failure to perform in a proper manner any duty imposed upon him as an officer;***
- (b) contravenes any of these Regulations;*
- (c) contravenes any written law relating to the Service; or*
- (d) is otherwise prejudicial to the efficient conduct of the Service or tends to bring discredit on the reputation of the Service or of the Public Service, **commits an act of misconduct** and is liable to such punishment as is prescribed by regulation 110(1) of the Public Service Commission Regulations.*

*(2) Without prejudice to the generality of sub regulation (1) **an officer commits an act of misconduct** and is liable to such punishment as is prescribed by regulation 110(1) of the Public Service Commission Regulations if he is guilty of any of the following:*

- (b) **Insubordinate conduct**, that is to say, if he is insubordinate, by word or act towards any prison officer, whose orders it is for the time being his duty to obey;*
- (c) **Disobedience to orders**, that is to say, if he without good and sufficient cause fails to carry out any lawful order whether in writing or not, promptly in compliance with the order” [Emphasis added]*

67. As underscored in these Regulations, insubordination and disobedience are matters that can be the subject of a disciplinary hearing. The penalties for this type of misconduct under s.110 Public Service Commission Regulations include dismissal, reduction in remuneration, reprimands and fines. It is not in dispute that the Claimant was subjected to disciplinary proceedings sometime after the events of 25 October 2015 for his alleged disobedience of the search orders.

68. However, the Defendant has not demonstrated from the regulations and rules cited that the Claimant's actions constituted an arrestable offence. There is no indication, in any legislation or subsidiary legislation cited by the Defendant, that the Claimant's refusal to comply with instructions, having subjected himself to a search, amounts to an arrestable offence.

iii. Misfeasance in Public Office

69. Misfeasance in Public Office is treated with in detail in **Atkin's Court Forms of Torts Vol. 38(1)** para. 94:

*"The essential elements of a claim in misfeasance were described in the case of Three Rivers District Council v Bank of England⁵. If a person suffers loss or damage as a result of unlawful or unauthorised conduct in the purported discharge of public duties and that **conduct is specifically intended to injure the claimant or undertaken in the knowledge that the public officer has no power to do the act complained of, or reckless as to whether that is the case, this is a tortious wrong⁶...** The purpose of the tort of misfeasance in public office is to compensate those who have suffered loss as a result of improper abuse of public power. It is based on the principle that public power may be exercised only for the public good and not for ulterior and improper purposes⁷. It applies to an unlawful (unauthorised) act by a person holding public office provided it is done with the requisite mental element⁸."*

⁵ [2000] 3 All ER 1, HL

⁶ See also Tort: The Law of Tort (Common Law Series) (LexisNexis 3rd Edn, 2014) [17.52]; Clerk & Lindsell on Torts (22nd Edn, 2017) para 14–120

⁷ Winfield & Jolowicz on Tort (19th Edn, 2014) para 8–24; Three Rivers District Council v Bank of England [2000] 3 All ER 1 at 7

⁸ Winfield & Jolowicz on Tort (19th Edn, 2014) para 8–26; Tort: The Law of Tort (Common Law Series) (LexisNexis 3rd Edn, 2014) [17.53]

70. In relation to damage as an essential ingredient of the tort, the learned authors state that, usually, the damage claimed will be economic damage⁹, but note that the tort is capable of extending to personal injury¹⁰ and loss of liberty¹¹.

71. As submitted by the Defendant, the tort of misfeasance in public office was also considered locally in **CV2007-00185 Dr. Keith Rowley v the Integrity Commission** where, at para.27, the court identified the six essential ingredients as:

“(i) the defendant must be a public officer;

(ii) the impugned conduct must be in the exercise or purported exercise of power as a public officer;

(iii) the defendant must have the requisite state of mind;

(iv) the Claimant must have a sufficient interest to found a legal standing to sue;

(v) the wrongful act must cause injury to the Claimant; and

(vi) the damage is not too remote.” [Emphasis added]

72. In **Three Rivers District Council and Others v. Governor and Company of the Bank of England (No.3) [2000] 2 WLR 15**, Auld LJ said of the two forms of the tort:

“The first form of the tort is what is now called ‘targeted malice’, that is, use or non-use of a power with the predominant intent of damaging a person, and which causes such damage. The second form is an intentional and knowingly or recklessly unlawful act or omission which causes damage to a person...Dishonesty lies at the heart of both forms of the tort...

... an honest person does not ‘deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather

⁹ Winfield & Jolowicz on Tort (19th Edn, 2014) para 8-30

¹⁰ Akenzua v Secretary of State for the Home Department [2002] EWCA Civ 1470

¹¹ Prison Officers Association v Iqbal sub nom Iqbal v Prison Officers Association [2009] EWCA Civ 1312; Malcolm v Ministry of Justice [2010] EWHC 3389 (QB)

not know, and then proceed regardless'; and 'Acting in reckless disregard of others' rights or possible rights can be a tell-tale sign of dishonesty.'"

E. Evidence and Analysis

i. Assault and Battery

73. As witnesses at the Trial, both the Claimant and Superintendent Alexander seem generally confused though truthful about how they perceived the events as unfolding, which resulted in the Claimant crying out that he was assaulted. The analysis of the evidence is, however, not based primarily on the demeanour of these witnesses.

74. The starting point in considering the evidence is a comparison of the pleadings with the evidence in chief provided in the parties' witness statements. The credibility of the Claimant's version of the events he characterises as assault and battery was adversely affected by material inconsistencies between his pleaded case and his Witness Statement.

75. The aforementioned inconsistencies are reflected in evidential objections filed by the Defendant on 3 March 2021. The Court ruled on the evidential objections at the start of the Trial, resulting in extensive un-pleaded factual contentions being struck out. These included evidence about:

- i. The Claimant observing another officer being searched while he waited his turn and that the officer placed boots on the search table.
- ii. The Claimant, after entering the room for his search, being able to see another officer waiting at the doorway who had a full view.
- iii. The Claimant asking during the search to be permitted to hold the contents from his bag.
- iv. Superintendent Alexander reaching out for the Claimant's food bowl of curry chicken, the Claimant opening it for him and Superintendent Alexander then trying to grab it while the Claimant still held on.

76. The fact that the Claimant did not plead these new points and sought to add them later in his evidence was compounded by further inconsistencies. The inconsistencies were in his responses under cross-examination as to how the alleged assault took place. These inconsistencies are extensively highlighted by Counsel for the Defendant at paragraph 53 of her submissions.
77. Of particular lack of credibility was the Claimant's belated account of having an opened container of curry chicken and dahlpuri in his hand when the Superintendent grabbed it. His account, which arose in cross-examination despite being struck out, was bereft of credible details on what became of the food. The suggestion that it fell back into his bag is not credible.
78. There were clearly a number of embellishments in the Claimant's account based on which he sought to persuade the Court that he was the victim of an assault. Because of the inconsistencies, the finding of the Court is that this embellishment undermined the credibility of the assault allegation. It instead appears on a balance of probabilities that the Claimant exaggerated the occurrences during the incident.
79. There is also more inherent probability in the Defendant's witnesses' version of the actions of both the Claimant and Superintendent Alexander leading to the alleged assault. It is clear from the Defendant's pleadings and evidence that there was nothing malicious about the search that Superintendent Alexander wanted to conduct on the Claimant. All officers arriving that day were to be subject to it.
80. The Claimant was, in my view, truthful about his perception of his encounter with Superintendent Alexander a few weeks prior to the alleged assault. The Claimant admitted under cross-examination that there was no direct interaction between them. However, the Claimant perceived that there was car search resistance by Superintendent Alexander to the actions of his assistants.

81. There was some embellishment of the story, as it is not credible that such an incident took place and the Claimant failed to document it. Additionally, adverse inferences are drawn from his failure to call as witnesses the persons who assisted with the searching Superintendent Alexander's car.
82. On the other hand, Superintendent Alexander was just a few weeks into his new role as head of the Port of Spain Prison when the Claimant arranged a search of his car. His evidence that he did not know the Claimant or remember such an incident is credible. The Claimant corroborates that he too did not know Superintendent Alexander.
83. From the account given by the Claimant of the actions leading to the alleged assault, it is my finding that since he remembered the car search incident, it was he and not Superintendent Alexander who interacted with a bad attitude when they next met on the date of the alleged assault. The Claimant came in for search with a defensive negative attitude as he remembered his prior interaction with Superintendent Alexander. The case for the Defendant, credibly corroborated by two witnesses, that the Claimant expressed his reservations about senior Prison Officers not being searched illustrates that he harboured ill feelings from the prior incident. It is accepted as factual that the Claimant made these comments.
84. The Claimant's case as to being genuinely concerned about a dirty table is more credible, though he embellished it somewhat with the evidence about boots on the table. In this context, the evidence of Superintendent Alexander was credible in showing no malice towards the Claimant as he tried to mitigate the dirty conditions complained of by placing a tablecloth.
85. Prison Officer Spencer was a forthright honest witness. Although he was called for the Defence, he expressly made clear that his account of the alleged assault was from his own perspective. This perspective was as an eyewitness in the room with the two men who clashed.

86. There is no merit to the Claimant's contention in closing submissions that Prison Officer Spencer was discredited as to his evidence that he was present in the search room. It is not a case of him being at two places at one time as suggested by the Claimant. It is logical and accepted as truthful that Spencer would escort officers into the room for searches, stay in the room to observe and then escort them out to the gate at the end of the search. Then at the gate, he would escort another officer in to the search room.
87. The event of the blow to the Claimant was fast. It was open to different perspectives as to whether it was an intended assault, as the Claimant believed, or an inadvertent blow while trying to prevent the Claimant from leaving, as was the case for the Defendant.
88. In closing submissions, counsel for the Claimant makes heavy weather of a point about Superintendent Alexander's evidence being that he "did not touch the man". There is, however, no such statement by Superintendent Alexander in evidence. There was a question asked by Counsel under cross-examination using those words and saying that that is the case for the Defence. Alexander responded with one word "correct." This was generally the Superintendent's manner of responding.
89. Superintendent Alexander was not interrogated further on this point of touching, which in reality formed no part of the Defendant's case. The Defendant's case admits that there was contact between the two men but explains it not by striking with the hand or any other type of touching. Instead, the Defence is that, after the arm was raised to block the Claimant, he moved towards Alexander. His chest made contact with Alexander's shoulder.
90. The evidence before the Court does not support the contention in the Claimant's submissions that "Alexander was clear that he never made contact with the Claimant". His one word answer "correct" to a vague, incorrectly

premised question, which was not developed, does not amount to such a statement.

91. Later, under cross-examination, Counsel put to Superintendent Alexander part of what is in fact the case for the Defence. The question and answer were as follows:

Q. And you raised your hand as if to block him?

A. Correct.

Q. And he says –your- –this is your evidence--. He says, “You see Spencer? He assaulted me?”

A. Correct.

92. On the accounts given by the Defence witnesses, it is more probable than not that Superintendent Alexander’s intention to raise an arm to block the Claimant from leaving may have connected forcefully and/or been followed by the shoulder to chest contact which caused pain. Clearly, the mind-set of Superintendent Alexander is to be considered in deciding whether the Defendant is liable for assault. The inadvertent forcefulness in blocking the Claimant, whereby the Claimant sustained a blow, did not include the requisite intentionality or recklessness to amount to assault and battery. It was an accidental blow.

93. To the extent that the Claimant alleges that Superintendent Alexander deliberately inflicted blows on him, the Claim as to Assault and Battery fails. As to the allegation, ventilated in closing submissions, that Alexander is also liable for the actions of the Police, which included assault by wrongful search, the Claimant did not sufficiently plead such an assault.

94. In the Statement of Case, the only clear allegation of assault and battery is at paragraph 12, which addresses the incident between Superintendent Alexander and the Claimant. In any event, the Claimant has not sufficiently

proven that Superintendent Alexander had such authority over the Police that he could be responsible for the way they carried out their duties.

ii. Wrongful arrest and False Imprisonment

95. It is not in dispute that the Claimant was arrested and detained. The Claimant and his supporting witness, Prison Officer Reinzi Marajh, gave cogent and compelling evidence, corroborating each other in all material respects as to the manner of the Claimant's detention.

96. It is my finding of fact that the Claimant was detained for around two hours and that for much of that time he was under armed guard. Further the Claimant was denied the opportunity to communicate with Prison Officer Marajh.

97. As Superintendent Alexander is not a Police Officer, he could only have been exercising powers of citizen's arrest when he detained the Claimant. There is no pleading or evidence from the Defendant that the purpose of the detention was an arrest for a suspected criminal offence or a prelude to the disciplinary proceedings, which ensued in the following days. As pointed out by Counsel for the Claimant in closing submissions, the Defendant's case does not specify any arrestable offence pursuant to the **Criminal Law Act, Section 3** as being the reason for the arrest. Instead, the information on the reason for the arrest and detention is obscured by inconsistencies between the pleadings and evidential accounts given by the Defence witnesses.

98. To the extent that any reason can be discerned, the evidence points somewhat vaguely to the need for police assistance with searching the Claimant. However, if that was the reason, it does not, on a balance of probabilities, amount to reasonable cause to suspect that the Claimant was either in the act of committing an arrestable offence or had committed one. Thus, their reason provides no credible defence to the false imprisonment claim.

99. It defies logic that the Claimant had to be kept for further searches when not only Superintendent Alexander but also Supervisor Ramhudit had opportunities to search him. The search could have been accomplished without insisting on it being done on the particular table objected to by the Claimant.

100. Both the Claimant and Superintendent Alexander agree that Supervisor Ramhudit was called to the scene after the aborted attempt to search items on a table. The Claimant says Supervisor Ramhudit, on hearing what transpired, did search him and it is reasonable that he would have done so. Thereafter, the Claimant's bags were left in the Programmes Room while he was detained near the gate. The Senior Prison Officers present could have searched the Claimant's bags and ordered him to leave the compound for his insubordination.

101. The Claimant's attitude, on the face of it, was one of unacceptable insubordination. He argued with Superintendent Alexander, refused to follow instructions on how the search was to be done and walked out after trying to submit to the search in his own way. That insubordination did not justify his detention in circumstances where there was no reasonable cause to suspect that he had any illegal items in his bags.

102. There was no apparent need to wait for police help to search the Claimant. No first-hand evidence supports the Defendant's case that Superintendent Alexander consulted his seniors by telephone and was directed to act in the manner he did. The hearsay testimony of Superintendent Alexander himself on that aspect of the case was struck out as inadmissible.

103. In any event, contradictory evidence from supporting witness, PO Spencer, sheds doubt on whether Superintendent Alexander's actions were sanctioned by his seniors before he called the police. Spencer's evidence is

that Superintendent Alexander called the police first and then contacted senior officers.

104. Additionally, as submitted by Counsel for the Claimant, the Defendant failed to call any of the police officers, present at the time of the incident, to corroborate or explain why they came and under what authority they carried out the searches. The Court draws adverse inferences from the failure to call such witnesses.

105. The alleged suspicion that caused the Claimant's detention had to do with a belief that he had items concealed in his pockets or in his bag. The need for a strip search, dormitory locker search and car search did not arise. In any event, under cross-examination, Superintendent Alexander says he did not ask for the strip search, which, while often performed on inmates, is not ordinarily performed on Prison Officers.

106. This further demonstrates that there was no need to detain the Claimant to be searched by the Police. Prison Officers could conduct the type of search Superintendent Alexander contemplated, which was only of the Claimant's bags and pockets.

107. Ultimately, the unreasonableness of the alleged suspicions harboured by Superintendent Alexander were made clear when police searches revealed nothing illegal in the Claimant's possession. Overall there is no case made out by the Defendant which, on a balance of probabilities, justifies as lawful the arrest and detention of the Claimant.

iii. Misfeasance in Public Office

108. Although the actions of Superintendent Alexander in detaining the Claimant were unjustified by law and amounted to false imprisonment, the Claimant has failed to prove that this amounted to misfeasance in public office. There is no evidence before the Court that the conduct of detaining the Claimant was specifically intended to injure him or undertaken in the

knowledge that Superintendent Alexander had no power to do so or was reckless as to whether that was the case.

109. On evidence presented, it is clear that the Defendant is of the belief that there was full authority for the Claimant to have been arrested and detained in the manner that he was. As such, there is no requisite state of mind based on which a finding can be made by the Court against the Defendant on this aspect of the Claimant's case.

F. Assessment of Damages

110. The court, in **S-788 of 1998 Adesh Maharaj v The Attorney General of Trinidad and Tobago**, awarded \$20,000.00 for a false imprisonment of 2½ hours.

111. Similarly, in **Morales v AG CV2008-02133**, an award of \$20,000 was ordered for a period of 2½ hours, and in **Rajesh Ravi Harry v AG, PC Makhan & PC Ramdeo HCA No. 3651 of 2002**, the court awarded \$20,000 for a period of 3½ hours. The court considered the fact that the claimant was a serving member of the Trinidad and Tobago Police Service as well as the public nature of the arrest to be relevant.

112. In the instant case, the embarrassment and humiliation of the Claimant by his unlawful detention under armed guard in view of other Prison Officers will be factored into the award.

113. The case for aggravated and exemplary damages is well made out. The conduct of Superintendent Alexander in calling for an officer with a gun to stand guard over the Claimant, preventing him from speaking to fellow officers and keeping him where his colleagues could see him detained were aggravating factors. Furthermore, the actions on his part as an agent of the State were oppressive in the **Rookes v Barnard**¹² sense.

¹² [1964] 1 All ER 367

114. An award of \$25,000 general damages will be made in these circumstances with an additional \$15,000 in aggravated and exemplary damages.

G. Conclusion

115. The Claimant failed to prove the alleged Assault and Battery. The soft tissue injury he received when he was exiting the search room was accidental.

116. However, there was no lawful basis for detaining the Claimant to search him as a suspect for further investigations. Thus, the Claimant succeeds in his claim as to false imprisonment.

117. The actions of Superintendent Alexander did not rise to the egregious level of dishonesty constituting malfeasance in public office. It is apparent that, on a balance of probabilities, he genuinely believed that arrest and detention were appropriate measures in a case where he felt the Claimant did not fully cooperate to be searched.

118. **IT IS HEREBY ORDERED:**

1. Judgment for the Claimant on the Claim of False Imprisonment.
2. The Defendant is to pay to the Claimant damages for False Imprisonment in the amount of \$40,000.00 inclusive of general, aggravated and exemplary damages plus interest thereon at the rate of 2.5% per annum from 16 October 2019 to the date of this Judgment.
3. The Defendant is to pay the costs of the Claim to the Claimant on the prescribed basis.

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Eleanor Joye Donaldson-Honeywell
Judge