REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-00029

BETWEEN

JASON RAYMOND

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Claim No. CV2016-00030

BETWEEN

MARVIN SCOTT

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Claim No. CV2015-04152

BETWEEN

RYAN STEPHENS

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Claim No. CV2015-04153

BETWEEN

CHRISTOPHER LEWIS

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Claim No. CV2015-04154

BETWEEN

JUNIOR COLLINS

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Thursday 20th July 2017

Appearances:
Mr. Gerald Ramdeen instructed by Mr. Darryl Heeralal for the Claimants
Mr. Fyad Hosein S.C. and Mr. Rishi Dass instructed by Ms. Gitanjali Gopeesingh for the Defendant

JUDGMENT SUMMARY

Introduction

1. The history of exemplary damages is thousands of years old[1]. It has continued to be the subject of academic and judicial debate.[2] A member of a New Hampshire Supreme Court in the 19th century described it as "a monstrous heresy… unsightly and unhealthy excrescence, deforming the symmetry of the body of the law"[3]. Yet as Lord Nicholls observed in **Kuddus v Chief Constable of Leicestershire** [2002] AC 122 the Courts "still toil in the chains of **Rookes v Barnard**[4]". That is, we have embraced this anomaly of punishment in the civil law where by an award of money a Court vents its condemnation of wrongdoing punishing truly outrageous conduct and seeks to compel behavioural change in the tortfeasor. This judgment deals with yet another instance of exemplary damages being awarded against the State to treat

[1] Pine Tree Justice: Punitive Damages Reform in Canada 36 Man L.J. 287.
[2] See a system known as amercements in 1066 AD in England. Commentators have examined the concept of punitive damages in ancient law as far back as the Law of Moses (Exodus 22:1) and the Code of Hammurabi of Babylon.
[3] **Fay v Parker**, 53 New Hampshire Reports See 342 (1872) at 382.
[4] [1964] A.C. 1129.

with a recurring problem of violence in our prisons and the use of force by prison officers on inmates in the discharge of their duties. The parties have asked this Court in this case to refocus on the underlying purpose of an award of exemplary damages. By so doing, in the face of recurring levels of violence in the prison, the time has come to re-tool the remedy of exemplary damages not only to provide vindication for the Claimants, but to stimulate change in behaviour of the Defendant in real terms beyond an artificial imposition of monetary awards which may be a windfall to Claimants.

2. This claim presents itself as a consolidated claim for damages for assault and battery made by five (5) prisoners who were in custody in the Remand Yard, Golden Grove Prison on 16th June 2015. During the search of the Lower North Wing of Remand Yard masked unknown prison officers attached to a Special Operations Unit administered unlawful beatings with batons to these five Claimants in their cells. There were a number of prison officers who comprised part of that team who carried shields, batons and wore masks to conceal their identity.

3. It is admitted by the Defendant that all but one of the Claimants (Junior Collins) were beaten by the prison officers. The Defendant contended that they did not use more force than was reasonable to conduct the search and defend themselves. They contended that the Claimants were obstructing the search, throwing missiles, throwing slop pails, using obscenities and barricading their cells. In these circumstances the Defendant denies liability.

4. The prison officers involved in this beating did not give any evidence. It was explained at the bar table and in the management of this case that those prison officers felt threatened and intimidated by the Claimants. If so, that even raises more concerns of the type of environment brooding in our prisons. While there may be a temptation to blame prisoners for prison violence, the lessons learnt in our judgments is that the amount of violence in a prison has much to do with its culture, the effectiveness of management and inept excuses to mistreat prisoners.[5]

[5] See also Making Prisons Safe: Strategies for Reducing Violence by Donald Specter 22 Wash. U. J. L. & Pol'y 125 (2006). And **Goring v AG** CV2010-03643.

5. The level of violence used in this search in the prison therefore raises much deeper issues for the prison service and the wider society: Whether the environment in our prisons contributes to the illegal use of force. Whether the prison as an institution promotes aggressive and violent behaviour; how regularly do prison officers turn to the use of force to deal with disruptive behaviour of inmates? What training and improvements have been implemented by the prison authorities to reduce the level of violence in prisons?

6. These issues arguably deserve to be dealt with elsewhere. However, equally, it inescapably arises in this case against the backdrop of several entreaties made by Judges in this jurisdiction that the illegal use of force will not be tolerated and must be a relic of past correctional theory. See for instance the judgment of des Vignes J (as he then was) in **Sean Wallace v The Attorney General** CV2008-04009.

7. This case simply begs the question of what constructive steps have been taken since those judgments have been referred to the Commissioner of Prisons and since awards of exemplary damages in the cumulative sum of $450,000.00 have been made against the State over the years[6]. In recessionary times what have we to show for such payments? Is this common law remedy out of step with the realities of the complex relationship in the Criminal Justice system between prison officers, administrators and the Attorney General? What principles should guide the Court in the award of exemplary damages in these circumstances? Is there another suitable remedy open to the Court in these proceedings to address the complaint of violence made by these Claimants in the prisons? How is the Court to be guided in using the traditionally empty award of exemplary damages with its proven ineffective track record as a deterrent?

8. This forces the Court to determine whether the law of exemplary damages can be reinvented to provide more restorative approaches to punishment and provide more relevant and real solutions to what evidently must still be a volatile climate of hostility and violence in our

[6] **Lester Pitman v The Attorney General** C.V. 2009-00638, **Hakim Brathwaite v The Attorney General** HC 3485/2009, **Lincoln Marshall v The Attorney General** CV 2009-03274, **David Abraham v The Attorney General** CV 2009-00635, **Sean Wallace v The Attorney General** C.V 2008-04009, **Frankie Bartholomew et al v The Attorney General** CV2009-00513, CV2009-04756, CV2009-04757, **Darrell Wade v The Attorney General** CV2011-01151, **Chet Sutton v The Attorney General of Trinidad and Tobago** CV2011-01191, **Morris Kenny v AG** HCA T-62 of 1997, **Martin Reid v AG** CV2006-0246 delivered on 6th June, 2007, **Owen Goring v AG** CV2010-03643.

prisons. All of this against the backdrop of a society itself in the throes of high levels of crime and violence.

9. Several of our Judges[7] have lamented on the illegal use of force in the execution of the duties of prison officers. The calls as they have noted in their judgments have not been met with the alacrity in responsive change as would have been expected. In response to what appears to be a recurring trend of illegal use of force, in several of our judgments there has been a steady increase in the level of exemplary damages creeping from $20,000.00 and recently galloping to $100,000.00. But this is merely a signal. One can argue in most cases a slap on the hand. Exemplary damages as discussed in this judgment with its roots in the theory of punishing the wrongdoer ought not to be forever mummified in the tomb of archaic retributive theory.

10. In my view, in the 21st century where a system of justice is no longer dominated by retribution where modern thinking with dealing with violence is restorative, one questions the traditional use of exemplary damages in matters against the State and more so in cases in our prison system and criminal justice system. A remedy which is a tool of punishment is anomalous to a complaint about punishment. Such remedies in the traditional award may serve to escalate levels of violence in a notoriously hostile environment which prevails in our prison system.

11. Theories of punishment have since evolved from the days of **Rookes v Barnard** to accommodate rehabilitative and therapeutic objectives. The theme in all of the judgments referred to me on the use of force in the prisons has been on effecting change through the awards of exemplary damages. With regard to **Rookes v Barnard** I observe the following. First, punishment did not bear the hallmarks of rehabilitation in the time when the law of exemplary damages was "codified" by Lord Devlin although by seeking to "deter" similar acts of conduct its purpose has in the large part a rehabilitative purpose. Second, if there is to be any meaningful attempt to deter offensive conduct there must be therapeutic objectives to be served in punishment[8]. Third, punishment which bears no element of rehabilitation only serves to increase a cycle of violence and retribution in an already violent and scarred environment in our prisons. Fourth, our Courts have lamented that making monetary awards

[7] Namely Justice des Vignes, Justice Rajkumar, Justice Jones (as they then were), the Court of Appeal, the former Chief Justice de la Bastide.
[8] See **Geeta Ragoonath v Ancel Roget** CV2015-01184.

have had very little dent on fulfilling the real objectives of the award of exemplary damages, begging the question of its relevance. Unless re-tooled the argument against exemplary damages may gain increasing currency.

12. This therefore is a fitting case to re-examine the principles of exemplary damages. To examine the problem of the unlawful use of force in these cases. Rather than deal with the problem through an empty award of exemplary damages it is time to recraft the remedy to provide more effective relief within the boundaries of its principled origins. The Court should adopt a purposive approach in exercising its discretion to make awards of exemplary damages. To focus on the "just response" to the wrong and the need to rehabilitate the offender.

13. Having considered the evidence in this case, namely the testimony of the Claimants, the medical reports, the fact that injuries were sustained and the admission by the Defendant that the Claimant was injured, the unchallenged evidence of Mr. Junior Collins and the absence of any credible evidence by the Defendant to justify the beating of the Claimant, the Court has found that the Defendant is liable for damages, assault and battery and is liable to pay damages. But that is hardly in contest in this case as conceded by attorneys for the State.

14. The main issue raised in these proceedings is the extent to which the Claimants are to be compensated for their injuries and in particular the utility of exemplary damages in circumstances where our litigation landscape with regard to damages for battery against the State demonstrates the ineffectiveness of an award of exemplary damages as a form of deterrence for oppressive conduct.

15. For the reasons set out in this judgment each of the Claimants would be entitled to damages inclusive of aggravated damages in the following sums:

- Junior Collins: $55,000.00
- Marvin Scott: $75,000.00
- Jason Raymond: $65,000.00
- Christopher Lewis: $70,000.00
- Ryan Stephens: $70,000.00

16. That an award of exemplary damages ought to be made in this case is also not disputed. However if an award of exemplary damages is intended to deter and not just send a signal. If an award of damage is intended to deal with the offending conduct, not just to be a slap on the wrist. If in making these awards the Court must be mindful of matters in mitigation and must be mindful that the taxpayer ultimately pays the price for the errant use of force by masked men, then the award must be crafted to finally bring home to the prison authorities that there must be an alternative way to develop a better environment that will mitigate against the use of excessive force. As a matter of policy in the exercise of my discretion I shall make a "**spilt award**". That a portion of the award will be paid to the Claimants and the remainder paid into the Court as a "Prison Reform Fund" for such programmes/plans and NGO's to reduce the level of violence in our prisons.

17. Some jurisdictions have already enacted tort reform legislation which implements the split award, providing guidance on the use of the fund and caps. Such legislation can be introduced in this jurisdiction but it does not derogate from the Court's discretion in making a split award as a just award. Quite apart from legislative enactment, Courts at least in the United States have recognised the inherent authority to allocate punitive damage awards between claimants and charities without legislation directing such allocation. Courts may require a defendant to deposit part of the exemplary damages into a fund administered by the Court to reduce the harm for which the defendant has been found guilty so long as the public interest is served. By such a procedure the dual purposes of punitive damages are served, punishment of the defendant and deterrence of that defendant and others who might act similarly.

18. Following on the heels of **Aron Torres**, there should be no question as a matter of principle of the Court's broad power to shape and effectuate this exemplary award remedy deeply rooted in the common law. A split award shall ensure that the Defendant can begin the process of restoring calm in our prisons. Both parties accept that this is a case of outrageous behaviour by prison officers. The rule of law needs to be re-instilled in the prisons administration. The fact that the prison officers were fully armed and masked to carry out a search suggests that the environment is a violent and hostile one. To deter future acts of illegal use of force necessitates a change in approach in the relationship between prisoner and prison officer and a rehabilitation of their environment. The exemplary damages award must serve that purpose.

19. Additionally, neither party can have complaint. The Claimants already satisfactorily compensated for their injuries receives part of the exemplary award to vindicate their efforts before this Court in articulating a claim to correct the wrongdoing of the State. The Defendant's funds are now diverted towards positive and therapeutic programmes which benefits both parties and the wider public in addressing a problem which the Claimants was at pains in their submission to point out still subsists.

20. In terms of quantum I have considered the ranges of exemplary damages awards in the several authorities referred to me which suggest a suitable range from $30,000.00 to $60,000.00. In the circumstances of this case $50,000.00 is a suitable award to mark the Court's strong condemnation of the acts of these masked prison officers in the beating of each of these Claimants. I have taken into account the following circumstances. The mercilessness of each beating. The trumping up of charges. The vulnerability of the Claimants. The position of legal and physical power of the prison officers. The relatively mundane procedural activity of a search which should not warrant the use of force at all.

21. For the reasons set out in this judgment I will make a "**split award**" of exemplary damages. That is the Court's award of exemplary damages shall be split between a direct award to the Claimants and towards a "Prison Violence Reform Fund" to assist in plans, programmes or NGO's to assist both inmates and prison officers in reducing the level of violence in the prisons. I will award the sum of $250,000.00 in exemplary damages. One third of that sum ($83,333.00) shall be prorated equally among the five Claimants ($16,667.00 each). Two thirds of this sum ($166,667.00) shall be paid into Court to be used as a "Prison Reform Fund" for such plans, programmes or NGO's as advised by both parties to reduce the level of violence in the prison for the benefit of both prison officers and inmates. These programmes may well be anger management, conducting safe searches, developing restorative justice programmes. It may be prayer groups or other constructive group activity. I will leave this as a matter for both the Claimants and the Defendant to advise the Court. The Registrar is directed to forward this judgment to the Commissioner of Prisons. The Defendant and Claimants shall file and serve within three (3) months the plans, programmes or NGO's that is deserving of such funding to reduce the level of violence in the prisons. Upon the Court's approval, the Registrar shall be directed to release the said funds for use in those

programmes. In default of filing those plans the said sums shall be payable to each of the Claimants in the following manner 50% for their immediate use and 50% to be payable upon their release to assist in their reintegration into society or within two (2) years whichever is earlier.

22. As a matter of policy, for a small society witnessing unprecedented levels of violence and crime, every effort must not be spared in ensuring that our prisons are not a breeding ground for further violent and aggressive behaviour. The violence that are bred within those walls quite easily spill out. The degree of institutional violence is a direct product of prison conditions and how the State operates its prisons.

23. The Courts have repeatedly called for change in the approach to violence in the process. The Claimants in this case cry out for a restorative and rehabilitative approach. The Defendant has recognised the premium use of tax payers funds for productive purposes which would deal with the offending conduct in this case of unlawful use of force. No party has canvassed before this Court exactly what fund or programme would assist in alleviating the problem of inmate and prison officer violence. I leave that for the further submissions to be received from both the Claimants and the Defendant when the parties submit their plans. If as Lord Hoffman noted that we are still shackled to the chain of **Rookes v Barnard**, we must be creative and inventive in its application. The Court of Appeal in **Aron Torres** has begun as a matter of policy to rework the principles and to make the tort remedy more relevant to the acts being complained of. The establishment of this "prison reform fund" by a split allocation of exemplary damages for outrageous acts of tortfeasors is more aligned to the basic principles of deterrence through a therapeutic key and satisfies the need to do justice to both parties in this dispute.

24. The making of a split award has never been done before in this jurisdiction. I have not seen any local or regional precedent to support the making of such award but in recognising this jurisdiction to make a "split award" on purely policy grounds even in the absence of local

precedent I am reminded of Lord Nicholls' encouraging words "never say never is a sound judicial admonition"[9].

Vasheist Kokaram
Judge

[9] **A v Botrill** [2002] UKPC 44.