

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

Introduction

1. The history of exemplary damages is said to be thousands of years old¹. It has continued to be the subject of academic and judicial debate. 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 Babylon². 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 Constabulary** [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.

¹ Pine Tree Justice: Punitive Damages Reform in Canada 36 Man L.J. 287.

² See also a system known as amercements in 1066 AD in England.

³ **Fay v Parker**, 53 New Hampshire Reports See 342 (1872) at 382.

⁴ [1964] A.C. 1129.

This judgment deals with yet another instance of exemplary damages being awarded against the State to treat 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 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 are 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 or 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 years⁶. In recessionary times what have we to show for such payments? It 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 prisons. All of this against the backdrop of a society itself in the throes of high levels of crime and violence.
8. Several of our Judges⁷ 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

⁶ **Lester Pitman v The Attorney General** CV2009-00638, **Hakim Brathwaite v The Attorney General** HC 3485/2009, **Lincoln Marshall v The Attorney General** CV2009-03274, **David Abraham v The Attorney General** CV2009-00635, **Sean Wallace v The Attorney General** CV2008-04009, **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** CV2006-00246 delivered on 6th June 2007, **Owen Goring v AG** CV2010-03643.

⁷ Namely Justice des Vignes, Justice Rajkumar, Justice Jones (as they then were), the Court of Appeal, the former Chief Justice de la Bastide.

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.

9. 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. 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. In my view, rather than deal with the problem of abuse of power 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.
10. 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 Claimants were injured, the unchallenged evidence of Mr. Junior Collins and the absence of any credible evidence by the Defendant to justify the beating of the Claimants, 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.
11. 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.
12. 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

13. 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.

14. For the reasons set out in this judgment I will make a “split order” 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 Court administered “Prison 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. The Registrar is directed to forward this judgment to the Commissioner of Prisons. The Defendant and Claimants shall file with this Court within three (3) months the plans, programmes or NGO’s that is deserving of such funds to reduce the level of violence in the prisons and 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 paid into Court (\$166,667.00) shall be paid out prorated equally to each of the Claimants (\$33,333.00) in the following manner 50% of their individual entitlement 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.

Core facts

15. On the night of 16th June 2015, the Claimants saw several prison officers entering the Lower North Wing of the Remand Yard. They wore masks, carried shields and batons. The prison officers were there to conduct a search of the prisons cells. Among the several inmates in the Lower Wing, the Claimants occupied two separate cells. Junior Collins and Marvin Scott were inmates in Cell No. 11 while Jason Raymond, Christopher Lewis and Ryan Stephens were in Cell No. 21.
16. In Cell No. 11, during the course of the search, the prison officers, took Junior Collins and Marvin Scott to a bathroom area located at the back end of the lower North Wing. Marvin Scott saw the masked prison officers beating Junior Collins. Upon commenting that the prison officers informed them that they would not be beaten if they followed the prison officers orders, the prison officers attacked him as well. After the assault, both Marvin Scott and Junior Collins were returned to their cell.
17. During the course of the search in Cell No. 21, Ryan Stephens attempted to leave the cell but was attacked by an officer who hit him in the face which caused him to fall back into the cell. Mr. Stephens and Mr. Raymond attempted to block the cells with their mattresses in fear that the prison officers would attack them again. The prison officers proceeded to attack and beat the Claimants about their body.
18. Jason Raymond, Christopher Lewis and Ryan Stephens were then taken to an area in the prison known as the “Breeze hole” where they were further attacked and beaten by the prison officers. They were subsequently returned to their cell where they found their belongings were ruined. Their mattresses were wet and destroyed.
19. The beatings inflicted on the Claimants by the masked prison officers were relentless and merciless. They are described in more detail later in this judgment.
20. The Claimants were later taken to the infirmary to be treated for their injuries but they contended that the treatment was insufficient to treat with their injuries. The prison medical doctor indicated they required external treatment. With the exception of Junior Collins who was sent to the Caura Medical Hospital, the other Claimants were taken on 17th June 2015 to

the Eric Williams Medical Sciences Complex (EWMSC). At their respective hospitals, the Claimants were treated for their injuries but continued to suffer pain about their bodies even after their treatment.

21. The Claimants' attorney gained access to them eventually by an order of the Court to take photographs of their injuries. The Defendant contended in their Defence that the Claimants were behaving in a hostile, provocative and riotous manner by using obscene language, throwing slop pails at the prison officers and other objects and barricading their cells with their mattresses to prevent the prison officers from carrying out their duty and conducting the search. In order to defend themselves and subdue the Claimants, the Defendant contended that they used no more than reasonable force to contain the situation.
22. The Defendant contended that the prisoners who were injured during the search were treated in the infirmary and taken back to their cells. They deny that the treatment in the infirmary was inadequate. The Defendant further stated that Junior Collins was not attacked on the night of the search nor was he taken to the infirmary. The inmates who were injured were taken to the hospital as soon as practical on the morning of the 17th June 2015 for treatment.

Issues

23. The main issues for determination are:
 - a) Was there reasonable force used in conducting the search?
 - b) If not, what award of damages should be made for each of the Claimants in the circumstances inclusive of aggravated damages?
 - c) What sum of exemplary damages or any other relief is appropriate in the circumstances?

Liability

24. There is no dispute in this case that the masked prison officers used force against the Claimants. The Defendant's case essentially is that they used lawful or reasonable force. The onus is therefore on the Defendant to demonstrate this on their evidence.

“A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large. Therefore, as long as the force used is reasonable, there is no assault or battery.”⁸

25. No evidence has been forthcoming from the Defendant to deal directly with the issue of how the beatings of these Claimants occurred. During the course of the management of this claim the Defendant’s attorneys repeatedly expressed their difficulty in obtaining this evidence from the prison officers. In that context, I had suggested that in the absence of such evidence that this matter proceed directly to an assessment of damages. Not having filed any evidence from the prison officers or any other prison officers for that matter who conducted the search, the evidence of the Claimants must be accepted on a balance of probabilities. I do take into account the fact that the prison officers who executed the search and against whom these allegations of an assault and battery are made were masked to conceal their identities and it would be counterproductive if they now reveal their identities. However this simply begs the question as to the necessity to take such action and the circumstances of the search. If indeed there is some policy that their identities should remain concealed for security reasons then the Court’s time should not be wasted on a discussion of liability.⁹

26. The Claimants’ evidence remained unshaken under cross examination. The Defendant led evidence only through Mr. Deryck Modeste, the Acting Prison’s Supervisor of the Trinidad and Tobago Prison Service. He was not present at these cells when the searches were executed and a substantial amount of his evidence was struck out as hearsay. Even if the evidence was not struck out it would not have assisted the Defendant in demonstrating the use of reasonable force in relation to these five Claimants. His evidence confirms that something went very wrong in the conduct of a routine search. Officers were armed to the hilt either expecting trouble or on a mission to brew up trouble. It also reveals that they were aware that there may be contraband or illegal substances in the prison and their attempt to deal with indiscipline of prisoners was archaic and ineffective.

⁸ Halsbury Laws of England Volume 97, 2015, para 533.

⁹ To the credit of the Claimants’ attorneys at law, they came on record only a few days before the trial and their application to adjourn the trial was refused for reasons which I gave at the start of the trial. They have however not wasted the Court’s time on the issue of liability and provided helpful submissions on quantum.

27. According to Mr. Modeste, the search was carried out by the Senior Superintendent of Operations in the prisons together with prison officers from the Strategic Operations Unit (SOU). This comprised 20 masked prison officers equipped with stab proof vests, shields and batons. He heard a loud commotion at around 9:00pm. He was aware of video recordings however those recordings were not properly tendered and were struck out for reasons which I gave at the beginning of the trial. Notably, none of the attorneys viewed the video recordings. I had cause to view it in deliberating on its admissibility. The video did not indicate when the recordings were taken. It also appeared to have been “spliced”. It shows prison officers conducting searches of various cells with the cells described by the cell numbers atop the cells. The search of one of the cells is in total darkness with a number of prison officers rushing in that cell. The video did not show any resistance by the occupants. Strangely, while the search of that cell was in total darkness, the other searches took place with the lights on. I had ruled that the Court would attach very little weight to that video but even if this video was tendered into evidence it raises more questions than answers for the Defendant and corroborates the Claimants’ case that the prison officers without provocation rushed in and administered blows.
28. Mr. Modeste indicated that about 17 prisoners complained of being injured that night. They were taken to the infirmary. They were transported for treatment at the hospital the next morning after being treated at the infirmary. Mr. Modeste indicates that no reports of injuries was made by Junior Collins. However there is no disputing the fact that Mr. Collins attended the Caura Medical Hospital for medical treatment.
29. The inmates were subsequently charged by the prison authorities for having committed offences during this search but at the date of trial Mr. Modeste could not indicate what were the outcome of those charges.
30. It was suggested that there was a riot in the prison on 17th June 2015 as well but no evidence that these Claimants were involved in that episode. The evidence from the Defendant does nothing to support their pleaded case that lawful force was used on these Claimants because they resisted a search being conducted by prison officers. Neither does the evidence rebut the evidence of the Claimants as to the injuries that they sustained that night. The charges laid

against these inmates without any explanation being offered as to why these charges were never prosecuted despite the passage of two years simply confirms in my view that there was no basis for them. I am satisfied on the evidence that these Claimants were assaulted and beaten by masked prison officers on 16th June 2015 during that search in the manner in which they have detailed in their unshaken testimony.

31. In light of this evidence, there ought not to have been a trial on liability at all in this matter. I have found that the use of the force by the Defendant was excessive and they are liable to pay damages. My award for damages will reflect an award of aggravated and exemplary damages.

Damages

32. This case has been and is now really about damages. It also highlights the serious matter of the use of excessive force by prison officers against prisoners in the confines of the prison walls. While it is acknowledged that prison officers do face a difficult task in dealing with inmates, it cannot be overlooked that prisoners should still be afforded their basic human rights. Where prison officers have breached the law, the Court will enforce the rule of law and protect prisoners from assaults and excessive force from those whose sworn duty is to uphold the rule of law.

33. In **Sobers and others v The Attorney General of Trinidad and Tobago** CV2010-04093, Madame Justice Jones as she then was noted at paragraph 113:

“As a society we require the prison authorities and the prison officers employed in our prisons to protect us from persons convicted of or suspected to have committed crimes. In this regard we demand that they exercise on our behalf the responsibility for the care and conduct of these persons. As a society committed to the maintenance of the rule of law and the protection of human rights, however, there is also a responsibility on us to ensure that these persons incarcerated at our behest and for our protection are afforded at the very least basic human rights and adequate living conditions. In order to do so the prison authorities must be given the necessary resources, physical and human.”

34. Of course no sum of money can truly compensate a victim for personal injury and the sense of humiliation meted out to him by a tortfeasor, but as far as money can compensate for pain and suffering for the physical injuries, in making a suitable award in damages to compensate the Claimants the Court is guided by the principles laid down by Wooding CJ in **Cornilliac v St. Louis** (1965) 7 WIR 491 in its assessment of general damages. These are:

- (i) The nature and extent of the injuries suffered.
- (ii) The nature and gravity of the resulting physical injuries.
- (iii) The pain and suffering endured.
- (iv) The loss of amenities.
- (v) Future pecuniary loss.¹⁰

35. Under the head of aggravated damages, the Claimants are entitled to recover damages for the mental anguish they would have suffered when they were subjected to assault and battery at the hands of the prison officers. A common complaint by all of these Claimants have been the sudden attack and violation by the prison officers. They felt “taken advantaged of.” They are left in the dark as to what did they do to deserve this punishment. Adding insult to injury, they were charged with offences which the prison authorities had no desire to prosecute. The mental anguish of the Claimants, their despair, their pleas, for the beating to stop and the vindictiveness of the prison officers are palpable in the unchallenged evidence of the Claimants.

36. For each Claimant I propose to make one award in general damages which includes aggravated damages. In **Thaddeus Bernard, Airports Authority of Trinidad v Nixie Quashie** Civil Appeal No. 159 of 1992 the Court of Appeal recommended at page 5:

“The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and to include what is referred to as aggravated damages, i.e. damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received.

¹⁰ See also **Mahadeo Singh v AG** CV2006-00986

Under this head of what I have called ‘mental suffering’, are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort. If the practice has developed of making a separate award of aggravated damages, I think that practice should be discontinued.

I think it is better to adhere to the traditional practice of making one award of compensatory damages. The judge may in coming to his decision identify the two components of the award but I think to separate them expressly in the judgment would tend to blur the fact that what is being awarded is a single figure intended to compensate the plaintiff for the suffering and damage he has endured both physical and mental”.

37. In **Russell Seaton v Attorney General** CV2009-3667 at paragraph 46 Master Patricia Sobion Awai noted that:

“Aggravated damages are damages for "mental suffering" including such elements as humiliation, damage to reputation, loss of dignity and the like. The practice in this jurisdiction is to make one award for general damages inclusive of aggravated damages, which is a component of compensatory damages: *Thaddeus Bernard v Nixon Quashie* CA 159 of 1992.”

38. In arriving at an appropriate award of damages I am guided by comparable cases. There is unfortunately no shortage of comparable cases in general damages in assault and battery in similar circumstances. These recent authorities prove useful in setting out an appropriate range of awards for the types of physical injuries inflicted and the mental anguish suffered at the hands of the prison officers.

- **Thaddeus Bernard v Nixie Quashie** Civil Appeal No. 159 of 1992- In this case, the Respondent was assaulted by the Appellant at the Crown Point Airport. One officer held the Respondent’s hands behind his back while the Appellant cuffed the Respondent a few times on his face causing the Respondent to suffer lacerations to his face. The trial judge awarded the Respondent \$78,000.00 in compensatory

damages and \$12,000.00 in exemplary damages. The Court of Appeal however, reduced the compensatory damages to \$40,000.00.

- **Lester Pitman v The Attorney General** CV2009-00638- In this case, the Claimant was beaten in the condemned division of the Port of Spain Prison by prison officers. Two of the prison officers used their closed fists to beat the Claimant while one used his riot staff. The Claimant suffered soft tissue injuries as a result of the attack. The Honourable Justice Jones awarded the Claimant the sum of \$90,000.00 in general damages and \$30,000.00 in exemplary damages.
- **Hakim Brathwaite v The Attorney General** HC3485/2009- In this case the Claimant was beaten by a prison officer with a baton when the Claimant objected to being placed in a cell with other prisoners. The Claimant was taunted and threatened by the prison officer and beaten until he fell unconscious on the ground. When the Claimant regained consciousness, he was still being beaten by the prison officer. As a result of the incident, the Claimant suffered injuries all over his body. Justice Boodoosingh awarded the sum of \$100,000.00 in damages and \$40,000.00 in exemplary damages.
- **Lincoln Marshall v The Attorney General** CV2009-03274- In this case, a Prison Officer used obscene language towards the Claimant to which the Claimant responded in a similar manner. The Claimant was then assaulted and beaten by three prison officers and suffered injuries which included losing two of his teeth, four broken teeth, welt marks about his body, tender swelling about his entire body, tender haematomas about the Claimant's body, intense swelling of the face and jaw area, inability to eat food and difficulty in talking, bleeding from the jaw area and soft tissue injury about the body. Madame Justice Rajnauth-Lee as she then was awarded the Claimant the sum of \$100,000.00 in general damages including aggravated damages and \$50,000.00 in exemplary damages.
- **David Abraham v The Attorney General** CV2009-00635- In this case the Claimant was assaulted and beaten at the Golden Grove Prison to a state of unconsciousness. He suffered soft tissue injuries and minor lacerations to the shin and head. The

Honourable Madame Justice Dean-Armorer awarded the Claimant by consent the sum of \$90,000.00 general damages, \$30,000.00 aggravated damages and \$50,000.00 exemplary damages.¹¹

- **Sean Wallace v The Attorney General CV2008-04009-** In this case, the Claimant was beaten by three prison officers about a bag which was thrown over the wall of the prison which the Claimant was accused of trafficking. The Claimant was taken upstairs by another officer and beaten “mercilessly” with a staff all over his face and body and was kicked in his face by the officer’s boot which caused the Claimant to defecate himself. The beating continued until the officer poured filthy faeces contaminated water taken from the prisoners’ slop pail over the Claimant’s head to wash his bleeding mouth. As a result of the attack, the Claimant suffered tender haematomas over the left occiput, abrasions over his right eye, small laceration on his inner lower lip, tender swelling over his right shoulder blades with extensive wheals over the right scapular, decreased range of motion in his right shoulder, tender right lateral lower rib, swelling with ecchymosis, bilateral renal angle tenderness, multiple large wheals over calves, thighs, both arms, back (especially his right scapula, chest etc, (everywhere), bilateral flank tenderness in his abdomen, tender swelling on his left calf. The Honourable Justice des Vignes (as he then was) awarded the Claimant \$160,000.00 in general damages and \$70,000.00 in exemplary damages.
- **Kenton Sylvester v The Attorney General et al H.C.A No. 4025 of 2002-** In this case, the Claimant’s car was hijacked by two bandits who forced him to remain in the vehicle. After a high speed chase around the Queen’s Park Savannah where his vehicle was shot at by police, his vehicle crashed in the vicinity of the hospital. Subsequently, he was pulled out of the vehicle and beaten by three police prison officers even though he attempted to explain he was the owner of the vehicle. The Claimant suffered several injuries including eight fractured ribs, broken upper humerus, trauma to his eyes, fractures proximal ulna, fractures proximal radius, a

¹¹ This is a consent order.

contused liver, punctured lung, multiple abrasions, a contused liver and blunt trauma to his abdomen. He was awarded the sum of \$200,000.00 in general damages.

39. In the Defendant's first submission on quantum¹² they submitted that a reasonable range of awards for general damages inclusive of aggravated damages was \$35,000.00- \$40,000.00. They relied on the following authorities:

- **Nanan v Archer** HCA No. S191/44- In this case the Claimant suffered lacerations to his face and loss of a tooth. He was awarded the sum of \$5,000.00 in 1988 which said sum when updated to December 2010 amounts to \$22,000.00
- **Singh v Lakhan** HCA 17 of 1973- In this case the Claimant suffered minor head injuries, pain, swelling to the face and loss of a tooth. Justice Hassanali awarded him the sum of \$1,200.00 in damages. This sum amounts to \$25,000.00 when updated to December 2010.
- **Ivan Neptune v The Attorney General of Trinidad and Tobago** CV2008-03386- The Claimant claimed that he was hit from behind by a marked police vehicle while he was proceeding in the vicinity of the Kentucky Fried Chicken outlet at the corner of the Eastern Main Road and the Golden Grove Road, Arouca. The Claimant left his vehicle and proceeded to the police officers but upon reaching them, he was beaten by them. He was taken to the Arouca Police Station where he was also beaten during interrogation. The Claimant suffered the following injuries:
 - Multiple hematoma to the scalp
 - Left facial swelling
 - Left peritoneal hematoma
 - Hematoma to the left anterior shoulder
 - Soft tissue injury to abdominal and chest wall
 - Large hematoma to the right thigh.

¹² Filed on 30th September, 2016

The Claimant was awarded \$25,000.00 inclusive of aggravated damages.

- **Tommie Chansun v The Attorney General of Trinidad and Tobago** CV2011-00224- In this case, the Claimant claimed that while at the Port of Spain Prison he was preparing to be transferred to the Carrera Island Prison when he was assaulted and battered by a prison officer. He suffered mild tenderness to his lower back and soft tissue injuries/contusions to both his thighs and buttocks. He was awarded \$30,000.00 in damages inclusive of aggravated damages.
- **Anino Garcia v The Attorney General of Trinidad and Tobago** CV2009-03273. However that decision was reversed on liability in the Court of Appeal in **The Attorney General v Anino Garcia** C.A. Civ. 86/2011.
- **Carter v Nandlal** HCA 2363 of 1995 the Claimant suffered injury to his mouth and teeth, severe fractures to left wrist and ankle and multiple abrasions. In 1995 he was awarded the sum of \$25,000.00 as damages for his injuries. This said sum when updated to December 2010 amounts to \$55,841.00
- **Frankie Bartholomew et al v The Attorney General** CV2009-00513, CV2009-04756, CV2009-04757. In **Frankie Bartholomew**, the Claimants suffered injuries at the hands of police officers while in the holding cell of the Port of Spain Magistrates' Court on 17th December 2010. Frankie Bartholomew suffered a 1 cm laceration to his left eye that was swollen and tender; swollen right elbow; red? (sic) to lateral aspect of right elbow; tender, swollen, right forearm; tender swollen left forearm; puncture wound visualized to posterior aspect of left forearm: tender mildly swollen anterior aspect of left foot; 0.5 cm superficial abrasion to anterior aspect of left foot; tender mildly, swollen left ankle; tender, swollen anterior aspect of right foot; 0.5 cm laceration to anterior aspect of right foot.¹³ The Honourable Madam Justice Jones awarded him the sum of \$60,000.00 in general damages inclusive of aggravated damages and \$20,000.00 in exemplary damages.

¹³ **Frankie Bartholomew et al v The Attorney General** CV2009-00513, CV2009-04756, CV2009-04757, paragraph 4 (i).

➤ **Darrell Wade v The Attorney General** CV2011-01151- The Claimant was incarcerated at the State Prison. On 17th December 2009, he was taken to the Port of Spain Magistrates' Court and placed in a holding cell. That afternoon, he was assaulted and battered on three separate occasions. He suffered the following injuries:

- Severe swelling of the left hand, left arm and left foot
- Severe pain in the ears and watering from the eyes
- Black and blue bruises all over the body
- Tenderness and swelling of the left hand and left foot
- Multiple large welts over arms, neck, back, chest, legs, and about the body
- Haematomas about the body
- Swollen ribs

Master Alexander awarded the Claimant \$60,000.00 in general damages inclusive of aggravated damages and \$15,000.00 in exemplary damages.

➤ **Mc Namara and Stephen v Seymour** HCA No. 2096 of 1973- In this case Claimant was involved in an accident and suffered severe tooth loss. Her two upper front incisors were knocked out and a denture was required to replace them. A third incisor was mobile and had to be treated for an abscess. Three other teeth were also affected and had to be crowned with a supporting brace. In 1973 the Court awarded the Claimant the sum of \$3,000.00 as damages in respect of these injuries. This said sum when updated to December 2010 amounts to \$62,615.00.

➤ **Jason Superville v The Attorney General of Trinidad and Tobago** CV2011-01152- In this case delivered on 20th May 2013 by Master Alexander, the Claimant was awarded damages in the amount of \$65,000.00 for assault and battery as a result of the actions of servants/agents of the State and \$20,000.00 in exemplary damages. The Claimant was diagnosed with soft tissue injuries as follows: (i) laceration to the Claimant's head and lips; (ii) laceration to the left side of body above waist; (iii) welt marks all over body; (iv) bruises about the body (back, buttocks, ribs, waist, arms, calves); (v) extensive pain and tenderness to the chest; (vi) tender swelling to the face and back; (vii) major swelling to the head; and (viii) extensive scars over the body.

- **Chet Sutton v The Attorney General of Trinidad and Tobago** CV2011-01191- In this case the Claimant suffered soft tissue injuries about the body (head, face, chest, back, arms and hands) together with welts, bruising, swelling and abrasions. His right cheek was tender and swollen. His right jaw was injured and he was unable to open it and was placed on a soft diet for approximately 2 weeks. The Court awarded the sum of \$70,000.00 in general damages inclusive of an uplift for aggravated damages.

40. In the Defendant's second submission on quantum¹⁴ their approach usefully was to set out the various bands within which the type of injuries sustained by the Claimants may fall and then to identify which is the appropriate award for each of the Claimants taking into account the nature of their injuries. For convenience I will set out these submissions on the various bands that may be applicable as it is a useful perspective in examining the injuries of these and the other Claimants to follow:

Moderate injuries (\$45,000.00-\$60,000.00)

- In **Russel Seaton v The Attorney of Trinidad and Tobago** CV2009-03667 the Claimant suffered soft tissue injury to the left wrist, knee and to the upper back, soft tissue injury and forehead with swelling to left forehead, soft tissue injury and forehead with bruising to right forehead, and multiple (x3) superficial abrasions to left elbow. The Claimant was awarded \$45,000.00 inclusive of aggravated damages.
- In **Morris Kenny v AG** HCA T-62 of 1997 delivered on 11th March 2002 the Plaintiff who was beaten with a cable about his body in a prison setting and suffered severe back pains, was unconscious for 2 days; suffered soft tissue injuries consisting of welt and abrasions to lower back and back of right thigh; and awarded for one week was awarded general damages inclusive of aggravation in the sum of \$50,000.00 and exemplary damages of \$60,000.00.
- In **Emraan Ali v The Attorney General of Trinidad and Tobago** Claim No. CV2012-02695, there was tenderness swelling and abrasions right side of head

¹⁴ After the change of attorneys.

involving temporal and parieto-occipital areas, left periorbital haematoma with tenderness and swelling left side of face involving temple and cheek area, areas of haematoma, abrasions, tenderness and swelling, left antero lateral arm extending from shoulder to elbow, abrasions tenderness and swelling ulnar aspect of left forearm extending from wrist to the mid left shoulder, tenderness swelling and bruising left upper chest extending into left shoulder and tenderness swelling and bruising left instep. The Court awarded \$55,000.00 which also included matters of aggravation.

- In **Mustapha Ghanny v Police Constable Dev Ramadhin No. 16969 v The Attorney General of Trinidad and Tobago** CV2015-01921, the injuries actually sustained did not appear to have had a long term physical impact. There were no fractures. They were mainly soft tissue injuries, with no permanent residual effects or resulting disability, and no effect on pecuniary prospects. The Court awarded the sum of \$55,000.00 inclusive of aggravated damages for assault and battery.
- In **Ijaz Bernadine v The Attorney General of Trinidad and Tobago** CV2010-02956 the Claimant sustained a right eyebrow laceration, ecchymosis of right eye as well as soft tissue injuries and was awarded the sum of \$55,000.00 inclusive of aggravated damages for assault and battery.
- **Darrell Wade v The Attorney General of Trinidad and Tobago** CV2011-01151 (discussed supra).

More Severe Injuries (\$65,000.00- \$100,000.00)

- **Jason Superville v The Attorney General of Trinidad and Tobago** CV2011-01152 (discussed supra).
- **Chet Sutton v The Attorney General of Trinidad and Tobago** CV2011-01191 (discussed supra).
- **Martin Reid v AG** CV2006-00246 delivered on 6th June 2007, suffered blunt head trauma; post-concussion syndrome (no focal cranial abnormalities); broken left middle finger; with continuing blackouts, pains to back of head and headaches. In the

case of Reid, he was left unattended for more than 2 days before being taken to the hospital, though he was taken to the infirmary officer right after the attack. His wounds continued to bleed. When he was taken to the hospital he was hospitalized for 5 days. An award was made for general damages inclusive of aggravation in the sum of \$65,000.00 adjusted to December 2010 at \$89,617.00 and exemplary damages of \$45,000.00.

- In **Braithwaite v AG** CV2010-04502, \$90,000.00 was awarded to the Claimant inclusive of aggravated damages for injuries allegedly suffered at the hands of the prison officers, which included: severe swelling on right side of head, haematomas about the body; contusions and tenderness about the body; soft tissue injury about the body; lacerations to the head and legs; broken ribs; contusions and haematomas to the face; and severe swelling about the body.
- In **Owen Goring v AG** CV2010-03643 delivered on 26th July 2011 where for laceration to the face, tenderness, swelling, bruising and pain over the entire body; and a short period of unconsciousness following an intense and prolonged period of licks from prison officers, an award was made for general damages in the sum of \$100,000.00 and exemplary damages of \$100,000.00.
- **Lincoln Marshall v The Attorney General**, CV2009-03274 (discussed supra).

41. The Defendant submitted that the awards in this category “severe injuries” should be avoided.

42. In dealing with these Claimants, I had in the case management of this claim asked the parties to produce a matrix which would set out the rivalling suggested awards in damages by both parties. Such a matrix is mirrored in “Scott Schedules” employed in negotiations to assist parties in “narrowing the gap”. It is a convenient reference point to examine the gaps between rivalling proposed awards but it also usefully assists in establishing suitable ranges for personal injury claims.

43. A matrix of the rivalling proposed awards by the parties are set out below.

Claimant	Comparative Cases for the Defendant	Suggested Maximum Award Inclusive Of Aggravated Damages By The Defendant	Comparative Cases for the Claimants	Suggested Maximum Award Inclusive Of Aggravated Damages By The Claimants
Marvin Scott	<p>More Severe Injuries:</p> <p>1) Bullock v AF CV2007-0176. In Bullock the Claimant's jaw was broken and he lost four teeth which warranted an award as high as \$150,263.00</p> <p>2) Lincoln Marshall v The Attorney General CV2009-03274</p> <p>More Similar Injuries:</p> <p>Jason Superville v AG CV 2011-01124 and that the maximum amount should be awarded in the</p>	\$65,000.00	<p>David Abraham v The Attorney General CV 2009-00635- \$90,000.00 in general damages. \$30,000.00 in aggravated damages.</p> <p>Kenton Sylvester v The Attorney General et al H.C.A No. 4025 of 2002- \$200,000.00 in general damages</p> <p>Thaddeus Bernard v Nixon Quashie Civil Appeal No. 159 of 1992- \$40,000.00 in general damages</p> <p>Lester Pitman v The Attorney General C.V. 2009-00638- \$90,000.00 in general damages</p> <p>Sean Wallace v The Attorney</p>	\$125,000.00-\$150,000.00 including an additional \$30,000.00-\$50,000.00 in aggravated damages.

	sum of \$65,000.00		<p>General C.V 2008-04009- \$160,000.00 in general damages</p> <p>Hakim Brathwaite v The Attorney General HC 3485/2009- \$100,000.00 in general damages</p> <p>Lincoln Marshall v The Attorney General CV 2009-03274- \$100,000.00 in general and aggravated damages.</p>	
Junior Collins	<p>Similar Injuries:</p> <p>Anino Garcia v the Attorney General of Trinidad and Tobago CV2009- 03273: \$45,000.00</p> <p>Russell Seaton v The Attorney General of Trinidad and Tobago CV2009- 3667: \$45,000.00</p>	\$45,000.00	<i>Same as above</i>	\$75,000.00- \$100,000.00 including an additional \$30,000.00- \$50,000.00 in aggravated damages.
Jason Raymond	Similar Injuries:	\$45,000.00	<i>Same as above</i>	\$125,000.00- \$150,000.00 including an

	<p>Anino Garcia v the Attorney General of Trinidad and Tobago CV2009-03273: \$45,000.00</p> <p>Russell Seaton v The Attorney General of Trinidad and Tobago CV2009-3667: 45,000.00</p>			additional \$30,000.00-\$50,000.00 in aggravated damages.
Ryan Stephens	<p>Similar Injuries:</p> <p>Anino Garcia v the Attorney General of Trinidad and Tobago CV2009-03273: \$45,000.00</p> <p>Russell Seaton v The Attorney General of Trinidad and Tobago CV2009-3667: 45,000.00</p>	\$45,000.00	<i>Same as above</i>	\$125,000.00-\$150,000.00 including an additional \$30,000.00-\$50,000.00 in aggravated damages.
Christopher Lewis	<p>Similar Injuries:</p> <p>Anino Garcia v the Attorney General of Trinidad and Tobago CV2009-03273: \$45,000.00</p>	\$55,000.00	<i>Same as above</i>	\$175,000.00-\$220,000.00 including an additional \$30,000.00-\$50,000.00 in aggravated damages.

	<p>Emraan Ali v The Attorney General of Trinidad and Tobago CV2012-02695: 55,000.00</p> <p>Mustapha Ghanny v The Attorney General of Trinidad and Tobago CV2015-01921: \$55,000.00</p> <p>Ijaz Bernadine v The Attorney General of Trinidad and Tobago CV2010-02966: \$55,000.00</p>			
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44. More recently in the past year the following awards were made in assault and battery cases against the State. In **Corneal Thomas v P.C Llewellyn Bethelmy #16347 and The Attorney General of Trinidad and Tobago CV2012-05160** the Claimant suffered soft tissue injury to his neck and left shoulder, muscle spasms, stiffness and pain to those areas. He was also found to have suffered brief loss of consciousness consequent to a head injury and was given a cervical collar and placed on an IV. He remained bedridden for two days suffering severe pain; he had several x-rays done and was administered pain medication during this time. Justice Charles awarded the sum of \$35,000.00 in damages for the assault and battery. In **Chandrabosh Maharaj v The Attorney General of Trinidad and Tobago CV2015-3937** the Claimant suffered swelling to lower right forearm, puncture wound to the left lower forearm and a broken ulna. Justice Gobin awarded the sum of \$160,000.00 in damages inclusive of aggravated and exemplary damages.

45. For each of the Claimants I have made the following awards:

- 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

46. The analysis for these awards are set out below.

Cell 11: Junior Collins and Marvin Scott

Junior Collins

47. Junior Collins claims that he suffered the following injuries in his Statement of Case¹⁵:

- a) Multiple Soft tissue injury about the body
- b) Soft tissue injury to upper face
- c) Severe pain about the entire body
- d) Lower lip laceration inner aspect
- e) Left upper arm swelling and tenderness
- f) Injury to mouth and jaw
- g) Upper lip swelling
- h) Right post-thigh swelling
- i) Abrasion to stomach area
- j) Multiple bruising throughout the entire body
- k) Multiple bruises to the chest area
- l) Welt marks to the back
- m) Welt marks to the left arm
- n) Welt marks to the right leg

¹⁵ Paragraph 10 of the Statement of Case of Junior Collins.

48. In his witness statement¹⁶ Junior Collins narrated the circumstances in which he was assaulted by the prison officers. He contended that several masked prison officers took him to the bathroom area located at the back end of the Lower North Wing of the Remand Yard Golden Grove Prison where the prison officers attacked and beat him with batons. He stated he was beaten on his legs and back with the batons and was cuffed and kicked about his entire body. He was fearful for his life. The pain he experienced was “excruciating” and he felt as though he was going to faint.

49. After the incident, Junior Collins contended that he was taken to the infirmary where he was given painkillers and then returned to his cell. He stated the pain was unbearable to the extent that he could not sleep all night and even though he asked the prison officers for medication, they refused his requests. He further contended that he was unable to eat for several days because of the injuries he sustained.

The Medical Evidence

50. Junior Collin’s medical evidence in the Prisoner’s ‘Medical History of Convict’ for the 17th June 2016, appears to show the following injuries:

- a) Lower lips laceration to the inner aspect
- b) Upper lip swelling
- c) Upper arm swelling and tender
- d) Post thigh swelling
- e) Chest good
- f) General body pains

51. As seen in the matrix above, the gap between the Claimants and Defendant’s suggested awards are large. The Claimant submits that he should be awarded \$105,000-\$150,000.00 in general damages inclusive of aggravated damages. The Defendant submitted he should be awarded \$45,000.00 in general damages inclusive of aggravated damages.

¹⁶ Filed on 3rd February 2017.

52. What is material in the Junior Collins claim as in the other Claimants' claims, is the corroborating medical evidence in the medical reports and the photographs. Also the evidence of Dr. Israel Dowlat who neatly summarised the Claimants injuries after reviewing the compilation of the Claimants medical history.
53. The medical evidence highlights injuries to the lip, upper arm and thigh. The photographs also reveal welt marks to the back. This Claimant experienced general body pains from the beatings. There were no fractures, no need for surgical intervention no permanent injury. As described above however, there were aggravating elements to this injury. In my assessment I have considered the following range to be applicable for Junior Collins \$40,000.00 to \$60,000.00. I consider an award of \$55,000.00 general damages inclusive of aggravated damages appropriate.

Marvin Scott

54. Marvin Scott claims that he suffered the following injuries in his Statement of Case¹⁷:

- a) Multiple soft tissue about the body
- b) Cannot open mouth, left jaw seized
- c) Soft tissue injury to upper face
- d) Severe pain about the entire body
- e) Loss of premolar left upper
- f) Ruptured left tympanic membrane
- g) Injury to mouth, jaw and left side of face
- h) Tenderness of left elbow
- i) Bleeding of right ear
- j) Abrasion to stomach area
- k) Multiple bruising throughout entire body
- l) Multiple bruises to the chest area.

¹⁷ Paragraph 10 of the Statement of Case of Marvin Scott.

55. Mr. Scott's injuries are more serious than that of Junior Collins. In his witness statement¹⁸, Marvin Scott explains that he was beaten with batons on the left side of his head, face and lower jaw. He was also kicked and cuffed about his body and started to spit blood. He lost one of his teeth because of the beating and felt "hopeless" and "helpless" throughout the ordeal. When he indicated to an officer that the officer kicked out his tooth, the officer told him to pick it up from the ground which he did. However, the prison officers continued their assault on him with their batons. He stated that at one point the prison officers stopped beating him but soon after an officer dragged and handcuffed him and continued beating him once more.

56. After the attack, he was taken to his cell. His entire body was in pain and he felt as though some parts of his body were broken. He was left in a state of shock because of the attack. He asked to be taken to the infirmary and to be given medication but his requests were not satisfied.

57. He went on to state that he was taken to the infirmary sometime after the attack but he found the treatment to be inadequate. After he was taken back to his cell, he could not sleep in the night because of the severe pain to his face, jaw, mouth and the rest of his body. His mouth was swollen and blood was flowing from where he lost his tooth. His left ear was also hurting and he could hardly hear from it. During the night, he made a few attempts to get medical attention from the prison officers but it was in vain. He further stated that he was unable to open his mouth even after several days elapsed and was unable to eat the meals provided to him. To this day he contends that he still suffers pain about his body.

The Medical Evidence

58. Marvin Scott's Medical History of Convict for 17th June 2015 to 5th August 2015 indicated that the Claimant was unable to open his mouth, had a tender left jaw, ruptured left tympanic membrane, loss of left upper premolar, soft tissue injury to upper face. On 22nd June 2015 he was suffering from left ear pains and allowed to have a soft diet.

¹⁸ Witness Statement of Marvin Scott filed on 3rd February 2017.

59. The Claimant's Prison Referral Form dated 17th July 2015 indicated that the Claimant could not open his mouth, his lower jaw was seized and he had a left tympanic membrane rupture.
60. The Claimant's Accident and Emergency Treatment Record from the North Central Regional Health Authority indicated that the Claimant suffered injury to his mouth, jaw, left side of face and facial bone, a decreased ability to hear and loss of premolar.
61. The gap between the Claimant and the Defendant on an award of general damages inclusive of aggravated damages is between \$155,000.00 to \$200,000.00 to the Defendant's \$65,000.00.
62. This is a far more severe injury. This inmate received beatings on two separate occasions. He was bleeding from the mouth. He lost a tooth. His jaw was damaged. His pictures corroborates his injuries as well. The aggravating nature of the taunts and callous responses of the prison officers also fall into consideration. The range of award for this inclusive of aggravated damages will be between \$60,000.00 to \$90,000.00. I will award \$75,000.00.

Cell 21 Jason Raymond, Christopher Lewis and Ryan Stephens

Jason Raymond

63. Jason Raymond claims he suffered the following injuries in his Statement of Case :¹⁹
- a) Multiple soft tissue injury about the body
 - b) Bruising on the right inferior aspect of the chest
 - c) Tenderness in right lateral aspect and lower quadrant
 - d) Upper left costal margin discomfort and tenderness
 - e) Tenderness to right flank with moderate bruising
 - f) Loss of light reflex
 - g) Severe pain about the entire body
 - h) Bruising noted priorbital
 - i) Right mild shaft tenderness

¹⁹ Paragraph 11 of the Statement of Case of Jason Raymond.

- j) Decreased power in left lower limb
- k) Bruising on right side of face
- l) Bruising on upper and lower thorax
- m) Bruising on right foot
- n) Welt marks about the body
- o) Multiple bruising throughout the entire body
- p) Multiple bruises to the chest area
- q) Right tympanic membrane rupture
- r) Auditory meatus swelling mandibular junction
- s) Unable to elevate legs
- t) Severe lower back pains
- u) Welt marks to stomach area
- v) Welt marks to the neck area
- w) Loss of consciousness.

64. In his witness statement²⁰ Jason Raymond stated he was beaten with batons by the prison officers and kicked about his body. He was dragged out of his cell by the prison officers where one prison officer held him in a headlock and another held onto his feet and threw him into the corridor in front of his cell. The prison officers continued to beat him and he was dragged to the “breeze hole” where 10 prison officers beat him at the same time. At the breeze hole, the prison officer put his head on the ‘lip’ and kicked him in his face. One prison officer put his boot on the Claimant’s throat and asked him if he was a Muslim and when he replied in the affirmative, the prison officers started to beat him again. He subsequently became unconscious until water was thrown on his face. He stated that he was fearful for his life throughout in the attack and was in extreme pain throughout the incident.

65. After the attack, he was taken to his cell where he found his belongings were wet. His holy book, the Holy Qur’an was ripped to pieces which made him frustrated, depressed and angry. He stated that the disrespect to his religion was difficult to accept and he was treated worse than an animal by the prison officers.

²⁰ Witness statement of Jason Raymond filed on 3rd February 2017.

66. After the incident he was taken to the infirmary and treated for his injuries then returned to his cell. He stated that the officer in the infirmary did not examine all of the injuries he received. He suffered from severe pains all over his body and could not sleep the entire night and was forced to sleep on a wet bed.

67. He was subsequently taken to the Eric Williams Medical Sciences Complex (EWMSC) on a stretcher since he was unable to walk and his upper and lower limbs were x-rayed to determine if there were any fractures to his body.

The Medical Evidence

68. I have paid particular regard to his medical record. Jason Raymond's Prison Inmate Medical Records on 17th June 2015 shows that he complained that he had zero power in his lower limbs, low back pains and chest pains and unable to elevate his legs. No external injuries were noted. He was referred to the EWMSC to complete examinations and determine the extent of his injuries and low back injury. On 18th June 2016 he was seen at the EWMSC. On 22nd June 2015, he fell on the bathroom floor and had trauma to his right elbow.

69. Jason's Raymond's medical report from the EWMSC dated 1st September 2015 indicated that on examination of the Claimant on the 17th June 2015 the following were noted:

- (i) The chest x-ray showed no signs of fractures, pneumothorax and dislocations.
- (ii) C-Spine showed no acute findings.
- (iii) No free fluids, pericardial effusion or pneumothorax and hemothorax.
- (iv) CT scans of abdomen and brain showed no acute findings.
- (v) His physical examination showed normal respiratory exam apart from bruising on the right inferior aspect of the chest.
- (vi) Cardiac exam was normal.
- (vii) There was abdominal tenderness with guarding or rebound, left costal margin discomfort and right flank tenderness.
- (viii) There was possible right tympanic membrane rupture and loss of light reflex.
- (ix) Auditory meatus swelling and bruising and significant pain over the preauricular areas as well as significant tenderness at the temporal mandibular junction.

- (x) There was bruising over right periorbital aspect with no step or pain over supra orbital ridge or zygomatic arch.
- (xi) His central nervous system showed no signs of spinal damages or reflex changes and EOMI and pupils were normal.
- (xii) A diagnosis of 'likely soft tissue injury' and 'likely ruptured tympanic membrane' was made.
- (xiii) Headache and LOC, pain in right knee and decreased hearing on the right side.

70. The gap between the Claimant and the Defendant on an award of general damages inclusive of aggravated damages is between \$155,000.00 to \$200,000.00 to the Defendant's \$45,000.00. In my view, like Marvin Scott, the range should be \$60,000.00 to \$80,000.00. I will award \$65,000.00.

Christopher Lewis

71. Christopher Lewis claimed he suffered the following injuries in the Statement of Case²¹:

- a) Multiple soft tissue about the body
- b) Left swollen black eye
- c) Abrasion to face
- d) Abrasion to left ear
- e) Blurred vision
- f) Numerous contusion marks all over back
- g) Severe pain about the entire body
- h) Numerous contusion marks over left arm
- i) Numerous contusion marks over right arm
- j) Severe swelling of left elbow
- k) Tenderness of left elbow

²¹ Paragraph 11 of the statement of case of Christopher Lewis.

- l) Left chest tenderness
- m) Welt marks over back
- n) Multiple bruising throughout the entire body
- o) Multiple bruises to the chest area
- p) Left eye subconjunctival haemorrhage
- q) Bruising on the left arm
- r) Bruising to fingers and hands
- s) Bruising to the right foot
- t) Welt marks to the stomach area
- u) Welt marks to the neck area

72. In his witness statement²² Christopher Lewis narrated that he was kicked, cuffed and beaten with batons by the prison officers even though he did not do anything to provoke them. He begged the prison officers to stop beating him but they did not stop their assault. He was then handcuffed and dragged out of his cell and thrown onto the corridor where the prison officers continued to beat him. The attack caused him to experience extreme pain. He was subsequently taken to the “breeze hole” where he was continuously beaten. He was beaten in his back, arms, legs, face and his left eye.

73. After the attack he was taken back to his cell. He stated that he could hardly walk and felt as though his skin was burning because of the pain he was experiencing throughout his body. His cell was ransacked and all his belongings were wet and his Holy Qu’ran was torn to pieces which made him more frustrated and upset. He stated he was treated worse than an animal by the prison officers.

74. He was later taken to the infirmary where he received painkillers for his injuries. He was then returned to his cell where he was forced to sleep on a wet bed. He was in severe pain through the night and could not sleep. The next morning he visited the prison medical doctor who

²² Witness Statement of Christopher Lewis filed on 3rd February 2017.

referred him to the hospital for treatment. He stated he suffered bruises and cuts over his body including his back, chest, arms and legs and the area around his face and his eyes were blue black and swollen. To this day he suffers pain about his body because of the incident.

The Medical Evidence

75. Christopher Lewis' Prison Inmate Medical Records on the 17th June 2015 indicated that he was suffering from black eye swelling, blurred vision, abrasion on face and ears, numerous contusion marks all over back, left right upper arm contusion, chest tenderness and chest injury. He was referred to the EWMSC.

76. His medical record for the 17th June 2015 in the Trinidad and Tobago Prison Service Medical noted that he was suffering from soft tissue injuries throughout his body with multiple bruising which were probably inflicted with blunt force trauma with blunt object and physical/bodily trauma from hand to hand altercation.

77. On 17th June 2015, he was seen at the EWMSC and the following was noted:

(i) Tone normal, speech normal, gait normal, no cerebral findings, extraocular movements intact, pupils equal, round and reactive to light and accommodation.

(ii) Left eye showed subconjunctival haemorrhage. No hyphema noted.

(iii) A diagnosis of soft tissue injuries secondary to physical assault was made.

(iv) X-Rays to chest no acute findings, to spine no acute findings, facial bones no fracture noted, left upper extremity no fracture noted, right knee no fracture noted.

78. The gap between the Claimant and the Defendant on an award of general damages inclusive of aggravated damages is between \$205,000.00 to \$270,000.00 to the Defendant's \$55,000.00.

79. These injuries were more severe and should be in an award in the higher range \$60,000.00 to \$80,000.00. I will award the sum of \$70,000.00 inclusive of aggravated damages.

Ryan Stephens

80. Ryan Stephens claims he suffered the following injuries²³:

- a) Multiple soft tissue injury about the body
- b) Paravertebral tenderness
- c) Palpitation of the lower back
- d) Palpitation of left knee
- e) Palpitation of 1/3 of leg
- f) Left upper limb small superficial laceration on lateral aspect of elbow
- g) Severe pain about the entire body
- h) Loose tooth
- i) Laceration to arm and shoulder
- j) Severe swelling of elbow
- k) Welt mark on left arm
- l) Large hematoma on the left buttock
- m) Welt marks about the back
- n) Laceration and bruise to the left knee
- o) Multiple bruises to the chest area
- p) Respiratory distress
- q) Headaches and blackouts
- r) Difficulty in hearing in right ear

81. In his witness statement²⁴, Ryan Stephens stated on the day of the incident, a masked man came into his cell and told him that they were conducting a search. He was ordered to take

²³ Paragraph 11 of the Statement of Case of Ryan Stephens.

²⁴ Witness statement of Ryan Stephens filed on 3rd February 2017.

his belongings out of the cell which he proceeded to do when an officer hit him. This made him fearful that the prison officers were going to attack him so he pulled a bed in front of his cell to prevent the prison officers from attacking him. However, some prison officers with riot shields pushed the bed away and rushed into the cell where the prison officers started to beat him with batons. He was then dragged out of the cell and into the corridor where the officer continued to beat him. He was taken to the “Breeze hole” where the prison officers continued to beat him.

82. He stated that was in severe pain and felt as though he was going to faint and he felt extreme pain in the front of his mouth. One of the prison officers hit him across the left arm and elbow with a baton which caused his elbow to bleed. He was cuffed and kicked in his stomach while his injury to his elbow continued to bleed.

83. After the incident he was taken to the infirmary where the only treatment he received was a bandage on his elbow. He was then returned to his cell where he was forced to sleep on a wet bed. He stated he was in severe pain throughout the night and could hardly talk because of the pain he was experiencing. He begged the prison officers for medications but his requests were refused. The next day he was taken to see the prison medical doctor and then to the EWMSC. He contends that to this day he still suffers from pain and he still has scars from the attack.

The Medical Evidence

84. Ryan Stephens’ referral letter from the Prison Medical Officer of the 17th June, 2015 noted that he suffered multiple injuries, low back pains, left upper limb, left tibia and multiple contusion marks all over his body. His Trinidad and Tobago Prison’s Service Medical Report of the 17th June 2015 stated that he was suffering from soft tissue injuries about the body and small superficial laceration to the left lateral elbow which were probably inflicted with blunt force, moderate degree trauma with a blunt object and hand to hand interaction. In the “Special Medical Remarks or Observations” it was stated that he had left elbow swelling, forearm swelling, multiple contusions to his back/buttocks, left tibia tender, lower back pains tender, no flexion. His medical report from the EWMSC stated his diagnosis as “Multiple soft tissue injury secondary and loose tooth.” The following was noted from his examination:

- He sustained injuries to face, left upper and lower limbs and pain on ambulation.
- X-Rays of left upper limbs, left lower limb and facial bones showed no fractures.
- Normal respiratory and cardiovascular examinations
- Paravertebral tenderness greater on right side than on left
- Palpitation of lower back
- Left knee tender to palpitation
- Left lower leg palpitation on proximal 1/3 of leg and left upper limb and small superficial laceration on lateral aspect of elbow (sutures were not needed).

85. The gap between the Claimant and the Defendant on an award of general damages inclusive of aggravated damages is between \$155,000.00 to \$200,000.00 to the Defendant's \$45,000.00.

86. My range is between \$60,000.00 to \$80,000.00. I will award the sum of \$70,000.00.

Exemplary Damages

87. At the trial I invited both parties to address the Court on the utility and/or relevance of exemplary awards in light of the vain expressions of outrage expressed by many judges on this issue of the unlawful use of force in prisons. Also the Court questioned whether the idea of punishment was served by making an additional monetary award to be paid by the taxpayer who play no part in the commission of the wrong which is being sought to correct. It is in short a question of public policy. To what extent retributive justice served by an award of exemplary damages should give way to distributive or restorative justice as an element of punishment. It is in fact an attempt to make such awards no longer anomalous but congruent to the concept of distributive theories of social justice and correctional theory.

88. The Defendant in this case recognised that this is a fitting case for an award of exemplary damages. They however urge against the making of a blank cheque approach to damages and that the award of exemplary damages must fulfil and give effect to the rule of law. The

Defendant urges the Court to pay regard to the purpose of the award of exemplary damages to punish the wrongdoer to signal the Court's disapproval and deter the Defendant and others from engaging in similar acts in the future.

89. Similarly attorney for the Claimants in his submission urges this Court to adopt a principled approach to solve the problem of violence in our nation's prisons. A passionate plea was made in the Claimants submissions²⁵:

“This problem in our nation's prisons is one that the judges have spoken time and time again about and the comments of the Courts have fallen on deaf ears. It is one that has led to the worsening crime problem that pervades our society today and for which we are all made to suffer the consequences. To simply treat with the narrow legal issues and no more would amount to the Court, respectfully, placing a plaster on a cancerous sore. We need to do more to improve this situation. Those with the responsibility to fix this problem need to be compelled to act. In the case of BS and SS it was the manner that the Court treated with that matter that resulted in change and the changes that resulted will benefit all young offenders in the future. There was not simply an adversarial approach but a collaborative and dedicated attempt to fix a broken system. This litigation provides all of the stakeholders in this broken system to do what is right to get it right and this Court has the power to make those stakeholders act in the best interest of those directly affected but more so in that best interest of our country.”

90. I begin there as both parties recognise that this is a fitting case for the award of exemplary damages and equally have asked the Court through such an award to pay regard to its fundamental purpose as a mechanism to deal with the offending conduct that is to reduce violence in our prisons. Both recognise that this goes beyond the question of compensation for the Claimants. In my view, fulfilling the purpose of exemplary damages can be achieved by making a “split award”. A portion of the award is paid to the Claimants and a portion is paid into Court to establish a court administered fund for programmes or non-government organisations approved by the Court to assist both prisoner and prison officers in the reduction of levels of violence in the prison.

²⁵ Paragraph 4 of the Claimant's submissions on Quantum filed on 10th March 2017.

91. To understand the jurisdiction to make such a **split award** I begin “at the beginning”.

Exemplary Damages – An exceptional remedy

92. Exemplary damages are reserved to deal with those exceptional cases where “truly outrageous conduct” of the Defendant cannot be adequately punished in any other way.

93. In the seminal House of Lords decision in **Rookes v Barnard** the Law Lords reviewed the doctrine of exemplary damages and recognized that except in a few exceptional cases, it was no longer permissible to award exemplary damages regardless of how outrageous the Defendant’s conduct may be.²⁶ Lord Devlin identified these exceptional cases as being:

- (i) where there is oppressive, arbitrary or unconstitutional conduct by servants of government;
- (ii) where the defendant’s conduct had been calculated to make a profit; and
- (iii) where it was statutorily authorised.

94. Only the first category is relevant in this case. In commenting on this category, Lord Devlin noted:

“Where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the other's, he might, perhaps, be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service.”²⁷

95. Lord Devlin’s judgment in **Rookes v Barnard** clearly places the object of exemplary damages as a means to punish and deter the tortfeasor. It is not compensatory in nature. In

²⁶ McGregor on Damages, paragraph 13-003.

²⁷ p.1126.

examining the several authorities over 200 years, he recognised that awards were being made in tort to punish the guilty. Those authorities convinced Lord Devlin of two main facts:

“First that your Lordships could not, without a complete disregard of precedent, and indeed of statute, now arrive at a determination that refused altogether to recognise the exemplary principle. Secondly, that there are certain categories of cases in which an award of exemplary images can serve a useful purpose in vindicating the strength of the law and thus affording a practical justification for admitting into the civil law a principle which ought logically to belong to the criminal.”²⁸

96. In recognising the need to transplant the notion of punishment from the criminal law into tort law Lord Devlin warned of three considerations. First, that the Claimant should not receive a windfall by such an award. Second, that it is weapon to be used in defence of liberty and not against it. Third, the means of the parties are relevant “everything that aggravates or mitigates the Defendant’s conduct is relevant’.

97. Every case referred to me on exemplary damages in this jurisdiction rely on **Rookes v Barnard** as the basis for making such an exceptional award. The awards in cases of violence in our prisons range from \$20,000.00 and incrementally have increased to \$100,000.00.²⁹ The principles that have been culled from these cases demonstrate that a guide for the Court in awarding exemplary damages are as follows:

- (i) the need to send a message of condemnation of the behaviour involved and to deter its recurrence;
- (ii) the need for moderation;
- (iii) the need to consider matters in mitigation and;
- (iv) proportionality.³⁰

²⁸ **Rookes v Barnard** [1964] AC 1129 page 1225.

²⁹ See **Goring v AG** CV2010-03643.

³⁰ **Aron Torres v Point Lisas Industrial Port Development Corporation Limited** Civil Appeal No. 84 of 2005.

98. Understandably with punishment as the main aim of exemplary awards it is by nature an exceptional award. The law of exemplary damages re-examined by Lord Devlin was in the climate of retribution as a nominal function of punishment in our criminal justice system. As a matter of policy and in justification for the development of a split award system, I make the following observations: 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 punishment³¹. 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 have had very little dent on fulfilling the real objectives of the award of exemplary damages. It begs the question of its relevance and unless re-tooled the argument against exemplary damages may gain increasing currency. One argument against the award of exemplary damages should be noted by Stephen Todd in “A New Zealand Perspective on Exemplary damages.”³² He notes quite succinctly that:

“The special categories mentioned by Lord Devlin in **Rookes v Barnard** as justifying awards of exemplary damages in England provide likely examples of non-criminal misconduct. The first concerns oppressive, arbitrary or unconstitutional action by servants of the government. Even if we accept that this category was needed at the time **Rookes v Barnard** was decided in 1964, it is not clear that it is any longer. In **Kuddus v Chief Constable of Leicestershire Constabulary** Lord Scott maintained that one of the great developments of the common law since that time had been in the area of public law and judicial review. Oppressive or similar conduct by members of the executive could be remedied through civil proceedings brought in the High Court. The remedies the court could provide included awards of damages, declarations of right and, in most cases, injunctions. These developments had transformed the ability of the ordinary citizen to obtain redress. So his Lordship concluded that the continuing need for exemplary damages

³¹ See **Geeta Ragoonath v Ancel Roget** CV2015-01184.

³² CLWR 33.3 (255) 1 September 2004.

as a civil remedy to control, deter and punish such acts of public officers was not in the least obvious. He added that the law could be vindicated in a civil action just as effectively by an award of aggravated damages; and where the defendant was not the wrongdoer and the damages were in any event going to be met out of public funds any supposed deterrent effect was fanciful.”

Punishment’s Purpose

99. A core feature of an award of exemplary damages which distinguishes it from compensatory damages is punishment. This indeed is the basis for a great degree of controversy surrounding the place of such awards in a civil system as damages are in their nature compensatory. In **Whiten v Pilot Insurance Co**, 2002 SCC 18, [2002] 1 SCR 595, Lebel J noted:

“The award of punitive damages in discussion here leads us far away from this principle. It tends to turn tort law upside down. It transmogrifies what should have remained an incident of a contracts case into the central issue of the dispute. The main purpose of the action becomes the search for punishment, not compensation. Perhaps, at some time in the future, this will be viewed as part of a broad intellectual and social movement of privatization of criminal justice, consonant with the general evolution of society. For the time being, without using *in terrorem* arguments, such an award has a potential to alter significantly what would appear to have been the proper function of tort law.”

100. Despite the controversy and the criticisms, the Courts have continued to make these awards and in our jurisdiction it now features in contract law. See Mendonca JA in **Aron Torres Point Lisas Industrial Port Development Corporation Limited** (2007) 74 WIR 431. This form of punishment is a means to mark the Court’s disapproval of conduct and a mechanism to deter future abhorrent actions.

101. The Privy Council has made it very clear of the purpose of the punishment which lies at the core of an award of exemplary damages:

“The award of exemplary damages is a common law head of damages, the object of which is to punish the Defendant for outrageous behaviour and deter him and others from

repeating it. One of the residual categories of behaviour in respect of which exemplary damages may properly be awarded is oppressive, arbitrary or unconstitutional action by the servants of the government. It serves, as Lord Devlin said in *Rookes v Barnard* [1964] AC 1129 at 1223, [1964] 1 All ER 367, [1964] 2 WLR 269, to restrain such improper use of executive power.”³³

102. In “**Civil Actions Against the Police**”³⁴ it is noted that “exemplary damages are solely intended to punish, or to mark the Court’s disapproval of, the Defendant’s serious misconduct and, even then, only if and to the extent that basic and aggravated damages are inadequate for that purpose. As such, unusually in the civil law, they relate not to the Claimant’s loss as a result of the tortious action (or even to the Defendant’s gain), but are intended as punitive and deterrent.”

103. If the award does not have a deterring effect then arguably it has lost its credibility. To mark therefore, the Courts disapproval of outrageous conduct, to make public condemnation of such acts and excoriation (see Moosai J in **Sahadeo Sookhai v The Attorney General of Trinidad and Tobago** CV2006-00986 paragraph 64) is really an attempt to instil the rule of law through an award of damages. Damages are being used to send “the right message that the Courts will intervene to protect the poor, the powerless and the downtrodden” per Moosai J in **Sahadeo Sookhai v The Attorney General of Trinidad and Tobago**, paragraph 65. Lord Nicholls in **Kuddus v Chief Constable of Lecestershire Constabulary** (2002) AC 122 recognised the award of exemplary damages as a response to the defendants conduct which calls for “a further response from the courts”. A response which “buttresses civil liberties”. A response which is needed to achieve a just result between the parties to deal with the outrageous conduct of the Defendant.

104. Marking the Court’s disapproval and vindicating rights has also been the basis for which awards for breach of constitutional rights have been granted. See **Attorney General v Mukesh Maharaj** Civ. App. No. 67 of 2011. In theory it mirrors the logic of awards of

³³ **Takitota v AG of the Bahamas**, Privy Council Appeal 71 of 2007.

³⁴ 3rd ed Clayton and Tomlinson para 14-030.

exemplary damages of the Courts doing “something more” in a money payment to vindicate the rule of law.

105. Interestingly, in terms of terminology, exemplary damages was used interchangeably with the labels of “punitive”, “vindictive” and “retributory” damages. However, theories of punishment are evolving. Borrowing a perspective from the Criminal Law on Punishment, if exemplary awards can be seen as a “tortious sentence” of the tortfeasor one should also be aware that “the purpose of sentencing is not merely punishment and deterrence but must also incorporate and encourage rehabilitation and restoration.”³⁵ I do not get the impression from Lord Devlin’s review of exemplary damages that purpose of punishment was a form of “vindictiveness”, “retribution” or “vengeance” legitimised by the Court. Rather, its purpose must be to have a deterrent effect, to prevent the reoccurrence of a wrong. In modern theory, rehabilitative and therapeutic goals are deeply rooted in the concept of deterring unlawful conduct and conditioning positive change.³⁶ One of the unique arguments for exemplary damages is that victims find the award to be therapeutic. It stems from the idea that the Claimants acquire a psychological benefit which aids their recovery in seeing the Court require the defendant to pay exemplary damages. But moreover in a case of prison violence where the Court is denouncing forms of “unwarranted punishment” by prison officers on prisoners is it now legitimate for the Court to “return the favour” on the wrongdoer? This does not deter a wrong it continues a cycle of violence in a volatile prison environment.

106. 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. 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

³⁵ The Honourable Chief Justice Ivor Archie in the Foreword to the Republic of Trinidad and Tobago Sentencing Handbook (2010).

³⁶ See “The Structure of Aggravated and Exemplary damages” by Allan Beaver.

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 re-tooling a traditionally empty award of exemplary damages with its proven ineffective track record as a deterrent?

Previous admonishment-crying in vain

107. Our Courts have repeatedly admonished the State in the oppressive and unconstitutional action by the police/prison officers in the prison service.³⁷ As far back as 1994, the Courts have underscored the need to be aware of the power entrusted to officers and the correct use of that power. In **Stephen Singh v The Attorney General** H.C.A. 3031 of 1994, Sinanan J (as he then was) noted at paragraph 29:

“Police officers must be made to understand that the powers that are entrusted to them are held in trust for the citizens of this country and they must exercise these powers for the benefit of their fellow citizens and not against them. What has occurred here is a brutal breach of trust.”

108. In the case of **Mustapha Ghanny v The AG** CV2015-01921 Rajkumar J (as he then was) noted at para 114 that:

“...it is the court’s duty to set an award of exemplary damages in an amount that may give pause to officers contemplating such abuse in future, and to their employers who do not take steps to hold such officers accountable.”

109. See also Chief Justice de la Bastide in **Thaddeus Bernard v Nixie Quashie** CA No 159 of 1992³⁸. Recently, that is over the last seven (7) years, exemplary damages have been

³⁷ Paragraph 39 of **Deryck Warner v Assistant Superintendent Clarke and The Attorney General of Trinidad and Tobago** CV2014-00542

³⁸ Bereaux JA in **The Attorney General v Anino Garcia** CA Civ 86/2011 noted at paragraph 107: “In closing, I wish to refer briefly on some of the comments of the judge in respect of violence meted out to prisoners in our prison system. It is a matter which concerns us as jurists and as citizens of Trinidad and Tobago. Such violence has, in deserving cases, rightly drawn criticism from our judges and appropriate awards made for breaches of the civil rights of several persons who are incarcerated. In many instances it is not enough. Disciplinary action should also have been taken.”

utilised by the Courts to “send a message of deterrence”. Justice Rajkumar, as he then was, however observed that the use of exemplary awards as a deterrent are ineffective. His observations in **Emraan Ali v The Attorney General of Trinidad and Tobago** CV2012-02695 are worth repeating:

“182. While various courts have been sending the message of condemnation while exercising moderation in the awards for exemplary damages the message is clearly not resulting in deterrence of such conduct by servants or agents of the State. In fact it appears to have been ineffective in deterring such conduct.

183. The approach of marginally and incrementally increasing the awards for exemplary damages appears to have been ineffective in sending the message, if it even needs to be sent, that such conduct is an abuse of power, is unlawful and oppressive, and will entitle the victims, if they survive, to substantial compensation.

184. It may be that the emphasis on moderation is being misconstrued as a mere slap on the wrist, resulting in recurrences.

185. The fact is that the pronouncements by the courts set out above appear to have been ineffective in preventing the repetition of behaviour similar to that here complained of, and allegations of assault at the hands of servants or agents of the State continue to be made.

186. Further the signals from the courts via awards of exemplary damages at previous levels have been ignored. The Court has a discretion with regard to the quantum of an award of exemplary damages. The courts are not unmindful of the fact that police officers have to face dangers in a real world environment. The recognition and enforcement of protection of citizens’ rights is not based on any artificial view of those conditions, nor tainted by any form of sentimentality. However this is no justification for behaviour such as has occurred here, where a citizen is subjected to arbitrary and excessive brutality, at the whim of those entrusted to protect and serve.

187. Failure to condemn such behaviour in the strongest possible terms amounts to countenancing and condoning it. This is incompatible with the duty of courts in a civilized

country which subscribes to the recognition, protection and enforcement of basic standards of treatment of its citizens.

188. In those circumstances it is the courts' duty to set an award of exemplary damages in an amount that may give pause to prison officers contemplating such abuse in future, and to their employers who do not take steps to hold such prison officers accountable.

189. If the mechanism of moderate awards of exemplary damages is ineffective, then increasing the strength of that signal by increasing the quantum awarded as the exemplary component of such award may be required.”³⁹

110. See also Rajkumar J's similar complaint in **Goring v AG** and **Mustapha Ghanny v AG**. The response in those cases was to increase a traditionally conservative award to \$100,000.00. However in light of repeated outrageous acts of violence by prison officers of the State, it drives home the point, how high should awards go to “send a message”.

111. In **Sean Wallace v The Attorney General of Trinidad and Tobago** CV2008-04009, Justice des Vignes, as he then was, also noted the following at paragraph 48:

“Notwithstanding these strongly worded condemnations and the award of exemplary damages, it appears to this Court that the message is not getting through to the rank and file of officers who are entrusted with the responsibilities of police officers or prison officers. The uncontroverted evidence of the Claimant in this matter paints a disgusting picture of depraved and inhuman treatment of the Claimant. No explanation has been given to this Court for the conduct of these officers and although the State had ample opportunity to put in a defence, they failed to do so. In fact, when I enquired of Counsel for the A.G. whether or not he had yet received instructions on this incident from the Prison Authority, he advised me that as at 24th June 2009, an investigation had not yet been conducted. This suggests to me that this incident is either considered unimportant or at least very low on the priority list of the Commissioner of Prisons. It is not surprising, therefore, to find that the abuses continue unabated because apparently the sharp criticisms of the several Courts

³⁹ **Emraan Ali v The Attorney General of Trinidad and Tobago** CV2012-02695, paragraphs 182-189

have fallen on deaf ears. This Court wishes to add its voice to the chorus of Judges who have clamoured against such barbaric behaviour as occurred in this matter and for action to be taken against the offending officers to discipline them for their vicious and unwarranted brutalization of the Claimant.”

112. Des Vignes J, as he then was, is right. A monetary award is an ineffective mechanism to “send a message”. Of course noting the dubious fact that the tax payers become the unwitting victim in this scheme of damages having to dole out damages when they have committed no wrong complicates the concept of “sending the message” or punishment. Over the years a review of our judgments in awards of exemplary damages against the State demonstrate that taxpayers have had to pay a total sum of \$450,000.00 in exemplary damages in these types of cases.⁴⁰ It is an inelegant and brutish method of sending a message. Perhaps it is the Court’s hope that by imposing such burdens on the taxpayer that they will make increasing demands on the Executive for change. But hope springs eternal.

113. Courts have further lamented the fact that the State Liabilities and Proceedings Act Chapter 8:02 provides an effective force field for the wanton abuse by the few errant prison officers of the State.

A purposive approach- A “just response”

114. Undoubtedly the case law on exemplary damages has demonstrated that its award is an exercise of the Court’s discretion. Lord Nicholls in **A v Botrill** [2002] UKPC 44 recognised the Court’s discretionary jurisdiction to make their awards in all cases of tortious wrongdoing where the conduct satisfies the criterion of “outrageousness”.

⁴⁰ **Lester Pitman v The Attorney General** CV2009-00638, **Hakim Brathwaite v The Attorney General** HC 3485/2009, **Lincoln Marshall v The Attorney General** CV2009-03274, **David Abraham v The Attorney General** CV2009-00635, **Sean Wallace v The Attorney General** CV2008-04009, **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.

115. 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.

116. Since 2011, Courts have been trying to focus on “a just response” to deter the offensive conduct which is the subject of the award of exemplary damages by using other creative mechanisms. In **Morris Kenny v The Attorney General of Trinidad and Tobago** H.C.T.62/1997 and **Sean Wallace v The Attorney General of Trinidad and Tobago**, the Court in addition to awarding exemplary damages ordered that the judgment were to be referred to the Registrar for onward transmission to the Commissioner of Prisons. Des Vignes J, as he then was, stated in paragraph 73 of **Sean Wallace v The Attorney General of Trinidad and Tobago**:

“73. In the light of the critical remarks made herein concerning the reprehensible conduct of the officers towards the Claimant and the apparent failure of the relevant authorities to properly investigate and take action against the offenders, I have decided to direct the Registrar of the Supreme Court to send a copy of this judgment to the Commissioner of Prisons and to the Director of Public Prosecutions for such investigation and further action as they see fit.”

117. In **Martin Reid v The Attorney General & Ors.** CV 2006-02496 Jones J (as she then was) recommended that rather than the tax payers being required to pay awards in such matters that in certain cases the prison officers involved should be made to pay the damages awarded.

118. Strong words were used again by Rajkumar J, as he then was, in **Ijah Oba Brathwaite v The Attorney General of Trinidad and Tobago** CV2010-04502 in examining the responsibility of the prison authorities to make the necessary changes for the sake of the administration of justice. At paragraph 133-138 he noted:

“133. The time for accountability in relation to such incidents has long passed. There are many incidents like this one where findings have been made that excessive force has been used against inmates of prisons. The courts award damages. In some cases the courts award

aggravated or exemplary damages. Presumably the damages are paid. But the incidents do not cease. Remarks made by the courts in several such matters appear to have been ignored, and there is every indication, from the repetition of like incidents, that the perpetrators face no consequences.

134. It is recognized that the prison environment poses dangers to prison officers. They may have to use force to defend themselves. However in the circumstances of this case nothing in law permitted the use of excessive force to the point where an unarmed inmate sustained inter alia, three 3 broken ribs and contusions to the kidney.

135. Failure to act upon findings of a court that servants or agents of the state are acting in an unlawful manner has implications for every citizen of this country. If servants of the State are permitted to act unlawfully, with impunity and without consequences, then it should come as no surprise when unlawful actions are repeated.

136. Accountability is a critical and fundamental feature of democracy. The office of the Attorney General has a role to play in ensuring that accountability, a duty that continues after the delivery of judgment.

137. The delivery of judgment in matters like these cannot be seen as a merely academic exercise. Though the Attorney General is the nominal defendant in matters like these, that office has a duty when decisions and findings are made in relation to officers, including prison officers, to convey the findings and decisions of the courts, including any recommendation made therein.

138. Its duty does not stop at the delivery of judgment. It must communicate to the necessary named officials and their supervisors the findings of the courts, whether at this level or on appeal, so that remedial action can be taken and persons held accountable.”

119. In **Aron Torres v Point Lisas Industrial Port Development Corporation Limited** the Court of Appeal explored the concept of the “just response” by the use of exemplary damages in the law of contract noting that in the exceptional case of outrageous behaviour there is the need “to convey to the tortfeasor and the general society that the law cannot be broken with

impunity and to vindicate the strength of the law...⁴¹ Mendonca JA clearly elucidated in **Aron Torres Point Lisas Industrial Port Development Corporation Limited** the ability of the Court to expand the limits of awards of exemplary damages along public policy lines.

120. In this respect, exemplary damages awards are underpinned by a larger social and public policy justification. Equally, in that respect, any payment to the Claimant who is already adequately compensated by an award of damages and aggravated damages, an award of exemplary damages marks a windfall.

121. In the face therefore of the recognition by the Courts explained above that the **Rookes v Barnard** award to the Claimant of an extra sum in exemplary damages is serving no useful purpose in deterring the conduct under review in this case of the illegal use of force. Further, in light of Judges' attempt to find creative means to satisfy this principle of deterrence by either commenting that the offending officer should pay or by sending "judicial messages" to the Commissioner of Prisons and the DPP and the creative expansion of the jurisdiction of the Courts ability to award exemplary damages. This is a fitting case to again re-examine the use of exemplary awards to perform the "just response" of deterrence and vindicating the rule of law.

122. This forces the Court to now examine a more creative use of the exemplary damages award that is more fit for its purpose as "a just response". To this end, the Defendant's submissions have been extremely helpful in answering the Claimants' question of what can be done to deal with a recurring problem of prison violence.

123. The Defendants make it very clear that an exemplary award must be the minimum necessary to achieve its purpose of punishment. See **John v Mirror Group Newspaper Limited** [1997] QB 586. One method of stopping short of "over punishing" the Defendant is to assess a single sum for exemplary damages and divide it amongst the number of successful Claimants where there are multiple Claimants. Authority for such a position is found in the

⁴¹ **Aron Torres v Point Lisas Industrial Port Development Corporation Limited** Civil Appeal No. 84 of 2005, paragraph 43.

review of cases by the Irish Law Commission in its report “Aggravated Exemplary and Restitutionary Damages Report [2000] IELRC 60:

“2.078

In the US case of *Roginsky v Richardson Merrill*, it was further suggested by the court that a single award of punitive damages could be made and then held by the court for later distribution amongst all successful plaintiffs.

(ii) English law

2.079

In recent years, the English courts have developed mechanisms for the regulation of group actions, where a large number of plaintiffs claim in damages against a single defendant. *AB v South West Water Services* was a group action involving 180 plaintiffs, claiming in exemplary damages against a single defendant. In that case, it was held by the English Court of Appeal that the large numbers of plaintiffs involved in the case precluded an exemplary award. Stuart-Smith LJ in his judgment referred to the great difficulties involved in multiple plaintiff exemplary damages cases:

“There is however one aspect of the case which in my view makes it peculiarly unsuitable for an award of exemplary damages ... and that is the number of plaintiffs. Unless all their claims are quantified by the court at the same time, how is the court to fix and apportion the punitive element of the damages? Should the court fix a global sum of £x and divide it by 180, equally among all the plaintiffs? Or should it be divided according to the gravity of the personal injury suffered? Some plaintiffs may have been affected by the alleged oppressive, arbitrary, arrogant and high handed behaviour, others not. If the assessment is made separately at different times for different plaintiffs, how is the court to know that the overall punishment is appropriate?”

2.080

The courts have also, on occasion, referred to the problems associated with multiple plaintiff exemplary damages cases as an argument against the award of exemplary damages at all. In *Riches v Newsgroup Newspapers* Stevenson LJ thought that the difficulty of apportionment between multiple plaintiffs “furnishe[d] yet another complication engendered by the survival of the right to exemplary damages and another argument in favour of abolishing the right.”

2.081

The option for reform favoured by the English Law Commission is as follows: that a single punitive damages award could be made in the first case that comes to court; that the whole of this should be awarded to the plaintiff in that case, and that subsequent plaintiffs could then recover in compensatory damages only. This approach has the virtue of simplicity, and may be further justified on the grounds that the plaintiff taking the initial case has to go to a great deal of trouble, and take risks, especially financial risks, to bring the case to court. Once the first plaintiff has established liability, plaintiffs who take similar subsequent cases can 'piggyback' by relying on the facts established in the initial case. Because of the additional stress, work and risk involved, it is argued, the first plaintiff is most deserving of the exemplary damages award.

2.082

A further argument reinforcing a 'first past the post' approach is the 'windfall' argument mentioned already. An award of exemplary damages is made with reference to the conduct of the defendant, to punish and deter that conduct. It does not refer to the plaintiff's need for compensation or retribution. Therefore, the fact that one plaintiff receives the exemplary damages windfall and others do not is incidental. The single exemplary damages award only impinges on the rights of subsequent plaintiffs where it bankrupts the defendant and thus prevents the recovery of further compensatory awards.

2.083

The English Law Commission also points out that the apparent harshness of the rule can be mitigated to some extent if efforts are made to consolidate proceedings as much as possible by joining other plaintiffs in the first action. The Law Commission notes that courts retain a discretion as to whether to award exemplary damages. Therefore, if the court were concerned that an award of exemplary damages in the case before it would deprive a larger number of plaintiffs in a subsequent case of an exemplary award, it could simply exercise its discretion and refuse to award exemplary damages.

2.084

The English Law Commission also recommended a statutory provision to state that:

“if the court intends to award punitive damages to two or more multiple plaintiffs in the same proceedings, the aggregate amount awarded must be such that, while it may properly take account of the fact that the defendant has deliberately and outrageously disregarded the rights of more than one person, it does not punish the defendant excessively for his conduct.”⁴²

124. In the paper “Quantum Leap: How to be creative about claiming non pecuniary loss”, Mr Johnathan Wheeler noted that:

“In addition, with multiple claimants, only one award is appropriate and later aggregated between all claimants, although if the conduct has affected more than one claimant then that is likely to be taken into account in the size of the award. Again detailed guidance on this is given in Broome v Cassell. This of course assumes that all claimants are represented in the same action. We know that that does not always happen in our cases. There is no guidance about what happens in that situation, save that the Law Commission

⁴² See also Lord Denning’s judgment in **Broome v Cassell & Co Ltd and another** [1971] 2 All ER 187.

opines that “*the first past the post takes all*” and once exemplary damages are awarded for a wrong, such an award cannot be claimed by claimants in subsequent litigation.”

125. The problem of course in those cases of multiple Claimants is the Court’s inability to review the facts and circumstances of each and every single Claimant. It is akin to a principle of “first past the post wins all.” For this reason it is expedient and fair to award a single sum and apportion it amongst the Claimants. Such an approach is inapplicable to the facts of this case where even though the actions are all consolidated and this is now a claim of multiple Claimants, their injuries have all been assessed separately. There is in fact a detailed record of the actions of the prison officers in relation to each of these inmates. It would be wrong to amalgamate them all in one lump sum as though they were all beaten under one huge and heavy hand. There were identifiable and separate acts of wanton abuse which warrant equal admonishment for the Claimants as some measure of recompense satisfying that therapeutic key of vindication. They each deserve their separate vindication for such a brutal attack on themselves and equally the rule of law.

126. I accept however two meaningful aspects of the submissions of the Defendant. First, that the Court must be astute to the fact that an award of exemplary damages in this case is a burden on the public purse. In circumstances where the Defendant, the State is found liable to pay exemplary damages, the money paid to the benefit and windfall of the individual Claimant will not be available to finance the publicly beneficial activities of that Defendant. The result being that one gains at the expense of many. See The Law Commission for England and Wales in their Report No. 247, *Aggravated, Exemplary and Restitutionary Damages* (1997) Report paragraphs 1.1157-1.1160 and in **Thompson and Hsu v Commissioner of Police of the Metropolis** [1997] 2 All ER 762 at 776C.

127. In the paper *Punitive Damages- A View from England* (2004) 41San Diego Law Review 1551 it was noted that:

“The reason for the American distaste for punitive damages against public bodies is straightforward: as Blackmun J in the Supreme Court put it in the civil rights case of *City of Newport v. Fact Concerts, Inc.*, awards of this sort tend to “burden the very taxpayers and citizens for whose benefit the wrongdoer was being chastised”. Public

bodies have limited funds available to carry out their duties: and however strong the claim of those suffering damage as a result of maladministration, every dollar (or pound) paid out by way of punitive damages reduces the amount available for its legitimate purposes.

Moreover, even on a purely instrumental basis, it is a little hard to see what we gain by diverting funds from public services to a relatively undeserving plaintiff. The argument that county treasurers, or for that matter taxpayers, will thereby be encouraged to exercise more control over what is done in their name seems, to say the least, far-fetched. Nor does there seem much to be said, even in civil rights suits, for the symbolic value of massive awards against taxpayers generally.”

128. Second, what is however very instructive about the lump sum approach is the Court’s jurisdiction to make such awards as part of its inherent jurisdiction in arriving at a just award. In some instances, as recognised in **Roginsky** the award could be held by the Court for later distribution amongst the successful Claimants.

129. The mechanism for a split award of exemplary damages would see the Court holding a fund to be administered for the benefit of both the Claimants, Defendant and to third parties to fund programmes and activities which are relevant to the deterrence sought. Indeed it would fulfil the purpose as advocated by the Defendants to divert public funds to be used for the training of prison officers in order to prevent similar conduct from being repeated. In this way, both the Claimants and the Defendants can be satisfied that the award of exemplary damages is serving its useful purpose of both vindication and correction.

The Split Award

130. Significantly the concept of the split award was also extensively discussed in the Irish Report referred by the Defendant in its submissions. In paragraph 2.044- 2.046 it stated:

“2.044

Since the purpose of exemplary damages is not to compensate the plaintiff but (primarily) to punish the defendant for his misconduct, and to deter, in the future,

similar conduct by the defendant or others, such damages have a social and public policy justification, distinct from the need to compensate the plaintiff. Exemplary damages are imposed on behalf of society. They are awarded, over and above what is necessary to compensate the plaintiff, as a separate indication of society's abhorrence of the defendant's wrongdoing.

2.045

Therefore, it can be seen as contrary to principle that, when the plaintiff has received full compensation (including, where appropriate, aggravated damages) for the injury that has been done to him, any exemplary damages should also accrue to the plaintiff. For, in such a case, the plaintiff would secure a bonus or windfall profit perhaps far above that which was necessary, even on the most generous assessment, in order to compensate him. Yet this is exactly what happens under our present law. The issue which arises is, therefore, whether the law regarding exemplary damages should be amended in order to provide that exemplary damages – in whole or in part – should accrue not to the plaintiff, but should instead be applied for the benefit of some wider social purpose, so as to mirror, in the application of such damages, the social reason – the deterrence of the defendant's misconduct – for their exaction in the first place.

2.046

One may, of course, argue that once exemplary damages have been exacted, the social purpose of deterrence has been fulfilled and it is immaterial whether the plaintiff receives the benefit of them or whether they are applied for the benefit of some wider social cause. Since the plaintiff has taken the trouble to bring the case to court, has run the risk of failure, and has thereby done a measure of public service in deterring an incidence of socially harmful conduct, it could well be argued that he or she is the appropriate recipient of the exemplary award. Seen thus, the plaintiff's recovery of damages can be seen as a 'bounty' rather than a 'windfall'⁵⁵. But, where an award of exemplary damages occurs solely because of the conduct of the wrongdoer, no moral right to receive the damages would seem to vest in anyone, be it in the plaintiff or some charity or the State. The question therefore

becomes rather who is the most appropriate recipient. Before returning to answer this question in paras. 2.064–66, we explore some of the implications of a split recovery regime.”

131. 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 just award. The Irish Law Commission did not see the frequency of exemplary awards in that jurisdiction to warrant a change in legislation but left it to the development of the law to meet what the Commission clearly saw as salutary in principle. Quite apart from legislative enactment, Courts at least in the United States have recognised the inherent authority to allocate punitive damage awards 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.

132. 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.

133. 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 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.

134. This approach was applied in authorities of note. In **Smith v States General Life Insurance Company** 502 So.2d 1021 (1992) where in awarding punitive damages as a result of fraudulent representation regarding insurance coverage, the Court allocated half the award to the Claimant and the other half to the clerk of the Court to disburse a prorata amount of attorney fees and expense to the Claimant’s attorneys and disburse the remainder to the

allocation of the local affiliate of the American Heart Association. The Court noted the role of heart disease in the case and the lack of an existing fund directed at insurance fraud. In other cases against tobacco companies exemplary awards were paid into a fund to be disbursed to “No Smoking” campaigns.

135. It is evident that “split awards” in the deserving cases suitably gives life to the purpose of the exemplary award. It fulfils additionally a therapeutic element in the Claimants’ pursuit of justice. In **Fuller v Preferred Risk Life Insurance Company** 577 So.2d 878 (1991) Justice Shores noted at 886-887:

“I believe that much of the criticism surrounding the issue of punitive damages is due to the perception on the part of the public that punitive damages awards sometimes amount to an undeserved windfall to the prevailing plaintiff. I believe it is true that sometimes an award does constitute an undeserved windfall to the plaintiff, but this fact has no bearing on the question of whether the award exceeds an amount appropriate to punish the defendant for the wrong committed and to deter others from similar conduct in the future. These are the factors the trial court is required to consider on the defendant's claim that the verdict is large. If the court concludes that the amount is not so excessive as to deprive the defendant of his property in contravention of § 13, Ala. Constitution 1901, it nevertheless may also determine that it would be in the best interest of justice to require the plaintiff to accept less than all of the amount and to require the defendant to devote a part of the amount to such purposes as the court may determine would best serve the goals for which punitive damages are allowed in the first place: vindication of the public and deterrence to the defendant and to others who might commit similar wrongs in the future. In such cases, the court has the discretion to order the defendant to devote a portion or all of the amount to efforts to eliminate the conditions that caused the plaintiff's injury.

In my opinion, the court may also order the defendant to pay part of the award either to the state general fund or to some special fund that serves a public purpose or advances the cause of justice. In Florida, for example, by statute 60 percent of each punitive damages award goes to either the Public Medical Assistance Trust Fund or to the General

Revenue Fund, depending upon the type of case. A Colorado statute requires that one-third of each punitive damages award be paid into the state general fund. Illinois statutory law gives the trial judge discretion to allocate the punitive damages award among the plaintiff, the plaintiff's attorney, and the Department of Rehabilitation. An Iowa statute requires that 75 percent of each punitive damages award be paid to the state unless the defendant acted with specific intent to injure the plaintiff. A Georgia statute required that 75 percent of all punitive damages awarded in products liability cases be paid to the state; however, this Georgia statute has been ruled unconstitutional.

The states just referred to allocate punitive damages pursuant to statute. The courts, however, have inherent authority to allocate punitive damages, with jurisdiction over both plaintiff and defendant, by reducing the amount that the plaintiff is to receive to less than the full amount of the verdict, and directing the defendant to pay a part of a punitive damages award to the state general fund or any special fund devoted to the furtherance of justice on behalf of all the people. To do so in proper cases could serve the purpose for which punitive damages were authorized to a greater degree than would allowing the plaintiff to receive the entire amount. Because the plaintiff's action resulted in the award, the beneficiary of which is the general public, it follows that the plaintiff's attorney fees should be based upon the total verdict, and not the reduced amount paid to the plaintiff, since it is due to the attorney's efforts that the public interest has been served.

If the award is not reduced, of course, the plaintiff's attorney is entitled to an attorney fee based upon the original verdict as returned by the jury. Only if the verdict is reduced by an amount necessary to preserve the defendant's due process rights is the plaintiff's attorney fee to be determined based upon the reduced amount, that is, the amount necessary to serve the goals sought to be served by authorizing punitive verdicts, without offending the defendant's constitutional rights.”

136. In my view after considering these authorities the principles that ought to guide a Court in making such a split award should be as follows:

- a) The general object of the split award is to deter future acts of reprehensible conduct by rehabilitating the wrongdoer and to vindicate the rule of law.

- b) The establishment of a special fund should serve a wider public interest or advance the cause of justice in the particular case.
- c) The fund may treat with the particular acts of misconduct or the condition which gave rise to the Claimants' injury. Consideration should be given to whether the circumstances require a therapeutic or restorative purpose which will contribute materially to a reformation of the Defendant's conduct or to address a relevant deficiency which underlies it.
- d) The fund can be administered by the Court or such body such as an NGO or charity that will advance the objectives of the fund.
- e) The quantum of the award of exemplary damages will be assessed in the traditional way that is:
 - (i) The exemplary damages award should bear a reasonable relationship to the harm that has occurred from the Defendant's conduct.
 - (ii) The degree of reprehensibility of the conduct is relevant. The duration of conduct, the degree of awareness by the Defendant and any concealment or cover up of the existence and frequency of similar or past conduct are all relevant in determining this aspect of reprehensibility.
 - (iii) The financial position of the Defendant is relevant.
 - (iv) The moderation of the Court so as not to over punish the wrongdoer.
 - (v) Matters in aggravation and mitigation should be taken into account.
 - (vi) Proportionality as discussed in the judgment of Mendonca JA in **Torres** "A proper award must therefore look at proportionality in several dimensions. Some of these which can impact on the quantum of the award were identified to be: (1) proportionate to the blame worthiness of the Defendant's conduct; (2) proportionate to the degree of vulnerability of the claimant; (3) proportionate to the harm or potential harm directed

specifically at the claimant; (4) proportionate to the need for deterrence; (5) proportionate even after taking into account the other penalties both civil and criminal which have been or are likely to be inflicted on the Defendant for the same conduct; and (6) proportionate to the advantage wrongfully gained by the Defendant from the misconduct. Applying these dimensions of proportionality of the facts of this case I can say at the onset that on the evidence there are no other penalties likely to be inflicted on the Respondent. The other matters, however, require some consideration.

A suitable award

137. This is a fitting case to allocate a split award to ensure that the Defendant can begin the process of restoring calm in our prisons. It will address both the Claimants' need for vindication and the wider societal need to treat with the levels of violence in prison. 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 prison 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 should serve that wider social purpose. 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 in arriving at the appropriate sum. 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.

138. The Court will order the total sum in exemplary damages in the sum of \$250,000.00 that is \$50,000.00 shall be paid to each Claimant. One third (1/3) being the sum of \$83,333.00 which will be paid to the Claimants prorated equally.

The Prison Reform Fund

139. Two thirds (2/3) of the exemplary damages award being the sum of \$166,667.00 shall to be paid into Court as a “Prison Reform Fund” for programmes or NGO’s which will assist both inmates and prison officers in reducing the level of violence in the prisons. 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. Such programmes or NGO’s shall be submitted to the Court within three (3) months of the date of this order. The Court fund shall be used for such programmes to be approved by the Court. The parties shall assist the Court in making that determination. In default of filing those plans, the said sums paid into Court (\$166,667.00) shall be paid out prorated equally to each of the Claimants (\$33,333.00) in the following manner 50% of their individual entitlement 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.

Conclusion

140. 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. To prevent abuse “the use of force must be controlled through clear policies, meaningful and constant supervision of all use of force, timely and truthful reporting of all use of force, accurate and unbiased investigation into excessive use of force, consistent imposition of progressive and proportional discipline when excessive force is used”, restorative justice programmes to restore balance in the relationship between inmates and prison officers and to deescalate levels of hostility.

141. Prison officers face a demanding task and indeed in the pressures of their jobs the temptation to abuse their charges may be their only response to those stressful situations in prisons which house inmates who have committed violent crimes. Of course, overcrowding and inadequate facilities simply makes violence inevitable.

142. The Courts have repeatedly called for change in the approach to violence in the prisons. 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.

143. 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 to deal with 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.

144. 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”⁴³.

Vasheist Kokaram
Judge

⁴³ **A v Botrill** [2002] UKPC 44.