

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**PORT OF SPAIN**

**Claim No. CV2017–03276**

**IN THE MATTER OF AN APPLICATION FOR REDRESS PURSUANT TO SECTION 14 OF THE  
CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO FOR THE CONTINUING  
VIOLATION OF CERTAIN RIGHTS GUARANTEED UNDER SECTION 4**

**BETWEEN**

**SHARON ROOP**

**CLAIMANT**

**AND**

**THE ATTORNEY GENERAL OF**

**TRINIDAD AND TOBAGO**

**DEFENDANT**

**Before the Honourable Madame Justice Margaret Y. Mohammed**

**Date of delivery: November 26, 2019**

**APPEARANCES:**

Mr. Anand Ramlogan SC leads Mr. Alvin Pariagsingh, instructed by Mr. Che Dindial,  
Attorneys at law for the Claimant.

Ms. Tinuke Gibbons-Glenn, Mr. Stefan Jaikaran and Ms. Candice Alexander instructed by Ms.  
Svetlana Dass, Attorneys at law for the Defendant.

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## **JUDGMENT ASSESSMENT OF DAMAGES**

### **INTRODUCTION**

1. On 9 November 2018 I found that the Claimant’s constitutional right under section 4(h) of the Constitution of the Republic of Trinidad and Tobago (“the Constitution”) was infringed by the denial of her request to wear a hijab together with her official uniform while on duty as a police officer. I also declared that the Police Service Regulations, 2007 (“the Regulations”) is unconstitutional, invalid, null and void to the extent that it makes no provision for the wearing of the hijab. I ordered damages to be assessed.

### **THE COURT’S JURISDICTION**

2. Section 14(1) of the Constitution confers unto the Court a wide power of redress for contraventions of the fundamental rights and freedoms. The Privy Council in **Oswald Alleyne and others v Attorney General of Trinidad and Tobago**<sup>1</sup> recognized that the form of redress includes an injunction, declaration, a monetary award or a combination of remedies.
3. The Claimant seeks both compensatory (inclusive of aggravated damages) and vindictory damages. In the local Court of Appeal judgment of **The Attorney General of Trinidad and Tobago v Selwyn Dillon**<sup>2</sup> the Court of Appeal cited with approval the following summary from Rampersad J regarding the applicable principles for the assessment of damages for constitutional breaches:

“[20.] Rampersad J., at paragraph 53 of his judgment, carefully, correctly and comprehensively set out the evolution of the law and principles governing the consideration and assessment of damages for constitutional breaches. There is therefore no need to rehearse this history or the relevant authorities in this judgment. The main points in summary are as follows: (1) the award of damages is discretionary; (2) the nature of any award of damages is always with the intention and purpose of upholding and/or vindicating the constitutional right(s) infringed and in furtherance of effective redress and relief for the breaches; (3) whether an award of damages is to be made depends on

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<sup>1</sup> [2015] UKPC 3 at paragraph 38

<sup>2</sup> CA Civ P. 245/2012

the circumstances of the case, including consideration whether a declaration alone is sufficient to vindicate the right(s) infringed and whether the person wronged has suffered damage; (4) in determining the sufficiency of a declaration and/or the need for damages, the effect(s) of the breach on the party seeking relief is a relevant and material consideration; (5) compensation can thus perform two functions - redress for the *in personam* damage suffered and vindication of the constitutional right(s) infringed; (6) compensation *per se* is to be assessed according to the ordinary settled legal principles, taking into account all relevant facts and circumstances, including any aggravating factors; (7) in addition to compensation *per se*, an additional monetary award may also need to be made in order to fully vindicate the infringed right(s) and to grant effective redress and relief; (8) such an additional award is justified based on the fact that what has been infringed is a constitutional right, which adds an extra dimension to the wrong, and the additional award represents what may be needed to reflect the sense of public outrage at the wrongdoing, emphasize the importance of the constitutional right and the gravity of the breach, and/or to deter further similar breaches; (9) the purpose of this additional award remains, as with compensation, the vindication of the right(s) infringed and the granting of effective relief and redress as required by section 14 of the Constitution, and not punish the offending party; and (10) care must be taken to avoid double compensation, as compensation *per se* can also take into account similar considerations, including relevant aggravating factors and is also intended to uphold and/or vindicate the right(s) infringed.”

4. The Privy Council decision in the land mark case of **The Attorney General of Trinidad and Tobago v Ramanooop**<sup>3</sup> at paragraphs 17-19 explained the difference between

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<sup>3</sup> PC Appeal No 13 of 2004

compensatory and vindictory damages under section 14 of the Constitution. The Court stated:

“17. Their Lordships view the matter as follows. Section 14 recognises and affirms the court’s power to award remedies for contravention of chapter I rights and freedoms. This jurisdiction is an integral part of the protection chapter I of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state’s violation of a constitutional right. This jurisdiction is separate from and additional to (“without prejudice to”) all other remedial jurisdiction of the court.

18. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award.

“Redress” in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense is not its object. Accordingly, the expressions “punitive damages” or “exemplary damages” are better avoided as descriptions of this type of additional award.” (Emphasis added)

5. In **Alphie Subiah v the Attorney General of Trinidad and Tobago**<sup>4</sup> Lord Bingham described the approach the Court should take in making the award of compensatory damages under section 14 of the Constitution at paragraph 11 as:

“11. The Board’s decisions in *Ramanoop*, paras 17-20, and *Merson*, para 18, leave no room for doubt on a number of points central to the resolution of cases such as the present. The Constitution is of (literally) fundamental importance in states such as Trinidad and Tobago and (in *Merson*’s case), the Bahamas. Those who suffer violations of their constitutional rights may apply to the court for redress, the jurisdiction to grant which is an essential element in the protection intended to be afforded by the Constitution against the misuse of power by the state or its agents. Such redress may, in some cases, be afforded by public judicial recognition of the constitutional right and its violation. But ordinarily, and certainly in cases such as the present (and those of *Ramanoop*, and *Merson*, and other cases cited), constitutional redress will include an award of damages to compensate the victim. Such compensation will be assessed on ordinary principles as settled in the local jurisdiction, taking account of all the relevant facts and circumstances of the particular case and the particular victim. Thus the sum assessed as compensation will take account of whatever aggravating features there may be in the case, although it is not necessary and not usually desirable (contrary to the practice commended by the Court of Appeal of England and Wales for directing juries in *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498, 516 D-E) for the

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<sup>4</sup> [2008] UKPC 47

allowance for aggravated damages to be separately identified. Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that sum affords the victim adequate redress or whether an additional award should be made to vindicate the victim's constitutional right. The answer is likely to be influenced by the quantum of the compensatory award, as also by the gravity of the constitutional violation in question to the extent that this is not already reflected in the compensatory award. As emphasised in Merson, however, the purpose of such additional award is not to punish but to vindicate the right of the victim to carry on his or her life free from unjustified executive interference, mistreatment or oppression." (Emphasis added)

#### **THE PARTIES' POSITION**

6. It was submitted on behalf of the Claimant that she should be compensated for the emotional distress, pain, anguish and severe inconvenience, she was forced to undergo as result of the prolonged and systemic discrimination in the Police Service. Her pain and suffering was aggravated by the stoic and at times brutal disregard of her rights as evidenced by the victimization and smear campaign that was designed to silence her legitimate quest for equality and respect. The conduct of Sergeant Nawal ("Sgt Nawal") and Woman Sergeant of Police Phillips ("WSP Phillips") were particularly egregious and added insult to injury. Senior Counsel also argued that the Claimant became frustrated and depressed and had to seek counselling from Imam Abraar Alli ("Imam Alli") for her depression, sleepless nights and constant anxiety.
7. With respect to the claim for vindicatory damages, Senior Counsel for the Claimant contended that apart from compensatory damages which must take into account the aggravating factors, this is an appropriate case for an award of vindicatory damages since the need for vindicating the constitutional right and the rule of law is also of paramount importance in the instant matter. In the circumstances, it was submitted on behalf of the Claimant that the Court should award the sum of \$200,000.00 to \$250,000.00 for compensatory damages (including aggravating damages) and \$300,000.00 to \$350,000.00 for vindicatory damages.

8. Counsel for the Defendant argued that any award of compensation to the Claimant must be fact dependent and while the amount need not be a nominal sum, it must be no more than is necessary to give recognition to the value and importance of the Claimant's constitutional rights and "emotional distress, pain, anguish and severe inconvenience" caused by the denial.
9. Counsel also argued that there is no need to invite the Court to exercise its power to make an award for vindictory damages for three reasons namely (a) there has been no continued unjustified executive interference, mistreatment or oppression by the Defendant upon the Claimant as the Claimant was allowed to wear her hijab immediately after the Order of this Court; (b) the deterrence of further breaches and the need to reflect the sense of public outrage in this matter are not prominent elements for considering an additional award because there are still Muslim female officers in the Police Service who have chosen not to wear the hijab; and (c) in some cases, declarations alone were viewed as sufficient for vindication of the rights breached.
10. For the aforesaid reasons Counsel for the Defendant submitted that the Claimant's submissions contained speculative figures for compensatory damages and vindictory damages (in the sum of \$250,000.00 and \$350,000.00 respectively) since there was no reasons and little assistance provided to prove such loss.

#### **THE EVIDENCE**

11. The Claimant stated that as a child she followed the teachings of Islam that were taught by her grandmother and she attended the Masjid with her. She said that she always remained part of the Islamic faith and revered the principles upon which it is based and tried to live her life according to the teachings of Islam which she knew. She started studying the Qur'an and attending the Masjid regularly and sought guidance on how she should live her life as a Muslim woman. She had officially taken Shahada, which is the Islamic equivalent of baptism.
12. According to the Claimant, the Qur'an and the Hadiths, which are the traditions or teachings of the Prophet Muhammad (PBUH) impart that the wearing of the hijab is



an act of modesty which is mandated for all Muslim women. The verses or ayahs of Surat Al-Ahzab and Surat An-Noor espouse that from preserving modesty, the wearing of the hijab is an act of devotion to Allah subhanahu wa ta'ala and it is a religious obligation which a woman has to undertake. As a Muslim woman, Sunnah or the behavioural norms which she is obligated to follow include the wearing of the hijab.

13. The Claimant also stated that approximately three years ago, having learnt more about the religious significance, meaning and importance of the hijab, she began covering herself and wearing the hijab at all times. She also immediately raised the issue with her superiors in the Trinidad and Tobago Police Service ("TTPS") as she was desirous of observing her religious practices at all times, including whilst she is on duty. She said that she had been taught by the religious leaders that there is no exemption from wearing the hijab for Muslim women who are truly practicing the faith.
14. According to the Claimant, her immediate superiors were very supportive when she raised the issue with them and encouraged her to write to the Commissioner of Police and seek approval. On 30 September 2015 she wrote a memorandum to the Commissioner of Police seeking permission to wear the hijab with her uniform. In the said memorandum, she outlined the religious significance of the hijab to him and included samples of the headscarf type covering which she proposed to wear. She included a picture of herself in a hijab which matched and looked very professional with the TTPS uniform so that the Commissioner of Police would be able to visualise the manner in which she proposed to wear the uniform. She also included research material which she had gathered to demonstrate to the Commissioner of Police that the wearing of the hijab by law enforcement officers was an accepted practice in various countries which are not Islamic countries but which are free and democratic societies, such as the United Kingdom and Canada. This aspect of the Claimant's evidence was not challenged in cross-examination.
15. Based on the Claimant's evidence, the wearing of the hijab is part of her expression and practice of her religious observances as a Muslim woman who has taken Shahada.

16. At paragraphs 11, 13 and 14 of the Claimant's affidavit filed on 14 September 2017, the Claimant described the effect of Shahada on her and how she felt when she could not wear the hijab with her uniform. She stated:

"11. Since I took Shahada, my life has changed and I am committed to the practice of Islam and to observing all the religious practices. However, when I am on duty I am prevented from truly practicing my religion and following its teachings because I am not allowed to wear the hijab. I am forced to remove my headscarf before exiting my vehicle on the police station compound and throughout the day, I am left feeling naked, exposed and ashamed because I am forced to disobey the religious instructions which I have received...

13. I also feel like a fraud to my children as I have preached the tenets of Islam to them and encouraged them to strictly adhere to these teaching, but yet I am not observing an important aspect of the religion because of my job. My greatest desire is to set the right example for my children. Since we all took *Shahada* they have been more disciplined and industrious. I also want to be an exemplar to other women in law enforcement, to show them that careers in the protective services are being forced to choose between practicing my religion and being a member of the TTPS. On the one hand, I love my job and I have been a committed officer for almost 8 years. Being a single parent it would be very difficult for me to abandon a stable job, especially in these tough economic times.

14. On the other hand, having to remove my hijab when I arrive at work has caused me great anxiety and stress. During the day, while I am on duty I feel uneasy and I am always nervous about being seen by someone from the Masjid. As soon as I am able to get out of the station immediately cover myself and I feel relieved, but the relief is short lived as I know that as soon as I return to work on my next shift I will again be forced to remove my hijab. The situation has caused me such immense mental anguish that I began experiencing anxiety and had trouble sleeping and functioning normally both

at work and at home. It became so bad that I decided to see the police psychologist in order to try to cope with the stress.”

17. This aspect of the Claimant’s evidence was also not challenged. Based on the Claimant’s unchallenged evidence, she is a devout practicing Muslim woman and her religious belief as a Muslim posed a unique challenge with her livelihood of being a police officer, as the hijab is mandatory for her religion, but was not accepted in her profession. This caused an extreme internal conflict, where work and religion are not cohesive, and the disobedience of either demands are serious.

18. The Claimant’s witness Imam Alli corroborated the Claimant’s evidence on her obligation as part of her religious belief. Imam Alli stated his credentials at paragraphs 3 to 9 of his affidavit filed on 28 September 2017 as:

“3. I am an Assistant *Imam* at the Nur-e-Islam Jamaat in El Socorro. I am a *Mufti*, which is an expert in Islamic legal matters who is permitted to give rulings on Islamic issues, such as marriage, divorce, prayer, business and trade. The role of the Mufti is to use their education and training in Islamic law to interpret the law and provide guidance to followers of Islam, or render an opinion on a matter that touches and concerns the interpretation of Islamic law and tradition. This is known as a *fatwah*.

4. I am the head of Islamic and Arabic Education at Nur-e-Islam and Principal of *Maktab* (Islamic primary level educational system) and *Madrassa* (primary plus level Islamic education) at this Jamaat.

5. I am also the Founder, Chairman and Director of Al-Ihsaan Institute, an Islamic educational institute which provides primary level education and offers courses in Arabic, *Hifdh* (or memorization of the Qu’ran) and introductory courses for beginners or newcomers to Islam.

6. I was a student of the Islamic Dawah Academy Jame’ah Riyadul Uloom based in Leicester in the United Kingdom from 2004 to 2010 where I completed the *Alimiyyah* course. As ‘*Alim*’ I was educated in Islamic theology and jurisprudence. The objective of the course was

gain in depth understanding of the meaning, interpretation and application of the Holy Qu'ran and other sources of Islamic knowledge.

7. I was educated in Arabic as well as the key sciences of *Fiqh* (Islamic jurisprudence) Hadith (traditions of the Prophet) and *Tafsir* (exegesis of the Holy Qur'an). Through my studies, I have acquired a better understanding of the how Islamic law is derived from the Holy texts and how they are applied to individuals and mankind as a whole.
  8. I also completed the *Ifta* course at *Jamiatul Ilm Wal Huda* in Blackburn in the United Kingdom between 2010 and 2012 in which I was educated in various subject areas such as charity, purity, pilgrimage, inheritance and women's issues.
  9. In each of the courses I completed I acquired *Ijazah*, which is like a license or authorization from learned Islamic Scholars from various countries indicating that I had acquired knowledge from them and was authorised to disseminate same. True copies of some of my certificates are hereto attached as "**A.A.1**".
19. Imam Alli, whose credentials as an Islamic scholar have not been challenged by the Defendant, described the customs and practices of women who profess to follow the teachings of the Islamic faith at paragraphs 11 to 16 of his affidavit as:
- "11. I learnt then that the Claimant was a police officer and was struggling with the issue of wanting to comply with the teachings of the Qur'an and the Prophet Mohammed which she had been taught. I learnt that she had taken *Shahada* which is the first of the five pillars of Islam and involves the recitation of a profession of faith before a minimum of two other Muslims. The *Shahada* – "*La ilaha illa Allah Muhammadur rasul Allah*" – is an expression of two fundamental beliefs that make a person a Muslim; that there is no God but Allah and Mohammed is the servant and messenger of Allah.

12. A person who takes *Shahada* must accept the laws of Allah *subhanahu wa ta'ala* and submit their life to the commandments of Almighty Allah *subhanahu wa ta'ala* which are found in the Holy Qur'an and the Sunnah, the customs and practices of people who profess the Islamic faith. This would include wearing the Hijab, which is one of the requirements of the dress code for Muslim women.
13. In the Qur'an, the direct commandment for post-pubescent women to cover their hair and neck is found in *Surat An-Noor, ayah 31* which says:

*“And tell the believing women to reduce of their vision and guard their private parts and not expose their adornment except that which necessarily appears thereof and to wrap a portion of their khumur over their juyub and not expose their adornment except to their husbands, their father ...”*
14. Firstly, the verse is directed to all “believing women” which means that the commandment is directed to all women who take *Shahada* and profess the Muslim faith. Islamic scholars around the world agree that the phrase “*was laa yubdina zenatahunna illa ma dhahara minha*” means that everything must be covered except for what must ordinarily appear to carry out daily affairs in public; that is, the face and hands. Throughout history, it has been agreed among various scholars that the covering of the hair is *fard* – meaning that it is a religious obligation or command directly from Almighty Allah.
15. The part of the scripture which is translated as “*to wrap a portion of their khumur over their juyub and not expose their adornment*” must be interpreted with reference to the historical context. At the time, *khumur* were the cloths that were draped over the top of the head and allowed to hang downwards. Women at that time, in various religions and cultures, were already covering their hair and the commandment was therefore for them to continue doing so, but additionally to wrap the *Khumur* over their ‘*juyub*’ which is the opening to the front of a

dress, referred to as the bosom area. The commandment was meant to ensure that their ears, neck and chest were no longer exposed, but were covered along with the hair. This is just one of the many sources from which the obligation to wear the Hijab is derived.

16. It should be noted that it is the unanimous view held by all mainstream Muslim scholars and the four schools of Islamic code and law, namely *Hanafi Madhab, Maliki Madhab, Shafi' Madhab* and the *Hanbali Madhab*, that it is compulsory for all Muslim women to wear the hijab. This fact has been mentioned in the hundreds of codified Islamic law books throughout the history of Islam and has been the undivided view of Islamic scholars for over 1438 years. Furthermore the covering of the head and/or hair is also the recognized form of dress of the pious women of our previous prophets and the people of the past, the likes of Ibrahim, Moses, Mary & Jesus.”

20. Imam Alli also described at paragraphs 17 and 18 the challenges the Claimant told him she experienced when she was not wearing the hijab at work. He stated:

“17. The claimant expressed grave concern to me about the impact that not wearing the hijab was having on her, both mentally and spiritually. In the course of counselling her, I observed first-hand her devotion and commitment to the practice of Islam and her passion to fulfil her religious obligation. It became evident that she was experiencing mental strain and anguish as a result of having to remove the hijab when she was at work. She expressed to me that, but for the financial constraints which she faced as a single parent of two children, she would have considered leaving her job. On the other hand however, she conveyed that she was truly passionate about the work that she did as a police officer, how much she was able to learn and excel in the field of law enforcement and how much she enjoyed helping people in the course of Police Service and she was apparently torn between the desire to fulfil her religious obligations and her career aspirations.

18. A Muslim woman who has to remove her hijab in public equates to a conservative, modest, non-Muslim woman being told to strip naked and carry on her daily life in front of lurking, ill-intentional men. I discussed with the Claimant the implications of not conforming with the dress code prescribed by Almighty Allah and the great injustice that was being done to her spirituality. I informed her that God gave orders that we can follow, and it is not beneficial to a follower of Islam or society as a whole for anyone to reject, or be forced to reject that which has been ordained by the Creator and instead follow the pathway of one's whims or the desires of Satan."

21. His evidence was not challenged and the Defendant did not call any witness to provide an alternative view.
22. There were 5 specific matters which Claimant stated caused her pain, suffering and humiliation to be aggravated namely (a) the failure by the Women's Police Bureau ("the WPB") to advocate this cause on behalf of the Claimant; (b) an incident on the International Day for Women; (c) Sgt Nawal allegedly victimizing the Claimant; (d) Senior Superintendent McIntyre ("Superintendent McIntyre") attempted to transfer her and (e) the Claimant felt that she was singled out as a Muslim woman while other police officers were permitted to wear religious symbols. The Defendant has taken issue with the Claimant's version of the aforesaid matters.

### **First Incident**

23. The Claimant testified that she approached the WBP to seek advice and assistance on her request to wear the hijab with her police uniform since she was of the view that they would have advocated on her behalf. Instead she was turned away and told that she could be disciplined and even prosecuted for not wearing the uniform as prescribed. According to the Claimant, the Woman Police Officer in charge also declined to assist her in getting permission to wear darker coloured stockings to cover her legs. The Woman Police Officer in charge told her that trying to be more covered by wearing the night uniform while on duty during the day was a breach of the Regulations and instructed her to desist from doing so immediately. The Claimant stated that she was very disheartened and discouraged by this response as no one

seemed to understand the emotional and psychological impact of being forced to disobey her religion.

24. In cross-examination the Claimant stated that she approached the WPB a short while after taking the Shahada and embracing Islam. She was unable to recall the name of the female officer who was in charge of the WPB who turned her away and told her that she can be disciplined. She stated that the same female officer had told her that trying to be more covered by wearing the night uniform while on duty during the day was a breach of the Regulations. According to the Claimant, the night uniform consists of a long sleeve shirt and long trousers that females wear. The daytime uniform is a skirt just below the knees and a short sleeved shirt. The Claimant stated that she wanted to wear the long sleeve shirt in the day. She testified at present she wears the long sleeve shirt while at work during the day and at night.

25. The Defendant did not produce any witness to challenge the aforesaid allegations made by the Claimant.

### **Second Incident**

26. The second incident was on International Women's Day on 8 March 2016. According to the Claimant, a telephone message was sent to the station inviting all women police to attend a programme. She was off duty and attended in wearing business attire and a hijab. One of the activities organised as part of the observance of International Women's Day was a walk to Busy Corner in Chaguanas where woman police officers would be allowed to speak to and interact with public. She stated that WSP Phillip stopped her in the presence of other officers and civilians and told her that she could not take part in the activities because of her attire. She testified that all other off duty women police officers attended the event in civilian clothing, with some in very casual wear. She stated that she was told by WSP Phillip that because of the hijab, which officers are not allowed to wear on duty, she would not be allowed to participate.



27. According to the Claimant, Sgt. Nawal who was in charge of the Chaguanas Police Station at the time asked to see her. He proceeded to scold her in a loud tone of voice in the charge room area of the station, in front of other officers and members of the public and he told to her remove the hijab or write a report. The Claimant stated that she felt hurt, humiliated, embarrassed and demotivated. At that moment she said that she just wanted to resign from the police service because she felt that all her commitment and hard work were being ignored, because she wanted to practice her religion.
28. The Claimant testified in cross-examination that she could not recall the exact date of the incident on International Women's Day. However, she stated that a telephone message was sent to the Chaguanas Police Station inviting all women police officers to attend the programme. She confirmed that that the message was not only sent to female police officers to attend and she denied that this was an event for them to perform road and traffic duty.
29. The Claimant also clarified in cross-examination that WSP Phillip stopped her when she was standing in front of the station which is situated on the western side of the road, along with about 40 other police officers dressed in plain clothes and uniform. She denied that she was alone at that time. She stated that she was wearing a long dress which was business attire and a hijab. She explained that the length of the dress was just below her ankles, it had a couple buttons and long sleeves just below the wrists. She denied that there was another female police officer who was not in uniform and who was not allowed to take part in the International Women's Day walk. She explained that she was not in police uniform since she was not asked to come in police uniform and she was not called to perform duties but to take part in the celebration for International Women's Day. The Claimant testified that WSP Phillip did not indicate to her that she could not perform duties, as she was not in police uniform.
30. The Claimant also testified in cross-examination that the police officers participated every year for International Women's Day. She explained that when Mr. Johnny Abraham was the Senior Superintendent, part of the activities involved interacting

with the public; sharing safety tips; a luncheon and lecture. She stated that there was always a telephone call inviting them but the activities were not detailed and outlined.

31. The Claimant also explained in cross-examination that Sgt Nawal was in charge of the Chaguanas Police Station at that time. She was attached to the Wireless Operations Department at that time and her direct Supervisor in that Department was Corporal Francis (“Cpl Francis”). She stated that she was called to the office by WSP Phillip, who told her that her that Sgt Nawal wanted to see her. She went into his office and there were two other Corporals and another woman police officer. She stated that she was cursed, abused and disrespected by Sgt Nawal who shouted at her in a loud voice, “You see this kinda stupidness in the Police Service, this kinda shit that allyuh doing here, Roop go and take off that garb and if yuh cannot take off that garb, go in that office and write a letter to the ASP Women’s Affairs on why yuh dressed like that.” She insisted that Sgt Nawal used obscene language toward her. Sgt Nawal was seated in his office when he told her to take off the hijab or write a report.
  
32. WSP Phillips’ version of the incident concerning International Women’s Day was set out in paragraphs 4 to 9 of her affidavit filed on 4 January 2018. She stated:
  - “4. A few days prior to the observation of International Women’s Day on March 8, 2016 a message was sent via telephone from the Senior Superintendent’s office of the Division requiring all women officers who were interested in performing police duties in recognition of that. I was on duty on that day and reported to the Chaguanas Police Station. On that day I was in charge of meeting with the women police officers who had reported for such duty and to organize them for their particular detail which includes organizing where we were going and what duties we were going to perform. The women police officers were not called out to participate in any march or walk in recognitions of International Women Day. We were called out and I then detailed the officers for specific duties.
  
  5. I estimate that about 22 women officers reported for duty in relation to the telephone message. All women officers who reported for duty on that day were

in full police uniform as required. However, there were a few who were in plain clothes as they were attached to the Criminal Investigation Unit and therefore had authorization from the Commissioner of Police to wear plain clothes whilst on duty. The Claimant was the only officer who did not report for duty in her police uniform although she is a uniformed police officer.

6. I conducted a brief meeting with the women police officers on that day and the Claimant was present at the meeting. After the meeting, I spoke to the Claimant privately and I informed her that she would not be able to perform duties on that day since she was not dressed in her police uniform. I told the Claimant that she can remain at the Station if she so desired. There was also another women officer Francis who was pregnant at the time and reported for duty in plain clothes on that day. I also had a conversation with that officer and she was not allowed to perform duties on that day since she had no authorization to be in plain clothes.

7. The other women police officers who were authorized to be in plain clothes participated in performing duties on that day since they were allowed to be in plain clothes. However, the uniformed officers took the lead in the traffic duties.

8. After speaking with the Claimant, I then had a conversation with Acting Sergeant Nawal about my decision not to allow the Claimant to perform duties because she was not authorized to wear plain clothes when reporting for duty. She was not dressed in a business suit as alleged. The Claimant was dressed in a hijab and a long Muslim garb. In any event, even if the Claimant was so dressed, I still would not have allowed her to perform duties on that day since she is not an officer who is authorized by the Commissioner of Police to wear plain clothes. This is in accordance with standing Order 6 section 17(3). A true copy of the said Standing Order is hereto annexed and marked **"M.P.1"**.

9. I never had any issue with or confrontation with the Claimant concerning her religions beliefs as a Muslim.

33. In cross-examination WSP Phillips testified that in March 2016, she was stationed at the Caroni Police Station and she was the Acting Sergeant. She explained that when she receives a message for dissemination to officers under her command, she would first record it in the telephone message book. She would then disseminate the message via telephone by calling the stations the officers are assigned to. She clarified that when she stated "all officers who are interested" in her affidavit, she meant that it was not a mandatory directive but voluntary for those who were on rest leave, that is off duty officers would be volunteering themselves.
34. According to WSP Phillips, the assembly point for the International Women's Day activity was the Chaguanas Police Station, and she was present. She stated that there were approximately 22 officers present and some of the officers present were in plain clothes. She stated that the authorisation to wear plain clothes relates to when officers are on official police duty but officers must still have their official uniform. She explained that not all officers at events such as Borough Day would wear official uniform.
35. WSP Phillips also testified in cross-examination that on International Women's Day, all officers participated in traffic duties, and stop and search. She testified that her duties on that day were traffic duties and she always did traffic duties in her 22 years participating in International Women's Day. She could not indicate whether there were other officers doing other things on that day. She accepted that she did not state in her affidavit that she was in charge on that day. Yet she confirmed that she briefed the 22 officers present with her and went out on traffic duties. She stated that she chose to do traffic duties on that day as she was in charge of Area North.
36. According to WSP Phillips she knew that the Claimant was a Special Reserve Police Officer and she believed that the Claimant would have been paid for International Women's Day. WSP Phillips stated that if an officer showed up on the day and did not wish to perform duties, she would have taken a decision of having that the officer stay in the charge room since she believed that she had the authority to make that decision.

37. WSP Phillips also testified in cross-examination she took a roll call of all officers present on the day when she took the briefing. She recorded it in her personal diary, but the diary was not requested as evidence. She knew every officer present, where they were working and what department. She stated that the Claimant was not wearing formal attire at the International Women's Day event and she spoke with the Claimant on the day and she told the Claimant to stay in the station, based on the Standing Order. After this, she spoke with Sgt Nawal and explained to him what transpired so that if he saw the Claimant in the charge room, he would have been aware of her decision.
38. WSP Phillips disagreed that some of the officers in attendance were not as formally attired as the Claimant and that some were in casual wear. She also disagreed that she spoke to the Claimant in public. Instead she stated she spoke to the Claimant in a private capacity in the conference room after all the officers left to go downstairs. She agreed that she told the Claimant she could not take part because of her attire. She also agreed that there were many different ways for officers to participate in International Women's Day.

### **Third Incident**

39. The third incident asserted by the Claimant was Sgt Nawal's conduct towards her. The Claimant stated in cross-examination that Sgt Nawal would sometimes write her up when she arranged to attend her religious functions, despite her getting approval from her immediate supervisor to attend jumma. She testified that he wrote her up "for all kinda things." By "write up" she explained that he placed a note on her file. She explained that as a Special Reserve Officer she was not paid for extra duties and that when she applied for a couple days compensatory leave, which was approved by her immediate supervisor, Sgt Nawal would still put her as absent in the duty book. She confirmed the "write up" was not only for religious functions but also when she took leave. She indicated that some of the "write up" would be recorded on her file and she accepted that she did not bring any evidence of this but she said that the Station Diary Duty Book could reflect this.

40. There was no affidavit filed on behalf of Sgt Nawal to rebut the assertions made by the Claimant concerning his threats and treatment of her.

**Fourth Incident**

41. The fourth matter raised by the Claimant was the attempt by Superintendent McIntyre to transfer her. The Claimant also stated that in March 2017 Superintendent McIntyre tried to transfer her because she was a Muslim who wore the hijab. At paragraph 17 of her affidavit filed on 14 September 2017 she described the incident as:

“17. Another incident occurred sometime in March 2017 when Senior Supt McIntyre tried to transfer me. He told me that he knew I was a Muslim who wanted to wear hijab with my uniform and so he could not trust me in wireless room when things “were getting hot” in Enterprise with the Muslims. He said he noticed that he was not hearing me during those times on the wireless. I immediately refuted those allegations and eventually complained to ACP Persad who convened a meeting with other officers who worked directly with me. After ascertaining that the allegations were untrue and unfounded, the transfer was revoked. Again, I felt that being a Muslim woman and wanting to practice my religion led to me being unfairly marginalized.”

42. Cpl Francis swore to an affidavit in support of the Claimant which was filed on 16 February 2018. According to Cpl Francis in September 2016 he was the Second Division Officer in-charge of wireless communications of the Sub-Control in Central Division. He stated that one of his core duties and responsibilities in Sub-Control was to ensure that all information on serious crimes, patrol types, sick and absent police officers for the 24-hours and prisoners in custody in the Division were prepared and formatted into what is referred to as the ‘Morning Report’ which was emailed to the Senior Superintendent in-charge of Central Division, together with various other Senior Officers including the Commissioner of Police.
43. Cpl Francis stated that two of his best wireless operators who received very little training from him, were No 17162 WPC Kay Hepburn and the Claimant, and both of

whom he knew had converted to Islam prior to him becoming in-charge of the Central Sub-Control. According to Cpl Francis, around Saturday 10 September 2016 there was an alleged security breach, in terms of the 'Morning Report' being leaked to the press. As a result of this leakage, a decision was taken, and instructions given by the then Senior Superintendent Floris Hodge-Griffith to transfer all wireless operators out of the Sub Control.

44. According to Cpl Francis, shortly after, Senior Superintendent Floris Hodge-Griffith was transferred and replaced by Superintendent Mc Intyre. As a result of this change no one was transferred and the Claimant continued to work as an operator. Shortly after a decision was taken to move the Central Sub-Control from downstairs in Chaguanas Police Station to upstairs in the Central Division Headquarters. He stated that this change in location revealed a serious weakness in the security of the information as the passwords were being shared with the Chief Clerk Office although he thought it was exclusively known to him and the wireless operators. He stated that he had to change the password 3 to 4 times to avoid the problem of leaks.
45. Cpl Francis further stated that while they were still in transition and he was recruiting potential wireless operators, the rumours and allegations about the Claimant began circulating. He said that persons in administration, specifically in the Chief Clerk's office and other clerical police officers expressed reservations about WPC Hepburn and the Claimant being kept in the Central Sub-Control because they were perceived as having an affiliation with the 'Unruly ISIS' gang which is based in Enterprise, Chaguanas. He stated that as far as he was aware the only basis for this assumption was their religious belief.
46. Cpl Francis stated that as far as he was aware, prior to coming to work in the Central Sub-Control, the Claimant was attached to the '500 patrol' which patrolled the Edinburgh 500 Area where crime escalated at the time. He stated that certain officers mentioned to him that they thought the Claimant sympathized with Muslims from Enterprise who got locked up. He stated that he did not share the view that the Claimant was affiliated with the infamous 'Unruly ISIS' gang, since he had not seen

any evidence to support this assertion and he was satisfied after doing his own enquiries as her immediate supervisor.

47. Cpl Francis stated that he discussed the matter with the Claimant, and she became despondent, and reluctant to work upstairs as the Chief Clerks office made it very clear that they did not want her upstairs as a result of their perceptions of supposed security concerns. He continued to organise the new Sub-Control office upstairs. He and the Network Administrator created a distributive group account for the eight wireless operators which included the Claimant known as 'Central Sub Control' as a means of controlling security leaks.
48. According to Cpl Francis, during the time that he was the direct supervisor of the Claimant, he reported directly to Senior Superintendents Forde, Hodge-Griffith and McIntyre and none of them ever expressed any dissatisfaction with the work performance of the Claimant or any made allegation of any "Unruly ISIS' gang affiliation. He also stated that not too long after Superintendent McIntyre's arrival, the latter asked him whether or not he supported the relocation of the Central sub-Control from Chaguanas Police Station building, to the Central Divisional Headquarters building. He stated that he indicated that it became necessary due to a structure leakage which would have been left unchecked and had the potential to cause death.
49. Cpl Francis stated that he and the Claimant and worked the last night in the year of 2016 and provided service support to the Central Division Task Force, Central Criminal Investigation Department and Hotspot patrols. He stated that in January 2017, he arrived for duty upstairs and met Superintendent McIntyre downstairs, who summoned him to an audience. Superintendent McIntyre asked him if the Claimant expressed that she wanted to be moved. He indicated that at one time the Claimant indicated to him that if she got an opportunity to work in Brasso she would leave the Central Operations Centre. Superintendent McIntyre ended that conversation and then requested him to come to his office with the Claimant and they both began walking upstairs to their respective offices. Whilst walking up the staircase Superintendent McIntyre said to him 'Don't mention anything to Roop'.



50. Cpl Francis stated that he met the Claimant in the Conference Room and Superintendent McIntyre summoned both he and the Claimant to his office immediately. On his way to his office, Superintendent McIntyre summoned No 14387 W/Cpl Karen Collymore, from the Discipline Office, to his office. On reaching inside his office, Superintendent McIntyre requested both he and the Claimant to be seated.
51. Superintendent McIntyre then took a seat at his desk and began saying, "Roop! You are one of my best wireless operators, if not the best'. He continued by saying words to the effect that "some information has reached my office where it is alleged that you have been making phone calls for Jelani Martins. You know the situation we are dealing with the Muslim group 'Unruly ISIS'. I have no choice but to transfer you."
52. According to Cpl Francis, the Claimant immediately began to cry and plead her case saying words to the effect, "Sir! I Don't make no call for Jelani Martins, I don't even know him, I does be upstairs when they are bringing prisoners'. The Claimant requested that she be left on the shift in the charge room. Superintendent McIntyre then rejected her request and transferred her to Freeport Police Station. He stated that the audience with the Superintendent McIntyre lasted approximately 10 minutes, and during that time Superintendent McIntyre never asked for his input as the Claimant's immediate Supervisor, nor did he ask for any advice from W/Cpl Collymore from the Discipline Office. He dismissed them shortly thereafter.
53. Cpl Francis stated that a message came from the Chief Clerk office less than 10 minutes after leaving Superintendent McIntyre's Office, to the Central Operations Centre via telephone, which informed him that the Claimant was transferred to Freeport Police Station. Sometime over the weekend of that week he received information that the Claimant had been transferred back to the Central Operations Centre. Cpl Francis stated that he never had any concerns about the Claimant when he worked with her.
54. Cpl Francis stated in cross-examination that he was the direct supervisor of the Claimant. According to Cpl Francis there were no other Muslim officers working in the

wireless operations department which consisted of 8 persons. He confirmed there were certain rumours about the Claimant and WPC Hepburn at the Chaguanas Police Station. He said that there were other reasons for the rumours other than the women being Muslim. He agreed that there was a rumour about the Claimant by certain officers which was that she sympathized with the Muslims who lived in Enterprise who were locked up. Cpl Francis stated that those rumours were baseless since he found no evidence after he did an inquiry. He accepted that he did not name the officers from the Chaguanas Police Station in his affidavit who circulated the rumours about the Claimant and he stated that as far as he was aware, they did not give evidence.

55. Superintendent McIntyre also swore to an affidavit in support of the Defendant which was filed on the 15 December 2017. At paragraphs 4 to 7 of his affidavit he outlined his interaction with the Claimant concerning matters she raised with respect to her transfer. He stated at paragraphs 4 to 6:

“4. I interact with the Claimant from time to time since she works at the Chaguanas Police Station. She does however, have an immediate supervisor. The Claimant is one of the communication operators at the Chaguanas Police Station and has the responsibility to provide me with information from time to time. She is assigned to the Central Division Operational Centre (CDOC) which handles all wireless communication for the entire Division.

5. Sometime earlier this year, I received information that led me to believe that the Claimant may have intercepted sensitive operations in the Enterprise area pertaining to the Unruly ISIS Gang. This caused me grave concern and I took the decision to have her transferred to the Chaguanas Charge Room pending further investigations into the allegation. However, I never had any issue with or confrontation with the Claimant concerning her religious beliefs as a Muslim.

6. Soon after my decision to have the Claimant transferred, I had a discussion with the Assistant Commissioner of Police with executive responsibility for the Division, namely ACP Surajdeen Persad. He was part of the strategic meetings I usually hold weekly at the Chaguanas Police Station. At this particular

meeting I indicated to ACP Persad the reasons for transferring the Claimant from the wireless centre (CDOC). Various options were then discussed between myself and ACP Persad, after which I decided to have the Claimant returned to the CDOC.

56. In cross-examination Superintendent McIntyre testified that he interacted with the Claimant while he was stationed at the Central Division at the relevant time. He stated that he was familiar with the disciplinary procedure in the police service. He agreed that the process was that: firstly, the officer is informed of the allegation; then an officer is appointed to investigate the allegation; the investigating officer will then write to the officer to ask him or her to respond to the allegation; after the investigation process is completed, a report is eventually given to the Commissioner of Police. He said that this report would not necessarily make recommendations as to whether a disciplinary charge should be laid. He agreed the report would detail what the findings are but he disagreed that it is the Commissioner of Police who determines if to lay a disciplinary charge. Instead, he said that is the role of the Head of the Disciplinary Committee. However, he was unable to recall the Regulation which stated this. Yet he agreed that the disciplinary charge is a matter for the Commissioner of Police but that the Disciplinary Committee would hear the matter. He also agreed that when a disciplinary charge is laid, an officer could be suspended from duty and that if the officer is found guilty, there is a range of options such as suspension, deduction from salary, transfers and reprimand.
57. Superintendent Mc Intyre also indicated in cross-examination that an investigating officer was not appointed by the Commissioner of Police into the Claimant. He indicated that he informed the Claimant of an allegation in relation to the instant matter. He agreed the process of informing the officer is done by way of Notice in writing and he did not exhibit the Notice and that there was never a disciplinary hearing into the matter of the Claimant. He also agreed that the Claimant complained about the manner in which he transferred her, and there was a meeting with Assistant Commissioner of Police Persad ("ACP Persad"), days after. He testified that he was

given an option at the end of the meeting with ACP Persad to reinstate the Claimant and allow her to resume previous duties but he refused. He denied that in March 2017, he transferred the Claimant because she was a Muslim. He also denied that he told the Claimant that he did not trust her as a Muslim in the wireless room because things were getting hot in Enterprise with the Muslims. He accepted that he convened the meeting with ACP Persad. He denied that after that meeting the allegations were found untrue and unfounded. He also denied that the Claimant resumed duties for a while and then subsequently went to a different department.

58. An affidavit sworn to by ACP Persad was filed on behalf of the Defendant on the 15 December 2017. At paragraphs 6 to 8 he outlined his position with respect to the assertion of the Claimant with respect to her transfer. He stated:

“6. The Claimant never spoke to me on any occasion concerning any alleged incident of discrimination against her due to her religious beliefs. Sometime earlier this year the Claimant did indicate to me that she had been transferred from the wireless operation centre. She called me on my phone and I indicated to her that I would speak to Senior Superintendent McIntyre about her transfer.

7. Following that conversation, I attended the usually scheduled strategic meeting which is held at the office of the Senior Superintendent in Chaguanas. That meeting is also attended by other first Division Officers from the said Central Division. After dealing with the agenda for the meeting I raised the issue of the Claimant’s transfer with Senior Superintendent McIntyre and we discussed various options. The decision to transfer is solely within the purview of the Senior Superintendent in charge of the Division.

8. After our discussion a decision was then made to have the Claimant returned to the wireless operation centre, where her activities would be monitored. At no time during these discussions did any issue arise with respect to the Claimant’s religious beliefs.”

59. ACP Persad was not cross-examined on the contents of his affidavit.

### **Fifth Incident**

60. The last assertion by the Claimant was that she was singled out and discriminated against for being a Muslim women police officer since the TTPS made accommodations for persons to wear items which carry religious significance such as items of jewelry like crosses and rosaries which are worn by Christians and raksha sutra strings on the wrists which is worn by Hindus in the Police Service.
61. Mr. Stephen Williams (“Mr Williams”) was the Commissioner of Police at the material time. He stated at paragraphs 8 of 14 of his affidavit filed on 22 December 2017 that:
- “8. The Regulations stipulate the code for police uniforms. The standard set for uniforms seeks to maintain a religious-neutral police uniform. Persons joining the police service are made aware of the key requirements of serving as a police officer including the uniform requirements as well as the work days which are seven days per week and twenty-four hours per day. There must be a clear commitment for compliance with the rules and regulations governing police officers.
9. Persons with certain religious persuasions may be guided in their religious practices by considerations such as the Sabbath. However, this does not affect the performance of a police officer’s duties. Thus, for instance, if an officer’s duty falls on his Sabbath, that officer would still be required to perform his duties on his Sabbath.
10. In joining the Trinidad and Tobago Police Service, officers would know that there is no special provision for time off on the basis of religion. This is in respect of any religion. Accordingly, in light of these set regulations, if we make accommodations for one religious persuasion, we would have to accommodate all there religious persuasions. It is in this context that we continue to be religious-neutral.
11. Notwithstanding the fact that the Claimant has provided examples of other jurisdictions which have allowed the wearing of the hijab with the police

uniform, it should also be noted that there are other jurisdiction which do not allow it, and some countries which have even banned its use.

12. In Trinidad and Tobago, the Police Service remains religious-neutral although members of our society practice various religious beliefs. This was my main consideration in deciding not to make any recommendations for a change in uniform to accommodate the Claimant. In my opinion, allowing any recommendations for the wearing of the hijab with the police uniform would open up the floodgates as to what we can and cannot allow by members of different religious persuasions within the Police Service.

13. In addition, allowing persons of different religious persuasion to take time off from duty to practice their differing religious persuasions will affect the efficiency of the Police Service. The officers are free to practice their religious activities while they are not on duty. However, they are not allowed to do so while they are on duty.

14. I joined the Trinidad and Tobago Police Service since 1979. To the best of my knowledge there have always been Muslim women within the Service and they have all adhered to the requirements of the Police uniform. It is for officers to decide whether or not they want to be part of the Police Service which has certain standard Regulations.”

62. Mr. Williams was cross examined on the aforesaid paragraphs of his affidavit. He confirmed that the Regulations governing the police officers uniform came into effect in 1971 and that during his career in the Police Service the uniform changed. He stated that official communication of policy is done by way of departmental order and standing orders, because they both have some legal authority made pursuant to the Police Service Act. At first he denied that he stated that the police uniform was religious neutral. He was taken to paragraph 8 of his affidavit, and then he accepted that this was his position. He explained that his statement meant that the uniform was religious neutral to all. He accepted that there is no standing order or departmental

order which states that the police uniform must be religiously neutral and that it is his opinion that the uniform seeks to maintain a religious neutral police uniform. He testified that there are different modes of dress in the police service, depending on the functions, all prescribed by the Regulations. One mode of uniform for women is knee high skirt.

63. Mr. Williams also testified in cross-examination that he was not familiar with the tenets of Islam or Hinduism. As such he was unable to indicate if the police uniform for women police officers offended the tenets of Islam since it prohibits a woman from showing her legs in public. Mr. Williams was asked if the principles of Islam were considered so that the police uniform for women police officers could be neutral to Islam. He indicated that he could not give a definite answer because he did not put in place the police uniform. He accepted that he spent 40 years in the police service and that during his career he did not consider the principles of Islam in relation to the police uniform because he never made any recommendations to change the uniform and he never prescribed the uniform. He stated that the only complaint he was aware of by women police officers about the uniform conflicting with their religious beliefs was the complaint was made by the Claimant.
64. Mr. Williams testified in cross-examination that he was on vacation when the complaint was made, and when he returned from vacation, he was advised that the complaint was being dealt with by the Deputy Commissioner of Police, Administration. As such he did not seek to ascertain whether the complaint was genuine. He maintained that it was not a matter of whether he was concerned about the complaint but whether it was being addressed. Yet he admitted that he did not give any instructions to his Deputy as he was advised that the person sitting as the Commissioner of Police had given directive to the Deputy. He also admitted that as the Commissioner of Police he did not follow up the matter and he never received a report from the Deputy in relation to the complaint.
65. Mr. Williams accepted in cross-examination that one of the objectives of the police uniform, would be to allow the officers to perform their duties in an efficient and

effective manner. He also indicated that another purpose of the police uniform was to clearly identify an officer. He agreed that the police service should reflect the composition of the public it protects and serves without sacrificing the principle of meritocracy. He did not agree that the reason was that the public would be able to identify with the police service. He refused to accept that it would be desirable that the police service reflect persons of all religious beliefs. Instead he indicated that religion was not the only factor to consider in the composition of the police service but there were other the factors to include such as gender, race, ethnicity and geography. He also stated that he did not have any difficulty with the police service not having any Christian members and he agreed that a person's religion could be relevant in the performance of duties in the police service.

66. Mr. Williams also stated in cross-examination that he did not develop any prayer for the police service. He accepted that prayers were said many times before the beginning of meetings but it does not necessarily end with "Amen" and that the police service does not provide for the observance of the Sabbath.
67. Mr. Williams testified that over the years there has been training in religious sensitivity and that he received religious sensitivity training in the United Kingdom but he did not participate in the local training. He stated that he is aware that officers in the UK are allowed to wear turbans and hijabs. He stated that there is a specific human resource imperative in the police service for religious sensitivity training and it has been factored into the strategic plan over the years.
68. Mr. Williams testified that there are Regulations concerning the wearing of trinkets and ornaments. He disagreed that officers are allowed to wear pendants on chains while on duty. He stated that an officer is supposed to be disciplined if he is caught wearing a religious pendant. He indicated that he is aware of officers being disciplined for wearing religious pendants, but he did not go into details about the religious pendants. He accepted that he has seen police officers wearing the Hindu symbolism on their wrists but he has not seen any officers wearing any symbol of Catholicism. He confirmed that tattoos are not permitted on selection of persons to the police service



and there is no system to detect if someone gets a tattoo after joining the police service.

69. Mr. Williams also testified in cross-examination that he never received complaints from officers from the non-Christian faiths that they did not feel sufficiently included in the activities of the police service. He said he has celebrated an official Eid function in the police service but not yearly. He testified that the Police Service has no Christmas treat and the Office of the Commissioner of Police does not host a Christmas event. He agreed that he did not make any recommendations with respect to the uniform of the Trinidad and Tobago Police Service.

### **THE FINDINGS**

70. In my opinion, the Claimant was being truthful when she stated that she sought the assistance of the WPB. It is also more plausible that since there was a Bureau to deal with issues of female officers in the TTPS, the Claimant would have approached it since this was one of her efforts to be proactive in finding an amicable solution to the challenges she faced.
71. I have also concluded that in the absence of any evidence from Sgt Nawal to contradict the Claimant's evidence of his threats and treatment of her, it was more plausible that her version was more credible. Further, the Claimant's evidence was corroborated by the evidence of Cpl Francis.
72. WSP Phillips' position that the reason the Claimant was excluded from the International Women's Day activities in March 2016 was because all the police officers participated in traffic duties and that since the Claimant was not dressed in her uniform but in plain clothes she was excluded. In my opinion this explanation by WSP Phillips for the Claimant's exclusion was not credible since WSP Phillips also admitted that there were other officers who were in plain clothes who were permitted to participate. In light of this lack of credibility of WSP Phillips' explanation for the Claimant's exclusion. I find that it was more probable that the reason the Claimant

was excluded from the activities on International Women's day was because she was wearing the hijab.

73. The Claimant's evidence that she was victimized because of her religion when Superintendent Mc Intyre attempted to transfer her, was corroborated by Cpl Francis and even unwittingly supported by Superintendent McIntyre's evidence in cross-examination who in essence indicated he took the decision to transfer the Claimant without following the procedure which he was well aware of. Therefore, the weight of the evidence supported the Claimant's version.
74. I have also concluded that the TTPS was not a religious neutral environment as asserted to by the then Commissioner of Police. Instead, the environment was one where there was no systemic sensitivity for religious tolerance but it was up to the individual opinion of the police officers.

#### **THE RELEVANT CASE LAW**

75. In support of his assertion that the Court should award the sum of \$200,000.00 to \$250,000.00 as compensatory damages , Senior Counsel for the Claimant noted that there is a dearth of learning on this issue but he still referred the Court to the authorities of **Ansarie Mohammed v the Commissioner of Police**<sup>5</sup>; **Damian Belfonte v The Attorney General of Trinidad and Tobago**<sup>6</sup> and **Maha Sabha and Central Broadcasting v The AG**<sup>7</sup>.
76. Counsel for the Defendant submitted that the Court should award a sum between \$15,000.00 to \$20,000.00 as compensatory damages and that no award should be made for vindictory damages. Counsel for the Defendant relied on the learning in the following cases in support of this submission **Maha Sabha and Central Broadcasting; Dennis Graham v Police Service Commission & The Attorney General of Trinidad and**

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<sup>5</sup> HCA No S 2089 of 2003

<sup>6</sup> Civ Appeal No 84 of 2004

<sup>7</sup> Civ App No 216 of 2009

**Tobago<sup>8</sup>; Romauld James v The Attorney General of Trinidad and Tobago<sup>9</sup>; Wilt Vincent v The Attorney General of Trinidad and Tobago<sup>10</sup>; Jason Bissessar v The Attorney General of Trinidad and Tobago<sup>11</sup>; Gerard Scott v The Attorney General of Trinidad and Tobago<sup>12</sup>; Jason Giles v The Attorney General of Trinidad and Tobago<sup>13</sup>; Quincy George v The Attorney General of Trinidad and Tobago<sup>14</sup>; The Attorney General of Trinidad and Tobago v Dion Samuel<sup>15</sup>; Paul Welch v The Attorney General of Trinidad and Tobago<sup>16</sup>; Ansari Mohammed Commissioner of Prisons and Maya Leaders' Alliance<sup>17</sup>.**

77. In **Ansarie Mohammed v Commissioner of Prisons** the Claimant was a devout Muslim, who was sentenced for 6 weeks imprisonment for failing to pay child maintenance. He brought proceedings against the Commissioner of Prisons after he was released since his hair had been cut and his beard shaven against his will while he had been imprisoned. He sought declaratory relief and damages. Moosai, J. (as he then was) held that the breaches of fundamental rights could be granted in judicial review proceedings and since prisoners' rights were still protected while in prison, a declaration was made that the decision to have his hair cut was unlawful as it was against the Prison Rules. Damages were awarded on the basis that shaving the Claimant's beard was a violation of his constitutional rights under section 4 (h) and that the Claimant had suffered distress and inconvenience. The Claimant also contended that shaving his beard made him feel that he had betrayed his religion and the mandates of God in carrying out his religious beliefs. In January 2005 the Court awarded a nominal sum of \$7,500.00 to the Claimant but did not consider the case one appropriate for punitive damages.

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<sup>8</sup> [2011] UKPC 46

<sup>9</sup> [2010]UKPC 23

<sup>10</sup> CV 2016-00691

<sup>11</sup> Civ App No P 136 of 2010

<sup>12</sup> CV 2016-04122

<sup>13</sup> CV 2016-00741

<sup>14</sup> CV 2011-03875

<sup>15</sup> Civ App No P 181 of 2013

<sup>16</sup> CV 2009-04042

<sup>17</sup> [2015] CCJ 15

78. In **Damian Belfonte v the Attorney General of Trinidad and Tobago** the Claimant was a Rastafarian whose dreadlocks was cut and he was fed meat, instead of his vegetarian diet while in prison. He asserted that this was in conflict with his Rastafarian faith. The High Court dismissed the claim for constitutional redress for breach of section 4 (h) of the Constitution. However, the Court of Appeal unanimously reversed the decision, and a declaration was made that his right to freedom of conscience and religious belief and observance was infringed. Although damages were assessed by a Master and paid, there was no written judgment.
79. In **Maha Sabha and Central Broadcasting Services Ltd and another v The Attorney General of Trinidad and Tobago** the Appellants' rights to equality of treatment and freedom of expression were found breached due to the failure of the Government to grant them a radio broadcasting licence. The licence was eventually granted after 6 years. The Appellants sought an assessment of damages, claiming both compensatory damages for the delay in the grant of the licence and vindictory damages "*to emphasize the importance of the constitutional rights and the gravity of their breach.*"<sup>18</sup> They were granted compensatory damages based on loss of profits for the 6 years in the sum of \$952,890.00 and vindictory damages for the persistent inequality displayed by the Government, in the sum of \$500,000.00. The Appellants appealed the quantum of the compensatory damages firstly to the Court of Appeal and then to the Privy Council. The Board agreed with the trial judge's approach to the assessment of damages in the Supreme Court of Trinidad and Tobago. The Board upheld the High Court award of \$952,890.00 in compensatory damages on the ground that the appellants had established no sufficient basis in evidence to claim a higher figure.
80. In **Dennis Graham v Police Service Commission & The Attorney General of Trinidad and Tobago**, the Appellant appealed to the Privy Council against the Court of Appeal judgment which dismissed his appeal against the award of damages made in the High Court for breach of his constitutional right to equality of treatment. The Appellant, a police officer complained that his promotion from Assistant Superintendent to

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<sup>18</sup> Paragraph 4 of the judgment

Superintendent should have been backdated to take effect as the same date of promotion to the office of Superintendent as other officers who were junior to him. The Board noted the Court of Appeal's difficulty in awarding damages where the Appellant failed to produce evidence as to what he lost or what he might have had a chance to earn and the impact it had on his pension. In the absence of this, the local Court of Appeal stated that when consideration was given to 'distress and hurt feelings' the modest sum of \$35,000.00 was adequate as compensation. The Board agreed with the Court of Appeal and also found that there was no basis to make an additional/vindictory award and the Board agreed with this position.

81. In **Romauld James v the Attorney General of Trinidad and Tobago** the Appellant was a police officer who challenged the qualifying examination for promotion in the police service. He alleged that he had been discriminated against since he was entitled to be exempted from the English component of the promotion exam as he had belatedly written and passed the English CXC examination and other officers in similar circumstances had been so exempted. He also sought damages. He was granted declaratory relief at the both the High Court and Court of Appeal but no monetary compensation. He appealed this decision to the Privy Council. The Privy Council Board dismissed the appellant's grounds of appeal, finding inter alia, that this was not a case for compensatory damages since "*there was no acceptable evidence that the appellant had suffered any injury to his feelings or particular distress.*"<sup>19</sup>
  
82. In **Wilt Vincent v The Attorney General of Trinidad and Tobago** the Claimant was entitled to a declaration that the application and enforcement of the Zero Tolerance Policy by the Trinidad and Tobago Defence Force is an infringement of the Claimant's constitutional right to be presumed innocent until proven guilty according to law, pursuant to Section 5(2)(f)(i) of the Constitution. The Claimant was entitled to damages in the amount of \$70,000.00 for the breach of the aforementioned constitutional right as well as exemplary damages in the amount of \$20,000.00.

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<sup>19</sup> See paragraph 32 of the judgment

83. In **Jason Bissessar v The Attorney General of Trinidad and Tobago** the Appellant was guilty of murder and was 'sentenced' for psychiatric evaluation pending determination of his innocence or guilt. He challenged the authority given to the State by the magistrate's order in particular the part stating "*that you Jason Bissessar be detained in safe custody at the St. Ann's Mental Hospital; that you be treated for your mental illnesses, that is paranoid delusions and mental subnormality until the President's pleasure is known.*" He also challenged the fact that he was not reviewed and tried within a reasonable period while he was detained for psychiatric evaluation. On 31 January 2017, Bereaux JA found that the appellant was entitled to compensation for the breaches of section 4(b) and 5(2)(h) of the Constitution and assessed the damages to be \$100,000.00. Bereaux JA found that this sum was sufficient to vindicate the Appellant's right and that it was unnecessary to award vindictory damages.
84. In **Gerard Scott v The Attorney General of Trinidad and Tobago** the Claimant sought damages inclusive of aggravated and/or exemplary damages for the violation of his rights enshrined under Section 4(a), 4(b), 4(d), 4(g), 4(i), 5(2) (a), 5(2) (c), 5(2) (e), and 5(2) (h) of the Constitution, wrongful arrest, false imprisonment and malicious prosecution. In this matter, the Claimant was arrested by officers of the Immigration Division of the Ministry of National Security. He was thereafter conveyed to and imprisoned and/or detained at the Immigration Detention Centre in Aripo for one hundred and fifty-nine days. On 29 November 2018, Rahim J, declared that the Claimant's detention by the Immigration Division from 13 July 2015 to 21 December 2015 was in breach of the rights of the claimant guaranteed under sections 4 (a), 4(b), 4(g) 5(2)(a), 5(2)(c), 5(2)(e) and 5(2)(h) of the Constitution and awarded compensation for the breach of these constitutional rights in the sum of \$30,000.00. The Claimant was not awarded any vindictory damages.
85. In **Jason Giles v The Attorney General of Trinidad and Tobago** the Claimant alleged that his imprisonment by the Defence Force and subsequent discharge were in breach of his rights guaranteed under sections 4(b), 5(2)(e) and 5(2)(h) of the Constitution. On the 27 April 2017, Rahim J declared that the Claimant's continued detention by the Defence Force, its servants and/agents from 2 April, 2015 to 8 April, 2015 was in

breach of the rights of the Claimant guaranteed under section 4 (b) of the Constitution and ordered that the Defendant pay the Claimant \$70,000.00 in compensatory damages inclusive of an uplift for aggravated damages. No vindictory damages were awarded.

86. In **Quincy George v The Attorney General of Trinidad and Tobago** Boodoosingh J on 24 July 2014 declared that the failure of the State, through the Prison Service of Trinidad and Tobago, to deliver or transmit the Claimant's notice of appeal to the Court of Appeal breached the Claimant's rights under sections 4(a), (b) and 5(2) (h) of the Constitution. He was awarded that \$20,000.00 in compensation for the breach of his constitutional right and \$50,000.00 in vindictory damages.
87. In **The Attorney General of Trinidad and Tobago v Dion Samuel** the Court of Appeal upheld the Trial Judge's findings that the Respondent's discharge on 19 December 2011 from the Trinidad and Tobago Defence Force on the ground that his service was no longer required had contravened the Respondent's right to the protection of the law as guaranteed under Section 4(b) of the Constitution. As a result, on 11 March 2019, the Court of Appeal ordered that the Appellant pay the Respondent the sum of \$18,000.00 in damages.
88. In **Paul Welch v The Attorney General of Trinidad and Tobago** on 6 February 2002 the Claimant was arrested and charged with possession of marijuana for the purpose of trafficking. On 7 February 2002 he pleaded guilty to the charge and was sentenced to 4 years hard labour by the Magistrate. On that same day, the Claimant stated that he dated and signed a notice of appeal against sentence and gave it to the prison officials. However, the notice of appeal was only received by the Magistrates' Court on 21 February 2002, after the stipulated time for filing had passed. When the appeal came up for hearing the Claimant was not present in court. The Court of Appeal dismissed the appeal. There was no hearing on the merits. The Claimant's conviction and sentence was affirmed and a warrant issued for his arrest with the sentence to run from the date of arrest. Upon his arrest on 6 June 2008, he was placed at the Maximum Security Prison at Golden Grove. He then filed his motion on 3 November 2009

supported by an affidavit dated 9 October 2009. No affidavits in reply were filed by the State and as such the Claimant's evidence remained unchallenged. Boodoosingh J declared that the actions of the State through its servants and/or agents in failing to transmit the Claimant's notice of appeal on time constituted: (a) a contravention of the Claimant's right to protection of the law under section 4 (b) of the Constitution; (b) a contravention of the Claimant's right not to be deprived of his liberty without due process of law under section 4 (a) of the Constitution; and (c) a contravention of the Claimant's right not to be deprived of such procedural provisions as are necessary for the purpose of giving effect and protection of the rights and freedoms guaranteed under section 5(2) (h) of the Constitution. In assessing damages the Court considered that there was no period of unconstitutional detention, and the Claimant was actually released before completing his full sentence. The Claimant also pleaded guilty to his charges and was actually appealing his sentence, not his conviction. On 23 April 2012, Boodoosingh J awarded \$20,000.00 in compensation for the breach of the Claimant's rights under sections 4(a), (b) and 5 (2) (e) of the Constitution. No award was made for vindictory damages.

89. In **Maya Leaders' Alliance** the Inter-American Commission on Human Rights (IACHR) issued a report recognising the Maya people's collective rights to land traditionally used and occupied in Toledo. The IACHR found that the Government of Belize had violated the Maya people's right to property and equality under international law, and it recommended that the Government of Belize delimit, demarcate and title Maya ancestral land. In 2007, the Maya Leaders Alliance and Toledo Alcaldes Association, on behalf of thirty-eight Maya communities, brought an action in the domestic courts for non-implementation of the IACHR decision. The Supreme Court of Belize ordered the Government of Belize to recognise Maya land rights, demarcate and title their land, and cease and abstain from interfering with their right to property. The CCJ found that the Government of Belize contravened the Maya Leaders constitutional right to protection of the law. The CCJ took a novel approach to the award of damages for this breach and ordered in fulfillment of a consent order between the parties, that the Government of Belize was to establish a fund of BZ\$300,000.00 to protect Maya customary land tenure.



## **ANALYSIS**

90. The cases of **Ansarie Mohammed, Damian Belfonte** and the **Maha Sabha and Central Broadcasting** are the only authorities which dealt with a breach of section 4 (h) of the Constitution. To this extent the measure of damages awarded in those cases are relevant and can be a guide to some extent to the instant matter. However, even those cases can be distinguished from the facts in the instant case and very limited in assisting the Court in determining the quantum.
91. **Ansarie Mohammed** can be distinguished from the instant case since the Claimant's beard was cut off in one instance but in the instant case the Claimant was deprived of wearing the hijab with her uniform from at least 2015 to 2018. Further in **Ansari Mohammed** his beard would have grown back. However, in the instant case, due to the antagonistic approach taken by the Commissioner of Police and other senior police officers against the Claimant wearing of a hijab, she was not certain that she would ever get to express her religious belief in the workplace. Lastly, the policy by the Prison Authorities in **Ansari Mohammed** did not discriminate against Muslims but against the growing of one's beard. However, in the instant case the relevant Regulation discriminated against the wearing of the hijab which is a garment worn by the devout Muslim woman to maintain her modesty and dignity.
92. In **Maha Sabha and Central Broadcasting** the damages were assessed based on the profit-loss assessment presented by the Claimant for the years it was deprived of enjoying broadcasting privileges. The compensatory damages were based solely on pecuniary loss but in the instant case, the Claimant's case is based on non-pecuniary loss.
93. In **Damian Belfonte** there was no written judgment on the factors the Master took into account in determining the award of damages and there was no quantum of the damages which was awarded.

94. All the other cases which were referred to by the parties on the issue of compensatory and vindicatory damages did not deal with the breach of section 4(h) of the Constitution.
95. Dennis **Graham** concerned an administrative error involving only Mr. Graham's individual right to promotion in the police service. There was no public interest element as in the instant case where the right to wear the hijab as part of the women police officers' uniform while on duty has far reaching effects beyond only on the Claimant. There was no finding in **Dennis Graham** of any bad faith or victimization by the public authority. In the instant case while the then Commissioner of Police, Mr. Williams, met the discriminatory regulations concerning the uniform for the women police officers, he failed to take any steps to have them changed which was discriminatory. Further, in **Dennis Graham** the loss claimed was pecuniary in nature while in the instant case the Claimant's loss has always been non-pecuniary.
96. **Romauld James** was also a case about promotion but there was a paucity of evidence to support the non-pecuniary loss. In the instant case, the Claimant has set out in great detail her hurt feeling and mental distress which she suffered. Her evidence was unchallenged and it was corroborated by her spiritual counsellor Imam Alli, whose evidence was also unchallenged.
97. In **Wilt Vincent** the rights infringed were the presumption of innocence and the right to due process due to the Trinidad and Tobago's Defence Force Zero Tolerance policy which gave the Chief of the Defence Force certain powers. These rights are different from the instant case which is discrimination based on religion and gender and the protection of the law. Further, there was no discrimination, victimization, bad faith or ill will and the impact of the Zero Tolerance Policy was not discriminatory in nature.
98. In **Jason Bissessar** the right infringed by the State was section 4(b) the right of the individual to equality before the law and the protection of the law and section 5(2)(h) right to procedural provisions. These are different from the instant case where the Claimant's main constitutional issue is section 4(h) her right to freedom of conscience

and religious belief and observance. Further, the Court did not consider vindictory damages appropriate in **Jason Bissessar** based on the facts since he had pleaded guilty for manslaughter since it was of the view that the award for compensatory damages was adequate.

99. **Gerard Scott** was awarded damages for breach of his constitutional rights; sections 4(a), 4(b), 4(g) 5(2)(a), 5(2)(c), 5(2)(e) and 5(2)(h). There was no claim of any breach of the right to religious belief and the actions of the State in oppressing such a right. He was awarded general damages including aggravating damages for wrongful arrest and false imprisonment, and \$30,000.00 for exemplary damages.
100. **Jason Giles** was about imprisonment, detention and the right of the individual to equality before the law and the protection of the law. The right infringed was one that affected the individual and had no bearing on the public at large, or was capable of rendering public outcry. It was not a matter of discrimination involving religious and gender elements, and is not comparable to the instant case.
101. **Quincy George** can be distinguished from the instant case on the basis that his constitutional right was breached because of an administrative error rather than a policy enshrined in the Regulations which was discriminatory on the basis of religion.
102. **Dion Samuel** can be distinguished from the instant case since it dealt with the disciplinary hearing of an officer in the Trinidad and Tobago Defence Force and the failure to afford Mr Samuel the right to the protection of the law as guaranteed by section 4(b) of the Constitution. The constitutional rights infringed in **Dion Samuel** were not comparable to the case at bar and has no bearing on quantum of damages.
103. In **Paul Welch** the constitutional rights which were infringed were the right to protection of the law under section 4(b) of the Constitution, the right not to be deprived of his liberty without due process under section 4(a) of the Constitution and the right not to be deprived of such procedural provisions as are necessary for the purpose of giving effect and protection of the rights and freedoms guaranteed under

section 5(2) (h) of the Constitution. Again the nature of the Constitutional rights are distinguishable from the instant case.

104. The **Maya Leaders** case dealt with indigenous people's displacement and occupation of territory, infringed by the Government and infringing their right to protection of the law. This was a class action law suit and again is of limited assistance to the Court in determining quantum of damages.
105. In determining the quantum of damages to award the Claimant as compensatory damages I took into account the pain, suffering and humiliation the Claimant felt every time she removed her hijab when she went to work as a police officer. This lasted for at least 3 years from 2015 to 2018. The effect was so profound that this experience caused her trouble to sleep, to feel anxiety and stress and to feel fear of being seen by others from her Masjid without her hijab. I accept that a medical report was not necessary since her evidence of her struggle was corroborated by Imam Alli in whom the Claimant confided. In any event, the Claimant did not assert that she suffered any medical ailments as a result of her pain and suffering. The mental anguish, emotional distress and painful inconvenience the Claimant suffered caused her to seek spiritual counselling since she was conflicted as she tried to reconcile her beliefs with the rigid demands of her job.
106. I am also of the opinion that in awarding compensatory damages, the sum ought to take into account the following aggravating factors.
107. Firstly, this matter did not have to reach the Court since the Claimant took a proactive and constructive approach. She wrote a memorandum dated 30 September 2015 to the Commissioner of Police entitled "Application to wear Hijab with Police Uniform". The memorandum stated that *"I believe that allowing me to wear my hijab with my police uniform I would feel more comfortable as a muslim woman mentally, spiritually and emotionally and would even perform my daily duties with a more high degree of efficiency"*. She also provided pictures of her appearance with the hijab and pictures of other WPC around the world wearing same. The memorandum was sincere and

constructive. The Claimant also approached the WPB for assistance which turned her away and refused to assist.

108. Secondly, the Claimant was afforded absolutely no assistance from the WPB to support her request to wear dark coloured stockings to cover her legs, wearing of the hijab, or even wearing the night uniform (which has mire covering) in the daytime. Instead, the WPB refused to assist or advocate on the Claimant's behalf and instead took an antagonistic approach by warning the Claimant that she can even be prosecuted for not wearing the uniform as prescribed. In my opinion, the WPB failure to show any support or assistance demonstrated that it had absolutely no appreciation of the Claimant's concern.
109. Thirdly, the Commissioner of Police did not even have the courtesy to respond to the Claimant's memorandum in 2015 requesting permission to wear the hijab in a modified way with her face uncovered. Mr. Williams by his own admission in cross-examination did not even follow up the complaint on the basis that he thought it was being dealt with. It was not until the Claimant caused a pre-action protocol letter in 2017 to be issued that the State provided some feedback. In my opinion this lack of courtesy by the Commissioner of Police demonstrated that he showed absolutely no appreciation to the gravity of the request made by the Claimant and the importance of this sensitive matter given the fundamental rights provision in the Constitution.
110. Fourth, the Claimant suffered personal humiliation, stigmatization and psychological distress, by the conduct of senior police officers towards her. She was scolded in front of other officers on the International Women's Day by WSP Phillip. She was verbally berated by Sgt Nawal and Superintendent McIntyre attempted to have her transferred on account of the Claimant's religious belief without due process being followed and without cause.
111. This is a novel area in assessing damages and I have taken this into account and the limited guidance in the learning. Based on the learning there is no range for non-pecuniary compensatory damages since the sum awarded in **Ansarie Mohammed** was

nominal damages of \$7,500.00 and the sum awarded in **Maha Sabha and Central Broadcasting Ltd** was for pecuniary loss. In my opinion, given my aforesaid assessment of the evidence in this case, a reasonable range for an award of compensatory damages is between \$100,000.00 and \$150,000.00 which includes an award for aggravated damages. I therefore award the sum of \$125,000.00 as compensatory damages which also includes aggravated damages.

112. I turn now to vindictory damages. According to the Privy Council guidance in **Ramanoop**, the fact that the right violated was a constitutional right adds an extra dimension to the wrong. A court can therefore make an additional award, not necessarily of substantial size to reflect (a) the sense of public outrage, (b) emphasize the importance of the constitutional right, (c) the gravity of the breach and (d) deter further breaches.
113. In my opinion, the facts in the instant case warrant an award for vindictory damages for the following reasons.
114. Firstly, I do not agree with the Defendant's submission that it was sufficient vindication of the Claimant's breached rights that she was allowed to wear the hijab with the police uniform after this Court made the declaration on 9 November 2018. In my opinion the Defendant had no choice to do so since failure to comply with the Court's Order would have been a contempt of Court. It is not as if the Claimant was permitted to wear the hijab shortly after she raised this issue with the Commissioner of Police in 2015. She had to wait for three years thereafter to do so.
115. Secondly, this is an important constitutional right in the multi religious society of Trinidad and Tobago. The issue of how any officials, public, in the instant case the Commissioner of Police, or private treats with an allegation of discrimination on the basis of religion is a matter of public interest in the multi religious society which is Trinidad and Tobago. It is a fundamental right in the Constitution and echoed in our National Anthem "*Here every creed and race finds and equal place*". These are not words which persons who live, work and conduct business in this Republic are to pay

mere lip service to. They are words which are to remind the people of Trinidad and Tobago on a daily basis of the type of society which citizens are to continue to strive to maintain. Indeed a society is judged not on how it treats with the majority but the protection given to the minority.

116. Thirdly, there must be some sense of outrage in the insensitive, careless manner in which then Commissioner of Police treated with the Claimant's complaint, Mr. Stephen Williams, the then Commissioner of Police was aware of other religious adornments such as the wearing of rakshasa and crosses by the police. The TTPS was therefore tolerant towards other religions to some extent, despite its stand of religious neutrality which it took in this matter. Under cross-examination, Mr. Williams demonstrated that he was aware of the sensitivity to religious symbols in other societies where officers wear the turban and the hijab but unfortunately he was insensitive to religious differences in the Police Service in Trinidad and Tobago which he was responsible for while he was the Commissioner of Police, despite his training in the UK on religion sensitivity. Indeed, he admitted under cross-examination that he has no idea about the tenets of Islam.
117. Based on the Commissioner of Police's evidence in cross-examination it was not surprising to the Court that having met the discriminatory Regulations, he did not seek to address it when it was brought to his attention but instead he actively sought to defend the discriminatory policy on the basis of religious neutrality.
118. Lastly, the Police Service and all organizations in Trinidad and Tobago, both public and private must be deterred from implementing, maintaining and enforcing work uniforms which fail to pay regard to the Constitutional right to freedom of conscience and to religious belief. In my opinion, the purpose for a uniform either at school or at work is laudable. However, it cannot be designed, implemented and used as a tool to infringe a person's rights under section 4(h) of the Constitution since Trinidad and Tobago is not a religious neutral society. In my opinion, an award of vindictory damages is to act as a deterrent or a catalyst to any public or private organization to

immediately review its own rules and policies to pay regard to persons' religious beliefs.

119. From the cases cited above it is not the usual practice for a Court to award vindictory damages. Based on the cases of **Qunicy George** and **Maha Sabha and Central Broadcasting Ltd** the ranges appears to be between \$50,000.00 and \$500,000.00 for vindictory damages. I have not considered the award of vindictory damages in the sum of \$1,000,000.00 in **Joshua Mitchell v AG and Ors**<sup>20</sup>, which involved the unlawful detention of a minor for 371 days since that case was fact specific as the detention of the minor was long and treacherous, littered with sexual, mental, emotional and physical abuse.
120. In my opinion, a reasonable range for vindictory damages for this matter is between \$50,000.00 and \$75,000.00. I have decided to award the sum of \$60,000.00.

#### **COSTS**

121. It was submitted on behalf of the Claimant that the Court should order the Defendant to pay the Claimant's costs of the assessment to the trial of the assessment of damages certified fit for Senior Counsel and Junior Counsel to be assessed by the Registrar in default of agreement. Counsel for the Defendant submitted that the Claimant would be entitled to her costs.
122. In the substantive claim I ordered the Defendant to pay the Claimant's costs certified fit for Senior Counsel to be assessed by the Registrar in default of agreement.
123. For the costs for the assessment of damages, I will order the Defendant to pay the Claimant's costs certified fit for Senior Counsel to be assessed by this Court. The Claimant is to file the Statement of Costs on or before 31 January 2020.

#### **THE ORDER**

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<sup>20</sup> CV 2017-03522



124. The Defendant to pay the Claimant damages including aggravated damages in the sum of \$125,000.00 and vindictory damages in the sum of \$60,000.00.
  
125. The Defendant to pay the Claimant's costs certified fit for Senior Counsel to be assessed by this Court. The Claimant is to file the Statement of Costs on or before 31 January 2020.

**Margaret Y Mohammed**  
**Judge**