

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2021-00352

**IN THE MATTER OF AN APPLICATION UNDER
SECTION 14(1) OF THE CONSTITUTION**

BETWEEN

CHYNELLE ARTHUR

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Madam Justice Margaret Y. Mohammed

Date of Delivery 4 March 2022

Appearances

**Mr Lee Merry and Ms Rebecca Rafeek instructed by Mr Larry Boyer Attorneys at
law for the Claimant.**

**Mr Stefan Jaikaran and Ms Chelvi Ramkissoon instructed by Ms Hillary Muddeen
Attorneys at law for the Defendant**

JUDGMENT

INTRODUCTION

1. The right to privacy of an individual is enshrined in section 4 (c) of the Constitution of Trinidad and Tobago¹ (“the Constitution”), however, this is not an absolute right. A police officer with reasonable and probable cause can effect a search on an individual without a warrant. The Claimant, a police officer, has brought this action where she has claimed that her right to privacy was violated when she was subjected to a strip search and her property was searched in circumstances where the police officers had no power to do so while she was a trainee at the Police Training Academy (“the Police Academy”).

THE BACKGROUND

2. The Claimant’s case was set out in her affidavit² (“the Claimant’s Affidavit”). According to the Claimant, from February to November 2020 (“the relevant period”) she was a police trainee at the Police Academy. At the Police Academy, the male and female trainees stayed in one building but were separated into 2 dormitories which were separated by floors and accessible by external staircases. There were CCTV cameras which covered these external staircases. The dormitories were prohibited to persons of the opposite sex. There were a total of 194 trainees housed at the Police Academy during the relevant period.
3. On Thursday 2 July, 2020 there was a reported incident of theft of \$2,100.00 cash belonging to a male trainee which he allegedly kept in his locker that had been left unsecured. The Claimant was subjected to a strip search in her dormitory room by Woman Police Constable Joseph-Guerra (“WPC Joseph-Guerra”) even after the

¹ Chapter 1:01

² 26 January 2021

Claimant explained to her that she was menstruating. During the search the Claimant was instructed to remove all of her clothing and squat but she was not touched by WPC Joseph-Guerra. The Claimant was not satisfied with her treatment and has brought the instant action where she has sought the following orders:

- a. A declaration that the command issued by No. 17634 WPC Joseph-Guerra to the Claimant to take off all her clothes, stoop and cough constitutes a breach of the Claimant's right to respect for her private life;
 - b. A declaration that the search of the Claimant's property conducted by No. 17634 WPC Joseph-Guerra constitutes a breach of the Claimant's right to respect for her private life;
 - c. Damages, including vindictory damages;
 - d. Costs; and
 - e. Such further or other relief as the Court deems fit.
4. The Defendant's position was set out in the affidavits of WPC Joseph-Guerra, No. 13586 Inspector Avian Hospedales Yearwood ("Inspector Yearwood") and No. 14121 Inspector Cynthia Romeo-Dick ("Inspector Romeo-Dick").
 5. The Defendant indicated in its written submissions that the command issued by WPC Joseph-Guerra to the Claimant to take off all her clothes, stoop and cough constituted a breach of the Claimant's right to respect for her private life under section 4(c) of the Constitution and that the Defendant therefore conceded that the Claimant may be entitled to a declaration to that effect.

THE ISSUES

6. The issues to be determined are :
 - (a) Whether the search of the Claimant's property conducted by WPC Joseph-Guerra constituted a breach of the Claimant's right to respect for her private life?
 - (b) What damages is the Claimant entitled to for the breach of her right to privacy?

WHETHER THE SEARCH OF THE CLAIMANT'S PROPERTY CONDUCTED BY WPC JOSEPH-GUERRA CONSTITUTED A BREACH OF THE CLAIMANT'S RIGHT TO RESPECT FOR HER PRIVATE LIFE?

7. It was not in dispute that the search of the Claimant's room was conducted in response to a report of missing money at the Police Academy, as there was a report that the sum of TT \$2,100.00 was missing from another trainee's locker which had been left unsecured.
8. Counsel for the Claimant submitted that before the commencement of any search of the Claimant's property, namely her clothes basket, school bag, duffle bag, purse, suitcase and locker it must have been based on reasonable cause to suspect that she had committed an offence. However, there was no evidence filed on behalf of the Defendant which demonstrated that there was sufficient information for the officers and WPC Joseph-Guerra to draw the inference that they had reasonable cause to suspect that the stolen monies were in the Claimant's possession.
9. It was argued on behalf of the Defendant that there was no breach of the Claimant's right to respect of her private life when the officers searched her property as it was reasonable in the circumstances to do so. Counsel argued that there was intermingling amongst male and female trainees, difficulties in guaranteeing that no female trainee would be allowed to enter the male dormitories and there existed a

possibility that a female trainee could have been responsible for the theft. It was also argued that the search was conducted on premises belonging to the State and the Claimant was a mere licensee at the time.

10. In order to demonstrate that there was no breach of the Claimant's right to privacy the onus was on the Defendant to demonstrate that WPC Joseph-Guerra had reasonable and probable cause to suspect that the stolen monies were in the possession of the Claimant. The test on reasonable and probable cause was set out in the House of Lords case of **O'Hara v Chief Constable of The Royal Ulster Constabulary**³. In summary the test for reasonable and probable cause has a subjective as well as an objective element. The officer who conducted the search must have an honest belief or suspicion that the Claimant had stolen the money and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. The officer need not have evidence amounting to a prima facie case. Hearsay information including information from other officers may be sufficient to create reasonable grounds, as long as that information is within the knowledge of the officer who conducted the search
11. In my opinion, there was no evidence that WPC Joseph-Guerra had any basis to form the honest belief that the Claimant had stolen the monies.
12. WPC Joseph-Guerra's evidence was that she has been attached to the Police Academy for the past six years as an instructor and her duties included lecturing the trainees on police procedures, traffic laws and the laws of evidence and procedure. On 3 July 2020, she was at the Faculty Office of the Police Academy, when she was approached by Inspector Romeo-Dick who gave her a pair of gloves, informed her that a search was going to be conducted and instructed her to meet her in the mess

³ [1997] AC 286

hall. Based on these instructions she put on the said gloves and proceeded to the mess hall.

13. WPC Romeo-Dick's evidence did not assist. Her evidence was that on 2 July 2020, she received a call from Sergeant Sookdeo, who informed her that WPC Campbell had telephoned him and informed him that a trainee had reported that the sum of TT \$2,100.00 had been stolen from his locker which had been left unsecured. Shortly thereafter, she contacted ASP Singh to inform him of the information that she had received and he gave instructions for the trainee to be taken to the St Clair Police Station to make a report and ordered a search to be conducted of the trainees' dormitories. She also contacted Sergeant Brendon Daniel and asked him to verify the report that had been made by the trainee.
14. According to WPC Romeo-Dick, she then visited the Mess Hall and had a short briefing with the female instructors. She advised the instructors of the report that had been made, that searches were to be conducted in both the male and female dormitories and then directed the female instructors to conduct a search of the female trainees and their respective dormitories. She stated that although she was unsure of whether she had given WPC Joseph-Guerra gloves to conduct these searches, it was the norm to use gloves when searches of any kind were being done.
15. Inspector Yearwood's evidence was also of no assistance in determining if WPC Joseph-Guerra had any reasonable basis to suspect that the Claimant had stolen the money. Her evidence was that Inspector Romeo-Dick had informed her that the sum of TT \$2,100.00 had been stolen from a male trainee, by another trainee and she required her assistance with the matter. She and Inspector Romeo-Dick then went to the cafeteria on the western side of the compound, where other instructors including WPC Joseph-Guerra were already present. While there, Inspector Romeo-Dick informed all the trainees that an unspecified sum of money had been stolen from a male trainee and as such a search would be conducted in their dormitories to retrieve

same. The trainees were sent to their respective dormitories and Inspector Romeo-Dick gave all the instructors gloves to carry out the search and told the female instructors to search the female dormitories, while the male instructors searched the male dormitories.

16. Shortly thereafter, Inspector Yearwood went to the female dormitories where each room is shared by two trainees and instructed them to stand by their respective doors and await an instructor to carry out the search. She asserted that she assigned instructors to each room and she had been searching one of the trainee's rooms, when WPC Joseph-Guerra was searching the Claimant's room. While conducting her search, she was interrupted by Sergeant Sookdeo, who informed her that the search was being called off and acting on this information she returned to the dormitories and informed the trainees accordingly.
17. In my opinion, without conducting any preliminary investigation, such as questioning persons and reviewing the available video recording, the decision which was taken to conduct a search of all the trainees including the Claimant was arbitrary. Proof of the arbitrariness of the search is that it was called off without any reason.
18. Although the Defendant submitted that the Claimant was a licensee as she was occupying property belonging to the State, this was not material as the room where the search was conducted was the Claimant's personal space which she shared with a roommate and it was not a public space⁴.
19. In the absence of any basis to conduct the search, I have concluded that the search of the Claimant's property was in breach of the Claimant's right to respect for her private life.

⁴ See paragraphs 21 and 22 of the Judgment in CV2013-03871 Cheryl Miller v The North West Regional Health Authority.

WHAT DAMAGES IS THE CLAIMANT ENTITLED TO FOR THE BREACH OF HER RIGHT TO PRIVACY?

20. At paragraphs 3 to 5 of the judgment on damages in **Sharon Roop v The Attorney General of Trinidad and Tobago**⁵, I set out the legal principles which the Court is guided by in determining damages for breach of Constitutional rights, which are still relevant and worthy of repeating at this juncture. It stated:

“3. The Claimant seeks both compensatory (inclusive of aggravated damages) and vindicatory damages. In the local Court of Appeal judgment of **The Attorney General of Trinidad and Tobago v Selwyn Dillon**⁶ 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 the circumstances of the case, including consideration whether a declaration alone is sufficient to vindicate the right(s) infringed and whether the person wronged

⁵ CV2017-03276

⁶ CA Civ P. 245/2012

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**⁷ at paragraphs 17-19 explained the

⁷ PC Appeal No 13 of 2004

difference between compensatory and vindicatory 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**⁸ 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

⁸ [2008] UKPC 47

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 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)"

21. There are two breaches which the Court is called upon to assess damages for in the instant case, the breach of the Claimant's right to privacy relating to the strip search and the search of her property.
22. It was submitted on behalf of the Claimant that compensatory damages are to be awarded in this case, as there was a significant breach of the Claimant's right to privacy. The security of the Claimant's body had been compromised and this in turn had negative effects on her.
23. With respect to vindicatory damages, it was submitted on behalf of the Claimant that this was an appropriate case for an award of vindicatory damages, as this case involved the commission of illegal searches on police trainees. Counsel suggested compensatory damages in the sum of \$250,000.00 and vindicatory damages in the sum of \$60,000.00 which is consistent with the award in **Juliana Webster v Republic Bank Limited and ors**⁹.
24. Counsel for the Defendant admitted that an award of damages may be made for breach of the Claimant's right to respect for her private life, to compensate her for any inconvenience, emotional distress and embarrassment arising from the strip search. However, it was submitted that there are several mitigating circumstances in the instant case which would minimize the award of damages made in the Claimant's favour.
25. Counsel also submitted that the sum awarded for damages in **Juliana Webster** was too exorbitant and that there are many factors which distinguish the instant case from **Juliana Webster**. Instead, Counsel for the Defendant relied on the judgments of **Dinesh Nandlal v The Attorney General**¹⁰; **Chabinath Persad v PC Deonarine Jaimungal and the Attorney General**¹¹; **David Baboolal and Ronald De Freitas v The**

⁹ CV2011-02974

¹⁰ CV2016-02762

¹¹ CV2008-04811

Attorney General¹². In light of the foregoing, the Defendant proposed an award in the range of \$15,000.00 to \$20,000.00 as compensation for the strip search.

26. With respect to the claim for vindictory damages, Counsel for the Defendant accepted that an award of vindictory damages ought to be made to vindicate the Claimant's right to respect for private life, as the degree of intrusiveness of the strip search was disproportionate to the aim of recovering the stolen money. Counsel suggested that the range of exemplary damages of \$20,000.00 to \$50,000.00 as recommended by Jones JA in **Darrell Wade v The Attorney General**¹³; **Jason Superville v The Attorney General**¹⁴ for "*arbitrary, oppressive and unconstitutional*" conduct on the part of State agents that resulted in physical injury, could be used as a guide for the range of vindictory damages in the instant case.
27. I will deal with the compensatory damages first. In the instant case, I have found that the Claimant's right to privacy was breached when she was strip searched and her property was searched without reasonable cause.
28. The Defendant accepted the Claimant's evidence on the humiliation, embarrassment, inconvenience and emotional distress which she suffered as a result of the strip search. The Claimant's evidence was that she felt humiliated, distressed and violated by the incident. She made attempts to meet with Mrs Ornella Dean, a Guidance Counsellor attached to the Police Academy on 6 July 2020 and 9 July 2020 to receive counselling but was unsuccessful. In fact, she was only able to meet with the Guidance Counsellor on one occasion and although she had requested another meeting with her it was never scheduled. She asserted that after graduating from the Police Academy on 6 November 2021, she became aware that there were police officers outside of the Police Academy who knew the details of her strip search and this caused her further embarrassment and distress.

¹² CV2008-02487

¹³ Civ Appeal 172 of 2012

¹⁴ Civ Appeal 173 of 2012

29. In determining an appropriate range of damages to award as compensatory damages I considered the authorities which both parties referred to me.
30. In **Dinesh Nandlal** the Claimant was strip searched before being put into a holding cell. He was taken behind a counter at the police station where he was instructed to pull down his pants and roll up his T-shirt. He did as he was instructed and 2 police officers searched him. The police officers did not find anything illegal on him. The Claimant was embarrassed and humiliated when he was stripped because he knew that he had nothing illegal on him and he was made to strip in a public area. In assessing the award of damages for false imprisonment for 2 days, the Court took into account the fact that the Claimant was made to strip in front of other persons; it was a relatively simple offence; and that the Claimant who was never arrested previously, felt embarrassed and ashamed in his community after the incident. In 2018, I awarded the Claimant the sum of \$50,000.00 inclusive of aggravated damages for his false imprisonment for 2 days.
31. In **Juliana Webster** the Claimant, who had ended her day's work, went to the lobby area to await her transport home. As she was about to leave, the Manager of the First Defendant told her and 3 cleaners who were about to depart to remain on the premises. He then gave instructions to the security officer to lock the door and not allow anyone to leave unless they were first searched. The Claimant stated that she was not told of the identity of the Second and Third Defendants (who were police officers) and they were not dressed in police uniforms. The Third Defendant searched the Claimant's handbag, lunch bag and jacket and told her to go to the basement so that the Second Defendant could conduct a body search. A cavity search of the Claimant's body was conducted despite her protests and objections thereto. The Claimant only learned during the search and after objecting to same that the person searching her was a police officer and that she was looking for a cell phone that had been reportedly stolen. The search was conducted in the presence and with the

assistance of 3 of the Bank's cleaners. The Claimant was only allowed to leave the Bank after the search. The Claimant stated that, as a result of the ordeal, she suffered humiliation, anxiety and sleeplessness, and could not go to work for extended periods. She could not attend supervisor meetings at the Bank and never worked there after the incident.

32. In 2017, the Court awarded the Claimant the sum of \$250,000.00 in general damages for assault and trespass to the person arising out of the illegal strip search. Vindictory damages were also ordered in the sum of \$60,000.00.
33. **Chabinath Persad** was a decision given in 2011. In assessing the quantum of damages for false imprisonment under the limb of "Injury to feelings/ reputation", the Court considered that the Claimant was made to squat and was strip searched in front of prison officers and prisoners. The Court also took into account that the Claimant was held for 3 days before being granted bail; he was snatched behind his neck and thrown into an unmarked police vehicle, bare back, bare footed and dressed in a pair of shorts, without being given an opportunity to put on decent clothes; as the arrest took place in front of the Claimant's family, friends and neighbours, he would have experienced shame, humiliation and psychological damage. The Claimant had to share a filthy, cramped cell with 7 to 8 other prisoners; accessed a shower for 3 minutes per day with 30 to 40 inmates at a time; used a pail as a toilet; slept on newspapers on the cold, concrete floor; experienced difficulty sleeping; was allowed airing once per week; became ill with the cold and fever; developed a rash which was untreated; witnessed many acts of violence and was subjected to threats. The Court awarded the Claimant \$110,000.00 in general damages inclusive of an uplift for aggravated damages, for the unlawful arrest, false imprisonment and malicious prosecution and the sum of \$20,000.00 in exemplary damages.
34. **David Baboolal and Ronald De Freitas** concerned Claimants, who were minors. They were arrested without any arrest warrant and then taken to the police station. They

were threatened and cursed by the police officers on the journey to and at the police station. There, they were required to kneel down steps with their hands in the air for 10-15 minutes and threatened with physical violence of being kicked down. They were searched and the First Claimant's pants was pulled down until part of his buttocks was exposed in full public view. They were detained for slightly over one hour and were denied access to their parents. The Claimants were not beaten, the period of detention was brief and they were not placed in a cell at the police station. As a result of the ordeal, both Claimants were diagnosed with Post-Traumatic Stress Disorder for which therapy was prescribed. In 2011, the Court awarded the sums of \$22,000.00 and \$20,000.00 respectively to the First and Second Claimants for the assault and battery and malicious prosecution. A separate sum of \$7,000.00 was made to each Claimant for their loss of liberty. An award of exemplary damages was further made in the sum of \$20,000.00 to each Claimant to show the Court's serious disapproval of the behaviour of the police officers.

35. In determining an appropriate range for the award of compensatory damages in the instant case, I encountered several challenges. In all the cases referred to above, the sums awarded were not only for the strip search but the Court also took into account other factors such as damages for assault and battery, false imprisonment and malicious prosecution in making the award. Notably, the only case where there was also a search of the individual's property was **Juliana Webster**.
36. However, I found that the award made in **Juliana Webster** was not consistent with the trends where a strip search was conducted. It provided no method of quantification or analysis as to how the Court arrived at the award of damages. There were no cases cited in the judgment which guided the Court's assessment of quantum and no guidance as to how the Court apportioned liability.
37. Although the facts in **Juliana Webster** involved a strip search and search of property, there are several factors which are distinguishable from the instant case which

prevented me from applying the award made in that case wholesale to the instant case. The distinguishing factors are:

- a. There was no evidence that WPC Joseph-Guerra was acting out of bad faith nor did she deliberately violate the Claimant's rights. She was simply following what she believed to be her instructions, of carrying out a "thorough" search to recover the stolen money.
- b. The Claimant was not singled-out for the strip search, as all the trainees who were searched were treated in a like manner.
- c. The manner in which the Claimant was searched closely followed the guidelines in the UK ¹⁵ governing the conduct of strip searches, namely:
 - i. the police officer carrying out the strip search was of the same gender of the person being searched;
 - ii. Only one police officer was involved in the search;
 - iii. The strip search was carried out in a private area such that no one other than WPC Joseph-Guerra could observe the search;
 - iv. At no time during the search did WPC Joseph- Guerra touch the Claimant;
 - v. The strip search involved only a visual inspection of the Claimant's genital and anal areas without any physical contact; and
 - vi. The strip search was conducted as quickly as possible and the Claimant was allowed to dress as soon as the procedure was completed.
- d. The Claimant removed her clothing for herself.

¹⁵ See *Golden v R* (supra) at paragraph [101]; Halsbury's Laws of England (Volume 84A, 2019), [535].

- e. The Claimant did not object when WPC Joseph-Guerra said that she was going to conduct a human search of her.
 - f. There is no evidence that WPC Joseph-Guerra disclosed to anyone any details about what the Claimant's body parts looked like, or any such private matter.
38. In my opinion, an appropriate range for the breach of the right to privacy with respect to the strip search and the search of the Claimant's property is between \$100,000.00 and \$150,000.00.
39. In the instant case, I am of the view that an award of \$150,000.00 as compensatory damages is reasonable in the circumstances of this case for the aforesaid breach. In arriving at this award I took into account the invasiveness of a strip search of the Claimant which was not warranted. The search was not carried out within the context of an arrest or detention. Furthermore, the Claimant was menstruating and her evidence was that she did not want to take off her underwear. The Claimant's evidence was that she felt embarrassed when she discovered that other trainees at the Police Academy learnt of the incident and that after she graduated other police officers learnt of the incident.
40. However, the Claimant was aware of the reason for the search. The Claimant knew that she was being searched by a police officer, she never protested or expressed her objection when WPC Joseph- Guerra told her that she was going to conduct a human search of her wherein she took off her own clothing. Further, only WPC Joseph-Guerra was present during the search. While the Claimant stated that she suffered humiliation and embarrassment there was no evidence that she suffered anxiety, sleeplessness or that she could not go to the Police Academy after the incident.
41. I now turn to the award for vindicatory damages. Counsel for the Defendant must be credited with acknowledging that given the facts in this action, an award of

vindictory damages will be made. In my opinion, an award for vindictory damages is necessary in the instant case to demonstrate the Court's total disgust with the conduct of the officers of the State. It is also necessary to send a signal to other officers of the State that such conduct will not be condoned and it will deter similar breaches in the future.

42. In arriving at the quantum, the guidance of Jones JA in **Darrell Wade** and **Jason Superville** is instructive. Paragraphs 18 to 21 state:

"18. In this regard while the purpose of an award of exemplary damages is different than that of an award of compensatory damages the method of arriving at an award of exemplary damages ought not to be much different than the method used to arrive at an award for compensatory damages. The figure arrived at should be one which in the mind of the assessor satisfies the criteria for exemplary damages, aligns with awards in comparable cases and meets the justice of the case.

19. Unlike compensatory damages:

"The object of exemplary damages ... is to punish and includes notions of condemnation or denunciation and deterrence (see *Rookes v Barnard* [1964] 1 All ER 367 at 407, [1964] AC 1129 at 1221). Exemplary damages are awarded where it is necessary to show that the law cannot be broken with impunity, to teach a wrongdoer that tort does not pay and to vindicate the strength of the law (see *Rookes v Bernard* [1964] 1 All ER 367 at 411, [1964] AC 1129 at 1227). An award of exemplary damages is therefore directed at the conduct of the wrongdoer. It is conduct that has been described in a variety of ways such as harsh, vindictive, reprehensible, malicious, wanton, willful, arrogant, cynical, oppressive, as being in contempt of the plaintiff's rights,

contumelious, as offending the ordinary standards of morality or decent conduct in the community and outrageous.” **Per Mendonca JA in Torres v PLIPDECO.**

20. Although essentially a case on the applicability of exemplary damages in breach of contract cases the decision in Torres sought to provide general guidance on the manner in which a court should exercise its discretion in making an award for exemplary damages.
21. Torres determined that an award of exemplary damages has to be proportional to the defendant’s conduct. Proportionality had to be examined in several dimensions, namely: (i) the blameworthiness of the defendant’s conduct, (ii) the degree of the vulnerability of the plaintiff, (iii) the harm or potential harm directed specifically at the plaintiff, (iv) the need for deterrence, (v) after taking into account penalties both civil and criminal which had been or were likely to be inflicted on the defendant for the same conduct, and (vi) to the advantage wrongfully gained by the defendant from the misconduct.”
43. Having regard to the awards made for exemplary damages in the cases cited above, I am of the view that given the facts in this case an appropriate range for vindictory damages is between \$20,000.00 and \$60,000.00.
44. In the instant case, I am minded to award the sum of \$50,000.00 as vindictory damages, as this most unfortunate incident took place at the Police Academy by senior police officers who ought to have known the law on the appropriate conduct in the circumstances of this case. This case involved an illegal search on the Claimant and other persons who were at the time police trainees at the Police Academy. The Court is mindful that the Claimant and the other trainees when they graduate, are required to go out and interact with the public while exercising the powers of police officers which include conducting searches. In my opinion, the consequences of

treating the Claimant and the trainees in this high-handed and arbitrary manner, violating their rights is sending the wrong signal to them that this an appropriate manner to treat the members of the public.

ORDER

45. It is declared that the command issued by No. 17634 WPC Joseph-Guerra to the Claimant to take off all her clothes, stoop and cough constituted a breach of the Claimant's right to respect for her private life.
46. It is declared that the search of the Claimant's property conducted by No. 17634 WPC Joseph-Guerra constituted a breach of the Claimant's right to respect for her private life.
47. The Defendant is to pay to the Claimant the sum of \$150,000.00 as compensatory damages.
48. The Defendant is to pay to the Claimant the sum of \$50,000.00 as vindictory damages.
49. The Defendant to pay the Claimant's cost to be assessed by the Registrar in default of agreement.

/S/ Margaret Y Mohammed
Judge