

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

C.V No. 2010-03643

BETWEEN

OWEN GORING

Claimant

AND

THE ATTORNEY GENERAL OF

TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. Gerald Ramdeen for the Claimant

Mr. Byam for the Defendant

## **Oral decision**

### **Award -Compensatory component**

1. I propose in the light of the authorities cited and in the light of the uncontested, uncontradicted witness statement of the claimant, which is partly corroborated by the medical reports that were tendered into evidence by consent, to award the sum of \$100,000.00 in respect of the compensatory aspect of the claimants claim, and that includes an element of aggravation which in accordance with **Subiah**, will remain unquantified.

### **Award- exemplary component**

2. With respect to the exemplary aspect of the case, I think first of all this is a case where exemplary damages must be awarded. The facts and circumstances detailed herein must attract the strongest possible statement of condemnation .One of the hallmarks of this case is the repeated nature of the assaults on the claimant where the alleged transgression namely, the discovery of cigarettes in the cell, certainly could not, on any sane view of the world, merit that response. That is one of the disturbing elements of this case.
3. Another disturbing element is the fact that the claimant was not hospitalized, and that the nature of the assaults that he describes could have resulted in permanent disability or death.

4. No court can ignore allegations such as those made by this claimant. The assaults he described are no different in effect from torture, and whether you call it assault or torture in this case doesn't change the nature of the actions that took place. There was no check or balance on the actions that were conducted by the servants or agents of the State in this case and because of the fact:

(i) that these type of assaults continue to occur despite pronouncements by several courts that steps need to be taken, to ensure that assaults like this do not take place, and

(ii) that a long hard look needs to be taken at what takes place on occasion behind prison walls in this country, and

(iii) that those various statements (pronouncements) over several years have continued to be ignored despite increasing signals from the courts, from the case law, in the form of exemplary damages,

it is necessary once again to send such a signal.

5. The latest award for exemplary damages in a similar circumstance is in the sum of \$70,000.00. There are awards of \$60,000.00 and \$50,000.00 for exemplary damages in other cases, which I will detail in a written judgment if necessary.

6. Those have not been sufficient to have any deterrent effect nor result in a reduction in the types of cases like those coming before the court. It is only through luck that the claimant, based upon the assaults he described, even survived the events that took place of which he complains.

7. In those circumstances having regard to the various dicta of cases ranging from the High Court to the Privy Council, which I will detail in the written judgment to follow, an award of exemplary damages is made in the sum of \$100,000.00.

**Dated this 26<sup>th</sup> day of July 2011**

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## Reasons for decision

### Background

1. The claimant claimed against the defendant damages for assault and battery arising out of an incident alleged to have taken place in prison on 30<sup>th</sup> November 2008. The details are set out hereinafter from his uncontradicted witness statement.

2. On December 14<sup>th</sup> 2010 the Claimant was granted permission to enter judgment in default of defence against the Defendant. Judgment was entered and the assessment of damages proceeded before this Court.

### The Evidence

3. The evidence of the Claimant with respect to the assault and battery was as follows (emphasis added):-

*(i) At this point **Mr. De Freitas** told me I was a liar and started to slap me in my face, he slapped me so hard that my glasses fell off my face. **He hit me about 6 or 8 slaps to my face** and to the side of my head telling me each time that if I did not want to talk he would make me talk. Each time that De Freitas slapped me in my face and to the side of my head I would feel a burning sensation and I could feel my face and heads swelling while the officer was hitting me. I tried to brakes the lash with my hands but the officer would not stop.*

(ii) After slapping me a number of times **the officer started to cuff and kick me all over my body.** I tried to move back into the cell to avoid the licks but the officer followed me and came into the cell and started kicking and cuffing me repeatedly all over my body and calling me a liar. I tried to move against the wall to try and break the lash but the officer stepped back and pulled out his baton and started to hit me with it. **The officer attacked me with his baton and kept hitting me all over my body.** I fell to the ground while the officer was hitting me and even though I was trying to break the licks from the **officer I was being hit all over my body from my head down to my feet.** I was mostly trying to break the officer from **hitting me to my head and face** but he still managed to connect me with a few blows to these areas. I was begging the officer to stop but this did not help. I was also calling out to the other officers who were present but they did not to assist and they did not try to stop the officer in his attack upon me. **I was hit in my head, face, back legs, chest and belly by the officer.**

(iii) After I fell to the ground and I was trying to roll on the ground to prevent the officer from hitting me. When this happened the officer's attack on me was more intense as he followed me and the lashes that he hit me were more painful than before. **He questioned me again about the cigarettes** and I told him again I knew nothing about no cigarettes. When I told him that like he got even more angry with me and **picked up the base of a yard broom and started to hit me all over my body over and over again.** I start to bawl out because I could not believe that he began to beat me again. **I begged him to stop telling him if he continued he would kill me but he continued.** The lashes from the yard broom left me in real pain, my skin started to feel like if it was on fire and my face and

head was swollen even more. At this time I managed to get myself into a crouched up position near a wall to prevent the officer from hitting me and also because of the pain that I was in at the time. I was in real pain and I kept bawling for the officer to have some mercy and stop. I was hit a number of times on **my shoulders, head and back.**

(iv) **Mr. Ramirez** then looked at the other officers and said “well what we waiting for” and then came to my right side and **began cuffing me in my right ear, my temple and neck.** He cuffed me about 4 times. This was very painful and my ear felt like it was going to burst. Each time that the officer hit me in my ears I felt a pain in my head and at one time I could not hear anything in my right ear. Then **Mr. Ganpat** came out from behind the desk holding a whip made out of two bucket handles that were taped together with medical tape. He asked me “how much of this you could take?” and he was wiggling it in his hand. I begged them to let me go back to my cell I told them I am feeling dizzy from those blows to my head and I did not do anything so I want to go back to my cell. **Mr. Ramirez** then told me “you trying tricks, you ain’t getting away today” when I was told this I really started fearing for my life because I thought they were going to kill me.

(v) **Mr. Garcia** then told me “you don’t want to hold no post well you will hold it by force” and **started to push me and kick me** to move towards the post. When he **pushed me and followed it with a kick my head and chest hit the post real hard** and I felt my insides jerk foward a bit. **My head hit the post** and when my head hit the post I felt **a sharp pain to my head from the impact.** The officers also grabbed my arms. **Mr. De Freitas** and **Mr.**

Ramirez each held one of my hands and pulled me unto the post. **Mr. Ganpat proceeded to hit me a number of strokes** on my back and bottom. Each time he hit my back I felt like the make shift whip of bucket handles cut into the skin of my back. **It was very painful** and each lash was followed with a burning sensation. I began to feel a bit of warm liquid trickling down my leg. I only realised at that time that because of the lashes I was receiving on my lower back I had urinated upon myself. **I felt very humiliated** at this time and at this time the officers started to laugh at me. I begged the officers to stop because I was in a lot of pain already from the licks I get before and the strokes were stinging me each time that they hit me. Each time that the offices hit me **my breath was getting shorter and shorter** I told them I was feeling like I was going to faint and to stop **because I cannot breathe. I was in real plenty pain** at this time.

(vi) After about nine strokes, **Mr. Garcia** said “gimme some, gimme some” and Mr. Ganpat handed him the whip and he then started hitting me some strokes also. I estimate that **I received about 20 strokes** in this attack. Somewhere during that time I lost breath and **the whole place suddenly went black**, I slumped down to the ground not even knowing how long I was on the ground for, during that period in time I did not even know myself or my surroundings. When I catch myself I saw and heard Mr. Lewis call an orderly by the name of Mr. Andy Cudjoe and told him to pick me up. I eventually caught my breath and started back bawling in pain and begging the officers not to hit me anymore, Mr. Garcia and Mr. De Freitas dragged me back to cell B II 3 in order to get my blue clothes to go to the Chief.

## **Prison Rules -made under the West Indies Prison Act 1838**

4. At the time of the alleged incident, the Claimant Owen Goring was detained at the State Prison serving a sentence of imprisonment.

5. Officers employed with the Prison Service are responsible for the incarceration of persons who include the most violent and dangerous members of society. To perform their functions special powers are conferred to protect not only themselves but also inmates and third parties. Permission for the use of force in certain defined circumstances has a statutory underpinning in the Prison Rules made under the **West Indies Prison Act 1838** and orders issued by the Commissioner of Prison to guide the officers in the performance of their functions.

6. They are permitted to use force to prevent escapes and to enforce prison discipline. However these powers do not permit unprovoked, disproportionate and brutal attacks upon inmates in their charge.

7. The alleged actions of the Defendants on the 30<sup>th</sup> November 2008, uncontradicted by any evidence, demonstrate not only a total and sickening disregard of the rights of the claimant but a breakdown of the regime that the legislature has stipulated must operate in and govern the prison system.

## **Compensatory/General Damages**

8. The factors which are to be taken into account by a Court in the assessment of general damages for personal injuries have been long settled by the Honourable Wooding CJ in the **Cornilliac v St. Louis (1965) 7 W.I.R. 491** as follows:-

- (i) The nature and extent of the injuries sustained.
- (ii) The nature and gravity of the resulting physical disability.
- (iii) The pain and suffering which had to be endured.
- (iv) The loss of amenities suffered
- (v) The extent to which, consequentially, the (claimant's) pecuniary prospects have been materially affected.

### **The nature and extent of the injuries suffered**

9. At the time of the incident the Claimant was incarcerated and could not seek medical attention on his own. The Claimant was only taken to the Port-of-Spain General Hospital five months after the incident where he was examined and then taken to the Eric Williams Medical Sciences Complex where an MRI scan was performed on his brain on April 27 2009. This revealed no disability or effects then discernible from the incident 5 months previously.

10. In his Statement of Case the Claimant identifies the injuries suffered from the incident as follows:-

1. Laceration to the face.

2. Welt marks about his body.
3. Tender swelling about his entire body.
4. Tender haematomas about the body.
5. Intense swelling of the face area.
6. Soft tissue injury about the body.
7. Severe pain about the entire body.
8. Severe swelling to the head.

11. The evidence adduced by the Claimant in his witness statement as to the manner of the assault and battery carried out upon him by the officers demonstrates that it was extremely fortunate that the injuries sustained were not of significantly greater severity. The manner in which the injuries were inflicted by Officers De Freitas, Gunpat and Garcia on the Claimant clearly had the potential to cause serious physical injury. The repeated attacks by these officers were brutal and apparently inflicted without restraint.

12. I am mindful that one may infer that the nature of the injuries could suggest that the claimant's description of the assault was exaggerated, especially as there were no fractured bones. I decline to take this view for the following reasons:

- (a) The named officers did not take steps to put forward any version of events inconsistent with that of the claimant. One would expect such serious allegations to have been defended if they were capable of being defended. If the named prison officers had an explanation or a denial to offer it is to be expected that they would have been eager to defend their reputations from allegations like these. The fact is the allegations are not

defended and the allegations stand uncontradicted. The nature of the repeated assault described, including the blows to the head with a blunt object, suggests that is fortunate, both for the claimant and the named officers, that there were no fractures, and that no residual effects were detected in the MRI.

(b) Further, they are not contradicted by the agreed medical evidence, and in fact the medical reports corroborate in part the evidence of the claimant, as detailed hereinafter.

13. The medical reports record that on December 11 2008 he was seen, reporting headaches, stomach pains – post trauma, right **lower** back 3 **superficial** healed abrasions.

14. On December 18 2008 he was seen for headaches and again on January 8 2009 and January 22 2009. X rays of the skull on that **latter** date revealed no bony abnormalities. (It is unclear from the note where this X ray was performed).

15. On examination on April 16 2009 left wrist pain and left hip pain were recorded. There is a barely decipherable note of left? ostitis recorded, and a similar illegible note for the examination On January 22 2009 of left side ? osteo? to which I ascribe no importance, as the interpretation of the note and its meaning were not available to the court.

16. At page 11 of the supplemental agreed bundle of documents however it is recorded separately that in December 08 he had back trauma 1/7, and (date unclear) superficial abrasions,

and in February 2009 he was still complaining of right hip pain, left waist pain, left wrist pain, and headaches.

### **Pain and suffering**

17. I accept that the level of pain and suffering of the claimant must have been intense. In fact he continued to complain of pain up to 5 months after the incident.

18. The Claimant would have suffered the most serious pain immediately after the incident and this was when he would have required medical attention. However, the Claimant was left without **proper** medical attention. **Three hours later he was simply taken to the infirmary, not to the hospital, where a thorough independent assessment of his injuries could have taken place.**

19. The nature and extent of the injuries suffered by the Claimant were serious. The fact that the Claimant had to be taken for investigative treatment some five months after the incident underlies the severity of the injuries.

20. The medical reports and the accident report submitted as agreed documents describe the treatment received by the Claimant subsequent to incident as set out above. The form of the notes, cursory and abbreviated as they are, without any explanation or supplementation forthcoming from their makers, suggests that they are not an exhaustive description of all the

claimant's complaints or injuries arising from the vicious assault described by him, and I do not consider them to be so.

21. I note that though X rays and MRI scan revealed nothing significant, and luckily there were no resultant broken bones, the records of soft tissue injuries and continuing pain are consistent with the attack described.

22. The following evidence in the Claimant's witness statement in particular is relevant to this factor- (emphasis added):-

(i) *Each time that De Freitas slapped me in my face and to the side of my **head I would feel a burning sensation and I could feel my face and heads swelling while the officer was hitting me.***

(ii) *The lashes from the yard broom **left me in real pain, my skin started to feel like if it was on fire and my face and head was swollen even more.***

(iii) ***Mr. Ramirez** then looked at the other officers and said "well what we waiting for" and then came to my right side and **began cuffing me** in my right ear, my temple and neck. **He cuffed me about 4 times. This was very painful and my ear felt like it was going to burst.** Each time that the officer hit me in my ears **I felt a pain in my head and at one time I could not hear anything in my right ear.***

(iv) When he pushed me and followed it with a **kick my head and chest hit the post real hard** and I felt my insides jerk forward a bit. **My head hit the post** and when my head hit the post **I felt a sharp pain to my head from the impact**. The officers also grabbed my arms. Mr. De Freitas and Mr. Ramirez each held one of my hands and pulled me unto the post. **Mr. Ganpat proceeded to hit me** a number of strokes on my back and bottom. Each time he hit my back I felt like the make shift whip of bucket handles cut into the skin of my back. **It was very painful** and each lash was followed with a burning sensation.....I begged the officers to stop because **I was in a lot of pain** already from the licks I get before and the strokes were stinging me each time that they hit me. Each time that the offices hit me my breath was getting shorter and shorter I told them I was feeling like I was going to faint and to stop because I cannot breathe. **I was in real plenty pain at this time**.

(v) Somewhere during that time I lost breath and **the whole place suddenly went black**, I slumped down to the ground not even knowing how long I was on the ground for, during that period in time I did not even know myself or my surroundings.

(vi) For the following days after this incident **my entire body became blue black and remained swollen from the injuries**. **I was in severe pain and I could not sit down comfortably for a week**, I was suffering severe pain when I tried to talk also. I also was unable to walk for **more than two weeks** after this incident, **my legs and my bottom were in real pain** and I was also **getting pain in my back and head**.

(vii) Whenever I would have to use the slop pail **I would be in severe pain** and when I urinated it would **be a very painful experience**. Since this incident I have **severe backaches** and when I walk long distances I suffer severe headaches all the time. I also have a bump on my head from this ordeal. I have scars from the injuries. I constantly remember this incident and I have sudden flashbacks. I never experienced any of these difficulties before this.

(viii) After this incident I kept complaining to the officers about headaches that I did not experience before this incident. I would have sudden pains to my head and I would feel like I was going to faint. At times I would experience a feeling like I was giddy and I would have to sit until I managed to catch myself. I never had these experiences before this incident. I made reports to the prison doctor on several occasions about this condition and how I was feeling.

(ix) I have not gotten any relief from the pains to my head that I experienced from this incident. Up to today I still have sudden pains to my head and I constantly have to resort to painkiller medication for relief.

## Judicial trends

23.

1. In **Kenton Sylvester v The Attorney General et al, H.C.A. No. 4025 of 2002** delivered July 31<sup>st</sup>, 2002 the Honourable Justice Christopher Hamel Smith (as he then was) was called upon to assess damages to the Plaintiff in circumstances where the Plaintiff had undergone a vicious attack at the hands of several police officers, who apparently were under the impression that he was a bandit, rather than the victim of bandits. The Plaintiff suffered serious personal injuries as result of the attack – including a fractured radius and ulna, 8 fractured ribs, broken upper humerus, punctured lung, contused liver, loss of consciousness, and multiple abrasions. Surprisingly, he made an almost complete recovery. The Plaintiff was awarded the sum of **\$200,000.00** general damages. It included an element for aggravated damages.

The injuries suffered by the Claimant were nowhere near as serious as those suffered by Sylvester. However the pain and suffering may have been comparable. I consider that the pain and suffering that the Claimant would have experienced would have been significant, as is evidenced from his witness statement.

In **Sylvester** immediately after the attack the ambulance came to the scene and he was taken to the hospital very close by. He was hospitalized for 12 days including 8 days in the intensive care unit.

The Claimant was left unattended to endure what must have been excruciating pain after the attack. The Claimant was not attended to until 3 hours after the incident, and even then he was not taken to hospital. From the time of the start of the attack to the time that the Claimant was seen by the infirmary officer the Claimant was left without any treatment for the pain and injuries suffered. After the Claimant was seen by the infirmary officer he was left unattended. Months later he still complained of residual pain.

2. **Martin Reid v The Attorney General, C.V. 2006-02496** delivered **June 6 2007** a decision of the Honourable Justice Jones.

Reid sustained injury after an assault at the hands of several prison officers. The attack in the case of Reid appears from the report to have been slightly less vicious and malicious than the instant case, though it was itself brutal. The injuries received by the Claimant Reid were however more severe than the injuries of the instant Claimant.

They included a broken finger, cuts to the back of his head and bruises. In the case of Reid he was left unattended for more than 2 day before being taken to hospital, though he had been taken to the infirmary officer right after the attack. His wounds continued to bleed. When he was taken to the hospital he was hospitalized for 5 days. He suffered post concussion syndrome from the blunt head trauma and he still suffered blackouts, pain and headaches at the time of assessment. The Court awarded the Claimant Reid the sum of **\$65,000.00** as general damages for the injuries suffered and \$45,000.00 as exemplary damages

I consider that the matters in aggravation in the instant case, identified hereinafter, appear to be more serious than in the Reid case.

In particular the failure to take the instant claimant to hospital, unlike Reid. That would have afforded the defendant the opportunity to at least contend that the claimant was exaggerating the injuries and their effects, if the medical records from the hospital so indicated. The failure to take the claimant to hospital and the consequent absence of contemporaneous independent hospital records is a matter from which inferences may be drawn. The instant claimant was therefore left to suffer.

The sadistic and humiliating manner in which the instant claimant was treated are also further matters in aggravation.

3. **Michael Bullock v The Attorney General C.V. 2007-01766 - Master Durity.**

The Claimant in Bullock suffered injuries which were severe - a broken jaw and the loss of several teeth, as a result of an attack by several prison officers triggered by his initial refusal to hand over his glasses. He had to be given a liquid diet by the authorities and had many other superficial injuries all about the body. The injuries in Bullock are more serious than in the instant case.

The Master awarded Bullock the sum of **\$130,000.00** as general damages which included an element of aggravated damages.

Further the Master awarded the Claimant the sum of \$50,000.00 as exemplary damages. Though the resultant injuries in Bullock were more serious than in the case of the Claimant, the nature of the attack and the brutality used by the offending officers was similar.

A distinguishing feature between the case of the Claimant and that of Bullock is that the instant Claimant was assaulted and battered in a manner calculated to humiliate and degrade him.

4. **Thaddeus Bernard v Nixon Quashie, Civil Appeal No. 159 of 1992** - delivered October 21 1998 per the Honourable Chief Justice De La Bastide

In Bernard the Respondent was beaten by the Appellant who was an estate constable at the Tobago Airport. The Respondent was assaulted at the Tobago Airport by the Appellant initially holding on to the collar of the Respondent. Another officer then held down the Respondent's hands behind his back at which time the Appellant struck the Respondent a few times in his face. As a result the Respondent suffered lacerations to the face. The lacerations bled quite profusely. He was taken to the hospital for treatment.

The trial judge awarded the Respondent the sum of \$78,000.00 in compensatory damages and \$12,000.00 in exemplary damages. On appeal to the Court of Appeal the general damages were reduced to \$40,000.00, as \$78,000.00 was held to be a wholly erroneous estimate of the damage,

in view of the then existing range of awards of that type (up to \$37,000.00) and the award of exemplary damages upheld.

The injuries suffered by the Respondent in Bernard were much less severe than the injuries suffered by the Claimant. Further, unlike the Respondent in Bernard the Claimant was denied proper medical treatment.

The instant Claimant was made to endure the pain and suffering from the incident with only treatment from the infirmiry officer. The injuries of the Respondent in Bernard, the nature of the assault upon him, in terms of its viciousness and duration, and the circumstances of humiliation are less serious when compared to the situation of the Claimant herein.

5. **Lester Pitman v The Attorney General C.V. 2009-00638** dated 18<sup>th</sup> December 2009 per the Honourable Justice Jones.

In the case of Pitman the Claimant was beaten in the condemned division of the Port-of-Spain by prison officers, two using closed fists and one using his riot staff. The injuries suffered by Pitman as a result of the attack consisted mainly of soft tissue injuries and did not consist of any broken bones. They are similar to the injuries suffered by the Claimant. The Honourable Justice Jones awarded Pitman the sum of **\$90,000.00** general damages and \$30,000.00 exemplary damages.

6. **Morris Kenny v The Attorney General H.C.A. T-62 of 1997** – delivered March 11 2002 per the Honourable Justice Tam.

The Plaintiff in this case was beaten in a prison setting with a cable about his body and suffered severe back pains. The Plaintiff also suffered many abrasions about the body and had welt marks as a result of the beating.

The Court awarded **Kenny** the sum of **\$50,000.00** general damages to take into account aggravating factors. Exemplary damages were awarded in the sum of **\$60,000.00**.

7. **Alphie Subiah v The Attorney General, Privy Council Appeal 39 of 2007**

The Privy Council in effect upheld an award of vindictory damages in the amount of \$35,000.00 when it accepted the compensatory damages in that case set by the court of appeal in the amount of \$45,000.00, but declined to interfere with a total award by the Master in the amount of \$80,000.00 - that sum including a further sum by way of what would have been vindictory damages.

The physical injuries suffered by the Appellant in Subiah, in an unprovoked and malicious assault by a police officer, were not as severe as those of the Claimant. In the present case the facts of the Claimant demonstrate a far greater degree of pain and suffering as well as aggravation.

8. In the case of **David Abraham v The Attorney General CV 2009 – 00635** an order was granted by consent by the Honourable Madam Justice Dean Armorer.

The Claimant in this matter was assaulted and beaten at the Golden Grove Prison. Abraham suffered soft tissue injuries though he was beaten into a state of unconsciousness. He sustained minor lacerations to the shin and head. He was taken by the authorities to the Mt. Hope Medical Sciences Complex for treatment and he was discharged the same night.

On July 22<sup>nd</sup> 2010 the Honourable Madam Justice Dean Armorer awarded the Claimant in these circumstances **by consent** the sum of \$90,000.00 general damages, \$30,000.00 aggravated damages and \$50,000.00 exemplary damages.

The injuries in the case of Abraham and Pitman were very similar to those suffered by the Claimant in this matter.

9. **Lincoln Marshall v The Attorney General, CV 2009- 03274** - delivered October 1 2010 the Honourable Madam Justice Rajnauth-Lee.

On or about the 22<sup>nd</sup> April 2007 a Prison Officer used obscene language towards the Claimant. The Claimant responded to the officer in like manner. The officer left and returned to the cell of the Claimant with two other officers. In the presence of the Claimant the three officers searched the cell. The Claimant was ordered back into the cell. The three officers followed the Claimant

back into the cell. As the Claimant was entering the cell he was pushed into the cell by one of the officers and he fell to the ground. The Claimant was assaulted and beaten by the three officers.

The injuries that were suffered by Marshall were as follows:-

- (i) The Claimant lost two teeth and had four of his other teeth broken.
- (ii) Welt marks about his body.
- (iii) Tender swelling about his entire body.
- (iv) Tender haematomas about the Claimants body.
- (v) Intense swelling of the face and jaw area.
- (vi) Inability to eat food and difficulty in talking.
- (vii) Bleeding from the jaw area.
- (viii) Soft tissue injury about the body.

On October 1 2010 Madam Justice Rajnauth Lee awarded the Claimant the sum of \$100,000.00 in general damages, including aggravated damages, and \$50,000.00 in exemplary damages.

10. **Sean Wallace v The Attorney General C.V. 2008-04009** delivered on the 2<sup>nd</sup> October 2009 by the Honourable des Vignes J.

The Claimant in this matter was incarcerated at the Port-of-Spain Prison and was accused of being involved in trafficking and connected with a bag thrown over the wall of the prison. The Claimant was beaten by a number of prison officers after being asked about the bag. The

Claimant was then taken upstairs and beaten by an officer Ganpat. It is alleged, though it is unclear whether it the case, that this is the same officer who features in the instant case.

24. **The nature of the attack** – paragraphs 17 - 24

*“Officer Ganpat then came into the yard. After making some enquiries about what was happening, he instructed the Claimant to go upstairs. The Claimant started to plead with Officer Ganpat that he had already been beaten by Officers Lewis, Peters and Bowen. That did not deter Officer Ganpat. As the Claimant turned to go up the stairs, he felt a blow to the back of his head. He became disoriented and fell grabbing the wall. He saw Officer Ganpat holding his staff in his hand. He proceeded to jam the staff into the Claimant’s side ribs and ordered him up the stairs. The Claimant complied and was taken into the A2 and B2 sections upstairs which was out of sight from other people.*

*Once again, Officer Ganpat demanded that the Claimant tell him where the bag was. When the Claimant repeated his earlier explanation, Ganpat tried to hit him on his thigh with the staff. The Claimant caught the staff with his hand but this angered Ganpat who began to “rain blows” upon the Claimant all over his body, on his arms, back, belly and legs.*

*In the course of this barrage, the Claimant fell to the ground but Ganpat continued to beat him mercilessly with the staff. During the course of this beating, the Claimant continued to plead with Ganpat that he was speaking the truth and begged him to stop. Ganpat did not*

*heed the pleas of the Claimant and continued to beat him with the staff. After a while, Ganpat stopped the beating with the staff and kicked the Claimant on the left side of his face with his boots. This caused the Claimant to defecate on himself while lying on the ground. Ganpat then demanded that he get up and tell him where the bag was. When he attempted to get up, the beatings resumed with the staff, this time on his shoulder, his back and knee. The Claimant fell again with this onslaught and Ganpat kicked him again in his face. The Claimant was bleeding from his mouth.*

*There was a brief lull when Prison Officer Clarke passed in the corridor and told Ganpat, “Oh gosh, enough is enough. What you want to do, kill him.” After that officer departed down the stairs, the beating resumed.*

*Then, Ganpat paused to retrieve a jug of water from another prisoner referred to as “old police”. He offered this jug to the Claimant to wash out his mouth but when he was unable to raise his hand to hold the water, Ganpat poured the water over his head. The water smelled filthy because, apparently, this water came from a copper which stored water for washing out faeces from the prisoners’ slop pails and for washing the drains and the yard. The Claimant was humiliated and surprised by this action of Ganpat and did all he could to prevent the filthy water getting into his bleeding mouth.*

*Ganpat then resumed beating the Claimant on his back, arms, ribs and shoulders. An officer then came upstairs to speak to Ganpat and after that conversation, Ganpat instructed the Claimant to go downstairs to the infirmary.*

*The Claimant limped and dragged himself to the infirmary. Due to his foul smell, the officer in charge instructed him to take a shower and return. With the assistance of another prisoner, the Claimant took off his bloodstained clothes and took a shower which was very painful. He then returned to the infirmary.”*

25. The injuries suffered by Wallace were more serious than those in the case of the Claimant. However the malice with which the incident took place and the pain and suffering inflicted during the beating and immediately thereafter are curiously similar.

26. This incident took place on March 17<sup>th</sup> 2008. The incident in the instant matter took place on 30<sup>th</sup> November 2008. This is before the judgement in the **Wallace** matter, but after the claim form and statement of case in the Wallace matter were filed and served (see paragraph 3 of the judgement), and after leave was sought by the claimant in that matter to enter judgement.

27. The fact that the claim in the **Wallace** matter was filed, in relation to brutal assault and battery of a prisoner at the prison had absolutely no deterrent effect on a repetition of similar conduct. His Lordship in **Wallace** awarded the Claimant the sum of **\$160,000.00** general damages.

28. In so doing he repeated pronouncements by various courts of this country in relation to the behaviour of prison (and police) officers that had attracted awards of exemplary damages, and expressed concern at their apparent ineffectiveness, as set out hereunder at paragraph 47.

*The second important observation that I feel compelled to make is that over the past eleven years, the number of matters where either police officers or prison officers have abused their power in the most abominable fashion has reached alarming proportions. In most, if not all, of the judgments, the Courts have expressed in the strongest possible language their abhorrence for the conduct of these officers and have even taken steps to bring the abuses to the attention of the relevant authorities. Yet, the abuse of power continues and the State continues to pay out substantial awards for compensatory and exemplary damages. I set out hereunder a small sampling of the opinions expressed by the Courts over the years...*

*(b) “.... The misconduct of the 1st, 2nd, 3rd, and 4th defendants towards the plaintiff clearly amounts to oppressive, arbitrary and unconstitutional action by servants of the State and it is the duty of this Court to express its disapproval of such misconduct by an award of exemplary damages that are meant to punish and deter similar misconduct in the future. While it is appreciated that the job of a prison officer is no doubt one of extreme danger, where life, limb and health are constantly at risk, nevertheless it is a risk that has been undertaken freely and the message must be made clear to all those charged with the responsibility for the guarding and safeguarding of prisoners that their charges are not without rights..... wanton or any form of brutality and unrestrained violence must play no part in the system of punishment and/or rehabilitation of convicted offenders.....The Court also directs that the Registrar of the Supreme*

*court send a copy of this judgment to the Commissioner of Prisons..... and to the Director of Public Prosecutions for such investigation and further actions they may find warranted.”* (Judgment of Tam J. (11th March 2002) in *Morris Kenny v. The Attorney General & Ors.*, H.C.A. No. T-62 of 1997 at pp. 14-15.)

*The State will be deterred in two ways. First, in my view, it will be more astute and alive to a more meticulous and rigorous selection procedure for police officers. Secondly, the payment out of such exemplary damages from the public purse, if persistent, will inevitably attract the attention of opposing politicians, the press, pressure groups and the taxpayer himself. This should lead in the long run to a system which is more efficient and accountable .....*” (Judgment of Sharma C.J (21st March 2003). in *Ramanoop v. The Attorney General*, Civil Appeal No. 52 of 2001)

(e) “.... In my view this is an appropriate case for exemplary damages..... The prison officers involved, whoever they may be, conducted a vicious and unbridled attack on the Claimant, a person placed in their custody by the State. Further, the failure of the prison authorities to ensure that the Claimant received proper medical attention immediately after the assault to be deplored..... That it is the taxpayer’s dollars that fund the State in a case like this is an unfortunate fact of life. Perhaps, the time has come for the State to take stock of the sums of money paid out of the public purse as compensation for these and similar acts of its servants and agents and devise some means by which such persons can be made accountable for their tortuous acts. This is a matter for the State and not the Court.” (Judgment of Jones J. (6th June

2007) in *Martin Reid v. The Attorney General & Ors.*, CV 2006-02496 at pp.4-5) at paragraph 48

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

Per Des Vignes J - *“In particular, I consider that the Claimant must have endured great humiliation and a growing sense of despair as the beatings continued unabated, despite his pleas for mercy. All the officers who were involved and, **Officer Ganpat**, in particular, seemed to derive great pleasure in administering this punishment upon the Claimant”.*

29. It was suggested that this is the same officer who is accused of a similar **assault** in the instant case. There is no evidence that it is.

30. If it is then this represents a significant failure on the part of prison authorities to have systems in place to avoid a recurrence. Alternatively it demonstrates that such behaviour has been allowed to become entrenched and without consequences for the perpetrators.

31. If the officers involved are different however it is no better. It means that different groups of officers are identified with such behaviour, that it is therefore not confined to a delinquent core group, that the abhorrent behaviour is more widespread, and that it is on its way to becoming entrenched.

32. A listing in tabular form of the awards in recent times made by the courts in respect of assaults by prison officers is set out hereunder.

No	Parties	Court	Quantum of Damages- including exemplary damages	Date of judgment
1	Abraham v AG	Dean Armorer J	\$180,000.00	22 <sup>nd</sup> July 2010
2	Marshall v AG	Rajnauth Lee J	\$150,000.00	1 <sup>st</sup> October 2010

3	Lester Pitman v AG	Jones J	\$127,000.00	18 <sup>th</sup> December 2009
4	Sean Wallace v A G	Des Vignes J	\$230,000.00	2 <sup>nd</sup> October 2009
5	Bullock v AG	Master Durity	\$180,000.00	9 <sup>th</sup> February 2009
6	Martin Reid v AG	Jones J	\$110,000.00	6 <sup>th</sup> June 2007

The quantum of the awards has clearly not proven to be a deterrent to the actions of some prison officers.

### **Aggravation**

33. Under this head of damages the Claimant is entitled to recover damages for mental suffering inflicted on the claimant as opposed to the physical injuries he may have received. Under this head are included such matters as the affront to the person's dignity, the humiliation he has suffered, the damage to his reputation and the standing in the eyes of others – **per Chief Justice de La Bastide in Thaddeus Bernard v Nixon Quashie at page 4.**

34. These are matters which may be affected by the manner in which the assault was carried out by the officers. The manner and the circumstances in which the attack was carried out must obviously have been humiliating to the Claimant. It was carried out with a clear intention to

humiliate the Claimant. The Claimant has stated that throughout it he was begging the officers to stop the beating.

35. The Claimant made specific reference to the following as matters in aggravation which should be reflected in a component for aggravated damages in an award:-

1. The fact the assault and battery was unprovoked.
2. The fact that the Claimant throughout the incident was calling out to the other officers to help him while he was being attacked but this call fell on deaf ears.
3. The officer took the base of a yard broom and used it as an instrument to beat the Claimant about his body. While this was ongoing the Claimant was telling the officer that he would kill him but this did not deter the Officer.
4. The malice with which the incident was carried out as evidenced by the following statement of the Claimant in his witness statement,

*“At this point Mr. Garcia told Mr. De Freitas, “Alistair get 12 strokes and it wasn’t his own so he have to get double.” They then put Alistair and Brent in the cell and carried me to the main prison. When we got to the main prison, Mr. Lewis was there and called me by the desk. He told me, “Boy make it easy on yourself and claim it if you know it is yours.” I told him it is not mine and then he told the other officers “allyuh do what allyuh want with him”:*  
*paragraph 7*

5. The following exchange between the Claimant and Officer Ramirez and Gunpat,

*He asked me “how much of this you could take?” and he was wiggling it in his hand. I begged them to let me go back to my cell I told them I am feeling dizzy from those blows to my head and I did not do anything so I want to go back to my cell. Mr. Ramirez then told me “you trying tricks, you ain’t getting away today”:* Paragraph 8.

6. The actions of the officers in holding the Claimants hands around the post to inflict another round of beating on him. The evidence was as follows:

*“Mr. Garcia then told me “you don’t want to hold no post well you will hold it by force” and started to push me and kick me to move towards the post. When he pushed me and followed it with a kick my head and chest hit the post real hard and I felt my insides jerk foward a bit. My head hit the post and when my head hit the post I felt a sharp pain to my head from the impact. The officers also grabbed my arms. Mr. De Freitas and Mr. Ramirez each held one of my hands and pulled me unto the post. Mr. Ganpat proceeded to hit me a number of strokes on my back and bottom”:* paragraph 9.

7. The actions of the officers in jointly taking turns to assault the Claimant illustrated by the following evidence :-

*“After about nine strokes, Mr. Garcia said “gimme some, gimme some” and Mr. Ganpat handed him the whip and he then started hitting me some strokes also. I estimate that I received about 20 strokes in this attack”:* Paragraph 10

8. The failure of the prison authorities to provide proper treatment to the Claimant for the intense pain suffered after the beating.

9. The callous disregard by the officer in charge for the injuries suffered by the Claimant when he was shown the injuries suffered by the Claimant. The evidence of the Claimant was as follows:

*“He watched me,, sucked his teeth and said “I doh have no time for that, I looking to go home now.” He told the officers “all yuh carry them back in their cell”.*

In addition there are the following additional matters that this court considers must be relevant:-

10. The mental torment that the Claimant would have experienced throughout the entire ordeal, and in particular the anguish, helplessness, despair, and fear that he may not have survived the rapidly degenerating ordeal.

11. The humiliation of being beaten while in the presence of the other officers who did nothing while the entire incident was ongoing.

12. The condonation of the attack upon him by those in authority.

13. The failure to provide the Claimant with meaningful medical treatment would have only reinforced this impression.

14. The complete lack of recourse for the vicious and unfair treatment he suffered.
15. The mental torture of knowing that a similar assault and battery , arbitrary and unprovoked as it was , and not having been recognised and acted upon , could have been repeated at any time.

### **Exemplary Damages**

36. The House of Lords in **Rookes v Bernard** [1964] AC 1129 recognized two categories of cases in which an award of exemplary damages would be appropriate at common law, including where there is evidence of “oppressive, arbitrary or unconstitutional action by the servants of the Government.”

37. In **Bernard v Quashie** (*supra*) the Honourable de la Bastide CJ stated “the function of exemplary damages is not to compensate but to punish and deter.”

38. In **Takitota v AG of the Bahamas, Privy Council Appeal 71 of 2007** delivered March 18 2009 it was stated:

*[12] The award of exemplary damages is a common law head of damages, the object of which is to punish the Defendant for outrageous behaviour and deter him and others from repeating it. One of the residual categories of behaviour in respect of which exemplary damages may properly be awarded is oppressive, arbitrary or unconstitutional action by the*

*servants of the government, the ground relied upon by the Court of Appeal in the present case. It serves, as Lord Devlin said in Rookes v Barnard [1964] AC 1129 at 1223, [1964] 1 All ER 367, [1964] 2 WLR 269, to restrain such improper use of executive power. Both Lord Devlin in Rookes v Barnard and Lord Hailsham of St Marylebone LC in Broome v Cassell & Co Ltd [1972] AC 1027 at 1081, [1972] 1 All ER 801, [1972] 2 WLR 645 emphasised the need for moderation in assessing exemplary damages. That principle has been followed in The Bahamas (see Tynes v Barr (1994) 45 WIR at 26), but in Merson v Cartwright and the Attorney General [2005] UKPC 38, [2006] 3 LRC 264 the Privy Council upheld an award of \$100,000 exemplary damages, which they regarded as high but within the permissible bracket.*

39. The matters which support an award under this head of damage are as follows:-

- (i) The fact that officers at this prison have been involved in similar incidents before. **See inter alia Wallace supra.**
- (ii) The urgent need to deter such conduct before there is loss of life.

## **Judicial Trends - Awards of Exemplary Damages in Cases of Assault and Battery by Prison Officers**

40.

1. In **Martin Reid v The Attorney General** the Honourable Justice Jones awarded the sum of **\$45,000.00** as exemplary damages.
2. In **Abraham** the Court awarded the sum of **\$50,000.00** as exemplary damages.
3. In **Bullock** the Master awarded the sum of **\$50,000.00** as exemplary damages.
4. In **Kenny** Justice Tam awarded the sum of **\$60,000.00** as exemplary damages.
5. In **Sean Wallace** Justice de Vignes awarded the sum of **\$70,000.00** as exemplary damages.
6. In **Ramanoop**, a case not involving a prison officer, the Honourable Madam Justice Rajunath Lee after the matter was remitted by the Privy Council, awarded the Claimant the sum of **\$60,000.00** as vindictory damages for the assault and beating of the Claimant. Vindictory damages are different from exemplary damages, and are subject to constraints on quantum, in the manner explained by the Privy Council in **Ramanoop**.

### **Need for moderation**

41. The need for moderation must be borne in mind when assessing exemplary damages. That must be balanced with the need to send a message of condemnation of the behavior involved and to deter its recurrence.

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

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

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

45. The fact is that the pronouncements by the courts set out above appear to have been ineffective in preventing the repetition of the behavior complained of, and allegations of assault continue to be made by prisoners in relation to some prison officers at prisons.

46. Further the signals from the courts via awards of exemplary damages at previous levels have been ignored.

47. The High Court has a discretion with regard to the quantum of an award of exemplary damages. In these circumstances there is no evidence contrary to that of the claimant, and his

account must be, and is, accepted. It is in the context of that evidence that the assessment must take place.

48. These assaults were systematic, not explicable by self defence or excessive force being used in the heat of the moment. They are characterized by brutality, verging on the sadistic, directed at a prisoner in circumstances where he was helpless and outnumbered.

49. The courts are not unmindful of the fact that prison officers have to face dangers in a real environment under conditions that do not even approximate those in the outside world. The recognition and enforcement of protection of prisoners' rights is not based on any artificial view of those conditions, or tainted by any form of sentimentality. It is, as it must be, based on the duty of the courts to ensure that those conditions do not degenerate to the point where prisoners can be subject to arbitrary and excessive brutality, amounting in effect to torture at the whim of those entrusted with their care.

50. Failure to condemn such behavior in the strongest possible terms amounts to countenancing and condoning it. This is incompatible with the duty of courts in a civilized country which subscribes to the recognition, protection and enforcement of basic standards of treatment of its citizens, including those incarcerated in its prisons.

51. Further the level of brutality described does not appear to be abated in any way by the vigorous pronouncements of courts in this country over a period of several years including those

set out above, which were identified and repeated by the Honourable Justice Des Vignes in **Wallace** (supra).

52. Further the decision in that case to bring to the attention of the Commissioner of Prisons and the Director of Public Prosecutions the matters that emerged in that case appear not to have prevented complaints of brutality such as the instant one, where disturbingly, the recipient of such treatment was not even afforded access to proper medical attention.

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

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

55. The balancing act, preserving the need for moderation with the need to send a message of deterrence, may yet be accomplished by an increase to some extent of an award of exemplary damages, in this case to \$100,000.00. This is \$30,000 more than such award in Wallace. In absolute terms however, given the fall in the purchasing power of money, it is not a drastic increase. Reticence or hesitation in increasing the strength of the signal that needs to be sent may result in recurrences, with the real likelihood of serious personal injury or death.

56. It is in those circumstances that an award of exemplary damages is made in the sum of \$100,000.00. This sum is in excess of that contended for by the claimant himself, but the purpose of the exemplary component of an award has little to do with compensating a claimant – that has already been addressed by the purely compensatory aspect of an award. It is directed at condemnation of actions, behavior and conduct of the servants or agents of the state – action that is high handed and oppressive - that must be highlighted and prevented, lest it be condoned, encouraged, systematized and perpetuated.

57. The submission was made that exemplary damages should cover only that component of the award for which the claimant had not already been compensated – see paragraph 11 of **Subiah**, and that to the extent that previous awards failed to recognize this principle the awards made therein were overstated . See paragraph 11 of **Subiah** hereunder:-

**Alphie Subiah v The Attorney General of Trinidad and Tobago Privy Council Appeal No. 39 of 2007 at paragraph 11**

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.**

58. That case dealt with the quantum of constitutional redress. In the instant case the quantum of the compensatory aspect of the damages, including the matters in aggravation, have been taken into account. The quantum of exemplary damages required to achieve the purpose of exemplary damages, in particular, deterrence, is set accordingly.

## **Conclusion**

59. It is ordered that Damages are assessed as follows:-

1. The sum of **One Hundred Thousand dollars (\$100,000.00)** is awarded to the Claimant inclusive of Aggravated Damages;
2. Further, the sum of **One Hundred Thousand dollars (\$100,000.00)** is awarded as Exemplary Damages;

3. Costs to be paid by the Defendant to the Claimant on the basis prescribed by the Civil Proceedings Rules 1998, in the sum of **Twenty Three Thousand Four Hundred Dollars (\$23,400.00)**.

Dated this 3rd day of August 2011

.....

Peter A. Rajkumar

Judge