

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2016-02467**

BETWEEN

RAMDEO SOOKDEO CORPORAL #16157

Claimant

AND

THE COMMISSIONER OF POLICE

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Appearances:

1. Mr. Seunath S.C., Ms. Neebar and Mr. Ramnath for the Claimant
2. Ms. Prosper, Mr. Grant, Ms. Almarales, Ms. Thompson and Mr. Hinds for the Defendant

Date of Delivery: March 15, 2017

DECISION

1. In this matter a consent order was entered into on the 15th December, 2016 and the parties agreed that the Claimant would be promoted to the rank of Sergeant with effect from 23rd April, 2016. There was however no agreement as to whether or not the Defendant has a duty to provide to the Claimant a certified copy of the complete order of Merit List inclusive of the points awarded to all eligible officers named therein nor was there an agreement as to whether or not costs should be assessed on an indemnity basis. Consequently, these were the issues that the Court had to resolve.

Resolution of the Issues

Issue 1 – Is the Commissioner of Police (COP) obligated to provide the claimant with a copy of the complete order of Merit List inclusive of the points awarded to all eligible officers?

2. In its resolution stage of this issue the court had regard to Sections 3, 30 (1), 35 and 41 of the Freedom of Information Act Chp.22:02 (hereinafter referred to as the “FOI Act”) and the court had to determine whether the disclosure of the requested documentation would involve the unreasonable disclosure of the personal information of the eligible officers whose names appeared on the Order of Merit List or the complete Order of Merit List.
3. In its determination as to whether the disclosure requested would be ‘unreasonable’, the Court considered inter alia all the relevant circumstances, such as the nature of the requested information, the method or manner by which the information is to be obtained, the privacy of the individuals to whom the information relates, the public interest override as provided for by Section 35 of the FOI Act, and the demonstrable relevance of the requested information to the resolution of the issues to be determined by the Court.
4. The Court agreed with and adopted approach taken by the Australian Court in **Vangel Colakovski v. Australian Telecommunications Corporation No. VG254 of 1990.** In that matter the Court considered the Australian equivalent to our Sec. 41 of the FOI Act and Lockhart J stated that what is reasonable disclosure of information of the purposes of

Section 41 (1) must have as its core, public interest considerations. In the instant matter the Claimant's request is for all the documents which were used to compile the merit list as well as the complete list that reflects the points awarded to all eligible officers as well as the respective positions held by each said officer on the list which was used for the promotion of officers from the rank of Corporal to Sergeant. By logical extension the Claimant's request can also extend to the one to one interview notes and score allotted to each officer, who was interviewed.

5. The court must always balance public interest considerations against the obligation to ensure that information which directly relates to the professional, business and/or personal affairs of citizens, is not casually disseminated.
6. The Claimant's substantive claim was premised on the basis that points should have been automatically added to his score by virtue of his attainment of a Bachelors of Laws Degree and that the addition of same would have improved his placement on the Order of Merit List and would have entitled him to a promotion. The Defendant conceded and awarded the Claimant 35 points by virtue of his LLB Degree, his place on the list was adjusted, and he was retroactively promoted to the rank of Sergeant with effect from 22nd April, 2016. There was also an agreement to pay to him all outstanding salaries due by virtue of the said retroactive appointment. In the circumstances, the Court is unable to understand how the requested information as to the points awarded to other officers and their respective positions on the order of merit list is of any further relevance to the Claimant
7. The Court is therefore resolute in its view and finds that the circumstances of the instant case do not give rise to any public interest considerations that favour disclosure of the information sought and the balancing exercise which considers all the factors hitherto outlined and leads the Court to conclude that the disclosure of the information sought would involve the unreasonable disclosure of the personal information of all the other

officers whose names appeared on the Order of Merit List. Consequently, the order for disclosure sought by the Claimant is hereby refused.

Issue 2 – The next issue that the Court had to resolve was the basis upon which costs should be calculated.

8. In **Norrani v. Claver (2009) All ER (d) 274**, Coulson J at paragraphs 8 and 9 of his judgment said the following in relation to costs on an indemnity basis;

*“8. Indemnity costs are no longer limited to cases where the Court wishes to express disapproval of the way in which litigation has been conducted. An order for indemnity costs can be made even when the conduct could not properly be regarded as lacking in moral probity or deserving of moral condemnation: see **Reid Minty v. Taylor (2002) 1 WLR 2800**. However, **such conduct must be unreasonable “to a high degree. ‘Unreasonable’ in this context does not mean merely wrong or misguided in hindsight”**: see Simon Brown LJ 9as he then was) in **Kiam v. MGN Limited No. 2 (2002) 1WLR 2810**.*

9. In any dispute about the appropriate basis for the assessment of costs, the Court must consider the particular factual matrix that is before it. If indemnity costs are sought, the court must review the course of conduct adopted and the circumstances of the case and determine whether the conduct was unreasonable to a high degree. The conduct of the parties must be viewed with regard to the overriding objective of the Civil Proceedings Rules 1998 as amended (hereinafter referred to as the “CPR”) and with due consideration to the concept of proportionality. The Court should also consider whether its process and/or procedures have been abused and whether the parties have engaged in inequitable conduct. Ultimately, for an award of costs on an indemnity basis, there should exist some exceptional circumstance that has arisen in the manner in which the litigation has been conducted that is not normal and is unusual and the said exceptional circumstance has to be inconsistent with the objectives imposed upon litigants by the provisions of the CPR and/or the obligations that litigants have to the Court.

10. In **Mayor of Burgessess of the London Borough of Southwark v. IBM UK Ltd. [2011] EWCH 653 (TCC)**, the Court in its determination as to whether costs should have been paid to the Defendants on an indemnity basis said as follows at paragraph 4:

“[4] The following are unexceptionable propositions:

- (a) An award of costs on an indemnity basis was not intended to be penal and regard should be had to what in the circumstances was fair and reasonable.*

- (b) Indemnity costs were not limited to cases in which the Court wished to express disapproval of the way in which litigation had been conducted. An order for indemnity costs could be made even when the conduct could not properly be regarded as lacking in moral probity or deserving of moral condemnation.*

- (c) The Court’s discretion was wide and generous but there had to be some conduct or some circumstance which took the case out of the norm.*

- (d) Such conduct had to be unreasonable to a high degree. ‘Unreasonable’ in that context did not mean merely wrong or misguided in hindsight.*

- (e) The pursuit of a weak claim would not usually, on its own, justify an order for indemnity costs, but the pursuit of a hopeless claim, or a claim which the party pursuing it should have realized had been hopeless, might well lead to such an order. There was no injustice to a Claimant in denying it the benefit of an assessment on a proportionate basis when the Claimant had showed no interest in proportionality in casting its claim disproportionately widely and requiring the Defendant to meet such a claim.*

- (f) There was no injustice to a Claimant in denying it the benefit of an assessment on a proportionate basis when the Claimant had showed no interest in proportionality in casting, its claim disproportionately widely and requiring the Defendant to meet such a claim.*

- (g) If one party had made a real effort to find a reasonable solution to the proceedings and the other party had resisted that sensible approach, then the*

latter put himself at risk that the order for costs might be on an indemnity basis.

(h) Rejection of a reasonable offer to settle would not of itself automatically result in an order for indemnity costs but where the successful party had behaved reasonably and the losing party had behave unreasonably the rejection of an offer might result in such an order.

(i) Rejection of reasonable offers could of itself justify an order for indemnity costs.”

12. The Court also stated at paragraph 3 of the judgment as follows:

“[3] The principles to be applied are derived from CPR Pt 44.4 which provides that the Court will assess costs on a standard or indemnity basis and Pt 44.3 which provides that the Court, in deciding what order to make about the costs, should have regard to the conduct of the parties (both before and during the proceedings), success, any admissible offer to settle, whether it was reasonable for a party to raise or pursue particular claims and the manner in which the party has pursued its case or particular allegations or issues.”

13. The matter before the Court was resolved in a fairly expeditious manner and the Court is not able to conclude that the Defendant’s conduct after the Claimant obtained leave to proceed with the instant claim was unreasonable to a high degree nor has the Court found that the circumstances of the case were outside of the norm or that they were exceptional. The Court also formed the view that it would not be fair or reasonable to issue a cost order on an indemnity basis. Accordingly, the Claimant’s request for costs on an indemnity basis is denied and the Defendant is to pay to the Claimant costs certified for Senior Counsel to be assessed in default of agreement.

FRANK SEEPERSAD
JUDGE