

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2015-03446

BETWEEN

**WILLIAM GOPAUL
(trading as PRSHAIWILL NANO TECHNOLOGIES)**

CLAIMANT

AND

(1) WOMAN POLICE CONSTABLE FRANCES BENJAMIN NO.17119

(2) POLICE CONSTABLE JOHN HINDS NO.7266

(3) POLICE CONSTABLE RISHI RAMDASS NO.14110

(4) POLICE INSP. ROBERT WILLIAMS NO.11771

(5) THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANTS

Before the Honourable Madame Justice Quinlan-Williams

Date of Delivery: Reason for Decision Delivered on the 27th March, 2019

Appearances: Ramesh Lawrence Maharaj S.C. leading Mr. Ronnie Bissessar instructed by Varin Gopaul-Gosine for the Claimant
Ms. Monica Smith instructed by Ms. Nisa Simmons for the Defendants

JUDGMENT

1. It is alleged that the First to Fourth Defendants, members of the Trinidad and Tobago Police Service in the executive arm of the State, abused and/or misused their powers. Instead of using their coercive powers for the purpose of investigating crime, it is the Claimant's case that they engaged in unlawful behavior. The allegations are that on the 13th September 2013, 17th September 2013 and the 16th October 2013 the First to Fourth Defendants unlawfully entered the Claimant's internet café business, Prshaiwill Nano Technologies ("Nano Technologies") and ordered his customers attired in school uniform using the internet services, to leave the premises. The Claimant asserts the police officers' unlawful actions, resulted in decline patronage, caused his profits to fall-off and subsequently forced him to close Nano Technologies on the 7th December 2013.

2. The main issues for the court's determination are whether:
 - a. the First, Second, Third and Fourth Defendants' or anyone or more of them behaved in a way that amounts to misfeasance in public office;
 - b. the Claimant has suffered damages attributable to the First, Second, Third and Fourth Defendants' or anyone or more as a result of their misfeasance in public office; and
 - c. the Fifth Defendant is liable for the acts of the First to Fourth Defendants.

Summary of Court's Findings

3. The court is not satisfied that the claimant has proved that the First to the Fourth Defendants behaved in a way that amounts to misfeasance in public office. Police officers are statutorily charged with the basic but fundamental duties of preserving peace, deterring, preventing and detecting crime. The court considered all the evidence in arriving at its judgment. However, the contemporaneous records of the police duties contained in the Extracts of the Police Station Diaries, the witness

Odale Mitchell and the financial records of Nano Technologies were critical in the court's findings.

4. The police officers were engaged in regular and normal duties geared towards forestalling breaches of the peace and other socially deviant infractions of the law. These duties were informed by complaints raised by members of the public and observations made by the police officers. Further, the court found the Claimant to be a witness of limited credibility. The court discounted material parts of his evidence as false, misleading or unreliable. There was no evidence that the Claimant or Nano Technologies were singularly or specially targeted by all or any of the First to the Fourth Defendants.
5. The court was not satisfied that the Claimant met the requisite standard of proof to establish that the First to Fourth Defendants' conduct was not in the exercise or purported exercise of power as a public officer. The court was also not satisfied that the First to Fourth Defendants' had the requisite state of mind to prove the tort of misfeasance.

The Claimant's Case

6. The advent of these proceedings arose out of an event that occurred on the 6th October 2012. The Claimant, a licenced money lender loaned Woman Police Constable Sheryil Ann Horsley ("WPC Horsley") the sum of \$6,000.00. The re-payment this sum was to be effected in six consecutive monthly instalments of \$1,500.00 for a total repayment amounting to \$9,000.00. Between the period 1st December 2012 to the 25th March 2013, a total of \$4,100.00 was repaid leaving an outstanding balance of \$4,900.00 due to the Claimant.
7. In or around the 10th September 2013 when the debt was still not satisfied by WPC Horsley, the Claimant wrote to the Commissioner of

Police (Ag) complaining that WPC Horsley has made no effort to pay him. The letter was also copied and delivered to WPC Horsley. No response to the Claimant's letter was received.

8. On the 11th September 2013 at 12:30 p.m. the Claimant avers that he saw WPC Horsley and another police officer (later discovered by the Claimant to be the Second Defendant, Police Constable John Hinds ("PC Hinds")) in a marked vehicle outside the San Fernando Police Station. The Claimant demanded from WPC Horsley the repayment of the outstanding sum but WPC Horsley failed to respond.
9. On the 13th September 2013 at approximately 4:00 p.m. four police officers led by the Third Defendant, Police Constable Rishi Ramdass ("PC Ramdass") entered Nano Technologies at La Pique Plaza, San Fernando. The police officers under PC Ramdass' direction stated that pursuant to the Education Act, school children were not allowed to frequent such a business. PC Ramdass ordered all children in school uniform using the internet services to leave the Claimant's business premises.
10. Accordingly, on the 18th September 2013, the Claimant filed a complaint, dated the 16th September 2013, reporting the actions of PC Ramdass at the Police Complaints Division.
11. On the 17th September 2013 at about 4:00 p.m. two police officers who were subsequently discovered by the Claimant to be PC Hinds and the First Defendant, Woman Police Constable Frances Benjamin ("WPC Benjamin"), entered the Claimant's business and ordered all unaccompanied children attired in school uniform using internet services to vacate the premises. The Claimant challenged the officers' actions and authority but they refused to provide an explanation for their actions. As a result, the Claimant later reported the incident at the

San Fernando Police Station and made a complaint at the Police Complaints Division on the 18th September 2013.

12. In addition, on the said 18th September 2013 the Claimant also met with Assistant Commissioner of Police Denoon (“ACP Denoon”) at the San Fernando Police Station to complain about the acts of harassment and intimidation experienced on the 13th and 17th September 2013. It is the Claimant’s case that ACP Denoon informed Sergeant Nanan and Insp. De Boulet in the Claimant’s presence that police officers could not order school children in uniform off the Claimant’s business premises unless there was a breach of the peace.

13. On the 16th October 2013 at approximately 4:00 p.m. three police officers entered the Claimant’s business premises and demanded that the children dressed in school uniform using the internet services leave the business premises. When the Claimant informed the police officers that ACP Denoon assured him that there were no laws to support their actions of ordering children out of his business premises, the three officers departed the Claimant’s business.

14. What’s more is that on the same day at about 4:35 p.m., five police officers led by the Fourth Defendant, Police Insp. Robert Williams (“Insp. Williams”) together with two army officers entered the Claimant’s business premises asking children in uniform using internet services to leave same. When challenged by the Claimant, the police officers responded that the Education Act did not permit the children to frequent his business premises in their school uniform and to do so, they had to go home and change their clothes. In addition, Insp. Williams demanded that the Claimant produce his moneylender’s licence which he then photographed and threatened to revoke if the Claimant maintained his objections to the police’s actions.

15. The Claimant avers that two of the police officers and both army officers carried AK47 assault weapons and brandished them at him in a threatening manner. Despite the Claimant's assertions as to his assurance by ACP Denoon, Insp. Williams advised the Claimant that he received instructions from ACP Denoon to remove the school children. Upon removal of the uniformed school children, a teacher who was a customer at Nano Technologies, indicated to Insp. Williams that he could not rely on a law that he was unable to produce. In response, the Claimant states that Insp. Williams threatened the teacher with arrest for obstructing the police in the course of their duties. The teacher was also forced to leave the premises. The Claimant states that one of the uniformed school children using the business' internet services who objected to his removal, was detained and taken to the San Fernando Police Station.

16. At about 7:30 p.m. the Claimant made a report to the San Fernando Police Station complaining about the actions of Insp. Williams and the other police officers earlier that day. Subsequent and pursuant to the advice received from ACP Denoon on the 17th October 2013, the Claimant filed a complaint at the Police Complaint Division in respect of Insp. Williams' and the other police officers' actions on the 16th October 2013. The Claimant was informed that the report would be investigated.

17. During the period the 18th October 2013 to the 7th December 2013 WPC Benjamin and PC Hinds stood outside the Claimant's business premises interrogating and deterring school children from entering the same. On the 14th November 2013, the Claimant again wrote to the Commissioner of Police (Ag.) complaining about the police harassment of his customers. However, no response was received. By the 7th December 2013, the Claimant was forced to close his business and vacate the business premises as a result of the aforementioned police

interventions. Likewise, the Claimant was constrained to sell his computers and various items of equipment, hardware and software used in Nano Technologies at prices well below market value.

18. On the 4th February 2014 the Claimant met with representatives of the Police Complaints Authority. By letter dated the 25th February 2014 the Police Complaints Authority advised the Claimant that some of the police officers involved in the incident had been summoned and spoken to about their conduct and behavior.

19. On the 14th July 2014 the Claimant through his attorneys at law issued a Pre-Action Protocol Letter of his claim against the police officers in question and the Attorney General of Trinidad and Tobago for relief in respect of the police officers' misfeasance in public office. However, there was no response to same. By letter dated 30th September 2014 the Commissioner of Police (Ag.) was again reminded of the claims. The Commissioner of Police (Ag.) responded to the Claimant by letter dated the 31st October 2014 advising that the Pre-Action Protocol Letter was sent to the Attorney General's Chambers to address the concerns therein.

20. By a letter dated the 2nd December 2014 the Chief State Solicitor's Department issued a preliminary response on a "without prejudice" basis denying the claims. The Claimant was informed that the Chief State Solicitor was in the process of receiving full instructions so that a final reply could not be provided. Despite these assertions, the Claimant and his attorneys at law have not received a final reply from the Chief State Solicitor's Department.

The Defendant's Case

21. As it relates to the events of the 11th September 2013, the evidence of PC Hinds indicates that he was not in the company of WPC Horsley

when the latter was confronted with the outstanding balance of \$4,900.00 owed to the Claimant. PC Hinds was not aware of any loan agreement between the Claimant and WPC Horsley.

22. PC Ramdass whilst on foot patrol at La Pique Plaza on the 13th September 2013, observed through a glass window, children in school uniform unaccompanied by adults, playing games in the Claimant's business place. PC Ramdass entered Nano Technologies to speak to the Claimant about permitting those children to frequent his business. Pursuant to his bona fide and genuine belief that it was correct to request children in school uniform to vacate the business premises, he ordered the children to leave. The Claimant became aggressive and told PC Ramdass that he could not make anyone leave his store and he knows who to call.

23. At or around 4:00 p.m. on the 17th September 2013, whilst on patrol PC Hinds and WPC Benjamin received reports from other business owners in La Pique Plaza that there were children attired in school uniform playing video games at a cyber café long after school hours. Upon their investigations they observed several children in uniform playing video games in Nano Technologies. They also observed that some of those uniformed school children were unaccompanied by adults.

24. WPC Benjamin indicated to the Claimant that due to the reports, business proprietors of the Plaza were asked to desist from encouraging uniformed school children from congregating. The Claimant responded in a loud and aggressive manner. With the exception of those accompanied by adults and those who were carrying out research, the school children in uniform were asked to leave and go home. The Claimant then shouted at the officers, "I will do for allyuh ass!" The police officers then exited the Claimant's business and resumed their patrol.

25. On the 16th October 2013 Acting Corporal Ayum, Woman Police Constable Noel and Woman Police Constable Campbell visited Nano Technologies because they observed several school children there playing video games. They identified themselves and Corporal Ayum told the Claimant that there were provisions in the Education Act that prohibited school children from loitering in their uniforms after school hours. The Claimant irately responded that the officer could not remove anyone from his business. He told them he had spoken to ACP Denoon and they should in turn speak to him.

26. The officers attempted to see ACP Denoon, but were unsuccessful because he was not present at the time. Consequently, the police officers spoke to Senior Superintendent Santana (“Supt. Santana”) who instructed Insp. Williams to accompany them back to Nano Technologies. Upon their return, Insp. Williams identified himself and indicated that the Education Act did not permit school children in uniform to frequent his business. Insp. Williams then asked the school children to leave which they did, with the exception of those engaged in research. The police officers present on that day assert that none of them knew the Claimant was a licenced moneylender or were armed with AK47 assault weapons.

The Law

27. In the case of *Three Rivers DC -v- Bank of England No.3* [2000] 2 WLR 1220¹ the court held:

“[T]hat the tort of misfeasance in public office involved an element of bad faith and arose when a public officer exercised his power specifically intending to injure the plaintiff, or when he acted in the knowledge of, or with reckless indifference to, the illegality of his act and in the knowledge of, or with reckless indifference to, the probability of causing injury to the plaintiff or persons of a class of which the plaintiff was a member; that

¹ At page 1221

subjective recklessness in the sense of not caring whether the act was illegal or whether the consequences happened was sufficient; that a deliberate omission involving an actual decision not to act might also give rise to liability; that only losses which had been foreseen by the public officer as a probable consequence of his act were recoverable; and that such a formulation of the tort struck the appropriate balance between providing adequate protection for the public and protecting public officers from unmeritorious claims”

28. The essential ingredients required in the tort of misfeasance were laid out by Lord Steyn in *Three Rivers*² [supra]:

- (1) The defendant must be a public officer;
- (2) The second requirement is the exercise of power as a public officer;
- (3) The third requirement concerns the state of mind of the defendant;
- (4) Duty owed to the plaintiff. Does the plaintiff have a right to sue in respect of an abuse of power by a public officer;
- (5) Causation is an essential element of the plaintiff’s cause of action. Causation is a question of fact; and
- (6) Damage and remoteness. The claims by the plaintiff are in respect of financial losses they suffered. These are, of course, claims for recovery of consequential economic losses. The question is when such losses are recoverable.

29. The tort of misfeasance in public office was also considered locally in CV 2007-00185 *Dr. Keith Rowley v the Integrity Commission* where Rajnauth-Lee J (as she then was) at paragraph 27 of her judgment identified the six essential ingredients of the tort of misfeasance in public office as:

- (i) the defendant must be a public officer;
- (ii) the *impugned* conduct must be in the exercise or *purported* exercise of power as a public officer;
- (iii) the defendant must have the requisite state of mind;
- (iv) the Claimant must have a sufficient interest to found a legal standing to sue;
- (v) the wrongful act must cause injury to the Claimant; and
- (vi) the damage is not too remote.

² At pages 1230-1235

30. *Three Rivers* [supra] and *Dr. Keith Rowley* [supra], describes two different forms of liability for misfeasance in public office. First there is the case of targeted malice by a public officer, i.e. conduct specifically intended to injure a person or persons. This type of case involves bad faith in the sense of the exercise of public power for an improper or ulterior motive. The second form is where a public officer acts knowing that he has no power to do the act complained of and that the act will probably injure the plaintiff. It involves bad faith inasmuch as the public officer does not have an honest belief that his act is lawful.

31. Auld LJ in *Three Rivers District Council and Others v. Governor and Company of the Bank of England (No.3)* [2000] 2 WLR 15³ said of the two forms of the tort:

“The first form of the tort is what is now called ‘targeted malice’, that is, use or non-use of a power with the predominant intent of damaging a person, and which causes such damage. The second form is an intentional and knowingly or recklessly unlawful act or omission which causes damage to a person...Dishonesty lies at the heart of both forms of the tort... Dishonesty in that or more direct form, as the Privy Council said in *Royal Brunei Airlines Sdn Bhd v Tan* [1995]2AC 378, 389D391, means simply not acting as an honest person would act in the circumstances. It is an objective standard, though it has to be assessed in the light of what the person concerned actually knew at the time; an honest person does not ‘deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless’; and ‘Acting in reckless disregard of others’ rights or possible rights can be a telltale sign of dishonesty.”

32. The first form “targeted malice” covers the case where the public official acts with the intent to harm the Claimant. The second form operates where the public official may lack the intention but nevertheless acts knowingly or recklessly whether their conduct will

³ At page 144

harm the Claimant. Both forms vary in the manner in which intention is established.

33. In the first form, intention is established by evidence. Every power granted to a public official is granted for a public purpose. For him to exercise his powers deliberately for his own private purpose whether out of spite, malice, revenge or merely self-advancement is an abuse of power and satisfies any possible requirements of proximity and causation.

34. In the second form, the state of mind is established not by positive evidence of the intention but by inference. Proof that the official concerned knew that he had no power to act as he did and that his conduct would injure the Claimant provides evidence of the requisite state of mind to be inferred. As Oliver L.J. demonstrated in *Bourgoin S.A. -v- Ministry of Agriculture, Fisheries and Food* [1986] Q.B. 716, 777, the inference cannot be rebutted by showing that the official acted not for his own personal purposes but for the benefit of other member of the public. An official must not knowingly exceed his powers in order to promote some public benefit at the expense of the Claimant.

35. The burden of proving the elements of the tort lies with the Claimant. If any one of the elements is not proven, the Claimant will not succeed in his claim for misfeasance in public office: *Calveley and others -v- Chief Constable of the Merseyside Police and other appeals* [1989] 1 All ER 1025.

Evidence and Analysis

36. It is noted that the Defendants in their closing submissions⁴ stated that there is no dispute in relation to the first and fourth elements of the

⁴ At paragraph 46

tort as abovementioned. Therefore, the evidence shall be itemized for the convenience of analyzing the second and third elements. The fifth and sixth elements will be addressed after.

37. As it relates to the third element of the tort, the Claimant has positively asserted that the First to Fourth Defendants are liable for the tort of misfeasance in public office with the requisite intention to satisfy the first form; that of targeted malice. The Claimant avers in paragraphs 73, 74 and 75 of his witness statement:

“73. It was only when I demanded the repayment of the balance of the debt of \$4900.00 from WPC Horsley on 11th September 2013 in the presence of PC Hinds that the police started visiting Nano Technologies and started harassing, intimidating and removing my customers from the business.

74. I believe that the 1st – 4th Defendants (WPC Benjamin, PC Hinds, PC Ramdass and Insp. Williams) as well as the officers under their command intended to and did victimize and harass me and my customers by entering Nano Technologies, remaining in the precincts of the business premises and ordering school children in school uniform off the business premises when there was no basis for them to do so.

75. As a result of the police harassment and victimization, I was forced to close my business on 07th December 2013 and I continue to suffer grave financial losses.”

38. The first form of the tort requires the Claimant to prove ‘targeted malice’, that is, use or non-use of a power with the predominant intent of damaging him and that such damage was caused by the actions of the Defendants. The Defendants must have purposely acted dishonestly towards the Claimant. The court will examine the allegations in chronological order.

a) First Incident – 13th September 2013

39. On the 13th September 2013, PC Ramdass while out on his “patrol and visit” duties, charged with the responsibility of checking the various spots to be patrolled by the foot patrol officers, noticed several children in school uniforms playing games in Nano Technologies. After

attempting to speak to the Claimant about encouraging school children in uniforms to frequent his business, he asked them to leave the premises and the students complied. These specifics are undisputed.

40. PC Ramdass stated that when he asked the children to leave, his bona fide and genuine belief is that he had the power to request school children in uniform unaccompanied by an adult, not doing research and/or school work to vacate Nano Technologies⁵. In his witness statement PC Ramdass identified the basis for his genuine belief that the congregation of uniformed school children unaccompanied by adults was contrary to the rules of many schools in the Southern Division⁶ (“the School Rules”). His belief was documented and supported by the contemporaneous evidence of the Station Diary Extract. When cross-examined about the School Rules PC Ramdass said that he did not have a copy, he never saw the School Rules nor does the police have a copy of same. PC Ramdass admitted that the basis of his knowledge of the School Rules stemmed from the fact that he went to High School and Primary School in San Fernando.

41. PC Ramdass said that he is aware of the standing orders as they relate to pocket diaries, however he made no contemporaneous record of his investigation in Nano Technologies on the 13th September 2013 in his pocket diary.

42. He also agreed that according to the Standing Orders, a police officer ought to make an accurate entry in the station diary upon his return to the police station. This should include all activities connected with the performance of his duties and a record of any reports made to him including the names and addresses of persons, observations and any

⁵ Paragraph 9 of the Defence filed Aug 3rd 2018

⁶ Paragraph 11 Witness Statement PC Rishi Ramdass filed Nov 3rd 2017

investigations and statements made. It is important to set out the entire Station Diary Extract relative to PC Ramdass' duties:

"No 5385 PC Cooper armed with pistol No 3871 and 15 rounds of 9mm ammunition in company with No 6501 WPC Phillip armed with pistol No 9831 and 17 rounds of 9mm ammunition and WT 81, returned to station and reported Re: Foot Patrol Duties along High Street, Coffee Street, Point-A-Pierre Road, and Mucurapo Street San – Fernando, having paid special attention to vehicular traffic, pedestrians, suspicious looking persons, businesses and all other offences, all appeared quiet and regular. No 6501 reported at around 2:45 pm No 14110 PC Ramdass having gone to Nano Technologies Internet Access, located at La Pique Plaza, 2nd Floor and spoke to the proprietor William Gopaul of No 5 Rigsby Street San Fernando and warned him to desist from having school children dressed in school uniform at his business place after school hours and that it was contrary to the rules of the various schools. PC Ramdass and party the asked the various students present in school uniform to leave the said premises and they did"

43. The Station Diary Extract is explicit. The party of police officers set out on foot patrol with a view to detect or prevent "all offences". All offences must and did include, in these circumstances school children in uniform congregating for an unlawful purpose, loitering or causing disturbances⁷. It must be obvious to the police and it is obvious to the court, that large numbers of school children in uniform, congregating could lead to anti-social behaviour that may amount to known crimes. Forestalling such trouble would naturally fall into the category of the police's duty of prevention and forestalling crime.

44. The Claimant also submitted that the Defendants have a non-delegable and mandatory duty pursuant to Part 10.5 of the CPR⁸ to set out their

⁷ Paragraph 4 and 5 Witness Statement PC Rishi Ramdass filed Nov 3rd 2017

⁸ **10.5** (1) The defendant must include in his defence a statement of all the facts on which he relies to dispute the claim against him.

(2) Such statement must be as short as practicable.

(3) In his defence the defendant must say—(a) which (if any) allegations in the claim form or statement of case he admits; (b) which (if any) he denies; and (c) which (if any) he neither admits nor denies, because he does not know whether they are true, but which he wishes the Claimant to prove.

case. The Claimant's submission was in relation to the allegations made in paragraph 10 of the statement of case and the defendants' response thereto in the defence. In CA No. 244/2008 between *M.I.5. Investigations Ltd -v- Centurion Protective Agency Ltd*, Mendonca JA⁹ said:

"In respect of each allegation in a claim form or statement of case therefore, there must be an admission or a denial or a request for a Claimant to prove the allegation. Where there is a denial, it cannot be a bare denial but it must be accompanied by the defendant's reasons for the denial. If the defendant wishes to prove a different version of events from that given by the Claimant he must state his own version.

...When the Defendant does not admit or deny an allegation or put forward a different version of events he must state his reasons for resisting the allegations (see 10.5 (5) [of the CPR])."

45. Mendonca¹⁰ JA further held:

"Where a defence does not comply with Rule 10.5(4) and set out reasons for denying an allegation or a different version of events from which the reasons for denying the allegation will be evident, the Court is entitled to treat the allegation in the claim form or statement of case as undisputed or the defence as containing no reasonable defence to that allegation."

46. It is a settled principle of law that pleadings mark out the parameters of the case and are "ground zero" for the examination and analysis of his evidence¹¹, so that the other party is aware of the case that he has to answer. The Judicial Committee of the Privy Council at paragraph 15 of its judgment set out the purpose of pleadings in the case of

(4) Where the defendant denies any of the allegations in the claim form or statement of case— (a) he must state his reasons for doing so; and (b) if he intends to prove a different version of events from that given by the Claimant, he must state his own version.

(5) If, in relation to any allegation in the claim form or statement of case the defendant does not— (a) admit or deny it; or (b) put forward a different version of events, he must state each of his reasons for resisting the allegation.

(6) The defendant must identify in or annex to the defence any document which he considers to be necessary to his defence.

⁹ At paragraph 7

¹⁰ At paragraph 10

¹¹ CV 2006-03677 *Top Hat Yachts Ltd -v- Petersen and Ors*, per Pemberton J (as she then was) at paragraph 2

Charmaine Bernard v Ramesh Seebalack [2010] UKPC 2015 which states:

“In the view of the Board, an amendment of the statement of case was required. Part 8.6, which is headed “Claimant’s duty to set out his case”, provides that the Claimant must include on the claim form or in his statement of case a short statement of all the facts on which he relies. This provision is similar to Part 16.4(1) of the England and Wales Civil Procedure Rules, which provides that “Particulars of claim must include—(a) a concise statement of the facts on which the Claimant relies”. In *McPhilemy v Times Newspapers Ltd* [1999] 3 All ER 775 at p 792J, Lord Woolf MR said:

The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party’s witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules. The Practice Direction to r 16, para 9.3 (Practice Direction – Statements of Case CPR Pt 16) requires, in defamation proceedings, the facts on which a defendant relies to be given. No more than a concise statement of those facts is required.”

47. Justice Joan Charles at paragraph 25 of her judgment in CV2008-04896

Universal Projects v The Attorney General of Trinidad and Tobago also affirmed the importance of pleadings in a case:

“It is well settled that a party must set out in his pleadings the case upon which he intends to rely. It is upon his pleaded case that the other side responds and prepares his case. One is therefore not allowed to either present a different case at trial or during the course of submissions.”

48. The JCPC in *Charmaine Bernard* [supra] also made it clear (at paragraph 16) having regard to [our Part 10.5(4)(a) and 10.5(5) of the CPR] that:

“... a detailed witness statement cannot be used as a substitute for a short statement of all the facts relied on by the Claimant. The statement must be as short as the nature of the claim reasonably allows.”

49. The court notes both the defence and the contemporaneous evidence, the Station Diary Extract. Both make no explicit reference to the evidence as contained in PC Ramdass’ witness statement of reports and complaints that PC Ramdass said he received from other officers during the month of September 2013 while conducting foot patrols. According to his evidence, it was due to such recent reports that he advised officers to continue regular patrols of La Pique Plaza. PC Ramdass admitted, such information was connected to his duties and therefore ought to have been included in his station diary entry.

50. However, reading the Station Diary Extract in totality and the nature of the duties, it appears to the court that PC Ramdass was providing amplification and context to the duties of what is reported in the Station Diary Extract. The duties included: Foot Patrol Duties along High Street, Coffee Street, Point-A-Pierre Road, and Mucurapo Street San – Fernando, having paid special attention to vehicular traffic, pedestrians, suspicious looking persons, businesses and all other offences, all appeared quiet and regular. The court’s understanding is that the reports were general ones about the nature of disturbances including the behaviour and modus operandi of school children in the areas where PC Ramdass was working.

51. The pleadings at paragraph 9 of the Amended Defence, do cover the areas the Claimant complains are not pleaded. The court does not agree that there were omitted pleading in the defence pertinent to PC

Ramdass's case sufficient for the court to disregard his evidence on that issue.

52. PC Ramdass set out on foot patrol as part of the regular and normal duties of a police officer to prevent or detect any offence. The lack of detail in the station diary or the want of an entry in the pocket diary would have carried greater weight if PC Ramdass was investigating some specific allegation against the Claimant. In those circumstances the court would expect to see detailed and particularized entries relating to the Claimant. There was no such investigation against the Claimant. It is tempting in hindsight to conclude that the officers should have had foresight of certain things. This is one such situation that PC Ramdass could not have predicted. The Claimant took objection to the actions of the police. It is for that reason it appears to the court that PC Ramdass made entries about the Claimant and not the other persons he interacted with while he was out on foot patrol.

53. Further, the onus is on the Claimant to prove that PC Ramdass set out with malice towards him as per the third limb in *Three Rivers DC* [supra] and *Dr. Keith Rowley* [supra]. In proof of this, the Claimant relies on the evidence that he had written the Police Commissioner as well as WPC Horsley. There is no evidence as to when those letters were delivered to the aforementioned. There is also no evidence that WPC Horsley knew of or had received the Claimant's letter or the Claimant's complaint that she was not meeting her obligations to repay the loan. There is also no evidence that proves that PC Ramdass was motivated by the relationship between the Claimant and WPC Horsley.

54. In proof of his allegation of targeted malice as described by *Three Rivers DC* [supra], the Claimant alleges that two days before PC Ramdass entered his business place he had the interaction with WPC Horsley. This interaction, according to the Claimant, caused the police

to have the intent to harm him. However, PC Ramdass was not present according to the Claimant, when that interaction occurred. Further PC Ramdass's evidence is that he does not know WPC Horsley personally. He knows her professionally from working with her at the Mon Repos Police Station, the San Fernando Police Station and the Traffic Section at San Fernando. PC Ramdass further states that he knows nothing about any relationship or arrangement between WPC Horsley and the Claimant.

55. There is also no evidence that any of the other officers; PC Cooper or WPC Phillip, who set out on foot patrol with that PC Ramdass had any relationship with WPC Horsley to cause them to target the Claimant. The Claimant has not met the burden he is required to meet according to *Bourgoin S.A.* [supra].

56. The Claimant would also fail on the second form of misfeasance according to *Three Rivers DC* [supra], where the public official may lack the intention but nevertheless has the knowledge or is reckless as to whether that their conduct will harm the Claimant. Even the Claimant's evidence about his business model is peculiar. The Claimant asserts that his business relied on sales generated from school children. Those school children should have limited hours to patronize his business; those hours after school. Further, one would also imagine that school children have limited disposal allowance. The Claimant did admit that his business was open from early in the morning, but he expects the court to believe that nothing much occurred during those long hours and that his business came mainly from school children at the end of a school day. The Claimant's assertions seemed implausible and the court treated them as such.

57. The court is not satisfied that the Claimant has met his burden that PC Ramdass had the requisite state of mind. PC Ramdass erred in his belief

that there were School Rules which prohibited children being in such establishments in school uniforms. However, the court is not satisfied that the error was made consequent to or as a result of any dishonesty geared towards targeting the Claimant or that PC Ramdass was reckless or indifferent as to the error in his belief.

b) Second Incident - the 17th September 2013

58. On the 17th September 2013, it is the Defendants' pleaded case that whilst WPC Benjamin and PC Hinds were on patrol they received reports from other business owners of La Pique Plaza about children dressed in school uniform playing video games at a cyber café upstairs the said plaza long after school hours. Upon entry to Nano Technologies and after introducing themselves to the Claimant, they informed him about the reports received that school children were misbehaving and being disruptive in La Pique Plaza and that uniformed school children were at his business. The Station Diary Extract reads:

“With reference to the entry no. 29 on page 178 on today's date, same should be corrected to No. 17119 WPC Benjamin armed with pistol no. 7266 PC Hinds armed with pistol no 4488 and 15 rounds of 9mm Ammunition, reporting that at 3.05pm ms. Anne Marie Ramnath reported that she was being followed constantly by a short, indian man, wearing a long sleeve green shirt with a purple folder in his hand, and was known to her as Ashram Toolsie. Around 3.20pm Mr Ashram Toolsie of 207 Tarouba Road, Marabella, was seen walking along the opposite side of Harris Promenade San Fernando and was stopped by no 7266 PC Hinds, who later warned him and told to desist from such action, and he after stated that he was going to make to the San Fernando Police Station. Also, at 4:00pm whilst on foot patrol duty at Upper High Street, San Fernando it was reported that there were children dressed in school uniform playing video games on the second Floor, La Pique Plaza San Fernando. No 17119 WPC Benjamin and no. 7266 OC Hinds then went to the said location, Nano Technologies Internet Access, and spoke to the proprietor, Mr. William Gopaul of no. 5 Rigsby Street, San Fernando, and warned and asked to desist from coming to his business place after school hours, and asked that all children dressed in school uniform to leave the premises and they did

same. It was then said in a loud tone of voice by Mr. William Gopaul "I will do for allyuh ass!"

59. The Station Diary Extract, the most contemporaneous account of what occurred on the 17th of September, 2013 is very insightful. It shows that the officers, PC Hinds and WPC Benjamin, were engaged in regular and normal police duties on the day in question. They engaged with a woman who made a report and the person against whom the report was made. Following that incident, they receive a report about school children playing video games inside an establishment in the Plaza. They followed up on that report.

60. In cross-examination, WPC Benjamin's and PC Hinds' evidence is that the reports received were of the school children causing disturbances. Both officers did admit that the Station Diary Extract did not reflect that detail. The report reflected that the children were playing video games. The Police, the court finds, were prompted to visit the Plaza because of their core duties to keep peace and order. The evidence and the contemporaneous account in the Station Diary belies the Claimant's account that WPC Benjamin and PC Hinds left the station to seek out the Claimant purposely to harass him and cause damage to his business with the meaning of the first limb of *Three Rivers DC* [supra].

61. Upon their arrival at Nano Technologies they told the Claimant that due to reports of school children causing disturbances, proprietors of the Plaza were asked to desist from encouraging students, especially those in school uniform from congregating long after school hours. WPC Benjamin and PC Hinds aver that the Claimant responded in a loud and aggressive manner. After asking the uniformed children to leave, except those accompanied by an adult and those carrying out research, the Claimant shouted to the officers, "I will do for allyuh ass!"

62. The provisions of the Section 76(3) Education Act, are outlined below:

“Except with the permission of the Principal and under the supervision of a teacher appointed by him for the purpose, no child on the register of any public or private school may be admitted, whether on payment or otherwise to any cinema show or other similar form of entertainment during the hours of 9:00 a.m. to 3:30 p.m. on any day on which the attendance of school by this Act and the Regulation required.”

63. Section 76(3) did not empower the officers with the authority they purported to exercise. However, the court is satisfied the officers did have the bona fide and genuine belief that the Education did authorise the exercise of that power. They had a mistaken but genuine belief, one that was not grounded in dishonesty as per *Three Rivers DC* [supra] and *Dr. Keith Rowley* [supra]. The Education Act did not give the power to order the school children attired in uniform unaccompanied by an adult and not conducting any research or school work to vacate the Claimant’s business premises out of the premises. However, WPC Benjamin and PC Hinds did have the power to perform their general powers. The officers were acting in the broad and general exercise of their duties of preserving the peace and were therefore in the exercise of their power as public officials.

64. The Defendants’ in their closing submission indicated that pursuant to section 45 of the Police Service Act Chapter 15:01, they were charged with the duty to preserve the peace, to detect crime and to apprehend persons found committing an offence or persons whom they suspect of having committed an offence. As a result, of the numerous complaints WPC Benjamin and PC Hinds received from business owners and concerned citizens about school children being disruptive, for the sake of the children’s safety and in efforts of preserving the peace in La Pique Plaza they asked the children to make their way home. As such their actions were consistent with their duties as police officers in

accordance with the Police Service Act Chapter 15:01 and under the honest and genuine belief that section 76(3) of the Education Act prevented school children from engaging in any form of entertainment long after school hours.

65. The Defendants submitted that WPC Benjamin's and PC Hinds' visit to the Claimant's business premises was to ensure the safety of the children as they were anticipating a breach of the peace due to the alleged reports about the children being disruptive. The case of *R -v- Howell* [1982] QB 416 per Watkins LJ provides guidance as to what constitutes a breach of the peace:

“...there is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.”

66. Similarly, in HCA No. S1753/2002 *Marvin Mariano Edmond and Owen Edmond -v- Attorney General* as per Alexander J (AG.) stated that a fight between boys amounted to a breach of peace. However, words spoken despite being aggressive and to some degree insulting, does not amount to a breach of the peace nor do they amount to a provocation of a breach of peace. What underscores a breach of peace must involve violence or the threat of violence¹². Furthermore, Lord Parker in *Piddington -v- Bates* [1960 3 All ER 660 highlighted that the anticipation of a breach of the peace is not enough to establish this defence:

“First the mere statement of a constable that he did anticipate that there might be a breach of the peace is clearly not enough. There must exist proved facts from which a constable could reasonably anticipate such a breach. Secondly, it is not enough that his contemplation is that there is a remote possibility of a breach of the peace. Accordingly, in every case, it becomes a question of whether, on the particular facts, it can be said that there were reasonable grounds on which a constable charged

¹² CV2011-02270 *Jonathan Moore and Anor -v- The Attorney General* per Charles J at paragraphs 55 and 60

with this duty reasonably anticipated that a breach of the peace may occur.”

67. The Defendants’ evidence is that the reports of school children misbehaving and being disruptive could have amounted to a breach of the peace or possibly some other social disorder or other type of offence. In other words, the police officers anticipated that there might be a breach of the peace and they acted in an effort to ensure that such did not materialize.

68. PC Hinds agreed in cross examination that since loitering is an offence, it would have been an important matter to have recorded. Neither WPC Benjamin nor PC Hinds upon their return to the police station included any information suggestive of loitering. However, the court is of the view that the policing exercise they engaged in was akin to a community activity of getting the school children off the streets and to their respective homes with the main aim of ensuring their safety and security. Their exercise was not about charging the school children but of forestalling the commission of criminal offences by or upon the school children. Nevertheless, the exercise also fell within their general powers under section 45 of the Police Service Act. Nothing WPC Benjamin or PC Hinds did was done with a dishonest intent nor did they act with reckless indifference about the illegality of their actions *Three Rivers DC* [supra] and *Dr. Keith Rowley* [supra].

69. The Claimant relied on the decision of Criminal Appeal No. 17 of 2003 *Frankie Boodram -v- The State* since the officers did not make entries of certain occurrences in the diaries. The decision of *Frankie Boodram* [supra] and the adverse inferences to be made against the police has a particular application. *Frankie Boodram* [supra] has relevance when a suspect makes an oral statement which can amount to an admission. The court does not find it to be applicable to a general situation as

pertained here, when there was no suspect but merely a general reporting about the important events that occurred while the police were on patrol. In the case here, there were no statements made by suspects, the recording of which they should have been invited to sign. None of the officers were treating the Claimant or any of the school children as suspects.

70. According to the Claimant, he asked the two officers whom he did not know (WPC Benjamin and PC Hinds) to identify themselves and they refused to do so. The Claimant stated that he acquired their identities from a traffic warden when he followed the police officers outside. It was at this point the Claimant averred that he recognized PC Hinds as the officer who was in the vehicle with WPC Horsley on the 11th September 2013, when he demanded the balance of the debt owed to him. The court does not accept the evidence of the Claimant in this regard.

71. The Claimant's evidence that he did not recognize PC Hinds while he was standing in his store by itself is not odd. What makes the evidence unbelievable is when the Claimant testified that after he asked the traffic warden and was given the names of the officers that somehow served as a trigger. According to the Claimant, that allowed him to recognize PC Hinds as the officer sitting in the vehicle with WPC Horsley. Although the Claimant's evidence is when he had the confrontation with WPC Horsley he did not know the other officer.

72. There is also contemporaneous evidence which belies the Claimant's truthfulness about recognizing PC Hinds. The Claimant made two complaints to the Police Complaints Division dated the 18th September 2013. In those complaints he alleged that because of his interaction with WPC Horsley, the police were targeting his establishment. The Claimant wrote "I have a strong feeling that it's Horsley told the officers

to come into my business and harass me". One complaint was of the incident on the 13th and the other of the incident on the 17th September 2013. In none of these reports did the Claimant state that any other officer was sitting in the police vehicle when he had the confrontation with WPC Horsley. In the complaint about the incident on the 17th September 2013, the Claimant did not say that he recognized PC Hinds as the officer sitting in the vehicle with WPC Horsley.

73. PC Hinds admitted in cross examination that he knew WPC Horsley for approximately six years before the incident, including working together performing extra duties. He also agreed that like all human beings a friendly relationship (not in the suspicious sense) will inevitably be developed while working together; and that at times they would discuss each other's problems. PC Hinds denied that he was carrying out any act of revenge on behalf of WPC Horsley. He also denied knowing anything about the loan that WPC Horsley took from the Claimant. Revenge in those circumstances seems far-fetched.

74. The Claimant avers that two days after his demand from WPC Horsley on the 11th September 2013, he was visited by police officers for the first time. Further, during the period 18th October 2013 to 7th December 2013, right before he was forced to close Nano Technologies, PC Hinds and WPC Benjamin used to stand outside the said business entrance at least two to three times a week and would speak to the school children in uniform outside his business in his presence. The Claimant avers that following such, not only did school children stop frequenting his business but also adults. He attributed this drop off to the police presence.

75. It was revealed by the Claimant's witness Mr. Oldale Mitchell, a school child at the time, working in the Claimant's business after school hours. He worked right after school, went to the Plaza in his school uniform

and wore his school uniform while at work. Mr. Mitchell's evidence is that he saw, over time, more police patrols in the Plaza. The police officers would be both upstairs and downstairs. Mr. Mitchell testified that the Plaza was frequented by school children after school and that there would be a police presence throughout the Plaza. The fact that Mr. Mitchell was able to attend Nano Technologies while he was dressed in school uniform discredits the core of the Claimant's evidence. The police did not target Nano Technologies; they were there to keep order at the Plaza.

76. Mr. Mitchell also contradicted the Claimant's evidence in other areas. While the Claimant's evidence is that the police officers stood outside his place of business, Mr. Mitchell's evidence is quite different. Mr. Mitchell testified that he would regularly see a female and sometime a male officer standing in the vicinity of Nano Technologies. The officers stood in the vicinity of a security desk. He estimates the security desk to be about 16 feet from the entrance of Nano Technologies. Mr. Mitchell would see the Plaza's security officers as well as the police at that location. The Claimant, on the other hand, averred that the officers stood outside Nano Technologies preventing school children and even other customers, from entering.

77. There is a Station Diary Day Duty Extract dated 3rd October 2013 which states:

"No. 17119WPC. BENJAMIN STATED THAT AROUND 3:45PM ON TODAY'S DATE WHILST ON PATROL IN COMPANY WITH WPC CLEMENT IN LA PIQUE PLAZA ONE WILLIAM GOPAUL OF NANOO TECHNOLOGIES SAW THE OFFICERS IN THE VICINITY OF THE STAIRCASE AT LA PIQUE PLAZA AND LOOKED IN THE DIRECTIONS OF THE OFFICERS AND SAID IN A LOUD TONE OF VOICE 'LET ALL YUH ONLY COME HERE I WILL DO FUH ALL YUH STINKING ASS' WPC BENJAMIN AND WPC CLEMENT REQUESTS THAT THIS MR GOPAUL BE WARED OF HIS BEHAVIOUR."

78. The Claimant's behaviour, as documented, was outlandish. He seemed to have convinced himself of a conspiracy at foot against him. There is no evidence that there was any such conspiracy. The Claimant is of course prognosticating that the children he saw the police speak to in the Plaza, would all have entered Nano Technologies and spent money at his establishment. That is no more than conjecture on the Claimant's part.

79. The court is not satisfied that the police officers WPC Benjamin and PC Hinds were motivated by malice in retaliation to the Claimant's demanding the repayment of the debt from WPC Horsley. There is also no evidence for the court to infer that the officers were reckless as to the fact that the Education Act did not give them the authority, they believed it did. The Claimant did not discharge his burden in accordance with the decision in *Bourgoin S.A.* [supra].

c) Third Incident – 16th October 2013

80. Corporal Ayum (Ag.), WPC Noel and WPC Campbell are all members of the Community Police Section of the Southern Division. It is their evidence that community police officers often receive calls from school principals, business owners and concerned citizens about children congregating and loitering after school hours creating disturbances. It was against this background that they went out on patrol. Whilst on patrol at La Pique Plaza, the police officers observed several school children playing video games in Nano Technologies. The Station Diary Extract provides the following record:

“No 13106 A/CPL Ayum driving vehicle PAY 4552 in company with No 17224 WPC Noel and No 17475 WPC Campbell armed with pistol no and 15 rds 9mm ammunition returned to station having performed school patrol and visit at the San Fernando West Secondary, St Pauls Anglican also having made checks at the A&S Mall High Street San Fernando for students of various schools also having gone to the business place in the La Pique Plaza San Fernando, namely Galaxy Games, KFC and Nano

Technologies where the owner William Gopaul was interviewed relative to the presence of school children of the Benedicts College, San Fernando East Secondary Seven Day Adventist Secondary, San Fernando West Secondary at the home of 4:50 to which he stated they were there for entertainment purpose and we have no rights in removing his customers. He was advised under the Education Act Chapter 30:01 Section 76(3) and he became irate and refused to listen. Also having being advised by Insp Williams re task force Personnel of said and the children were removed; and their parents will be informed of their whereabouts at the afternoon period.”

81. They informed the Claimant that there were provisions in the Education Act which prohibited school children from loitering in their uniform after school hours, the Claimant shouted at the police officers and told them to speak to ACP Denoon. The Claimant had already spoken to ACP Denoon and he was assured that the Education Act did not permit the officers to ask children to leave his business place. The police officers did go to see ACP Denoon but were unable to meet with ACP Denoon. They spoke to Supt. Santana, instead as he was present. Supt. Santana instructed Insp. Williams to accompany the police officers back to Nano Technologies.

82. The officers went back to Nano Technologies under the supervision of Insp. Williams. Insp. Williams informed the Claimant that pursuant to the Education Act, children in school uniform ought not to be frequenting his business and he asked the uniformed children to leave.

83. The Claimant could not be correct then that he was being specially targeted by Defendants. The extract from the Station Diary details their movements which involved visiting schools and numerous other business places that school children in uniform frequented after school.

84. Further, if the officers were targeting the Claimant, why then would they attempt to see ACP Denoon. When that was unsuccessful they

sought the intervention of another senior officer, Supt. Santana. It was Supt. Santana who instructed Insp. Williams to accompany the officers to Nano Technologies. Insp. Williams, in those circumstances could not and did not, have a dishonest intent. He did not have malice towards the Claimant when he visited Nano Technologies as per *Three Rivers DC* [supra] and *Dr. Keith Rowley* [supra]. Insp. Williams was acting on instructions from a senior officer both as to the applicable law and as to the particular duty at Nano Technologies. There is no evidence, nor is there any suggestion that Insp. Williams knew WPC Horsley or that WPC Horsley took a loan from the Claimant.

85. Insp. Williams stated that at the material time, his genuine and honest belief was that the provisions of the Education Act prohibited school children in uniform from frequenting places such as the Claimant's business. However, the Claimant disputes his belief as Insp. Williams' evidence is that he received instructions from Supt. Santana who instructed him to accompany the police officers to remove uniformed school children from Nano Technologies. There is no evidence from which the court could infer that Insp. Williams did not believe what was relayed by him to Supt. Santana. What the court is satisfied about is that Insp. Williams relied on and in fact believed what he was told by Supt. Santana.

86. Insp. Williams admitted that on the 16th October 2013, prior to the removal of the school children, he was informed by the Claimant that ACP Denoon told the Claimant that it was not an offence for school children to be at his business premises after 3:30 p.m. The Claimant notes that neither Supt. Santana nor ACP Denoon were called to give evidence about their belief or understanding of the provisions of the Education Act. Their beliefs, however are not conclusive in determining Insp. Williams' intention at the time he acted. Insp. Williams himself

gave evidence of his genuine and honest belief in the provisions of the Education Act.

87. Based on the evidence, the court accepts the evidence of Insp. Williams that he held a genuine and honest belief that the Education Act prohibited school children in uniform from being at the Claimant's business after school hours. While it is accepted that he may not have had a copy nor had he seen an extract of section 76(3) of the Education Act Chapter 39:01, his evidence is that he received instructions from his senior who had the belief in the provisions of the Education Act. It is reasonable to expect that Insp. Williams would believe his superior's instructions and beliefs. There were no allegations that Supt. Santana was involved in the acts of dishonesty complained of by the Claimant.

88. In relation to the Claimant's allegations that there were army officers with AK47s as part of the police party who visited Nano Technologies, the court rejects this evidence. The police party according to the contemporaneous record, comprised task force personnel. The evidence relating to the presence of army officers and the accompanying assault weapons appears to be contrived by the Claimant to exacerbate the events that had unfolded. The court notes that on the 17th October 2013, the day after the incident, the Claimant in his complaint to the Police Complaints Division detailed that two army officers were present but failed to mention anything about the weapons.

89. With respect to Insp. Williams' threat to arrest the teacher who protested the removal of the school children, the court does not accept the evidence of the Claimant in this regard. The court also does not believe that a student was arrested on the day in question as submitted by the Claimant. The contemporaneous report exhibited to the witness statement of Corporal Ayum (Ag.) dated 8th November 2013, states

“We then all left La Pique Plaza where we the Community police even assisted one of the students to get to his home at Rankin Street, Mon Repos as it was in route to our office which is situated at the Mon Repos Police Station...”. This evidence sheds light on the nature of the police duties and in fact is an indicator of the manner in which the police officers were engaging and treating with the school children they encountered on that day.

90. The court is therefore not satisfied that Insp. Williams acted in bad faith; he did not target malice towards the Claimant as per *Three Rivers DC* [supra] and *Dr. Keith Rowley* [supra] nor was he reckless in forming the opinion that the Education Act allowed him to remove school children for Nano Technologies.

91. The court now recounts on observations made that redounds adversely on the Claimant’s credibility. The court has found the Claimant to be a witness with a penchant for exaggeration at the least and at the most a dishonest witness:

a. Firstly, the Claimant in his letter to the Deputy Commissioner of Police, dated 10th September 2013 stated that “Ms Horsley have made no efforts to pay me back and I am under the impression that I am being robbed”. This letter gives the impression that WPC Horsley did not repay any part of the debt. The Claimant’s documentation showing his loan to WPC Horsley shows that by the time he wrote that letter WPC Horsley had indeed repay a sum of \$4,100.00.

b. Secondly, in a second letter dated the 14th November 2013 to the Acting Commissioner of Police the Claimant wrote “on the 13/09/2013, I approached WPC 6881 Sheryil A Horsley about moneys that she borrowed from me totaling \$9000.00 and told

her she is not above the law that she needs to make a payment on her loan". The Claimant is a licensed money lender. He wrote a letter that was factually incorrect and which gave a false impression. WPC Horsley did not borrow \$9,000.00 from him and by the date of his letter, she had liquidated a portion of the debt owed.

- c. Thirdly, the Claimant stated in his complaint dated the 18th September 2013 that the two incidents of the 13th and 17th September 2013 "...has caused a tremendous financial burden on my business and I wanted to be compensated financially". By this time the Claimant's complaint related to incidents that occurred after 3:00 p.m. in a business that was opened from the morning up to 7:00 p.m. according to him. This is just not believable. It seems to the court that the Claimant had decided, quite early, on a course of action that he would take. He apparently decided that he would use the actions of the police officers to wrest money from the state.
- d. Fourthly, the Claimant gave the impression that he was specially and specifically targeted. His evidence is that in so targeting him, the police officers came to his business place. The evidence in the Station Diaries and from the Claimant's own witness however relayed the correct context. The police were conducting their duties in and around the Plaza. The officers patrolled the first as well as the second floors of the Plaza. The Police Officers did not discriminate when it came to their efforts to get the school children in uniform to go to their respective homes, even on one occasion taking a school child home.
- e. Fifthly, the Claimant's allegations included evidence that the police officers behaved in a "brusque manner" while

performing their duties. His witness' evidence provided by Mr. Mitchell is that he could not hear what was being said by the officers to Mr. Gopaul. He also testified that when officers were at the Plaza, he could not hear what the officers were saying to the school children. He admitted that on one occasion he did leave Nano Technologies but on the other occasions he did not have difficulty entering the establishment in his school uniform.

- f. Sixthly, the PCA's letter to the Claimant dated 25th February 2014 detailed that the officers were warned about their conduct and behavior. This would not be surprising based on section 76(3) of the Education Act. In that same letter the PCA admonished him about inaccurate representations. After outlining the action taken by the PCA in response to the Claimant's complaint, on the second page of the said letter the legal officer wrote: "Additionally, the PCA notes that despite its regular updates and meetings with you, correspondence is sent by you to parties suggesting that the PCA is not giving sufficient attention to your matter. You would be aware that is not an accurate representation of the PCA's handling of your matter". It seems, similar to the court's findings, the PCA also concluded that the Claimant had made inaccurate representations.

- g. Seventhly, the Claimant's evidence is that he was forced to close his business as a result of the actions taken by the police. The witness Mr. Siew produced financial accounts in 2017 for the periods ending 30th September 2013 and 30th September 2014. No accounts were provided for the year 2012 for the court to have an appreciation of the volume of income Nano Technologies generated in the period before the Claimant's complaints. Additionally, the Claimant's claim is that he was forced to close the business on the 7th December 2013. The

accounts produced for Nano Technologies, however, was for the period ending the 30th September 2014. By the end of the first accounting period, when two of the three incursions complained of had occurred, the Claimant posted revenue of \$924,983.00. With that revenue the Claimant netted a profit after taxation in 2013 of \$54,000.00.

- h. Eightly, the Pre-Action letter written by Attorney at Law on behalf of the Claimant dated the 14th July 2014 the Claimant claim that Nano Technologies netted a monthly profit of \$50,000.00. However, the Claimant's witness' evidence is that the net profit for the financial year ending the 30th September 2013 was a total of \$54,000.00. The Claimant's claim and the evidence of his witness are inconsistent.

Damages

92. Damages would be considered under the fifth and sixth elements of the tort of misfeasance as outlined in the cases *Three Rivers DC* [supra] and *Dr. Keith Rowley* [supra]. The Claimant has claimed damages in misfeasance under three separate heads:

- a. Special damages in the sum of \$662,770.00;
- b. General damages inclusive of aggravated damages in the sum of \$1.5M; and
- c. Exemplary damages in the sum of \$500,000.00.

93. Based on the court's findings and the authorities of *Three Rivers DC* [supra] and *Dr. Keith Rowley* [supra], it is obvious that the Claimant is not entitled to damages under any head claimed.

94. The Claimant's claim against all the Defendants is dismissed.

95. The Claimant shall pay the Defendants' costs in the sum of \$10,000.00 stay of execution 28 days.

Final Observations

96. As noted during course of this judgment, the provisions of Section 76(3) of the Education Act are narrow, very focused and do not provide coverage for school children outside of the school hours of 8:00 a.m. to 3:30 p.m. There seems to be an obvious gap in existing legislation for the police to exercise supervisory authority over children at certain places in keeping with their community oriented policing role. It is evident that there is a growing interest in society for the safety and protection of our children. Therefore, it may be a useful exercise for policy makers and persons in the legislative arm of the state to consider a review of the existing laws to ensure that the police are enabled to act in ways that are in the best interest of school children – within and outside the normal hours of school.

.....

Justice Avason Quinlan-Williams

JRC: Romela Ramberran