REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 86 of 2008
H.C.A. No. 3562 of 2003

BETWEEN

ANNISSA WEBSTER AND OTHERS

Appellants

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

PANEL: **A. MENDONÇA, J.A.**
P. JAMADAR, J.A.
N. BEREAUX, J.A.

APPEARANCES: **R. Maharaj, SC, and V. Maharaj for the Appellants**
F. Hosein, SC and R. Thurab for the Respondent

DATE DELIVERED: 31 October 2012

I agree with the judgment of Bereaux, J.A. and have nothing to add.

A. Mendonça
Justice of Appeal

I too agree with the judgment of Bereaux, J.A. and have nothing to add.

P. Jamadar
Justice of Appeal

JUDGMENT

Delivered by Bereaux, J.A.

The issues:

[1] Two issues arise in this appeal :

(a) Whether the Executive has discriminated against the appellants who are past and present members of the Special Reserve Police, by failing to equate their terms and conditions of service with those of regular police officers, contrary to section 4(b) and (d) of the Constitution;

(b) Whether the appellants have been denied the protection of the law, contrary to section 4(b) of the Constitution by the failure of the Minister of National Security to promulgate regulations governing their terms and conditions of service.

[2] Before Moosai J. they sought declarations to the following effect; that by not equating their terms and conditions of service with those of regular police officers, the State had breached section 4(b) and 4(d); that by failing to make regulations pursuant to section 22 of the Special Reserve Police Act, Chap 15:03, in terms similar to those of the Police Service Regulations Chap. 15:01, the State (through the Minister of National Security) had breached their rights under sections 4(b) and 4(d) of the Constitution of Trinidad and Tobago.

They also sought consequential monetary compensation for the contravention of their rights including exemplary damages.

[3] The trial judge answered both questions in the negative and the appellants now appeal against this decision. In my judgment, the judge was correct. There was no breach of the appellants rights under section 4(b) and (d) in respect of

issue (a) and no breach of the appellants rights to the protection of the law in respect of issue (b).

Relevant facts and history

[4] The following facts are not in dispute. The appellants are past and present members of the Special Reserve Police established under the Special Reserve Police Act Chap. 15:03 ("The Act"). Section 4(2) of the Act provides for three categories of Special Reserve Police; full time, part time, and temporary. Full time refers to officers whose duties augment the shifts of regular police officers. Special Reserve Police Officers ("SRPOs") who are employed full time, usually work for eight hours per day for five days per week. SRPOs who are temporary, work as and when required. SRPOs who are employed part time work sixteen hours per month, each tour comprising a period of four hours.

[5] The Special Reserve Police Service was formed to provide a body comprising persons who were otherwise employed but who out of civic responsibility were prepared to assist the police by rendering part time service. However, due to the increasing demand for manpower in the Trinidad and Tobago Police Service, without corresponding increases in its sanctioned strength, SRPOs were called out on what appeared to be a permanent basis instead of full-time or temporary service, as contemplated by the Act. During this time no regulations were made in relation to the Special Reserve Police for *inter alia* the organization of the Special Reserve Police, although power to make such regulations was conferred on the Minister by section 22(1) and (2) of the Act.

[6] On 29th October, 1998, the Cabinet of Trinidad and Tobago agreed that regulations be made to give effect to the Act. In the process of preparing the regulations however, it became clear that those SRPOs who had been on virtual permanent duty would be disadvantaged when the regulations were made because such permanence was not envisaged when the Act was passed.

[7] The Cabinet also decided that the practice of utilizing SRPOs for extended periods on a full time basis should be discontinued. The decision meant that SRPOs would no longer be employed full time. The Cabinet also agreed that those SRPOs who had been continuously engaged, full time, for a period of over 2 years (as at 1st August, 2000) were eligible for permanent appointment into the regular police service.

[8] Of the one thousand one hundred and ten (1,110) police officers in the Special Reserve Police Service at the time, six hundred and ninety-six (696) had been on full time duty for periods in excess of two years. But because of the difference in qualification requirements for the regular police service and because of certain *"untenable employee relations issues"*- which would arise because of it, the decision was also made that –

(1) these SRPOs be absorbed into the police service at the rank of Police Constable subject to the meeting of certain specific criteria by the candidates in question.

(2) a special package would be offered to those who were terminated or who declined the option of absorption. This package was based on a formula provided under section 18(3) of the Retrenchment and Severance Benefits Act 1981 with a 20% enhancement.

(3) SRPOs who accepted the package would no longer be eligible for employment into the Special Reserve Police Service.

(4) those SRPOs who were absorbed and who held the ranks of Corporal and Sergeant would be paid a taxable allowance equal to the difference between what they were paid as salary as a police constable and what had been paid as Special Reserve Police Corporal or Sergeant. This allowance would also be taken into account in computing their superannuation benefits. This allowance would also be subsumed into their salary as police constable when the salaries of police constables were increased.

[9] Special training arrangements were made for those SRPOs who were absorbed into the regular service, in place of the academic, physical and age requirements which ordinarily obtain for entry into the regular police service. SRPOs who were fifty-five years and over were not to be absorbed into the regular police service because the retirement age for regular police constables was fifty-five years. Absorption commenced in or about October 2000 and ended in or about June 2001.

[10] This motion was filed on behalf of five hundred and ninety two (592) applicants. Of these applicants, three hundred and thirty four (334) were granted leave to discontinue. The contents of the affidavits of each applicant in this claim, in their respective categories, are identical, subject to personal details. To avoid duplication, the record of appeal contains one sample affidavit from each category. Some SRPOs who were granted leave to discontinue are applicants in two other pending actions which were filed for the same relief on the same or substantially the same facts.

[11] These two actions have been stayed, by consent, to abide the final determination of this action.

[12] The appellants set themselves into six categories. The fifth category is no longer relevant to this appeal. The 1st to 10th named appellants ("the first category of appellants") are persons now employed as part-time members of the Special Reserve Police and are called out on part-time duty only. The 11th to 35th named appellants ("the second category of appellants") are persons employed as part-time members of the Special Reserve Police but who are called out on full-time duty. The 36th to 468th named appellants ("the third category of appellants") are former members of the Special Reserve Police who were absorbed into the police service.

[13] The 469th to 544th named appellants ("the fourth category of appellants")

are former members of the Special Reserve Police, who, pursuant to the Cabinet decision, were summarily retired from the Special Reserve Police upon attaining 55 years of age (the age of retirement of Second Division Police Officers in the Police Service). They were paid a separation package calculated at one month's salary for every year of service plus a 20% enhancement, without pension. The 563rd to 592nd named appellants ("the sixth category of appellants") are former members of the Special Reserve Police, who before the Cabinet decision, retired compulsorily from service at age 60 and were paid an *ex gratia* "compassionate" gratuity. I have struggled to come to terms with the basis of their claim and the reasons for their joining in this action.

[14] Section 22(1) of the Act provides for the making of regulations to give effect to the provisions of the Act. Subsection (2) goes on to specify what those regulations may provide for. The section is more fully addressed at paragraphs 35 et seq. The Act does not however make express provision for the payment of benefits of any kind to SRPOs. Provision for the payment of sickness, injury and disability benefits for SRPOs were made in sections 21(1) and 21(2) of the Special Reserve Police Ordinance Ch 11 No. 3 (1950 Rev. Ed.) by which the Special Reserve Police Force was originally established. Provision was also made in section 20(2) of the Ordinance for payments to be made to SRPOs for their attendance at parades or drills. These sections, along with section 12 of the Ordinance (which provided for the provision to the SRPOs of a manual setting out the policies and duties of an SRPO as well as for the provision of uniforms and equipment) were repealed by Act No. 38 of 1967.

[15] The necessity for regulations to govern, inter alia, the benefits of the appellants, including those previously conferred by these repealed sections, was then provided for in what is now section 22(1) and (2) of the Act. Section 22(4) of the Act however provides that the former sections shall continue in force until replaced by regulations made pursuant to section 22(1) and (2). One of the questions for the trial judge was whether this provision was effective to protect

the rights and entitlements of the appellants.

Affidavits

[16] The following affidavits were filed on behalf of the appellants in support of the motions:

a. Annisa Webster filed on the 18th March, 2005 [Category 1]

b. Ellen Henry filed on the 18th March, 2005 [Category 2]

c. Ancil Hosanine filed on the 17th February, 2005 [Category 3]

d. Balliram Rampersad filed on the 18th March, 2005 [Category 4]

e. Edward Francis filed on the 17th June, 2005 [Category 6]

f. Crompton Pearson filed on the 13th February, 2006

The respondent in answer filed the affidavits of Wayne Richards on the 21st August, 2006 and Hetty Mohammed-Libert on the 30th August, 2006.

Three further affidavits were then filed; that of Crompton Pearson on the 23rd of October, 2006 in reply to the affidavits of the State; the affidavit of Anthony Andrews on the 1st of November, 2006 filed in defence of the action and a joint affidavit by Crompton Pearson and John Victory filed in reply to the Andrews' affidavit.

Judge's conclusions

[17] The judge preferred the evidence of the respondent. He found that there was a sufficient foundation of undisputed material corroborated by documentary evidence coming from the respondent's deponents as opposed to general and inaccurate statements from the applicants. He concluded that :

(a) Members of the Police Service cannot be true comparators with members of the Special Reserve Police Service as the legislature has clearly created two distinct classes of officers and the Special

Reserve Police Service has been assigned duties of lesser responsibility.

(b) The failure to make regulations was not a breach of the right to protection of the law. There was no legally enforceable duty on the relevant Minister to pass regulations within any specific time frame. The non-implementation of the regulations could not have provided the basis for the remedies sought.

(c) The appellants could access all, or substantially all, of the benefits proposed by the unimplemented regulations under the subsisting legislation. In the final analysis, the determination of the terms and conditions of service of SRPOs was a matter of policy.

(d) There was no breach of the protection of the law because there was no legally enforceable duty on the Minister to promulgate the regulations within any specific time. The non-implementation of the regulations could not therefore have provided the basis for the remedies sought. The appellants could access all or substantially all of the benefits contemplated by section 22 of the Act. The Special Reserve Police Ordinance was initially passed in 1946. It was amended by Act No. 38 of 1967 which provided for the Minister to make regulations generally to give effect to the provisions of the Act. In amending the Act, the legislature was careful to ensure that members of the Special Reserve Police Service would retain the benefits conferred by sections 12, 20(2), 21(2) and 21(3) of the Ordinance, by permitting these sections to continue in force until the making of the regulations. In essence the appellants are claiming for improved terms and conditions and this is essentially a matter of policy.

[18] He found the statutory requirements for appointment to the Police Service and the Special Reserve Police to be *"quite different"*. He noted the following differences :

(a) Members of the Police Service, due to their status as permanent employees are afforded a far higher degree of political insulation than members of the Special Reserve Police Service. Matters relating to the appointment, transfer, discipline, resignation and termination of police officers fall under the purview of the Police Service Commission. They hold office for an indeterminate period, while SRPOs are appointed by the Commissioner of Police and their appointment can be revoked at any time by the Commissioner.

(b) Qualification for the appointment of SRPOs, including education and physical attributes, are substantially lower than that of regular police officers. See regulation 4 of the Police Service Regulations as opposed to section 8 of the Special Reserve Police Act. He found it significant that educational qualifications were absent in respect of SRPOs adding that, *"academic qualifications may provide a legitimate basis for the differential treatment of persons."*

(c) Regular police officers undergo an intensive six month training programme, while SRPOs receive basic induction training over four to six weeks on a part time basis and they thus trained to perform basic police duties.

(d) Section 18 of the Act, which states that an SRPOs while on duty, *"shall have exercise and enjoy all the powers, authorities, privileges and immunities and perform all the duties*

and….responsibilities of a member of the Police Service," serves merely to empower and protect SRPOs when carrying out their duties, but it does not found a basis for a finding that they are similarly circumstanced.

(e) While there were similarities in the work performed by both groups there were also significant differences. While SRPOs perform many of the functions of regular police officers, they perform them at a lower level in scope, complexity and concommittant risk. This was especially so with regard to conducting investigations, special duties and assignment to the presidential guard and escort. SRPOs assist police officers but do not take up heavy responsibility even when they are attached to special units (para. 14 of Supt. Richards' affidavit).

[19] In concluding, Moosai J. noted that *"even though a substantial number of members of the Special Reserve Police were being called out on what appeared to be a permanent full-time basis, a position not contemplated by the Act, it seems that great care was always taken to ensure that the distinction between the two classes of officers remained, by assigning members of the Special Reserve Police duties of significantly lesser responsibility".*

Grounds of Appeal

[20] The appellants filed six grounds of appeal which were quite generalized. The grounds of appeal impugn the judge's reliance on the distinguishing features of the statutory regimes of the Special Reserve Police Service and the regular Police Service. The appellants also complain about the judge's preference of the evidence of the respondent over that of the appellants. They contend inter alia that the judge gave too little weight to the similarity of the duties and responsibilities of SRPOs to those of regular police officers and too much weight

to the differences. They also impugn the judges evaluation of the evidence and the evidential bases upon which he provided his decision. They also contend that the judge erred in law in finding that the non-promulgation of regulations pursuant to section 22 of the Act was not a breach of the appellants' right to the protection of the law.

The Law and Conclusions

Inequality of Treatment

[21] It is accepted that in order to prove discrimination under sections 4(b) and (d) of the Constitution, an applicant for constitutional relief must show that he was similarly circumstanced to other persons but was treated differently. Similarity of circumstances does not mean that there should be no differences between relevant comparators. It will be sufficient that there are no material differences. Mala fides does not necessarily have to be proven unless it is specifically alleged. See Mendonca J.A. in **Police Service Commission v. Graham, Civil Appeal No. 143 of 2006** at paragraphs 37 to 58. The judge's finding that regular police officers were not true comparators effectively ended any further enquiry into whether the appellants were treated differently or not from regular police officers. In my judgment he was correct in his finding.

[22] The appellants challenge the judge's acceptance of the respondent's evidence over their own evidence in concluding that they were not true comparators. But I do not consider that evidence was determinative of the issue in this case. Certainly, the respondent's evidence, prima facie, is far more authoritative and authentic and the judge was entitled to accept it. But one simply has to examine the governing statutes to recognize that Parliament intended to distinguish both types of police officers as belonging to different classes. This distinction having been made, the functions and duties performed became secondary with little or no bearing on the outcome. If the functions and duties

have become blurred then it is a matter of policy for the Executive to address with the body of SRPOs. It is not for the Courts. In this regard Moosai J's reliance on the distinguishing features of the statutory regimes cannot be faulted.

[23] As he noted, the statutory scheme under which the police service is set up allows for constitutional protection of regular police officers. I note however that the original scheme of protection accorded to regular police officers has been modified by Act No. 6 of 2006 and Act No. 12 of 2007 which have given the Commissioner of Police power to appoint persons to offices in the Police Service (other than those of Commissioner of Police and Deputy Commissioner of Police), to transfer any police officer and to remove and exercise disciplinary control over police officers. However, the Police Service Commission retains power to make appointments on promotion and power to confirm appointments after the service of a probationary period. The Commission is also empowered to hear and determine appeals from decisions the Commissioner (or his delegate) in respect of appointments or promotion or disciplinary proceedings brought against a police officer. Police Officers therefore enjoy a considerable measure of protection and insulation from the decisions of the Commissioner of Police.

[24] The requirements for the recruitment of regular police officers are far more thorough and exacting than those for SRPOs. This is reflective of the difference in the scope of their duties and the level of performance expected of regular police officer. Recruitment and appointment of police officers are governed by Part 1 of the Police Service Regulations made pursuant to section 78 of the Police Service Act Chap. 15:01. Among the qualifications set out in regulation 3 is the requirement that a trainee for the Police Service :

(a) Must pass a medical examination conducted by a Government Medical Officer.

(b) Must undergo a polygraph test, psychological test and be tested for dangerous drugs.

(c) Must be of good character.

(d) Must be of a minimum height requirement.

(e) Must possess five subjects at the CXC Examinations, including English Language or five GCE O' level passes including English (minimum grade and levels specified for both examinations) or proof of having reached an equivalent or higher standard of education.

(f) Must be required to pass a physical examination and agility test.

(g) Must pass a written examination.

[25] Additionally, an applicant must submit his or her application form to the officer in charge of the Police Station nearest his place of residence. He or she must then be finger-printed and traced and a report on his or her job suitability then submitted, along with the application form. Applicants who are selected are then interviewed by a panel appointed by the Commissioner of Police.

[26] The statutory scheme which establishes the Special Reserve Police Service is far less comprehensive. The eligibility for appointment to the post of SRPOs is basic. Section 8 of the Act simply provides that ***"Every male person who is (a) over the age of eighteen years (b) able bodied and (c) of good character shall be deemed to be qualified for appointment as a member of the Special Reserve Police."*** There is no minimum height requirement. There is no minimum educational qualification. It is undisputed that regular police officers undergo a vigorous six month training programme. SRPOs on the other hand require only basic induction training over a four to six week period on a part-time basis. (See paragraph 14 of the affidavit of Supt Wayne Richards. See also the evidence of Mrs. Hetty Mohammed Libert and Asst. Supt. Alexander.) These are significant distinctions which are demonstrative of the creation of a different and subordinate class of police officer. Indeed, the lack of minimum educational qualification for SRPOs is, by itself, a sufficient basis upon which to base a differentiation on allowances payable to them and those payable to regular police officers.

[27] There is a clear legislative differentiation between the two types of police service. The Special Reserve Police Service is established under section 3 of what is now called the Special Reserve Police Act, Chap; 15:03. By section 4(1) SRPOs are called out for service by the Commissioner, Deputy Commissioner or any other first division officer in cases of external aggression, or internal disturbance, actual or threatened.

[28] By section 4(2), they are also called out by the Commissioner in his discretion, *"whenever additional police may be required for the preservation of good order, the protection of persons or property or the performance of any other duty exercisable by members of the Police Service".* The intention behind the establishment of the Special Reserve Police Service is to assist the regular police but as a subsidiary police force. The Commissioner may call out SRPOs full-time, part-time or temporarily. They enjoy no constitutional protection under the Constitution in respect of appointment or discipline. It does not appear that they are required to serve any probationary period before confirmation. Unlike regular police officers, SRPOs are subject to discipline by the officer in charge of his division subject to an appeal to the Commissioner of Police.

[29] Given the legislative differentiation between both classes of police officers the judge's decision need not have depended on any evidence at all, far less any necessity to choose between the appellants and respondent's evidence.

[30] But in any event, the judge's acceptance of the respondent's evidence was plainly right. There was no cross-examination of the parties' deponents. Mr. Maharaj submitted that it was open to the judge to have accepted and to have rejected parts of the evidence of both sides rather than an outright rejection of the appellants' evidence. Certainly that was an option open to the judge, as it is also now an option open to us. He enjoys no advantage over us in the absence of cross examination, this being affidavit evidence. But having reviewed the evidence, not only do I consider that that the judge was entitled to accept the respondents

evidence but that he was plainly right to have done so.

The respondents' deponents spoke authoritatively and credibly about the history and evolution of the Special Reserve Police Service and about functions and duties of both groups of police officers. In contrast, the evidence of appellants was self serving and superficial. The thread common to all of the appellants' deponents is the complaint that they perform the same duties as that of regular police officers but do not get the same remuneration and allowances. In my judgment, the quality of the appellant's evidence was poor and was characterized by imprecision. Ancil Hosanine, for example deposed that he was denied all his retroactive benefits, allowances and payments due to him when he became a member of the regular police service. He does not condescend to particulars of what these benefits were nor does he seem to pursue them in this constitutional action as a breach of his right to property. He spoke of knowledge of SRPOs who have died and have received no benefits. He provided no evidence of the basis of his knowledge. Particulars of names or duties are not provided. There was therefore no opportunity for the respondents to refute them.

[31] Edward Francis' evidence deposed that he *"first enlisted"* in the Special Reserve Police Service in 1967. He allegedly retired at age 60 after twenty-one years of continuous service. This meant that he retired in 1988, twelve years before the Cabinet decision and some sixteen years before he filed this application. He contends that he was given an ex-gratia payment of forty seven thousand, three hundred and twenty three dollars and fifty eight cents ($47,323.58) in lieu of gratuity and pension but that a regular police officer would have been entitled to more. He provides no evidence of the source of that knowledge. No figures are provided in respect of what amount such a police officer would have received.

[32] Crompton Pearson the main deponent for the appellants detailed *"the discrepancies between the terms and conditions of SRPOs and regular police*

officer of equal rank." The similarities he detailed were simplistic at best. He produced a chart setting out what he alleged was the core roles and functions of both SRPOs and regular police officers. He did not disclose how the chart was compiled or what was the source of his data upon which he had concluded that the functions and duties set out in respect of each police service were core functions. The chart purported to identify identical functions in respect of both police services. Many were generalized.

[33] There was an inherent lack of quality about his evidence which rendered the respondents' rebutting evidence innately persuasive, more so when considered in the context of the statutory regimes. Assistant Supt. Richards for example, deposed the duties listed by Mr. Pearson did not indicate the true dissimilarities in scope and complexity of the work undertaken by both groups and that SRPOs performed at a lower level of responsibility and supplemented the work of regular police officers. This is consistent with the statutory schemes of the Police Service and the Special Reserve Police Service, more so having regard to the disparities in academic qualification and training.

In my judgment Moosai J was entitled to prefer the evidence of the respondents and there is no proper basis upon which to reverse his decision.

[34] But, in any event, it is to be expected that SRPOs will perform the same duties as regular police officers. They are there to supplement the regular police force. Section 4(2) provides for SRPOs to be called out *"for the preservation of good order"* and to perform *"any other duty exercisable by members of the Police Service.*

[35] Given that the Act provides for SRPOs to perform the duties *"exercisable by members of the police service"*, the contentions of Mr. Pearson and Mr. Victory as to the sameness of their duties with that of police officers took their case no further. Nor did those allegations undermine the evidence of Supt.

Richards and Asst. Supt Alexander that SRPOs were generally given lower level duties to perform and that they functioned at a lower level of responsibility. Indeed, the examples given by both Pearson and Victory supported the officers' assertions.

The appellants thus fail on this question.

Mr. Maharaj also criticised the judge's rejection of the fact that SRPOs are given the same powers as regular police officers by section 18 of the Act, as being a basis for inferring that they are true comparators. Section 18 provides that an SRPO, while on duty, enjoys *"all the powers, authorities, privileges and immunities"* of a member of the Police Service. The appellants had prayed that section in aid of their submission that they were true comparators with the regular police officers. Moosai J held that section 18 served merely to empower and protect SRPOs while exercising their duties but that alone did not make them true comparators. He applied the dictum of Mohammed J in **Bernard & Anor. v. AG HCA No. 3463 of 2002** which is to the same effect. In my judgment the powers give under section 18 are necessary for SRPOs to function effectively as SRPOs. They are, at bottom, police officers who exercise the police powers of the State. There will always be similarity with regular police officers in that respect but of itself, it cannot confer upon them a status not intended by statute.

Breach of the protection of the law

[36] I turn to the second question; whether there was a breach of the appellant's right to the protection of the law by the non-enactment of regulations pursuant to section 22 of the Act. It provides as follows

"22. (1) The Minister may make Regulations generally for giving effect to the provisions of the Act.

(2) Without prejudice to the generality of the power conferred by subsection (1), Regulations made under that subsection may provide for -

(a) the organisation of the Special Reserve Police;

(b) the establishment of different ranks and the precedence and command to be had or exercised by the holders of such ranks;

(c) the conditions of service, enrolment, promotion, demotion, resignation, dismissal or suspension of members of the Special Reserve Police;

(d) the training of members of the Special Reserve Police;

(e) the discipline and guidance of the Special Reserve Police

(f) …

(g) …

(h) the payment of wages and of subsistence allowances, travelling allowances and out of pocket expenses to members of the Special Reserve Police and the rates at which and conditions upon which such wages or allowances or both shall be paid to different ranks of the Special Reserve Police;

(i) medical attention and examination of any member of the Special Reserve Police who sustains injury whilst on duty;

(j) the grant to members of the Special Reserve Police who are injured in the execution of their duty of sick benefit and the conditions upon which and the rates at which the benefit shall be payable to members of different ranks;

(k) the grant to members of the Special Reserve Police who consequent upon injuries received in the course of their duty as such are permanently incapacitated from following their normal employment or whose earning power in such employment is impaired, pensions or gratuities and the conditions upon which and the rates at which such pensions or gratuities may be granted to different ranks of the Special Reserve Police;

(l) the grant, subject to the following conditions and such other conditions as may be prescribed, at such rates as may be

prescribed, of a pension or gratuity to the widow and child or children, or dependant, of any member of the Special Reserve Police who dies as a result of injuries received;

(i) in the actual discharge of his duty; and

(ii) without his own default; and

(iii) on account of circumstances specially attributable to the nature of his duty;

(m) supplies, accommodation and uniform of members of the Special Reserve Police;

(n) controlling the use of transport for the carrying out of duties by members of the Special Reserve Police.

(3) …

(4) …

(5) …"

Moosai J found that there was no breach of Section 4(b). There was no legally enforceable duty on the Minister to enact regulations. His findings on this question are summarized at paragraph 14(d)(supra).

Law and Conclusions

[37] It is now accepted that the term *"protection of the law"* is a term of wide import. See **AG v. Oswald Alleyne and others, Civil Appeal 52 of 2003**. In that case, the Court of Appeal held that the failure to enact legislation to allow for the recognition by the relevant statutory authority of representative associations formed by municipal police officers was a breach of the officers' right to procedural provisions for the protection of their rights and a consequent breach of their right to the protection of the law. The right to form associations was a specific right given to municipal police officers by Section 25(2) of the Statutory Authorities Act Chap 24:01. The Act also provided that such associations *"shall"* be recognized by the statutory authority as appropriate associations for the

purpose of consultation and negotiation of matters relevant to the terms and conditions of employment of those officers.

[38] By section 26 of the Statutory Authorities Act, the Executive was empowered to make regulations setting out the conditions to be satisfied as to the procedure to be adopted for the recognition of the association. No regulations were passed under section 26, resulting in the municipal police officers being unable to pursue their rights and remedies under Part V of the Industrial Relations Act.

[39] The Court of Appeal agreed with and approved the dictum of de la Bastide P and Saunders J in **AG of Barbados and others v. Joseph and Boyce (2006) 69 WIR 104, at paragraph 60** (a decision of the Caribbean Court of Justice,) that the term *"protection of the law"* was so broad and pervasive as to be almost impossible to encapsulate, in a section of the Constitution, all the ways in which it may be invoked.

[40] The question is whether the failure to pass regulations in this case is a breach of the protection of the law. In my judgment the answer is in the negative. Moosai J was correct to hold that there was no section 4(b) breach.

[41] While it is true that no regulations have been enacted under section 22 subsections (1) and (2), the effect of the proviso in section 22(4) of the Act is to allow those benefits provided to the appellants under the previous sections to remain in force. The appellants are, by law, provided with benefits which have always been accorded SRPOs from the inception of the Act. It may have been an entirely different matter if the former sections had been fully repealed and no new regulations put into effect. As it stands however, the appellants have suffered no loss and their benefits remain in existence by operation of law. To the extent that they may complain about insufficient or outmoded benefits I agree with Moosai J that that is a matter of policy which they can pursue as a body with the Executive.

[42] Unlike **Alleyne**, there is no similar statutory right to have regulations enacted. The appellants have not demonstrated how the failure to enact regulations has impacted directly (and adversely) on their terms and conditions of service such as to amount to a breach of their right to the protection of the law. Nothing which has been conferred upon them under the Act (or the Ordinance) is negatively affected by the non-promulgation of the regulations.

[43] The appellants also complain that their terms and conditions of service are inferior to those of the regular police officer. But that is consistent with statutory regimes which provide for two distinct classes of police officer and in the case of the Special Reserve Police Service, officers whose primary purpose is to assist regular police officers in the performance of their duties.

[44] The fact of non-enactment of the regulations does not prevent the appellants from even now pursuing better terms and conditions with the Executive. Those are matters of policy which are in no way affected by the non passage of regulations. The provision for the passage of the regulations is a discretionary one. Moosai J was also correct that there is no enforceable duty on the Minister of National Security to enact the regulations. The scheme of the Act when examined, does not require the passage of regulations for the effective functioning of the special reserve police service. The objectives of the legislation are not frustrated or undermined by their non-promulgation. See **Alleyne** at paragraph 56 applying Mendonça J.A. in **The Registrar of the Integrity Commission v. Chandresh Sharma**.

But even if there were such a duty, there is no guarantee that passage of such regulations would have resulted in the parity with regular police officers that the appellants seek. They would still be faced with the class differentiation created by the respective statutory regimes to which the regulations would have to adhere. Secondly it would be, in any event, a question of policy as to what benefits should attach to the office of Special Reserve Police Officer.

[45] Some complaint is also made about the arbitrariness of promotions but the appellants do not provide detail sufficient to raise any basis upon which to find a breach of section 4(b).

[46] In the result there is no merit in the appeal and it is dismissed. We will hear arguments on costs.

Nolan P.G. Bereaux
Justice of Appeal