TRINIDAD & TOBAGO

IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY, SAN FERNANDO

HCA NO. S-0047/2001

IN THE MATTER OF THE CONSTITUTION OF
TRINIDAD AND TOBAGO

AND

IN THE MATTER OF THE GUARANTEES OF FUNDAMENTAL
HUMAN RIGHTS AND FREEDOMS PART 1 OF THE SAID
CONSTITUTION

AND

IN THE MATTER OF THE ENFORCEMENT OF FUNDAMENTAL
HUMAN RIGHTS AND FREEDOMS PURSUANT TO SECTION 14
OF THE CONSTITUTION AND ORDER 55 OF THE RULES OF THE
SUPREME COURT

BETWEEN

SIEWCHAND RAMANOOP

Applicant

AND

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

Respondent

Before: The Hon. Justice Nolan Bereaux

Appearances: Mr. H. Seunath SC and A Ramlogan for Applicant
Ms. J. Baptiste, State Counsel, for Respondent

REASONS

The Applicant by notice of motion filed on 15th January, 2001 sought redress under section 14 of the Constitution of Trinidad and Tobago as a result of his arrest and detention at 12.00 midnight on 10th November, 2000.

In his affidavit in support of the motion, the Applicant deposed that on the night of 10th November, 2000 he had an altercation with *"a thin, tall, dark man of east Indian descent"* outside a pub which he had patronized.

Later that night at around 10.45 pm, a car stopped at his home and he heard someone calling out his name. Upon opening his door he was confronted by two men, one of them a uniformed police officer whom he identified as P.C. Rahim, the other was the same man with whom he had the altercation.

The Applicant stated that *"before he could say anything"* P.C. Rahim slapped him across his face and neck. P.C. Rahim then handcuffed him and slapped and cuffed him for *"about 5 - 10 minutes"* shouting that:

> ***"yuh want tuh (expletive deleted) interfere with police. Take dat. I will manners yuh. Doh ever interfere with police."***

At this time he was standing outside his home clothed only in his underwear. He was shoved back inside his house where P.C. Rahim continued to beat him for a further 2 – 3 minutes. The plaintiff deposes that P.C. Rahim instructed him to "*take a shirt and pants"* because *"he was going to lock me up"*. He was put into the back seat of a motor vehicle, still handcuffed and wearing only underwear, P.C. Rahim having refused to allow him to get properly dressed. Rahim sat next to him while the *"Indian man"* drove to the Gasparillo Police Station. During the journey he was constantly slapped and cuffed by Rahim who stated that he would teach him a *"lesson for interfering with police."*

On arrival at the station, his head was rammed against a wall of the police station by P.C. Rahim resulting in a gushing wound. Rahim then poured rum over his head causing his wound to burn.

The Applicant was later allowed to put his clothes on and was handcuffed by Rahim to an iron bar attached to a wall of the police station. He was interviewed by Rahim who asked him to initial a written document. The Applicant refused and was slapped about the head by Rahim who told him:

> ***"If you doh sign dis yuh cyah (expletive deleted) leave this station here tonight."***

The Applicant said he signed the document because he was losing blood, felt weak and dizzy and was frightened of what Rahim might do to him if he did not. P.C. Rahim later apologized, saying that his wife was pregnant and he was *"under some pressure"*. The Applicant was then taken home by the *"Indian man"*. The Applicant deposed that at no time during his detention was he informed of his right to retain or instruct an attorney or to hold communication with him.

The facts were not contested by the respondent. On the day of hearing, Ms. Baptiste conceded that the Applicant's rights had been breached and I granted *inter alia* the following declarations:

(1) A declaration that the Applicant's arrest and imprisonment from midnight on 10th November, 2000 to 2.00 am on 11th November, 2000 was unconstitutional and a breach of the Applicant's rights under section 4(a).

(2) A declaration that the assault of the Applicant by police during his arrest and period of imprisonment was a breach of the Applicant's right to security of the person under section 4(a).

I granted two other declarations relative to the failure of the police to inform the Applicant of his right to retain and instruct a legal advisor of his choice and to hold communication with him and to the failure of the police to permit him to

communicate with a friend or relative by way of a telephone call while under arrest; as being breaches of section 4(b) of the Constitution. I must add that as to the latter declaration there was no full argument on the point even though I did request some assistance of Mr Seunath on the viability of this contention.

The primary issue at the assessment concerned the suitability of granting exemplary damages in an application for redress under section 14 of the Constitution for breaches of sections 4 & 5 of the Constitution. There is no doubt that the conduct of the police officer in question was outrageous and that such conduct would in an ordinary action under the common law attract exemplary damages. The question is whether such damages can be awarded under section 14. Opinion is divided. In my judgment exemplary damages are not available under section 14 of the Constitution for the reasons I shall now give.

Section 14 of the Constitution provides:

> **(1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.**
>
> **(2) The High Court shall have original jurisdiction -**
>
> > **(a) to hear and determine any application made by any person in pursuance of subsection (1); and**

> **(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (4),**
>
> **and may, subject to subsection (3), make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.**

The bases upon which exemplary damages may be awarded in tort were set out in the decisions of the House of Lords in **Rookes v Barnard** [1964] A.C. 1129 and **Cassell & Co. Ltd. v Broome** [1972] A.C. 1027. Lord Devlin in **Rookes v Barnard** held that exemplary damages may be awarded where the facts of the case fell within either of two categories, to wit:

(i) Oppressive, arbitrary or unconstitutional actions by servants of government, and

(ii) Conduct by the defendant calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff.

This categorisation by Lord Devlin was later explained by the House of Lords in **Cassell & Co. v Broome**. Both are decisions in tort. The question is whether the very wide provisions of section 14(2) permit an award of exemplary damages by the High Court in the exercise of its original jurisdiction. In **Maharaj v The Attorney General of Trinidad & Tobago** (No. 2) 1979 A.C. 385, the Judicial Committee of the Privy Council held that damages for deprivation of liberty should include compensation for loss of earnings consequent on the imprisonment as well as for inconvenience and distress suffered by the individual. The Board found it unnecessary to express a view on the applicability of an award of exemplary damages because no such claim was made.

In **Attorney General of St Christopher, Nevis & Anguilla v Reynolds** (1980) A.C. 637, the decision of the Judicial Committee of the Privy Council appears to have been that exemplary damages cannot be awarded for constitutional breaches. In that case, the Applicant had brought both a common law action for false imprisonment and a constitutional action under section 3(6) of the Constitution in respect of his unlawful detention. The Court of Appeal of West Indies Associated States Supreme Court granted increased damages from the original decision of the High Court, including a small sum as exemplary damages on the claim for false imprisonment. Before the Judicial Committee it was argued on behalf of the Attorney General that the damages recoverable under the then Constitution of St Christopher, Nevis and Anguilla were compensatory and not punitive and could not include any award for exemplary damages. Lord Salmon who delivered the judgment of the Judicial Committee said at pg. 662E:

> ***"The Attorney-General relied on the last few words of the judgment which revealed that the sum awarded included 'a small sum as exemplary damages'. His argument was that no exemplary damages should have been awarded because compensation alone could be claimed under section 3(6) of the Constitution. This, no doubt, would be true but for section 16(1) of the Constitution, which makes it plain that anyone seeking redress under the Constitution may do so 'without prejudice to any other action with respect to the same matter which is lawfully available'; and in the present case, the plaintiff claimed (1) damages for false imprisonment, and (2) compensation pursuant to the provisions of section 3(6) of the Constitution."***

The Board upheld the decision of the Court of Appeal to award exemplary damages in the claim for false imprisonment.

Section 3(6) of the Constitution of St Christopher, Nevis & Anguilla gave a right of compensation to any person unlawfully deprived of his liberty. Section 14(1) of the Trinidad and Tobago Constitution gives to a person aggrieved by state action the right to apply for "redress" and makes no specific reference to "compensation" being paid. The difference in expression was noted by de la Bastide C.J. in **Jorsingh v The Attorney General** (1997) 52 W.I.R. 501 at pgs. 505-506 in which he expressed his strong dissent from the decision of the Board in **Reynolds** in these terms:

> ***"If that is to be regarded as part of the ratio decidendi, then I would respectfully express the hope that the Privy Council may be persuaded to re-examine this issue when it is raised again before them as inevitably it will be. The power to award damages in constitutional cases is part of the jurisdiction conferred on the High Court by section 14(2) of the Constitution… The discretion given to the court by this provision is a very wide one indeed. It empowers the court to make any order, without limitation, which the court considers appropriate for the purpose of enforcing the rights enshrined in the Constitution. Given the breadth of this power, it is not readily apparent to me why, in making an order for payment of damages as a consequence of a breach of a constitutional right, the court should be either (a) limited to providing compensation for the injured party, or (b) bound necessarily by the rules which govern the assessment of damages (including exemplary damages) at common law."***

At pg. 506 he continued that section 14(2):

> ***"has the effect of releasing the court from the constraints of common law rules governing the award of damages, more so as our section 14(2) … makes no express mention of the 'payment of compensation'."***

The comments of the learned Chief Justice which were supported by Sharma J A in a separate but no less vigorous judgment, were obiter dicta, since exemplary damages were not in issue in that case. The learned Chief Justice reiterated those views (also obiter) in **Attorney General v Ferreira** Civil Appeal #146 of 1997.

The dictum of de la Bastide C J in **Jorsingh** was applied by Kangaloo J in **Ramesar v The Attorney General of Trinidad & Tobago** HCA S-895 of 1992 and by Smith J in **Abraham v The Attorney General of Trinidad and Tobago** HCA 801 of 1997. In both cases exemplary damages were awarded to the Applicants for breach of their rights under section 4.

In **Mark John Jones v The Attorney General** HCA 19 of 1998 I declined to award exemplary damages to the Applicant who succeeded before me in a claim for constitutional relief, being of the view that I was bound by **Reynolds**.

I continue to be of the view that I am bound by **Reynolds** but it seems to me on further consideration that even if I am not, exemplary damages are inappropriate to actions brought under section 14 of the Constitution. The decision in **Rookes v Barnard** (1964) A.C. 1129 is founded on precedent, some decided more than two hundred years ago, at a time when there existed no clear remedy against high-handed state action. See the speech of Lord Devlin at pgs. 1222 and 1223.

Section 14(1) of the Constitution however provides the remedy for such action by permitting any person aggrieved to apply to the High Court for "redress".

In **Maharaj v The Attorney General** Lord Diplock said of the redress provision in the 1962 Constitution that:

> ***"The right to 'apply to the High Court for redress' conferred by section 6(1) is expressed to be 'without prejudice to any other action with respect to the same matter which is lawfully***

available.' The clear intention is to create a new remedy whether there was already some existing remedy or not. Speaking of the corresponding provision of the Constitution of Guyana which is in substantially identical terms, the Judicial Committee said in <u>Jaundoo v The Attorney General of Guyana</u> [1971] A.C. 972, 982.

'To "apply to the High Court for redress" was not a term of art at the time the Constitution was made. It was an expression which was first used in the Constitution of 1961 and was not descriptive of any procedure which then existed under Rules of Court for enforcing any legal right. It was a newly created right of access to the High Court to invoke a jurisdiction which was itself newly created'…"

The result is to provide persons aggrieved by arbitrary, high-handed or oppressive state action with a remedy for breach of their constitutional rights. Any breach may be sufficient for the grant of redress and may include declaratory or compensatory relief and can be buttressed by ancillary orders made pursuant to section 14(2). In those circumstances an award of exemplary damages as additional relief in a constitutional action is superfluous. The grant of relief is itself a vindication of the rights and freedoms of the individual and the award of compensation will be commensurate with the seriousness of the breach taking into account *inter alia*, the distress and inconvenience suffered by the Applicant. The fact of such a provision in the Constitution renders doubtful the need for the continued retention of Lord Devlin's first category. Certainly, to the extent that section 14(1) already provides a remedy, exemplary damages are unnecessary in a constitutional action. I am fortified in my opinion by the speech of Lord Diplock in <u>**Cassell & Co. v Broome**</u> at page 1128D and in particular his comments at 1129H where he expressed his reservations about the retention by Lord Devlin of the first category in light of developments in public law at that time. Commenting

on reasons for the retention of the two categories by the House of Lords in **Rookes v Barnard** he said:

> ***"The purpose of Lord Devlin's division of them … was in order to distinguish between factual situations in which there was some special reason still relevant in modern social conditions for retaining the power to award exemplary damages, and factual situations in which no special reason still survived.***
>
> ***With this end in view Lord Devlin extracted from the single nebulous class which appeared to be all that had been consciously recognised as justifying an award for exemplary damages at common law, two categories of cases in which this House decided that there were special reasons why the power to award exemplary damages should be retained. These two (apart from cases where exemplary damages are authorised by statute) are generally referred to as ' the categories'."***

At pg. 1129H he continued:

> ***"They were retained because this House considered that there were circumstances in which a power to award exemplary damages still served a useful social purpose and the descriptive words must be understood in the light of the social purpose which they were designed to serve.***
>
> ***My Lords, had I been party to the decision in Rookes v Barnard I doubt if I should have considered it still necessary to retain the first category. The common law weapons to curb abuse of power by the executive had not been forged by the mid-eighteenth century. In view of the developments, particularly in the last***

> ***twenty years, in adapting the old remedies by prerogative writ and declaratory action to check unlawful abuse of power by the executive, the award of exemplary damages in civil actions for tort against individual government servants seems a blunt instrument to use for this purpose to-day."***

The provisions of section 14(2) are some of the weapons now available to protect the rights of the citizenry. They include the very wide powers to make orders, issue writs and give directions, and as Lord Diplock stated in **Maharaj** are ancillary to the Court's jurisdiction to hear and determine any application made under section 14(1) so as to give effect to the rights and freedoms of the individual. They do not however grant to the High Court any enabling power to award punitive damages

The breadth of the provisions of section 14(2) is demonstrated by the order of the Privy Council in **Gairy v Attorney General of Grenada** [2001] 3 W.L.R. 779 and is exemplified by the dictum of Lord Bingham at page 792A as follows:

> ***"…a court charged under the Constitution with securing effective protection of fundamental rights cannot be denied such power of enforcement as proves necessary for its task."***

The comments of Lord Diplock in **Cassell & Co. v Broome** were echoed by Lord Scott of Fosscote, almost thirty years later in **Kuddus v Chief Constable of Leicestershire Constabulary** [2001] 3 All E.R. 193 in which he questioned the continuing need for exemplary damages as a civil law remedy. The appeal before the House of Lords in that case turned on the narrow interlocutory issue of the arguability of awarding exemplary damages for the tort of misfeasance in public office. The House of Lords, Lord Slynn excepted, took the view that the issue was subsumed into the wider question of whether exemplary damages should continue to be available as a civil law remedy. The appeal not having been

argued on that basis the House declined to rule on it but some diverging opinions were expressed on the continued relevance of exemplary damages.

At pg. 203 Lord Mackay, who expressed no view, posed the question this way:

> ***"Much water has flowed under the bridge since Rookes v Barnard was decided. Many statutory duties have been created and the Human Rights Act 1998 has been enacted which give rise to claims of damages the principles of which may well affect the propriety of and the necessity for a power to award exemplary damages to continue to be recognised in the law of England. However in the absence of fuller argument on this point and the fact that the Law Commission after a full consultation has recommended that the power to award exemplary damages should not be removed from the law of England I am content to decide this appeal in the light of the arguments that have been presented. Rookes v Barnard is an authority decided in this House. While under the Practice Statement of 1966 (Practice Statement (Judicial Precedent) [1966] 3 All E.R. 77, [1966] 1 WLR 1234) the House could now for good reason decline to follow it, since neither party was prepared to advance reasons for declining to follow it, in my opinion, the duty of the House is to follow it in deciding the present appeal."***

Lord Scott whose views were admittedly in the minority, was far more sanguine. At pg. 221 (e) he said:

> ***"The law regarding exemplary damages did not become fossilised and set in stone when Lord Devlin pronounced in 1964 (Rookes v Barnard) or when the seven members of the House pronounced in 1972 (Cassell & Co. Ltd v Broome). Since then the common law has flowed on. One of the great developments***

of the common law since the time of Rookes v Barnard has been in the area of public law and judicial review to which Lord Diplock referred. Oppressive, arbitrary and unconstitutional acts by members of the executive can be remedied through civil proceedings brought in the High Court. The remedies the court can provide include awards of damages, declarations of right and, in most cases, injunctions. The developments since Lord Diplock's remarks in Cassell & Co. Ltd v Broome have transformed the ability of the ordinary citizen to obtain redress. The continuing need in the year 2001 for exemplary damages as a civil remedy in order to control, deter and punish acts falling within Lord Devlin's first category is not in the least obvious.

My noble and learned friend, Lord Hutton, has referred, as examples, to two cases in Northern Ireland where in his view the award of exemplary damages served a valuable purpose in restraining the arbitrary and outrageous use of executive power and in vindicating the strength of the law. In one case (Lavery v Ministry of Defence [1984] NI 99) a soldier was the wrongdoer. The Ministry of Defence was the defendant. In the other case (Pettigrew v Northern Ireland Office [1990] NI 179), prison officers were the wrongdoers. The Northern Ireland Office was the defendant. In each case the conduct of the wrongdoer, or wrongdoers was outrageous and fell squarely within Lord Devlin's first category. But I do not follow why an appropriate award of aggravated damages would not have served to vindicate the law just as effectively as the fairly moderate awards of exemplary damages that were made. The condemnation by the trial judge of the conduct in question would have been expressed no differently. As to deterrence, in a case where the defendant is not the wrongdoer, and the damages are in any event going to be

met out of public funds, how can it be supposed that the award of exemplary damages adds anything at all to the deterrent effect of the trial judge's findings of fact in favour of the injured person and his condemnation of the conduct in question? The proposition that exemplary damage awards against such defendants as the Ministry of Defence or the Northern Ireland Office, or, for that matter, the defendant, can have a deterrent effect is, in my respectful opinion, fanciful. It is possible that exemplary damages awards against the actual wrongdoers which they would have to meet out of their own pockets would have a deterrent effect upon them and their colleagues. But that is not what happened in either of the two cases."

"….Lord Devlin's second category, cases in which the defendant's wrongful conduct has made a profit for himself which exceeds the compensation payable to the victim of the conduct, has been largely overtaken by developments in the common law. Restitutionary damages are available now in many tort actions as well as those for breach of contract. The profit made by a wrongdoer can be extracted from him without the need to rely on the anomaly of exemplary damages: see the discussion of the topic in A-G v Blake (Jonathan Cape Ltd, third party) [2000] 4 All E.R. 385 at 391-394, [2001] 1 A.C. 268 at 278-280 by Lord Nicholls of Birkenhead.

Whatever may have been the position in 1964, when Rookes v Barnard was decided, or in 1972, when Cassell & Co. Ltd v Broome was decided, there is, in my opinion, no longer any need for punitive damages in the civil law, or, at least, no need sufficient to offset the disadvantages to which Lord Morris of Borth-y-Gest in Cassell & Co. Ltd v Broome cogently referred. These disadvantages are the more prominent now that, via the

Human Rights Act 1998, art 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) has become part of our domestic law."

The "disadvantages" to which Lord Morris had referred in **Cassell & Co v Broome** were expressed at pg. 1100A of his speech where he commented on the paradox of awarding punitive damages in a civil action in this way:

> ***"Logical analysis forces the conclusion therefore that in the result there would in a civil action have been punishment for conduct not particularised in any criminal code and that such punishment had taken the form of a fine not receivable by the state but as a sort of bonus by a private individual who would, apart from it, be solaced for the wrong done to him. There may be much to be said for making it permissible in a criminal court to order in certain cases that a convicted person should pay compensation. There is much to be said against a system under which a fine becomes payable in a civil court without any of the safeguards which protect those charged with crimes.***

It seems to me that section 14(1) allows us to avoid those pitfalls and to the extent that it addresses arbitrary state action, now serves the social purpose for which the first category was culled by Lord Devlin. The provisions of the Constitution are buttressed by the provisions of Order 53 of the Rules of the Supreme Court of Trinidad and Tobago and the Judicial Review Act #60 of 2000 by which a person aggrieved by administrative action may seek damages, declaratory relief or the prerogative remedies.

But not only has the social purpose of exemplary damages been displaced by section 14; their very nature and purpose are inconsistent with *"redress"* under section (14)1. In **Maharaj** Lord Diplock at page 398F defined *"redress"* as not

being *"a legal term of art"* but as bearing its ordinary meaning of *"reparation of, satisfaction or compensation for, a wrong sustained or the loss resulting from this"*. Exemplary damages are damages awarded in excess of loss or injury suffered. They are additional to the compensation awarded for the wrong sustained. They are intended to punish and deter. As Lord Kilbrandon in **Cassell & Co. Ltd v Broome** said at page 1134:

> ***"The doctrine proceeds upon the footing whether sound or not, that in some torts, and in some circumstances, there is an element of public interest to be protected. The only way in which that can be done may be by awarding to a plaintiff a sum of damages which he does not deserve, being in excess of any loss or injury he has suffered; that sum includes an element calculated to deter the defendant and other like-minded persons, from committing similar offences."***

Retribution, deterrence or punishment is foreign to constitutional relief and is at best a matter to be addressed by the criminal process or by any disciplinary process initiated against the offending state functionary, which may flow from the findings of the Court. Lord Scott's dictum in **Kuddus** at pg. 218 is especially apt. He said:

> ***"… the function of an award of damages in our civil justice system is to compensate the claimant for a wrong done to him. The wrong may consist of a breach of contract, or a tort, or an interference with some right of the claimant under public law. But whatever the wrong may consist of the award of damages should be compensatory in its intent."***

In my judgment the provisions of section 14 do not accommodate the awarding of exemplary damages because it is a doctrine entirely inconsistent with their purport.

Monetary Compensation

There is also conflicting judicial dicta on the appropriate measure of compensation in constitutional cases. The obiter dictum of Lord Diplock in **Maharaj** at pg. 400 is to the effect that there is a difference in the measure of "monetary compensation" where the case is founded under the Constitution rather than in private law. As he put it:

> ***The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone. Such compensation would include any loss of earnings consequent on the imprisonment and recompense for the inconvenience and distress suffered by the appellant during his incarceration."***

The distinction is not immediately obvious. Indeed that approach was rejected by de la Bastide C J in **Attorney General v Ferreira** Civil Appeal #146/1997. At page 5 of the judgment he said:

> ***"On this aspect of the matter I would also reject the suggestion that in assessing compensation for breach of a constitutional right, different rules from those which govern the assessment of damages at common law have to be applied. As I pointed out in Jorsingh v The Attorney General (1998) 52 W.I.R. 501, the power to the Court to make an order under section 14(2) of the Constitution is not limited to ordering compensatory damages. It may in a proper case either make an order for damages on a different scale or some other type of order which is directed not merely to compensating the person whose rights have been***

breached, but either to deterring future breaches or marking the Court's disapproval of the particular breach."

The dictum of Lord Diplock in **Maharaj** was not cited by the learned Chief Justice in **Ferreira**. It was cited however by Nelson J.A. in **The Attorney General of Trinidad & Tobago v David Lakhan and Trinidad & Tobago Transport Specialist Limited** Civil Appeal #154 of 1997 (unreported), a later decision of the Court of Appeal. In Lakhan the Attorney General conceded that the respondent's right to property under section 4(a) had been infringed as a result of the seizing of his 40-foot container trailer. The trailer was returned to the respondent and an order for assessment of damages was made. The trial judge assessed damages for the wrongful detention of the trailer on the basis of the common law damages in detinue. The Court of Appeal rejected that assessment as being wrong in law. Nelson J.A. noted that an award of monetary compensation under section 14 is discretionary and in applying Lord Diplock's distinction between *"monetary compensation"* awarded under the Constitution and common law *"damages"*, said at pg. 12:

"In my judgment the broad dimension of the constitutional remedy would be lost if constitutional torts were only compensable by reference to the common law measure of damages. On the other hand, monetary compensation is limited to the public law element of the wrong."

He added at pg. 14:

"To permit constitutional law actions to be converted after liability into assessments on a common law basis may be unfair to the State. Firstly, to do so would be to ignore section 14(1) of the Constitution, which expressly reserves to the citizen rights of action at common law. Secondly, nothing in the Constitution suggests that immured in every constitutional action is a private

> ***law action. Thirdly, constitutional motions are based on affidavit, and there is no provision for pleadings, especially in relation to defences such as limitation which are required to be specifically pleaded. Fourthly, interlocutory procedures, common in writ actions, such as interrogatories, requests for particulars and notices to admit, would serve to reduce the speed at which constitutional motions are expected to come on for hearing."***

In this case I approached the assessment purely on the basis of a public law breach for loss of liberty and for breach of the Applicant's right to security of the person. I did not understand Mr Seunath to have sought any compensation for loss of earnings.

The wrongs perpetrated on the Applicant were outrageous. He was wrongly detained at the police station for two hours without being charged. He had been severely beaten and taken from his home to the police station by motorcar, dressed only in his underwear. While at the station he was again beaten, his head banged against a wall, he was soaked in the shower and rum poured onto his wounds. Those actions were particularly egregious breaches of the Applicant's right to liberty and security of the person.

Taking those factors into account including the inconvenience and distress suffered by the Applicant I awarded the Applicant the sum of $18,000.00 for the two hour deprivation of his liberty and $35,000.00 for breach of his right to security of the person. As to the other breaches to which I have earlier referred, in my judgment, the declarations granted were singularly appropriate.

NOLAN P.G. BEREAUX
Judge

30th April, 2002