



[2020] JMSC Civ. 144

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2014 HCV 00790**

<b>BETWEEN</b>	<b>BARRINGTON GRAHAM</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>CORPORAL GREGORY GIVANS</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN OPEN COURT**

Kimberly Dawkins instructed by Jacqueline Samuels-Brown Q.C. for the Claimant  
Dale Austin instructed by Director of State Proceedings for the Defendants

**Heard:** December 18, 2019, March 19, 2020 and July 7, 2020

*Assessment of Damages - Assault and Battery – Damage to wrist and shoulder –  
Damage to Reputation - False Imprisonment - Malicious Prosecution – Information on  
reason for arrest - Proceedings terminated in favour of the claimant - Aggravated  
Damages – Exemplary Damages – Constitutional Damages*

**LAWRENCE-BESWICK J:**

[1] Mr. Barrington Graham (claimant) alleges that he has been injured by the abuse and assault of Corporal Gregory Givans (2<sup>nd</sup> defendant). He alleges further that the Corporal falsely imprisoned him and maliciously prosecuted him.

[2] In this suit he claims compensation for this damage from the Corporal as well as from the Attorney General (1<sup>st</sup> Defendant) who is sued pursuant to the Crown Proceedings Act.

## **BACKGROUND**

[3] On February 27, 2013 at about 10:15 pm Mr. Graham, a Justice of the Peace, reversed his car into a gateway on Avon Park Crescent and was effecting the manoeuvre necessary to turn to proceed in the opposite direction from which he had been going.

[4] Cpl Givans, driving a police vehicle, blocked the path of the motor car. With Mr. Graham no longer in a position to move the car, Cpl Givans asked him if he did not know where he was going, then continued questioning him, eventually asking for the documents for his licensed firearm.

[5] Whilst Mr. Graham was in the process of retrieving those papers from the car, Cpl Givans inexplicably pointed his firearm at Mr. Graham's forehead, held it within inches of it, and then at his back whilst giving him instructions on where and how to stand and move. He "chucked" him and then eventually handcuffed him. A crowd of persons had by then gathered along the roadway, watching the goings-on.

[6] Cpl Givans told Mr. Graham that he was under arrest and placed him into the police vehicle. In that process, the Corporal beat Mr. Graham's feet and refused to heed his pleas to loosen the handcuffs which were digging into his flesh.

[7] Cpl Givans then took him to the Admiral Town Police Station up to which time the Corporal did not answer the enquiry as to the reason for the arrest. Mr. Graham remained there, in a holding area at the front of the station, again in plain view of persons. Cpl Givans had left the station and Mr. Graham had to await his return in order

to be processed. Several hours later, he was released on bail to attend the Resident Magistrate's Court on March 14, 2013.

[8] When Mr. Graham attended at Court on March 14, 2013, he found that no case had been filed against him. He made subsequent enquiries. There was never any case filed against him. Whilst searching the Court for the case and making enquiries about a case in which he was the accused person , he was exposed to public scrutiny.

[9] It is not disputed that Mr. Graham had worked at the Admiral Town Police Station some years earlier, as a member of the Jamaica Defence Force, and that he visited it on occasion as part of his duties as a Justice of the Peace, concerning the offer of bail to detainees and their general welfare. He had been a Justice of the Peace for about 3 years and was in fact then being trained to be a Lay Magistrate.

[10] Mr. Graham 's evidence is that during the incident on Avon Park Crescent he had been injured whilst being handled roughly in handcuffs and had to obtain medical treatment. Further the Corporal's actions embarrassed and humiliated him in plain sight of the community; He had grown up in the area and was active there. Indeed his sister still lived there. In addition, he became worried about the exposure to the community that he carried a private licensed firearm on his person.

### **JUDGMENT ON ADMISSION**

[11] On December 19, 2018, the defendants admitted liability and judgment was entered for Mr. Graham. This matter therefore concerns the assessment of damages arising from that judgment.

## **SUBMISSIONS BY DEFENCE**

### **Assault and Battery**

[12] Defence Counsel submitted that there is a paucity of authorities relating to injuries similar in nature to those in this case. They were primarily tenderness, swelling and redness to the wrist with a healing abrasion, and pain in the shoulder.

[13] Defence Counsel relied on **Leroy Robinson v. James Bonfield and Conrad Young**<sup>1</sup> where the award for assault was for injuries to the hand, the elbow, the eyebrows and a fracture of the wrist.

[14] Counsel updated this 1996 award of \$269,438.00 and relied on it being converted to approximately \$1,763,748.87 to argue that in view of the far less serious injuries of Mr. Graham, the amount awarded there should be discounted by 75%. The submission was that \$440,937.22 would therefore be reasonable as an award for assault and battery in this case.

### **False Imprisonment and Malicious Prosecution**

[15] Counsel's argument for the defence was that since it appears that there had been no charge laid against the Claimant, then there had been no determination of the criminal charges in his favour. The submission continued that there should be no consideration given to the fact that Mr. Graham had attended Court on March 14, 2013 because there was no evidence as to the reason why Mr. Graham chose to do that.

[16] As it concerns the quantum, if any award were being made, Counsel for the Defence argued, the authorities on which Mr. Graham sought to rely did not bear close enough resemblance to the circumstances at hand and thus are of no use.

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<sup>1</sup> CL 1992 R 116

[17] Instead the defence relied on some authorities as discussed below<sup>2</sup>, and urged the Court to award an amount of \$105,000.00 for 3 hours of unlawful imprisonment, being an amount of \$35,000.00 per hour of imprisonment.

### **Constitutional Damages**

[18] Counsel submits that there should be no award for constitutional damages because Mr. Graham has in this suit already pursued claims for false imprisonment and assault and battery. There was no evidence to support an award to be made different from that being given for those parallel claims.

### **Aggravated and Exemplary Damages**

[19] Counsel for the Defence submitted that a Court may properly take the view that a further award of \$500,000.00 as aggravated damages may be appropriate in the circumstances, but that there should be no additional award of exemplary damages in these circumstances.

## **SUBMISSIONS BY THE CLAIMANT**

### **Assault and Battery**

In this regard, Counsel highlighted Mr. Graham's physical injuries and referred to **Hugh Douglas v. Morris Warp, Vincent McPherson, Sergeant Boreland and the Attorney General**<sup>3</sup> to urge the court to award \$2,100,000. 00 for the assault and battery.

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<sup>2</sup> *Inasu Ellis v The Attorney-General* (Civil Appeal 37/01) and *Sharon Greenwood-Henry v The Attorney-General* (CL G 116/1999)

## **False Imprisonment and Malicious Prosecution**

[20] The defendants having admitted liability, the submission for the claimant was that Corporal Givans curtailed Mr. Graham's right to liberty several times. The first occasion was by the use of force<sup>4</sup>, on the street during the assault. Then he was falsely imprisoned at the police station and again, his freedom of movement was curtailed by unnecessarily requiring him to attend court. Counsel approximated the total time of false imprisonment as being 5 hours. The search for the case showed that Corporal Givans had filed no papers for it, yet had restricted his movement by requiring him to attend the Court to answer a non-existent case.

[21] The submission continued that the Court should also consider under this head of damages that he has been degraded in the eyes of his community<sup>5</sup> and the consequent damage to his reputation is irreparable.

[22] Counsel relied on **Colin Henry v. Attorney General of Jamaica and Assistant Superintendent T.K. White and Det. Cons. Esmond Brown**<sup>6</sup> to submit that the appropriate award for damages for false imprisonment and malicious prosecution in these circumstances is \$2,200,000.00.

## **Constitutional Damages**

[23] Counsel submits that the evidence showed clearly that Mr. Graham's constitutional rights were infringed as it concerns freedom of movement, liberty and security of the person, and equitable and humane treatment.

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<sup>3</sup> CL 1984/D130, Khan's Vol 4 at p. 210

<sup>4</sup> par. 6 to 24 witness statement

<sup>5</sup> par. 9, 21,26, 27 witness statement

<sup>6</sup> 30 JLR 227

[24] In placing reliance on **Fullerton v. Attorney-General**<sup>7</sup> counsel argued that an award of \$1.6 million would be appropriate for constitutional damages.

### **Aggravated Damages**

[25] As it concerns aggravated damages, the submission was that the humiliation and embarrassment which Mr. Graham testifies that he felt at the hand of the servant of the State warranted an award of aggravated damages.<sup>8</sup>

[26] She argued further that Corporal Givans' behaviour became more egregious when he failed to file papers with the Court and did not inform Mr. Graham that there would be no case filed<sup>9</sup>.

### **Exemplary Damages**

[27] Counsel for Mr. Graham further submitted that Corporal Givans' behaviour was oppressive, highhanded and outrageous including the instances of pointing his firearm at Mr. Graham and hitting the sole of his foot<sup>10</sup>, entitling him to exemplary damages.

[28] In submitting that an award of \$1,000,000.00 would be appropriate for aggravated damages and exemplary damages, Counsel relied in part on **Stephen Bell**<sup>11</sup>, where the updated 2016 award is approximately \$1,489,196.00 for aggravated damages and \$558,448.75 for exemplary damages.

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<sup>7</sup> 2010 HCV 1556

<sup>8</sup> **Inasu Everaldo Ellis v Attorney General and Ransford Fraser SCCA 37/01**

<sup>9</sup> par.28

<sup>10</sup> par. 10, 14 and 17 witness statement

<sup>11</sup> [2016] JMS Civ 59

## DISCUSSION

### Assault and Battery

#### *Assault*

[29] It has long been established that where a plaintiff reasonably apprehends that the defendant is going to inflict a battery on him that is an assault.<sup>12</sup> The evidence is that Mr. Graham feared the Corporal would shoot him because he pointed his pistol at Mr. Graham's forehead from a distance of about two inches. Mr. Graham was in fear of an immediate, non-consensual and unlawful touching by the police officer.

[30] In addition, Mr. Graham became afraid that he would become a target for the persons on the street who may later want his firearm since the Corporal caused him to expose his firearm to the persons on the road who were watching the proceedings.

[31] Liability has already been established by the judgement on admission. The injuries have not been challenged. They are listed in the medical report<sup>13</sup> as being tenderness, swelling and erythema (redness) proximal to his left wrist and a lesion as well as a healing abrasion in the lesion.

There was soft tissue injury of the left distal forearm and rotator cuff injury of his left shoulder.

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<sup>12</sup> **Collins v. Wilcock** (1984) 1 WLR 1172 at 1177, **Steve Oddman and Orville Bowra v. Attorney General of Jamaica and Sergeant Carwood** 2012HCV 03817

<sup>13</sup> Dated February 3, 2014.



*Battery*

[32] “The intentional and direct application of force to another person is battery.”<sup>14</sup> The unchallenged evidence shows that Cpl Givans touched Mr. Graham’s body on three occasions:

1. He “chucked” him in his chest resulting in Mr. Graham staggering back into his vehicle.
2. He used his baton to hit Mr. Graham’s feet when he was being placed into the police vehicle.
3. He placed the handcuffs on Mr. Graham’s wrist and also adjusted them too tightly resulting in pain.

[33] According to Mr. Graham, as supported by the medical evidence, he suffered injuries to his wrist, forearm and to his left shoulder. He was treated with pain killers and was sent home.

[34] In seeking to determine the appropriate award, I have considered all the authorities submitted, recognising that there is a paucity of authorities in this regard.

[35] In **Hugh Douglas v. Morris Warp, Vincent McPherson v. Sergeant Boreland and the Attorney General**<sup>15</sup> the court awarded \$195,000.00 as general damages of which \$140,000.00 was for personal injuries. The balance was for false imprisonment and malicious prosecution.

[36] The injuries to that claimant, Mr. Douglas, who was a security guard, were delivered by a police officer, and included bruises to both limbs, weals over the

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<sup>14</sup> **Collins v. Wilcock** [1984] 1WLR 1172 at 1177

<sup>15</sup> *Supra*

shoulder, swelling to the arm and forearm, and tenderness over the humerus, the bone in the arm.

[37] Counsel for Mr. Graham updated the entire amount to \$2,110,680 using the CPI for December 2019 and submits that \$2,100, 000. 00 is reasonable for an award for damages for assault and battery in this suit.

[38] I agree with Counsel for the Defence that **Leroy Robinson v. James Bonfield and Conrad Young**<sup>16</sup> , on which the claimant relies, involved injuries which are far greater than those in this case. Mr. Robinson's injuries arose from a motor vehicle accident and although no permanent disability was noted there, Mr. Robinson did suffer a slight deformity of his wrist with accompanying pain. He had been hospitalised and was incapacitated for eight weeks. The injuries had also been more extensive, having been to his hand, elbow, eyebrows and wrist.

[39] However, I regard the submitted discount of 75% of that \$1,763,748.87 award as being too great and instead consider a 50% discount as being more appropriate. This would amount to approximately \$900,000.00 for assault and battery based on this authority.

[40] Having considered all the authorities, I regard one million dollars as being appropriate for the assault and battery which Mr. Graham suffered resulting in injuries to his wrist, his arm and his shoulder. I here also consider the assault suffered from being "chucked" in the chest, beaten on the foot and having the firearm pointed at him from very close distances.

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<sup>16</sup> Supra

## **False Imprisonment and Malicious Prosecution**

[41] False imprisonment is defined as “the infliction of bodily restraint which is not expressly or impliedly authorized by law.”<sup>17</sup> Malicious Prosecution is proved where the proceedings were instituted maliciously by the defendant, acting without reasonable and probable cause, and where the proceedings were terminated in favour of the claimant who thereby suffered damage.<sup>18</sup>

[42] The evidence shows that Mr. Graham was falsely imprisoned for 5 hours from 10:15p.m on February 27, 2013 to 3:00 am on February 28, 2013. He was not at liberty to leave Avon Park Crescent or the police vehicle and he was restrained at the Police Station. Further, he was required to attend court on March 14, 2013 for the criminal proceedings.<sup>19</sup> and he was therefore unable to follow his own pursuits during that time. There is however no evidence as to the precise amount of time which he spent searching for the case which did not exist.

[43] I reject the Defence argument that he was not told any date for Court and therefore had no reason to attend there. Similarly, I reject the submission that because the matter was not filed in Court it must be considered that the matter was not completed in his favour. In my view, the absence of any filed case is the ultimate success for a claimant. It means that the Defendant should be taken as not even having had enough evidence to start the proceedings. The victorious claimant has to answer to nothing and is clearly successful.

[44] I accept as true Mr. Graham’s evidence that he had been required to attend Court to answer to charges. It is only normal that on allowing an arrested person to proceed on bail, there must be an instruction as to the time to attend at the Court to answer to charges. Were it otherwise the detainee would have been released fully, not

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<sup>17</sup> Winfield and Jolowicz on Tort, 11<sup>th</sup>ed 1979 at page 55

<sup>18</sup> **Baugh v. Courts(Jamaica) Limited and the Attorney General of Jamaica** CL B099/1997

<sup>19</sup> par. 4, 24 and 25 witness statement

on bail. In addition, the “recognizance for surety” document which provides information on Mr. Graham’s charges and his responsibility to return to Court, is an exhibit which means that Mr. Graham was given a date to return to court.

**[45]** The action of Corporal Givans in requiring Mr. Graham to attend to answer a charge which was never filed must be condemned. The seriousness with which Mr. Graham regarded attending Court to answer a charge is shown by the unchallenged evidence that he retained an attorney-at-law to represent him and that attorney-at-law joined in the search for what became a phantom case, non-existent. In my view the action of the officer in this regard was reprehensible and highhanded and is a clear example of malicious prosecution.

**[46]** In determining the appropriate amount of any award for false imprisonment, I consider the time Mr. Graham spent unlawfully detained as well as the damage to his reputation because of the false imprisonment.

**[47]** It is not disputed that he was at the time, a Justice of the Peace, was in training to be a Lay Magistrate, operated a security company and had been a member of the Jamaica Defence Force.

**[48]** Nor is it disputed that persons stood on the roadway watching the incident which culminated with the police putting Mr. Graham in handcuffs, into the police car and driving away with him to the station, after assaulting him.

**[49]** I take judicial notice of the fact that Justices of the Peace and Lay Magistrates are generally speaking, held in high regard and enjoy tremendous respect because of the voluntary work which they are required to do in the society.<sup>20</sup> They have multiple roles including visits to detainees in custody, offering them bail and recommending persons for their good behaviour.

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<sup>20</sup> Justices of the Peace Jurisdiction Act

[50] It is true that Mr. Graham has provided no evidence from anyone to support his assertion that he suffered loss to his reputation. However, common sense dictates that he must have suffered some lessening of the high regard in which his position is held, if he was seen to be handcuffed and forced into a police vehicle. Those actions could reasonably cause a reasonable person to conclude that Mr. Graham was a wrongdoer, or at least to question whether or not Mr. Graham had done wrong. It would further lead persons to question whether he was fit to hold the station of a Justice of the Peace as he was then being treated as a common criminal.

[51] The further time spent in custody at the police station, in an area within the view of the public, would also lead to such a conclusion. Who is apprehended and kept in custody, if not a person who is believed to have done wrong?

[52] At the same time there was no challenge to the evidence that Mr. Graham owned a security company, an entity which must require the confidence of its users.

[53] In the absence of any challenge to the evidence that Mr. Graham was a Justice of the Peace, was being trained to become a Lay Magistrate, owned a security company, and had been a member of the Jamaica Defence Force earlier, I draw the inescapable conclusion that he had the respect of the community.

[54] Corporal Givans' actions in apprehending him and arresting and charging him in the very public manner in which he did, must have caused damage to Mr. Graham's reputation.

[55] **Colin Henry v. Attorney General of Jamaica and Assistant Superintendent T.K. White and Det. Cons. Esmond Brown**<sup>21</sup> on which Counsel for the claimant relies, concerns a matter of false imprisonment in which there was far more evidence of loss than obtains in this matter.

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<sup>21</sup> 30 JLR 227

[56] Mr. Colin Henry was wrongfully arrested and charged for possession of ganja. The evidence that he had resigned from the position which he held at the time, of Executive Director of the Private Sector Organization of Jamaica, supported his assertion that there was resulting damage to his reputation from the false imprisonment and malicious prosecution. He also provided evidence of both his mental as well as physical pain.

[57] The Court there awarded \$150,000.00, which when updated now is \$2,205,078.26\_for false imprisonment and malicious prosecution.

[58] In 2001, the Supreme Court considered damages for false imprisonment of a civil servant and Justice of the Peace, Mr. Inasu Ellis.<sup>22</sup>

[59] There the Court awarded the amount of \$100,000.00 for seven (7) hours unlawful detention at a police station. The award as updated amounts to \$285,588.13, using the Consumer Price Index (CPI) of February 2020 (269.5). This calculates as \$40,798.30 per hour.

[60] In **Sharon Greenwood-Henry v. The Attorney-General**<sup>23</sup>, in 2005, the Supreme Court's award for damages for false imprisonment for approximately 15.5 hours was \$100,000. Converted by the CPI of March 2020 of 268.80 the award updates to \$285, 047.00 which calculates to an amount of \$18,390.13\_per hour.

[61] Counsel for the Defence submitted that perhaps the reason for the great disparity between the hourly rate of these awards may have been the claimant's reputation or standing in the community. I agree with that submission. Further submission by the defence was that an hourly rate of \$35,000 be awarded in view of the high standing of Mr. Graham.

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<sup>22</sup> **Inasu Ellis v The Attorney-General** Civil appeal 37/01

<sup>23</sup> CL G 116/1999

[62] In my view, an amount of \$100,000 per hour of false imprisonment of Mr. Graham is appropriate, not only because of his standing in the community, but also because the various periods of imprisonment occurred in such an open disrespectful fashion in full view of members of the community in which he was so well known and which he served..

[63] Mr. Graham was detained from 10:15pm on February 27, 2013 to 3a.m on February 28, approximately 5 hours and was obliged to be at the Court on March 14.

[64] My aim now is to make an award “to put the person whose right has been invaded in the same position as if it had been respected so far as the award of a sum of money can do so.”<sup>24</sup>

[65] The amount I regard as being reasonable for false imprisonment here is \$500,000 being \$100,000.00 per hour, and for malicious prosecution the award is \$500,000.00.

### **Aggravated Damages**

[66] Aggravated damages arise where the complainant’s proper feelings of dignity and pride are injured by the tort committed by the defendant.<sup>25</sup>

[67] In **Attorney-General of Jamaica v. Gary Hemans**<sup>26</sup> the Court of Appeal, in agreeing with the approach to aggravated damages taken by Lord Devlin referred to his discussion in **Rookes v. Barnard**<sup>27</sup> on the award of those damages. The learned Law Lord there opined that where the manner in which the wrong was committed was such as to injure the plaintiff’s proper feelings of pride and dignity or give rise to humiliation,

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<sup>24</sup> **The Albazero** (19770 AC 741 at 841 per Lord Diplock

<sup>25</sup> Clerk and Lindsell on Tort 19<sup>th</sup> edition, par. 29 to 137

<sup>26</sup> [2015] JMCA Civ 63 at par. 23

<sup>27</sup> [1964] AC 1129

distress, insult or pain, those were circumstances in which an award for aggravated damages would be appropriate.

**[68]** Lord Devlin thereafter summarised the elements into two categories: 1) exceptional or contumelious conduct or motive by the defendant and 2) intangible loss, that is, injury to personality.

**[69]** In **Inasu Everaldo Ellis v Attorney General and Ransford Fraser**<sup>28</sup> the Court emphasised that aggravated damages become appropriate where the behaviour complained of is disdainful, grossly insulting and offensive. The Court of Appeal increased the award given to Mr. Ellis by the trial court and replaced it in 2004 with an award of \$2.1 million (upgraded to \$6.7 million) for malicious prosecution including aggravated damages. The charges against him had been pending for almost 5 years. Initially he had been denied Counsel, had been left standing in custody for 5 ½ hours. Mr. Ellis was a civil servant and the case against him had been highly publicized.

**[70]** In **Stephen Bell**<sup>29</sup>, the circumstances for an award for aggravated damages were examined. Mr. Bell was a bearer and deliveryman. He was detained and handcuffed in the view of passersby. He was arrested and charged for illegal possession of a firearm and the charges were later dropped. His motor cycle and helmet which he used in his job and which the police defendant had seized were never returned to him, despite the order of the court. In addition, he contracted chicken pox whilst in custody and was always in fear of hostile inmates. The space to eat and to sleep had been limited.

**[71]** In my view, the extent of the embarrassment and humiliation of Mr. Graham in the case at bar was greater than that of Mr. Bell because of his high standing in the society as well as the interaction which he had previously enjoyed with the police at the Admiral Town Police Station. However Mr. Bell endured far greater physical injury than

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<sup>28</sup> Supra at page 14

<sup>29</sup> supra



did the claimant in this case. The award in **Bell** for aggravated damages was \$1,489,196.00 (as updated).

Mr. Graham's evidence of being humiliated, embarrassed, distressed and sad<sup>30</sup> remains unchallenged. Having considered the evidence as well as the authorities, I regard the award of \$500,000.00 for aggravated damages as being reasonable in this case, where, although the physical injury was less than that in **Bell**, the injury to the dignity and pride of Mr. Graham, a servant of the community occurred in extremely public scenarios.

### **Exemplary Damages**

[72] In **Rookes v Barnard**<sup>31</sup> the special circumstances in which exemplary damages can be properly awarded are stated. These are where there is evidence of oppressive, arbitrary or unconstitutional actions by the servants of the Government.

[73] The evidence is unchallenged that Corporal Givans, without making even the most perfunctory of enquiries, detained Mr. Graham despite his protestations. There has been no evidence of any basis for his detention and this exemplifies that the Corporal's action was arbitrary.

[74] Mr. Graham's continued enquiries on Avon Park Crescent as to the reason for his arrest brought no response from the Corporal, other than continued detention.

[75] The Constitution provides that any person who is arrested or detained shall have the right at the time of his arrest or detention or as soon as is reasonably practicable , to

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<sup>30</sup> par. 15, 21,26,27,29

<sup>31</sup> supra

be informed, in a language which he understands, of the reasons for his arrest or detention.<sup>32</sup>

[76] Viscount Simon explained the concept clearly when he said,

“If the charge on suspicion of which the man is arrested is then and there made known to him, he has the opportunity of giving an explanation of any misunderstanding or of calling attention to other persons for whom he may have been mistaken, with the result that further enquiries may save him from the consequences of false accusation.”<sup>33</sup>

[77] Further, the Constitution protects a person’s right to freedom of movement<sup>34</sup> except in specified circumstances, none of which pertain here. Where an officer encroaches on that right, there must be the expectation that a clear, reasonable explanation would be immediately forthcoming.

[78] A police officer, even when purportedly pursuing his duties, is not above the law. Indeed it may well be argued that he, even moreso than a private citizen, must show respect for the Constitution and the laws which exist for the proper functioning of our society.

[79] What the evidence shows is that Corporal Givans stopped Mr. Graham because he was turning his car around in a driveway when the officer was driving along the road. It resulted in the assault and battery, false imprisonment and malicious prosecution of Mr. Graham. The Corporal’s behaviour in this matter was oppressive, arbitrary and unconstitutional and provides a solid basis for Mr. Graham to receive an award for exemplary damages.

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<sup>32</sup>Section 14 (2)(b)

<sup>33</sup>**Christie and Another v Leachinsky** supra at 574

<sup>34</sup>Section 13(3)(f)

[80] Such an award was made In **Greenwood-Henry**<sup>35</sup> . There the police officer took the claimant to a hospital and insisted that the claimant's body and body cavities be searched repeatedly for drugs, not only by a doctor but also by his colleague police officer. Further he directed that she be administered a laxative to expel drugs. There were no drugs in or on her body. The exemplary damages awarded there were \$700,000 in 2005. Updated this amounts to \$ 1,995,334.04

[81] In this matter the police officer publicly demeaned and assaulted Mr. Graham in an oppressive, arbitrary and unconstitutional manner. Mr. Graham was kept ignorant of the charges at the scene at Avon Park Crescent and was sent on a "wild goose chase" to attend Court when there was no filed case. The Corporal exposed Mr. Graham to possible embarrassment by requiring him to attend at the public Court as an accused person whilst being trained as a Lay Magistrate which position means that he would be expected to adjudicate in certain courts. I regard the amount of \$600,000.00 for exemplary damages as being appropriate in these circumstances.

### **Constitutional Damages**

[82] Counsel for Mr. Graham has sought damages for breach of constitutional rights, including the right to freedom of movement.

[83] In **Attorney General of Trinidad and Tobago v Ramanoop** (Trinidad and Tobago)<sup>36</sup> the Privy Council opined:

*"...where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise*

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<sup>35</sup> supra

<sup>36</sup> [2005] UKPC 15 at par. 25,

*available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process..."*

**[84]** I agree that Corporal Givans' actions infringed Mr. Graham's constitutional rights. However, I have made awards for assault and battery, false imprisonment and malicious prosecution as well as for aggravated and exemplary damages and have considered therein the constitutional breaches.

**[85]** I regard these awards as adequate in the circumstances of this matter and decline to make a separate award for damages for breach of constitutional rights.

**Special Damages**

**[86]** Counsel have agreed this amount as \$136,800.00 including medical treatment, transportation to obtain the treatment, and loss of earnings,

**CONCLUSION**

**[87]** Having assessed the damages, the award I regard as reasonable and which I make is therefore for:

**GENERAL DAMAGES**

Assault and Battery .....	\$1,000,000. 00
False imprisonment .....	\$500,000.00
Malicious prosecution .....	\$500,000.00
Aggravated damages.....	\$500,000.00

Exemplary damages..... \$600,000.00

TOTAL ..... \$3,100,000.00

with interest of 3% per annum from date of service of the claim form to today.

**SPECIAL DAMAGES** in the amount of \$136,800.00 with interest of 3% per annum from date of incident to today.

**COSTS** to the claimant to be agreed or taxed.