

August 26, 1996 for what was alleged to have been breaches of Prison rules 50 (a), (d), (f) and (s) of Booklet (1) of the Prison Act Cap 281 of the Laws of St. Vincent and the Grenadines.

- (3) A declaration that the cellular confinement of the Applicant since August 26, 1996 and continuing to the present time without break and ordered by the Superintendent of Prisons amounts to inhuman and degrading treatment which the Applicant is guaranteed not to be subjected to by Section 5 of the Constitution of St. Vincent and the Grenadines.
- (4) A declaration that the applicant having been kept in iron-clad leggings and handcuffs from August 26, 1996 until the month of February 1997 continuously, and with which he had to sleep and eat so bound and only relieved of those shackles when he was allowed to bathe amounted to torture or to inhuman or degrading punishment contrary to section 5 of the Constitution of St. Vincent and the Grenadines.
- (5) A declaration that the whip or instrument known and referred to as the "cat-o-nine tails" is not an instrument which is legalized at the present time or at the time of August 26, 1996 in St. Vincent and the Grenadines for the purpose of punishment of offenders against the criminal and/or penal law or the prison rules or regulations in St. Vincent and the Grenadines.
- (6) An award of costs to the Applicant to be taxed if not agreed.

The learned judge not having made an award of damages, the applicant appealed to the Court of Appeal and by a consent order before that court liability was conceded by the Respondents and the Court of Appeal ordered "assessment of such constitutional redress payable to the appellant" by a Judge of the High Court.

This judgment is concerned solely with the assessment of damages to which the applicant would be entitled and following hereunder is a synopsis of the facts as found by the trial judge -

"The applicant Reynold Peters (hereafter Mr. Peters) is 40 years old. He is serving a term of 12 years imprisonment for manslaughter imposed on 12th June, 1988 at the State Prison for men, in Kingstown. On 26th August, 1996 he is alleged to have assaulted Senior Prison Officer Linus Goodluck. To be specific he is said to have hit him in the back of his head with a 3 foot length of 2" x 2" wood, rendering him unconscious for several hours. Even while officer Goodluck was unconscious and being dragged from the prisons, Mr. Peters pursued him with the length of wood attempting to strike him again. There is no suggestion that he succeeded in striking officer Goodluck more than once, nor is there any indication what sparked the assault. There is a charge of assault causing actual

bodily harm still pending in the Magistrate's Court relating to this incident. Mr. Peters is liable if he is convicted of this charge to be sentenced to a lengthy term of imprisonment to run either concurrently with or consecutive to the balance of the term he is still serving.

On 26th August the day of the incident and immediately after it had occurred, the Applicant was additionally charged as a result of this incident with various contraventions of Section 50 of the Prison Rules. The actual assault on Officer Goodluck did not form part of the disciplinary charges brought under the Prison Rules. That offence of assault is being dealt with by the police, not the prison authorities, and is still before the Magistrate. The disciplinary charges brought against Mr. Peters under Section 50 were heard by the Superintendent of Prisons on the same day as the incident. The Superintendent found Mr. Peters guilty of the above disciplinary charges. As punishment the applicant was ordered to receive 10 strokes with a cat-o-nine tails, and to cellular confinement. He was placed lying on his stomach on a bench with iron stays to each of his legs to keep them in place. His hands were handcuffed. A hood was placed over his face. His back was then exposed. The flogging with 10 strokes of the cat-o-nine tails was then carried out.

Following the execution of this physical punishment the applicant was placed in a cell where he was still kept at the time of the hearing of this application on 24th July, 1997. He is confined to his cell continuously, allowed out only for a short period each day to shower. The evidence in the affidavit of the Superintendent is that this cellular confinement was for a two-fold purpose, to aid recovery from the flogging and to form part of the punishment for the threat on the lives of officers, including that of the Superintendent. The applicant must have recovered from his injuries from the flogging by this time. He must therefore be still in solitary confinement for the other remaining reason, i.e. punishment.

He was for some months kept in a single cell in restraint, that is he had to eat and sleep bound with foot-leggings and handcuffs. These shackles were sometimes removed for short periods of time, for example when he showered. Mr. Peters as a result of his continuously being shackled has suffered abrasions and contusion to his lower legs. Finally, on 10th January after an intervention by Mr. Peters' solicitor to the Prime Minister in his capacity as Minister of Justice, the shackles were removed. He does not appear still to be shackled. When he appeared in Court he was unchained and accompanied by a single Prison Officer."

It is upon the basis of these facts that I embark on the search for an appropriate sum to compensate the citizen for what must be described as an alarming breach of his constitutional rights.

In an article published in the Canadian Bar Review Vol. 62 (1984) 517 it is said that the purpose of awarding damages in constitutional matters should not be limited to simple compensation. Such an award the article suggests ought in proper cases to be made with a view to deterring a repetition of breach or punishing those responsible for it or even for securing effective policing of the constitutionally enshrined rights by rewarding those who expose breaches of them with substantial damages.

The nature of a claim for compensation for breach of ones constitutional rights was further explained by the Privy Council in **Maharaj v Attorney General of Trinidad and Tobago 1977 1 ALL ER P.C.** (when speaking of right not to be deprived of ones liberty).

"Finally their Lordships would say something about the measure of monetary compensation recoverable under Section 6 where the contravention of the claimants constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment under which damages 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..."

I propose to proceed to the award on the basis that the liability of the State in the case is not based on the theory of vicarious liability incurred by virtue of a tort committed by its servants but rather primary liability in the area of public law for a wrong committed by the State and in its name.

Lord Diplock put it succinctly when he said in relation to redress under the constitution of Trinidad and Tobago -

"The claim for redress under 6 (1) for what has been done by a judge is a claim against the State for what has been done in the exercise of the judicial power of the State. This is not vicarious liability; it is liability of the State itself. It is not a liability in tort at all: it is a liability in the public law of the State not of the judge himself, which has been newly created by Section 6 (1) and (2) of the constitution". **Maharaj v Attorney General of Trinidad and Tobago 2 1979 A.C. p. 399.**

In approaching the assessment of damages in this case I am mindful that there is a dearth of authority on the principles or guidelines by which such damages are to be assessed. I am only aware of two decisions of the Privy Council that have dealt with the assessment of damages for breach of constitutional rights. Those cases are **Maharaj v The Attorney General of Trinidad**

and Tobago No. 2 1979 A.C. 385 and Attorney General of St. Christopher and Nevis v Reynolds 1980 A.C. p. 637. Maharaj was a case of deprivation of liberty by wrongful imprisonment. The court took into account as matters relevant to the computation:

- (1) Loss of earnings consequent upon imprisonment
- (2) recompense for the inconvenience and distress suffered by the victim of the breach.

No claim was in that case made for exemplary damages and so none was awarded.

Loss of earnings would be irrelevant in this case as the aggrieved citizen was in fact serving a sentence of imprisonment. But in the later case of **Reynolds** a small sum of exemplary damages was awarded and the principle acknowledged that exemplary damages are payable for high-handed and oppressive conduct by officers of the State. This principle I venture to state is firmly embedded in our constitutional law jurisprudence - "The fundamental ends sought by an award of exemplary damages are both punishment and disapproval. It is a question of punishing a wrong and of publicly indicating that it is not acceptable; the end sought is not to compensate the victim for the loss suffered." - vide **Patenando v Roy et al 128 D.L.R. 4th Edition p. 78.**

But there are other Caribbean cases that are worthy of attention since they deal both with awards of exemplary damages, and damages payable under other headings. I first draw attention to the case of **Tynes v Barr 1992 45 WIR p. 7.** In that case a lawyer was subjected to a body search by the defendant including the "patting" through his clothing of his private parts. He was then taken handcuffed in an open jeep clearly visible to the public, to the police station where he was forcibly strip-searched while handcuffed, then fingerprinted, and placed in a cell. He was denied the use of the telephone to call a lawyer but was later released on bail and charged with an offence relating to trespass at an airport tarmac contrary to the Civil Aviation Act and for failing to move contrary to S. 212 (8) of the penal code. The plaintiff instituted proceedings for damages for the torts of assault, false imprisonment, malicious prosecution and breach of his right to personal liberty as guaranteed under Article 19 of the Constitution. On the 6th day of the trial the defendant conceded liability for the torts of assault, false imprisonment, malicious prosecution and the breach of the citizens right to personal liberty as guaranteed under Article 19 of the Constitution. On the ninth day the tort of malicious prosecution was conceded.

In that case special damages of \$40,505.00 were awarded and so were damages of \$75,000.00 for assault, battery, and false imprisonment; \$100,000.00 for malicious prosecution, and \$40,000.00 for breach of the plaintiff's constitutional rights. In relation to the sum paid for breach of the constitutional rights of the plaintiff the court expressed the view that the conduct of the defendant fell precisely in the category of oppressive, arbitrary or unconstitutional action by "servants" giving rise to exemplary damages. In assessing the exemplary damages a court should include the injury the plaintiff had endured to his dignity and pride, mental suffering and loss of reputation.

This is how the learned Chief Justice perceived the conduct of the public officials in that case:

"Unless the Bahamas has become a police state the conduct of the upper echelons of the police force cannot be accepted by any court and certainly not by the Supreme Court which is the guardian of the Constitution. As a result of the flagrant disregard for the rule of law by the police an order with a penal notice endorsed thereon was issued to the Commissioner of Police and only then were some of the relevant documents (even those which have been helpful to the defence) produced. It must be clear to all concerned in the administration of justice in this country, that the Constitution of the Bahamas is predicated upon the rule of law, not anyone's whim or fancy and that everyone is subject to the law. "The attitude", the Chief Justice continued, "exhibited by those in positions of authority in disciplined forces such as the police permeates the whole organization and if they show such disregard for the orders of the Supreme Court can it be wondered at that the lower ranks would show disregard for individual subject's rights!"

The case of **Fuller v Attorney General Jamaica (Civil Appeal 91 of 1995)** is the other Caribbean case to which I now turn attention. That case involved barbarity at the highest level and resulted in very erudite judgments in the Court of Appeal in Jamaica. Some of the prisoners who were placed in the cells died because of poor ventilation. This led to actions brought by the mother of one of the deceased under the Fatal Accidents Act of Jamaica. After expressing the opinion that he should take account of the awful prison conditions in which Fuller had been placed Downer JA went on to say "the unqualified language of Section 17 demonstrates that the Constitution imposed an absolute prohibition on the State as regards torture or inhuman or degrading treatment. The nearest counterpart to this in our Statute law is the Bill of Rights which prohibits illegal and cruel punishments inflicted that go beyond the tort of false imprisonment in bad conditions. Equally Section 17 of the Constitution which goes beyond the tort of false imprisonment is a recognition that the horrors which governments in this century have inflicted on those within their jurisdictions require constitutional remedies". The learned Justice of Appeal went on to award 1 1/2 million dollars.

Patterson J.A. in the very case in considering what financial redress the breach of the citizens constitutional rights should allow said,

"It is incumbent on the Courts to develop appropriate principles and guidelines as to the quantum of awards of compensation where applicable. As I pointed out before the usual order sought was the grant of a declaration that the applicants constitutional rights had been infringed. Where such a declaration has been made it is adhered to by the appropriate organ of the State and the implementation poses no difficulty. Where an award of monetary compensation is appropriate the crucial question must be what is a reasonable amount in the circumstances of the particular case. The infringement should be viewed in its true perspective as an

infringement of the sacrosanct fundamental rights and freedoms of the individual and a breach of the supreme law of the land by the State itself. But that does not mean that the infringement should be blown out of all proportion to reality nor does it mean that it should be trivialized. In like manner the award should not be so large as to be a windfall nor should it be so small as to be nugatory."

The learned judge went on to say,

"I will take into account the inconvenience and distress which the deceased must have suffered during his incarceration. I will also take into account that the inhuman and degrading treatment lasted for thirty-six hours."

The learned judge held that one million dollars was sufficient compensation.

It is of some importance to note that in his judgment Harrison J.A. (the third judge) took time to observe that the Government of Jamaica had conceded there was inhuman treatment, apologized, paid the funeral expenses, offered no defence to the claim, and cast no aspersion on the character of the deceased; and further note should be taken that Downer J.A. referring to the quantum of damages said, "It must be sufficient recompense to the estate of the deceased so that the beneficiaries will be aware in a tangible way that the State cares and acknowledges the responsibilities with regard to its obligations under Chapter 111 of the Constitution."

In the case of **Ramnarine Jorsingh v Attorney General of Trinidad and Tobago Civil Appeal No. 144 of 1991** De La Bastide C.J. in the Court of Appeal found that the loss of earnings which the citizen had suffered was directly attributable to the delay by the Court in rendering its judgment and that such failure constituted a breach of his constitutional rights, awarding \$50,000.00 for loss of earnings and \$20,000.00 for distress and inconvenience and ordering the payment of interest on the total sum of \$70,000.00 from the date the citizen had filed his action up to the date of judgment of the Chief Justice.

The learned trial judge in the instant case found that the solitary confinement, the shackling of the applicant and the flogging were all unlawful.

"The shackling of the prisoner for an extended period including while he slept and ate without the order of the justices was a brutal and severe assault on the person and psyche of Mr. Peters. It was designed to brutalize and break him and to reduce him to compliancy by stripping him of all dignity and self respect. It amounted to a form of torture."

The illegalities of which the Superintendent was manifestly guilty, would have inflicted considerable pain and suffering, which would include the indignity and humiliation to which he

was subjected. Notionally \$50,000.00 can be appropriate compensation for such a tragic imposition on the human personality.

Then there was the solitary confinement which Mr. Peters was made to undergo from the 26th August, 1996 and was still undergoing when the learned trial judge gave his judgment on July 31, 1997. Solitary confinement the learned judge held was by virtue of prison rules limited to a month unless extended by the visiting justices. There was no such extension. Notionally too I cannot find the way to a lesser sum of damages than that of \$50,000.00 for this foul outrage.

The trial judge found that Mr. Peters was shackled (both hands and feet) and that this was in violation of the prison laws. The shackling continued even when the prisoner was having his meals or going to sleep. This was if anything cruelty "in excelsis". It lasted from August of 1996 to January 1997. Mercifully but oddly so, it was only political intervention (sought by counsel for Mr. Peters) that led to the removal of the shackles. The sum of \$50,000.00 is perhaps too small a sum to compensate Mr. Peters, victim as he admittedly was of conduct reminiscent of the African slave trade.

I have looked at the affidavits of Dr. Debnath and Dr. Ramjani. The last named doctor also testified at the hearing for the assessment of damages. The influence of their testimony has been minimal.

In arriving at a global figure relating to damages for the flogging, shackling of the applicant's feet and hands and the solitary confinement which he underwent, I take into account:

- (1) the pain and suffering
- (2) the assault on his dignity
- (3) distress and inconvenience that inevitably followed
- (4) the disgrace and humiliation which accompanied the treatment meted out to him

I am aware that redress in financial terms for breach of constitutional provisions is an ingredient of our jurisprudence now coming into prominence and which must necessarily evolve in such a way as to balance the competing interests of the State to preserve law and order and that of the citizen not to have his constitutional rights trampled upon. The noble task of effecting this balance is conferred upon the judiciary, who have traditionally been regarded as guardians of the constitution.

Before arriving at an award of damages I should like to refer to the case of **Jamakana v Attorney General 1985 L.R.C. (Const) 569** a case from the Solomon Islands where Daly CJ made two separate awards of compensation for a breach of a constitutional right; one against the Government and the other against the Minister responsible for the breach, personally. He

founded the right to do so on section 18(2) of the Solomon Islands constitution which provides that the court could

"make such orders, issue such writs and give such directions including the payment of compensation as it may consider appropriate for the purpose of enforcing or securing the enforcement of the protective provision of this constitution."

The Chief Justice in drawing attention to the provision just cited went on to say that

"it will be noted that the discretion here granted to make orders of compensation is expressly related to the enforcement of the protective provisions of this constitution and therefore would seem to go beyond the normal common law principles which would for example require only one award of damages to be made against joint tortfeasors sued in one action. I consider that my paramount duty is to enforce or secure the enforcement of the protective provisions of the constitution, and hence if it is necessary to do so in the performance of this duty I may award compensation separately against persons alleged to have contravened the constitutional rights of an applicant."

In the case of **Jorsingh** cited above De La Bastide CJ agreeing with Daly CJ said:

"I would respectfully agree with the learned Chief Justice that the constitutional provision which makes enforcement of the guaranteed rights the object of the relief which the court is empowered to grant has the effect of releasing the court from the constraints of the common law rules governing the award of damages moreso as our section 14 (2) (unlike section 18 (2) in the Solomon Islands) makes no express mention of the "payment of compensation" ".

It is to be noted that the constitution of St. Vincent and the Grenadines by section 16(2) expresses in very broad terms the discretion given to the court for the purpose of enforcing the provisions enacted for the protection of constitutional rights. The provision gives authority to the court to

"make such declarations and 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 section 2 to 15 (inclusive) of this Constitution."

It is my view that under the foregoing provision a court may *inter alia* order the initiation of legal proceedings against a delinquent public official, impose an award of damages against him, subject him to disciplinary proceedings, and commute a sentence of death to one of life imprisonment when the discretion to do these things is warranted - because of constitutional breaches.

In the course of his judgment in **Jorsingh** (supra) Chief Justice De La Bastide commenting on the provisions cited above, relevant to the enforcement of constitutional provisions (section 16(2) of the constitution of St. Vincent and the Grenadines, section 14 (2) of the constitution of Trinidad and Tobago, and section 18(2) of the Solomon Islands) expressed the view that given the breadth of the sections of the respective constitutions

"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."

Chief Justice De La Bastide was somewhat concerned that the Privy Council seems to have been saying in the case of **Reynolds** (supra) that exemplary damages were not recoverable as part of an award of damages for breach of a constitutional right. I say with due deference that the Privy Council has not specifically so determined.

Against this background, I am of the view that in addition to the factors numbered 1 - 4 mentioned above which I am prepared to take into account in fixing the quantum of damages, I should - while awaiting determination of a court that binds me to the principle that exemplary damages in a matter such as this are not allowable - proceed on the basis that I am not bound by any such principle.

A tragic day it was in August of 1996 when darkness fell upon this land through the activities of a public official serving the State of St. Vincent and the Grenadines in the capacity of Superintendent of Prisons. As if he were a law unto himself he laid a charge against the applicant which he had no authority to bring, inflicted the punishment of flogging which the law did not permit, shackled the hands and feet of another human for months on end with occasional relief, and after his avenging lust had spent itself consigned the aching body of Reynold Peters to solitary confinement.

I am mindful of the economic considerations relating to the purchasing power of the currency involved in this case and venture the opinion that in Third World countries the citizen knows all too well the value of his money. In refraining from the grant of damages in the case Mitchell J volunteered that had he to assess the damages he would consider the amount of \$225,000.00.

What the learned judge suggested *en passant* in the course of his judgment I have by deliberate consideration regarded as appropriate. I convert the figures I considered as notional earlier in this judgment into figures of \$50,000.00 attributing that sum in each case to the shackling, the flogging and the solitary confinement making a total of \$150,000.00. In fixing a figure of exemplary damages in this case I would take into account the fact that up to this very moment no apology in writing has been forthcoming from the State concerning the admitted breach of the

applicant's constitutional rights. None has come from the public official (see case of **Fuller** (supra) on this aspect).

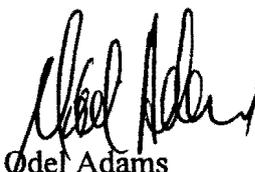
Instead of admitting at the outset the flagrant breaches by the Superintendent of Prisons counsel for the State sought to introduce into this tragedy the baseless and insulting contention that counsel appearing for the applicant had not in fact been retained by him.

The public official who was responsible for this sordid chapter in the prison's history is still in the office as Superintendent with no indication on the file so far as I can see of any disciplinary proceedings ever having been taken against him.

I fix damages of an exemplary nature in the sum of \$75,000.00 making a global figure of an award of \$225,000.00 with interest at the rate of 6 per cent per annum to run from the date of the filing of the citizen's application to the High Court up to the date of the Judgment of Mitchell J.

Further and in pursuance of section 16(2) of the Constitution of this State I order that the Attorney General proceed forthwith with the institution of disciplinary proceedings against Bernard Marksman, the Superintendent of Prisons.

Costs shall be certified fit for two counsel, to be taxed if not agreed.


Odel Adams
HIGH COURT JUDGE